

**SB 512**



Monday, March 2, 2009  
9:30 AM, Conference Room # 211

COMMITTEE ON WAYS AND MEANS  
Senator Donna Mercado Kim, Chair  
Senator Shan S. Tsusui, Vice Chair

Testimony of Bruce Anderson, President, Oceanic Institute

**In support of SB 512, Relating to Taxation**

Oceanic Institute strongly supports SB 512, which would amend an already existing but as yet unused, ethanol facility tax credit to also encourage the production of biodiesel in the State of Hawaii. Changing the wording 'ethanol facility' to 'biofuel facility' would enable local companies to utilize this dormant incentive to expand biofuel production capacity state-wide. We are particularly excited about the potential for producing aquatic and terrestrial animal feeds and other useful materials from the co-products of biofuels production. This would add value to the production process and help to address the problems associated with the escalating costs of animal feeds in Hawaii. More biofuel facilities in the state would support the creation of more jobs in the agricultural sector.

Existing and new businesses would benefit from this already well constructed policy to propel state forward towards energy independence and creating jobs and sustainable economic growth.

Thank you for the opportunity to testify on this measure.

Bruce S. Anderson, Ph.D.  
President

Monday, March 2, 2009  
9:30 AM, Conference Room # 211

LATE

COMMITTEE ON WAYS AND MEANS  
Senator Donna Mercado Kim, Chair  
Senator Shan S. Tsutsui, Vice Chair

Testimony of **Garrett W. Marrero, Maui Brewing Co.**

**In support of SB 512, Relating to Taxation**

As Hawaii's "Green Business of the Year", Maui Brewing Co. strongly supports SB 512, which would amend an already existing but as yet unused, ethanol facility tax credit to also encourage the production of biodiesel in the State of Hawaii. Changing the wording 'ethanol facility' to 'biofuel facility' would enable local companies to utilize this dormant incentive to expand biofuel production capacity state-wide. More biofuel facilities in the state would also create jobs in the agricultural sector well.

Sustainable businesses could use this already well-constructed policy to propel state forward towards energy independence and creating jobs and economic growth through locally owned businesses.

Thank you for the opportunity to testify,

**Garrett W. Marrero**

**LATE**

**Testimony before the  
Senate Committee on**

**Ways and Means**

**S.B. 512 SD1 -- Relating to Energy**

**Monday, March 2, 2009  
9:30 am, Conference Room 211**

**By Arthur Seki  
Director, Technology  
Hawaiian Electric Company, Inc.**

Chair Kim, Vice-Chair Tsutsui and Members of the Committee:

My name is Arthur Seki. I am the Director of Technology for Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company (HECO) and its subsidiary utilities, Maui Electric Company (MECO) and Hawaii Electric Light Company (HELCO), hereby referred to collectively as the HECO Utilities.

We support S.B. 512 SD1 amending the definitions for biofuel facilities and providing incentives for biofuel development in Hawaii. We respectfully offer a few amendments (**in bold**) under Hawaii Revised Statutes ("HRS") § 235-110.3--biofuel facility tax credit:

- Under "qualifying biofuel production", page 4, lines 15 to 21:  
"Qualifying [~~ethanol~~] biofuel production" means ethanol or biodiesel produced from renewable, organic feedstocks, or waste materials, including fats, oils, grease, and municipal solid waste. All qualifying production shall be fermented, distilled, gasified, **processed, refined,** or produced by physical or chemical conversion methods such as, **but not limited to,** reformation and catalytic conversion and dehydrated at the facility."

- Under “qualifying biofuel production facility”, page 5, lines 1 to 5:  
"Qualifying [~~ethanol~~] biofuel production facility" or "facility" means a facility located in Hawaii which produces motor fuel grade [~~ethanol~~] biofuel meeting the minimum specifications by the American Society of Testing and Materials standard D-4806[,] **or biofuel meeting the specifications for electrical production**, as amended."

As you may know, HECO Utilities are committed to exploring and using biofuels in its existing and planned generating units. The amendments we propose will help biofuel production facility development. The use of biofuels can reduce the State's dependence on imported oil and increase the amount of renewable energy from sustainable resources. This commitment by the HECO Utilities is demonstrated by the following initiatives:

- Installing the 2009 power plant (100 MW) at Campbell Industrial Park to be 100% biofueled;
- Testing biodiesel in its diesel engines and combustion turbine at MECO's Maalaea power plant and conducting further tests;
- Planning for a 30-day test at Kahe 3 biofuel co-firing demonstration in a steam boiler generating unit for late 2009;
- Provided 2 years of seed funding to the Hawaii Agriculture Research Center ("HARC") and the agriculture departments at the University of Hawaii's Manoa and Hilo campuses to conduct biofuel crop research and a 3<sup>rd</sup> year funding to follow this year; and
- Evaluating micro-algae for biofuels and ocean energy projects.

In conclusion, HECO Utilities support S.B. 512 SD1 as a way to stimulate the biofuel development.

Thank you for the opportunity to present this testimony.

**kim2 - Arline**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 28, 2009 4:08 PM  
**To:** WAM Testimony  
**Cc:** holter@maui.net  
**Subject:** Testimony for SB512 on 3/2/2009 9:30:00 AM

Testimony for WAM 3/2/2009 9:30:00 AM SB512

**LATE**

Conference room: 211  
Testifier position: support  
Testifier will be present: No  
Submitted by: Lance Holter  
Organization: Maui County Democratic Party  
Address: PO Box 790656 Paia  
Phone: 808-579-9442  
E-mail: [holter@maui.net](mailto:holter@maui.net)  
Submitted on: 2/28/2009

**Comments:**

The Hawaii Democratic party at their 2008 convention overwhelmingly support, as part of their platform, renewable energy legislation and specifically legislation that makes Hawaii more sustainable as in the case for SB512. We need to support with tax and investment credits biofuel facilities. Further, we strongly support SB 512, which would amend an already existing but as yet unused, ethanol facility tax credit to also encourage the production of biodiesel in the State of Hawaii. Changing the wording 'ethanol facility' to 'biofuel facility' would enable local companies to utilize this dormant incentive to expand biofuel production capacity state-wide. More biofuel facilities in the state would also create jobs in the agricultural sector well. Lance Holter, Chair, Maui County Democratic party



**SENATE COMMITTEE ON WAYS AND MEANS**

March 2, 2009, 9:30 A.M.

Room 211

**(Testimony is 1 page long)**

**TESTIMONY IN SUPPORT OF SB 512 SD1, SUGGESTED AMENDMENT**

Chair Kim and members of the committee:

The Blue Planet Foundation supports SB 512 SD1, expanding the biofuel tax credit. **We respectfully ask this Committee, however, to amend SB 512 SD1 so that any future biofuel tax credits apply only to facilities utilizing Hawaii-grown and produced feedstocks.**

Transportation fuels in Hawai'i can be made from renewable resources, such as sugarcane, algae, and waste products. These materials are neither as scarce nor as expensive as crude oil. Even more importantly, these materials are available here. Hawai'i should set a clear course for a steady, incremental transition to renewable fuels and more efficient vehicles.

The amendments proposed in SB 512 SD1 make sense to expand the tax credits to other biofuels, including biodiesel. These amendments would lower fuel costs, diversify our fuel supply, provide energy security, and create a new market for Hawaii farmers to produce fuel from Hawaii crops and waste materials.

Thank you for the opportunity to testify.

# Department of Taxation

## Position Summary

Senate Committee on Ways & Means/March 2, 2009

# LATE

5/2

Bill Number	Bill Title "Relating to..."	Position	Comments	Revenue Impact	Methodology
SB 972 SD 1	TAX ADMINISTRATION	Strong concerns; prefer original version	*The Department strongly prefers the enforcement efforts set forth in the original measure because they are effective and comprehensive to target the Cash Economy. * Tax clearances as provided in this measure will be both time consuming and costly for the Department and taxpayers. The Department would need additional resources to accomplish this measure beyond what the original measure provided.	Potentially substantial, assuming sufficient resources.	Pending



SB 287 SD 1	ENERGY	Opposed to unbudgeted revenue loss	The Department recommends amending to preclude a taxpayer from claiming this credit and any other credit, in addition to the preclusion to claim the research credit.	The potential loss in revenue is estimated at \$900,000 in FY10 & FY11.	Assuming 3 potential plants and \$1.0 million construction cost per plant and 2 years to build. (3 * \$1 million * 30% = \$900,000).
<del>SB 512 SD 1</del>	TAXATION	Opposed to unbudgeted revenue loss		Up to a \$12 million per year revenue loss beginning in FY 12.	\$12 million per year is the maximum allowable credit by the law.
SB 1165	GENERAL EXCISE TAX	No position	No technical comments.	The Department is not currently collecting revenue on these proceeds as a result of the exemption. If the exemption sunsets on December 31, 2009 as required by current law, an additional \$3.6 million per year would be collected.	The Time Share Occupancy Tax is levied at the rate of 7.25% on one-half of the daily maintenance costs of the timeshare unit. Collections from the tax totaled \$9.7 million in 2008, which implies total maintenance costs of \$267.6 million (= (\$9.7 million X 2)/.0725). Assuming these are the costs of the operators of timeshare projects paid by the timeshare association and that 1/3 of this cost goes to wages, the GET that would be lost as a result of the exemption for these payments would be \$3.6 million.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

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**LATE**

Statement of  
**THEODORE E. LIU**  
Director

Department of Business, Economic Development, and Tourism  
before the

**SENATE COMMITTEE ON WAYS AND MEANS**

Monday, March 2, 2009

9:30 AM

State Capitol, Conference Room 211

in consideration of  
**SB 512 SD1**  
**RELATING TO TAXATION.**

Chair Kim, Vice Chair Tsutsui, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB 512, SD1, which would: 1) broaden the applicability of the ethanol facility incentive to other biofuels, such as biodiesel, produced in Hawaii; and 2) increase the incentive from thirty cents per gallon of capacity to forty cents per gallon produced. We prefer the approach proposed in Senate Bill 872, which would remove the cap on facility size and statewide production capacity, and not change the level or method of calculating the incentive. We defer to the Department of Taxation with respect to implementation.

To encourage greater fuel production capacity in the state, we suggest that SB 512, SD1, be amended to remove the facility size cap and statewide production cap. This can be done, **without additional revenue impacts**, by maintaining the annual credit cap. To accomplish this, two changes are needed.

First, the section that begins on page 1, line 14, would be revised to read as follows:

"if the nameplate capacity of the qualified biofuel production facility is greater than five hundred thousand [~~but less than fifteen million~~] gallons. A taxpayer may claim this credit for the first fifteen million gallons of capacity of each qualifying [~~ethanol~~] biofuel facility, provided that:"

Second, the section that begins on page 7, line 21, would be deleted:

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

These changes, together with the broader applicability to biodiesel production, will increase the attractiveness of the incentive to local biofuels projects.

Thank you for the opportunity to offer these comments.

**EXISTING**

capacity	2,000,000	2,000,000	2,000,000	2,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 600,000	\$ 600,000	\$ 600,000	\$ -	

capacity	5,000,000	5,000,000	5,000,000	5,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ -	

capacity	15,000,000	15,000,000	15,000,000	15,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ -	

capacity	30,000,000	30,000,000	30,000,000	30,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	?	?	?	\$ -	

**PROPOSED - SB512, SD1**

capacity	2,000,000	2,000,000	2,000,000	2,000,000	gallons per year
credit	\$ 0.40	\$ 0.40	\$ 0.40	\$ 0.40	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 960,000	\$ 800,000	\$ 600,000	\$ 400,000	

capacity	5,000,000	5,000,000	5,000,000	5,000,000	gallons per year
credit	\$ 0.40	\$ 0.40	\$ 0.40	\$ 0.40	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 2,400,000	\$ 2,000,000	\$ 1,500,000	\$ 1,000,000	

capacity	15,000,000	15,000,000	15,000,000	15,000,000	gallons per year
credit	\$ 0.40	\$ 0.40	\$ 0.40	\$ 0.40	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ 3,000,000	

capacity	30,000,000	30,000,000	30,000,000	30,000,000	gallons per year
credit	\$ 0.40	\$ 0.40	\$ 0.40	\$ 0.40	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	?	?	?	?	

**EXISTING**

capacity	2,000,000	2,000,000	2,000,000	2,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 600,000	\$ 600,000	\$ 600,000	\$ -	

capacity	5,000,000	5,000,000	5,000,000	5,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ -	

capacity	15,000,000	15,000,000	15,000,000	15,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ -	

capacity	30,000,000	30,000,000	30,000,000	30,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	?	?	?	\$ -	

**PROPOSED - SB872**

capacity	2,000,000	2,000,000	2,000,000	2,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 600,000	\$ 600,000	\$ 600,000	\$ -	

capacity	5,000,000	5,000,000	5,000,000	5,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ -	

capacity	15,000,000	15,000,000	15,000,000	15,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ -	

capacity	30,000,000	30,000,000	30,000,000	30,000,000	gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30	per gallon produced
annual production	120%	100%	75%	50%	of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ -	

**EXISTING**

capacity	2,000,000	2,000,000	2,000,000	2,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	\$ 600,000	\$ 600,000	\$ 600,000	\$ -

capacity	5,000,000	5,000,000	5,000,000	5,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ -

capacity	15,000,000	15,000,000	15,000,000	15,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ -

capacity	30,000,000	30,000,000	30,000,000	30,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	?	?	?	\$ -

**PROPOSED - SB872**

capacity	2,000,000	2,000,000	2,000,000	2,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	\$ 600,000	\$ 600,000	\$ 600,000	\$ -

capacity	5,000,000	5,000,000	5,000,000	5,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	\$ 1,500,000	\$ 1,500,000	\$ 1,500,000	\$ -

capacity	15,000,000	15,000,000	15,000,000	15,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ -

capacity	30,000,000	30,000,000	30,000,000	30,000,000 gallons per year
credit	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.30 per gallon produced
annual production	120%	100%	75%	50% of nameplate capacity
annual max. credit	\$ 4,500,000	\$ 4,500,000	\$ 4,500,000	\$ -

## SUGGESTED LANGUAGE

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

For each qualified [~~ethanol~~] biofuel production facility, the annual dollar amount of the [~~ethanol~~] biofuel facility tax credit during the eight-year period shall be equal to thirty per cent of its nameplate capacity if the nameplate capacity is greater than five hundred thousand [~~but less than fifteen million~~] gallons. A taxpayer may claim this credit for the first fifteen million gallons of capacity of each qualifying [~~ethanol~~] biofuel facility; provided that:

- (1) The claim for this credit by any taxpayer of a qualifying [~~ethanol~~] biofuel production facility shall not exceed one hundred per cent of the total of all investments made by the taxpayer in the qualifying [~~ethanol~~] biofuel production facility prior to and during the credit period;
- (2) The qualifying [~~ethanol~~] biofuel production facility operated at a level of production of at least seventy-five per cent of its nameplate capacity on an annualized basis;
- (3) The qualifying [~~ethanol~~] biofuel production facility is in production on or before January 1, 2017; and
- (4) No taxpayer that claims the credit under this section shall claim any other tax credit under this chapter for the same taxable year.

(b) As used in this section:

"Biofuel" means ethanol, biodiesel, diesel, jet fuel, or other liquid fuel meeting the relevant fuel specifications of ASTM International (formerly ASTM, the American Society for Testing and Materials), provided such fuel is produced from renewable, organic feedstocks, or waste materials, including fats, oils, grease, and municipal solid waste.

"Credit period" means a maximum period of eight years beginning from the first taxable year in which the qualifying [~~ethanol~~] biofuel

production facility begins production even if actual production is not at seventy-five per cent of nameplate capacity.

"Investment" means a nonrefundable capital expenditure related to the development and construction of any qualifying ~~[ethanol]~~ biofuel production facility, including processing equipment, waste treatment systems, pipelines, and liquid storage tanks at the facility or remote locations, including expansions or modifications. Capital expenditures shall be those direct and certain indirect costs determined in accordance with section 263A of the Internal Revenue Code, relating to uniform capitalization costs, but shall not include expenses for compensation paid to officers of the taxpayer, pension and other related costs, rent for land, the costs of repairing and maintaining the equipment or facilities, training of operating personnel, utility costs during construction, property taxes, costs relating to negotiation of commercial agreements not related to development or construction, or service costs that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function.

For the purposes of determining a capital expenditure under this section, the provisions of section 263A of the Internal Revenue Code shall apply as it read on March 1, 2004. For purposes of this section, investment excludes land costs and includes any investment for which the taxpayer is at risk, as that term is used in section 465 of the Internal Revenue Code (with respect to deductions limited to amount at risk).

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

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

"Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~ biofuel produced ~~[from renewable, organic feedstocks, or waste materials, including municipal solid waste. All]~~ at the facility, providing that all qualifying production shall be fermented, distilled, gasified, or produced by physical chemical conversion methods such as reformation and catalytic conversion and dehydrated at the facility.

"Qualifying ~~[ethanol]~~ biofuel production facility" or "facility" means a facility located in Hawaii which produces ~~[motor]~~ fuel grade



~~[ethanol meeting the minimum specifications by the American Society of Testing and Materials standard D-4806, as amended.]~~ biofuel.

(c) In the case of a taxable year in which the cumulative claims for the credit by the taxpayer of a qualifying ~~[ethanol]~~ biofuel production facility exceeds the cumulative investment made in the qualifying ~~[ethanol]~~ biofuel production facility by the taxpayer, only that portion that does not exceed the cumulative investment shall be claimed and allowed.

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

- (1) Maintain records of the total amount of investment made by each taxpayer in a facility;
- (2) Verify the amount of the qualifying investment;
- (3) Total all qualifying and cumulative investments that the department of business, economic development, and tourism certifies; and
- (4) Certify the total amount of the tax credit for each taxable year and the cumulative amount of the tax credit during the credit period.

Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation. Notwithstanding the department of business, economic development, and tourism's certification authority under this section, the director of taxation may audit and adjust certification to conform to the facts.

If in any year, the annual amount of certified credits reaches \$12,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the total amount of certified credits exceed \$12,000,000 per year. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.

(e) If the credit under this section exceeds the taxpayer's income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than \$1. All claims for a credit under this section must be properly filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

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

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

~~[(h)]~~ (g) Prior to construction of any new qualifying [~~ethanol~~] biofuel production facility, the taxpayer shall provide written notice of the taxpayer's intention to begin construction of a qualifying [~~ethanol~~] biofuel production facility. The information shall be provided to the department of taxation and the department of business, economic development, and tourism on forms provided by the department of business, economic development, and tourism, and shall include information on the taxpayer, facility location, facility production capacity, anticipated production start date, and the taxpayer's contact information. Notwithstanding any other law to the contrary,

this information shall be available for public inspection and dissemination under chapter 92F.

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

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

~~[(k)]~~ (j) Each calendar year during the credit period, the taxpayer shall provide information to the director of business, economic development, and tourism on the ~~[number of]~~ gallons ~~[of ethanol]~~ and type of biofuel produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, percentage of Hawaii-grown feedstocks and other feedstocks used for ~~[ethanol]~~ biofuel production, the number of employees of the facility, and the projected ~~[number of]~~ gallons ~~[of ethanol]~~ and type of biofuel production for the succeeding year.

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

~~[(m)]~~ (l) Following each year in which a credit under this section has been claimed, the director of business, economic development, and tourism shall ~~[submit a written]~~ include in its annual report to the governor and legislature ~~[regarding the~~

~~production and sale of ethanol. The report shall include] the following:~~

- (1) The number, location, and nameplate capacities of qualifying ~~[ethanol]~~ biofuel production facilities in the State;
- (2) The total number of gallons of ~~[ethanol]~~ biofuel produced and sold during the previous year; and
- (3) The projected number of gallons of ~~[ethanol]~~ biofuel production for the succeeding year.

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