

S.B. NO. 2672

JAN 25 2010

A BILL FOR AN ACT

RELATING TO BIOFUELS.

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

1 SECTION 1. The purpose of this Act is to modify the
2 existing ethanol facility tax credit to include other liquid
3 biofuels and to remove the current cap of 40,000,000 gallons per
4 year applicable to the ethanol facility tax credit, but retain
5 the per production facility capacity cap of 15,000,000 gallons.

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 if the nameplate

S.B. NO. 2672

1 capacity is greater than five hundred thousand [~~but less than~~
2 ~~fifteen million~~] gallons. A taxpayer may claim this credit for
3 the first fifteen million gallons of capacity of each qualifying
4 ~~[ethanol]~~ biofuel production facility; provided that:

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

11 (2) The qualifying ~~[ethanol]~~ biofuel production facility
12 operated at a level of production of at least seventy-
13 five per cent of its nameplate capacity on an
14 annualized basis;

15 (3) The qualifying biofuel production facility is located
16 within the State and uses locally grown agricultural
17 feedstock for at least seventy-five per cent of its
18 production output;

19 ~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ biofuel production
20 facility is in production on or before January 1,
21 2017; and

1 ~~[(4)]~~ (5) No taxpayer that claims the credit under this
2 section shall claim any other tax credit under this
3 chapter for the same taxable year.

4 (b) As used in this section:

5 "Agricultural feedstocks" means organic feedstock oil,
6 fiber, or other organic materials not previously used. Unused
7 byproducts of food, feed, fiber, or other products, or
8 electricity production, may be considered agricultural
9 feedstocks. Used cooking oils, industrial waste, or municipal
10 waste shall not be considered agricultural feedstocks.

11 "Biofuel" means liquid or gaseous fuels as defined in
12 section 269-91, Hawaii Revised Statutes, that meet the
13 applicable fuel specifications of the American Society for
14 Testing and Materials International.

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

20 "Investment" means a nonrefundable capital expenditure
21 related to the development and construction of any qualifying
22 ~~[ethanol]~~ biofuel production facility, including processing

1 equipment, waste treatment systems, pipelines, and liquid
2 storage tanks at the facility or remote locations, including
3 expansions or modifications. Capital expenditures shall be
4 those direct and certain indirect costs determined in accordance
5 with section 263A (with respect to capitalization and inclusion
6 in inventory costs of certain expenses) of the Internal Revenue
7 Code, relating to uniform capitalization costs, but shall not
8 include expenses for compensation paid to officers of the
9 taxpayer, pension and other related costs, rent for land, the
10 costs of repairing and maintaining the equipment or facilities,
11 training of operating personnel, utility costs during
12 construction, property taxes, costs relating to negotiation of
13 commercial agreements not related to development or
14 construction, or service costs that can be identified
15 specifically with a service department or function or that
16 directly benefit or are incurred by reason of a service
17 department or function. For the purposes of determining a
18 capital expenditure under this section, the provisions of
19 section 263A of the Internal Revenue Code shall apply as it read
20 on March 1, 2004. For purposes of this section, investment
21 excludes land costs and includes any investment for which the
22 taxpayer is at risk, as that term is used in section 465 (with

1 respect to deductions limited to amount at risk) of the Internal
2 Revenue Code [~~with respect to deductions limited to amount at~~
3 ~~risk)~~].

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

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

9 "Qualifying [~~ethanol~~] biofuel production" means [~~ethanol~~]
10 biofuel produced from renewable, organic feedstocks, or waste
11 materials, including municipal solid waste. All qualifying
12 production shall be fermented, distilled, gasified, or produced
13 by physical chemical conversion methods such as reformation and
14 catalytic conversion and dehydrated at the facility.

15 "Qualifying [~~ethanol~~] biofuel production facility" or
16 "facility" means a facility located in Hawaii [~~which~~] that
17 produces [~~motor~~] fuel grade [~~ethanol meeting the minimum~~
18 ~~specifications by the American Society of Testing and Materials~~
19 ~~standard D 4806, as amended.~~] biofuel.

20 (c) In the case of a taxable year in which the cumulative
21 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]
22 biofuel production facility exceeds the cumulative investment

S.B. NO. 2672

1 made in the qualifying [~~ethanol~~] biofuel production facility by
2 the taxpayer, only that portion that does not exceed the
3 cumulative investment shall be claimed and allowed.

4 (d) The department of business, economic development, and
5 tourism shall:

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

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

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

12 (4) Certify the total amount of the tax credit for each
13 taxable year and the cumulative amount of the tax
14 credit during the credit period.

15 Upon each determination, the department of business,
16 economic development, and tourism shall issue a certificate to
17 the taxpayer verifying the qualifying investment amounts, the
18 credit amount certified for each taxable year, and the
19 cumulative amount of the tax credit during the credit period.
20 The taxpayer shall file the certificate with the taxpayer's tax
21 return with the department of taxation. Notwithstanding the
22 department of business, economic development, and tourism's

S.B. NO. 2672

1 certification authority under this section, the director of
2 taxation may audit and adjust certification to conform to the
3 facts.

4 If in any year, the annual amount of certified credits
5 reaches \$12,000,000 in the aggregate, the department of
6 business, economic development, and tourism shall immediately
7 discontinue certifying credits and notify the department of
8 taxation. In no instance shall the total amount of certified
9 credits exceed \$12,000,000 per year. Notwithstanding any other
10 law to the contrary, this information shall be available for
11 public inspection and dissemination under chapter 92F.

12 (e) If the credit under this section exceeds the
13 taxpayer's income tax liability, the excess of credit over
14 liability shall be refunded to the taxpayer; provided that no
15 refunds or payments on account of the tax credit allowed by this
16 section shall be made for amounts less than \$1. All claims for
17 a credit under this section [~~must~~] shall be properly filed on or
18 before the end of the twelfth month following the close of the
19 taxable year for which the credit may be claimed. Failure to
20 comply with the foregoing provision shall constitute a waiver of
21 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 acquisition shall be
5 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 production facilities built within the State reaches or~~
16 ~~exceeds a level of forty million gallons per year, credits under~~
17 ~~this section shall not be allowed for new ethanol production~~
18 ~~facilities. If a new facility's production capacity would cause~~
19 ~~the statewide ethanol production capacity to exceed forty~~
20 ~~million gallons per year, only the ethanol production capacity~~
21 ~~that does not exceed the statewide forty million gallon per year~~
22 ~~level shall be eligible for the credit.]~~

S.B. NO. 2672

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

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

S.B. NO. 2672

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

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

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

7 ~~[(m)]~~ (l) 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]~~ include in its
10 annual report to the governor and legislature ~~[regarding the~~
11 ~~production and sale of ethanol. The report shall include:]~~ the
12 following:

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

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

19 (3) The projected number of gallons of ~~[ethanol production~~
20 ~~for]~~ biofuel expected to be produced in the succeeding
21 year.

S.B. NO. 2672

1 ~~[(n)]~~ (m) The director of taxation shall prepare forms
2 that may be necessary to claim a credit under this section.
3 Notwithstanding the department of business, economic
4 development, and tourism's certification authority under this
5 section, the director may audit and adjust certification to
6 conform to the facts. The director may also require the
7 taxpayer to furnish information to ascertain the validity of the
8 claim for credit made under this section and may adopt rules
9 necessary to effectuate the purposes of this section pursuant to
10 chapter 91."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

15

INTRODUCED BY:



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16

BY REQUEST

Report Title:

Biofuel Facility Incentive

Description:

Modifies the existing tax credit for ethanol production facilities to apply to other biofuel production facilities using agricultural feedstocks and removes the statewide production cap of 40,000,000 gallons per year, but retains the per-facility tax credit limit of 15,000,000 gallons of production capacity.

SB. NO. 2672

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO BIOFUELS.

PURPOSE: To modify the existing ethanol facility tax credit to include other liquid biofuels and to enable larger facilities to be eligible for the tax incentive for the first 15,000,000 gallons per year of production capacity.

MEANS: Amend section 235-110.3, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Fuels other than ethanol can help Hawaii to increase its use of non-fossil liquid fuels, particularly for transportation purposes. Green diesel, biodiesel, and biojet fuels are examples of other liquid fuels that could be produced in Hawaii from locally grown feedstocks.

This measure would expand existing tax credits that currently apply only to Hawaii facilities that can produce ethanol and allow use of those tax credits by investors in facilities of all types of liquid biofuels. This measure also removes the existing cap that suspended the tax credit when ethanol production reached a capacity of 40,000,000 gallons per year.

Impact on the public: As Hawaii moves aggressively to expand its portfolio of renewable energy projects to meet the goals set forth in the Hawaii Clean Energy Initiative, current statutory incentives should be broadened so that the public has a wide range of renewable fuel sources to meet our local energy needs.

Impact on the department and other agencies: The Department of Business, Economic Development, and Tourism will be responsible

for certifying whether a biofuel facility qualifies for the tax credits and shall maintain records of and verify the qualifying and cumulative investments in qualifying facilities.

GENERAL FUND: \$12,000,000 per year tax credit cap already set in section 235-110.3, Hawaii Revised Statutes.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-120 SI.

OTHER AFFECTED
AGENCIES: Department of Taxation and Department of Agriculture.

EFFECTIVE DATE: Upon approval.