
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 the State's current
2 ethanol mandate has been insufficient in promoting
3 sustainability and reducing Hawaii's reliance on foreign imports
4 as was originally intended. The legislature also finds that
5 eighty per cent of the 50 million barrels of oil imported at
6 over \$100 per barrel come from foreign sources, which negatively
7 impacts Hawaii's economy.

8 Another solution must be found to increase Hawaii's
9 sustainability and reduce our dependence on foreign imports.
10 Hawaii still has many options for increasing local production of
11 fuel. Green diesel, biodiesel, biojet, and ethanol are examples
12 of fuels that could be produced in Hawaii from locally grown
13 feedstock. The legislature also finds that feedstock produced
14 in Hawaii can be used directly as a biofuel to produce
15 electricity in Hawaii. The local production of these biofuels
16 could contribute to Hawaii's renewable energy objectives, reduce
17 the impact of world oil price volatility, provide a measure of
18 energy security, provide economic diversification, encourage



1 increased agricultural production, and circulate Hawaii's energy
2 expenditures within Hawaii's economy.

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

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

8 "**§235-110.3** ~~[Ethanol]~~ Bioenergy production facility tax
9 **credit.** (a) ~~[Each year during the credit period,]~~ Beginning
10 January 1, 2014, there shall be allowed to each taxpayer subject
11 to the taxes imposed by this chapter, ~~[an ethanol]~~ a bioenergy
12 production facility tax credit that shall be applied to the
13 taxpayer's net income tax liability, if any, imposed by this
14 chapter for the taxable year in which the credit is properly
15 claimed.

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



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1 an electricity generating facility, shall be equal to three
2 cents per kilowatt hour of the facility's annual nameplate
3 capacity if the facility's annual nameplate capacity is greater
4 than five million kilowatt hours. For each qualifying bioenergy
5 production facility, a taxpayer may claim this credit [~~for each~~
6 qualifying ethanol facility]; provided that:

7 (1) The claim for this credit by any taxpayer of a
8 qualifying [~~ethanol~~] bioenergy production facility
9 shall not exceed one hundred per cent of the total of
10 all investments made by the taxpayer in the qualifying
11 [~~ethanol~~] bioenergy production facility [~~during the~~
12 ~~credit period~~];

13 (2) The qualifying [~~ethanol~~] bioenergy production facility
14 operated at a level of production of at least seventy-
15 five per cent of its nameplate capacity on an
16 annualized basis;

17 (3) The qualifying bioenergy production facility uses
18 agricultural feedstock for at least seventy-five per
19 cent of its production output;

20 [~~(3)~~] (4) The qualifying [~~ethanol~~] bioenergy production
21 facility is in production on or before January 1,
22 2017; [~~and~~]



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1 (5) No taxpayer that claims a credit under this section
2 may claim a tax credit based on both biofuel
3 production capacity and electricity generating
4 capacity for the same facility; and

5 [~~4~~] (6) No taxpayer that claims the credit under this
6 section shall claim any other tax credit under this
7 chapter for the same taxable year.

8 (b) As used in this section:

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

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

15 (2) Unused byproducts of food, feed, fiber, or other
16 products for electricity generation;

17 provided that used cooking oils shall not be considered
18 agricultural feedstock.

19 "Bioenergy" means biofuel produced from or electricity
20 generated using agricultural feedstock.

21 "Biofuel" means ethanol, biodiesel, renewable diesel,
22 renewable jet fuel, or any other liquid fuel that meets the



1 relevant fuel specifications of the American Society for Testing
2 and Materials International and is produced from agricultural
3 feedstock.

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

9 "Investment" means a nonrefundable capital expenditure
10 related to the development and construction of any qualifying
11 [~~ethanol~~] bioenergy production facility, including processing
12 equipment, boilers, turbines, generators, waste treatment
13 systems, pipelines, and liquid storage tanks at the facility or
14 remote locations, including expansions or modifications[-];
15 provided that the term "investment" shall include direct capital
16 expenditures in agricultural infrastructure, including
17 irrigation and drainage systems, land clearing and leveling,
18 establishment of crops, planting, and cultivation where the
19 bioenergy production facility and agricultural operations are
20 integrated. Capital expenditures shall be those direct and
21 certain indirect costs determined in accordance with section
22 263A of the Internal Revenue Code, relating to uniform



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

20 "Nameplate capacity" means the qualifying [~~ethanol~~]
21 bioenergy production facility's net production design capacity,



1 in gallons of [~~motor fuel grade ethanol~~] biofuel or kilowatt
2 hours of electricity per year.

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

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

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



1 (c) In the case of a taxable year in which the cumulative
2 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]
3 bioenergy production facility [~~exceeds~~] exceed the cumulative
4 investment made in the qualifying [~~ethanol~~] bioenergy production
5 facility by the taxpayer, only that portion that does not exceed
6 the cumulative investment shall be claimed and allowed.

7 (d) The department of business, economic development, and
8 tourism shall:

- 9 (1) Maintain records of the total amount of investment
10 made by each taxpayer in a facility;
- 11 (2) Verify the amount of the qualifying investment;
- 12 (3) Total all qualifying and cumulative investments that
13 the department of business, economic development, and
14 tourism certifies; and
- 15 (4) Certify the total amount of the tax credit for each
16 taxable year and the cumulative amount of the tax
17 credit during the credit period.

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



1 The taxpayer shall file the certificate with the taxpayer's tax
2 return with the department of taxation. Notwithstanding the
3 department of business, economic development, and tourism's
4 certification authority under this section, the director of
5 taxation may audit and adjust certification to conform to the
6 facts.

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

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



1 with the foregoing provision shall constitute a waiver of the
2 right to claim the credit.

3 (f) If a qualifying [~~ethanol~~] bioenergy production
4 facility or an interest therein is acquired by a taxpayer prior
5 to the expiration of the credit period, the credit allowable
6 under subsection (a) for any period after such acquisition shall
7 be equal to the credit that would have been allowable under
8 subsection (a) to the prior taxpayer had the taxpayer not
9 disposed of the interest. If an interest is disposed of during
10 any year for which the credit is allowable under subsection (a),
11 the credit shall be allowable between the parties on the basis
12 of the number of days during the year the interest was held by
13 each taxpayer. In no case shall the credit allowed under
14 subsection (a) be allowed after the expiration of the credit
15 period.

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



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

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

16 ~~(+)]~~ (h) 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-fuel]~~ bioenergy production for the
21 next 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)]~~ (i) If a qualifying ~~[ethanol]~~ bioenergy production
4 facility fails to achieve an average annual production of at
5 least seventy-five per cent of its nameplate capacity for two
6 consecutive years, the stated capacity of that facility may be
7 revised by the director of business, economic development, and
8 tourism to reflect actual production for the purposes of
9 determining ~~[statewide production capacity under subsection (g)~~
10 ~~and]~~ allowable credits for that facility under subsection (a).
11 Notwithstanding any other law to the contrary, this information
12 shall be available for public inspection and dissemination under
13 chapter 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 produced]~~ and type of biofuel produced and sold and the
18 kilowatt hours of electricity generated and sold during the
19 previous calendar year, how much was sold in Hawaii versus
20 overseas, ~~[feedstocks]~~ the percentage of Hawaii-grown
21 agricultural feedstock and other agricultural feedstock used for
22 ~~[ethanol]~~ bioenergy production, the number of employees of the



1 facility, and the projected ~~[number of]~~ gallons of ~~[ethanol]~~
2 biofuel production and kilowatt hours of electricity generation
3 for the succeeding year.

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

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

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

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



- 1 (3) The projected number of gallons [~~of ethanol production~~
2 ~~for~~] of biofuel expected to be produced and kilowatt
3 hours of bioenergy expected to be generated in
4 ~~[ethanol production for]~~ the succeeding year [-]; and
5 (4) The total number of employees employed by each
6 facility, including those employed in agricultural
7 operations.

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

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

20 SECTION 4. This Act shall take effect upon its approval
21 and shall apply to taxable years beginning after December 31,
22 2013.



INTRODUCED BY:

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JAN 20 2012



H.B. NO. 2210

Report Title:

Biofuel Facilities; Income Tax; Tax Credit

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.

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