

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO BIOFUEL FACILITIES.

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

1           SECTION 1. In 2008, Hawaii imported 41.5 million barrels  
2 of crude oil at a cost and loss to the State's economy of  
3 approximately \$4,100,000,000. Unfortunately, well intended  
4 discussions and plans over many years have not been fruitful,  
5 and the outflow of Hawaii's scarce dollars for offshore fuel  
6 purchases continues unabated. The legislature finds that it is  
7 time for meaningful action that can result in significant, near-  
8 term commercial production of biomass-based fuels in Hawaii.

9           Given Hawaii's growing energy and economic security needs,  
10 it is imperative that Hawaii begin in earnest to generate its  
11 own fuel from local feedstock production and biofuel conversion.  
12 Hawaii's climate and rich natural resources provide a solid  
13 foundation upon which this local industry can be built and  
14 successfully sustained. Advanced and second generation  
15 feedstocks including sugarcane, sweet sorghum, and algae hold  
16 tremendous potential to displace fossil fuel imports given their  
17 relatively low input requirements, exceptionally high yields,  
18 and potential to produce a portfolio of products including



1 liquid fuels, renewable power, feed, and other bio-based co-  
2 products through various bioconversion pathways.

3       Notwithstanding its great potential to reduce fossil fuel  
4 imports and stimulate the local economy, bio-based fuel  
5 production in Hawaii can only be realized through near term  
6 initial investments in feedstock production and bioconversion  
7 facilities. While the existing ethanol facility tax credit  
8 under section 235-110.3, Hawaii Revised Statutes, was created to  
9 provide such support, its scope limits the State's ability to  
10 diversify its fuel mix and displace other imported fossil fuels  
11 upon which Hawaii is critically dependent, including but not  
12 limited to diesel and aviation fuel. For example, in 2008  
13 alone, Hawaii consumed over 208.4 million gallons of highway and  
14 off-highway diesel at an average cost per gallon of \$4.63,  
15 resulting in an approximate outflow of \$965,000,000 based on  
16 statistics from the department of business, economic  
17 development, and tourism. The State consumed an additional 195  
18 million gallons of aviation fuel at an average of \$3.08 per  
19 gallon, for another \$600,600,000 in estimated outflows over the  
20 same period. Expanding production of bio-based fuel capable of  
21 displacing gasoline and diesel fuels is imperative if Hawaii is



1 to increase its energy security and meet its stated renewable  
2 energy targets.

3 Hawaii's ability to secure the substantial capital required  
4 for large-scale commercial facilities requires providing a  
5 degree of assurance to private investors (banks, organizations  
6 and individuals) that they will be able to recover their  
7 investment within a reasonable time horizon. Extending the  
8 current ethanol facility tax credit to incorporate biofuels more  
9 broadly would help to attract a broader set of investors and  
10 provide additional financial support needed to stimulate and  
11 diversify Hawaii's renewable energy base.

12 In 2009, the legislature adopted senate concurrent  
13 resolution no. 132, S.D. 1, which established the construction  
14 industry task force (task force) to determine the economic value  
15 of the construction industry in Hawaii. As directed in the  
16 concurrent resolution, the task force was charged with  
17 developing a series of recommendations to stimulate the  
18 construction industry and create new jobs in the local  
19 construction industry. Unfortunately, to date, many of the task  
20 force's recommendations have yet to be enacted by the  
21 legislature. The intent of this Act is to enact and implement



1 one of the recommendations of the task force in an effort to  
2 support the local construction industry.

3 This Act provides tax credit incentives designed to attract  
4 needed renewable fuel investment to the State, minimize capital  
5 investment requirements of production facilities, and retain  
6 billions of dollars in the State's economy. The incentive  
7 program would be self-sustaining as the additional business and  
8 income tax revenue generated by the industry would be applied to  
9 future tax credits. As such, the legislation directly ties the  
10 incentives to the local market, enables the removal of the  
11 current 40 million gallon production cap, and provides support  
12 to a range of advanced and more efficient production  
13 technologies.

14 The purpose of this Act is to enhance Hawaii's economic  
15 vitality through renewable energy resources that are self-  
16 sufficient, affordable, and produced locally.

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

19 **"§235-110.3 ~~[Ethanol]~~ Biofuel facility tax credit.** (a)  
20 Each year during the credit period, there shall be allowed to  
21 each taxpayer subject to the taxes imposed by this chapter, [~~an~~  
22 ~~ethanol~~] a biofuel facility tax credit that shall be applied to



1 the taxpayer's net income tax liability, if any, imposed by this  
2 chapter for the taxable year in which the credit is properly  
3 claimed.

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

- 12 (1) The claim for this credit by any taxpayer of a  
13 qualifying [~~ethanol~~] biofuel production facility shall  
14 not exceed one hundred per cent of the total of all  
15 investments made by the taxpayer in the qualifying  
16 [~~ethanol~~] biofuel production facility during  
17 construction of the facility and the credit period;
- 18 (2) The qualifying [~~ethanol~~] biofuel production facility  
19 operated at a level of production of at least seventy-  
20 five per cent of its nameplate capacity on an  
21 annualized basis;



1        (3) The qualifying biofuel production facility shall be  
2            located within the State and use locally grown  
3            feedstock for at least seventy-five per cent of its  
4            production output;

5        [~~3~~] (4) The qualifying [~~ethanol~~] biofuel production  
6            facility [~~is in~~] commences production on or after  
7            January 1, 2015, and before January 1, [~~2017~~] 2020;  
8            and

9        [~~4~~] (5) No taxpayer that claims the credit under this  
10           section shall claim any other tax credit under this  
11           chapter for the same taxable year.

12        (b) As used in this section:

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

18           "Investment" means a nonrefundable capital expenditure  
19 related to the development and construction of any qualifying  
20 [~~ethanol~~] biofuel production facility, including processing  
21 equipment, waste treatment systems, pipelines, and liquid  
22 storage tanks at the facility or remote locations, including



1 expansions or modifications. Capital expenditures shall be  
2 those direct and certain indirect costs determined in accordance  
3 with section 263A (with respect to capitalization and inclusion  
4 in inventory costs of certain expenses) of the Internal Revenue  
5 Code, relating to uniform capitalization costs, but shall not  
6 include expenses for compensation paid to officers of the  
7 taxpayer, pension and other related costs, rent for land, the  
8 costs of repairing and maintaining the equipment or facilities,  
9 inventory, training of operating personnel, utility costs during  
10 construction, property taxes, costs relating to negotiation of  
11 commercial agreements not related to development or  
12 construction, or service costs that can be identified  
13 specifically with a service department or function or that  
14 directly benefit or are incurred by reason of a service  
15 department or function. For the purposes of determining a  
16 capital expenditure under this section, the provisions of  
17 section 263A of the Internal Revenue Code shall apply as it read  
18 on March 1, 2004. For purposes of this section, investment  
19 excludes land costs and includes any investment for which the  
20 taxpayer is at risk, as that term is used in section 465 (with  
21 respect to deductions limited to amount at risk) of the Internal



1 Revenue Code [~~with respect to deductions limited to amount at~~  
2 ~~risk~~].

3 "Nameplate capacity" means the qualifying [~~ethanol~~] biofuel  
4 production facility's production design capacity, in gallons of  
5 [~~motor~~] fuel grade [~~ethanol~~] biofuel per year. Nameplate  
6 capacity shall be determined by the facility owner and shall not  
7 exceed the amount of production actually recorded during a  
8 consecutive seven-day period multiplied by fifty-two.

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

11 "Qualifying [~~ethanol~~] biofuel production" means ethanol,  
12 biodiesel, biobutanol, bio-based diesel, bio-based gasoline, or  
13 bio-based jet fuel produced from renewable[~~organic~~]  
14 feedstocks[~~or~~] or waste materials, including fats, oils, grease,  
15 algae, and municipal solid waste. All qualifying production  
16 shall be fermented, distilled, gasified, or produced by physical  
17 chemical conversion methods such as reformation and catalytic  
18 conversion and dehydrated at the facility.

19 "Qualifying [~~ethanol~~] biofuel production facility" or  
20 "facility" means a facility located in Hawaii [~~which~~] that, if  
21 intended for transport vehicles, produces [~~motor~~] fuel grade  
22 [~~ethanol~~] biofuel meeting the minimum specifications by [~~the~~





1 ~~American Society of Testing and Materials]~~ ASTM International  
2 standard D-4806, or D-6751, as amended.

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

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

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

20 Upon each determination, the department of business,  
21 economic development, and tourism shall issue a certificate to  
22 the taxpayer verifying the qualifying investment amounts, the



1 credit amount certified for each taxable year, and the  
2 cumulative amount of the tax credit during the credit period.  
3 The taxpayer shall file the certificate with the taxpayer's tax  
4 return with the department of taxation. Notwithstanding the  
5 department of business, economic development, and tourism's  
6 certification authority under this section, the director of  
7 taxation may audit and adjust certification to conform to the  
8 facts.

9 If in any year, the annual amount of certified credits  
10 reaches [~~\$12,000,000~~] \$20,000,000 in the aggregate, the  
11 department of business, economic development, and tourism shall  
12 immediately discontinue certifying credits and notify the  
13 department of taxation. In no instance shall the total amount  
14 of certified credits exceed [~~\$12,000,000~~] \$20,000,000 per year.  
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~~] shall be properly filed on or  
2 before the end of the twelfth month following the close of the  
3 taxable year for which the credit may be claimed. Failure to  
4 comply with the foregoing provision shall constitute a waiver of  
5 the 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~~] the acquisition shall  
10 be 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)~~] (i) If a qualifying [~~ethanol~~] biofuel production  
6 facility fails to achieve an average annual production of at  
7 least seventy-five per cent of its nameplate capacity for two  
8 consecutive years, the stated capacity of that facility may be  
9 revised by the director of business, economic development, and  
10 tourism to reflect actual production for the purposes of  
11 determining [~~statewide production capacity under subsection (g)~~  
12 ~~and~~] allowable credits for that facility under subsection (a).  
13 Notwithstanding any other law to the contrary, this information  
14 shall be available for public inspection and dissemination under  
15 chapter 92F.

16 [~~(k)~~] (j) 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 of  
19 [~~ethanol~~] biofuel produced and sold during the previous calendar  
20 year, how much was sold in Hawaii versus overseas, percentage of  
21 Hawaii-grown feedstocks and other feedstocks used for [~~ethanol~~]  
22 biofuel production, the number of employees of the facility, and



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

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

9 [~~(m)~~] (l) 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 report to the  
12 governor and legislature regarding the production and sale of  
13 [~~ethanol~~] biofuel. The report shall include:

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

21 [~~(n)~~] (m) The director of taxation shall prepare forms  
22 that may be necessary to claim a credit under this section.



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

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

11 SECTION 4. This Act, upon its approval, shall apply to  
12 taxable years beginning after December 31, 2014.

13

INTRODUCED BY:           *Paul N. Hill, Jr.*          



# S.B. NO. 2342

**Report Title:**

Biofuels Facility; Nameplate Capacity; Certified Credits;  
Construction Industry Task Force

**Description:**

Expands the facility tax credit to include various biofuels; amends the definition of nameplate capacity; requires a qualifying facility to be located within the State and utilize locally grown feed stock for at least seventy-five per cent of its production output; increases the maximum annual amount of certified credits from \$12,000,000 to \$20,000,000; and removes the 40,000,000 gallon production per year cap. Applies to taxable years after 12/31/14.

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