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

17 For each ~~[qualified ethanol]~~ qualifying biofuel production
18 facility, the annual dollar amount of the ~~[ethanol]~~ biofuel
19 production facility tax credit during the eight-year period
20 shall be equal to ~~[thirty per cent of its nameplate capacity if~~
21 ~~the nameplate capacity is greater than five hundred thousand but~~
22 ~~less than fifteen million gallons.]~~ _____ per gallon of



1 production. A taxpayer may claim this credit for each
2 qualifying [~~ethanol~~] 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 before
19 January 1, 2017; and

20 [~~4~~] (5) No taxpayer that claims the credit under this
21 section shall claim any other tax credit under this
22 chapter for the same taxable year.



1 (b) As used in this section:

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

7 "Investment" means a nonrefundable capital expenditure
8 related to the development and construction of any qualifying
9 [~~ethanol~~] biofuel production facility, including processing
10 equipment, waste treatment systems, pipelines, and liquid
11 storage tanks at the facility or remote locations, including
12 expansions or modifications. Capital expenditures shall be
13 those direct and certain indirect costs determined in accordance
14 with section 263A (with respect to capitalization and inclusion
15 in inventory costs of certain expenses) of the Internal Revenue
16 Code, relating to uniform capitalization costs, but shall not
17 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 inventory, 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 (with
10 respect to deductions limited to amount at risk) of the Internal
11 Revenue Code [~~(with respect to deductions limited to amount at~~
12 ~~risk)] .~~

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

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 biodiesel, biobutanol, bio-based diesel, bio-based gasoline,



1 bio-based jet fuel, or other bio-based liquid fuels used in the
2 generation of electricity produced from renewable~~[, organic]~~
3 feedstocks, or waste materials, including fats, oils, grease,
4 algae, and municipal solid waste. All qualifying production
5 shall be fermented, distilled, transesterified, gasified,
6 pyrolyzed, or produced by physical chemical, biochemical, or
7 thermochemical conversion methods, such as reformation and
8 catalytic conversion, and dehydrated at the facility.

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

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

21 (d) The department of business, economic development, and
22 tourism shall:



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

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

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

21 If in any year, the annual amount of certified credits
22 reaches [\$12,000,000] \$ _____ in the aggregate, the

1 department of business, economic development, and tourism shall
2 immediately discontinue certifying credits and notify the
3 department of taxation. In no instance shall the total amount
4 of certified credits exceed [~~\$12,000,000~~] \$ _____ per year.
5 Notwithstanding any other law to the contrary, this information
6 shall be available for public inspection and dissemination under
7 chapter 92F.

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

18 (f) If a qualifying [~~ethanol~~] biofuel production facility
19 or an interest therein is acquired by a taxpayer prior to the
20 expiration of the credit period, the credit allowable under
21 subsection (a) for any period after [~~such~~] the acquisition shall
22 be equal to the credit that would have been allowable under



1 subsection (a) to the prior taxpayer had the taxpayer not
2 disposed of the interest. If an interest is disposed of during
3 any year for which the credit is allowable under subsection (a),
4 the credit shall be allowable between the parties on the basis
5 of the number of days during the year the interest was held by
6 each taxpayer. In no case shall the credit allowed under
7 subsection (a) be allowed after the expiration of the credit
8 period.

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

18 ~~(h)]~~ (g) Prior to construction of any new qualifying
19 ~~[ethanol]~~ biofuel production facility, the taxpayer shall
20 provide written notice of the taxpayer's intention to begin
21 construction of a qualifying ~~[ethanol]~~ biofuel production
22 facility. The information shall be provided to the department



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

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

17 [-(j)] (i) If a qualifying [~~ethanol~~] biofuel production
18 facility fails to achieve an average annual production of at
19 least seventy-five per cent of its nameplate capacity for two
20 consecutive years, the stated capacity of that facility may be
21 revised by the director of business, economic development, and
22 tourism to reflect actual production for the purposes of



1 determining [~~statewide production capacity under subsection (g)~~
2 and] allowable credits for that facility under subsection (a).
3 Notwithstanding any other law to the contrary, this information
4 shall be available for public inspection and dissemination under
5 chapter 92F.

6 [~~(k)~~] (j) Each calendar year during the credit period, the
7 taxpayer shall provide information to the director of business,
8 economic development, and tourism on the number of gallons [~~of~~
9 ~~ethanol~~] by type of biofuel produced and sold during the
10 previous calendar year, how much was sold in Hawaii versus
11 overseas, the percentage of Hawaii-grown feedstocks and other
12 feedstocks used for [~~ethanol~~] biofuel production, the number of
13 employees of the facility, and the projected number of gallons
14 of [~~ethanol~~] biofuel production 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~~] biofuel production facility. The cost upon
18 which the tax credit is computed shall be determined at the
19 entity level. Distribution and share of 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 report to the
2 governor and legislature regarding the production and sale of
3 ~~[ethanol.]~~ biofuel. The report shall include:

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

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

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

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

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

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



1 SECTION 4. This Act shall take effect on January 1, 2050,
2 and shall apply to taxable years beginning after December 31,
3 2012.



Report Title:

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

Description:

Expands the ethanol facility tax credit to include various biofuels; renames the tax credit as the biofuel production facility tax credit; changes the determination of the biofuel production facility tax credit from thirty percent of nameplate capacity to an unspecified amount per gallon of production; requires a qualifying facility to be located within the State and to utilize locally grown feedstock for at least seventy-five per cent of its production output; replaces the amount of certified credits from \$12 million with an unspecified amount; amends a reporting requirement by a taxpayer claiming the tax credit; and removes the 40 million gallon production per year cap. Effective 1/1/2050. (SD2)

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

