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Testimony of
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before the
**SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND AGRICULTURE AND ENVIRONMENT**

Tuesday, January 30, 2024
1:01 PM
State Capitol, Conference Room 229 and Videoconference

Providing Comments on
SB 2768

RELATING TO GREENHOUSE GAS EMISSIONS.

Chairs DeCoite and Gabbard, Vice Chairs Wakai and Richards, and Members of the Committees, the Hawai'i State Energy Office (HSEO) provide comments on SB 2768, which requires HSEO to adopt rules governing a clean fuel standard for gasoline and diesel in the State.

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 and the analysis completed through the development of the Act 238 Report, Pathways to Decarbonization.¹ Notably, implementing a Clean Fuel Standard, based on lifecycle carbon intensity, was discussed in Chapter 5 of the Decarbonization Report.

The Act 238 report notes:

"Bioenergy, specifically biofuels, and alternative fuels will likely play a significant role in decarbonization.... With the selection of Stage 3 projects alone setting aside over 650 MW nameplate capacity by 2033 for bioenergy.² The electric sector is anticipated to require significant biofuel production and feedstock imports.

¹ Hawai'i State Energy Office (2023). Hawai'i Pathways to Decarbonization Report to the 2024 Hawai'i State Legislature. Act 238 (SLH 2022). Available at: https://energy.hawaii.gov/wp-content/uploads/2024/01/Act-238_HSEO_Decarbonization_Report.pdf

² Hawaiian Electric (2023) [Renewable Project Status Board](#).

However, as biofuels exhibit a diverse spectrum of lifecycle emissions, it becomes crucial to establish lifecycle carbon intensity standards which apply to all sectors. At a minimum, these standards should ensure that the carbon footprint throughout a biofuel's lifecycle remains consistently lower than that of fossil fuel. This approach ensures a stringent measure of environmental sustainability across various sectors. A clean fuel standard (CFS), or an adjustment to the RPS to account for the carbon emissions of biofuels [in the electric sector], would require fuel suppliers to gradually reduce the CI of the fuels sold and distributed within the state.

Increasingly stringent CI reduction requirements can serve to decrease the CI of alternative fuels and help ensure that the state prioritizes low carbon fuel imports as they become commercially available.”³

Accordingly, a CFS bill should support a lifecycle CI that is high enough to reflect fuels that are currently available while still being lower than the fossil fuel alternatives, low enough to reduce carbon emissions and have the flexibility to have the CI threshold decrease over time to encourage technological improvements and the adoption of cleaner fuels over time.

HSEO welcomes the intent of this bill which encourages measures to help attain Hawai'i's decarbonization goals by providing market mechanisms to lower the carbon intensity of alternative fuels used in the state. However, HSEO recommends a modified approach to ensure the standard can be used to achieve the intent of the bill to widely support the deployment of clean transportation fuel technologies through a methodical reduction of the carbon intensity of fuels used in the state over time.

Specifically, HSEO has the following comments and concerns on the proposed measure in its current form:

Scope of the Clean Fuel Standard

SB 2768 covers a narrower scope of transportation fuels than that of other Clean Fuels Standards (“CFS”) and Low-Carbon Fuel Standards (“LCFS”) implemented in other states. Given the core purpose of a CFS is to promote better management of waste and resources, while incentivizing the use of fuels with lower lifecycle carbon

³ Hawai'i State Energy Office (2023). Hawai'i Pathways to Decarbonization Report to the 2024 Hawai'i State Legislature. Act 238 (SLH 2022). Pages 226-229.

intensity, the scope of fuels covered under SB2768 definitions may be too narrow to promote significant levels of decarbonization.

SB 2768 proposes to enforce a CFS on diesel, gasoline, and alternative fuels, the latter of which is defined as “any fuel that is used in transportation and derived from municipal solid waste, agriculture or forestry practices, construction waste, animal or food waste, or other biogenic biomass sources. Section 2 (c) of SB 2768 defines alternative fuel as “any fuel that is used in transportation and derived from municipal solid waste, agriculture or forestry practices, construction waste, animal or food waste, or other biogenic biomass sources.” However, other state fuel standards, such as those in Washington State and Oregon have CFS that apply to gasoline, gasoline substitutes, diesel, and diesel substitutes. California’s LCFS applies more broadly to (1) California reformulated gasoline; (2) California diesel fuel; (3) fossil compressed natural gas or fossil liquefied natural gas; (4) biogas CNG or biogas LNG; (5) electricity; (6) compressed or liquefied hydrogen; (7) a fuel blend containing hydrogen; (8) a fuel blend containing greater than 10 percent ethanol by volume; (9) a fuel blend containing biomass-based diesel; (10) denatured fuel ethanol; (11) neat biomass-based diesel; and (12) any other liquid or non-liquid fuel.⁴ The EPA’s Renewable Fuels Standard (“RFS”) Program⁵ also covers a broader range of renewable fuels.⁶ Hawai’i’s own alternate fuel standard goal, as codified in Hawai’i Revised Statutes section 196-42, uses the federal definition of “alternate fuels,”⁷ which also provides a broader definition of alternative fuels than that defined under SB 2768.

Accordingly, HSEO advises that an effective fuel standard would have a broadened scope of the CFS to include electricity and a broader range of alternative

⁴ ORS Chapter 468A, § 266.

⁵ *Approved Pathways for Renewable Fuel*, EPA, <https://www.epa.gov/renewable-fuel-standard-program/approved-pathways-renewable-fuel>.

⁶ 10 C.F.R. § 490.2.

⁷ “Alternative Fuel” means “methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas, including liquid fuels domestically produced from natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); three P-series fuels (specifically known as Pure Regular, Pure Premium and Pure Cold Weather) as described by United States Patent number 5,697,987, dated December 16, 1997, and containing at least 60 percent non-petroleum energy content derived from methyl-tetrahydrofuran, which must be manufactured solely from biological materials, and ethanol, which must be manufactured solely from biological materials; and electricity (including electricity from solar energy).” 10 C.F.R. § 490.2.

fuels. HSEO suggests the definition of covered fuels is consistent with EPA's Renewable Fuel Standard.

Clean Air Act Compliance, Federal Preemption, and State Implementation Plans

Under Section 110 of the CAA, states must adopt State Implementation Plan (SIPs) and submit them to the EPA to ensure that they are adequate to meet the statutory requirements of the Clean Air Act. SIPs provide a plan for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards ("NAAQS") in each state.⁸

Title II of the CAA generally preempts states from adopting their own emission standards for new motor vehicles or engines. CAA Section 209(b) provides an exception to federal preemption of state vehicle emission standards:

The [EPA] Administrator shall, after notice and opportunity for public hearing, waive application of this section [the preemption of State emission standards] to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines before March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

Only California can qualify for such a preemption waiver because it is the only state that adopted motor vehicle emission standards "prior to March 30, 1966." However, Section 177 of the CAA allows other states to adopt California's stricter motor vehicle emission standards in lieu of federal requirements, but only for non-attainment areas (i.e., areas where pollution levels have not met the NAQQS). Hawai'i consistently receives "attainment" status from the EPA, therefore under Section 177 of the CAA, it is ineligible to adopt California's stricter vehicle emissions standards.⁹ Nonetheless, the State of Hawai'i could coordinate with the EPA to have a SIP for fuel standards that comport with the EPA's regulations if the EPA makes a finding that it is necessary to

⁸ *Basic Information About Air Quality SIPs*, EPA, <https://www.epa.gov/air-quality-implementation-plans/basic-information-about-air-quality-sips>.

⁹ See FACT SHEET: Review of Hawaii Status to Adopt a Zero Emission Vehicle Standard, HSEO (Dec. 2018), available at: https://energy.hawaii.gov/wp-content/uploads/2019/03/Review-of-Hawaii-Status-to-Adopt-a-ZEV-Standard_Dec2018.pdf

help the state achieve a NAAQS standard.¹⁰ Thus, insofar that Hawai'i's CFS is for motor vehicle emission control, Hawai'i will likely have to modify its SIP for EPA approval. The State Department of Health, Clean Air Branch would be the coordinating agency for modifying Hawai'i's SIP.

HSEO recommends this step be incorporated into SB 2768 and be done prior to requiring rule making.

Importance of Complementary Policy

While a CFS with a temporally decreasing carbon intensity target is likely needed to meet Hawai'i's emissions target (HRS §225P-5), the state should implement complementary policies that promote alternative fuel production, otherwise, alternative fuel supply may become an issue.

Act 122, Session Laws of Hawai'i 2019 required HSEO to examine the implementation of a carbon pricing policy for Hawai'i. The analysis noted Hawai'i's relatively small market size and limited number of market participants limit the effectiveness of instituting a cap-and-trade policy. One way to bridge the limitation of market size may be for Hawai'i to join existing cap-and-trade policies that exist in other jurisdictions. States like Washington and California have discovered that a combination of LCFS and cap-and-trade help drive long-term investments in renewables and advanced fuels without which meaningful air quality improvements can be achieved in communities that are disproportionately impacted by carbon emissions.

However, for California, researchers have found that the cap-and-trade currently is not stringent enough to drive substantial emission reductions because over time many covered entities and outside investors have banked unused allowances.¹¹ A carbon tax program could serve a similar purpose if fuels not meeting the CFS are

¹⁰ A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements." 42 U.S.C. § 7545(c)(4)(C)(i).

¹¹ California's Cap-and-Trade Program: Frequently Asked Questions. (2023, October 24). Legislative Analyst's Office.

<https://lao.ca.gov/Publications/Report/4811#:~:text=However%2C%20cap%2Dand%2Dtrade,significant%20number%20of%20unused%20allowances.>

subject to an aggressive surcharge. Further research is needed to determine the appropriate complementary carbon pricing regime.

Standards for Measuring Net Greenhouse Gas Emissions

Section 2 (a) (3) requires the HSEO to adopt rules, which shall include (3) “Standards for measuring net greenhouse gas emissions using Argonne National Lab's GREET model attributable to the production and use of diesel, gasoline, and other alternative fuels throughout their lifecycles, including feedstock production or extraction, fuel production, transportation of raw materials and finished fuels, and greenhouse gas sequestrations;”.

HSEO notes that while the Argonne National Laboratory’s GREET is an ideal model for determining lifecycle carbon emissions, adjustments to the model would be needed, particularly to capture upstream emissions from in-state biofuels and feedstock, as the default feedstock carbon intensity calculator (FD-CIC) does not have Hawai’i-specific land characteristics built-in, these characteristics must be input by the user and can be both subjective and skewed by the user. California adopted its lifecycle models and documentation to overcome this challenge and ensure appropriate system boundaries were applied to the applicant's analysis.¹² Hawai’i would likely need to do the same, additional resources would be needed to assist in the development of a HI-GREET Model.

HSEO thanks the Committee for hearing this bill and respectfully requests your consideration of the recommended modified approach and changes.

Thank you for the opportunity to testify.

¹² California Air Resources Board (2023). LCFS Life Cycle Analysis Models and Documentation <https://ww2.arb.ca.gov/resources/documents/lcfs-life-cycle-analysis-models-and-documentation>