

JAN 17 2013

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Hawaii is extremely vulnerable to soaring  
2 prices or disruptions of its energy imports, which can hinder,  
3 cripple, or even devastate the State's economy and the well-  
4 being of its inhabitants. As the most isolated land mass on  
5 earth, Hawaii imports nearly ninety per cent of its energy needs  
6 with most of that being used for transportation purposes. The  
7 legislature finds that it is critical for Hawaii to ensure  
8 greater energy security by becoming more self-sufficient in its  
9 energy supply.

10           The purpose of this Act is to:

- 11           (1) Establish a renewable transportation fuels production  
12           tax credit to achieve greater energy security for  
13           Hawaii; and  
14           (2) Repeal the ethanol facility tax credit.

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



1            "§235-        Renewable transportation fuels production tax  
2 credit. (a) Each year during the credit period, there shall be  
3 allowed to each taxpayer subject to the taxes imposed by this  
4 chapter, a renewable transportation fuels production tax credit  
5 that shall be applied to the taxpayer's net income tax  
6 liability, if any, imposed by this chapter for the taxable year  
7 in which the credit is properly claimed; provided that the  
8 taxpayer shall not claim a credit under this section for more  
9 than five taxable years.

10           For each taxpayer producing qualifying renewable  
11 transportation fuels, the annual dollar amount of the renewable  
12 transportation fuels tax credit during the five-year period  
13 shall be equal to thirty cents per one hundred fifteen thousand  
14 British thermal units of renewable transportation fuels using  
15 the lower heating value produced and sold for distribution in  
16 Hawaii; provided that the taxpayer's production of renewable  
17 transportation fuels is not less than fifteen billion British  
18 thermal units of renewable transportation fuels per year;  
19 provided further that the amount of tax credit claimed under  
20 this section by a taxpayer shall not exceed \$3,000,000 per  
21 taxable year. No other tax credit may be claimed under this  
22 chapter for the costs related to qualifying renewable



1 transportation fuels production that are used to properly claim  
2 a tax credit under this section for the taxable year.

3 (b) As used in this section:

4 "Credit period" means a maximum period of five years  
5 beginning from the first taxable year in which a taxpayer begins  
6 qualifying renewable transportation fuels production at a level  
7 of at least fifteen billion British thermal units of renewable  
8 transportation fuels per year.

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

11 "Qualifying renewable transportation fuels" means  
12 production of fuel grade renewable transportation fuels.

13 "Renewable feedstocks" means biomass crops; agricultural  
14 residues; oil crops, including but not limited to algae, canola,  
15 jatropha, palm, soybean and sunflower; other agricultural crops;  
16 grease and waste cooking oil; food wastes; municipal solid  
17 wastes and industrial wastes; and animal residues and wastes  
18 that can be used to generate energy.

19 "Renewable transportation fuels" means fuels produced  
20 within the State from renewable feedstocks transported less than  
21 one thousand miles from point of origin to the production  
22 facility located within the State; provided that the fuels shall



1 be sold in the State as a fuel to propel aircraft, vehicles, and  
2 vessels used for transportation within the State or departing  
3 from the State; provided further that the renewable  
4 transportation fuels meet the relevant ASTM International  
5 specifications for the particular fuel or other industry  
6 specifications for liquid or gaseous fuels, including but not  
7 limited to:

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

9 (2) Hydrogen;

10 (3) Biodiesel or renewable diesel;

11 (4) Other biofuels; or

12 (5) Renewable jet fuel or renewable gasoline.

13 (c) The department of business, economic development, and  
14 tourism shall:

15 (1) Verify the amount and type of renewable transportation  
16 fuels produced and sold, including the purpose for  
17 which the fuel was produced;

18 (2) Total all qualifying renewable transportation fuels  
19 production that the department of business, economic  
20 development, and tourism certifies for purposes of  
21 paragraph (3); and



1       (3) Certify the total amount of the tax credit for each  
2       taxable year and the cumulative amount of the tax  
3       credit during the credit period.

4 Upon each determination, the department of business, economic  
5 development, and tourism shall issue a certificate to the  
6 taxpayer verifying the amount of qualifying renewable  
7 transportation fuels production, the credit amount certified for  
8 each taxable year, and the cumulative amount of the tax credit  
9 during the credit period. The taxpayer shall file the  
10 certificate with the taxpayer's tax return with the department  
11 of taxation. Notwithstanding the department of business,  
12 economic development, and tourism's certification authority  
13 under this section, the director of taxation may audit and  
14 adjust the certification process as is necessary.

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



1        (d) If the credit under this section exceeds the  
2 taxpayer's income tax liability, the excess of credit over  
3 liability may be carried over to future years. All claims for a  
4 credit under this section must be properly filed on or before  
5 the end of the twelfth month following the close of the taxable  
6 year for which the credit may be claimed. Failure to comply  
7 with the foregoing provision shall constitute a waiver of the  
8 right to claim the credit.

9        (e) Prior to production of any qualifying renewable  
10 transportation fuels for the year, the taxpayer shall provide  
11 written notice of the taxpayer's intention to begin production  
12 of qualifying renewable transportation fuels. The information  
13 shall be provided to the department of taxation and the  
14 department of business, economic development, and tourism on  
15 forms provided by the department of business, economic  
16 development, and tourism, and shall include information on the  
17 taxpayer, facility location, facility production capacity,  
18 anticipated production start date, and the taxpayer's contact  
19 information. Notwithstanding any other law to the contrary,  
20 this information shall be available for public inspection and  
21 dissemination under chapter 92F.



1        (f) The taxpayer shall provide written notice to the  
2 director of taxation and the director of business, economic  
3 development, and tourism within thirty days following the start  
4 of production. The notice shall include the production start  
5 date and expected renewable transportation fuel production for  
6 the next twelve months. Notwithstanding any other law to the  
7 contrary, this information shall be available for public  
8 inspection and dissemination under chapter 92F.

9        (g) Each calendar year during the credit period, the  
10 taxpayer shall provide information to the director of business,  
11 economic development, and tourism on the number of British  
12 thermal units of renewable transportation fuels produced and  
13 sold during the previous calendar year, the type of  
14 transportation fuels, feedstocks used for renewable  
15 transportation fuels production, the number of employees of the  
16 facility and each employee's state of residency, and the  
17 projected number of British thermal units of renewable  
18 transportation fuels production for the succeeding year.

19        (h) In the case of a partnership, S corporation, estate,  
20 or trust, distribution and share of the tax credit for  
21 qualifying renewable transportation fuels production shall be



1 determined pursuant to section 704(b) (with respect to partner's  
2 distributive share) of the Internal Revenue Code.

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

8 (1) The number, location, and production of qualifying  
9 renewable transportation fuels production facilities  
10 in the State;

11 (2) The total number of British thermal units of renewable  
12 transportation fuels, broken down by type of biofuel,  
13 produced and sold during the previous year; and

14 (3) The projected number of British thermal units of  
15 renewable transportation fuels production for the  
16 succeeding year.

17 (j) The director of taxation shall prepare forms that may  
18 be necessary to claim a credit under this section.

19 Notwithstanding the department of business, economic  
20 development, and tourism's certification authority under this  
21 section, the director of taxation may audit and adjust the  
22 certification process as is necessary. The director of taxation





1 may also require the taxpayer to furnish information to  
2 ascertain the validity of the claim for credit made under this  
3 section and may adopt rules necessary to effectuate the purposes  
4 of this section pursuant to chapter 91.

5 (k) Starting in the tenth taxable year after the first  
6 year of receiving the tax credit under this section, a taxpayer  
7 who has received tax credits under this section shall pay the  
8 State ten per cent of the taxpayer's net profits each year until  
9 the entire amount of the cumulative tax credits properly claimed  
10 by the taxpayer are recaptured by the State."

11 SECTION 3. 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~~



# S.B. NO. 18

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

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

5 SECTION 5. This Act, upon its approval, shall apply to  
6 taxable years beginning after December 31, 2013.

7

INTRODUCED BY:

Mike Hubbard  
Joe Dunne Jr.  
Arvid Y. G.



# S.B. NO. 18

**Report Title:**

Income Tax Credit; Renewable Transportation Fuels

**Description:**

Establishes renewable transportation fuels production income tax credit. Repeals ethanol facility tax credit. Effective for taxable years beginning after December 31, 2013.

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

