

JAN 21 2010

S.B. NO. 2232

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 feedstocks. The local production of these biofuels could
5 contribute to Hawaii's renewable liquid fuel objectives, reduce
6 negative impacts of oil price volatility on Hawaii, 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 expand the existing ethanol
10 facility tax credit 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 to read as follows:

15 "§235-110.3 ~~[Ethanol]~~ Biofuel facility tax credit. (a)
16 Each year during the credit period, there shall be allowed to
17 each taxpayer subject to the taxes imposed by this chapter, [an



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

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

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

19 (2) The qualifying [~~ethanol~~] biofuel production facility
20 operated at a level of production of at least seventy-
21 five per cent of its nameplate capacity on an
22 annualized basis;



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

5 [~~3~~] (4) The qualifying [ethanol] biofuel production
6 facility is in production on or before January 1,
7 2017; and

8 [~~4~~] (5) No taxpayer that claims the credit under this
9 section shall claim any other tax credit under this
10 chapter for the same taxable year.

11 (b) As used in this section:

12 "Agricultural feedstocks" means oil, fiber, or other
13 materials grown on farms and not previously used. Unused
14 byproducts of food, feed, fiber, or other products, or
15 electricity production, may be considered agricultural
16 feedstocks. Used cooking oils, or industrial or municipal
17 wastes, shall not be considered agricultural feedstocks.

18 "Biofuel" means ethanol, biodiesel, diesel, jet fuel, or
19 other liquid fuel meeting the relevant fuel specifications of
20 ASTM International (formerly ASTM, the American Society for
21 Testing and Materials) and produced from agricultural
22 feedstocks.



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 4654 (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.

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

17 "Qualifying [~~ethanol~~] biofuel production" means [~~ethanol~~]
18 biofuel produced from [~~renewable, organic~~] agricultural
19 feedstocks [~~, or waste materials, including municipal solid~~
20 ~~waste~~]. All qualifying production shall be fermented,
21 distilled, gasified, or produced by physical chemical conversion



1 methods such as reformation and catalytic conversion and
2 dehydrated at the facility.

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

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

14 (d) The department of business, economic development, and
15 tourism shall:

- 16 (1) Maintain records of the total amount of investment
17 made by each taxpayer in a facility;
- 18 (2) Verify the amount of the qualifying investment;
- 19 (3) Total all qualifying and cumulative investments that
20 the department of business, economic development, and
21 tourism certifies; and



1 (4) Certify the total amount of the tax credit for each
2 taxable year and the cumulative amount of the tax
3 credit during the credit period.

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

15 If in any year, the annual amount of certified credits
16 reaches \$12,000,000 in the aggregate, the department of
17 business, economic development, and tourism shall immediately
18 discontinue certifying credits and notify the department of
19 taxation. In no instance shall the total amount of certified
20 credits exceed \$12,000,000 per year. Notwithstanding any other
21 law to the contrary, this information shall be available for
22 public inspection and dissemination under chapter 92F.



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

11 (f) If a qualifying [~~ethanol~~] biofuel production facility
12 or an interest therein is acquired by a taxpayer prior to the
13 expiration of the credit period, the credit allowable under
14 subsection (a) for any period after such acquisition shall be
15 equal to the credit that would have been allowable under
16 subsection (a) to the prior taxpayer had the taxpayer not
17 disposed of the interest. If an interest is disposed of during
18 any year for which the credit is allowable under subsection (a),
19 the credit shall be allowable between the parties on the basis
20 of the number of days during the year the interest was held by
21 each taxpayer. In no case shall the credit allowed under



1 subsection (a) be allowed after the expiration of the credit
2 period.

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

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



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

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

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



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

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

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



- 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 by those facilities during the
6 previous year; and
- 7 (3) The projected number of gallons of [~~ethanol production~~
8 ~~for~~] biofuel expected to be produced in the succeeding
9 year.

10 [~~(n)~~] (m) The director of taxation shall prepare forms
11 that may be necessary to claim a credit under this section.
12 Notwithstanding the department of business, economic
13 development, and tourism's certification authority under this
14 section, the director may audit and adjust certification to
15 conform to the facts. The director may also require the
16 taxpayer to furnish information to ascertain the validity of the
17 claim for credit made under this section and may adopt rules
18 necessary to effectuate the purposes of this section pursuant to
19 chapter 91."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 4. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2009.
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Report Title:

Renewable Fuels; Biofuels; Tax Credit

Description:

Expands the existing ethanol facility tax credit to include other liquid biofuels.

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