

JAN 18 2013

S.B. NO. 730

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, in addition to
2 ethanol, pyrolysis oil, renewable diesel, bio-gasoline and bio-
3 jet fuel are examples of potential fuels that could be produced
4 in Hawaii from locally grown agricultural feedstock.

5 The legislature finds that pyrolysis oil, renewable diesel,
6 bio-gasoline and bio-jet, and ethanol, are examples of potential
7 fuels that could be produced in Hawaii from locally grown
8 feedstock.

9 Despite Hawaii's favorable climate and biomass growth
10 potential, commercial-scale biofuels production is constrained,
11 largely because of limited land availability. The non-
12 contiguous nature of land parcels and competing land uses makes
13 maximizing biofuel production per unit of land and water
14 critical. First generation feedstocks including sugar and
15 oilseed crops combined with conventional fermentation or
16 transesterification conversion technology presently produce no
17 greater than one hundred gallons per acre. Second generation
18 biofuels produced from dedicated energy crops, however, produce



1 roughly five times the volume of output on a per acre basis.
2 Further, second-generation conversion technologies can produce
3 high-energy-density fuels that are compatible with existing
4 infrastructure. Given the State's limited land, these second
5 generation technologies offer the best hope of substantially
6 increasing local biofuel production while minimizing the impact
7 on land and resources. With these second-generation benefits,
8 however, comes increased capital costs and investment risk. A
9 biofuel production facility credit targeting second-generation
10 production could help ameliorate this risk while helping to
11 jumpstart a new, bio-based industry for the Hawaii.

12 Applying a tax credit to biofuel production facilities that
13 commence construction on or after January 1, 2014, would help to
14 foster new investment and construction in the State. Facilities
15 that have already commenced construction have likely secured the
16 necessary financing and would be moving forward regardless of
17 the credit. Applying a tax credit to new construction would to
18 help jumpstart an advanced, high-tech industry while creating
19 demand from other sectors of the local economy, including
20 construction, which have been badly hit by the economic
21 slowdown.



1 Advanced feedstock and conversion technologies will help
2 minimize the land, water, and resource footprint of biofuel
3 operations while generating a portfolio of energy outputs and
4 value-added co-products. Encouraging advanced technology would
5 enhance sustainability, attract higher levels of capital
6 investment, and help establish Hawaii as a center for bio-based
7 innovation.

8 At present, a tax credit is allowed based on the percentage
9 of nameplate capacity up to a limit of fifteen million gallons.
10 Amending the language to provide for a 30 cents per one hundred
11 fifteen thousand British thermal units of renewable biofuels
12 would enhance administrative efficiency and provide incentive
13 for the production of higher-density fuels. Further, removing
14 the fifteen million gallon per year facility cap would allow
15 larger-scale facilities to also benefit from the incentive.
16 Maintaining the statutory requirement that the facility must
17 operate at or above seventy-five per cent capacity in order to
18 claim the credit would also help to ensure the credit helps
19 bring the greatest volume of fuels to market.

20 Finally, incorporating a sunrise date that applies a tax
21 credit to taxable years after December 31, 2014, would help to
22 provide assurance to investors and project developers that



1 support would be available, while not unnecessarily tying up
2 state funds.

3 The purpose of this Act is to modify the existing ethanol
4 facility tax credit to include other liquid biofuels and to
5 enable larger facilities to be eligible for the tax incentive,
6 without changing the level of incentive or cap per facility.

7 Amending the current statute to incorporate biofuels and to
8 foster advanced technology is key to supporting a broader range
9 of high-density biofuels producers, enhancing land use and
10 production efficiency, attracting high-tech investment to the
11 State, spurring agricultural and economic development, and
12 minimizing the State's petroleum dependence and emissions.

13 SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§235-110.3 [~~Ethanol~~] Biofuel production facility tax
16 **credit.** (a) Each year during the credit period, there shall be
17 allowed to each taxpayer subject to the taxes imposed by this
18 chapter, [~~an ethanol~~] a biofuel production facility tax credit
19 that shall be applied to the taxpayer's net income tax
20 liability, if any, imposed by this chapter for the taxable year
21 in which the credit is properly claimed.



1 For each [~~qualified ethanol~~] qualifying biofuel production
2 facility, the annual dollar amount of the [~~ethanol~~] biofuel
3 production facility tax credit during the eight-year period
4 shall be equal to [~~thirty per cent of its nameplate capacity if~~
5 ~~the nameplate capacity is greater than five hundred thousand but~~
6 ~~less than fifteen million gallons.~~] 30 cents per one hundred
7 fifteen thousand British thermal units of biofuels; provided
8 that the biofuel production facility's capacity is not less than
9 five hundred seventy-five billion British thermal units of
10 biofuel per year; provided further that the amount of the tax
11 credit claimed under this section by a taxpayer shall not exceed
12 \$3,000,000 per taxable year. A taxpayer may claim this credit
13 for each qualifying [~~ethanol~~] biofuel production facility;
14 provided that:

- 15 (1) The claim for this credit by any taxpayer of a
16 qualifying [~~ethanol~~] biofuel production facility shall
17 not exceed one hundred per cent of the total of all
18 investments made by the taxpayer in the qualifying
19 [~~ethanol~~] biofuel production facility during the
20 credit period;
- 21 (2) The qualifying [~~ethanol~~] biofuel production facility
22 operated at a level of production of at least seventy-



1 five per cent of its nameplate capacity on an
2 annualized basis;
3 (3) The qualifying biofuel production facility is located
4 within the State and, if available, uses agricultural
5 feedstock for at least seventy-five per cent of its
6 production output;

7 ~~[(3)]~~ (4) The qualifying [ethanol] biofuel production
8 facility [is in production on or before January 1,
9 2017,] commences construction on or after January 1,
10 2014; and

11 ~~[(4)]~~ (5) No taxpayer that claims the credit under this
12 section shall claim any other tax credit under this
13 chapter for the same taxable year.

14 (b) As used in this section:

15 "Agricultural feedstock" includes but is not limited to:
16 sugar cane; byproducts from sugar cane; sweet sorghum; sugar
17 beets; biomass; renewable oils; fiber; algae; woody biomass; and
18 other biological materials.

19 "Biofuel" means ethanol; pyrolysis oil; renewable diesel;
20 bio-gasoline; bio-jet fuel; or any other liquid fuel that meets
21 the relevant biofuel specifications of ASTM International and is
22 produced from agricultural feedstock.



1 "Credit period" means a maximum period of eight years
2 beginning from the first taxable year in which the qualifying
3 [~~ethanol~~] biofuel production facility begins production even if
4 actual production is not at seventy-five per cent of nameplate
5 capacity.

6 "Investment" means a nonrefundable capital expenditure
7 related to the development and construction of any new
8 qualifying [~~ethanol~~] biofuel production facility, including
9 processing equipment, waste treatment systems, pipelines, and
10 liquid storage tanks at the facility or remote locations,
11 including expansions or modifications. Direct capital
12 expenditures in agricultural infrastructure, including
13 irrigation and drainage systems, land clearing and leveling,
14 establishment of crops, planting, and cultivation where the
15 biofuel production facility and agricultural operations are
16 integrated shall be eligible. Capital expenditures shall be
17 those direct and certain indirect costs determined in accordance
18 with section 263A of the Internal Revenue Code, relating to
19 uniform capitalization costs, but shall not include expenses for
20 compensation paid to officers of the taxpayer, pension and other
21 related costs, rent for land, the costs of repairing and
22 maintaining the equipment or facilities, training of operating



1 personnel, utility costs during construction, property taxes,
2 costs relating to negotiation of commercial agreements not
3 related to development or construction, or service costs that
4 can be identified specifically with a service department or
5 function or that directly benefit or are incurred by reason of a
6 service department or function. For the purposes of determining
7 a capital expenditure under this section, the provisions of
8 section 263A of the Internal Revenue Code shall apply as it read
9 on March 1, 2004. For purposes of this section, investment
10 excludes land costs and includes any investment for which the
11 taxpayer is at risk, as that term is used in section 465 of the
12 Internal Revenue Code (with respect to deductions limited to
13 amount at risk).

14 ~~["Nameplate capacity" means the qualifying ethanol~~
15 ~~production facility's production design capacity, in gallons of~~
16 ~~meter fuel grade ethanol per year.]~~

17 "Net income tax liability" means net income tax liability
18 reduced by all other credits allowed under this chapter.

19 "Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~
20 biofuel produced from ~~[renewable, organic feedstocks, or waste~~
21 ~~materials, including municipal solid waste. All qualifying~~
22 ~~production shall be fermented, distilled, gasified, or produced~~



1 ~~by physical chemical conversion methods such as reformation and~~
2 ~~catalytic conversion and dehydrated at the facility.] renewable~~
3 ~~feedstocks produced within the State; provided that the~~
4 ~~renewable transportation fuel shall be sold in the State.~~

5 "Qualifying [~~ethanol~~] biofuel production facility" or
6 "facility" means a facility located in Hawaii [~~which~~] that
7 produces [~~meter~~] fuel grade [~~ethanol meeting the minimum~~
8 ~~specifications by the American Society of Testing and Materials~~
9 ~~standard D 4806, as amended.] biofuel from renewable feedstocks~~
10 ~~and that meets the relevant ASTM International specifications~~
11 ~~for that particular fuel or other industry specifications for~~
12 ~~the production of:~~

- 13 (A) Methanol, ethanol, or other alcohols;
14 (B) Hydrogen;
15 (C) Biodiesel or renewable diesel;
16 (D) Biofuels derived from biological materials, including
17 algae; or
18 (E) Renewable jet fuel, renewable gasoline, or liquid or
19 gaseous fuels.

20 (c) In the case of a taxable year in which the cumulative
21 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]
22 biofuel production facility exceeds the cumulative investment



1 made in the qualifying [~~ethanol~~] biofuel production facility by
2 the taxpayer, only that portion that does not exceed the
3 cumulative investment shall be claimed and allowed.

4 (d) The department of business, economic development, and
5 tourism shall:

6 (1) Maintain records of the total amount of investment
7 made by each taxpayer in a facility;

8 (2) Verify the amount [~~of the qualifying investment,~~] and
9 type of biofuel produced;

10 (3) Total all qualifying [~~and cumulative investments~~]
11 biofuel production facilities that the department of
12 business, economic development, and tourism certifies;
13 and

14 (4) Certify the total amount of the tax credit for each
15 taxable year and the cumulative amount of the tax
16 credit during the credit period.

17 Upon each determination, the department of business,
18 economic development, and tourism shall issue a certificate to
19 the taxpayer verifying the qualifying [~~investment amounts,~~]
20 volume of biofuel production, the credit amount certified for
21 each taxable year, and the cumulative amount of the tax credit
22 during the credit period. The taxpayer shall file the



1 certificate with the taxpayer's tax return with the department
2 of taxation. Notwithstanding the department of business,
3 economic development, and tourism's certification authority
4 under this section, the director of taxation may audit and
5 adjust certification to conform to the facts.

6 If in any year, the annual amount of certified credits
7 reaches [~~\$12,000,000~~] \$ _____ in the aggregate, the
8 department of business, economic development, and tourism
9 [~~shall~~] may immediately discontinue certifying credits and
10 notify the department of taxation. [~~In no instance shall the~~
11 ~~total amount of certified credits exceed \$12,000,000 per year.~~]
12 Alternatively, the department of business, economic development,
13 and tourism may increase the cap according to the level of
14 demand for qualified biofuel production; provided that the
15 department of business, economic development, and tourism shall
16 report to the legislature the rationale and justification for
17 any such increase in its next annual report to the legislature.
18 Notwithstanding any other law to the contrary, this information
19 shall be available for public inspection and dissemination under
20 chapter 92F.

21 (e) If the credit under this section exceeds the
22 taxpayer's income tax liability, the excess of credit over



1 liability shall be refunded to the taxpayer; provided that no
2 refunds or payments on account of the tax credit allowed by this
3 section shall be made for amounts less than \$1. All claims for
4 a credit under this section must be properly filed on or before
5 the end of the twelfth month following the close of the taxable
6 year for which the credit may be claimed. Failure to comply
7 with the foregoing provision shall constitute a waiver of the
8 right to claim the credit.

9 (f) If a qualifying [~~ethanol~~] biofuel production facility
10 or an interest therein is acquired by a taxpayer prior to the
11 expiration of the credit period, the credit allowable under
12 subsection (a) for any period after such acquisition shall be
13 equal to the credit that would have been allowable under
14 subsection (a) to the prior taxpayer had the taxpayer not
15 disposed of the interest. If an interest is disposed of during
16 any year for which the credit is allowable under subsection (a),
17 the credit shall be allowable between the parties on the basis
18 of the number of days during the year the interest was held by
19 each taxpayer. In no case shall the credit allowed under
20 subsection (a) be allowed after the expiration of the credit
21 period.



1 ~~[(g) Once the total nameplate capacities of qualifying~~
2 ~~ethanol production facilities built within the State reaches or~~
3 ~~exceeds a level of forty million gallons per year, credits under~~
4 ~~this section shall not be allowed for new ethanol production~~
5 ~~facilities. If a new facility's production capacity would cause~~
6 ~~the statewide ethanol production capacity to exceed forty~~
7 ~~million gallons per year, only the ethanol production capacity~~
8 ~~that does not exceed the statewide forty million gallon per year~~
9 ~~level shall be eligible for the credit.~~

10 ~~(h)]~~ (g) Prior to construction of any new qualifying
11 ~~[ethanol]~~ biofuel production facility, the taxpayer shall
12 provide written notice of the taxpayer's intention to begin
13 construction of a qualifying ~~[ethanol]~~ biofuel production
14 facility. The information shall be provided to the department
15 of taxation and the department of business, economic
16 development, and tourism on forms provided by the department of
17 business, economic development, and tourism, and shall include
18 information on the taxpayer, facility location, facility
19 production capacity, anticipated production start date, and the
20 taxpayer's contact information. Notwithstanding any other law
21 to the contrary, this information shall be available for public
22 inspection and dissemination under chapter 92F.



1 ~~[(i)]~~ (h) The taxpayer shall provide written notice to the
2 director of taxation and the director of business, economic
3 development, and tourism within thirty days following the start
4 of production. The notice shall include the production start
5 date and expected ~~[ethanol fuel]~~ biofuel production for the next
6 twenty-four months. Notwithstanding any other law to the
7 contrary, this information shall be available for public
8 inspection and dissemination under chapter 92F.

9 ~~[(j)]~~ ~~If a qualifying ethanol production facility fails to~~
10 ~~achieve an average annual production of at least seventy five~~
11 ~~per cent of its nameplate capacity for two consecutive years,~~
12 ~~the stated capacity of that facility may be revised by the~~
13 ~~director of business, economic development, and tourism to~~
14 ~~reflect actual production for the purposes of determining~~
15 ~~statewide production capacity under subsection (g) and allowable~~
16 ~~credits for that facility under subsection (a). Notwithstanding~~
17 ~~any other law to the contrary, this information shall be~~
18 ~~available for public inspection and dissemination under chapter~~
19 ~~92F.~~

20 ~~(k)]~~ (i) Each calendar year during the credit period, the
21 taxpayer shall provide information to the director of business,
22 economic development, and tourism on the number of ~~[gallons]~~



1 British thermal units of [~~ethanol~~] biofuel produced and sold
 2 during the previous calendar year, how much was sold in Hawaii
 3 versus overseas, [~~feedstocks~~] percentage of Hawaii-grown
 4 feedstock and other feedstock used for [~~ethanol~~] biofuel
 5 production, the number of employees of the facility, and the
 6 projected number of [~~gallons~~] British thermal units of [~~ethanol~~]
 7 biofuel production for the succeeding year.

8 ~~[(1)]~~ (j) In the case of a partnership, S corporation,
 9 estate, or trust, the tax credit allowable is for every
 10 qualifying [~~ethanol~~] biofuel production facility. The cost upon
 11 which the tax credit is computed shall be determined at the
 12 entity level. Distribution and share of credit shall be
 13 determined pursuant to section 235-110.7(a).

14 ~~[(m)]~~ (k) Following each year in which a credit under this
 15 section has been claimed, the director of business, economic
 16 development, and tourism shall [~~submit a written~~] include in its
 17 annual report to the governor and legislature [~~regarding the~~
 18 ~~production and sale of ethanol. The report shall include:~~] the
 19 following:

- 20 (1) The number, location, and nameplate capacities of
- 21 qualifying [~~ethanol~~] biofuel production facilities in
- 22 the State;



1 (2) The total number of [~~gallons~~] British thermal units of
2 [~~ethanol~~] biofuel produced and sold during the
3 previous year; and

4 (3) The projected number of [~~gallons~~] British thermal
5 units of [~~ethanol~~] biofuel production for the
6 succeeding year.

7 [~~(n)~~] (1) The director of taxation shall prepare forms
8 that may be necessary to claim a credit under this section.
9 Notwithstanding the department of business, economic
10 development, and tourism's certification authority under this
11 section, the director may audit and adjust certification to
12 conform to the facts. The director may also require the
13 taxpayer to furnish information to ascertain the validity of the
14 claim for credit made under this section and may adopt rules
15 necessary to effectuate the purposes of this section pursuant to
16 chapter 91."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

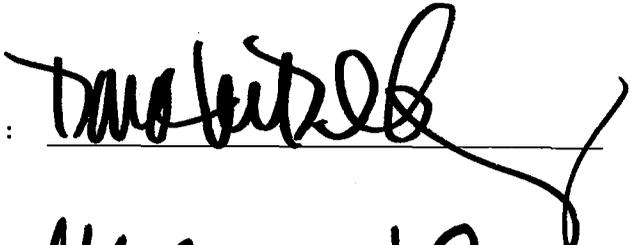
20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 5. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2014.

3

INTRODUCED BY:






Report Title:

Renewable Fuels; Biofuels; Ethanol; Tax Credits

Description:

Substitutes the term "biofuel" for "ethanol". Expands tax credit eligibility to include larger facilities. Changes the formula for calculating the amount of tax credit allowed and caps the amount of tax credits allowed. Limits the credit to Hawaii biofuel production facilities. Allows the department of business, economic development, and tourism to increase the aggregate tax cap with reporting requirements. Applies to taxable years beginning after December 31, 2014.

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