

JAN 21 2011

S.B. NO. 772

A BILL FOR AN ACT

RELATING TO BIOFUEL FACILITIES.

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

1 SECTION 1. Senate Concurrent Resolution No. 132, S.D. 1
2 (2009), established a task force to determine the economic
3 contributions of the construction industry in Hawaii and to
4 develop a series of proposals for state actions to preserve and
5 create new jobs in the local construction industry. This Act
6 implements one of the task force's proposals in conjunction with
7 the Abercrombie administration's support for state actions to
8 create new jobs in Hawaii's construction industry.

9 In addition, in 2010, the senate committee on economic
10 development and technology and the house committee on economic
11 revitalization, business, and military affairs convened an
12 informal small business discussion group to address the most
13 critical issues facing the small business sectors within
14 Hawaii's economy. Representatives from the Chamber of Commerce
15 of Hawaii, construction and trades industries, community
16 nonprofits, the agricultural sector, food and restaurant
17 industries, retailing, the science and technology sector, the
18 commercial transportation industry, and interested stakeholders



1 developed a package of bills that address the most pressing
2 problems facing Hawaii's small business community.

3 The purpose of this Act is to support the findings of the
4 small business working group and the recommendations proposed by
5 the construction industry task force to enhance Hawaii's
6 economic vitality through renewable energy resources that are
7 self-sufficient, affordable, and produced locally.

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

10 "§235-110.3 ~~[Ethanol]~~ Biofuel facility tax credit. (a)

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

17 For each [~~qualified ethanol~~] qualifying biofuel production
18 facility, the annual dollar amount of the [~~ethanol~~] biofuel
19 facility tax credit during the eight-year period shall be equal
20 to thirty per cent of its nameplate capacity [~~if the nameplate~~
21 ~~capacity is greater than five hundred thousand but less than~~] up
22 to the first fifteen million gallons[-] of production. 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
8 construction of the facility and the 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~~] commences production on or after
19 January 1, 2013, and before January 1, [2017,] 2021;
20 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 "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. Capital expenditures shall be
16 those direct and certain indirect costs determined in accordance
17 with section 263A (with respect to capitalization and inclusion
18 in inventory costs of certain expenses) of the Internal Revenue
19 Code, relating to uniform capitalization costs, but shall not
20 include expenses for compensation paid to officers of the
21 taxpayer, pension and other related costs, rent for land, the
22 costs of repairing and maintaining the equipment or facilities,



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

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



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

3 "Qualifying [~~ethanol~~] biofuel production" means ethanol,
4 biodiesel, biobutanol, bio-based diesel, bio-based gasoline, or
5 bio-based jet fuel produced from renewable [~~organic~~]
6 feedstocks, or waste materials, including fats, oils, grease,
7 algae, and municipal solid waste. All qualifying production
8 shall be fermented, distilled, gasified, or produced by physical
9 chemical conversion methods, such as reformation and catalytic
10 conversion, and dehydrated at the facility.

11 "Qualifying [~~ethanol~~] biofuel production facility" or
12 "facility" means a facility located in Hawaii which, if intended
13 for transport vehicles, produces [~~motor~~] fuel grade [~~ethanol~~]
14 biofuel meeting the minimum specifications by the American
15 Society of Testing and Materials standard D-4806 [~~7~~] or D-6751,
16 as amended.

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



1 (d) The department of business, economic development, and
2 tourism shall:

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

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

6 (3) Total all qualifying and cumulative investments that
7 the department of business, economic development, and
8 tourism certifies; and

9 (4) Certify the total amount of the tax credit for each
10 taxable year and the cumulative amount of the tax
11 credit during the credit period.

12 Upon each determination, the department of business,
13 economic development, and tourism shall issue a certificate to
14 the taxpayer verifying the qualifying investment amounts, the
15 credit amount certified for each taxable year, and the
16 cumulative amount of the tax credit during the credit period.

17 The taxpayer shall file the certificate with the taxpayer's tax
18 return with the department of taxation. Notwithstanding the
19 department of business, economic development, and tourism's
20 certification authority under this section, the director of
21 taxation may audit and adjust certification to conform to the
22 facts.



1 If in any year, the annual amount of certified credits
2 reaches [~~\$12,000,000~~] \$20,000,000 in the aggregate, the
3 department of business, economic development, and tourism shall
4 immediately discontinue certifying credits and notify the
5 department of taxation. In no instance shall the total amount
6 of certified credits exceed [~~\$12,000,000~~] \$20,000,000 per year.
7 Notwithstanding any other law to the contrary, this information
8 shall be available for public inspection and dissemination under
9 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 [~~sueh~~] 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 production facilities built within the State reaches or~~
13 ~~exceeds a level of forty million gallons per year, credits under~~
14 ~~this section shall not be allowed for new ethanol production~~
15 ~~facilities. If a new facility's production capacity would cause~~
16 ~~the statewide ethanol production capacity to exceed forty~~
17 ~~million gallons per year, only the ethanol production capacity~~
18 ~~that does not exceed the statewide forty million gallon per year~~
19 ~~level shall be eligible for the credit.]~~

20 ~~[(h)]~~ (g) Prior to construction of any new qualifying
21 ~~[ethanol]~~ biofuel production facility, the taxpayer shall
22 provide written notice of the taxpayer's intention to begin



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

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

19 [-(j)] (i) If a qualifying [~~ethanol~~] biofuel production
20 facility fails to achieve an average annual production of at
21 least seventy-five per cent of its nameplate capacity for two
22 consecutive years, the stated capacity of that facility may be



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

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

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



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

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

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

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

13 [~~n~~] (m) The director of taxation shall prepare forms
14 that may be necessary to claim a credit under this section.

15 Notwithstanding the department of business, economic
16 development, and tourism's certification authority under this
17 section, the director may audit and adjust certification to
18 conform to the facts. The director may also require the
19 taxpayer to furnish information to ascertain the validity of the
20 claim for credit made under this section and may adopt rules
21 necessary to effectuate the purposes of this section pursuant to
22 chapter 91."



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

3 SECTION 4. This Act shall take effect on January 1, 2013,
4 and shall apply to taxable years beginning after December 31,
5 2012.

6

INTRODUCED BY:

Carol Fuhrmann

Arvid Y. Lee

Annabel Lee

Erzanne Chun Aalund

Melanie J. Kim
Resaly H. Park

[Signature]



Report Title:

Construction Task Force (2010); Biofuel Facilities; Nameplate Capacity; Certified Credits

Description:

Expands the facility tax credit to include various biofuels; amends the definition of nameplate capacity; requires a qualifying facility to be located within the State and to utilize locally grown feedstock for at least 75% of its production output; increases the amount of certified credits from \$12 million to \$20 million; and removes the 40 million gallon production per year cap.

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

