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# 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  
4 legislature also finds that feedstock produced in Hawaii can be  
5 used directly as a biofuel to produce electricity in Hawaii.  
6 The local production of these biofuels could contribute to  
7 Hawaii's renewable energy objectives, reduce the impact of world  
8 oil price volatility, provide a measure of energy security,  
9 provide economic diversification, encourage increased  
10 agricultural production, and circulate Hawaii's energy  
11 expenditures within Hawaii's economy.

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

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

17           "**§235-110.3** [~~Ethanol~~] Bioenergy production facility tax  
18 **credit.** (a) [~~Each year during the credit period,~~] Beginning



1 January 1, 2014, there shall be allowed to each taxpayer subject  
2 to the taxes imposed by this chapter, [~~an ethanol~~] a bioenergy  
3 production facility tax credit that shall be applied to the  
4 taxpayer's net income tax liability, if any, imposed by this  
5 chapter for the taxable year in which the credit is properly  
6 claimed.

7 For each [~~qualified ethanol~~] qualifying bioenergy  
8 production facility, the annual dollar amount of the [~~ethanol~~]  
9 bioenergy production facility tax credit during the eight-year  
10 period, for the biofuel production facility, shall be equal to  
11 thirty per cent of its annual nameplate capacity if the  
12 facility's nameplate capacity is greater than five hundred  
13 thousand [~~but less than fifteen million~~] gallons[-A], or, for  
14 an electricity generating facility, shall be equal to 3 cents  
15 per kilowatt hour of the facility's annual nameplate capacity if  
16 the facility's annual nameplate capacity is greater than five  
17 million kilowatt hours. For each qualifying bioenergy  
18 production facility, a taxpayer may claim this credit [~~for each~~  
19 qualifying ethanol facility]; provided that:

20 (1) The claim for this credit by any taxpayer of a  
21 qualifying [~~ethanol~~] bioenergy production facility  
22 shall not exceed one hundred per cent of the total of



1 all investments made by the taxpayer in the qualifying  
2 ~~[ethanol]~~ bioenergy production facility ~~[during the~~  
3 ~~credit period]~~;

4 (2) The qualifying ~~[ethanol]~~ bioenergy production facility  
5 operated at a level of production of at least seventy-  
6 five per cent of its nameplate capacity on an  
7 annualized basis;

8 (3) The qualifying bioenergy production facility uses  
9 agricultural feedstock for at least seventy-five per  
10 cent of its production output;

11 ~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ bioenergy production  
12 facility is in production on or before January 1,  
13 2017; ~~[and]~~

14 (5) No taxpayer that claims a credit under this section  
15 may claim a tax credit based on both biofuel  
16 production capacity and electricity generating  
17 capacity for the same facility; and

18 ~~[(4)]~~ (6) No taxpayer that claims the credit under this  
19 section shall claim any other tax credit under this  
20 chapter for the same taxable year.

21 (b) As used in this section:

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



1       (1) Sugar cane, byproducts from sugar cane, sweet sorghum,  
2       sorghum, sugar beets, woody biomass, grasses,  
3       vegetable or seed oil, fiber, and other materials  
4       grown on agricultural lands or other lands approved by  
5       the State for harvesting of biomass; and  
6       (2) Unused byproducts of food, feed, fiber, or other  
7       products or for electricity generation;  
8       provided that used cooking oils shall not be considered  
9       agricultural feedstock.

10       "Bioenergy" means biofuel produced from or electricity  
11       generated using agricultural feedstock.

12       "Biofuel" means ethanol, biodiesel, renewable diesel,  
13       renewable jet fuel, or any other liquid fuel that meets the  
14       relevant fuel specifications of the American Society for Testing  
15       and Materials International and is produced from agricultural  
16       feedstock.

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



1 "Investment" means a nonrefundable capital expenditure  
2 related to the development and construction of any qualifying  
3 ~~[ethanol]~~ bioenergy production facility, including processing  
4 equipment, boilers, turbines, generators, waste treatment  
5 systems, pipelines, and liquid storage tanks at the facility or  
6 remote locations, including expansions or modifications[-];  
7 provided that the term "investment" shall include direct capital  
8 expenditures in agricultural infrastructure, including  
9 irrigation and drainage systems, land clearing and leveling,  
10 establishment of crops, planting, and cultivation where the  
11 bioenergy production facility and agricultural operations are  
12 integrated. Capital expenditures shall be those direct and  
13 certain indirect costs determined in accordance with section  
14 263A of the Internal Revenue Code, relating to uniform  
15 capitalization costs, and utility costs incurred during  
16 construction that are capitalized and not expensed, but shall  
17 not include expenses for compensation paid to officers of the  
18 taxpayer, pension and other related costs, rent for land, the  
19 costs of repairing and maintaining the equipment or facilities,  
20 training of operating personnel, ~~[utility costs during~~  
21 ~~construction,~~] property taxes, costs relating to negotiation of  
22 commercial agreements not related to development or



1 construction, or service costs that can be identified  
2 specifically with a service department or function or that  
3 directly benefit or are incurred by reason of a service  
4 department or function. For the purposes of determining a  
5 capital expenditure under this section, the provisions of  
6 section 263A of the Internal Revenue Code shall apply as it read  
7 on March 1, 2004. For purposes of this section, investment  
8 excludes land costs and includes any investment for which the  
9 taxpayer is at risk, as that term is used in section 465 of the  
10 Internal Revenue Code (with respect to deductions limited to  
11 amount at risk).

12 "Nameplate capacity" means the qualifying [~~ethanol~~]  
13 bioenergy production facility's net production design capacity,  
14 in gallons of [~~motor fuel grade ethanol~~] biofuel or kilowatt  
15 hours of electricity per year.

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

18 "Qualifying [~~ethanol~~] bioenergy production" means [~~ethanol~~]  
19 bioenergy produced or generated from [~~renewable, organic~~  
20 ~~feedstocks, or waste materials, including municipal solid~~  
21 ~~waste.~~] agricultural feedstock. All qualifying production shall  
22 be fermented, distilled, transesterified, gasified, pyrolyzed,



1 combusted, or produced by other physical, chemical, biochemical,  
2 or thermochemical conversion methods [~~such as reformation and~~  
3 ~~catalytic conversion and dehydrated~~] at the facility.

4 "Qualifying [~~ethanol~~] bioenergy production facility" or  
5 "facility" means a facility located in Hawaii [~~which~~] that  
6 produces [~~meter~~] or generates, directly from agricultural  
7 feedstock, fuel grade [~~ethanol meeting the minimum~~  
8 ~~specifications by the American Society of Testing and Materials~~  
9 ~~standard D 4806, as amended.~~] biofuel or electricity, meeting  
10 the relevant American Society for Testing and Materials  
11 International specifications for the particular fuel or other  
12 specifications for electrical production.

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

19 (d) The department of business, economic development, and  
20 tourism shall:

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



- 1           (2) Verify the amount of the qualifying investment;
- 2           (3) Total all qualifying and cumulative investments that
- 3                 the department of business, economic development, and
- 4                 tourism certifies; and
- 5           (4) Certify the total amount of the tax credit for each
- 6                 taxable year and the cumulative amount of the tax
- 7                 credit during the credit period.

8           Upon each determination, the department of business,

9           economic development, and tourism shall issue a certificate to

10           the taxpayer verifying the qualifying investment amounts, the

11           credit amount certified for each taxable year, and the

12           cumulative amount of the tax credit during the credit period.

13           The taxpayer shall file the certificate with the taxpayer's tax

14           return with the department of taxation. Notwithstanding the

15           department of business, economic development, and tourism's

16           certification authority under this section, the director of

17           taxation may audit and adjust certification to conform to the

18           facts.

19           If in any year, the annual amount of certified credits

20           reaches \$12,000,000 in the aggregate, the department of

21           business, economic development, and tourism shall immediately

22           discontinue certifying credits and notify the department of





1 taxation. In no instance shall the total amount of certified  
2 credits exceed \$12,000,000 per year. Notwithstanding any other  
3 law to the contrary, this information shall be available for  
4 public inspection and dissemination under chapter 92F.

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

15 (f) If a qualifying [~~ethanol~~] bioenergy production  
16 facility or an interest therein is acquired by a taxpayer prior  
17 to the expiration of the credit period, the credit allowable  
18 under subsection (a) for any period after such acquisition shall  
19 be equal to the credit that would have been allowable under  
20 subsection (a) to the prior taxpayer had the taxpayer not  
21 disposed of the interest. If an interest is disposed of during  
22 any year for which the credit is allowable under subsection (a),



1 the credit shall be allowable between the parties on the basis  
2 of the number of days during the year the interest was held by  
3 each taxpayer. In no case shall the credit allowed under  
4 subsection (a) be allowed after the expiration of the credit  
5 period.

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

15 ~~(h)]~~ (g) Prior to construction of any new qualifying  
16 ~~[ethanol]~~ bioenergy production facility, the taxpayer shall  
17 provide written notice of the taxpayer's intention to begin  
18 construction of a qualifying ~~[ethanol]~~ bioenergy production  
19 facility. The information shall be provided to the department  
20 of taxation and the department of business, economic  
21 development, and tourism on forms provided by the department of  
22 business, economic development, and tourism, and shall include



1 information on the taxpayer, facility location, facility  
2 production capacity, anticipated production start date, and the  
3 taxpayer's contact information. Notwithstanding any other law  
4 to the contrary, this information shall be available for public  
5 inspection and dissemination under chapter 92F.

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

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



1 shall be available for public inspection and dissemination under  
2 chapter 92F.

3 ~~[(k)]~~ (j) Each calendar year during the credit period, the  
4 taxpayer shall provide information to the director of business,  
5 economic development, and tourism on the ~~[number of]~~ gallons ~~[of~~  
6 ~~ethanol produced]~~ and type of biofuel produced and sold and the  
7 kilowatt hours of electricity generated and sold during the  
8 previous calendar year, how much was sold in Hawaii versus  
9 overseas, ~~[feedstocks]~~ the percentage of Hawaii-grown  
10 agricultural feedstock and other agricultural feedstock used for  
11 ~~[ethanol]~~ bioenergy production, the number of employees of the  
12 facility, and the projected ~~[number of]~~ gallons of ~~[ethanol]~~  
13 biofuel production and kilowatt hours of electricity generation  
14 for the succeeding year.

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

21 ~~[(m)]~~ (l) Following each year in which a credit under this  
22 section has been claimed, the director of business, economic



1 development, and tourism shall [~~submit a written~~] include in its  
2 annual report to the governor and legislature [~~regarding the~~  
3 ~~production and sale of ethanol. The report shall include:~~] the  
4 following:

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

8 (2) The total number of gallons [~~of ethanol produced~~] of  
9 biofuel produced and sold and kilowatt hours generated  
10 and sold by those facilities, and total bioenergy  
11 sales during the previous year; [and]

12 (3) The projected number of gallons [~~of ethanol production~~  
13 ~~for~~] of biofuel expected to be produced and kilowatt  
14 hours of bioenergy expected to be generated in the  
15 succeeding year[-]; and

16 (4) The total number of employees employed by each  
17 facility, including those employed in agricultural  
18 operations.

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

21 Notwithstanding the department of business, economic  
22 development, and tourism's certification authority under this



1 section, the director may audit and adjust certification to  
2 conform to the facts. The director may also require the  
3 taxpayer to furnish information to ascertain the validity of the  
4 claim for credit made under this section and may adopt rules  
5 necessary to effectuate the purposes of this section pursuant to  
6 chapter 91."

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

9 SECTION 4. This Act shall take effect upon its approval  
10 and shall apply to taxable years beginning after December 31,  
11 2013.



**Report Title:**

Bioenergy Production Facilities; Nameplate Capacity; Certified Credits

**Description:**

Amends the existing ethanol facility income tax credit to include other bioenergy production and to enable larger facilities to be eligible for the tax incentive. (SB772 HD1)

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

