
A BILL FOR AN ACT

RELATING TO RENEWABLE FUELS.

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

1 SECTION 1. The legislature finds that green diesel,
2 biodiesel, and biojet, in addition to ethanol, are examples of
3 potential fuels that could be produced in Hawaii from locally
4 grown feedstock. The local production of these biofuels could
5 contribute to Hawaii's renewable liquid fuel objectives; reduce
6 negative impacts on Hawaii of oil price volatility; provide a
7 measure of energy security; provide economic diversification;
8 and keep energy dollars circulating within Hawaii's economy.

9 The purpose of this Act is to modify the existing ethanol
10 facility tax incentive to include other liquid biofuels and to
11 enable larger facilities to be eligible for the tax incentive,
12 without changing the level of incentive or cap per facility.

13 SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending the title and subsections (a) to (c) to
16 read:

17 "§235-110.3 [~~Ethanol~~] Biofuel facility tax credit. (a)

18 Each year during the credit period, there shall be allowed to



1 each taxpayer subject to the taxes imposed by this chapter, [~~an~~
2 ~~ethanol~~] a biofuel facility tax credit that shall be applied to
3 the taxpayer's net income tax liability, if any, imposed by this
4 chapter for the taxable year in which the credit is properly
5 claimed.

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

14 (1) The claim for this credit by any taxpayer of a
15 qualifying [~~ethanol~~] biofuel production facility shall
16 not exceed one hundred per cent of the total of all
17 investments made by the taxpayer in the qualifying
18 [~~ethanol~~] biofuel production facility during the
19 credit period;

20 (2) The qualifying [~~ethanol~~] biofuel production facility
21 operated at a level of production of at least seventy-



1 five per cent of its nameplate capacity on an
2 annualized basis;

3 (3) The qualifying biofuel production facility is located
4 within the State and uses agricultural feedstock for
5 at least seventy-five per cent of its production
6 output;

7 ~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ biofuel production
8 facility is in production on or before January 1,
9 2017; and

10 ~~[(4)]~~ (5) No taxpayer that claims the credit under this
11 section shall claim any other tax credit under this
12 chapter for the same taxable year.

13 (b) As used in this section:

14 "Agricultural feedstock" includes but is not limited to
15 sugar cane, byproducts from sugar cane, sweet sorghum, sugar
16 beets, biomass, oil, fiber, and other materials grown on farms
17 and not previously used. Unused byproducts of food, feed,
18 fiber, or other products, or electricity production, may be
19 considered agricultural feedstock. Used cooking oils, or
20 industrial or municipal wastes, shall not be considered
21 agricultural feedstock.



1 "Biofuel" means ethanol, biodiesel, diesel, jet fuel, or
2 other liquid fuel meeting the relevant fuel specifications of
3 ASTM International (formerly ASTM, the American Society for
4 Testing and Materials) and produced from agricultural feedstock.

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

10 "Investment" means a nonrefundable capital expenditure
11 related to the development and construction of any qualifying
12 [~~ethanol~~] biofuel production facility, including processing
13 equipment, waste treatment systems, pipelines, and liquid
14 storage tanks at the facility or remote locations, including
15 expansions or modifications. Direct capital expenditures in
16 agricultural infrastructure, including irrigation and drainage
17 systems, land clearing and leveling, establishment of crops,
18 planting, and cultivation where the biofuel production facility
19 and agricultural operations are integrated shall be eligible.
20 Capital expenditures shall be those direct and certain indirect
21 costs determined in accordance with section 263A of the Internal
22 Revenue Code, relating to uniform capitalization costs, but



1 shall not include expenses for compensation paid to officers of
2 the taxpayer, pension and other related costs, rent for land,
3 the costs of repairing and maintaining the equipment or
4 facilities, training of operating personnel, utility costs
5 during construction, property taxes, costs relating to
6 negotiation of commercial agreements not related to development
7 or construction, or service costs that can be identified
8 specifically with a service department or function or that
9 directly benefit or are incurred by reason of a service
10 department or function. For the purposes of determining a
11 capital expenditure under this section, the provisions of
12 section 263A of the Internal Revenue Code shall apply as it read
13 on March 1, 2004. For purposes of this section, investment
14 excludes land costs and includes any investment for which the
15 taxpayer is at risk, as that term is used in section 465 of the
16 Internal Revenue Code (with respect to deductions limited to
17 amount at risk).

18 "Nameplate capacity" means the qualifying [~~ethanol~~] biofuel
19 production facility's production design capacity, in gallons of
20 [~~motor fuel grade ethanol~~] biofuel per year.

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



1 "Qualifying [~~ethanol~~] biofuel production" means [~~ethanol~~]
2 biofuel produced from [~~renewable, organic feedstocks, or waste~~
3 ~~materials, including municipal solid waste.~~] agricultural
4 feedstock. All qualifying production shall be fermented,
5 distilled, gasified, or produced by physical chemical conversion
6 methods such as reformation and catalytic conversion and
7 dehydrated at the facility.

8 "Qualifying [~~ethanol~~] biofuel production facility" or
9 "facility" means a facility located in Hawaii [~~which~~] that
10 produces [~~meter~~] fuel grade [~~ethanol meeting the minimum~~
11 ~~specifications by the American Society of Testing and Materials~~
12 ~~standard D-4806, as amended.~~] biofuel meeting the relevant ASTM
13 specifications for the particular fuel.

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

20 2. By amending subsection (f) to (m) to read:

21 "(f) If a qualifying [~~ethanol~~] biofuel production facility
22 or an interest therein is acquired by a taxpayer prior to the



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

12 (g) [~~Once the total nameplate capacities of qualifying~~
13 ~~ethanol production facilities built within the State reaches or~~
14 ~~exceeds a level of forty million gallons per year, credits under~~
15 ~~this section shall not be allowed for new ethanol production~~
16 ~~facilities. If a new facility's production capacity would cause~~
17 ~~the statewide ethanol production capacity to exceed forty~~
18 ~~million gallons per year, only the ethanol production capacity~~
19 ~~that does not exceed the statewide forty million gallon per year~~
20 ~~level shall be eligible for the credit.] Ethanol production
21 facilities shall be eligible for \$12,000,000 of annual credits
22 representing forty million gallons of annual capacity. Other~~



1 biofuels shall be eligible for a combined maximum of \$12,000,000
2 of annual credits representing forty million gallons of credit
3 eligible annual capacity. If ethanol or other biofuel
4 production facilities are built that reach or exceed their
5 maximum eligible credits, no further credits under this section
6 shall be allowed for new ethanol or biofuel production
7 facilities.

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

21 (i) The taxpayer shall provide written notice to the
22 director of taxation and the director of business, economic



1 development, and tourism within thirty days following the start
2 of production. The notice shall include the production start
3 date and expected [~~ethanol~~] biofuel fuel production for the next
4 twenty-four months. Notwithstanding any other law to the
5 contrary, this information shall be available for public
6 inspection and dissemination under chapter 92F.

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

18 (k) Each calendar year during the credit period, the
19 taxpayer shall provide information to the director of business,
20 economic development, and tourism on the [~~number of~~] gallons [~~of~~ ,
21 ~~ethanol~~] and type of biofuel produced and sold during the
22 previous calendar year, how much was sold in Hawaii versus



1 overseas, [~~feedstocks~~] percentage of Hawaii-grown feedstock and
2 other feedstock used for [~~ethanol~~] biofuel production, the
3 number of employees of the facility, and the projected [~~number~~
4 ~~of~~] gallons [~~of ethanol~~] and type of biofuel production for the
5 succeeding year.

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

12 (m) Following each year in which a credit under this
13 section has been claimed, the director of business, economic
14 development, and tourism shall [~~submit a written~~] include in its
15 annual report to the governor and legislature [~~regarding the~~
16 ~~production and sale of ethanol. The report shall include:~~] the
17 following:

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



1 (2) The total number of gallons of [~~ethanol~~] biofuel
2 produced and sold by those facilities and total
3 biofuel sales during the previous year; and

4 (3) The projected number of gallons of [~~ethanol production~~
5 ~~for~~] ethanol expected to be produced in the succeeding
6 year[-] and expected total biofuels sales in the
7 succeeding year."

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

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

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Report Title:

Biofuel Facilities; Income Tax; Tax Credit

Description:

Amends the ethanol facility income tax credit to include other liquid biofuels, and to enable larger facilities to be eligible for the tax incentive.

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