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

3           1. By amending its title and subsections (a) through (c)  
4 to read:

5           "§235-110.3 ~~[Ethanol]~~ Renewable fuels facility tax credit.

6 (a) Each year during the credit period, there shall be allowed  
7 to each taxpayer subject to the taxes imposed by this chapter,  
8 ~~[an ethanol]~~ a renewable fuels facility tax credit that shall be  
9 applied to the taxpayer's net income tax liability, if any,  
10 imposed by this chapter for the taxable year in which the credit  
11 is properly claimed.

12           For each ~~[qualified ethanol]~~ qualifying renewable fuels  
13 production facility, the annual dollar amount of the ~~[ethanol]~~  
14 renewable fuels facility tax credit during the eight-year period  
15 shall be equal to thirty per cent of its annual nameplate  
16 capacity if the facility's nameplate capacity is greater than  
17 five hundred thousand but less than fifteen million gallons. A



1 taxpayer may claim this credit for each qualifying [~~ethanol~~]  
2 renewable fuels facility; provided that:

3 (1) The claim for this credit by any taxpayer of a  
4 qualifying [~~ethanol~~] renewable fuels production  
5 facility shall not exceed one hundred per cent of the  
6 total of all investments made by the taxpayer in the  
7 qualifying [~~ethanol~~] renewable fuels production  
8 facility during the credit period;

9 (2) The qualifying [~~ethanol~~] renewable fuels production  
10 facility operated at a level of production of at least  
11 seventy-five per cent of its nameplate capacity on an  
12 annualized basis;

13 (3) The qualifying [~~ethanol~~] renewable fuels production  
14 facility is in production on or before January 1,  
15 2017; and

16 (4) No taxpayer that claims the credit under this section  
17 shall use the investment upon which the claim under  
18 this section is made to claim any other tax credit  
19 under this chapter for the same taxable year.

20 (b) As used in this section:



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

6 "Investment" means a nonrefundable capital expenditure  
7 related to the development and construction of any qualifying  
8 ~~[ethanol]~~ renewable fuels production facility, including  
9 processing equipment, boilers, turbines, generators, waste  
10 treatment systems, pipelines, and liquid storage tanks at the  
11 facility or remote locations, including expansions or  
12 modifications. 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, but shall not include expenses for  
16 compensation paid to officers of the taxpayer, pension and other  
17 related costs, rent for land, the costs of repairing and  
18 maintaining the equipment or facilities, training of operating  
19 personnel, utility costs during construction, property taxes,  
20 costs relating to negotiation of commercial agreements not  
21 related to development or construction, or service costs that



1 can be identified specifically with a service department or  
2 function or that directly benefit or are incurred by reason of a  
3 service department or function. For the purposes of determining  
4 a capital expenditure under this section, the provisions of  
5 section 263A of the Internal Revenue Code shall apply as it read  
6 on March 1, 2004. For purposes of this section, investment  
7 excludes land costs and includes any investment for which the  
8 taxpayer is at risk, as that term is used in section 465 of the  
9 Internal Revenue Code (with respect to deductions limited to  
10 amount at risk).

11 "Nameplate capacity" means the qualifying [~~ethanol~~]  
12 renewable fuels production facility's net production design  
13 capacity, in gallons of [~~meter~~] fuel grade [~~ethanol~~] renewable  
14 fuels per year.

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

17 "Qualifying renewable fuel" means a fuel created from  
18 renewable feedstocks; provided that for the purpose of the  
19 renewable fuels facility tax credit, any renewable feedstock  
20 transported more than five hundred miles using a fossil fuel can  
21 become a qualifying renewable feedstock only upon a showing to



1 the state energy office of the department of business, economic  
2 development, and tourism that the renewable feedstock serves a  
3 legitimate public purpose for Hawaii. For the purpose of this  
4 showing, the state energy office of the department of business,  
5 economic development, and tourism shall consider the impact of  
6 such fossil fuel transportation on the State's energy security  
7 and contribution to greenhouse gas emissions.

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

16 "Qualifying [~~ethanol~~] renewable fuels production facility"  
17 or "facility" means a facility located in Hawaii [~~which~~] that  
18 produces [~~meter~~] or generates, directly from renewable  
19 feedstocks, fuel grade [~~ethanol~~] renewable fuels meeting the  
20 [~~minimum specifications by the American Society of Testing and~~  
21 ~~Materials standard D-4806, as amended.~~] relevant ASTM



1 International specifications for the particular fuel or other  
2 industry specifications for liquid or gaseous fuels, including  
3 but not limited to:

- 4 (1) Methanol, ethanol, or other alcohols;
- 5 (2) Hydrogen;
- 6 (3) Biodiesel or renewable diesel;
- 7 (4) Biogas;
- 8 (5) Other biofuels; or
- 9 (6) Renewable jet fuel or renewable gasoline.

10 "Renewable feedstocks" means:

- 11 (1) Biomass crops;
- 12 (2) Agricultural residues;
- 13 (3) Oil crops, including but not limited to algae, canola,  
14 jatropha, palm, soybean, and sunflower;
- 15 (4) Sugar and starch crops, including but not limited to  
16 sugar cane and cassava;
- 17 (5) Other agricultural crops;
- 18 (6) Grease and waste cooking oil;
- 19 (7) Food wastes;
- 20 (8) Municipal solid wastes and industrial wastes;
- 21 (9) Water; and



1        (10) Animal residues and wastes,  
2        that can be used to generate energy.

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

10           2. By amending subsections (f) through (m) to read:

11           "(f) If a qualifying [~~ethanol~~] renewable fuels production  
12        facility or an interest therein is acquired by a taxpayer prior  
13        to the expiration of the credit period, the credit allowable  
14        under subsection (a) for any period after [~~such~~] the acquisition  
15        shall be equal to the credit that would have been allowable  
16        under subsection (a) to the prior taxpayer had the taxpayer not  
17        disposed of the interest. If an interest is disposed of during  
18        any year for which the credit is allowable under subsection (a),  
19        the credit shall be allowable between the parties on the basis  
20        of the number of days during the year the interest was held by  
21        each taxpayer. In no case shall the credit allowed under



1 subsection (a) be allowed after the expiration of the credit  
2 period.

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

13 (h) Prior to construction of any new qualifying ~~[ethanol]~~  
14 renewable fuels production facility, the taxpayer shall provide  
15 written notice of the taxpayer's intention to begin construction  
16 of a qualifying ~~[ethanol]~~ renewable fuels production facility.  
17 The information shall be provided to the department of taxation  
18 and the department of business, economic development, and  
19 tourism on forms provided by the department of business,  
20 economic development, and tourism, and shall include information  
21 on the taxpayer, facility location, facility production





1 capacity, anticipated production start date, and the taxpayer's  
2 contact information. Notwithstanding any other law to the  
3 contrary, this information shall be available for public  
4 inspection and dissemination under chapter 92F.

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

13 (j) If a qualifying [~~ethanol~~] renewable fuels production  
14 facility fails to achieve an average annual production of at  
15 least seventy-five per cent of its nameplate capacity for two  
16 consecutive years, the stated capacity of that facility may be  
17 revised by the director of business, economic development, and  
18 tourism to reflect actual production for the purposes of  
19 determining statewide production capacity under subsection (g)  
20 and allowable credits for that facility under subsection (a).  
21 Notwithstanding any other law to the contrary, this information



1 shall be available for public inspection and dissemination under  
2 chapter 92F.

3 (k) 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 and  
6 type of [~~ethanol~~] renewable fuels produced and sold during the  
7 previous calendar year, how much was sold in Hawaii versus  
8 overseas, feedstocks used for [~~ethanol~~] renewable fuels  
9 production, the number of employees of the facility, and the  
10 projected number of gallons of [~~ethanol~~] renewable fuels  
11 production for the succeeding year.

12 (l) In the case of a partnership, S corporation, estate,  
13 or trust, the tax credit allowable is for every qualifying  
14 [~~ethanol~~] renewable fuels production facility. The cost upon  
15 which the tax credit is computed shall be determined at the  
16 entity level. Distribution and share of credit shall be  
17 determined pursuant to section 235-110.7(a).

18 (m) Following each year in which a credit under this  
19 section has been claimed, the director of business, economic  
20 development, and tourism shall submit a written report to the



1 governor and legislature regarding the production and sale of  
2 ~~[ethanol-]~~ renewable fuels. The report shall include:

- 3 (1) The number, location, and nameplate capacities of  
4 qualifying ~~[ethanol]~~ renewable fuels production  
5 facilities in the State;
- 6 (2) The total number of gallons of ~~[ethanol]~~ renewable  
7 fuels produced and sold during the previous year; and
- 8 (3) The projected number of gallons of ~~[ethanol~~  
9 ~~production]~~ renewable fuels expected to be produced  
10 for the succeeding year."

11 SECTION 2. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect on July 1, 2030, and  
14 shall apply to taxable years beginning after December 31, 2015.



**Report Title:**

Renewable Fuels Facility Tax Credit

**Description:**

Amends the existing ethanol facility income tax credit to include facilities that produce other renewable fuels. (HB1689 HD2)

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

