

JAN 18 2013

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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 purpose of this Act is to:

2 (1) Encourage the development and construction of biofuel  
3 production facilities in Hawaii by creating an income  
4 tax credit for investments in the construction and  
5 development of biofuel production facilities in the  
6 State; and

7 (2) Clarify the circumstances under which an environmental  
8 assessment is required for an action proposing an oil  
9 refinery by adding a new definition of "oil refinery".

10 SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13 "§235- Biofuel production facility income tax credit.

14 (a) There shall be allowed to each taxpayer subject to the  
15 taxes imposed by this chapter, a biofuel production facility  
16 income tax credit that shall be deducted from the taxpayer's net  
17 income tax liability, if any, imposed by this chapter for the  
18 taxable year in which the credit is properly claimed.



1        (b) The amount of the credit shall be equal to fifteen per  
2 cent of the qualified development and construction costs of a  
3 biofuel production facility. The credit allowed under this  
4 section shall be claimed against the net income tax liability  
5 for the taxable year in which the biofuel production facility is  
6 placed in service. Total tax credits claimed per qualified  
7 biofuel production facility shall not exceed \$60,000,000.

8        (c) As used in this section:

9        "Capital expenditures" means those certain direct and  
10 indirect costs determined in accordance with section 263A of the  
11 Internal Revenue Code, relating to uniform capitalization costs,  
12 but shall not include expenses for compensation paid to officers  
13 of the taxpayer, pension and other related costs, rent for land,  
14 the costs of repairing and maintaining the equipment or  
15 facilities, training of operating personnel, property taxes,  
16 costs relating to negotiation of commercial agreements not  
17 related to development or construction, or service costs that  
18 can be identified specifically with a service department or  
19 function or that directly benefit or are incurred by reason of a  
20 service department or function.

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



1 "Qualified biofuel production facility" means a facility  
2 that produces liquid or gaseous fuels from organic sources,  
3 including biomass crops, agricultural residues, and oil crops,  
4 including palm, canola, soybean, and waste cooking oils; grease;  
5 food wastes; locally produced municipal solid wastes and  
6 industrial wastes; and animal residues and wastes that can be  
7 used to generate energy.

8 "Qualified development and construction costs" mean capital  
9 expenditures related to the development and construction of any  
10 qualified biofuel production facility, including costs for  
11 agricultural infrastructure, design, processing equipment, waste  
12 treatment systems, pipelines, and liquid storage tanks at the  
13 facility or remote locations, including expansions or  
14 modifications, interest accrued during construction if the  
15 project is not capitalized and not expensed, and utility costs  
16 incurred during construction if the utility costs are  
17 capitalized and not expensed. The term excludes land costs and  
18 includes any investment for which the taxpayer is at risk, as  
19 that term is used in section 465 of the Internal Revenue Code  
20 (with respect to deductions limited to amount at risk).



1        (d) Qualified biofuel production facilities shall comply  
2 with this section. To qualify for this credit, the biofuel  
3 production facility shall:

- 4        (1) Be located within the State;
- 5        (2) Meet the definition of a qualified biofuel production  
6        facility;
- 7        (3) Have a biofuel production capacity of no less than  
8        five million gallons;
- 9        (4) Have qualified development and construction costs  
10       totaling at least \$10,000,000; and
- 11       (5) Be in production on or before January 1, 2018.

12       (e) To receive the tax credit, the taxpayer shall first  
13 prequalify a biofuel production facility for the credit by  
14 registering with the department of business, economic  
15 development, and tourism during the development or construction  
16 stage. Failure to comply with this provision may constitute a  
17 waiver of the right to claim the credit.

18       (f) Every taxpayer claiming a tax credit under this  
19 section for a qualified biofuel production facility, no later  
20 than ninety days following the end of the taxable year in which  
21 the biofuel production facility is placed in service, shall

1 submit a written, sworn statement to the department of business,  
2 economic development, and tourism, identifying:

3 (1) All qualified development and construction costs as  
4 defined in subsection (c), if any, incurred; and

5 (2) The number of hires related to the development or  
6 construction of the qualified biofuel production  
7 facility in the taxable year.

8 (g) If the tax credit under this section exceeds the  
9 taxpayer's income tax liability, the excess of the credit over  
10 liability may be used as a credit against the taxpayer's income  
11 tax liability in subsequent years until exhausted. All claims,  
12 including any amended claims, for tax credits under this section  
13 shall be filed on or before the end of the twelfth month  
14 following the close of the taxable year for which the credit may  
15 be claimed. Failure to properly claim the credit shall  
16 constitute a waiver of the right to claim the credit.

17 (h) A recipient of tax credits under this section shall  
18 refund to the State the entire amount of the cumulative credits  
19 earned and claimed, in one payment, in the tenth taxable year  
20 after the recipient obtains the final tax credit.

21 (i) The department of business, economic development, and  
22 tourism shall:



- 1        (1) Maintain records of the names of the taxpayers and  
2                    qualified biofuel production facilities claiming the  
3                    tax credit under this section;
- 4        (2) Obtain and total the aggregate amounts of all  
5                    qualified development and construction costs for each  
6                    qualified biofuel production facility for each taxable  
7                    year; and
- 8        (3) Provide a letter to the director of taxation  
9                    specifying the amount of the tax credit for each  
10                   qualified biofuel production facility for each taxable  
11                   year that a tax credit is claimed and the cumulative  
12                   amount of the tax credit for all years claimed.

13        Upon each determination required under this subsection, the  
14        department of business, economic development, and tourism shall  
15        issue a letter to the taxpayer specifying the qualified  
16        development and construction costs and the tax credit amount  
17        qualified for in each taxable year a tax credit is claimed. The  
18        taxpayer for each qualified biofuel production facility shall  
19        file the letter with the taxpayer's tax return for the qualified  
20        biofuel production facility to the department of taxation.  
21        Notwithstanding the authority of the department of business,  
22        economic development, and tourism under this section, the

1 director of taxation may audit and adjust the tax credit amount  
2 to conform to the information filed by the taxpayer.

3 (j) If a deduction is taken under section 179 (with  
4 respect to election to expense depreciable business assets) of  
5 the Internal Revenue Code, no tax credit shall be allowed for  
6 those costs for which the deduction is taken.

7 The basis for eligible property for depreciation of  
8 accelerated cost recovery system purposes for state income taxes  
9 shall be reduced by the amount of credit allowable and claimed.

10 No taxpayer that claims the costs allowable for the credit  
11 under this section shall claim those same costs toward any other  
12 tax credit under this chapter.

13 (k) In the case of a partnership, S corporation, estate,  
14 or trust, the tax credit allowable shall be for qualified  
15 development and production costs incurred by the entity for the  
16 taxable year. The cost upon which the tax credit is computed  
17 shall be determined at the entity level. Distribution and share  
18 of the tax credit shall be determined under section 704(b) (with  
19 respect to a partner's distributive share) of the Internal  
20 Revenue Code.

21 (l) The director of taxation shall prepare forms as may be  
22 necessary to claim a credit under this section. The director



1 may require the taxpayer to furnish information to ascertain the  
2 validity of the claim for credit made under this section and may  
3 adopt rules necessary to implement this section pursuant to  
4 chapter 91."

5 SECTION 3. Section 343-2, Hawaii Revised Statutes, is  
6 amended by adding a new definition to be appropriately inserted  
7 and to read as follows:

8 "Oil refinery" means:

- 9 (1) A new facility that processes fossil fuels into  
10 refined products; or  
11 (2) The expansion of an existing fossil fuel refinery."

12 SECTION 4. Section 343-5, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) Except as otherwise provided, an environmental  
15 assessment shall be required for actions that:

- 16 (1) Propose the use of state or county lands or the use of  
17 state or county funds, other than funds to be used for  
18 feasibility or planning studies for possible future  
19 programs or projects that the agency has not approved,  
20 adopted, or funded, or funds to be used for the  
21 acquisition of unimproved real property; provided that  
22 the agency shall consider environmental factors and





1 available alternatives in its feasibility or planning  
2 studies; provided further that an environmental  
3 assessment for proposed uses under section 205-  
4 2(d)(11) or 205-4.5(a)(13) shall only be required  
5 pursuant to section 205-5(b);

6 (2) Propose any use within any land classified as a  
7 conservation district by the state land use commission  
8 under chapter 205;

9 (3) Propose any use within a shoreline area as defined in  
10 section 205A-41;

11 (4) Propose any use within any historic site as designated  
12 in the National Register or Hawaii Register, as  
13 provided for in the Historic Preservation Act of 1966,  
14 Public Law 89-665, or chapter 6E;

15 (5) Propose any use within the Waikiki area of Oahu, the  
16 boundaries of which are delineated in the land use  
17 ordinance as amended, establishing the "Waikiki  
18 Special District";

19 (6) Propose any amendments to existing county general  
20 plans where the amendment would result in designations  
21 other than agriculture, conservation, or preservation,  
22 except actions proposing any new county general plan



- 1 or amendments to any existing county general plan
- 2 initiated by a county;
- 3 (7) Propose any reclassification of any land classified as
- 4 a conservation district by the state land use
- 5 commission under chapter 205;
- 6 (8) Propose the construction of new or the expansion or
- 7 modification of existing helicopter facilities within
- 8 the State, that by way of their activities, may
- 9 affect:
- 10 (A) Any land classified as a conservation district by
- 11 the state land use commission under chapter 205;
- 12 (B) A shoreline area as defined in section 205A-41;
- 13 or
- 14 (C) Any historic site as designated in the National
- 15 Register or Hawaii Register, as provided for in
- 16 the Historic Preservation Act of 1966, Public Law
- 17 89-665, or chapter 6E; or until the statewide
- 18 historic places inventory is completed, any
- 19 historic site that is found by a field
- 20 reconnaissance of the area affected by the
- 21 helicopter facility and is under consideration

1 for placement on the National Register or the  
2 Hawaii Register of Historic Places; and

3 (9) Propose any:

4 (A) Wastewater treatment unit, except an individual  
5 wastewater system or a wastewater treatment unit  
6 serving fewer than fifty single-family dwellings  
7 or the equivalent;

8 (B) Waste-to-energy facility;

9 (C) Landfill;

10 (D) Oil refinery<sup>[+]</sup>, as defined in section 343-2; or

11 (E) Power-generating facility."

12 SECTION 5. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on July 1, 2013;  
15 provided that section 2 of this Act shall:

16 (1) Apply to taxable years beginning after December 31,  
17 2012;

18 (2) Apply to qualified development and construction costs  
19 of qualified biofuel production facilities incurred on  
20 or after July 1, 2012, and before January 1, 2018; and



1 (3) Be repealed on January 1, 2029.

2

INTRODUCED BY:

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**Report Title:**

Biofuel Production Facility; Tax Credit; Environmental Impact Statements

**Description:**

Creates an income tax credit for development and construction costs for qualifying biofuel production facilities. Repeals tax credit 1/1/2029. Defines "oil refinery". Clarifies that an environmental assessment is required for an action proposing the expansion of an existing oil refinery.

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