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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Section 235-110.3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~§235-110.3~~ [~~Ethanol~~] Biofuel facility tax credit. (a)  
4 Each year during the credit period, there shall be allowed to  
5 each taxpayer subject to the taxes imposed by this chapter, [~~an~~  
6 ~~ethanol~~] a biofuel facility tax credit that shall be applied to  
7 the taxpayer's net income tax liability, if any, imposed by this  
8 chapter for the taxable year in which the credit is properly  
9 claimed.

10           For each qualified [~~ethanol~~] biofuel production facility,  
11 the annual dollar amount of the [~~ethanol~~] biofuel facility tax  
12 credit during the eight-year period shall be equal to [~~thirty~~  
13 ~~per cent of its nameplate capacity~~] 40 cents per gallon produced  
14 if the nameplate capacity of the qualified biofuel production  
15 facility is greater than five hundred thousand gallons but less  
16 than fifteen million gallons. A taxpayer may claim this credit  
17 for each qualifying [~~ethanol~~] biofuel facility; provided that:

- 1 (1) The claim for this credit by any taxpayer of a  
2 qualifying ~~[ethanol]~~ biofuel production facility shall  
3 not exceed one hundred per cent of the total of all  
4 investments made by the taxpayer in the qualifying  
5 ~~[ethanol]~~ biofuel production facility during the  
6 credit period;
- 7 (2) The qualifying ~~[ethanol]~~ biofuel production facility  
8 operated at a level of production of at least seventy-  
9 five per cent of its nameplate capacity on an  
10 annualized basis;
- 11 (3) The qualifying biofuel production facility shall be  
12 located within the State and utilize locally grown  
13 feedstock for at least seventy-five per cent of its  
14 production output;
- 15 ~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ biofuel production  
16 facility is in production on or before January 1,  
17 2017; and
- 18 ~~[(4)]~~ (5) No taxpayer that claims the credit under this  
19 section shall claim any other tax credit under this  
20 chapter for the same taxable year.
- 21 (b) As used in this section:

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

6 "Investment" means a nonrefundable capital expenditure  
7 related to the development and construction of any qualifying  
8 [~~ethanol~~] biofuel production facility, including processing  
9 equipment, waste treatment systems, pipelines, and liquid  
10 storage tanks at the facility or remote locations, including  
11 expansions or modifications. Capital expenditures shall be  
12 those direct and certain indirect costs determined in accordance  
13 with section 263A (with respect to capitalization and inclusion  
14 in inventory costs of certain expenses) of the Internal Revenue  
15 Code, relating to uniform capitalization costs, but shall not  
16 include expenses for compensation paid to officers of the  
17 taxpayer, pension and other related costs, rent for land, the  
18 costs of repairing and maintaining the equipment or facilities,  
19 training of operating personnel, utility costs during  
20 construction, property taxes, costs relating to negotiation of  
21 commercial agreements not related to development or  
22 construction, or service costs that can be identified

1 specifically with a service department or function or that  
2 directly benefit or are incurred by reason of a service  
3 department or function. For the purposes of determining a  
4 capital expenditure under this section, the provisions of  
5 section 263A of the Internal Revenue Code shall apply as it read  
6 on March 1, 2004. For purposes of this section, investment  
7 excludes land costs and includes any investment for which the  
8 taxpayer is at risk, as that term is used in section 465 (with  
9 respect to deductions limited to amount at risk) of the Internal  
10 Revenue Code [~~(with respect to deductions limited to amount at~~  
11 ~~risk)]~~.

12 "Nameplate capacity" means the qualifying [~~ethanol~~] biofuel  
13 production facility's production design capacity, in gallons of  
14 motor fuel grade [~~ethanol~~] biofuel per year. Nameplate capacity  
15 shall be determined by the facility owner and shall not exceed  
16 the amount of production actually recorded during a consecutive  
17 seven-day period multiplied by fifty-two.

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

20 "Qualifying [~~ethanol~~] biofuel production" means ethanol or  
21 biodiesel produced from renewable, organic feedstocks, or waste  
22 materials, including fats, oils, grease, and municipal solid

1 waste. All qualifying production shall be fermented, distilled,  
2 gasified, or produced by physical chemical conversion methods  
3 such as reformation and catalytic conversion and dehydrated at  
4 the facility.

5 "Qualifying [~~ethanol~~] biofuel production facility" or  
6 "facility" means a facility located in Hawaii [~~which~~] that  
7 produces motor fuel grade [~~ethanol~~] biofuel meeting the minimum  
8 specifications by the American Society of Testing and Materials  
9 standard D-4806, as amended.

10 (c) In the case of a taxable year in which the cumulative  
11 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]  
12 biofuel production facility exceeds the cumulative investment  
13 made in the qualifying [~~ethanol~~] biofuel production facility by  
14 the taxpayer, only that portion that does not exceed the  
15 cumulative investment shall be claimed and allowed.

16 (d) The department of business, economic development, and  
17 tourism shall:

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

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

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

4 (4) Certify the total amount of the tax credit for each  
5 taxable year and the cumulative amount of the tax  
6 credit during the credit period.

7 Upon each determination, the department of business,  
8 economic development, and tourism shall issue a certificate to  
9 the taxpayer verifying the qualifying investment amounts, the  
10 credit amount certified for each taxable year, and the  
11 cumulative amount of the tax credit during the credit period.  
12 The taxpayer shall file the certificate with the taxpayer's tax  
13 return with the department of taxation. Notwithstanding the  
14 department of business, economic development, and tourism's  
15 certification authority under this section, the director of  
16 taxation may audit and adjust certification to conform to the  
17 facts.

18 If in any year, the annual amount of certified credits  
19 reaches \$12,000,000 in the aggregate, the department of  
20 business, economic development, and tourism shall immediately  
21 discontinue certifying credits and notify the department of  
22 taxation. In no instance shall the total amount of certified

1 credits exceed \$12,000,000 per year. Notwithstanding any other  
2 law to the contrary, this information shall be available for  
3 public inspection and dissemination under chapter 92F.

4 (e) If the credit under this section exceeds the  
5 taxpayer's income tax liability, the excess of credit over  
6 liability shall be refunded to the taxpayer; provided that no  
7 refunds or payments on account of the tax credit allowed by this  
8 section shall be made for amounts less than \$1. All claims for  
9 a credit under this section [~~must~~] shall be properly filed on or  
10 before the end of the twelfth month following the close of the  
11 taxable year for which the credit may be claimed. Failure to  
12 comply with the foregoing provision shall constitute a waiver of  
13 the right to claim the credit.

14 (f) If a qualifying [~~ethanol~~] biofuel production facility  
15 or an interest therein is acquired by a taxpayer prior to the  
16 expiration of the credit period, the credit allowable under  
17 subsection (a) for any period after [~~such~~] the acquisition shall  
18 be equal to the credit that would have been allowable under  
19 subsection (a) to the prior taxpayer had the taxpayer not  
20 disposed of the interest. If an interest is disposed of during  
21 any year for which the credit is allowable under subsection (a),  
22 the credit shall be allowable between the parties on the basis

1 of the number of days during the year the interest was held by  
2 each taxpayer. In no case shall the credit allowed under  
3 subsection (a) be allowed after the expiration of the credit  
4 period.

5 (g) Once the total nameplate capacities of qualifying  
6 [~~ethanol~~] biofuel production facilities built within the State  
7 reaches or exceeds a level of forty million gallons per year,  
8 credits under this section shall not be allowed for new  
9 [~~ethanol~~] biofuel production facilities. If a new facility's  
10 production capacity would cause the statewide [~~ethanol~~] biofuel  
11 production capacity to exceed forty million gallons per year,  
12 only the [~~ethanol~~] biofuel production capacity that does not  
13 exceed the statewide forty million gallon per year level shall  
14 be eligible for the credit.

15 (h) Prior to construction of any new qualifying [~~ethanol~~]  
16 biofuel production facility, the taxpayer shall provide written  
17 notice of the taxpayer's intention to begin construction of a  
18 qualifying [~~ethanol~~] biofuel production facility. The  
19 information shall be provided to the department of taxation and  
20 the department of business, economic development, and tourism on  
21 forms provided by the department of business, economic  
22 development, and tourism, and shall include information on the



1 taxpayer, facility location, facility production capacity,  
2 anticipated production start date, and the taxpayer's contact  
3 information. Notwithstanding any other law to the contrary,  
4 this information shall be available for public inspection and  
5 dissemination under chapter 92F.

6 (i) The taxpayer shall provide written notice to the  
7 director of taxation and the director of business, economic  
8 development, and tourism within thirty days following the start  
9 of production. The notice shall include the production start  
10 date and expected [~~ethanol-fuel~~] biofuel production for the next  
11 twenty-four months. Notwithstanding any other law to the  
12 contrary, this information shall be available for public  
13 inspection and dissemination under chapter 92F.

14 (j) If a qualifying [~~ethanol~~] biofuel production facility  
15 fails to achieve an average annual production of at least  
16 seventy-five per cent of its nameplate capacity for two  
17 consecutive years, the stated capacity of that facility may be  
18 revised by the director of business, economic development, and  
19 tourism to reflect actual production for the purposes of  
20 determining statewide production capacity under subsection (g)  
21 and allowable credits for that facility under subsection (a).  
22 Notwithstanding any other law to the contrary, this information

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

3 (k) Each calendar year during the credit period, the  
4 taxpayer shall provide information to the director of business,  
5 economic development, and tourism on the number of gallons of  
6 ~~[ethanol]~~ biofuel produced and sold during the previous calendar  
7 year, how much was sold in Hawaii versus overseas, percentage of  
8 Hawaii-grown feedstocks and other feedstocks used for ~~[ethanol]~~  
9 biofuel production, the number of employees of the facility, and  
10 the projected number of gallons of ~~[ethanol]~~ biofuel production  
11 for the succeeding year.

12 (l) In the case of a partnership, S corporation, estate,  
13 or trust, the tax credit allowable is for every qualifying  
14 ~~[ethanol]~~ biofuel production facility. The cost upon which the  
15 tax credit is computed shall be determined at the entity level.  
16 Distribution and share of credit shall be determined pursuant to  
17 section 235-110.7(a).

18 (m) Following each year in which a credit under this  
19 section has been claimed, the director of business, economic  
20 development, and tourism shall submit a written report to the  
21 governor and legislature regarding the production and sale of  
22 ~~[ethanol]~~ biofuel. The report shall include:

1 (1) The number, location, and nameplate capacities of  
2 qualifying [~~ethanol~~] biofuel production facilities in  
3 the State;

4 (2) The total number of gallons of [~~ethanol~~] biofuel  
5 produced and sold during the previous year; and

6 (3) The projected number of gallons of [~~ethanol~~] biofuel  
7 production for the succeeding year.

8 (n) The director of taxation shall prepare forms that may  
9 be necessary to claim a credit under this section.

10 Notwithstanding the department of business, economic  
11 development, and tourism's certification authority under this  
12 section, the director may audit and adjust certification to  
13 conform to the facts. The director may also require the  
14 taxpayer to furnish information to ascertain the validity of the  
15 claim for credit made under this section and may adopt rules  
16 necessary to effectuate the purposes of this section pursuant to  
17 chapter 91."

18 SECTION 2. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 3. This Act shall take effect on July 1, 2090, and  
21 shall apply to taxable years beginning after December 31, 2089.

**Report Title:**

Biofuels Facility; Nameplate Capacity; Gallons Produced

**Description:**

Amends the definition of nameplate capacity for biofuels facilities and revises the allowable tax credit to be equal to 40 cents per gallon of biofuel produced. Requires qualifying facility to be located within the State and utilize locally grown feed stock for at least 75% of its production output.

(SD2)