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## 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, 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 liquid fuel objectives; reduce the impact of world oil  
6 price volatility; provide a measure of energy security; provide  
7 economic diversification; and circulate Hawaii's energy  
8 expenditures within Hawaii's economy.

9           The purpose of this Act is to expand 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 the incentive or the fuel cap per  
13 facility.

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

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



1           "§235-110.3 [~~Ethanol~~] Biofuel facility tax credit. (a)  
2 Each year during the credit period, there shall be allowed to  
3 each taxpayer subject to the taxes imposed by this chapter, [~~an~~  
4 ~~ethanol~~] a biofuel facility tax credit that shall be applied to  
5 the taxpayer's net income tax liability, if any, imposed by this  
6 chapter for the taxable year in which the credit is properly  
7 claimed.

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

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



1           (2) ~~[The qualifying ethanol production facility operated~~  
2           ~~at a level of production of at least seventy-five per~~  
3           ~~cent of its nameplate capacity on an annualized~~  
4           ~~basis.]~~ The qualifying biofuel production facility  
5           uses agricultural feedstock for at least seventy-five  
6           per cent of its production output;

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

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

12           (b) As used in this section:

13           "Agricultural feedstock" includes but is not limited to  
14           sugar cane, byproducts from sugar cane, sweet sorghum, sugar  
15           beets, biomass, oil, fiber, other materials grown on farms that  
16           were not previously used for other purposes, and unused  
17           byproducts of food, feed, fiber, or other products, or  
18           electricity production. The term shall include used cooking  
19           oils.

20           "Biofuel" means ethanol, biodiesel, diesel, jet fuel, or  
21           any other liquid fuel that meets the relevant fuel  
22           specifications of the American Society for Testing and Materials



1 International or specifications for electrical generation and is  
2 produced from agricultural feedstock.

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

8 "Investment" means a nonrefundable capital expenditure  
9 related to the development and construction of any qualifying  
10 [~~ethanol~~] biofuel production facility, including processing  
11 equipment, waste treatment systems, pipelines, and liquid  
12 storage tanks at the facility or remote locations, including  
13 expansions or modifications[-]; provided that the term shall  
14 include direct capital expenditures in agricultural  
15 infrastructure, including irrigation and drainage systems, land  
16 clearing and leveling, establishment of crops, planting, and  
17 cultivation where the biofuel production facility and  
18 agricultural operations are integrated. Capital expenditures  
19 shall be those direct and certain indirect costs determined in  
20 accordance with section 263A of the Internal Revenue Code,  
21 relating to uniform capitalization costs, but shall not include  
22 expenses for compensation paid to officers of the taxpayer,



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

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

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

21 "Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~  
 22 biofuel produced from ~~[renewable, organic feedstocks, or waste~~



1 ~~materials, including municipal solid waste.]~~ locally grown or  
 2 locally sourced agricultural feedstock. All qualifying  
 3 production shall be fermented, distilled, transesterified,  
 4 gasified, pyrolized, or produced by other physical, chemical,  
 5 biochemical, or thermochemical conversion methods [~~such as~~  
 6 ~~reformation and catalytic conversion and dehydrated at the~~  
 7 ~~facility].~~

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

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

22 2. By amending subsections (f) to (m) to read:



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~~] biofuel production  
15 capacities of qualifying [~~ethanol~~] biofuel production facilities  
16 built within the State reaches or exceeds a level of forty  
17 million gallons per year, credits under this section shall not  
18 be allowed for new [~~ethanol~~] biofuel production facilities. If  
19 a new facility's production capacity would cause the statewide  
20 [~~ethanol~~] biofuel production capacity to exceed forty million  
21 gallons per year, only the [~~ethanol~~] biofuel production capacity



1 that does not exceed the statewide forty million gallon per year  
2 level shall be eligible for the credit.

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

16 (i) The taxpayer shall provide written notice to the  
17 director of taxation and the director of business, economic  
18 development, and tourism within thirty days following the start  
19 of production. The notice shall include the production start  
20 date and expected [~~ethanol~~] biofuel fuel production for the next  
21 twenty-four months. Notwithstanding any other law to the





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

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

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

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

3       [~~(l)~~] (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 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 its  
12 annual report to the governor and legislature [~~regarding the~~  
13 ~~production and sale of ethanol. The report shall include:]~~ the  
14 following:

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

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

21       (3) The projected [~~number of~~] gallons of [~~ethanol~~  
22 ~~production for~~] biofuel expected to be produced in the



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1 succeeding year[-] and expected total biofuels sales  
2 in the succeeding year."

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

5 SECTION 4. This Act shall take effect upon its approval  
6 and shall apply to taxable years beginning after December 31,  
7 2010.

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**Report Title:**

Biofuel Facilities; Income Tax; Tax Credit

**Description:**

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

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

