
A BILL FOR AN ACT

RELATING TO BIOFUEL FACILITIES.

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

1 SECTION 1. The legislature finds that green diesel,
2 biodiesel, biojet, and ethanol are examples of fuels that could
3 be produced in Hawaii from locally grown feedstock. The local
4 production of these biofuels could contribute to Hawaii's
5 renewable energy objectives, reduce the impact of world oil
6 price volatility, provide a measure of energy security, provide
7 economic diversification, encourage increased agricultural
8 production, and circulate Hawaii's energy expenditures within
9 Hawaii's economy.

10 The purpose of this Act is to expand the existing ethanol
11 facility tax incentive to include other liquid biofuels
12 generated from agricultural feedstocks.

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

15 "**§235-110.3** ~~[Ethanol]~~ **Biofuel production facility tax**
16 **credit.** (a) ~~[Each year during the credit period,]~~ Beginning
17 January 1, 2014, there shall be allowed to each taxpayer subject
18 to the taxes imposed by this chapter, ~~[an ethanol]~~ a biofuel



1 production facility tax credit that shall be applied to the
2 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 production facility tax credit during the eight-year period, for
8 the biofuel production facility, shall be equal to thirty per
9 cent of its annual nameplate capacity if the facility's
10 nameplate capacity is greater than five hundred thousand [~~but~~
11 ~~less than fifteen million~~] gallons. [A] For each qualifying
12 biofuel production facility, a taxpayer may claim this credit
13 [~~for each qualifying ethanol 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 uses
4 agricultural feedstock for at least seventy-five per
5 cent of its production output;

6 ~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ biofuel production
7 facility is in production on or before January 1,
8 2017; and

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

12 (b) As used in this section:

13 "Agricultural feedstock" includes but is not limited to:

14 (1) Sugar cane, byproducts from sugar cane, sweet sorghum,
15 sorghum, sugar beets, woody biomass, grasses,
16 vegetable or seed oil, fiber, and other materials
17 grown on agricultural lands or other lands approved by
18 the State for the harvesting of biomass; and

19 (2) Unused byproducts of food, feed, fiber, or other
20 products;

21 provided that used cooking oils shall not be considered
22 agricultural feedstock.



1 "Biofuel" means ethanol, biodiesel, renewable diesel,
2 renewable jet fuel, or any other liquid fuel that meets the
3 relevant fuel specifications of ASTM International and is
4 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, boilers, turbines, generators, waste treatment
14 systems, pipelines, and liquid storage tanks at the facility or
15 remote locations, including expansions or modifications[-];
16 provided that the term "investment" shall include direct capital
17 expenditures in agricultural infrastructure, including
18 irrigation and drainage systems, land clearing and leveling,
19 establishment of crops, planting, and cultivation where the
20 biofuel production facility and agricultural operations are
21 integrated. Capital expenditures shall be those direct and
22 certain indirect costs determined in accordance with section



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



1 "Nameplate capacity" means the qualifying ~~[ethanol]~~ biofuel
2 production facility's net production design capacity, in gallons
3 of ~~[motor fuel grade ethanol]~~ biofuel per year.

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

6 "Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~
7 biofuel produced or generated from ~~[renewable, organic~~
8 ~~feedstocks, or waste materials, including municipal solid~~
9 ~~waste.]~~ agricultural feedstock. All qualifying production shall
10 be fermented, distilled, transesterified, gasified, pyrolyzed,
11 combusted, or produced by other physical, chemical, biochemical,
12 or thermochemical conversion methods ~~[such as reformation and~~
13 ~~catalytic conversion and dehydrated]~~ at the facility.

14 "Qualifying ~~[ethanol]~~ biofuel production facility" or
15 "facility" means a facility located in Hawaii ~~[which]~~ that
16 produces ~~[motor]~~ or generates, directly from agricultural
17 feedstock, fuel grade ~~[ethanol meeting the minimum~~
18 ~~specifications by the American Society of Testing and Materials~~
19 ~~standard D-4806, as amended.]~~ biofuel, meeting the relevant ASTM
20 International specifications for the particular fuel.

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



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

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

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

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

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

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

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

21 The taxpayer shall file the certificate with the taxpayer's tax
22 return with the department of taxation. Notwithstanding the



1 department of business, economic development, and tourism's
2 certification authority under this section, the director of
3 taxation may audit and adjust certification to conform to the
4 facts.

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

13 (e) If the credit under this section exceeds the
14 taxpayer's income tax liability, the excess of credit over
15 liability shall be refunded to the taxpayer; provided that no
16 refunds or payments on account of the tax credit allowed by this
17 section shall be made for amounts less than \$1. All claims for
18 a credit under this section must be properly filed on or before
19 the end of the twelfth month following the close of the taxable
20 year for which the credit may be claimed. Failure to comply
21 with the foregoing provision shall constitute a waiver of the
22 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.~~



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-fuel]~~ biofuel 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.



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



1 ~~[number of]~~ gallons of ~~[ethanol]~~ biofuel production for the
2 succeeding year.

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

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

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

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



1 (3) The projected number of gallons [~~of ethanol production~~
2 ~~for~~] of biofuel expected to be produced in the
3 succeeding year[-]; and

4 (4) The total number of employees employed by each
5 facility, including those employed in agricultural
6 operations.

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

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2030, and
20 shall apply to taxable years beginning after December 31, 2013.



Report Title:

Biofuel Production Facilities; Nameplate Capacity; Certified Credits

Description:

Amends the existing ethanol facility income tax credit to include other biofuel production and to enable larger facilities to be eligible for the tax incentive. Effective July 1, 2030.
(SB772 HD2)

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