
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]~~ qualifying biofuel production
11 facility, the annual dollar amount of the ~~[ethanol]~~ biofuel
12 facility tax credit during the eight-year period shall be equal
13 to ~~[thirty per cent of its nameplate capacity]~~ 40 cents per
14 gallon produced if the nameplate capacity of the qualifying
15 biofuel production facility is greater than five hundred
16 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~~] biofuel production facility
10 operated at a level of production of at least seventy-
11 five per cent of its nameplate capacity on an
12 annualized basis;

13 (3) The qualifying biofuel production facility shall be
14 located within the state and use locally grown
15 feedstock for at least seventy-five per cent of its
16 production output;

17 [~~(3)~~] (4) The qualifying [~~ethanol~~] biofuel production
18 facility is in production on or before January 1,
19 2017; and

20 [~~(4)~~] (5) No taxpayer that claims the credit under this
21 section shall claim any other tax credit under this
22 chapter for the same taxable year.



1 (b) As used in this section:

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

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



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

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

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

21 "Qualifying ~~[ethanol]~~ biofuel production" means ethanol or
22 biodiesel produced from renewable, organic feedstocks, or waste



1 materials, including fats, oils, grease, and municipal solid
2 waste. All qualifying production shall be fermented, distilled,
3 gasified, or produced by physical chemical conversion methods
4 such as reformation and catalytic conversion and dehydrated at
5 the facility.

6 "Qualifying [~~ethanol~~] biofuel production facility" or
7 "facility" means a facility located in Hawaii [~~which~~] that
8 produces motor fuel grade [~~ethanol~~] biofuel meeting the minimum
9 specifications by the American Society of Testing and Materials
10 [~~standard D-4806,~~] standard D-4806 or D6751, as amended.

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

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

- 19 (1) Maintain records of the total amount of investment
20 made by each taxpayer in a facility;
- 21 (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 July
2 1, 2011, through December 31, 2012, the annual amount of
3 certified credits allowed under this section shall not exceed
4 \$8,000,000 in the aggregate and shall be prorated over a twelve-
5 month year; provided further that after December 31, 2012, the
6 annual amount of \$12,000,000 certified credits per year shall be
7 reinstated. Notwithstanding any other law to the contrary, this
8 information shall be available for public inspection and
9 dissemination under chapter 92F.

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

20 (f) If a qualifying [~~ethanol~~] biofuel production facility
21 or an interest therein is acquired by a taxpayer prior to the
22 expiration of the credit period, the credit allowable under



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

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

21 (h) Prior to construction of any new qualifying [~~ethanol~~]
22 biofuel production facility, the taxpayer shall provide written



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

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

20 (j) If a qualifying [~~ethanol~~] biofuel production facility
21 fails to achieve an average annual production of at least
22 seventy-five per cent of its nameplate capacity for two



1 consecutive years, the stated capacity of that facility may be
2 revised by the director of business, economic development, and
3 tourism to reflect actual production for the purposes of
4 determining statewide production capacity under subsection (g)
5 and allowable credits for that facility under subsection (a).
6 Notwithstanding any other law to the contrary, this information
7 shall be available for public inspection and dissemination under
8 chapter 92F.

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

18 (l) In the case of a partnership, S corporation, estate,
19 or trust, the tax credit allowable is for every qualifying
20 [~~ethanol~~] biofuel production facility. The cost upon which the
21 tax credit is computed shall be determined at the entity level.



1 Distribution and share of credit shall be determined pursuant to
2 section 235-110.7(a).

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

8 (1) The number, location, and nameplate capacities of
9 qualifying ~~[ethanol]~~ biofuel production facilities in
10 the ~~[State,]~~ state;

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

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

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

17 Notwithstanding the department of business, economic
18 development, and tourism's certification authority under this
19 section, the director may audit and adjust certification to
20 conform to the facts. The director may also require the
21 taxpayer to furnish information to ascertain the validity of the
22 claim for credit made under this section and may adopt rules



1 necessary to effectuate the purposes of this section pursuant to
2 chapter 91."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 3. This Act shall take effect on July 1, 2020.



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.
(SB512 HD1)

