

JAN 25 2010

S.B. NO. 2651

A BILL FOR AN ACT

RELATING TO BIOFUEL FACILITIES.

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

1 SECTION 1. The legislature finds that ethanol and
2 biodiesel are currently the only two types of biofuels that have
3 completed Environmental Protection Agency Tier 1 and Tier 2
4 emission testing program standards, have a standard of quality
5 that is defined by the United States American Society of Testing
6 and Materials, and are generally accepted for use by various
7 engine manufacturers.

8 The legislature further finds that technological
9 advancements in the production and use of ethanol and biodiesel
10 as renewable energy resources should be supported in an equal
11 fashion as advanced technologies continue to emerge. In this
12 State, that can be partially achieved through allowing both
13 forms of renewable energy equal opportunity to obtain production
14 tax credits at the state level. However, since the current
15 economy of the State is in crisis, the availability of biofuels
16 facility tax credits for either ethanol or biodiesel should be
17 tempered with financial conservatism, especially since those



1 renewable energy resources are only in the infancy stage of
2 industry development in this State.

3 The purpose of this Act is to enhance the efforts to
4 generate and sustain support for renewable fuels and facilities
5 in Hawaii.

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

8 "§235-110.3 ~~[Ethanol]~~ Biofuel facility tax credit. (a)

9 Each year during the credit period, there shall be allowed to
10 each taxpayer subject to the taxes imposed by this chapter, [~~an~~
11 ~~ethanol~~] a biofuel facility tax credit that shall be applied to
12 the taxpayer's net income tax liability, if any, imposed by this
13 chapter for the taxable year in which the credit is properly
14 claimed.

15 For each [~~qualified ethanol~~] qualifying biofuel production
16 facility, the annual dollar amount of the [~~ethanol~~] biofuel
17 facility tax credit during the eight-year period shall be equal
18 to [~~thirty per cent of its nameplate capacity~~] 40 cents per
19 gallon produced if the nameplate capacity of the qualifying
20 biofuel production facility is greater than five hundred
21 thousand gallons but less than fifteen million gallons. A



1 taxpayer may claim this credit for each qualifying [~~ethanol~~]
2 biofuel production facility; provided that:

3 (1) The claim for this credit by any taxpayer of a
4 qualifying [~~ethanol~~] biofuel production facility shall
5 not exceed one hundred per cent of the total of all
6 investments made by the taxpayer in the qualifying
7 [~~ethanol~~] biofuel production facility during the
8 credit period;

9 (2) The qualifying [~~ethanol production facility operated~~
10 ~~at a level of production of at least seventy five per~~
11 ~~cent of its nameplate capacity on an annualized~~
12 ~~basis;~~] biofuel production facility shall be located
13 within the State and shall use Hawaii sourced
14 feedstock for at least seventy-five per cent of its
15 production output;

16 (3) The qualifying [~~ethanol~~] biofuel production facility
17 is in production on or before January 1, 2017; and

18 (4) No taxpayer that claims the credit under this section
19 shall claim any other tax credit under this chapter
20 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 [~~7~~] or D-6751, 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[-]; provided that from
2 July 1, 2011, through December 31, 2012, the annual amount of
3 certified credits allowed under this section shall not exceed
4 \$3,000,000 in the aggregate and shall be prorated over a
5 twelve-month year; provided further that from January 1, 2013,
6 through December 31, 2014, the annual amount of certified
7 credits allowed under this section shall not exceed \$8,000,000
8 in the aggregate; provided further that after December 31, 2014,
9 the annual amount of \$12,000,000 certified credits per year
10 shall be reinstated. Notwithstanding any other law to the
11 contrary, this information shall be available for public
12 inspection and dissemination under chapter 92F.

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



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

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



1 exceed the statewide forty million gallon per year level shall
2 be eligible for the credit.

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

16 (i) 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~~] biofuel production for the next
21 twenty-four months. Notwithstanding any other law to the



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

3 (j) If a qualifying [~~ethanol~~] biofuel 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) 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~~] biofuel produced and sold during the previous calendar
18 year, how much was sold in Hawaii versus overseas, the
19 percentage of Hawaii-sourced feedstocks and other feedstocks
20 used for [~~ethanol~~] biofuel production, the number of employees
21 of the facility, and the projected number of gallons of
22 [~~ethanol~~] biofuel production for the succeeding year.



1 (1) In the case of a partnership, S corporation, estate,
2 or trust, the tax credit allowable is for every qualifying
3 [~~ethanol~~] biofuel 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) 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~~] biofuel. The report shall include:

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

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

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

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

21 Notwithstanding the department of business, economic
22 development, and tourism's certification authority under this



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

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

9 SECTION 4. This Act, upon its approval, shall apply to
 10 taxable years beginning after December 31, 2009.

11

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Report Title:

Biofuels Facility; Nameplate Capacity; Certified Credits

Description:

Expands the facility tax credit to include biofuels, amends the allowable tax credit to be equal to 40 cents per gallon of biofuel produced, amends the definition of nameplate capacity, requires qualifying facility to be located within the State and utilize locally sourced feedstock for at least 75% of its production output, restricts certified credits in the aggregate in the initial 4 years of availability.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

