
A BILL FOR AN ACT

RELATING TO ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The legislature finds that the intent of the
3 ten per cent ethanol requirement under section 486J-10, Hawaii
4 Revised Statutes, was to provide energy independence from
5 foreign oil, reduce statewide gasoline consumption, and
6 establish industrial plants to produce ethanol locally.

7 The State of Hawaii imports all of its ethanol, along with
8 crude oil, from overseas. Act 257, Session Laws of Hawaii 1997,
9 requires that gasoline sold in the State contain ten per cent
10 ethanol. Despite several planned ethanol plants and an
11 abundance of vacant sugar cane land, no plants have been built.
12 The legislature finds that the intent of Act 257 remains
13 unfulfilled. The legislature further finds that different
14 requirements for diesel fuel may be necessary because gasoline
15 with ethanol or other biofuels is not an equal substitute for
16 biodiesel. The legislature notes that biofuel-blended gasoline
17 is for use in gasoline engines, and biodiesel is for use in
18 diesel engines.



1 The purpose of this part is to create a task force within
2 the department of business, economic development, and tourism to
3 examine potentially changing the existing law requiring ten per
4 cent ethanol fuel content in gasoline to a requirement that each
5 distributor who sells liquid fuels in the State for use in motor
6 vehicles shall ensure that locally-produced biofuels account for
7 at least five per cent by volume of the distributor's annual
8 sales of liquid fuels for motor vehicles; provided that for
9 diesel fuel, sales of no more than five per cent of locally-
10 produced biofuels shall be required.

11 SECTION 2. (a) There shall be established within the
12 department of business, economic development, and tourism a task
13 force on biofuel. The task force shall examine potential
14 changes to the existing law requiring ten per cent ethanol fuel
15 content in gasoline to a requirement that each distributor who
16 sells liquid fuels in the State for use in motor vehicles shall
17 ensure that locally-produced biofuels account for at least five
18 per cent of the distributor's annual sales of liquid fuels for
19 motor vehicles by volume; provided that for diesel fuel, sales
20 of no more than five per cent of locally-produced biofuels shall
21 be required. The task force shall examine locally-produced
22 biofuels that are liquid or gaseous fuels that meet the relevant



1 ASTM International specifications of the latest issue produced
2 from organic sources such as biomass crops; agricultural
3 residues; oil crops, including algae, canola, jatropha, palm,
4 soybean, and sunflower; other agricultural crops; grease and
5 waste cooking oil; food wastes; municipal solid wastes and
6 industrial wastes; and produced animal residues and wastes.

7 (b) The task force shall be composed of:

- 8 (1) A member to be selected by the director of business,
9 economic development, and tourism;
- 10 (2) A member to be selected by the senate president;
- 11 (3) A member to be selected by the speaker of the house of
12 representatives;
- 13 (4) A member from the Hawaii transportation authority;
- 14 (5) A representative of the Hawaii Automobile Dealers
15 Association;
- 16 (6) A representative of Pacific Biodiesel; and
- 17 (7) A representative of a leading producer of biodiesel in
18 Hawaii to be selected by the director of business,
19 economic development, and tourism.

20 (c) The members of the task force shall serve without
21 compensation, but shall be reimbursed for expenses necessary in
22 the performance of their duties.



1 (d) The members of the task force shall select a
2 chairperson from among its members.

3 (e) The task force shall submit to the legislature, no
4 later than twenty days prior to the convening of the regular
5 session of 2015, a final report of its activities, findings, and
6 recommendations for proposed legislation.

7 (f) The task force shall cease to exist on August 1, 2015.

8 PART II

9 SECTION 3. Hawaii is extremely vulnerable to soaring
10 prices or disruptions of its energy imports, which can hinder,
11 cripple, or even devastate the State's economy and the well-
12 being of its residents. As the most isolated land mass on
13 earth, Hawaii imports nearly ninety per cent of its energy. The
14 legislature finds that it is critical for Hawaii to ensure
15 greater energy security by becoming more self-sufficient in its
16 energy supply.

17 The purpose of this part is to:

- 18 (1) Establish a biofuels production tax credit to achieve
19 greater energy security for Hawaii; and
20 (2) Repeal the ethanol facility tax credit.



1 SECTION 4. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§235- Biofuels production tax credit. (a) Each year
5 during the credit period, there shall be allowed to each
6 taxpayer subject to the taxes imposed by this chapter, a
7 biofuels production tax credit that shall be applied to the
8 taxpayer's net income tax liability, if any, imposed by this
9 chapter for the taxable year in which the credit is properly
10 claimed; provided that the taxpayer shall not claim a credit
11 under this section for more than five taxable years.

12 For each taxpayer producing qualifying biofuels, the annual
13 dollar amount of the biofuels production tax credit during the
14 credit period shall be equal to:

15 (1) Thirty cents per gallon of biofuel produced and sold
16 for use in Hawaii for biofuels with energy content
17 equal to or above one hundred fourteen thousand
18 British thermal units per gallon; or

19 (2) Twenty cents per gallon of biofuels produced and sold
20 for use in Hawaii for biofuels with energy content
21 below one hundred fourteen thousand British thermal
22 units per gallon;



1 provided that the taxpayer's production of biofuels is not less
2 than one hundred thousand gallons per year; provided further
3 that the amount of tax credit claimed under this section by a
4 taxpayer shall not exceed \$3,000,000 per taxable year. No other
5 tax credit may be claimed under this chapter for the costs
6 related to qualifying biofuels production that are used to
7 properly claim a tax credit under this section for the taxable
8 year.

9 (b) The department of business, economic development, and
10 tourism shall:

11 (1) Verify the amount and type of biofuels produced and
12 sold, including the purpose for which the fuel was
13 produced;

14 (2) Total all qualifying biofuels production that the
15 department of business, economic development, and
16 tourism certifies for purposes of paragraph (3); and

17 (3) Certify the total amount of the tax credit for each
18 taxable year and the cumulative amount of the tax
19 credit during the credit period.

20 Upon each determination, the department of business, economic
21 development, and tourism shall issue a certificate to the
22 taxpayer verifying the amount of biofuels production, the credit



1 amount certified for each taxable year, and the cumulative
2 amount of the tax credit during the credit period. The taxpayer
3 shall file the certificate with the taxpayer's tax return with
4 the department of taxation. Notwithstanding the department of
5 business, economic development, and tourism's certification
6 authority under this section, the director of taxation may audit
7 and adjust the certification process as is necessary.

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

16 (c) If the credit under this section exceeds the
17 taxpayer's income tax liability, the excess of credit over
18 liability may be used as a credit against the taxpayer's income
19 tax liability in subsequent years until exhausted. All claims
20 for a credit under this section must be properly filed on or
21 before the end of the twelfth month following the close of the
22 taxable year for which the credit may be claimed. Failure to



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

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

15 (e) The taxpayer shall provide written notice to the
16 director of taxation and the director of business, economic
17 development, and tourism within thirty days following the start
18 of production. The notice shall include the production start
19 date and expected biofuels production for the next twelve
20 months. Notwithstanding any other law to the contrary, this
21 information shall be available for public inspection and
22 dissemination under chapter 92F.



1 (f) Each calendar year during the credit period, the
2 taxpayer shall provide information to the director of business,
3 economic development, and tourism on the number of gallons of
4 biofuels produced and sold during the previous calendar year,
5 the type of biofuels, feedstocks used for biofuels production,
6 the number of employees of the facility and each employee's
7 state of residency, and the projected number of gallons of
8 biofuels production for the succeeding year.

9 (g) In the case of a partnership, S corporation, estate,
10 or trust, distribution and share of the tax credit for
11 qualifying biofuels production shall be determined pursuant to
12 section 704(b) (with respect to partner's distributive share) of
13 the Internal Revenue Code.

14 (h) Following each year in which a credit under this
15 section has been claimed, the director of business, economic
16 development, and tourism shall submit a written report to the
17 governor and legislature regarding the production and sale of
18 biofuels. The report shall include:

19 (1) The number, location, and production of qualifying
20 biofuels production facilities in the State;



1 (2) The total number of gallons of biofuels, broken down
2 by type of biofuel, produced and sold during the
3 previous year; and

4 (3) The projected number of gallons of biofuels to be
5 produced for the succeeding year.

6 (i) The director of taxation shall prepare forms that may
7 be necessary to claim a credit under this section. The director
8 of taxation may also require the taxpayer to furnish information
9 to ascertain the validity of the claim for credit made under
10 this section and may adopt rules necessary to effectuate the
11 purposes of this section pursuant to chapter 91.

12 (j) As used in this section:

13 "Biofuels" means liquid fuels produced within the State
14 from renewable feedstocks transported less than one thousand
15 miles from point of origin to the production facility located
16 within the State, including:

17 (1) Methanol, ethanol, or other alcohols;

18 (2) Biodiesel or renewable diesel; and

19 (3) Renewable jet fuel or renewable gasoline.

20 "Credit period" means a maximum period of five years
21 beginning from the first taxable year in which a taxpayer begins



1 biofuels production at a level of at least one hundred thousand
2 gallons of biofuels per year.

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

5 "Renewable feedstocks" means biomass crops; agricultural
6 residues; oil crops, including but not limited to algae, canola,
7 jatropha, palm, soybean and sunflower; other agricultural crops;
8 grease and waste cooking oil; food wastes; municipal solid
9 wastes and industrial wastes; and animal residues and wastes
10 that can be used to generate energy."

11 SECTION 5. Section 235-110.3, Hawaii Revised Statutes, is
12 repealed.

13 [~~"§235-110.3 Ethanol facility tax credit. (a) Each year~~
14 ~~during the credit period, there shall be allowed to each~~
15 ~~taxpayer subject to the taxes imposed by this chapter, an~~
16 ~~ethanol facility tax credit that shall be applied to the~~
17 ~~taxpayer's net income tax liability, if any, imposed by this~~
18 ~~chapter for the taxable year in which the credit is properly~~
19 ~~claimed.~~

20 ~~For each qualified ethanol production facility, the annual~~
21 ~~dollar amount of the ethanol facility tax credit during the~~
22 ~~eight year period shall be equal to thirty per cent of its~~



1 ~~nameplate capacity if the nameplate capacity is greater than~~
2 ~~five hundred thousand but less than fifteen million gallons. A~~
3 ~~taxpayer may claim this credit for each qualifying ethanol~~
4 ~~facility; provided that:~~

- 5 ~~(1) The claim for this credit by any taxpayer of a~~
6 ~~qualifying ethanol production facility shall not~~
7 ~~exceed one hundred per cent of the total of all~~
8 ~~investments made by the taxpayer in the qualifying~~
9 ~~ethanol production facility during the credit period;~~
10 ~~(2) The qualifying ethanol production facility operated at~~
11 ~~a level of production of at least seventy five per~~
12 ~~cent of its nameplate capacity on an annualized basis;~~
13 ~~(3) The qualifying ethanol production facility is in~~
14 ~~production on or before January 1, 2017; and~~
15 ~~(4) No taxpayer that claims the credit under this section~~
16 ~~shall claim any other tax credit under this chapter~~
17 ~~for the same taxable year.~~

18 ~~(b) As used in this section:~~

19 ~~"Credit period" means a maximum period of eight years~~
20 ~~beginning from the first taxable year in which the qualifying~~
21 ~~ethanol production facility begins production even if actual~~



1 ~~production is not at seventy five per cent of nameplate~~
2 ~~capacity.~~

3 ~~"Investment" means a nonrefundable capital expenditure~~
4 ~~related to the development and construction of any qualifying~~
5 ~~ethanol production facility, including processing equipment,~~
6 ~~waste treatment systems, pipelines, and liquid storage tanks at~~
7 ~~the facility or remote locations, including expansions or~~
8 ~~modifications. Capital expenditures shall be those direct and~~
9 ~~certain indirect costs determined in accordance with section~~
10 ~~263A of the Internal Revenue Code, relating to uniform~~
11 ~~capitalization costs, but shall not include expenses for~~
12 ~~compensation paid to officers of the taxpayer, pension and other~~
13 ~~related costs, rent for land, the costs of repairing and~~
14 ~~maintaining the equipment or facilities, training of operating~~
15 ~~personnel, utility costs during construction, property taxes,~~
16 ~~costs relating to negotiation of commercial agreements not~~
17 ~~related to development or construction, or service costs that~~
18 ~~can be identified specifically with a service department or~~
19 ~~function or that directly benefit or are incurred by reason of a~~
20 ~~service department or function. For the purposes of determining~~
21 ~~a capital expenditure under this section, the provisions of~~
22 ~~section 263A of the Internal Revenue Code shall apply as it read~~



1 ~~on March 1, 2004. For purposes of this section, investment~~
2 ~~excludes land costs and includes any investment for which the~~
3 ~~taxpayer is at risk, as that term is used in section 465 of the~~
4 ~~Internal Revenue Code (with respect to deductions limited to~~
5 ~~amount at risk).~~

6 ~~"Nameplate capacity" means the qualifying ethanol~~
7 ~~production facility's production design capacity, in gallons of~~
8 ~~motor fuel grade ethanol per year.~~

9 ~~"Net income tax liability" means net income tax liability~~
10 ~~reduced by all other credits allowed under this chapter.~~

11 ~~"Qualifying ethanol production" means ethanol produced from~~
12 ~~renewable, organic feedstocks, or waste materials, including~~
13 ~~municipal solid waste. All qualifying production shall be~~
14 ~~fermented, distilled, gasified, or produced by physical chemical~~
15 ~~conversion methods such as reformation and catalytic conversion~~
16 ~~and dehydrated at the facility.~~

17 ~~"Qualifying ethanol production facility" or "facility"~~
18 ~~means a facility located in Hawaii which produces motor fuel~~
19 ~~grade ethanol meeting the minimum specifications by the American~~
20 ~~Society of Testing and Materials standard D 4806, as amended.~~

21 ~~(c) In the case of a taxable year in which the cumulative~~
22 ~~claims for the credit by the taxpayer of a qualifying ethanol~~



1 ~~production facility exceeds the cumulative investment made in~~
2 ~~the qualifying ethanol production facility by the taxpayer, only~~
3 ~~that portion that does not exceed the cumulative investment~~
4 ~~shall be claimed and allowed.~~

5 ~~(d) The department of business, economic development, and~~
6 ~~tourism shall:~~

7 ~~(1) Maintain records of the total amount of investment~~
8 ~~made by each taxpayer in a facility;~~

9 ~~(2) Verify the amount of the qualifying investment;~~

10 ~~(3) Total all qualifying and cumulative investments that~~
11 ~~the department of business, economic development, and~~
12 ~~tourism certifies; and~~

13 ~~(4) Certify the total amount of the tax credit for each~~
14 ~~taxable year and the cumulative amount of the tax~~
15 ~~credit during the credit period.~~

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

21 ~~The taxpayer shall file the certificate with the taxpayer's tax~~
22 ~~return with the department of taxation. Notwithstanding the~~



1 ~~department of business, economic development, and tourism's~~
2 ~~certification authority under this section, the director of~~
3 ~~taxation may audit and adjust certification to conform to the~~
4 ~~facts.~~

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

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



1 ~~(f) If a qualifying ethanol production facility or an~~
2 ~~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 capacities of qualifying~~
15 ~~ethanol production facilities built within the State reaches or~~
16 ~~exceeds a level of forty million gallons per year, credits under~~
17 ~~this section shall not be allowed for new ethanol production~~
18 ~~facilities. If a new facility's production capacity would cause~~
19 ~~the statewide ethanol production capacity to exceed forty~~
20 ~~million gallons per year, only the ethanol production capacity~~
21 ~~that does not exceed the statewide forty million gallon per year~~
22 ~~level shall be eligible for the credit.~~



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

14 ~~(i) The taxpayer shall provide written notice to the~~
15 ~~director of taxation and the director of business, economic~~
16 ~~development, and tourism within thirty days following the start~~
17 ~~of production. The notice shall include the production start~~
18 ~~date and expected ethanol fuel production for the next twenty~~
19 ~~four months. Notwithstanding any other law to the contrary,~~
20 ~~this information shall be available for public inspection and~~
21 ~~dissemination under chapter 92F.~~



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

12 ~~(k) Each calendar year during the credit period, the~~
13 ~~taxpayer shall provide information to the director of business,~~
14 ~~economic development, and tourism on the number of gallons of~~
15 ~~ethanol produced and sold during the previous calendar year, how~~
16 ~~much was sold in Hawaii versus overseas, feedstocks used for~~
17 ~~ethanol production, the number of employees of the facility, and~~
18 ~~the projected number of gallons of ethanol production for the~~
19 ~~succeeding year.~~

20 ~~(l) In the case of a partnership, S corporation, estate,~~
21 ~~or trust, the tax credit allowable is for every qualifying~~
22 ~~ethanol production facility. The cost upon which the tax credit~~



1 ~~is computed shall be determined at the entity level.~~
2 ~~Distribution and share of credit shall be determined pursuant to~~
3 ~~section 235-110.7(a).~~

4 ~~(m) Following each year in which a credit under this~~
5 ~~section has been claimed, the director of business, economic~~
6 ~~development, and tourism shall submit a written report to the~~
7 ~~governor and legislature regarding the production and sale of~~
8 ~~ethanol. The report shall include:~~

- 9 ~~(1) The number, location, and nameplate capacities of~~
10 ~~qualifying ethanol production facilities in the State;~~
11 ~~(2) The total number of gallons of ethanol produced and~~
12 ~~sold during the previous year; and~~
13 ~~(3) The projected number of gallons of ethanol production~~
14 ~~for the succeeding year.~~

15 ~~(n) The director of taxation shall prepare forms that may~~
16 ~~be necessary to claim a credit under this section.~~

17 ~~Notwithstanding the department of business, economic~~
18 ~~development, and tourism's certification authority under this~~
19 ~~section, the director may audit and adjust certification to~~
20 ~~conform to the facts. The director may also require the~~
21 ~~taxpayer to furnish information to ascertain the validity of the~~
22 ~~claim for credit made under this section and may adopt rules~~



1 ~~necessary to effectuate the purposes of this section pursuant to~~
2 ~~chapter 91."]~~

3 PART III

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2050, and
7 shall be repealed on July 1, 2021.



Report Title:

Biofuel; Ethanol; Motor Vehicles; Diesel Fuel

Description:

Establishes a task force to examine changing the 10 percent ethanol requirement for gasoline to a locally-produced biofuels and biodiesel requirement. Establishes Biofuels Production Income Tax Credit. Repeals Ethanol Facility Tax Credit. (SB15 HD1)

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