

NEIL ABERCROMBIE  
GOVERNOR

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**HOUSE COMMITTEES ON ENERGY & ENVIORNMENTAL PROTECTION AND  
ECONOMIC REVITALIZATION & BUSINESS**

**TESTIMONY OF THE DEPARTMENT OF TAXATION  
REGARDING SB 772, SD 2 PROPOSED HD 1  
RELATING TO BIOFUEL FACILITIES**

**TESTIFIER:** FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR  
DESIGNEE)  
**COMMITTEE:** EEP/ERB  
**DATE:** MARCH 22, 2011  
**TIME:** 10:40AM  
  
**POSITION:** SUPPORT FOR DELAYED EFFECTIVE DATE AND  
TECHNICAL CONCERN

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This measure modifies the current ethanol production facilities tax credit to provide a tax credit for bioenergy production facilities.

**DEFER TO DBEDT ON POLICY** - The Department of Taxation (Department) defers to the Department of Business, Economic Development & Tourism on the non-tax technical and policy aspects of this measure.

The Department supports the encouragement and implementation of alternative energy systems in Hawaii in order to lessen the State's dependence on alternative energy. Hawaii's ability to generate its own energy from home will make the State more secure and less reliant on others.

**SUPPORT DELAYED EFFECTIVE DATE** – By delaying the ability of taxpayers to claim this credit until tax year 2014, it allows the Legislature to remove this credit from budget consideration during the current, trying fiscal year while continuing to incentivize the construction of a bioenergy production facility in Hawaii.

**TECHNICAL CONCERN** - The Department also notes that in its current form the credit is unworkable. This bill (and the current statute as well, it should be noted) calculates the dollar amount of the credit based on a percentage of the gallons produced. The credit needs to be a percentage of a monetary amount rather than a production amount in order to be calculable.



HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION  
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

Testimony in of  
KENTON ELDRIDGE  
Partner, Aina Koa Pono, LLC

March 22, 2011, at 10:40 a.m.  
House Conference Room 312

**TESTIMONY IN SUPPORT OF SB 772, HD 1 (proposed)**

Chair McKelvey, Vice Chair Coffman and members of the Committees:

Aina Koa Pono ("AKP") strongly supports SB 772, HD1 (proposed), Relating to Biofuel Facilities. AKP is a locally-owned biofuel company which is building a biofuel plant in Ka`u, Hawaii. We recently entered into a power purchase agreement with HECO to produce biodiesel from locally grown feedstock. But we still need to obtain financing for the plant. SB 772, HD 1 (proposed) will help us obtain financing for the plant. Once we obtain financing we will be able to build the plant. That will in turn kick-start a local biofuel industry in Hawai`i which will provide many returns for the state, including:

- **Job Growth.** Large-scale biofuel production facilities will provide hundreds of high-paying permanent jobs for the state. AKP estimates that its planned Ka`u facility will create 200 such permanent jobs.
- **Productive Land Use.** Biofuel will return thousands of acres of currently-fallow land to agricultural production. This will help reinvigorate Hawai`i's agricultural economy.
- **Clean Energy.** Large biofuel production facilities are an integral part of Hawai`i's clean energy future, and will provide the state with insulation from spikes in the price of fossil fuels.

Thank you for the opportunity to provide this testimony. Providing a tax credit to biofuel production facilities will provide returns to the state far in excess of what it spends on the credit. Previous biofuel projects have failed because they have not been able to obtain adequate financing. This credit is critical to ensure the development of a viable biofuel industry in Hawai`i.



**SB 772 SD2**

**RELATING TO BIOFUELS FACILITIES**

**JOEL K. MATSUNAGA  
CHIEF OPERATING OFFICER & EXECUTIVE VP  
HAWAII BIOENERGY**

**MARCH 22, 2011**

Chairs Coffman and McKelvey and Members of the House Committees on Energy & Environmental Protection and Economic Revitalization & Business:

I am Joel Matsunaga, testifying on behalf of Hawaii BioEnergy on SB 772 SD2, "Relating to Biofuel Facilities."

**SUMMARY**

Hawaii BioEnergy ("HBE") supports SB 772 SD2 (with amendment), which revises Section 235-110.3 of the Hawaii Revised Statutes by expanding the Ethanol Facility Credit to apply to liquid biofuels, encouraging the utilization of locally produced feedstock, and enabling facilities greater than 15 million gallons per year of production capacity to qualify. While HBE supports SB 772 SD2, the company believes some of the language contained in the proposed measure is unnecessarily limiting and proposes to extend the cap to apply to the total biofuel investment including related agricultural production. HBE has incorporated suggested changes to the proposed language which are outlined below. The amendments to HRS §235-110.3 as contained in SB772 SD2, as well as the amendment proposed below, will help to reduce the state's dependence on imported fossil fuels as well as provide a needed economic stimulus to the state's agricultural and industrial sectors.

HBE submits that the tax dollars allocated for the existing incentive and any subsequent increase would be more than offset by the direct and indirect tax revenue biofuel facilities would generate. Should companies take advantage of the total funding in the initial years, a gradual escalation would help to attract additional investment in the sector and help the state to meet its increasing renewable fuels goals.

## **HAWAII BENEFITS FROM LOCAL BIOFUELS PRODUCTION**

Hawaii BioEnergy is a local company dedicated to strengthening the state's energy future through sustainable biofuel production from locally grown feedstocks. Among its partners are three of the larger land owners in Hawaii, who control over 430,000 acres of land. HBE and its partners would like to use significant portions of their land to address Hawaii's existing and growing energy needs.

One of the biofuel alternatives that HBE is pursuing is the production of jet fuel and other oil derivatives from micro-algae, and is already engaged in Phase II of a Hawaii-based, DARPA-funded algae project. Along with providing a local, renewable, and lower-carbon fuel source, expanded algae-based biofuel production will benefit the agriculture industry by providing a local source of protein for animal feed, fertilizers and other products. In addition to HBE's on-going algae-based biofuel projects, the company is moving forward with plans to develop locally produced high density fuels from sweet sorghum, eucalyptus and/or other dedicated energy crops. The feedstocks and conversion production pathways under consideration hold tremendous potential to displace fossil fuel imports given their relatively low input requirements, exceptionally high yields, and capacity to produce a portfolio of products including liquid fuels for transport and power generation while contributing feed, and other bio-based co-products to the local market.

In addition to the clear environmental and energy security benefits that local production would bring to bear, fostering Hawaii's biofuel industry would also provide needed economic stimulus to the state through direct investment, job creation, and demand for goods and services. Based on an independent analysis commissioned by HBE, it's projected that a large-scale agricultural operation coupled with biofuels facility could provide up to 1,400 new direct, indirect and induced jobs, over \$115 million in value added or new wealth, and over \$17 million in annual tax revenue from combined indirect business and personal income taxes. Such

benefits could be multiplied through additional investments in large-scale biofuels facilities supported through a facility tax credit.

While the environmental, energy security and economic benefits are clear, the state's ability to secure the substantial capital required for large-scale commercial facilities requires providing a degree of assurance to private investors that they will be able to recover their investment within a reasonable time horizon. Extending the current Ethanol Facility Tax Credit to incorporate biofuels more broadly would help to attract a wider range of investors and provide the additional support needed to help offset the technology and capital risk inherent in the establishment of new industries, particularly those that require new technology. The credit would also be self-sustaining as the additional business and income tax revenue generated by the industry could be applied to future credits. As such, the legislation directly ties the incentives to the local market, enables the removal of the 40 million gallon cap as proposed in SB 772 SD2, and provides support to a range of advanced and more efficient biofuel production technologies.

#### **PROPOSED AMENDMENTS TO SB 772 SD2**

While HBE supports the extension of the Ethanol Facility Credit to include a range of biofuel production facilities, the company would like to propose the following amendment to SB 772 SD2 in order to maximize the credit's reach and impact:

- To incorporate in Section 2 (b) under "Investment" that "Direct capital expenditures in agricultural infrastructure, including irrigation and drainage systems, land clearing and leveling, establishment of crops and/or algae, planting, and cultivation where the biofuel production facility and agricultural operations are integrated shall be eligible."

#### **CONCLUDING REMARKS**

HBE is moving forward with projects that will help to address Hawaii's energy future and believes that SB 772 SD2, with the proposed amendment, will help to accelerate and expand Hawaii's bio-based renewable energy economy.

Based on the aforementioned, Hawaii BioEnergy respectfully requests your support for SB 772 SD2, with the above referenced amendment.

Thank you for the opportunity to testify.

SB 772 SD2

Testimony of Richard K. McQuain

President, Hu Honua Bioenergy, LLC

I do not support this bill. Given the current economic situation of the State of Hawaii and recent events in Japan that may have serious consequences for the state, I do not think that the state can afford to hand out generous tax exemptions to support industry. Although, my company is an energy company and we would at least to some extent benefit from this bill, I cannot in good conscience support it at this time. This measure was originally passed in an attempt to kick start ethanol production in an effort to support a flagging sugar industry. Those results were never achieved and I am dubious that this bill will have any real impact when it comes to supporting or encouraging an industry that really needs to stand on its own.

**PACIFIC WEST ENERGY LLC**  
1212 NUUANU #1704  
HONOLULU, HI 96817  
Tel. 808-927-3608

March 21, 2011

Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy  
And Members of the Committee on Economic Revitalization & Business

Representative Denny Coffman, Acting Chair  
And Members of the Committee on Energy and Environmental Protection  
Hawaii State Capitol  
415 S. Beretania  
Honolulu, HI 96813

Re: SB 772 SB2 Proposed HD1 – Relating to Biofuel Facilities

Dear Chairs McKelvey and Coffman, Vice-Chair Choy and Members of the Committees,

My name is William Maloney and I am the President and Chief Executive Officer of Pacific West Energy LLC and its affiliate, Pacific West Energy Kauai LLC, the developers of an integrated agriculture to green power and biofuel project on Kauai. I testify today in support of SB 772 SD2 Proposed HD1.

Pacific West Energy LLC continues to intend to construct a biofuel production facility on Kauai, integrated with a renewable energy electricity cogeneration facility. The total project cost is approximately \$140 million, with \$40 million of this representing the biofuel facility. We recently acquired the former Kekaha sugar mill industrial site. We are progressing positively our land lease negotiations, and negotiating contract farming agreements, and have entered into several contracts in support of this project. We expect to conclude a Purchase Power Agreement with Kauai Island Utility Cooperative (“KIUC”) by end-May, and phase 2 of our project will integrate biofuels production.

With advances in technology it is apparent that opportunities exist to produce a range of renewable fuels in Hawaii, not just ethanol, from local agricultural feedstocks. It is a good idea at this stage to expand the incentive to cover biofuels generally, and we specifically endorse the proposed HD1’s further expansion to include bioenergy facilities, e.g., agricultural biomass to electricity facilities. This is a logical step, as the final market, electricity use, is the same whether the intermediate step of biofuels is produced or direct electricity is produced.

Sincerely,

*William Maloney*  
William Maloney  
President & Chief Executive Office  
Pacific West Energy LLC





Kaua'i made renewable energy from biomass: long term lower electric bills on over 11% of KIUC's energy produced, 39 agricultural jobs, 20% of Kauai's firm power sustainably and no importation of 3,700,000 gallons of fossil fuel per year - good for the people of Kaua'i

Statement of  
**ERIC KNUTZEN**  
**GREEN ENERGY TEAM LLC**  
before the  
**COMMITTEE ON ENERGY AND ENVIRONMENT**  
**AND**  
**COMMITTEE ON AGRICULTURE**

Tuesday, March 22, 2011  
3 p.m.  
State Capitol, Conference Room 225

in consideration of  
**SB 772**  
**RELATING TO SUSTAINABILITY**

Good morning Chairs Gabbard and Nishihara, Vice Chairs English and Kahele, and Members of the Committees. My name is Eric Knutzen and I'm the Authorized Representative of Green Energy Team LLC. Our company together with our affiliated companies has several renewable projects on Kaua'i, including a 6.7 net MW biomass-to-energy project with a Power Purchase Agreement executed with KIUC on January 25, 2011. Upon production start in late 2013, we represent over 20% of the firm power on Kaua'i.

I and Green Energy Team LLC strongly support SB 772, to further move Hawaii towards food and energy security through the intended purpose of Act 73 (2010), which states these goals as a clear public benefit.

The ability of the State to acquire consistent, sustained funding enables building the capacity to meet the State's goals in the "Hawaii 2050 Sustainability Plan" and the "Hawaii Clean Energy Initiative." This in turn will allow Hawaii to measurably achieve food sustainability and to reduce the State's heavy dependence on imported fossil fuels.

The Energy Office provides profound support regarding not only navigating the complex and challenging permitting entitlement process, but also in directly providing relevant



Kaua'i made renewable energy from biomass: long term lower electric bills on over 11% of KIUC's energy produced, 39 agricultural jobs, 20% of Kauai's firm power sustainably and no importation of 3,700,000 gallons of fossil fuel per year - good for the people of Kaua'i

information pertinent to moving renewable energy projects forward. We humbly and sincerely plead for your support with regard to **SB 772**

Thank you for the opportunity to offer these comments.

House of Representatives  
Committees on Energy & Environmental Protection and  
Economic Revitalization & Business  
March 22, 2011  
10:40 a.m., Room 312

Statement of the Hawaii Carpenters Union on SB 772, SD2, Relating to Biofuel Facilities

The Hawaii Carpenters Union Urges the passage of SB 772, SD2, with an immediate effective date for the provision of tax credits to qualified developers and operators of biofuel facilities.

This is a growth industry of the type planners seem to be endlessly seeking. It will stimulate construction, as the Construction Industry Task Force found. It will provide incentives for industrial production that provides a wide range of job types. It will reduce dependence on fossil fuels, which has already threatened economic recovery with price spikes. It has positive environmental impacts, and will be compatible with, if not eventually essential to, the visitor industry.

Among proposals for incentives to provide jobs, this industry has the advantage of being based on tangible production facilities. While there are no guarantees that any industry will survive in place, tangible industrial plant assets provide an anchor. In this industry, the room for expansion, the price levels for fuel and the Hawaii customer base, all point to longer term returns and jobs.

This Bill adjusts to new technologies, and a higher potential for Hawaii production than was hoped for with ethanol. The need that ethanol was to fill still remains. Ethanol production itself remains as a possibility.

Were direct appropriations available as a choice, we might favor that method of jump starting this industry, but we do not see a choice. We urge your favorable action now, for implementation upon legislative approval.

Thank you for this opportunity to testify in support of SB 772, SD2.

**HAWAII RENEWABLE ENERGY ALLIANCE**

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**Officers**President  
Warren S. Bollmeier IIVice-President  
John Crouch**Directors**Warren S. Bollmeier II  
WSB-HawaiiCully Judd  
Inter Island Solar SupplyJohn Crouch  
SPSI, LLCHerbert M. (Monty) Richards  
Kahua Ranch Ltd.

TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE HAWAII  
RENEWABLE ENERGY ALLIANCE BEFORE THE  
HOUSE COMMITTEES ON ENERGY AND ENVIRONMENTAL PROTECTION  
AND ECONOMIC REVITALIZATION & BUSINESS  
SB 772 SD2, RELATING TO BIOFUEL FACILITIES

March 22, 2011

Chairs Coffman and McKelvey, Vice-Chair Choy and members of the Committees, I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance (“HREA”). HREA is a nonprofit corporation in Hawaii, established in 1995 by a group of individuals and organizations concerned about the energy future of Hawaii. HREA’s mission is to support, through education and advocacy, the use of renewables for a sustainable, energy-efficient, environmentally-friendly, economically-sound future for Hawaii. One of HREA’s goals is to support appropriate policy changes in state and local government, the Public Utilities Commission and the electric utilities to encourage increased use of renewables in Hawaii.

The purposes of SB 772 SD2 are to: (i) expand the facility tax credit to include various biofuels; (ii) rename the tax credit as the biofuel production facility tax credit; (iii) change the determination of the biofuel production facility tax credit from thirty percent of nameplate capacity to an unspecified amount per gallon of production; (iv) require a qualifying facility to be located within the State and to utilize locally grown feedstock for at least seventy-five per cent of its production output; (v) replace the amount of certified credits from \$12 million with an unspecified amount; (vi) amend a reporting requirement by a taxpayer claiming the tax credit; and (vii) remove the 40 million gallon production per year cap. Effective 1/1/2050.

HREA **supports SB 772 SD2** as it will assist developers of biofuel facilities in Hawaii and thereby support our state’s Clean Energy objectives. **We cannot support the Committee’s proposed HD1** for the following reasons:

- (1) The measure proposes a much broader scope for “bioenergy production facilities,” and we believe it exceeds the scope of SB 772 as “Relating to Biofuel Facilities.”
- (2) We see as problematic the inclusion of a number of potential biofuels, which need further definition and clarification as to which meet ASTM or other standards. Specifically, the encouragement of un-standardized fuels could reek havoc in the market place.
- (3) The method for calculation of the actual production credit is unclear, as well as to how a potential queue for project applicants would be handled.
- (4) While it may be desirable to encourage projects with gaseous biofuels and biofuels for generation of electricity, there inclusion in this measure would require a significant revision, or better yet a separate measure (s).

## **HAWAII RENEWABLE ENERGY ALLIANCE**

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Thus, we respectfully prefer the **SB 772 SD2** as the better vehicle to move forward with the goals of assisting biofuel facilities. We have attached our detailed comments (with explanations) for consideration by the Committee for the enhancing the SB 772 SD2. Our comments are summarized below. Specifically, we:

- (1) believe the measure should focus on only ethanol and biodiesel that meet the appropriate ASTM standards
- (2) support a production credit, that is not based on “nameplate capacity,” but on the actual production in gallons per year.
- (3) believe if a developer/owner elects to take the production credit, he should not be eligible to take any other state tax incentive.
- (4) recommend 30 cents/gallon as an appropriate amount for the production credit that would be paid for a period of no longer than 8 years.
- (5) support the goal of achieving 100% of production utilizing appropriate production facilities and locally-sourced feedstocks. Ideally, over time, the feedstocks will be “energy crops” grown in Hawaii in concert with appropriate amounts of agricultural residues and wastes, including recycled waste cooking oils and greases.
- (6) support a sunrise date as soon as possible for this measure with no sunset date.
- (7) support no CAPs on the total amount of credits to be paid annually. Such CAPs would force some sort of a “queuing system” that would invariably become problematic for a number of reasons, but especially because investors would likely be wary of an additional risk to the already risky-enough business of developing energy projects in Hawaii.

We respectfully request that you pass this measure out with our recommended amendments.

Thank you for this opportunity to provide comments in support of this measure.

## HAWAII RENEWABLE ENERGY ALLIANCE

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THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

**S.B. NO.** 772  
S.D. 2  
HREA-  
Proposed  
HD1

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# A BILL FOR AN ACT

RELATING TO BIOFUEL FACILITIES.

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

SECTION 1. Senate Concurrent Resolution No. 132, S.D. 1 (2009), established a task force to determine the economic contributions of the construction industry in Hawaii and to develop a series of proposals for state actions to preserve and create new jobs in the local construction industry. This Act implements one of the task force's proposals in conjunction with the Abercrombie administration's support for state actions to create new jobs in Hawaii's construction industry.

In addition, in 2010, the senate committee on economic development and technology and the house committee on economic revitalization, business, and military affairs convened an informal small business discussion group to address the most critical issues facing the small business sectors within Hawaii's economy. Representatives from the Chamber of Commerce of Hawaii, construction and trades industries, community nonprofits, the agricultural sector, food and restaurant industries, retailing, the science and technology sector, the commercial transportation industry, and interested stakeholders developed a package of bills that address the most pressing problems facing Hawaii's small business community.

The purpose of this Act is to support the findings of the small business working group and the recommendations proposed by the construction industry task force to enhance Hawaii's economic vitality through renewable energy resources that are self-sufficient, affordable, and produced locally.

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

**"§235-110.3 ~~[Ethanol]~~ Biofuel production 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 production 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]~~ qualifying biofuel production facility, the annual dollar amount of the ~~[ethanol]~~ biofuel production 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.]~~ \$0.30 per gallon of production. A taxpayer may claim this credit for each qualifying ~~[ethanol]~~ biofuel production 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 during construction of the facility and the credit period;

Note: since this is a production tax credit, you don't need to specify a nameplate capacity

(3) The qualifying biofuel production facility shall be located within the State and use locally sourced feedstocks for at least seventy-five per cent of its production output; Note: locally "grown" is too restrictive. By amending to "locally sourced" allows the facility developer/operator to take advantage of various waste residues and other organic materials. This can be particularly important as the facility developer/operator is working with ag growers to produce locally grown feedstocks, such as jatropha and palm oil.

~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ biofuel production facility ~~[is in]~~ commences production on or before January 1, 2017; and

~~[(4)]~~ (5) No taxpayer that claims the credit under this section shall claim any other state investment tax credit under this chapter for the same taxable year. Note: as written, this requirement is unnecessarily too restrictive. For example, developer/operator should be able to apply for federal biofuel incentives, as appropriate

(b) As used in this section:

"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

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"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 (with respect to capitalization and inclusion in inventory costs of certain expenses) 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, inventory, 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 (with respect to deductions limited to amount at risk) of the Internal Revenue Code [~~(with respect to deductions limited to amount at risk)~~].

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

"Qualifying [~~ethanol~~] biofuel production" means ethanol that meets the ASTM D4806 standard and biodiesel that meets the ASTM D6751 standard and any other liquid fuel determined by the State Energy Office to be a defined product or sale in Hawaii which displaces petroleum fuel, produced from renewable[~~, organic~~] feedstocks or waste materials, including fats, oils, grease, algae, and municipal solid waste. All qualifying production processes shall be limited to fermentation, distillation, transesterification, gasification, pyrolyzation, or or physical chemical, biochemical, or thermochemical-conversion methods, such as reformation and catalytic conversion, and dehydration at the



## HAWAII RENEWABLE ENERGY ALLIANCE

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facility. Note: it is very important to have fuels that meet (or exceed) ASTM standards. In addition, these recommended amendments makes the bill technology-neutral with respect to fuel type, and focuses on commercial fuel production processes.

"Qualifying [~~ethanol~~] biofuel production facility" or "facility" means a facility located in Hawaii which produces [~~motor~~] fuel grade [~~ethanol~~] biofuel meeting the [~~minimum~~] relevant specifications by the American Society of Testing and Materials [~~standard D-4806, as amended.~~] for that particular fuel. Note: at this time, we believe the amendments to allow this credit to apply to other liquid fuels is appropriate. If the intent was to broaden the scope to include gaseous fuels, a major revision, if not a totally separate policy/bill would be required.

(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~~] exceed 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.

## HAWAII RENEWABLE ENERGY ALLIANCE

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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~~] shall 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~~] the 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.]~~

## HAWAII RENEWABLE ENERGY ALLIANCE

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~~(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)~~ ( Note: if there are no nameplate requirements, then there is no need for this paragraph. ~~(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]~~ by type of biofuel produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, the 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]~~ 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 report to the

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governor and legislature regarding the production and sale of [~~ethanol~~]biofuel. The report shall include:

- (1) The number and location 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."

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

SECTION 4. This Act shall take effect on January 1, 2050, and shall apply to taxable years beginning after December 31, 2012.

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### **Report Title:**

Construction Task Force (2010); Biofuel Facilities; Certified Credits

### **Description:**

Expands the ethanol facility tax credit to include various biofuels; renames the tax credit as the biofuel production facility tax credit; changes the determination of the biofuel production facility tax credit from thirty percent of nameplate capacity to an unspecified amount per gallon of production; requires a qualifying facility to be located within the State and to utilize locally grown feedstock for at least seventy-five percent of its production output; replaces the amount of certified credits from \$12 million with an unspecified amount; amends a reporting requirement by a taxpayer claiming the tax credit; and removes the 40 million gallon production per year cap. Effective 1/1/2050. (SD2)

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