

JAN 21 2011

A BILL FOR AN ACT

RELATING TO BIOFUELS.

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

1 SECTION 1. The legislature finds that Hawaii depends upon
2 imported fuel to meet over eighty-five per cent of its
3 electricity generation needs and one hundred per cent of its
4 transportation fuel requirements. Hawaii used to produce more
5 than thirty per cent of its electricity from direct combustion
6 of biomass in the form of sugarcane bagasse, the primary co-
7 product of commercial sugar producers. Because the sugarcane
8 industry has been affected by lower-cost competition from
9 foreign sugar producers, the acreage used for sugarcane
10 production in Hawaii has declined dramatically. This has hurt
11 Hawaii's ability to generate electricity from renewable sources.
12 The Hawaii sugarcane industry once employed over twenty-two
13 thousand workers, including one thousand six hundred workers on
14 the island of Oahu. Building agriculturally-based biofuel
15 refineries in Hawaii has the potential to reinvigorate Hawaii's
16 struggling agriculture industry while also helping to meet the
17 renewable energy goals of Hawaii's clean energy initiative.



1 This initiative aims to reduce Hawaii's reliance on petroleum by
2 forty per cent by the end of year 2030.

3 The legislature finds that a relatively small investment by
4 the State in biofuel production projects will result in larger
5 private sector investments in those biofuel projects. For
6 example, if a fifteen per cent tax credit were authorized for a
7 \$200,000,000 biofuel plant in Hawaii, the State would incur a
8 liability of \$30,000,000 for that tax credit, but the private
9 sector will have invested \$170,000,000 in the project. This
10 equates to a seven-to-one increase in local economic activity
11 that will generate tax revenue for the State.

12 The legislature finds that the construction of biofuel
13 production facilities is an investment in Hawaii's workforce
14 that will pay dividends with the training, employment, and
15 development of skilled local workers. Eleven jobs are created
16 for every \$1,000,000 spent on construction in the State. In
17 addition, the development of biofuel production facilities will
18 create numerous jobs in biofeedstock agriculture and related
19 industries for the life of a plant, which is twenty to thirty
20 years. In addition, jobs will be created for the workers who
21 will operate and maintain the biofuel production facilities.



1 Finally, the legislature finds that it is desirable to
2 provide incentives to encourage the development and construction
3 of biofuel production facilities because these facilities will:

- 4 (1) Attract investments in Hawaii's economy that will be
5 spread across many communities and businesses;
- 6 (2) Create jobs in agriculture, construction, and biofuel
7 refinery operations; and
- 8 (3) Assist the State to become energy self-sufficient,
9 reduce imports of foreign oil, and improve energy
10 security.

11 The purpose of this Act to encourage the development and
12 construction of biofuel production facilities in Hawaii by
13 creating an income tax credit for investments in the
14 construction and development of biofuel production facilities in
15 the State.

16 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§235- Biofuel production facility income tax credit.

20 (a) There shall be allowed to each taxpayer subject to the
21 taxes imposed by this chapter, a biofuel production facility
22 income tax credit that shall be deducted from the taxpayer's net



1 income tax liability, if any, imposed by this chapter for the
2 taxable year in which the credit is properly claimed. The
3 amount of the credit shall be fifteen per cent of the qualified
4 development and construction costs of a biofuel production
5 facility.

6 In the case of a partnership, S corporation, estate, or
7 trust, the tax credit allowable shall be for qualified
8 production costs incurred by the entity for the taxable year.
9 The cost upon which the tax credit is computed shall be
10 determined at the entity level. Distribution and share of the
11 tax credit shall be determined by rule adopted by the director
12 of taxation.

13 If a deduction is taken under section 179 (with respect to
14 election to expense depreciable business assets) of the Internal
15 Revenue Code, no tax credit shall be allowed for those costs for
16 which the deduction is taken.

17 The basis for eligible property for depreciation of
18 accelerated cost recovery system purposes for state income taxes
19 shall be reduced by the amount of credit allowable and claimed.

20 (b) The credit allowed under this section shall be claimed
21 against the net income tax liability for the taxable year. For
22 purposes of this section, "net income tax liability" means net



1 income tax liability reduced by all other credits allowed under
2 this chapter.

3 (c) No taxpayer that claims the credit under this section
4 shall claim any other tax credit under this chapter for the same
5 taxable year.

6 (d) If the tax credit under this section exceeds the
7 taxpayer's income tax liability, the excess of credits over
8 liability shall be refunded to the taxpayer; provided that no
9 refunds or payment on account of the tax credits allowed by this
10 section shall be made for amounts less than \$1. All claims,
11 including any amended claims, for tax credits under this section
12 shall be filed on or before the end of the twelfth month
13 following the close of the taxable year for which the credit may
14 be claimed. Failure to properly claim the credit shall
15 constitute a waiver of the right to claim the credit.

16 (e) To qualify for this credit, the biofuel production
17 facility shall:

18 (1) Be located within the State and use locally grown
19 feedstock for at least seventy-five per cent of its
20 production output;

21 (2) Meet the definition of a qualified biofuel production
22 facility;



1 (3) Have a biofuel production capacity of no less than ten
2 million gallons;

3 (4) Have qualified development and construction costs
4 totaling at least \$10,000,000; and

5 (5) Be in production on or before January 1, 2017.

6 (f) To receive the tax credit, the taxpayer shall first
7 prequalify a biofuel production facility for the credit by
8 registering with the department of business, economic
9 development, and tourism during the development or construction
10 stage. Failure to comply with this provision may constitute a
11 waiver of the right to claim the credit.

12 (g) The director of taxation shall prepare forms as may be
13 necessary to claim a credit under this section. The director
14 may also require the taxpayer to furnish information to
15 ascertain the validity of the claim for credit made under this
16 section and may adopt rules necessary to effectuate the purposes
17 of this section pursuant to chapter 91.

18 (h) Every taxpayer claiming a tax credit under this
19 section for a qualified biofuel production facility, no later
20 than ninety days following the end of each taxable year in which
21 qualified costs were expended, shall submit a written, sworn



1 statement to the department of business, economic development,
2 and tourism, identifying:

3 (1) All qualified development and construction costs as
4 provided by subsection (a), if any, incurred in the
5 previous taxable year;

6 (2) The amount of tax credits claimed pursuant to this
7 section, if any, in the previous taxable year; and

8 (3) The number of hires related to the development or
9 construction of the qualified biofuel production
10 facility in the taxable year.

11 (i) The department of business, economic development, and
12 tourism shall:

13 (1) Maintain records of the names of the taxpayers and
14 qualified biofuel production facilities claiming the
15 tax credits under this section;

16 (2) Obtain and total the aggregate amounts of all
17 qualified development and construction costs for each
18 qualified biofuel production facility and for each
19 qualified biofuel production facility for each taxable
20 year; and

21 (3) Provide a letter to the director of taxation
22 specifying the amount of the tax credit for each



1 qualified biofuel production facility for each taxable
2 year that a tax credit is claimed and the cumulative
3 amount of the tax credit for all years claimed.

4 Upon each determination required under this subsection, the
5 department of business, economic development, and tourism shall
6 issue a letter to the taxpayer specifying the qualified
7 development and construction costs and the tax credit amount
8 qualified for in each taxable year a tax credit is claimed. The
9 taxpayer for each qualified biofuel production facility shall
10 file the letter with the taxpayer's tax return for the qualified
11 biofuel production facility to the department of taxation.

12 Notwithstanding the authority of the department of business,
13 economic development, and tourism under this section, the
14 director of taxation may audit and adjust the tax credit amount
15 to conform to the information filed by the taxpayer.

16 (j) Total tax credits claimed per qualified biofuel
17 production facility shall not exceed \$60,000,000.

18 (k) Qualified biofuel production facilities shall comply
19 with this section.

20 (l) As used in this section:

21 "Qualified biofuel production facility" means a facility
22 that produces liquid or gaseous fuels from organic sources such



1 as biomass crops, agricultural residues, and oil crops,
2 including palm, canola, soybean, and waste cooking oils; grease;
3 food wastes; locally produced municipal solid wastes and
4 industrial wastes; and animal residues and wastes that can be
5 used to generate energy.

6 "Qualified development and construction cost" means a
7 capital expenditure related to the development and construction
8 of any qualified biofuel production facility, including costs
9 for agricultural infrastructure, design, processing equipment,
10 waste treatment systems, pipelines, and liquid storage tanks at
11 the facility or remote locations, including expansions or
12 modifications, interest accrued during construction if the
13 project is not capitalized and not expensed, and utility costs
14 incurred during construction if the utility costs are
15 capitalized and not expensed. Capital expenditures shall be
16 those certain direct and indirect costs determined in accordance
17 with section 263A of the Internal Revenue Code, relating to
18 uniform capitalization costs, but shall not include expenses for
19 compensation paid to officers of the taxpayer, pension and other
20 related costs, rent for land, the costs of repairing and
21 maintaining the equipment or facilities, training of operating
22 personnel, property taxes, costs relating to negotiation of



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

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2011;
15 provided that this Act shall:

16 (1) Apply to taxable years beginning after December 31,
17 2010;

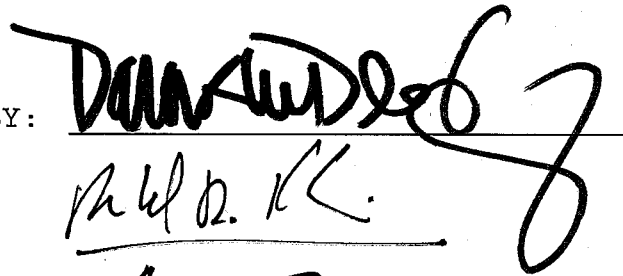
18 (2) Apply to qualified development and construction costs
19 of qualified biofuel production facilities incurred on
20 or after July 1, 2010, and before January 1, 2017; and

21 (3) Be repealed on January 1, 2017; provided that any
22 qualified development and construction costs of



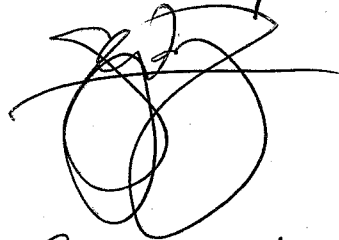
1 qualified biofuel production facilities incurred
2 before January 1, 2017, shall be eligible for the tax
3 credit established by this Act in the immediately
4 following taxable year if not claimed in a prior
5 taxable year or before the repeal of this Act.
6

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Report Title:

Biofuel Production Facility; Tax Credit

Description:

Creates an income tax credit for development and construction costs for qualifying biofuel production facilities. Repeals 1/1/2017.

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