SB 730

RELATING TO TRANSPORTATION. Substitutes the term "biofuel" for "ethanol". Expands tax credit eligibility to include larger facilities. 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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
Richard C. Lim
Director
Department of Business, Economic Development, and Tourism
before the
Senate Committees on Energy and Environment, Economic Development, Government Operations and Housing, and Agriculture
Monday, February 4, 2013
3:45 PM
State Capitol, Conference Room 016

in consideration of

SB 730 RELATING TO TRANSPORTATION.

Chairs Gabbard, Dela Cruz, and Nishihara; Vice Chairs Ruderman, Slom, and Kouchi; and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments on SB 730, which would change the ethanol facility tax credit to a production credit available to all biofuels, including ethanol. It would also replace the $12 million annual cap with an amount to be determined, and would give DBEDT discretion to increase the cap "according to the level of demand." We defer to the appropriate agencies on the undefined fiscal impacts to the State and associated tax issues and implementation.

We are concerned that we don't have the required human and financial resources to carry out the requested tasks in our budget plan. We also question the effectiveness of this credit in influencing investment in biofuel facilities.

Furthermore, we note that the definition of "qualifying biofuel production" (which specifies "produced within the State" on page 9, line 3) appears to be in conflict with the commerce clause of the U.S. Constitution.

Thank you for the opportunity to offer these comments.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

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DEPARTMENT OF TAXATION
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To: The Honorable Mike Gabbard, Chair,
and Members of the Senate Committee on Energy and Environment

The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Agriculture

The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Economic Development, Government Operations and Housing

Date: Monday, February 4, 2013
Time: 3:45 P.M.
Place: Conference Room 016, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 730, Relating to Transportation

The Department appreciates the intent of S.B. 730, and provides the following information and comments for your consideration.

S.B. 730 amends the tax credit in Section 235-110.3, Hawaii Revised Statutes, such that it applies to a biofuel production facility rather than an ethanol facility. It also changes the tax credit such that it is applied based on the amount of fuel produced, rather than nameplate capacity of the facility.

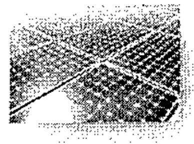
The Department notes that the definition of "qualifying biofuel production" on page 8 of the bill would require that biofuel be produced from renewable feedstock produced within the State. The Department defers to the Department of the Attorney General for an analysis of the constitutionality of this provision, but notes that the holding in Bacchus Imports Ltd. v. Dias, 468 U.S. 263 (1984) indicates that provisions that result in taxation that is discriminatory against products imported from outside the State would likely violate the Commerce Clause of the United States Constitution.

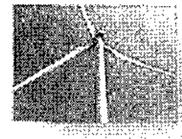
The Department additionally notes that the tax credit is to be administered based on British Thermal Units of fuel produced by a facility. Different fuels may have differing heat capacities, and the use of the British Thermal Unit as a unit of measure may make this bill difficult to administer without further clarification. The Department suggests that the bill instead make reference to standard values for different types of fuel or to an established source of such information, in order to facilitate tax administration and enforcement.

Finally, the Department notes that this tax credit has an aggregate cap of an undetermined value. Aggregate caps are difficult to administer and would require manual handling and processing of taxpayer filings in orde to ensure that the aggregate cap is not exceeded. Additionally, the Department notes that aggregate caps result in uncertainty for taxpayers. The Department suggests that the provision establishing the aggregate cap be removed.

Thank you for the opportunity to provide comments.

blue planet FOUNDATION





SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
SENATE COMMITTEE ON AGRICULTURE
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

February 4, 2013, 3:45 P.M.
Room 016
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF SB 730

Chairs Gabbard, Nishihara, and Dela Cruz and members of the committees:

The Blue Planet Foundation supports SB 730, expanding the eligibility for biofuel production facilities beyond ethanol. We appreciate that this measure requires that a majority (75%) of the feedstock be locally sourced in order for the facility to qualify. This policy—providing a biofuel facility tax credit to incentivize the needed development and construction of such facilities—will provide greater support for Hawaii's diverse biofuel production infrastructure.

Biofuels will likely play a major role in Hawaii's clean energy future—particularly as a substitute for petroleum-based transportation fuels. Transportation fuels in Hawai`i can be made from renewable resources, such as biomass in various forms, 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 including local and sustainable biofuels.

Thank you for the opportunity to testify.

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February 3, 2013

TESTIMONY ON SB 730, RELATING TO TRANSPORTATION
OPPOSE

TO: Senator Mike Gabbard, Chair, Committee on Energy and Environment
Senator, Russel Ruderman, Vice Chair

Senator Clarence K. Nishihara, Chair, Committee on Agriculture
Senator Ronald D. Kouchi, Vice Chair

Senator Donovan M. Dela Cruz, Chair, Committee on Economic Development, Government Operations and Housing
Senator Sam Slom, Vice Chair

Hearing February 4, 2013 at 3:45 pm, Conference Room 016

From: Samuel Millington
Pacific Biodiesel Technologies, LLC

Aloha Chair, Vice Chair, and Distinguished Members:

My name is Sam Millington and I am the new CEO at Pacific Biodiesel Technologies (PBT), a fast-growing, Hawai`i-based biofuel technology and production company that has been supplying the State with biodiesel fuel since 1996. I am working closely with Robert King who has moved up to Chairman of the Board of PBT, and I represent the management and staff of over 50 taxpaying residents, as well as the interests of over 35 individual investors in PBT and Big Island Biodiesel. Mr. King and other members of the management staff are on the mainland this week at the National Biodiesel Conference.

I recently returned home to Hawai`i nei after serving the United States government abroad and I am excited by my new role with Pacific Biodiesel because, among other reasons, I will now be in a position to help advance the state of Hawai`i's clean energy goals—goals that, if realized, will not only make a positive difference in the lives of each of us in this room, but also, more importantly, in the lives of all of Hawai`i's residents and, most important of all, in the lives of our keiki for generations to come.

With that in mind, I stand before you today to testify in opposition to SB730.

While PBT supports the intent of SB730, too many of the details and mechanics articulated within are flawed. As a result, the bill fails to serve the best interests of either Hawai`i's residents or the "boots-on-the ground" Hawai`i-based investors and employees who are already advancing proven biofuel technology and fuel products.

Because others here before you can speak in detail to the technical aspects of this flawed bill, I would like to concentrate on the major concerns that bring me here today in opposition to its further consideration:

1. The Preamble fails to include Biodiesel which is the only proven biofuel currently in commercial production in our state—production supported by local investors and local employees.

2. Production per acre/yield figures mentioned in the bill are not based on existing data or on direct *"hand-in-the-soil"* experience.

3. The Bill affords an unfair advantage to new biofuel interests, the majority of which are likely to come from the Mainland; and in so doing, it encourages the promotion of unproven new technologies that will likely result in more facilities but not necessarily more fuel production which, of course, is the end game we should not and cannot lose sight of. Too often over the past two decades we have witnessed pie-in-the sky claims, false promises, and deeply flawed studies that have ended up wasting the taxpayer money while also delaying Hawai`i's ability to move forward in terms of developing and executing a sound, sustainable renewable energy policy.

4. From our perspective, SB730 seems to be written to discourage already established, *"boots-on-the-ground,"* commercial biofuel companies which are creating local jobs and which serve as an important revenue-growing source for the State. In terms of the Big Island Biodiesel plant which is being commissioned in Kea`au, and which is introducing cutting edge technological innovation as well as creating dozens of new quality jobs, I would like to go on record as stating that a pure production tax credit would be the best path to follow because it would enhance investment return for local investors as well as encourage expansion.

Finally, circling back to my opening remarks, I would humbly suggest that you do not pass SB730 out of committee.

Instead, I ask that you strongly consider hearing and passing Senate Bill 18.

SB18's provisions will not only support direct production of biofuels in Hawai`I, but the Bill will also lead to increased biofuel production, enhance job growth in local markets, and create sustainable, community-generated revenues which will benefit the entire State.

Mahalo for your hard work on this important issue and for your consideration of my testimony.

Sincerely,

Samuel W. Millington
CEO, Pacific Biodiesel Technologies, LLC

TAXBILLSERVICE

SUBJECT: INCOME, Biofuel production facility tax credit

BILL NUMBER: SB 730

INTRODUCED BY: Dela Cruz and 2 Democrats

BRIEF SUMMARY: Amends HRS section 235-110.3 to change the name of the ethanol facility tax credit to the biofuel production facility tax credit including changing any references to ethanol to biofuel.

The annual dollar amount of the tax credit during the eight-year period shall be equal to 30 cents per one hundred fifteen-thousand British thermal units (BTU) of biofuels; provided that the biofuel production facility's capacity is not less than five hundred seventy-five billion BTUs of biofuel per year; provided further that the amount of the tax credit claimed by a taxpayer shall not exceed $3,000,000 per taxable year. Also requires the qualifying biofuel production facility to be located in the state and, if available, use agricultural feedstock for at least 75% of its production output.

The credit shall be allowed to a biofuel production facility that commences construction on or after January 1, 2014.

Defines "biofuel" as ethanol; pyrolysis oil; renewable diesel; bio-gasoline; bio-jet fuel; or any other liquid fuel that meets the relevant biofuel specifications of ASTM International and is produced from agricultural feedstock. Adds a definition of "agricultural feedstock" as sugar cane; byproducts from sugar cane; sweet sorghum; sugar beets; biomass; renewable oils; fiber; algae; woody biomass; and other biological materials. Clarifies the definition of "investment" to include "direct capital expenditures."

Increases the annual amount of certified credits from $12 million to $____ million in the aggregate. Allows the department of business, economic development, and tourism (DBEDT) to increase the cap according to the level of demand for qualified biofuel production provided that DBEDT report to the legislature the rationale and justification for any such increase in its next annual report to the legislature. Repeals the limitation that the income tax credit be limited to 40 million gallons per year.

EFFECTIVE DATE: Tax years beginning after December 31, 2014

STAFF COMMENTS: The legislature by Act 289, SLH 2000, established an investment tax credit to encourage the construction of an ethanol production facility in the state. The legislature by Act 140, SLH 2004, changed the credit from an investment tax credit to a facility tax credit. This measure proposes to change the ethanol facility tax credit to a biofuel production facility tax credit, increase the amount of credits from $12 million to $_____ million and repeal the 40 million gallon annual limit in order to claim the credit.

While it has been almost ten years since the credit for the construction of an ethanol plant in Hawaii was enacted and ground has yet to be broken, it appears that there are other far more efficient biofuels which could be developed and, therefore, the existing credit, which is specific to ethanol, might not be available to assist in the development of these other types of fuels.

While the idea of providing a tax credit to encourage such activities may have been acceptable a few years ago when the economy was on a roll and advocates could point to credits like those to encourage construction and renovation activities, what lawmakers and administrators have learned in these past few months is that unbridled tax incentives, where there is no accountability or limits on how much in credits can be claimed, are indeed irresponsible as the cost of these credits go far beyond what was ever contemplated. As an alternative, lawmakers should consider repealing this credit and utilize other strategies to encourage the development and use of alternate energy resources such as a loan program or the issuance of special revenue bonds for this purpose or perhaps even a specific appropriation of taxpayer dollars. At least lawmakers would have a better idea of what is being funded and hold the developers of these alternate forms of energy to a deliberate timetable or else lose the funds altogether. A direct appropriation would be preferable to a tax credit as it would provide some accountability for the taxpayers' funds being utilized to support this effort.

Finally, this proposal verifies what has been said all along about legislators latching onto the fad of the month without doing very serious research. While ethanol was the panacea of yesterday, lawmakers have learned that there are more down sides to the use of ethanol than there are pluses. Ethanol production demands more energy to produce than using a traditional petroleum product to produce the same amount of energy and the feedstock that is used to produce ethanol basically redirects demand for that feedstock away from traditional uses, causing those other products to substantially increase in price.

Even algae, which was once thought of as a great alternative fuel, has been reported to consume more energy and resources than the energy that is produced from the substance. Lawmakers have a wealth of resource information at their finger tips through the Hawaii Natural Energy Institute upon which to draw and learn more about cutting edge research in this area.

Finally, when language is written so vaguely in an attempt to throw a broad net to attract all comers, that vague language can lead to misinterpretation and abuse as witnessed in the case of the tax credits for high technology research and investment, and more recently incentives for photovoltaic "systems." As such, this proposal should come under closer scrutiny instead of being left to interpretation by a taxpayer wanting to utilize the tax incentive to underwrite the cost of what would still be a questionable use of taxpayer dollars.

Digested 2/2/13

HREA

TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE SENATE COMMITTEEs ON ENERGY AND ENVIRONMENT, AGRICULTURE, AND ECONOMIC DEVELOPMENT, GOVERNMENT OPERATIONS AND HOUSING

SB 730, RELATING TO TRANSPORTATION

February 4, 2013

Chairs Gabbard, Nishihara, and Dela Cruz, and Vice-Chairs Ruderman, Kouchi and Slom, and members of the Committees I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance ("HREA"). HREA is an industry-based, nonprofit corporation in Hawaii established in 1995. Our 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 our 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 730 are to: (i) substitute the term "biofuel" for "ethanol", (ii) expand tax credit eligibility to include larger facilities, (iii) change the formula for calculating the amount of tax credit allowed and caps the amount of tax credits allowed, (iv) limit the credit to Hawaii biofuel production facilities, (v) allow the department of business, economic development, and tourism to increase the aggregate tax cap with reporting requirements, and (vi) apply to taxable years beginning after December 31, 2014.

HREA **supports the intent** of this measure, as it points in the right direction. However, we offer the following comments and attached proposed amendments, which we believe would improve this measure:

1) Section 1 (Preamble). We believe there are few inaccuracies in this section, such as leaving out biodiesel as a biofuel in Hawaii and value of first generation technologies (see proposed amendments in the attached). In addition, we see the largest production gains coming from better feedstocks which can be used by first or potentially second generation conversion technologies.

2) Section 2 (Proposed Revisions to the HRS). Per our proposed amendments, we support allowing the credit to apply to facilities that have been in production by January 1 2012. We also recommend changes to the definitions of agricultural feedstock, biofuel, nameplate capacity and qualifying biofuel production. In addition, we can't stress enough the need for all qualifying biofuels to be certified to ASTM standards.

3) Comments & Questions. In Section 2 (p. 4, line 17, we believe there may be a need to clarify the term taxpayer based on number of equity partners, i.e., pro-rate the total tax among the partners. Finally, we can't stress enough the importance that we allow this credit to apply to commercial technologies, and that we work together will all potential suppliers that can bring second generation technologies to Hawaii

Mahalo for this opportunity to testify

Attachment

THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

S.B. NO. 730

A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

SECTION 1. The legislature finds that, in addition to ethanol, pyrolysis oil, renewable diesel, bio-gasoline and bio-jet fuel are examples of potential fuels that could be produced in Hawaii from locally grown agricultural feedstock.

The legislature finds that pyrolysis oil, biodiesel, renewable diesel, bio-gasoline and bio-jet, and ethanol, are examples of potential fuels that could be produced in Hawaii from locally grown feedstock.

Despite Hawaii's favorable climate and biomass growth potential, commercial-scale biofuels production is constrained, largely because of limited land availability. The non-contiguous nature of land parcels and competing land uses makes maximizing biofuel production per unit of land and water critical. First generation feedstocks including sugar and oilseed crops combined with conventional fermentation or transesterification conversion technology presently produce no greater than one hundred gallons per acre. Second generation biofuels produced from dedicated energy crops, however, can produce roughly five times the volume of output on a per acre basis depending on the feedstocks used. Further, second-generation conversion technologies can produce high-energy-density fuels that are compatible with existing infrastructure. Given the State's limited land, these second generation technologies offer the best hope of substantially increasing local biofuel production while minimizing the impact on land and resources. With these second-generation benefits, however, comes increased capital costs and investment risk. A biofuel production facility credit targeting second-generation production could help ameliorate this risk while helping to jumpstart a new, bio-based industry for the Hawaii.

Applying a tax credit to biofuel production facilities that commence construction on or after January 1, ~~2014~~2012, would help to foster new investment and construction in the State. While f~~F~~acilities that have already commenced construction may have ~~likely~~ secured the necessary financing for construction, this credit will help the facilities move more rapidly to develop local energy crop production. ~~and would be moving forward regardless of the credit~~. Applying a tax credit to new construction would to help jumpstart an advanced, high-tech industry while creating demand from other sectors of the local economy, including construction, which have been badly hit by the economic slowdown.

Advanced feedstock and conversion technologies will help minimize the land, water, and resource footprint of biofuel operations while generating a portfolio of energy outputs and value-added co-products. Encouraging advanced technology would enhance sustainability, attract higher levels of capital investment, and help establish Hawaii as a center for bio-based innovation.

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

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

The purpose of this Act is to modify the existing ethanol facility tax credit to include other liquid biofuels and to enable larger facilities to be eligible for the tax incentive, without changing the level of incentive or cap per facility. Amending the current statute to incorporate biofuels and to foster advanced technology is key to supporting a broader range of high-density biofuels producers, enhancing land use and production efficiency, attracting high-tech investment to the State, spurring agricultural and economic development, and minimizing the State's petroleum dependence and emissions.

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.

Comment [W1]: based on the taxpayer's equity share in facility?

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.~~] 30 cents per one hundred fifteen thousand British thermal units of biofuels; provided that the biofuel production facility's capacity is not less than five hundred seventy-five billion British thermal units of biofuel per year; provided further that the amount of the tax credit claimed under this section by a taxpayer shall not exceed $3,000,000 per taxable year. 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 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 biofuel production facility is located within the State and, if available, uses agricultural feedstock for at least seventy-five per cent of its production output;

Comment [W2]: Consider: if "not available," the facility can seek a "waiver" of this requirement from DBEDT?

[~~(3)~~] (4) The qualifying [~~ethanol~~] biofuel production facility [~~is in production on or before January 1, 2017;~~] commences construction on or after January 1, ~~2014~~2012 and into production by January 1, 2017; and

[~~(4)~~] (5) 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:

"Agricultural feedstock" includes but is not limited to: sugar cane; byproducts and residues from sugar cane and into production by January 1, 2017; sweet sorghum; sugar beets; biomass; municipal solid waste, renewable oils (including jatropha, palm kukui nut, canola, sunflower and safflower); fiber; algae; waste cooking oils and grease, ~~woody biomass~~; and other biological materials.

"Biofuel" means methanol, ethanol and other alcohols; pyrolysis oil; renewable gaseous fuels (including hydrogen from renewable sources, renewable gas from landfills, sewage waste and municipal sold waste) and biodiesel or renewable diesel; renewable crude oil, renewable fuel oil, biobutanol and bio-gasoline; bio-jet or renewable fuel; or any other liquid or gaseous fuel that meets the relevant biofuel specifications of ASTM International or other appropriate industry standards or specifications and is produced from agricultural feedstock.

Comment [W3]: These revisions are to make the definition here consistent with the definition of qualifying biofuel production facility below

"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 new 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. Direct capital expenditures in agricultural infrastructure, including irrigation and drainage systems, land clearing and leveling, establishment of crops, planting, and cultivation where the biofuel production facility and agricultural operations are integrated shall be eligible. 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 production facility's production design capacity, in gallons of motor fuel grade ethanol per year.~~] "Nameplate capacity" means the qualifying biofuel production facility's production design capacity in BTUs 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 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.~~] renewable feedstocks produced within the State; provided that the renewable transportation fuel shall be sold in the State.

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Comment [W4]: The term "nameplate capacity" is used in the document several times.

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

(A) Methanol, ethanol, or other alcohols;

(B) Gaseous Fuels (including ~~H~~hydrogen);

(C) Biodiesel or renewable diesel;

~~(D) Biofuels derived from biological materials, including algae; or~~

(D~~E~~) Biojet or Renewable jet fuel;

(E) Renewable crude oil, renewable fuel oil, biobutanol and biogasoline.~~;~~ ~~renewable gasoline, or liquid or gaseous fuels.~~

(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;~~] and type of biofuel produced;

(3) Total all qualifying [~~and cumulative investments~~] biofuel production facilities 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,~~] volume of biofuel production, 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~~] may 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.~~] Alternatively, the department of business, economic development, and tourism may increase the cap according to the level of demand for qualified biofuel production; provided that the department of business, economic development, and tourism shall report to the legislature the rationale and justification for any such increase in its next annual report to the legislature. 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) If a qualifying ethanol 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)~~] (i) 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~~] British thermal units of [~~ethanol~~] biofuel produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, [~~feedstocks~~] percentage of Hawaii-grown feedstock and other feedstock used for [~~ethanol~~] biofuel production, the number of employees of the facility, and the projected number of [~~gallons~~] British thermal units of [~~ethanol~~] biofuel production for the succeeding year.

[~~(l)~~] (j) 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)~~] (k) 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~~] British thermal units of [~~ethanol~~] biofuel produced and sold during the previous year; and

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

[~~(n)~~] (l) 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. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, ~~2014~~<u>2013</u>.

INTRODUCED BY: ______________________________

Report Title:
Renewable Fuels; Biofuels; Ethanol; Tax Credits

Description:
Substitutes the term "biofuel" for "ethanol". Expands tax credit eligibility to include larger facilities. 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~~2013.