
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 to read 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 a 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 three
15 cents per kilowatt hour of the facility's annual nameplate
16 capacity if the facility's annual nameplate capacity is greater
17 than five 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, pyrolized,



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 ~~[(j)]~~ (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 ~~[(j)]~~ (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
15 [~~ethanol production for~~] the 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:

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. (Proposed HD1)

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