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## A BILL FOR AN ACT

RELATING TO RENEWABLE FUELS.

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

1           SECTION 1. The legislature finds that pyrolysis oil,  
2 renewable diesel, biogasoline and biojet, in addition to  
3 ethanol, are examples of potential fuels that could be produced  
4 in Hawaii from locally grown agricultural feedstock. The local  
5 production of these biofuels could contribute to Hawaii's  
6 renewable liquid fuel objectives, mitigate Hawaii's exposure to  
7 oil price volatility, strengthen the State's energy security,  
8 diversify the economy, and keep energy dollars circulating  
9 within Hawaii's economy. Furthermore, initiatives that support  
10 new or significantly improved technology will help to attract  
11 high technology investment to the State, jumpstart construction,  
12 and create jobs.

13           The purpose of this Act is to modify the existing ethanol  
14 facility tax credit to include other liquid biofuels, enable  
15 larger facilities to be eligible for the tax incentive, without  
16 changing the level of total funding for the incentive or cap per  
17 facility, and convert the existing facility credit to a cents-  
18 per-gallon production credit in order to streamline



1 administrative efficiency and to help ensure that the associated  
2 biofuels production comes online.

3 SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is  
4 amended follows:

5 1. By amending the title and subsections (a) through (c)  
6 to read:

7 "§235-110.3 ~~[Ethanol]~~ Biofuel production facility tax  
8 **credit.** (a) Each year during the credit period, there shall be  
9 allowed to each taxpayer subject to the taxes imposed by this  
10 chapter, ~~[an ethanol]~~ a biofuel production facility tax credit  
11 that shall be applied to the taxpayer's net income tax  
12 liability, if any, imposed by this chapter for the taxable year  
13 in which the credit is properly claimed.

14 For each ~~[qualified ethanol]~~ qualifying biofuel production  
15 facility, the annual dollar amount of the ~~[ethanol]~~ biofuel  
16 production facility tax credit during the eight-year period  
17 shall be equal to thirty ~~[per cent]~~ cents per gallon of its  
18 nameplate capacity if the nameplate capacity is greater than  
19 five hundred thousand ~~[but less than fifteen million]~~ gallons[-]  
20 and employs a new or significantly improved technology as  
21 compared with commercial technologies. A taxpayer may claim  
22 this credit for the first fifteen million gallons of production



1 for each qualifying [~~ethanol~~] biofuel production facility;

2 provided that:

3 (1) The claim for this credit by any taxpayer of a  
4 qualifying [~~ethanol~~] biofuel production facility shall  
5 not exceed one hundred per cent of the total of all  
6 investments made by the taxpayer in the qualifying  
7 [~~ethanol~~] biofuel production facility [~~during the~~  
8 ~~credit period~~];

9 (2) The qualifying [~~ethanol~~] biofuel production facility  
10 operated at a level of production of at least seventy-  
11 five per cent of its nameplate capacity on an  
12 annualized basis;

13 (3) The qualifying biofuel production facility is located  
14 within the State and uses agricultural feedstock for  
15 at least seventy-five per cent of its production  
16 output, if available;

17 [~~(3)~~] (4) The qualifying [~~ethanol~~] biofuel production  
18 facility commences construction on or after January 1,  
19 2013, and is in production on or before January 1,  
20 [~~2017,~~] 2020; and



1       ~~(4)~~ (5) No taxpayer that claims the credit under this  
2               section shall claim any other tax credit under this  
3               chapter for the same taxable year.

4       (b) As used in this section:

5       "Agricultural feedstock" means sugar cane, byproducts from  
6 sugar cane, sweet sorghum, sugar beets, biomass, renewable oils,  
7 fiber, algae, woody biomass, and other organic materials.

8       "Biofuel" means ethanol, pyrolysis oil, renewable diesel,  
9 biogasoline, biojet fuel, or other liquid fuel, that meets the  
10 relevant fuel specifications of ASTM International (formerly  
11 ASTM, the American Society for Testing and Materials) and is  
12 produced from agricultural feedstock.

13       "Commercial technology" means a technology in general use  
14 in the commercial marketplace in the United States that has been  
15 installed and has been in operation in three or more commercial  
16 projects in the United States for at least five years.

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



1 "Investment" means a nonrefundable capital expenditure  
2 related to the development and construction of any new  
3 qualifying [~~ethanol~~] biofuel production facility, including  
4 processing equipment, waste treatment systems, pipelines, [and]  
5 liquid storage tanks at the facility or remote locations,  
6 including expansions or modifications[-], and agricultural  
7 infrastructure, including irrigation and drainage systems, land  
8 clearing and leveling, establishment of crops, planting, and  
9 cultivation where the biofuel production facility and  
10 agricultural operations are integrated. Capital expenditures  
11 shall be those direct and certain indirect costs determined in  
12 accordance with section 263A of the Internal Revenue Code,  
13 relating to uniform capitalization costs, but shall not include  
14 expenses for compensation paid to officers of the taxpayer,  
15 pension and other related costs, rent for land, the costs of  
16 repairing and maintaining the equipment or facilities, training  
17 of operating personnel, utility costs during construction,  
18 property taxes, costs relating to negotiation of commercial  
19 agreements not related to development or construction, or  
20 service costs that can be identified specifically with a service  
21 department or function or that directly benefit or are incurred  
22 by reason of a service department or function. For the purposes



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

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

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

13 "New or significantly improved technology" means technology  
14 that is not a commercial technology and has either:

15 (1) Only recently been developed, discovered, or learned;

16 or

17 (2) Involves or constitutes one or more meaningful and  
18 important improvements in productivity or value, in  
19 comparison to commercial technologies in use in the  
20 United States.

21 "Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~  
22 biofuel produced from ~~[renewable, organic feedstocks, or waste~~



1 ~~materials, including municipal solid waste.]~~ agricultural  
2 feedstock. All qualifying production shall be fermented,  
3 distilled, transesterified, gasified, pyrolyzed, or produced by  
4 other advanced physical, chemical, biochemical, or  
5 thermochemical conversion methods [~~such as reformation and~~  
6 ~~catalytic conversion and dehydrated at the facility].~~

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

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

19 2. By amending subsections (f) through (m) to read:

20 "(f) If a qualifying [~~ethanol]~~ biofuel production facility  
21 or an interest therein is acquired by a taxpayer prior to the  
22 expiration of the credit period, the credit allowable under



1 subsection (a) for any period after such acquisition shall be  
2 equal to the credit that would have been allowable under  
3 subsection (a) to the prior taxpayer had the taxpayer not  
4 disposed of the interest. If an interest is disposed of during  
5 any year for which the credit is allowable under subsection (a),  
6 the credit shall be allowable between the parties on the basis  
7 of the number of days during the year the interest was held by  
8 each taxpayer. In no case shall the credit allowed under  
9 subsection (a) be allowed after the expiration of the credit  
10 period.

11 (g) ~~[Once the total nameplate capacities of qualifying~~  
12 ~~ethanol production facilities built within the State reaches or~~  
13 ~~exceeds a level of forty million gallons per year, credits under~~  
14 ~~this section shall not be allowed for new ethanol production~~  
15 ~~facilities. If a new facility's production capacity would cause~~  
16 ~~the statewide ethanol production capacity to exceed forty~~  
17 ~~million gallons per year, only the ethanol production capacity~~  
18 ~~that does not exceed the statewide forty million gallon per year~~  
19 ~~level shall be eligible for the credit.] Biofuel production~~  
20 facilities shall be eligible for a combined \$12,000,000 of  
21 annual credits. If biofuel production facilities are built that  
22 reach or exceed their maximum eligible credits, no further





1 credits under this section shall be allowed for new biofuel  
2 production facilities.

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

16 (i) The taxpayer shall provide written notice to the  
17 director of taxation and the director of business, economic  
18 development, and tourism within thirty days following the start  
19 of production. The notice shall include the production start  
20 date and expected [~~ethanol-fuel~~] biofuel production for the next  
21 twenty-four months. Notwithstanding any other law to the



1 contrary, this information shall be available for public  
2 inspection and dissemination under chapter 92F.

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

14 (k) Each calendar year during the credit period, the  
15 taxpayer shall provide information to the director of business,  
16 economic development, and tourism on the [~~number of~~] gallons [~~of~~  
17 ~~ethanol~~] and type of biofuel produced and sold during the  
18 previous calendar year, how much was sold in Hawaii versus  
19 overseas, [~~feedstocks~~] percentage of Hawaii-grown agricultural  
20 feedstock and other agricultural feedstock used for [~~ethanol~~]  
21 biofuel production, the number of employees of the facility, and



1 the projected [~~number of~~] gallons of [~~ethanol~~] biofuel  
2 production for the succeeding year.

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

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

15 (1) The number, location, and nameplate capacities of  
16 qualifying [~~ethanol~~] biofuel production facilities in  
17 the State;

18 (2) The [~~total number of~~] gallons [~~of ethanol~~] and type of  
19 biofuel produced and sold during the previous year;  
20 and



1           (3) The projected [~~number of~~] gallons [~~of ethanol~~] and  
2           type of biofuel production and sales for the  
3           succeeding year."

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

6           SECTION 4. This Act, upon its approval, shall apply to  
7 taxable years beginning after December 31, 2015.

8

INTRODUCED BY:

JAN 25 2012



# H.B. NO. 2741

**Report Title:**

Taxation; Biofuels

**Description:**

Changes the existing ethanol facility tax credit to a biofuel production facility tax credit; includes ethanol and other liquid biofuels in the definition of biofuel; changes the amount of the tax credit from thirty per cent of nameplate capacity to thirty cents per gallon and deletes the cap in the nameplate capacity; makes conforming amendments; applies to taxable years beginning after 12/31/2015.

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

