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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 legislature finds that, in addition to  
2 ethanol, pyrolysis oil, renewable diesel, bio-gasoline and bio-  
3 jet fuel are examples of potential fuels that could be produced  
4 in Hawaii from locally grown agricultural feedstock.

5           Despite Hawaii's favorable climate and biomass growth  
6 potential, commercial-scale biofuels production is constrained,  
7 largely because of limited land availability. The non-  
8 contiguous nature of land parcels and competing land uses make  
9 maximizing biofuel production per unit of land and water  
10 critical. First generation feedstocks including sugar and  
11 oilseed crops combined with conventional fermentation or  
12 transesterification conversion technology presently produce no  
13 greater than one hundred gallons per acre. Second generation  
14 biofuels produced from dedicated energy crops, however, produce  
15 roughly five times the volume of output on a per acre basis.  
16 Further, second-generation conversion technologies can produce  
17 high-energy-density fuels that are compatible with existing  
18 infrastructure. Given the State's limited land, these second



1 generation technologies offer the best hope of substantially  
2 increasing local biofuel production while minimizing the impact  
3 on land and resources. With these second-generation benefits,  
4 however, comes increased capital costs and investment risk. A  
5 biofuel production facility credit targeting second-generation  
6 production could help ameliorate this risk while helping to  
7 jumpstart a new, bio-based industry for the Hawaii.

8       Applying a tax credit to biofuel production facilities that  
9 commence construction on or after January 1, 2014, would help to  
10 foster new investment and construction in the State. Facilities  
11 that have already commenced construction have likely secured the  
12 necessary financing and would be moving forward regardless of  
13 the credit. Applying a tax credit to new construction would  
14 help jumpstart an advanced, high-tech industry while creating  
15 demand from other sectors of the local economy, including  
16 construction, which have been badly hit by the economic  
17 slowdown.

18       Advanced feedstock and conversion technologies will help  
19 minimize the land, water, and resource footprint of biofuel  
20 operations while generating a portfolio of energy outputs and  
21 value-added co-products. Encouraging advanced technology would  
22 enhance sustainability, attract higher levels of capital



1 investment, and help establish Hawaii as a center for bio-based  
2 innovation.

3 At present, a tax credit is allowed based on the percentage  
4 of nameplate capacity up to a limit of less than fifteen million  
5 gallons. Amending the language to provide for a 30 cents per  
6 one hundred fifteen thousand British thermal units of renewable  
7 biofuels would enhance administrative efficiency and provide  
8 incentive for the production of higher-density fuels. Further,  
9 removing the fifteen million gallon per year facility cap would  
10 allow larger-scale facilities to also benefit from the  
11 incentive. Maintaining the statutory requirement that the  
12 facility must operate at or above seventy-five per cent capacity  
13 in order to claim the credit would also help to ensure the  
14 credit helps bring the greatest volume of fuels to market.

15 Finally, incorporating a sunrise date that applies a tax  
16 credit to taxable years after December 31, 2014, would help to  
17 provide assurance to investors and project developers that  
18 support would be available, while not unnecessarily tying up  
19 state funds.

20 The purpose of this Act is to modify the existing ethanol  
21 facility tax credit to include other liquid biofuels and to  
22 enable larger facilities to be eligible for the tax incentive,



1 without changing the level of incentive or cap per facility.  
2 Amending the current statute to incorporate biofuels and to  
3 foster advanced technology is key to supporting a broader range  
4 of high-density biofuels producers, enhancing land use and  
5 production efficiency, attracting high-tech investment to the  
6 State, spurring agricultural and economic development, and  
7 minimizing the State's petroleum dependence and emissions.

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

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

17 For each ~~[qualified ethanol]~~ qualifying biofuel production  
18 facility, the annual dollar amount of the ~~[ethanol]~~ biofuel  
19 production facility tax credit during the eight-year period  
20 shall be equal to ~~[thirty per cent of its nameplate capacity if~~  
21 ~~the nameplate capacity is greater than five hundred thousand but~~  
22 ~~less than fifteen million gallons.]~~ 30 cents per one hundred



1 fifteen thousand British thermal units of biofuels; provided  
2 that the biofuel production facility's capacity is not less than  
3 five hundred seventy-five billion British thermal units of  
4 biofuel per year; provided further that the amount of the tax  
5 credit claimed under this section by a taxpayer shall not exceed  
6 \$3,000,000 per taxable year. A taxpayer may claim this credit  
7 for each qualifying [~~ethanol~~] biofuel production facility;  
8 provided that:

9 (1) The claim for this credit by any taxpayer of a  
10 qualifying [~~ethanol~~] biofuel production facility shall  
11 not exceed one hundred per cent of the total of all  
12 investments made by the taxpayer in the qualifying  
13 [~~ethanol~~] biofuel production facility during the  
14 credit period;

15 (2) The qualifying [~~ethanol~~] biofuel production facility  
16 operated at a level of production of at least seventy-  
17 five per cent of its nameplate capacity on an  
18 annualized basis;

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



1        [~~3~~] (4) The qualifying [~~ethanol~~] biofuel production  
2                facility [~~is in production on or before January 1,~~  
3                ~~2017,~~] commences construction on or after January 1,  
4                2014; and

5        [~~4~~] (5) No taxpayer that claims the credit under this  
6                section shall claim any other tax credit under this  
7                chapter for the same taxable year.

8                (b) As used in this section:

9                "Agricultural feedstock" includes but is not limited to:  
10               sugar cane; byproducts from sugar cane; sweet sorghum; sugar  
11               beets; biomass; renewable oils; fiber; algae; woody biomass; and  
12               other biological materials.

13               "Biofuel" means ethanol; pyrolysis oil; renewable diesel;  
14               bio-gasoline; bio-jet fuel; or any other liquid fuel that meets  
15               the relevant biofuel specifications of ASTM International and is  
16               produced from agricultural feedstock.

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. Direct capital  
7 expenditures in agricultural infrastructure, including  
8 irrigation and drainage systems, land clearing and leveling,  
9 establishment of crops, planting, and cultivation where the  
10 qualifying biofuel production facility and agricultural  
11 operations are integrated shall be eligible. Capital  
12 expenditures shall be those direct and certain indirect costs  
13 determined in accordance with section 263A of the Internal  
14 Revenue Code, relating to uniform capitalization costs, but  
15 shall not include expenses for compensation paid to officers of  
16 the taxpayer, pension and other related costs, rent for land,  
17 the costs of repairing and maintaining the equipment or  
18 facilities, training of operating personnel, utility costs  
19 during construction, property taxes, costs relating to  
20 negotiation of commercial agreements not related to development  
21 or construction, or service costs that can be identified  
22 specifically with a service department or function or that



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

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

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

15 "Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~  
16 biofuel produced from ~~[renewable, organic feedstocks, or waste~~  
17 ~~materials, including municipal solid waste. All qualifying~~  
18 ~~production shall be fermented, distilled, gasified, or produced~~  
19 ~~by physical chemical conversion methods such as reformation and~~  
20 ~~catalytic conversion and dehydrated at the facility.]~~ renewable  
21 feedstocks produced within the State; provided that the  
22 renewable transportation fuel shall be sold in the State.





1 "Qualifying [~~ethanol~~] biofuel production facility" or  
2 "facility" means a facility located in Hawaii [~~which~~] that  
3 produces [~~motor~~] fuel grade [~~ethanol meeting the minimum~~  
4 ~~specifications by the American Society of Testing and Materials~~  
5 ~~standard D 4806, as amended.~~] biofuel from renewable feedstocks  
6 and that meets the relevant ASTM International specifications  
7 for that particular fuel or other industry specifications for  
8 the production of:

- 9 (1) Methanol, ethanol, or other alcohols;
- 10 (2) Hydrogen;
- 11 (3) Biodiesel or renewable diesel;
- 12 (4) Biofuels derived from biological materials, including  
13 algae; or
- 14 (5) Renewable jet fuel, renewable gasoline, or liquid or  
15 gaseous fuels.

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



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

3 (1) Maintain records of the total amount of investment  
4 made by each taxpayer in a facility;

5 (2) Verify the amount [~~of the qualifying investment;~~] and  
6 type of biofuel produced;

7 (3) Total all qualifying [~~and cumulative investments]~~  
8 biofuel production facilities that the department of  
9 business, economic development, and tourism certifies;  
10 and

11 (4) Certify the total amount of the tax credit for each  
12 taxable year and the cumulative amount of the tax  
13 credit during the credit period.

14 Upon each determination, the department of business,  
15 economic development, and tourism shall issue a certificate to  
16 the taxpayer verifying the qualifying [~~investment amounts;~~]  
17 volume of biofuel production, the credit amount certified for  
18 each taxable year, and the cumulative amount of the tax credit  
19 during the credit period. The taxpayer shall file the  
20 certificate with the taxpayer's tax return with the department  
21 of taxation. Notwithstanding the department of business,  
22 economic development, and tourism's certification authority



1 under this section, the director of taxation may audit and  
2 adjust certification to conform to the facts.

3 If in any year, the annual amount of certified credits  
4 reaches [~~\$12,000,000~~] \$ in the aggregate, the  
5 department of business, economic development, and tourism  
6 [~~shall~~] may immediately discontinue certifying credits and  
7 notify the department of taxation. [~~In no instance shall the~~  
8 ~~total amount of certified credits exceed \$12,000,000 per year.~~]  
9 Alternatively, the department of business, economic development,  
10 and tourism may increase the cap according to the level of  
11 demand for qualified biofuel production; provided that the  
12 department of business, economic development, and tourism shall  
13 report to the legislature the rationale and justification for  
14 any such increase in its next annual report to the legislature.  
15 Notwithstanding any other law to the contrary, this information  
16 shall be available for public inspection and dissemination under  
17 chapter 92F.

18 (e) If the credit under this section exceeds the  
19 taxpayer's income tax liability, the excess of credit over  
20 liability shall be refunded to the taxpayer; provided that no  
21 refunds or payments on account of the tax credit allowed by this  
22 section shall be made for amounts less than \$1. All claims for



1 a credit under this section must be properly filed on or before  
2 the end of the twelfth month following the close of the taxable  
3 year for which the credit may be claimed. Failure to comply  
4 with the foregoing provision shall constitute a waiver of the  
5 right to claim the credit.

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

19 [~~(g) Once the total nameplate capacities of qualifying~~  
20 ~~ethanol production facilities built within the State reaches or~~  
21 ~~exceeds a level of forty million gallons per year, credits under~~  
22 ~~this section shall not be allowed for new ethanol production~~



1 ~~facilities. If a new facility's production capacity would cause~~  
2 ~~the statewide ethanol production capacity to exceed forty~~  
3 ~~million gallons per year, only the ethanol production capacity~~  
4 ~~that does not exceed the statewide forty million gallon per year~~  
5 ~~level shall be eligible for the credit.~~

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

19 ~~[(i)]~~ (h) The taxpayer shall provide written notice to the  
20 director of taxation and the director of business, economic  
21 development, and tourism within thirty days following the start  
22 of production. The notice shall include the production start



1 date and expected [~~ethanol-fuel~~] biofuel production for the next  
2 twenty-four months. Notwithstanding any other law to the  
3 contrary, this information shall be available for public  
4 inspection and dissemination under chapter 92F.

5 [~~(j)~~] ~~If a qualifying ethanol production facility fails to~~  
6 ~~achieve an average annual production of at least seventy five~~  
7 ~~per cent of its nameplate capacity for two consecutive years,~~  
8 ~~the stated capacity of that facility may be revised by the~~  
9 ~~director of business, economic development, and tourism to~~  
10 ~~reflect actual production for the purposes of determining~~  
11 ~~statewide production capacity under subsection (g) and allowable~~  
12 ~~credits for that facility under subsection (a). Notwithstanding~~  
13 ~~any other law to the contrary, this information shall be~~  
14 ~~available for public inspection and dissemination under chapter~~  
15 ~~92F.~~

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



1 production, the number of employees of the facility, and the  
2 projected number of [~~gallons~~] British thermal units of [~~ethanol~~]  
3 biofuel production for the succeeding year.

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

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

- 16 (1) The number, location, and nameplate capacities of  
17 qualifying [~~ethanol~~] biofuel production facilities in  
18 the State;
- 19 (2) The total number of [~~gallons~~] British thermal units of  
20 [~~ethanol~~] biofuel produced and sold during the  
21 previous year; and



1           (3) The projected number of [~~gallons~~] British thermal  
 2                   units of [~~ethanol~~] biofuel production for the  
 3                   succeeding year.

4           [~~(a)~~] (1) The director of taxation shall prepare forms that  
 5 may be necessary to claim a credit under this section.

6 Notwithstanding the department of business, economic  
 7 development, and tourism's certification authority under this  
 8 section, the director of taxation may audit and adjust  
 9 certification to conform to the facts. The director may also  
 10 require the taxpayer to furnish information to ascertain the  
 11 validity of the claim for credit made under this section and may  
 12 adopt rules necessary to effectuate the purposes of this section  
 13 pursuant to chapter 91."

14           SECTION 3. This Act does not affect rights and duties that  
 15 matured, penalties that were incurred, and proceedings that were  
 16 begun before its effective date.

17           SECTION 4. Statutory material to be repealed is bracketed  
 18 and stricken. New statutory material is underscored.

19           SECTION 5. This Act, upon its approval, shall apply to  
 20 taxable years beginning after December 31, 2014.

21

INTRODUCED BY: 





# H.B. NO. 1410

**Report Title:**

Renewable Fuels; Biofuels; Ethanol; Tax Credits

**Description:**

Replaces the ethanol facility tax credit with the biofuel production facility tax credit. Expands tax credit eligibility to include larger facilities and production of multiple types of biofuel. Changes the formula for calculating the amount of tax credit allowed and caps the amount of tax credits allowed. Limits the credit to Hawaii biofuel production facilities. Allows the Department of Business, Economic Development, and Tourism to increase the aggregate tax cap with reporting requirements. Applies to taxable years beginning after December 31, 2014.

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