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# A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 SECTION 1. The purpose of this Act is to encourage the  
2 development and construction of biofuel production facilities in  
3 Hawaii by creating an income tax credit for investments in the  
4 construction and development of biofuel production facilities in  
5 the State.

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

9 **"§235- Biofuel production facility income tax credit.**

10 (a) There shall be allowed to each taxpayer subject to the  
11 taxes imposed by this chapter, a qualified biofuel production  
12 facility income tax credit that shall be deducted from the  
13 taxpayer's net income tax liability, if any, imposed by this  
14 chapter for the taxable year in which the credit is properly  
15 claimed.

16 (b) The amount of the credit shall be fifteen per cent of  
17 the qualified development and construction costs of a qualified  
18 biofuel production facility.



1       (c) The credit allowed under this section shall be claimed  
2 against the net income tax liability for the taxable year in  
3 which the plant becomes commercially operational. For purposes  
4 of this section, "net income tax liability" means net income tax  
5 liability reduced by all other credits allowed under this  
6 chapter.

7       (d) To qualify for this credit, the biofuel production  
8 facility shall:

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

12       (2) Meet the definition of a qualified biofuel production  
13 facility;

14       (3) Have a biofuel production capacity of no less than  
15 five million gallons or gallon equivalents;

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

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

19       (e) To receive the tax credit, the taxpayer shall first  
20 prequalify a biofuel production facility for the credit by  
21 registering with the department of business, economic  
22 development, and tourism during the development or construction



1 stage. Failure to comply with this provision may constitute a  
2 waiver of the right to claim the credit.

3 (f) Every taxpayer claiming a tax credit under this  
4 section for a qualified biofuel production facility, no later  
5 than ninety days following the end of the taxable year in which  
6 the biofuel plant becomes commercially operational, shall submit  
7 a written, sworn statement to the department of business,  
8 economic development, and tourism, identifying:

9 (1) All qualified development and construction costs as  
10 provided by subsection (n), if any, incurred; and

11 (2) The number of hires related to the development or  
12 construction of the qualified biofuel production  
13 facility in the taxable year.

14 (g) If the tax credit under this section exceeds the  
15 taxpayer's income tax liability, the excess of credits over  
16 liability shall be refunded to the taxpayer; provided that no  
17 refunds or payment on account of the tax credits allowed by this  
18 section shall be made for amounts less than \$1. All claims,  
19 including any amended claims, for tax credits under this section  
20 shall be filed on or before the end of the twelfth month  
21 following the close of the taxable year for which the credit may



1 be claimed. Failure to properly claim the credit shall  
2 constitute a waiver of the right to claim the credit.

3 (h) The department of business, economic development, and  
4 tourism shall:

5 (1) Maintain records of the names of the taxpayers and  
6 qualified biofuel production facilities claiming the  
7 tax credits under this section;

8 (2) Obtain and total the aggregate amounts of all  
9 qualified development and construction costs for each  
10 qualified biofuel production facility for each taxable  
11 year; and

12 (3) Provide a letter to the director of taxation  
13 specifying the amount of the tax credit for each  
14 qualified biofuel production facility for each taxable  
15 year that a tax credit is claimed and the cumulative  
16 amount of the tax credit for all years claimed.

17 Upon each determination required under this subsection, the  
18 department of business, economic development, and tourism shall  
19 issue a letter to the taxpayer specifying the qualified  
20 development and construction costs and the tax credit amount  
21 qualified for in each taxable year a tax credit is claimed. The  
22 taxpayer for each qualified biofuel production facility shall



1 file the letter with the taxpayer's tax return for the qualified  
2 biofuel production facility to the department of taxation.  
3 Notwithstanding the authority of the department of business,  
4 economic development, and tourism under this section, the  
5 director of taxation may audit and adjust the tax credit amount  
6 to conform to the information filed by the taxpayer.

7 (i) If a deduction is taken under section 179 of the  
8 Internal Revenue Code (with respect to election to expense  
9 depreciable business assets), no tax credit shall be allowed for  
10 those costs for which the deduction is taken.

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

14 No taxpayer that claims the credit under this section shall  
15 claim any other tax credit under this chapter for the same  
16 taxable year.

17 (j) In the case of a partnership, S corporation, estate,  
18 or trust, the tax credit allowable shall be for qualified  
19 production costs incurred by the entity for the taxable year.  
20 The cost upon which the tax credit is computed shall be  
21 determined at the entity level. Distribution and share of the



1 tax credit shall be determined by rule adopted by the director  
2 of taxation.

3 (k) Total tax credits claimed per qualified biofuel  
4 production facility shall not exceed \$60,000,000.

5 (l) Qualified biofuel production facilities shall comply  
6 with this section.

7 (m) The director of taxation shall prepare forms as may be  
8 necessary to claim a credit under this section. The director  
9 may also require the taxpayer to furnish information to  
10 ascertain the validity of the claim for credit made under this  
11 section and may adopt rules necessary to effectuate the purposes  
12 of this section pursuant to chapter 91.

13 (n) As used in this section:

14 "Qualified biofuel production facility" means a facility  
15 that produces liquid or gaseous fuels from organic sources such  
16 as biomass crops, agricultural residues, and oil crops,  
17 including palm, canola, soybean, and waste cooking oils; grease;  
18 food wastes; locally produced municipal solid wastes and  
19 industrial wastes; and animal residues and wastes that can be  
20 used to generate energy.

21 "Qualified development and construction cost" means a  
22 capital expenditure related to the development and construction



1 of any qualified biofuel production facility, including costs  
2 for agricultural infrastructure, design, processing equipment,  
3 waste treatment systems, pipelines, and liquid or gas storage  
4 tanks at the facility or remote locations, including expansions  
5 or modifications, interest accrued during construction if the  
6 project is not capitalized and not expensed, and utility costs  
7 incurred during construction if the utility costs are  
8 capitalized and not expensed. Capital expenditures shall be  
9 those certain direct and indirect costs determined in accordance  
10 with section 263A of the Internal Revenue Code (relating to  
11 uniform capitalization costs), but shall not include expenses  
12 for compensation paid to officers of the taxpayer, pension and  
13 other related costs, rent for land, the costs of repairing and  
14 maintaining the equipment or facilities, training of operating  
15 personnel, property taxes, costs relating to negotiation of  
16 commercial agreements not related to development or  
17 construction, or service costs that can be identified  
18 specifically with a service department or function or that  
19 directly benefit or are incurred by reason of a service  
20 department or function. For the purposes of determining a  
21 capital expenditure under this section, the provisions of  
22 section 263A of the Internal Revenue Code shall apply as it read



1 on March 1, 2004. For purposes of this section, investment  
2 excludes land costs and includes any investment for which the  
3 taxpayer is at risk, as that term is used in section 465 of the  
4 Internal Revenue Code (with respect to deductions limited to  
5 amount at risk)."

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2012;  
9 provided that section 2 of this Act shall:

- 10 (1) Apply to taxable years beginning after December 31,  
11 2011;
- 12 (2) Apply to qualified development and construction costs  
13 of qualified biofuel production facilities incurred on  
14 or after July 1, 2011, and before January 1, 2017; and
- 15 (3) Be repealed on January 1, 2017; provided that any  
16 qualified development and construction costs of  
17 qualified biofuel production facilities incurred  
18 before January 1, 2017, shall be eligible for the tax  
19 credit established by this Act in the immediately  
20 following taxable year if not claimed in a prior  
21 taxable year or before the repeal of this Act.





**Report Title:**

Biofuel Production Facility; Tax Credit

**Description:**

Creates an income tax credit for development and construction costs for qualifying biofuel production facilities. Repeals January 1, 2017. (HB2669 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

