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# A BILL FOR AN ACT

RELATING TO ETHANOL FACILITY TAX CREDIT.

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

1           SECTION 1. The purpose of this Act is to encourage the  
2 construction and operation of large-capacity ethanol production  
3 facilities by repealing the qualifying capacity limits of  
4 ethanol production facilities, providing a vehicle to change the  
5 total ethanol facility tax credits allowed per year, and  
6 repealing the sunset provision with respect to the total  
7 nameplate capacity for qualifying ethanol production facilities.

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

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

17           For each qualified ethanol production facility, the annual  
18 dollar amount of the ethanol facility tax credit during the



1 eight-year period shall be equal to thirty per cent of its  
2 nameplate capacity [~~if the nameplate capacity is greater than~~  
3 ~~five hundred thousand but less than~~] , up to the first fifteen  
4 million gallons. A taxpayer may claim this credit for each  
5 qualifying ethanol facility; provided that:

- 6 (1) The claim for this credit by any taxpayer of a  
7 qualifying ethanol production facility shall not  
8 exceed one hundred per cent of the total of all  
9 investments made by the taxpayer in the qualifying  
10 ethanol production facility during the credit period;
- 11 (2) The qualifying ethanol production facility operated at  
12 a level of production of at least seventy-five per  
13 cent of its nameplate capacity on an annualized basis;
- 14 (3) The qualifying ethanol production facility is in  
15 production on or before January 1, 2017; and
- 16 (4) No taxpayer that claims the credit under this section  
17 shall claim any other tax credit under this chapter  
18 for the same taxable year.

19 (b) As used in this section:

20 "Credit period" means a maximum period of eight years  
21 beginning from the first taxable year in which the qualifying  
22 ethanol production facility begins production even if actual



1 production is not at seventy-five per cent of nameplate  
2 capacity.

3 "Investment" means a nonrefundable capital expenditure  
4 related to the development and construction of any qualifying  
5 ethanol production facility, including processing equipment,  
6 waste treatment systems, pipelines, and liquid storage tanks at  
7 the facility or remote locations, including expansions or  
8 modifications. Capital expenditures shall be those direct and  
9 certain indirect costs determined in accordance with section  
10 263A of the Internal Revenue Code, relating to uniform  
11 capitalization costs, but shall not include expenses for  
12 compensation paid to officers of the taxpayer, pension and other  
13 related costs, rent for land, the costs of repairing and  
14 maintaining the equipment or facilities, training of operating  
15 personnel, utility costs during construction, 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. For the purposes of determining  
21 a capital expenditure under this section, the provisions of  
22 section 263A of the Internal Revenue Code shall apply as it read



1 on March 1, 2004. For purposes of this section, investment  
2 excludes land costs and includes any investment for which the  
3 taxpayer is at risk, as that term is used in section 465 of the  
4 Internal Revenue Code (with respect to deductions limited to  
5 amount at risk).

6 "Nameplate capacity" means the qualifying ethanol  
7 production facility's production design capacity, in gallons of  
8 motor fuel grade ethanol per year.

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

11 "Qualifying ethanol production" means ethanol produced from  
12 renewable, organic feedstocks, or waste materials, including  
13 municipal solid waste. All qualifying production shall be  
14 fermented, distilled, gasified, or produced by physical chemical  
15 conversion methods such as reformation and catalytic conversion  
16 and dehydrated at the facility.

17 "Qualifying ethanol production facility" or "facility"  
18 means a facility located in Hawaii which produces motor fuel  
19 grade ethanol meeting the minimum specifications by the American  
20 Society of Testing and Materials standard D-4806, as amended.

21 (c) In the case of a taxable year in which the cumulative  
22 claims for the credit by the taxpayer of a qualifying ethanol



1 production facility exceeds the cumulative investment made in  
2 the qualifying ethanol production facility by the taxpayer, only  
3 that portion that does not exceed the cumulative investment  
4 shall be claimed and allowed.

5 (d) The department of business, economic development, and  
6 tourism shall:

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

9 (2) Verify the amount of the qualifying investment;

10 (3) Total all qualifying and cumulative investments that  
11 the department of business, economic development, and  
12 tourism certifies; and

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

16 Upon each determination, the department of business,  
17 economic development, and tourism shall issue a certificate to  
18 the taxpayer verifying the qualifying investment amounts, the  
19 credit amount certified for each taxable year, and the  
20 cumulative amount of the tax credit during the credit period.

21 The taxpayer shall file the certificate with the taxpayer's tax  
22 return with the department of taxation. Notwithstanding the



1 department of business, economic development, and tourism's  
2 certification authority under this section, the director of  
3 taxation may audit and adjust certification to conform to the  
4 facts.

5 If in any year, the annual amount of certified credits  
6 reaches [~~\$12,000,000~~] \$ \_\_\_\_\_ in the aggregate, the  
7 department of business, economic development, and tourism shall  
8 immediately discontinue certifying credits and notify the  
9 department of taxation. In no instance shall the total amount  
10 of certified credits exceed [~~\$12,000,000~~] \$ \_\_\_\_\_ per year.  
11 Notwithstanding any other law to the contrary, this information  
12 shall be available for public inspection and dissemination under  
13 chapter 92F.

14 (e) If the credit under this section exceeds the  
15 taxpayer's income tax liability, the excess of credit over  
16 liability shall be refunded to the taxpayer; provided that no  
17 refunds or payments on account of the tax credit allowed by this  
18 section shall be made for amounts less than \$1. All claims for  
19 a credit under this section must be properly filed on or before  
20 the end of the twelfth month following the close of the taxable  
21 year for which the credit may be claimed. Failure to comply



1 with the foregoing provision shall constitute a waiver of the  
2 right to claim the credit.

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

16 ~~[(g) Once the total nameplate capacities of qualifying~~  
17 ~~ethanol production facilities built within the State reaches or~~  
18 ~~exceeds a level of forty million gallons per year, credits under~~  
19 ~~this section shall not be allowed for new ethanol production~~  
20 ~~facilities. If a new facility's production capacity would cause~~  
21 ~~the statewide ethanol production capacity to exceed forty~~  
22 ~~million gallons per year, only the ethanol production capacity~~



1 ~~that does not exceed the statewide forty million gallon per year~~  
2 ~~level shall be eligible for the credit.~~

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

16 ~~(i)~~ (h) The taxpayer shall provide written notice to the  
17 director of taxation and the director of business, economic  
18 development, and tourism within thirty days following the start  
19 of production. The notice shall include the production start  
20 date and expected ethanol fuel production for the next twenty-  
21 four months. Notwithstanding any other law to the contrary,





1 this information shall be available for public inspection and  
2 dissemination under chapter 92F.

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

14 ~~(+k)~~ (j) Each calendar year during the credit period, the  
15 taxpayer shall provide information to the director of business,  
16 economic development, and tourism on the number of gallons of  
17 ethanol produced and sold during the previous calendar year, how  
18 much was sold in Hawaii versus overseas, feedstocks used for  
19 ethanol production, the number of employees of the facility, and  
20 the projected number of gallons of ethanol production for the  
21 succeeding year.



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

7       ~~[(m)]~~ (l) Following each year in which a credit under this  
8 section has been claimed, the director of business, economic  
9 development, and tourism shall submit a written report to the  
10 governor and legislature regarding the production and sale of  
11 ethanol. The report shall include:

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

18       ~~[(n)]~~ (m) The director of taxation shall prepare forms  
19 that may be necessary to claim a credit under this section.  
20 Notwithstanding the department of business, economic  
21 development, and tourism's certification authority under this  
22 section, the director may audit and adjust certification to



1 conform to the facts. The director may also require the  
2 taxpayer to furnish information to ascertain the validity of the  
3 claim for credit made under this section and may adopt rules  
4 necessary to effectuate the purposes of this section pursuant to  
5 chapter 91."

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on January 1, 2009.



**Report Title:**

Tax Credits; Ethanol Production Facilities

**Description:**

Repeals the qualifying capacity limits of ethanol production facilities, provides a vehicle to change the total tax credits allowed per year, and repeals the sunset provision with respect to the total annual nameplate capacity for qualifying ethanol production facilities. (SD1)

