

JAN 25 2012

S.B. NO. 2666

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# A BILL FOR AN ACT

RELATING TO ENERGY.

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

SECTION 1. The purpose of this Act is to:

- (1) Encourage the development and construction of biofuel production facilities in Hawaii by creating an income tax credit for investments in the construction and development of biofuel production facilities in the State; and
- (2) Clarify the circumstances under which an environmental assessment is required for an action proposing an oil refinery by adding a new definition of oil refinery.

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

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

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



1        (b) The amount of the credit shall be fifteen per cent of  
2 the qualified development and construction costs of a biofuel  
3 production facility.

4        (c) The credit allowed under this section shall be claimed  
5 against the net income tax liability for the taxable year in  
6 which the plant becomes commercially operational. For purposes  
7 of this section, "net income tax liability" means net income tax  
8 liability reduced by all other credits allowed under this  
9 chapter.

10       (d) To qualify for this credit, the biofuel production  
11 facility shall:

12       (1) Be located within the State and use locally grown  
13 feedstock for at least seventy-five per cent of its  
14 production output;

15       (2) Meet the definition of a qualified biofuel production  
16 facility;

17       (3) Have a biofuel production capacity of no less than  
18 five million gallons;

19       (4) Have qualified development and construction costs  
20 totaling at least \$10,000,000; and

21       (5) Be in production on or before January 1, 2017.



1       (e) To receive the tax credit, the taxpayer shall first  
2 prequalify a biofuel production facility for the credit by  
3 registering with the department of business, economic  
4 development, and tourism during the development or construction  
5 stage. Failure to comply with this provision may constitute a  
6 waiver of the right to claim the credit.

7       (f) Every taxpayer claiming a tax credit under this  
8 section for a qualified biofuel production facility, no later  
9 than ninety days following the end of the taxable year in which  
10 the biofuel plant becomes commercially operational, shall submit  
11 a written, sworn statement to the department of business,  
12 economic development, and tourism, identifying:

13       (1) All qualified development and construction costs as  
14 provided by subsection (a), if any, incurred; and

15       (2) The number of hires related to the development or  
16 construction of the qualified biofuel production  
17 facility in the taxable year.

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



1 including any amended claims, for tax credits under this section  
2 shall be filed on or before the end of the twelfth month  
3 following the close of the taxable year for which the credit may  
4 be claimed. Failure to properly claim the credit shall  
5 constitute a waiver of the right to claim the credit.

6 (h) The department of business, economic development, and  
7 tourism shall:

8 (1) Maintain records of the names of the taxpayers and  
9 qualified biofuel production facilities claiming the  
10 tax credits under this section;

11 (2) Obtain and total the aggregate amounts of all  
12 qualified development and construction costs for each  
13 qualified biofuel production facility and for each  
14 qualified biofuel production facility for each taxable  
15 year; and

16 (3) Provide a letter to the director of taxation  
17 specifying the amount of the tax credit for each  
18 qualified biofuel production facility for each taxable  
19 year that a tax credit is claimed and the cumulative  
20 amount of the tax credit for all years claimed.

21 Upon each determination required under this subsection, the  
22 department of business, economic development, and tourism shall



1 issue a letter to the taxpayer specifying the qualified  
2 development and construction costs and the tax credit amount  
3 qualified for in each taxable year a tax credit is claimed. The  
4 taxpayer for each qualified biofuel production facility shall  
5 file the letter with the taxpayer's tax return for the qualified  
6 biofuel production facility to the department of taxation.  
7 Notwithstanding the authority of the department of business,  
8 economic development, and tourism under this section, the  
9 director of taxation may audit and adjust the tax credit amount  
10 to conform to the information filed by the taxpayer.

11 (i) If a deduction is taken under section 179 (with  
12 respect to election to expense depreciable business assets) of  
13 the Internal Revenue Code, no tax credit shall be allowed for  
14 those costs for which the deduction is taken.

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

18 No taxpayer that claims the credit under this section shall  
19 claim any other tax credit under this chapter for the same  
20 taxable year.

21 (j) In the case of a partnership, S corporation, estate,  
22 or trust, the tax credit allowable shall be for qualified



1 production costs incurred by the entity for the taxable year.  
2 The cost upon which the tax credit is computed shall be  
3 determined at the entity level. Distribution and share of the  
4 tax credit shall be determined by rule adopted by the director  
5 of taxation.

6 (k) Total tax credits claimed per qualified biofuel  
7 production facility shall not exceed \$60,000,000.

8 (l) Qualified biofuel production facilities shall comply  
9 with this section.

10 (m) The director of taxation shall prepare forms as may be  
11 necessary to claim a credit under this section. The director  
12 may also require the taxpayer to furnish information to  
13 ascertain the validity of the claim for credit made under this  
14 section and may adopt rules necessary to effectuate the purposes  
15 of this section pursuant to chapter 91.

16 (n) As used in this section:

17 "Qualified biofuel production facility" means a facility  
18 that produces liquid or gaseous fuels from organic sources such  
19 as biomass crops, agricultural residues, and oil crops,  
20 including palm, canola, soybean, and waste cooking oils; grease;  
21 food wastes; locally produced municipal solid wastes and



1 industrial wastes; and animal residues and wastes that can be  
2 used to generate energy.

3 "Qualified development and construction cost" means a  
4 capital expenditure related to the development and construction  
5 of any qualified biofuel production facility, including costs  
6 for agricultural infrastructure, design, processing equipment,  
7 waste treatment systems, pipelines, and liquid storage tanks at  
8 the facility or remote locations, including expansions or  
9 modifications, interest accrued during construction if the  
10 project is not capitalized and not expensed, and utility costs  
11 incurred during construction if the utility costs are  
12 capitalized and not expensed. Capital expenditures shall be  
13 those certain direct and indirect costs determined in accordance  
14 with section 263A of the Internal Revenue Code, relating to  
15 uniform capitalization costs, but shall not include expenses for  
16 compensation paid to officers of the taxpayer, pension and other  
17 related costs, rent for land, the costs of repairing and  
18 maintaining the equipment or facilities, training of operating  
19 personnel, property taxes, costs relating to negotiation of  
20 commercial agreements not related to development or  
21 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 SECTION 3. Section 343-2, Hawaii Revised Statutes, is  
11 amended by adding a new definition to be appropriately inserted  
12 and to read as follows:

13 "Oil refinery" means:

14 (1) A new facility that processes fossil fuels into  
15 refined products; or

16 (2) The expansion of an existing fossil fuel refinery."

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

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

21 (1) Propose the use of state or county lands or the use of  
22 state or county funds, other than funds to be used for





1 feasibility or planning studies for possible future  
2 programs or projects that the agency has not approved,  
3 adopted, or funded, or funds to be used for the  
4 acquisition of unimproved real property; provided that  
5 the agency shall consider environmental factors and  
6 available alternatives in its feasibility or planning  
7 studies; provided further that an environmental  
8 assessment for proposed uses under section 205-  
9 2(d)(11) or 205-4.5(a)(13) shall only be required  
10 pursuant to section 205-5(b);

11 (2) Propose any use within any land classified as a  
12 conservation district by the state land use commission  
13 under chapter 205;

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

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

20 (5) Propose any use within the Waikiki area of Oahu, the  
21 boundaries of which are delineated in the land use



1 ordinance as amended, establishing the "Waikiki  
2 Special District";

3 (6) Propose any amendments to existing county general  
4 plans where the amendment would result in designations  
5 other than agriculture, conservation, or preservation,  
6 except actions proposing any new county general plan  
7 or amendments to any existing county general plan  
8 initiated by a county;

9 (7) Propose any reclassification of any land classified as  
10 a conservation district by the state land use  
11 commission under chapter 205;

12 (8) Propose the construction of new or the expansion or  
13 modification of existing helicopter facilities within  
14 the State, that by way of their activities, may  
15 affect:

16 (A) Any land classified as a conservation district by  
17 the state land use commission under chapter 205;

18 (B) A shoreline area as defined in section 205A-41;  
19 or

20 (C) Any historic site as designated in the National  
21 Register or Hawaii Register, as provided for in  
22 the Historic Preservation Act of 1966, Public Law



89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and

(9) Propose any:

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

(B) Waste-to-energy facility;

(C) Landfill;

(D) Oil refinery[+], as defined in section 343-2; or

(E) Power-generating facility."

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

SECTION 6. This Act shall take effect on July 1, 2012; provided that section 2 of this Act shall:

(1) Apply to taxable years beginning after December 31, 2011;



- 1       (2) Apply to qualified development and construction costs  
2       of qualified biofuel production facilities incurred on  
3       or after July 1, 2011, and before January 1, 2017; and  
4       (3) Be repealed on January 1, 2017; provided that any  
5       qualified development and construction costs of  
6       qualified biofuel production facilities incurred  
7       before January 1, 2017, shall be eligible for the tax  
8       credit established by this Act in the immediately  
9       following taxable year if not claimed in a prior  
10      taxable year or before the repeal of this Act.

11  
INTRODUCED BY: 



# S.B. NO. 2666

**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 1/1/2017. 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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