JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAIʻI
DEPARTMENT OF TAXATION
Ka ʻOihana ʻAuhau
P.O. BOX 259
HONOLULU, HAWAIʻI 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

TESTIMONY OF GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
H.B. No. 2767, H.D. 1, Relating to Renewable Fuel.

BEFORE THE:
House Committee on Finance

DATE: Wednesday, February 28, 2024
TIME: 12:00 p.m.
LOCATION: State Capitol, Room 308

Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding H.B. 2767, H.D. 1, for your consideration.

H.B. 2767, H.D. 1, makes significant changes to the Renewable Fuels Production Tax Credit (RFPTC) in section 235-110.32, Hawaii Revised Statutes (HRS). The bill increases the amount of credit available to each taxpayer from 20 cents to 35 cents per 76,000 British thermal units (BTUs) of renewable fuels produced and sold for distribution in the State. It also creates an additional $1 credit per gallon of renewable fuels produced from renewable feedstock locally grown or recycled in the State, and another $1 credit per gallon of sustainable aviation fuel produced.

The bill also changes the per-taxpayer credit cap from a set amount of $3,500,000 per taxable year to 75 percent of the total amount of RFPTC credits allowed in a taxable year. The bill then replaces the credit's current aggregate cap of $20,000,000 per taxable year with an undefined amount. The Department notes that if a taxpayer's credit is reduced because of the aggregate cap in a given tax year, the taxpayer may claim a credit for the amount of the reduction in the subsequent year.

Additionally, H.B. 2767, H.D. 1, extends the availability of the RFPTC by amending the definition of "credit period" from 10 to 20 consecutive years, and providing that any taxpayer that previously claimed the RFPTC would be reset for tax years beginning after December 31, 2023. The measure also extends the Hawaii State Energy Office's (HSEO) deadline to issue certificates from 30 to 60 days after the taxpayer's statement is due and requires the HSEO to determine whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced by the taxpayer is at least 25 per cent lower than that of fossil fuels. The bill also adds definitions for "lifecycle greenhouse gas emissions" and "locally grown".

H.B. 2767, H.D. 1, has a placeholder effective date of July 1, 3000 and would apply to taxable years beginning after December 31, 2023.

The Department defers to HSEO regarding its ability to certify the RFPTC with these proposed changes, but requests that these certification requirements be maintained. The Department does not have the subject-matter expertise in renewable energy necessary to certify these credits, nor does it have the administrative capability to track aggregate caps.

The Department further notes that the measure's amendment to section 235-110.32(a) at page 4, lines 2-4, which provides that "any taxpayer who previously claimed credits under this chapter shall be reset for taxable years beginning after December 31, 2023," is ambiguous. If the intent of this provision is to allow taxpayers who previously claimed the RFPTC credit to be eligible to claim the RFPTC credit for a single 20-year period beginning in tax year 2024, the Department suggests amending the provision to read as follows:

> Each taxpayer, together with all of its related entities as determined under section 267(b) of the Internal Revenue Code and all business entities under common control, as determined under sections 414(b), 414(c), and 1563(a) of the Internal Revenue Code, shall not be eligible for more than a single [~~ten-year~~] credit period[~~.~~]; provided that for taxable years beginning after December 31, 2023, a taxpayer may be eligible to claim the credit for a single credit period notwithstanding any claim made by the taxpayer for the credit under this section for taxable years beginning before January 1, 2024.

Thank you for the opportunity to provide comments on this measure.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024

ON THE FOLLOWING MEASURE:
H.B. NO. 2767, H.D. 1, RELATING TO RENEWABLE FUEL.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 28, 2024 **TIME:** 12:00 p.m.

LOCATION: State Capitol, Room 308 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Cynthia M. Johiro, Deputy Attorney General

Chair Yamashita and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill proposes to update the renewable fuels production tax credit established by section 235-110.32, Hawaii Revised Statutes, to incentivize locally produced renewable fuel sold in the State. Page 2, lines 4-6.

Taxpayers who produce renewable fuels are provided an additional credit value of $1 per gallon for renewable fuels "produced from renewable feedstock locally grown or recycled in the State." Page 3, lines 7-10 (emphasis added). "Locally grown" is defined as "renewable feedstock that is grown, produced, generated, or collected in the State." Page 6, lines 7-8.

This bill could be subject to challenge as violating the Commerce Clause of the United States Constitution, which provides that Congress shall have the power to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce." *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 98 (1994). This negative aspect of the Commerce Clause is known as the Dormant Commerce Clause; this doctrine prohibits states from "advancing their own commercial interests by curtailing the movement of

articles of commerce, either into or out of the state," *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Nat. Res*., 504 U.S. 353, 359 (1992) (internal brackets omitted), to address "economic protectionism," i.e., "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337 (2008).

A tax credit may violate the Dormant Commerce Clause if it is "facially discriminatory, discriminatory in effect, or discriminatory in purpose." See *DIRECTV v. Utah State Tax Comm'n*, 364 P.3d 1036, 1040 (Utah 2015). For example, in *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263 (1984), the United States Supreme Court struck down an exemption from the liquor tax for sales of okolehau and fruit wine brewed in Hawaii from locally grown products upon finding that the exemption bestowed a commercial advantage on locally produced products; see also *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269 (1988) (holding that ethanol tax credit for each gallon of ethanol sold, but only if ethanol produced in Ohio, violated Dormant Commerce Clause).

Similar to the situation in *Bacchus Imports*, the proposed tax credit may be challenged under the Commerce Clause because it could be construed by a court as bestowing a commercial advantage on products using "locally grown" feedstock insofar as the credit encourages and incentivizes the purchase and use of such products versus products manufactured with the same ingredients grown outside of the State.

Based on the foregoing, we respectfully ask that these concerns be addressed. Accordingly, we recommend deleting the following:

(1) The phrase "locally sourced" in section 1, at page 1, lines 12-13 and 16, and page 2, line 2;

(2) The phrase "to incentivize locally produced renewable fuel sold in the State" in section 1, page 2, lines 5-6;

(3) The phrase "provided further that there shall be an additional credit value of $1 per gallon for renewable fuels produced from renewable feedstock locally grown or recycled in the State;" in section 235-110.32(a), HRS, as amended by section 2(1) of the bill, on page 3, lines 7-10; and

(4) The definition of "locally grown" feedstock in section 235-110.32(o), HRS, as amended by section 2(4) of the bill, at page 6, lines 7-8.

These changes would resolve the Department's constitutional concerns.

Thank you for the opportunity to provide comments.

HAWAII STATE ENERGY OFFICE
STATE OF HAWAII

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARK B. GLICK
CHIEF ENERGY OFFICER

235 South Beretania Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 451-6648
Web: energy.hawaii.gov

Testimony of
MARK B. GLICK, Chief Energy Officer

before the
HOUSE COMMITTEE ON FINANCE

Wednesday, February 28, 2024
12:00 PM
State Capitol, Conference Room 308 and Videoconference

Providing Comments on
HB 2767, HD1

RELATING TO RENEWABLE FUEL.

Chair Yamashita, Vice Chair Kitagawa, and members of the Committee, the Hawai'i State Energy Office (HSEO) provides comments on HB 2767, HD1, which 1) updates the Renewable Fuels Production Tax Credit (RFPTC) to incentivize locally grown, produced, generated, or collected renewable fuel; 2) extends the credit period from ten to twenty consecutive years; and 3) increases the total amount of tax credits allowed in any calendar year.

HSEO's comments are guided by its mission to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient, clean energy, decarbonized economy.

HSEO appreciates the intent of the proposal to expand the RFPTC, which is a significant financial incentive for renewable fuel producers and contributes to achieving greater energy security for Hawai'i. HSEO recommended in the recent HSEO Act 238 Report, which can be found at energy.hawaii.gov, the following actions to improve the efficacy of the RFPTC: 1) requiring renewable fuel to meet an established lifecycle carbon intensity threshold; 2) lowering the production minimum to allow for smaller renewable fuels producers to take advantage of the tax credit; and 3) removing or

extending the 10-year eligibility limit as desirable means to expand the RFPTC.[1] HSEO appreciates that the recommendations of the Act 238 report are reflected in this bill.

HSEO recommends the following changes HB 2767, HD1, distinguished in **bold**, with the rationale for each change provided below each suggested change.

Page 2, line 19

For each taxpayer producing renewable fuels, the annual dollar amount of the renewable fuels production tax credit during the twenty-year credit period shall [~~be~~] include an amount equal to **20** ~~**35**~~ cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value sold for distribution in the State;

Page 3, lines 1-3

... provided that the taxpayer's production of renewable fuels is not less than two billion five hundred million British thermal units **lower heating value** of renewable fuels per calendar year;

Page 3, lines 7 through 12

provided further that there shall be an additional credit value of ~~**$1.00 per gallon**~~ **15 cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value** for renewable fuels, **inclusive of sustainable aviation fuels**, produced from renewable feedstock locally grown or recycled in the State; ~~**provided further that there shall be an additional credit of $1 per gallon for the production of sustainable aviation fuel;**~~

Rationale for the amended language: HSEO supports extending the duration of the tax credit. However, while HSEO supports increasing the credit for renewable fuels producers, HSEO believes the current credit amount of 20 cents per 76,000 Btu using lower heating value (LHV) is adequate to incentivize the production of renewable fuels with imported feedstock and the additional credit of 15 cents per 76,000 Btu LHV may be best suited for fuels produced using local feedstock.

[1] Hawai‘i State Energy Office (2023). Hawai‘i Pathways to Decarbonization, Act 238 Report to the 2024 Hawai‘i State Legislature (Act 238 Report). (Page 11)

Further, HSEO requests that British thermal units with lower heating values be specified to ensure appropriate calculations and energy conversions. HSEO recommends consistent units of energy be used for the tax credit, as gallons may not be the most appropriate for certain fuel types, such as natural gas which is more commonly measured in units of volume. Accordingly, the use of the British thermal unit (btu) derived using the lower heating value is an appropriate metric to compare energy sources, or fuels, on an equal basis, and consistency allows for easier accounting and verification.

HSEO understands that there will be substantial demand for sustainable aviation fuel; however, granting sustainable aviation fuel an additional credit of potentially two dollars per gallon is extensive, and could compete unfairly for the tax credit based on the volume of fuel needed for aviation and the tax credit cap, which is set-up to be allocated to each eligible taxpayers for each given year in proportion to the total amount of renewable fuels produced.

Page 3, lines 13 through 14

provided further that the tax credit shall only be claimed for fuels with lifecycle emissions **at least fifty per cent** below that of fossil fuel~~s~~ **in which the renewable fuel is most likely to replace.**

Same edit should be carried through on Page 4, line 18

(3) Provide the taxpayer with a determination of whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced is lower than that of fossil fuels[~~.~~] and whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced is **fifty** per cent lower than that of the **fossil fuel in which the renewable fuel is most likely to replace.**"

Rationale for the amended language: HSEO recommends specifying the comparison of fossil fuel be the fuel in which the renewable fuel receiving the tax credit is most likely to replace. Without this specification, it is difficult to compare, as fuels

have wide-ranging lifecycle emissions and carbon intensities. Further, HSEO recommends this is consistent with federal treasury tax credit guidance.2

Page 6, Line item 1-6

"Lifecycle greenhouse gas emissions" means the aggregate attributional core lifecycle greenhouse gas emissions values **including upstream emissions, midstream emissions, transportation emissions, and generation or operational emissions.** ~~**utilizing the most recent version of Argonne National Laboratory's Greenhouse gasses, Regulated Emissions, and Energy use in Technologies (GREET) Model, inclusive of agricultural practices and carbon capture sequestration.**~~

Rationale for the amended language: Regarding requiring the use of the GREET model, HSEO advises that while HSEO uses the GREET model to verify the emissions analysis after submittal and has included reference to the model in its guidance documents for the credit, the GREET model may not be the best accounting tool to capture lifecycle emissions in certain circumstances. For example, there are occasions when renewable fuels producers may have completed a more individualized and comprehensive GHG analysis and submitted it to another regulatory agency for fuel contracts to the utility.

Finally, guidance from the Environmental Protection Agency (EPA) renewable fuels program suggests that sequestration activities, unrelated to the production of the fuels, not be included in the lifecycle analysis.[3] The lifecycle assessment of fuel production should not include activities that are unrelated to the fuel lifecycle (e.g., offset projects) or emissions associated with physical and organizational infrastructure

[2] https://www.catf.us/2023/12/new-treasury-tax-credit-guidance-sustainable-aviation-fuels-enhance-carbon-intensity-assessments-better-account-indirect-land-use-change-emissions/#:~:text=To%20qualify%20for%20the%20credit,conventional%20petroleum%2Dderived%20jet%20fuel.

[3] US Environmental Protection Agency (2023). Lifecycle Analysis of Greenhouse Gas Emissions under the Renewable Fuel Standard. Available at: https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel#:~:text=The%20EPA's%20assessment%20of%20fuel,employees%20commuting%20to%20the%20facility).

(e.g., facility construction, employees commuting to the facility). Accordingly, HSEO recommends only onsite sequestration activities directly related to the production of the fuels, e.g. soil amendments and climate-smart agricultural practices be included in the emissions analysis. These activities would automatically be included in the upstream emissions analysis, therefore HSEO recommends removing language referencing carbon capture sequestration to avoid potential misinterpretation.

Thank you for the opportunity to testify.

P.O. Box 1459
Kahului, Hawaii 96733
Phone (808) 877-3144
Fax (808) 877-5030
www.biodiesel.com

February 26, 2024

TESTIMONY ON HB 2767 HD1, RELATING TO RENWABLE FUEL

SUPPORT WITH AMENDMENTS

Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair
Committee on Finance
Hearing: February 28, 2024, at 12:00pm, Conf Room 308

Aloha Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee,
Pacific Biodiesel supports HB 2767 HD1 which updates the renewable fuels production tax credit.

I. Suggested Amendments.

A. We believe that increased incentives must be justified by increased benefits to the State. We support raising the bar for anyone receiving the tax credit. Currently, the base credit can be claimed by anyone producing renewable fuel even if it only reduces GHG emissions by 1%. That should be raised to 50%.
   - Amend Subsection 235-110.32(a), Hawaii Revised Statutes, to read: "provided further that the tax credit shall only be claimed for fuels with lifecycle emissions **at least 50 per cent** below that of fossil fuels.

B. The original bill provided additional incentives to produce renewable energy that reduced greenhouse gas "GHG" emissions by at least 75%. The additional incentive was justified by significant reductions in GHG emissions. At the previous committee, that section was replaced by an additional incentive to produce sustainable aviation fuel "SAF." We support the bill in its original form that incentivized reducing GHG emissions by 75%.
   - Amend Subsection 235-110.32(a), Hawaii Revised Statutes, to provide an additional credit value of $1.00 per gallon for renewable fuels produced with lifecycle greenhouse gas emissions at least 75 per cent below that of fossil fuels.

II. Bill highlights.

A. New investments are needed to incentivize existing producers to increase production of firm renewable energy and to encourage new producers to begin production. The production tax credit gives a very important incentive to invest further in firm renewable fuel production in Hawaii. Past investments in the renewable fuels production tax credit succeeded in promoting local investments in cleaner fuels and

moving us closer to energy independence and security. Continuing this credit sends the correct signal for new and continued investments in this firm renewable energy.

- Amends Subsection 235-110.32(a), Hawaii Revised Statutes, to raise the tax credit from 20 cents to 35 cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value sold for distribution in the State.
- Amends Subsection 235-110.32(f), Hawaii Revised Statutes, to raise the total amount of tax credits allowed under this section from $20,000,000 to $_____.
- Amend Subsection 235-110.32(a), Hawaii Revised Statutes, to provided that taxpayers who have previously claimed credits under this chapter shall be reset for tax years beginning after December 31, 2023.

B. We believe that increased incentives must be justified by increased benefits to the State. Therefore, we support the creation of a tiered system of tax credits that incentivizes: 1) renewable fuels produced from renewable feedstock **locally grown or recycled in the State of Hawaii** and 2) renewable fuels produced with lifecycle greenhouse gas emissions at least **75% below that of fossil fuels**.
   - Amends Subsection 235-110.32(a), Hawaii Revised Statutes, to provide an additional credit value of $1.00 per gallon for renewable fuels produced from renewable feedstock locally grown or recycled in the State of Hawaii.
   - Return the bill to its original form amending Subsection 235-110.32(a), Hawaii Revised Statutes, to provide an additional credit value of $1.00 per gallon for renewable fuels produced with lifecycle greenhouse gas emissions at least 75 per cent below that of fossil fuels.

C. A 20-year plan ensures that Hawaii's firm energy needs can be met with firm renewable energy by 2045. To ensure sustainable inventories of locally sourced firm renewable energy for electric utility companies' renewable portfolio standards, long term planning that includes incentives, are essential for investment and development of locally sourced firm, renewable energy production. With twenty years remaining to reach the mandate that one hundred percent of our electricity be generated by renewable sources of energy by 2045, **we must update the renewable fuels production tax credit with a 20-year plan to ensure that our firm energy needs can be met with renewable firm energy by 2045**.
   - Amend Subsection 235-110.32(o), Hawaii Revised Statutes, to define the credit period as twenty consecutive years instead of ten consecutive years.

D. The individual cap should be raised to encourage increased production while also protecting smaller producers.
   - Amend Subsection 235-110.32(a), Hawaii Revised Statutes, to change the individual tax credit limit from $3,500,000 to 75% of the total tax credit amount.

III. Major investments are needed in firm renewable energy to meet Hawaii's mandate to reach 100% renewable energy by 2045.

A. Hawaii's utility companies rely on and need more of Pacific Biodiesel's locally produced firm renewable energy. HRS section 269-92(a) requires each electric utility company

that sells electricity for consumption in the State to establish a renewable portfolio standard of forty percent of its net electricity sales by December 31, 2030, seventy percent of its net electricity sales by December 31, 2040, and one hundred percent of its net electricity sales by December 31, 2045. In order for electric utility companies to meet the required renewable portfolio standards by 2045, an indispensable component of the electric utility companies' renewable portfolio standard must include sufficient locally sourced firm renewable energy sources to offset the intermittent nature of wind and solar power renewable energy.

B. Speaking for the liquid biofuels industry, it is well known that the cost to move from 70% to 100% renewables will be extremely expensive using any other technology. Biodiesel can cost effectively optimize battery sizing by providing firm renewable power, quickly dispatched at any time. Fast-start, efficient diesel engines – when fueled with clean biodiesel – are enabling higher penetration of intermittent PV and wind assets while maintaining grid stability. Biodiesel allows for an immediate reduction of greenhouse gas emissions. Our biodiesel is a 100% renewable Advanced Biofuel that is a crucially important firm renewable power source in Hawaii to back up other renewables on the grid. And, more importantly now than ever, Hawaii's locally produced biodiesel is supporting energy security in our island state and reducing reliance on imported fossil fuel. **It is a direct replacement for petroleum diesel fuel that can be used right now in any diesel engine without modification, helping to reduce greenhouse gas emissions by 86% compared to petroleum diesel.** The diesel engine is NOT the problem. Petroleum diesel FUEL – fossil fuel – used in efficient diesel engines is the problem. **Biodiesel has one of the lowest carbon footprints of any fuel.** A California Air Resources Board (CARB) report* shared findings that total greenhouse gas (GHG) reductions from biomass-based diesel were three times the total reductions from electric vehicles. In Hawaii, where the carbon intensity of our electricity grid is significantly higher than the US average, the assumption would be an even greater GHG reduction with the use of 100% biodiesel compared to EVs charged by an electricity grid that is currently only 30% powered by renewables.

C. Unfortunately, Hawaii is rushing to support electrification while ignoring the many environmental and economic benefits of biofuels. We cannot and should not sit back and wait for a 100% zero emission future. The State must get serious, soon, about requiring a lifecycle GHG reduction analysis on its "zero emission" strategies before Hawaii spends millions on electrification.

Our locally produced 2nd Generation biodiesel is produced from recycled used cooking oil from Hawaii and recycled used cooking oil from the mainland. Increasing production using locally grown or recycled feedstock is our goal, and that goal is becoming reality at our new project on Kauai. Pacific Biodiesel and other companies need this incentive to increase local production with from local feedstock over the next 20 years. That is how we achieve energy independence.

The further we move towards our goal of 100% renewable, the more critical firm energy like liquid biofuel sources will be. At Pacific Biodiesel's refinery on Hawaii Island, we

produce 6 million gallons per year of premium distilled biodiesel – the equivalent of 220 MWh per DAY of 100% renewable energy for Hawaii. **But, building up the supply is a long process. We must accelerate implementation and support additional local production now to meet expanding demand in the future and to ensure that our firm energy needs can be met with firm renewable energy by 2045**.

Mahalo,

Sincerely,

James Forrest, General Counsel
Pacific Biodiesel Technologies, LLC

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME TAX, Renewable Fuels Production Tax Credit Enhancement

BILL NUMBER: HB 2767 HD 1

INTRODUCED BY: House Committee on Energy & Environmental Protection

EXECUTIVE SUMMARY: Updates the Renewable Fuels Production Tax Credit to incentivize local production of renewable fuel sold in the State. Extends the credit period from ten to twenty years. Amends the total amount of tax credits allowed in any calendar year. Resets credits claimed for taxable years beginning after 12/31/2023.

SYNOPSIS: Amends section 235-110.32, HRS, to raise the credit from 20 to 35 cents per 76,000 BTU of renewable fuels produced and sold for distribution in the State. Removes the $3.5 million aggregate cap on the credit but specifies that the credit awarded to any one taxpayer shall not exceed 75% of the total amount of credits awarded in the year. Adds a $1 per gallon credit for renewable fuels produced from locally sourced renewable feedstock. Adds a $1 per gallon credit for the production of sustainable aviation fuel. . Increases the time within which the Hawaii State Energy Office is given to respond to a request for certification from 30 to 60 days. Raises the aggregate credit cap from $20 million to $____. Increases the credit period from 10 to 20 consecutive years.

Adds a definition of "lifecycle greenhouse gas emissions" as the aggregate attributional core lifecycle greenhouse gas emissions values utilizing the most recent version of Argonne National Laboratory's Greenhouse gasses, Regulated Emissions, and Energy use in Technologies (GREET) Model, inclusive of agricultural practices and carbon capture sequestration.

Adds a definition of "locally grown" as renewable feedstock that is grown, produced, generated, or collected in the State.

Adds a definition of "sustainable aviation fuel" as an alternative fuel, as defined in section 243-1 (in the Fuel Tax Law), that is used in aviation.

EFFECTIVE DATE: July 1, 3000; applicable to taxable years beginning after December 31, 2023.

STAFF COMMENTS: Act 202, SLH 2016, enacted a renewable energy production credit with a five-year life. The credit sunset on December 31, 2021. The credit was revived by Act 16, SLH 2022 with an aggregate cap of $20 million.

While the idea of providing a tax credit to encourage such activities may have been acceptable a few years ago when the economy was on a roll and advocates could point to credits like those to encourage construction and renovation activities, what lawmakers and administrators have learned in these past few years is that unbridled tax incentives, where there is no accountability or limits on how much in credits can be claimed, are irresponsible as the cost of these credits goes far beyond what was ever intended. Instead, lawmakers should encourage alternative energy

production through the appropriation of a specific number of taxpayer dollars. The State could directly purchase energy, or it could give a subsidy to developers. Then, lawmakers would have a better idea of what is being funded and hold the developers of these alternate forms of energy to a deliberate timetable or else lose the funds altogether. A direct appropriation would be preferable to the tax credit as it would: (1) provide some accountability for the taxpayers' funds being utilized to support this effort; and (2) not be a blank check.

There is also a constitutional issue. The bill applies an additional credit for fuel from "locally grown" feedstock which is defined as grown, produced, generated, or collected in the State. This restriction could be unconstitutional under the Commerce Clause of the Constitution because the same preferential tax treatment is not allowed for competing products from other States. *See In re Hawaiian Flour Mills, Inc.,* 76 Haw. 1, 868 P.2d 419 (1994); *Bacchus Imports, Inc. v. Dias,* 468 U.S. 263 (1984); Hawaii Tax Information Release No. 93-4. In *Hawaiian Flour Mills*, the Hawaii Supreme Court determined that a general excise tax exclusion for locally grown, raised, or caught agricultural, meat, or fish products for consumption out-of-state violated the Commerce Clause of the United States Constitution. The Court found that appellant Hawaiian Flour Mills, Inc. was entitled to the exemption from the general excise tax on its sales of fresh food products to be consumed out-of-State by persons engaged in interstate or foreign commerce, whether or not the fresh food products were locally grown, raised, or caught.

Digested: 2/26/2024

P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 28, 2024

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 2767, HD1
RELATING TO RENEWABLE FUEL

Conference Room 308 & Videoconference
12:00 PM

Aloha Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaiʻi Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaiʻi's voice of agriculture to protect, advocate, and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawaiʻi Farm Bureau supports HB 2767, HD1, which updates the Renewable Fuels Production Tax Credit to incentivize local production of renewable fuel sold in the State, extends the credit period from ten to twenty years, amends the total amount of tax credits allowed in any calendar year, and resets credits claimed for taxable years beginning after 12/31/2023.

Renewable energy is important to the State's energy goals. Biofuels can play a critical role in helping Hawaiʻi reach the goal of one hundred percent renewable energy by 2045, help to diversify Hawaiʻi's economy and agricultural sector, reduce greenhouse gas emissions, and reduce our dependence on imported oil.

HFB supports the production of dedicated energy crops, crop residues, and agricultural wastes into economically and environmentally sustainable biofuels and value-added by-products such as livestock feed. The renewable fuels production tax credit is an important incentive for the production of locally grown renewable fuels and supports the state's clean energy and carbon reduction goals.

Thank you for this opportunity to testify on this important subject.

HB-2767-HD-1
Submitted on: 2/27/2024 5:29:22 AM
Testimony for FIN on 2/28/2024 12:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gene Harrington	Biotechnology Innovation Organization	Support	Written Testimony Only

Comments:

BIO supports HB 2767 and urges a 'yes' vote on this important legislation, which will greatly benefit Hawaii's agricultural sector. Under the bill, the production of locally produced renewable fuel - generated by Hawaii grown crops – will be incentivized, reducing carbons emissions and boosting the economy, especially in rural areas.

Airlines for America®
We Connect the World

February 28, 2024

TESTIMONY ON HB 2767
RELATING TO RENEWABLE FUEL

COMMITTEE ON FINANCE
Rep. Kyle T. Yamashita, Chair
Rep. Lisa Kitagawa, Vice Chair

February 28, 2024, 12:00
Conference Room 308
State Capitol 415 South Beretania Street

Dear Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

Thank you for the opportunity to provide supportive comments on HB 2767 HD1, Relating to Renewable Fuel. Airlines for America® (A4A) is the principal trade and service organization of the U.S. airline industry[1]. A4A and its members have a strong climate change record and are committed to working across the aviation industry and with government leaders in a positive partnership to achieve net-zero carbon emissions by 2050, which parallels the Biden administration's goal to achieve net-zero greenhouse gas emissions in the aviation sector by 2050.

Airlines, governments and other aviation stakeholders have recognized that achieving net-zero aviation emissions by 2050 will require a very rapid transition from conventional (fossil) jet fuel to sustainable aviation fuel (SAF). SAF is a drop-in fuel, meaning that it works with existing aircraft engines, pipelines, and storage infrastructure, as long as it is blended up to 50% with conventional jet fuel and qualified to the relevant ASTM standards for alternative jet fuel. Work is underway to approve uses up to 100% SAF. SAF can bring meaningful reductions in aviation carbon emissions, reducing lifecycle emissions intensity of fuel up to 80% compared to conventional jet fuel today, with future pathways having potential for 100% reductions.

Ensuring the sustainability and environmental integrity of feedstocks and the production technology pathways is critical to the continued recognition and acceptance of SAF to achieve the carbon emissions reduction ambitions of aviation. We support establishing strong and robust sustainability and technical requirements based on objective criteria and the latest scientific research. A4A and its members are feedstock and technology neutral for SAF production, we firmly believe that any production pathway that can meet robust technical and sustainability requirements should be eligible for incentive programs.

[1] A4A's members are: Alaska Airlines, Inc.; American Airlines Group Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines, Inc.; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada, Inc. is an associate member.

Achieving this rapid transition to SAF requires industry and government to work in partnership, at both the federal and state levels, to expand SAF production capacity across the country. And, we also recognize the unique fiscal challenge the State of Hawai‘i is currently facing. A4A and our member airlines value our partnership with the state and believe there is a unique opportunity to jointly develop a market for cost competitive SAF.

Thank you for your consideration of our feedback. Please do not hesitate to contact us if you have any questions.

Sincerely,

Sean Williams
Vice President, State and Local Government Affairs
swilliams@airlines.org

February 27, 2024

TESTIMONY IN SUPPORT OF HB 2767 HD1
RELATING TO RENEWABLE FUEL

House Committee on Finance (FIN)
The Honorable Kyle T. Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair

February 28, 2024, 12:00 pm
House Conference Room 308
State Capitol 415 South Beretania Street

Chair Yamashita and Vice Chair Kitagawa, and members of the Committee,

Thank you for the opportunity to provide testimony in SUPPORT of HB 2767 HD1, Relating to Renewable Fuel. We believe that the proposed legislation presents a win-win opportunity for our state, our environment, and our agricultural sector.

Pono Pacific is the state leader in land management with nearly 25 years of experience across the Hawaiian Islands with an emphasis on conservation lands, agriculture, and renewable energy. Pono Pacific has partnered with Par to develop a supply of locally grown feedstocks for biofuel production. Locally grown feedstocks will provide farmers with a viable economic commodity to supply the refinery and help put idle lands to work. HB 2767 HD1 will help Hawaii farmers compete against imported feedstocks by providing an additional credit of $1 per gallon for renewable fuels produced from locally grown renewable feedstocks.

Finding viable uses for agriculture lands that will encourage sustainability in our environment and that produce positive economic cash flow for Hawaii is a critical need. Locally grown biofuel feedstocks offer significant benefits for our farmers. These crops can thrive on marginal land, improving soil health and reducing erosion. They require less water and fertilizer than traditional row crops. By creating a demand for these crops, the renewable fuels industry can revitalize rural communities, create new jobs, and diversify farm income streams.

Par Hawaii has publicly committed to spend significant capital retrofitting its Kapolei refinery to produce renewable fuels, including SAF. Transitioning to SAF, derived from renewable

sources like energy crops, presents a crucial step towards decarbonizing air travel. SAF can bring meaningful reductions in aviation carbon emissions, with lifecycle emissions intensity up to 50 to 80% lower than conventional jet fuel. Investing in local SAF production is not just economically sound, it's an environmental imperative.

Hawaii needs to be competitive with other states that have already adopted tax credits for SAF and other renewable fuels and provide local production and consumption with the necessary advantages to succeed, especially as the industry is just starting to get off the ground. Initially to be competitive, local SAF production will need government support.

Growing biofuel feedstocks locally helps to create new agricultural jobs, encourage food production through infrastructure synergies, and does not compete with food crops when using oil seed cover crops. Pono Pacific believes these feedstocks will be able to provide a quality biofuel product and usable byproducts (such as animal feed) to help support Hawaii's sustainability goals, and agricultural, ranching and dairy sectors of the local economy.

The production and distribution of SAF is not just about farms; it is about building a robust green energy infrastructure within our state. From biofuel refineries to logistics companies, the entire chain creates high-paying jobs, attracts investment, and boosts Hawaii's overall economic output. Investing in local SAF production positions us as a leader in the burgeoning clean aviation fuel market, attracting further investment and innovation.

Renewable fuels face a financial hurdle and cost more to produce than conventional alternatives. This bill proposes a strategic set of tax incentives tailored to incentivize local renewable fuel production and imports of renewable fuels into Hawaii. These incentives will empower us to cultivate energy independence, foster economic growth, and create a sustainable future for our islands. Incentives and credits, therefore, are not a perpetual need but a bridge to get biofuel production to maturity and scale when it can compete successfully against traditional petroleum-based fuels.

The proposed tax incentives for local renewable fuel production are not just an economic stimulus package; they represent a strategic investment in Hawaii's future. By supporting our farmers, fostering clean energy innovation, and building a more sustainable aviation industry, we can secure a brighter future for generations to come.

Importantly, the proposed tax incentives, and specifically the additional $1 credit for renewable fuels produced from locally grown renewable feedstock, does not run afoul of the Commerce Clause. Hawaii's biofuel tax credit aligns with the Biden administration's

goals for clean energy transition and climate change mitigation, potentially paving the way for collaboration and federal support. The pertinent legal question is whether promoting energy security through biofuels produced from locally grown sustainable is a "legitimate public purpose." Unlike most states, Hawaii's geographic isolation significantly amplifies its vulnerability to fuel price fluctuations and supply disruptions. This unique dependency on imported fossil fuels necessitates innovative solutions tailored to its specific context.

The U.S. Supreme Court has stated: "As long as a State does not needlessly obstruct interstate trade or attempt to 'place itself in a position of economic isolation,' it retains broad regulatory authority to protect the health and safety of its citizens and the integrity of its natural resources." *Maine v. Taylor*, 477 U.S. 131, 151 (1986) (quoting *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 527 (1935)). Based on this principle, the legal test is not whether the law "allow[s] for companies outside of Hawaii to be qualified." Under the U.S. Supreme Court's legal test, a tax credit is valid if it "serves a legitimate local purpose" and this purpose could not be served as well by other available means, even if it the tax credit favors Hawaii taxpayers over other taxpayers in interstate commerce. *Id*. at 138 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)). The substantial local benefits of the tax credit (energy security, environmental protection, economic development) clearly outweigh the minimal burden on interstate commerce.

The unique combination of Hawaii's energy vulnerability, limited renewable options, and the minimal impact of the tax credit on interstate commerce, coupled with its substantial local benefits and alignment with national goals, provides a compelling case for upholding its legality under the Commerce Clause. Recognizing and supporting Hawaii's innovative approach to energy security sets a crucial precedent for state sovereignty and paves the way for a more sustainable energy future for the nation as a whole.

We urge you to pass this legislation and unlock the immense potential of locally produced renewable fuels, including SAF. Together, we can build a cleaner, more prosperous future for all. Thank you for your time and consideration.

Mahalo,

Chris Bennett
Vice President of Sustainable Energy Solutions
Pono Pacific Land Management, LLC

Par Hawaii

February 28, 2024

TESTIMONY IN SUPPORT OF HB 2767 HD1
RELATING TO RENEWABLE FUELS

House Committee on Finance
The Honorable Klye T. Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair

February 28, 2024, 12:00 p.m.
House Conference Room 308
State Capitol 415 South Beretania Street

Chair Yamashita and Vice Chair Kitagawa, and members of the Committee,

Thank you for the opportunity to provide testimony in strong **SUPPORT** of HB 2767 HD1, Relating to Renewable Fuels.

Hawaii has made significant progress to decarbonize our economy over the past 15 years since the Hawaii Clean Energy Initiative launched in 2008. Yet, there is much work still to be done. Transportation emissions account for over 50% of Hawaii's GHG emissions.[1] Electrifying the vehicle fleet will reduce emissions as the electric grid becomes greener. However, there are limited options available to address emissions with trucks and other heavy-duty vehicles. The aviation sector faces particular challenges.

States on the US West Coast have started to address these challenges by introducing incentives for the use of low carbon fuels. In California, as reported by the California Air Resources Board, over 50% of diesel demand is now met by Renewable Diesel (RD). RD is a low-carbon fuel produced by processing used cooking oil, animal fats and vegetable oils. Similarly, there are small but growing volumes of renewable fuels for the aviation sector. This product is called Sustainable Aviation Fuel (SAF), and it is produced in a similar process and from the same feedstocks as RD.[2]

These liquid renewable fuels are critical to meeting Hawaii's clean energy goals. This was a key finding in the recent Act 238 Hawaii Decarbonization Pathway Study which calls for RD and SAF to be a significant part of Hawaii's fuel supply beginning later this decade.[3] See the chart in Appendix A.

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[1] https://health.hawaii.gov/cab/files/2023/05/2005-2018-2019-Inventory_Final-Report_rev2.pdf (Pages 26-27 document Transportation sector emissions of 10.68 MT of CO2 equivalent in the most recent reporting period of 2019. Total net emissions were 19.42 MT CO2 equivalent.)

[2] RD and SAF are produced from the same feedstocks as biodiesel but have superior properties including serving as drop-in replacements for traditional diesel and jet fuel.

[3] https://energy.hawaii.gov/what-we-do/clean-energy-vision/decarbonization-strategy/

Par Hawaii

The good news is that Hawaii companies are stepping up to meet the need for these fuels. However, the cost to produce these fuels is significantly higher than the cost of fossil fuels, and additional financial incentives are required to initiate and sustain the production of these fuels. States on the US West Coast have had success in bringing renewable fuels to the market, but it has required state-level financial incentives of up to $1.00-2.00 per gallon. Without action, these desirable renewable fuels will be produced and delivered to other markets including the West Coast.

This legislation originally provided for an annual aggregate cap of $80 million. While we understand the current State budget realities, we believe the aggregate annual cap should be at least $80 million. This amount is what is required to put Hawaii on a pathway to reach its renewable energy goals, and is consistent with the support that spurred the solar and film industries in Hawaii. If necessary, this cap could be phased in over 2-3 years.

Mahalo for allowing Par Hawaii to share our comments in support of HB 2767 HD1.

Par Hawaii

Appendix A

Act 238 Hawaii Decarbonization Pathway Study

- December 2023 Act 238 Pathways to Decarbonization Study modeled 3 scenarios
- **Study finds that renewable liquid fuels are critical to Hawaii reaching it's decarbonization goals**
- Recommends an expansion of renewable fuels production tax credit

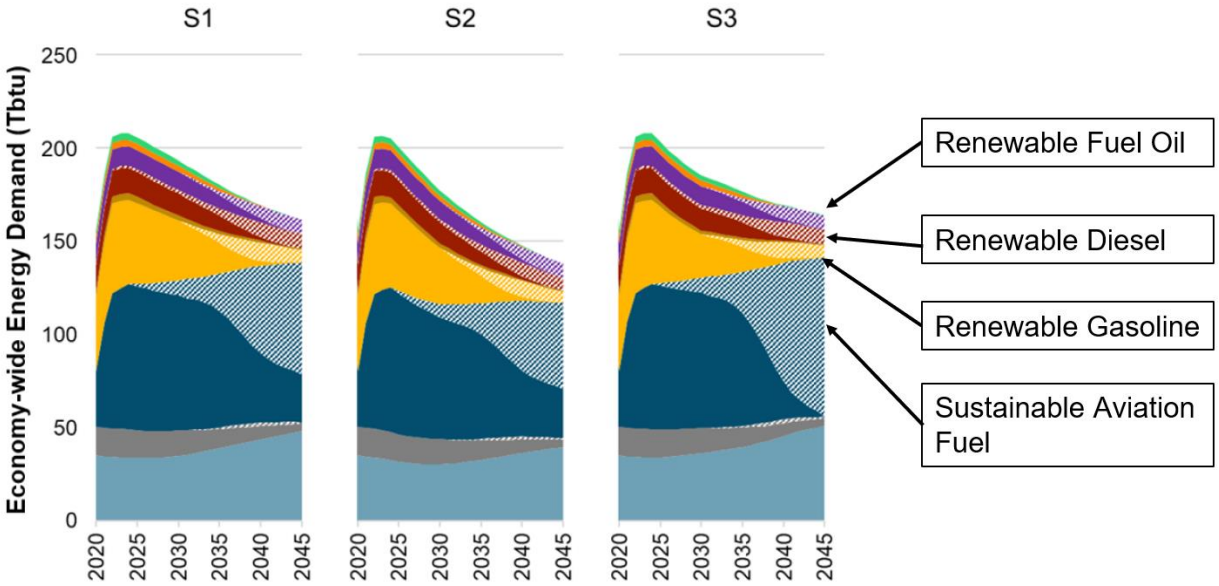

Figure 54 Economywide energy demand from 2020 through 2045 (excludes fuels combusted for electricity generation)

February 28, 2024

TESTIMONY IN SUPPORT OF HB 2767 HD1
RELATING TO RENEWABLE FUEL

House Committee on Finance
The Honorable Kyle T. Yamashita, Chair
The Honorable Lisa Kitagawa, Vice Chair

February 28, 2024, 12:00pm
Conference Room 308
State Capitol 415 South Beretania Street

Chair Yamashita, Vice Chair Kitagawa, and members of the Committee,

Thank you for the opportunity to provide testimony in SUPPORT of HB 2767 HD1, Relating to Renewable Fuel.

This bill expands on the renewable fuels production tax credit with a higher base credit value, incremental value for locally produced or recycled feedstock, incremental value for sustainable aviation fuel (SAF) compared to renewable diesel (RD) in order to 'level the playing field' and encourage producers to allocate some production volume to SAF, the introduction of a lifecycle greenhouse gas (GHG) reduction threshold to be eligible for the credit, and the elimination of the restrictive $3.5 million cap per producer. We are supportive of these changes and believe this bill can play an important role in decarbonizing our economy in Hawaii, and particularly in the hard-to-abate aviation sector, while driving economic activity in the biofuels and agricultural sectors.

Aviation emissions represent a very small part of overall global carbon emissions. Nonetheless, aviation represents a higher proportion of Hawaii's fossil fuel usage, given our unique dependence on air transportation and relatively limited utilization of road fuel. Within Hawaii, it is worth noting that aviation fuel usage is driven predominantly (estimated about 90%) by long-haul travel; with its short flight distances, the intrastate flying on which our community depends drives relatively little fuel consumption. In order to address the existential threat of human-caused climate change, airlines in the U.S. have all committed to reach net-zero in the decades to come.

Sustainable aviation fuel (SAF) is widely viewed as the most promising technology to advance aviation decarbonization. The U.S. airline industry has pledged to work with government leaders and other stakeholders to make 3 billion gallons of cost-competitive SAF available to U.S. aircraft operators in 2030. SAF is a proven, drop-in fuel, meaning that it is certified for use in existing aircraft engines, pipelines, and storage infrastructure, as long as it is blended up to 50% with conventional jet fuel. SAF can bring meaningful reductions in aviation carbon emissions, with lifecycle emissions intensity up to 50 to 80% lower than conventional jet fuel.

The reality is that while promising alternatives to jet engines lie beyond the horizon, the commercial aviation industry's excellent safety record relies on incremental adoption of new technology. The advantage of SAF is that it is already being used in today's aircraft and engines, which makes it one of the only credible means of reaching decarbonization goals between now and 2050.

The challenge with SAF is that it is not yet commercially viable, and it is not available at scale, and therefore incentives are needed to drive adoption in the near term. Objective economic analyses have demonstrated that the higher cost of SAF vs. jet fuel today is driven by two factors: (1) the maturity of manufacturing technologies, and (2) the lack of scale in production. Incentives and credits, therefore, are not a perpetual need but a bridge to get biofuel production to maturity and scale, when it can compete successfully against traditional petroleum-based fuels.

Other U.S. states, such as California, Oregon, Washington, Illinois and Minnesota, provide state-level incentives to advance SAF in their states. The State of Hawaii has established an ambitious target to achieve economy-wide net-zero emissions by 2045, and aviation emissions comprise about 50 percent of Hawaii's transportation emissions. If Hawaii wants to attract supply of SAF to address its aviation emissions, it will need incentives that are competitive with other U.S. states. As long as there is scarcity of supply, volume will go to the markets which provide the most value.

HB 2767 HD1 has many elements that support local production of renewable fuels, including sustainable aviation fuel, however we believe for it to be effective at spurring economic development, expanding supply of renewable fuels, and making progress toward the state's decarbonization goals, the amount of the aggregate annual cap and the term of the incentive need to be sufficient to stimulate investment and competition in the market.

We believe state-level tax credits, in combination with existing federal incentives, will be the most effective mechanism to drive meaningful volumes of renewable fuels in Hawaii in the near term. We acknowledge that the cost is significant, but it represents a realistic estimate of what is needed to drive decarbonization in our economy, and particularly in aviation, which has been deemed a 'hard to decarbonize' sector. Offset against this cost are: (1) the benefits to the state's economy from developing an industry and creating jobs in biofuel and feedstock production, and (2) major steps forward in reaching our state's carbon reduction goals.

Mahalo,

Alanna James
Managing Director, Sustainability Initiatives
Hawaiian Airlines

February 27, 2024

Dear Representative Yamashita, Chair and
Members of House Committee on Finance

Subject: Renewable fuel production tax credits HB2767_HD1 and SB3360-SD1 - Opposed

Though yet to be determined the maximum allowable renewable fuel production tax credit available under HB2767_HD1 and similarly SB3360_1 is still a large and unnecessary drain (of potentially well over $100 MM per year) on the public resources without corresponding benefits for Hawaii's farmers or residents. After the window dressing has been removed, it amounts to a large public subsidy for two highly successful companies Pacific Biodiesel and Par Hawaii Refining (the supplier for Hele and 76 brands and most of Hawaii's utility and jet fuel). Moreover, contrary to its objectives the bill will not:

- provide a meaningful incentive and spur adequate local production of renewable oil seed feedstocks,
- provide or promote energy security through local sourcing or
- soften the blow of higher fuel and electricity costs that are projected because of the renewable portfolio standard (RPS) and the 2045 carbon neutral mandate.

First some facts to help clarify and quantify the true magnitude of the renewable fuel production credit. The lower heating value (LHV) of renewable jet fuel aka sustainable aviation fuel (SAF) and B100 biodiesel fuel are 123,000 and 119,550 BTU per gallon, respectively. Note: Ethanol, which was the original foundation for the renewable fuel production tax credit, has LHV of 76,000 BTU/gal.

Based on an average LHV of 121,275 BTU/gal, the base tax credit for most of the renewable fuel is equal to about $0.56/gal (121,275 BTU/gal * $0.35/ 76,000 BTU). In total the current bill (SB3360_SD1) has the potential to provide a stackable tax credit of between $0.56 - $2.56/gal as summarized below and up to $3.56 per gallon for just SAF.

$ 0.56/gal base tax credit for production of renewable fuel (average of B100 biodiesel and jet fuel)
$ 1.00/gal for renewable fuel that reduces GHG by 75% (the min reduction is about 50%)
$ 1.56/gal for all highly effective renewable fuels made from imported feedstocks (US and foreign)

$ 1.00/gal for renewable fuel produced from locally grown, or collected renewable feedstocks
$ 2.56/gal Max subtotal tax credit allowed for all renewable fuels made from Hawaii feedstocks

$ 1.00/gal Extra $1/gal for just Sustainable Aviation Fuel (SAF). Applicable in HB2767_HD1 but not in SB3360_SD1

$ 3.56/gal Max credit for just SAF, when local feedstocks are used to produced renewable jet fuel. Applicable in HB2767_HD1 but not in SB3360_SD1 ($2.56 if feedstock imported)

Notably, in response to the requests from proponents, HB2767_HB1 adds yet another stackable renewable credit of $1.00/ gallon just for Sustainable Aviation Fuel (SAF) which raises the proposed State tax credit for just jet fuel from a maximum of approximately $2.56/gal to $3.56/gal. As originally proposed in HB2296 and as amended HB2767_HD1 includes an extra ($1/gal) tax credit for SAF favors tourist/travelers over Hawaii residents, who are more directly and continuously impacted by Hawaii's renewable portfolio standards (RPS).

While renewable jet fuel (aka SAF) would (independent of any special consideration) still qualify for up to $2.56 in State tax credits, the extra $1/gal credit from the State is not (equitable or) necessary because there are other robust federal incentives for renewable jet fuel. For example, when qualified renewable fuels are used to make jet fuel, renewable RIN credits (worth about $1.50/gal) are generated under the federal Renewable Fuel Standard (RFS), and there is a relatively new federal tax credit of $1.25 - $1.75 per gallon that was created specifically for SAF by the Inflation Reduction Act of 2022. Moreover unlike others fuels, the State has virtually no potential to recover tax revenues on any subsequent sale of renewable (or any) jet fuel to the military or jet fuel consumed in qualified international travel. In addition to military aviation fuel which is exempt state taxes, at least 27% of the jet fuel sold for international travel through the Foreign Trade Zone (FTZ) is exempt from State's excise and barrel taxes[1]. To avoid preferentially subsidizing the US military and transpacific travelers, if the extra $/gal tax credit for SAF is retained, it should be limited to inter-island flights.

In addition to any federal credits and incentives that may be available, the re-occurring State production tax credit of $.56 to $2.56 per gallon (under SB3360_SD1) will go to two main renewable fuel producers, Pacific Biodiesel and Par Hawaii Refining which have or will soon have the capacity to produce 5,500,000 and 61,000,000 gallons of renewable fuels per year, respectively. Although not yet finalized in the proposed legislation, these two companies alone will have more than sufficient production capacity to claim the entire renewable fuel production credit and retain preferred positioning to make that claim for years if not decades to come.

Even without accounting for the extra $1/gal for SAF, on just the 61,000,000 gallons of renewable fuel projected to be manufactured by Par Hawaii's $90 MM renewable fuel production facility, theoretically the value of renewable fuel tax credit could range between $34 MM and $156 MM per year.

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[1] The UHERO 2021 Carbon Assessment stated: *"Bonded aviation fuel is only sold to air carriers arriving from or going to a foreign port (HRS §243-7). In 2018, an estimated 27% of the aviation fuel was bonded (DOTAX, 2019). This portion of aviation fuel sold would not be subject to a state carbon tax."*

Assuming 61 MM gallons of renewable fuel is made from imported (foreign sourced) soybean oil as previously announced in Par's April 27th, 2023, press release and based on $1.56/gal the overall value of the 2-tier renewable production tax credit is likely to be worth about $95 MM per year in first full year of operation and for at least 20 years thereafter.

Par Pacific Announces Significant Investment in Hawaii Renewable Fuels Production | Par Pacific

Factoring in the extra $1/gal credit for SAF on 60% of the of the overall renewable production or roughly 36 million gallons of renewable jet fuel the Par Hawaii expects to produce would equate to an additional tax credit of $36,000,000 per year. Subject to the limitations of any caps and without the use of any Hawaii grown or collected feedstocks, the total tax credit (with SAF) that Par Hawaii Refining could potentially claim in its first year of operation to $131,000,000 per year.

Largely in recognition of and to accommodate the renewable fuel production facility that Par had announced in April 2023, the original version of the SB3360 deliberately and significantly raised the individual taxpayer/company cap from $3.5 MM to $60 MM per year and the total cap of the production credit from $15 MM to $80 MM per year.

As reflected in the YouTube video testimony (2/6/24), on the SB3360 as originally introduced, Senator Wakai was incredulous that SB3360 provided the capacity to payout $80 MM per year - for (at least) 20 years - and $60,000,000 per year to one company - Par Hawaii Refining.

EET-GVO DEFER, EET, EET Public Hearings 2-06-2024 (youtube.com)

Pending additional determinations by the legislature, the revised bills still have the potential to provide a tax credit of $60 MM per year to a single company (i.e. Par Hawaii Refining), and perhaps even more, because total value of the renewable credit limit has not yet been finalized and could be set either lower or higher (aligned with $100 MM per year originally proposed by SB2574 for example). The magnitude of the tax credit in the House and Senate bills (HD1 and SD1) is not currently specified and awaits input and direction from the FIN and WAM committees. If not this year, the tax credit could be set even higher in future years.

Par Hawaii suggested in original testimony to the EET committee that the while it was technically possible that Par could receive an annual tax credit of $60 MM per year (under SB3360), it was unlikely to do so, because the tax credit was dependent upon its ability to develop locally grown feedstocks in collaboration with Pono Pacific and other Hawaii farmers. However, the suggestion that the size of the tax credit that possibly could be

taken Par was dependent on the State's ability to develop locally sourced feedstocks was a red herring (diversion) because Par Hawaii could alternatively claim the entire $60-million-dollar credit, if the company's efforts are successful and the renewable fuel was able to qualify for the additional $1/gal tax credit based on the 75% GHG reduction threshold criteria - regardless of where the renewable feedstocks were sourced.

As exemplified earlier, in absence of the $60 MM company cap, the tax credit that could be claimed by Par Hawaii would equate $95 MM per year if GHG emission can be reduced by 75% and $131 MM per year if the extra $1/gal credit is allowed for SAF, as proposed. Because the tax credit will be readily consumed, there is little remaining motivation to buy local. Moreover, even if the overall production tax credits are increased to well over $150 MM per year, the additional $1/gallon tax credit for locally sourced renewable feedstocks, which clearly has some appeal to the legislature is unlikely to have the intended impact because Hawaii simply does not have enough land (or water) just to supply the amount of renewable feedstock that Par Hawaii's renewable production facility will require in its first year of operation. See additional details in a supplement at the end.

Even though the proposed tax credits ($80, $100 or even $150 MM per year) are undeniably a lot of money to be taken from the taxpayers' coffers to subsidize the manufacture of renewable fuel, the tax credits will cover less than 4% of the renewable fuel that the State needs. According DBEDT's on-line reports, in CY2022 the State's electricity producers burned 390,546,968 gallons of traditional fossil fuels, airlines used 405,594,000 gallons of imported jet fuel, and Hawaii drivers consumed 420,390,000 gallons of gasoline, total over 1,200,000,000 gallons in the aggregate. Consequently, well-established renewable fuel producers, airlines and even utilities will be constantly advocating for more and more increases to the renewable fuel production credit. HECO and the airlines have already testified to that effect. The State should find it difficult to afford and justify the magnitude of tax credits that have been proposed, particularly since there will be inevitable requests for further expansion, of the production credit, just as there has been this year (in 2024).

Neither Pacific Biodiesel nor Par Hawaii Refining need additional public assistance to make renewable fuels. The State has passed stringent renewable fuel mandates and besides the higher prices that biofuels already command, there are strong financial incentives already in place. Pacific Biodiesel is expanding to keep up with demand and Par Pacific (now parent company for 4 refineries) is about to announce another year of record profits. Par Hawaii had long ago recognized there were tremendous economic incentives provided by State and federal regulatory mandates and sought to further benefit from those initiatives, by appealing to the legislature for a 4 to 6-fold expansion of State's renewable fuel tax credit for its renewable fuel production facility.

Even though legislature is committed to making Hawaii carbon neutral by 2045, the legislature should not be deceived into granting Par Hawaii Refining a generous 20-year (and potentially never-ending and refundable) production tax credit of $34 to $131 million per year, while the company is still under investigation by the State's AG for false claims related to its FTZ refinery. Historically production equipment and supplies (very much like that which are now planned and needed for Par's $90 MM renewable fuel production facility) have been brought into the FTZ and installed without Par Hawaii recognizing or paying State excise or use taxes on that production equipment. Much of the legislature is probably unaware that a significant multi-million tax and false claims case against Par from 2021 remains open and as yet unresolved.

Hawaii Sues State's Largest Oil Refiner For Alleged Unpaid Taxes - Honolulu Civil Beat

If the legislature, particularly those well-intended committee members that were initially persuaded to endorse the narrowly focused renewable fuel tax credit bills, had been fully informed, about the tax and false claim allegations against Par, they probably would have been far more hesitant and may have rejected proposed legislation that would hand Par Hawaii Refining such a large public subsidy to manufacture renewable fuels in the FTZ.

Until the matter of past taxes and claims for the FTZ have been resolved, Par Hawaii does not have a creditable foundation upon which to suggest legislation, and advocate for its adoption (under the cover of being in the State's interest) and then claim yet another (large) tax benefit for its operation in the Hawaii FTZ.

As SB3360_SD1 comes before the FIN committee and eventually the WAM committee, with magnitude of the tax credit and the standing of it primary benefactors more clearly understood, the legislature should seriously question the merit and ramifications of passing a bill that, by design, will enable Par Hawaii Refining to collect a large re-occurring taxpayer subsidy for making renewable fuels at its FTZ refinery, at very time when the AG and DOTAX are still attempting to collect taxes and penalties for Par's alleged activities in the FTZ, along with those of its suppliers, contractors and service providers who acted under Par's direction.

The proposed increase in the renewable fuel tax credit should be rejected. If not, then to limit the possibility of a large public outlay, this bill should be further amended to explicitly specify that the tax credit is non-refundable, because the value of the tax credit, ($131 MM per year for Par Hawaii alone) far exceeds the net tax income tax liability of the very short list of companies that would benefit from the renewable fuel tax credit.[2]

[2] Per DOTAX's published reports, net corporate income tax collected from all companies was $281 MM in CY2022.

Supplemental $1/gal for Locally Grown or Collected Feedstocks Likely to be Insignificant or Ineffective

The on-going field trials for locally produced oil seed feedstocks with Pono Pacific or any of Hawaii's renewable feedstock suppliers (farmers) will be largely irrelevant because for all practical purposes the source of the renewable feedstocks has already been determined - the great majority of the renewable seed oil will have to be imported. There is little realistic potential to further develop on-island sources, with the efficiency and more importantly on the scale that is needed to reach the demand created by RPS and 2045 carbon neutral mandates. Some of the proof is already in and future projections do not look promising. On July 12, 2022, under docket 2022-0014 HECO reported to the PUC that over a 4-year period from 2019 to 2022 YTD, on average 68% of the biodiesel that it purchased from PBD was produced from renewable feedstocks (specifically used cooking oil) that were imported into the State. Dramatically raising the aggregate size of the tax credit and the per gallon tax credit for on-island sources, as has been proposed this year will not have the intended affect.

One of the primary appeals made to and seeming embraced by the legislature was that the proposed HB2767 and SB3360 would provide an extra $1/gal for local sourcing of feedstocks on the hope/expectation that the extra tax credit would provide substantial economic benefits for Hawaii farmers and fuel security for Hawaii residents. While local demand for local feedstock may be slightly elevated, a significant supply shift is not realistic because the tax credit only goes to the fuel manufacturers (not the farmers) and because half of Hawaii would have to be dedicated to growing oil seed crops such as camelina and soybean oil, just to meet Par's projected first-year demand for renewable feedstocks.

According to the US Dept of Agriculture (USDA) in CY2022 an amazing 87,000,000 acres of soybeans were planted in the US, with an average yield of 49.5 bushels per acre. After crushing and separating out the soybean meal, each 60-lb bushel only yields an average of 1.42 gallons of soybean oil. While soybeans are recognized by the USDA and DOE as the most common source of renewable fuels, only 70.3 gallons of soybean oil is produced from each acre of land. That means to satisfy just the feedstock demands for the 61,000,000 gallons of renewable fuel that Par Hawaii Refining anticipates producing annually, the State would need to dedicate 867,709 acres of land to the production of soybeans or some other oil seed crop. The island of Oahu only consists of 386,188 acres, consequently complete sourcing of renewable feedstocks (by Hawaii's farmers) is clearly infeasible. Particularly when the (air) transportation sector is considered, simply put Hawaii's demand for fuel grossly exceeds its ability to supply with local feedstocks.

Even if Hawaii were to develop some type of quantum-leap super seed crop (which does not require much water), the dollar value of the oil seed crops grown by Hawaii farmers for the purpose of producing renewable fuel will be insignificant relative to the value of domestic or foreign imports. The extra $1/gal tax credit for local sourcing of renewable feedstock has been retained in SB3360 and prominently highlighted to provide a green (home-grown) cover for the tax credits that have been earmarked for its largest benefactors, Pacific Biodiesel and Par Hawaii Refining.

It is unlikely that the $1/gallon tax credit for on-island sourcing will be able to overcome economies of scale, logistical and infrastructure advantages held by other states and other countries which can produce and supply renewable feedstocks, such as raw soybean oil at a much lower price-point. For additional perspective, in response to world-wide demand in 2022 Brazil planted 105 million acres of soybean and exported about 625,650,000 gallons of soybean oil. As largely conveyed in its April 27, 2023, press release Par Hawaii already has foreign suppliers of soybean oil lined up, because they recognize how difficult it will be for relatively small Hawaii-based growers to simply to supply let lone compete with much larger international producers in Brazil and Argentina, and that will be true in future years as well. Renewable feedstocks which are imported into the State and converted to renewable fuel in the Hawaii FTZ are subject to US duties and State taxes on an advantaged, post-production basis. Moreover, renewable jet fuel (SAF) which is sold within the Hawaii FTZ as bonded jet fuel and used for international travel will be entirely exempt from US duties, and the State's excise and barrel taxes, as well as any carbon taxes that might be added in the future.

Even with robust incentives, the State of Hawaii simply cannot produce enough renewable feedstock, to meet the near term (or future) demand for renewable fuels and feedstocks. Already there is not enough used cooking oil being generated in Hawaii to suffice Pacific Biodiesel demand and Par Hawaii's demand for seed oil or other renewable feedstocks is 10 to 12 times larger. It should come as no surprise, there simply is not enough land (or water) in Hawaii to support the amount of renewable fuel that must be produced. Certainly, there will be some (minor) purchases of local oil-bearing feedstocks to support the promise/facade of local supply, but the amount local feedstock and dollar valuation will be negligible in comparison to the amount of vegetable/seed oil that will be imported into the State through Hawaii FTZ, principally from foreign countries, to facilitate the State's transition to renewable fuel.

Theodore (Ted) K. Metrose
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