

JAN 26 2011

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# 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 bio-derived  
2 renewable fuels such as renewable diesel, biodiesel, and  
3 renewable jet fuel, in addition to ethanol, are examples of  
4 potential fuels that could be produced in Hawaii from locally  
5 grown feedstocks. The local production of these biofuels could  
6 contribute to Hawaii's renewable fuel objectives; reduce  
7 negative impacts on Hawaii of oil price volatility; provide a  
8 measure of energy security; provide economic diversification;  
9 and keep energy dollars circulating within Hawaii's economy.

10           The purpose of this Act is to modify the existing ethanol  
11 facility tax incentive to include other biofuels and to enable  
12 larger facilities to be eligible for the tax incentive, without  
13 changing the level of incentive or cap per facility.

14           SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "**§235-110.3** ~~[Ethanol]~~ **Biofuel facility tax credit.** (a)  
17 Each year during the credit period, there shall be allowed to  
18 each taxpayer subject to the taxes imposed by this chapter, [an

1 ~~ethanol~~] a biofuel facility tax credit that shall be applied to  
2 the taxpayer's net income tax liability, if any, imposed by this  
3 chapter for the taxable year in which the credit is properly  
4 claimed.

5 For each [~~qualified ethanol~~] qualifying biofuel production  
6 facility, the annual dollar amount of the [~~ethanol~~] biofuel  
7 facility tax credit during the eight-year period shall be equal  
8 to thirty [~~per cent~~] cents per gallon of its nameplate capacity  
9 if the nameplate capacity is greater than five hundred thousand  
10 [~~but less than fifteen million~~] gallons. A taxpayer may claim  
11 this credit for the first fifteen million gallons of capacity of  
12 each qualifying [~~ethanol~~] biofuel production facility; provided  
13 that:

14 (1) The claim for this credit by any taxpayer of a  
15 qualifying [~~ethanol~~] biofuel production facility shall  
16 not exceed one hundred per cent of the total of all  
17 investments made by the taxpayer in the qualifying  
18 [~~ethanol~~] biofuel production facility prior to and  
19 during the credit period;

20 (2) The qualifying [~~ethanol~~] biofuel production facility  
21 operated at a level of production of at least seventy-

1 five per cent of its nameplate capacity on an  
2 annualized basis;

3 (3) The qualifying biofuel production facility is located  
4 within the State and uses locally grown agricultural  
5 feedstock for at least seventy-five per cent of its  
6 production output;

7 ~~[(3)]~~ (4) The qualifying ~~[ethanol]~~ biofuel production  
8 facility is in production on or before January 1,  
9 2017; and

10 ~~[(4)]~~ (5) No taxpayer that claims the credit under this  
11 section shall claim any other tax credit under this  
12 chapter for the same taxable year.

13 (b) As used in this section:

14 "Agricultural feedstock" means bio-derived feedstock oil,  
15 fiber, or other biomass materials not previously used. Unused  
16 byproducts of food, feed, fiber, or other products, or  
17 electricity production, may be considered agricultural  
18 feedstock. Used cooking oils, industrial waste, or municipal  
19 wastes shall not be considered agricultural feedstock.

20 "Biofuel" means liquid or gaseous fuels as defined in  
21 section 269-91 that meet applicable fuel specifications of the  
22 American Society for Testing and Materials International or

1 specifications for electrical generation and produced from  
2 agricultural feedstock.

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

8 "Investment" means a nonrefundable capital expenditure  
9 related to the development and construction of any qualifying  
10 [~~ethanol~~] biofuel production facility, including processing  
11 equipment, waste treatment systems, pipelines, and liquid  
12 storage tanks at the facility or remote locations, including  
13 expansions or modifications. Capital expenditures shall be  
14 those direct and certain indirect costs determined in accordance  
15 with section 263A (with respect to capitalization and inclusion  
16 in inventory costs of certain expenses) of the Internal Revenue  
17 Code, relating to uniform capitalization costs, but shall not  
18 include expenses for compensation paid to officers of the  
19 taxpayer, pension and other related costs, rent for land, the  
20 costs of repairing and maintaining the equipment or facilities,  
21 training of operating personnel, utility costs during  
22 construction, property taxes, costs relating to negotiation of

1 commercial agreements not related to development or  
2 construction, or service costs that can be identified  
3 specifically with a service department or function or that  
4 directly benefit or are incurred by reason of a service  
5 department or function. For the purposes of determining a  
6 capital expenditure under this section, the provisions of  
7 section 263A of the Internal Revenue Code shall apply as it read  
8 on March 1, 2004. For purposes of this section, investment  
9 excludes land costs and includes any investment for which the  
10 taxpayer is at risk, as that term is used in section 465 (with  
11 respect to deductions limited to amount at risk) of the Internal  
12 Revenue Code [~~(with respect to deductions limited to amount at~~  
13 ~~risk)]].~~

14 "Nameplate capacity" means the qualifying [~~ethanol~~] biofuel  
15 production facility's production design capacity, in gallons of  
16 [~~motor fuel grade ethanol~~] biofuel per year.

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

19 "Qualifying [~~ethanol~~] biofuel production" means [~~ethanol~~]  
20 biofuel produced from [~~renewable, organic feedstocks, or waste~~  
21 ~~materials, including municipal solid waste.~~] locally grown  
22 agricultural feedstock. All qualifying production shall be

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1 fermented, distilled, transesterified, gasified, pyrolized, or  
2 produced by other physical, chemical, biochemical, or  
3 thermochemical conversion methods [~~such as reformation and~~  
4 ~~catalytic conversion and dehydrated at the facility~~].

5 "Qualifying [~~ethanol~~] biofuel production facility" or  
6 "facility" means a facility located in Hawaii [~~which~~] that  
7 produces [~~meter~~] fuel grade [~~ethanol meeting the minimum~~  
8 ~~specifications by the American Society of Testing and Materials~~  
9 ~~standard D-4806, as amended.~~] biofuel.

10 (c) In the case of a taxable year in which the cumulative  
11 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]  
12 biofuel production facility [~~exceeds~~] exceed the cumulative  
13 investment made in the qualifying [~~ethanol~~] biofuel production  
14 facility by the taxpayer, only that portion that does not exceed  
15 the cumulative investment shall be claimed and allowed.

16 (d) The department of business, economic development, and  
17 tourism shall:

18 (1) Maintain records of the total amount of investment  
19 made by each taxpayer in a facility;

20 (2) Verify the amount of the qualifying investment;

1           (3) Total all qualifying and cumulative investments that  
2           the department of business, economic development, and  
3           tourism certifies; and

4           (4) Certify the total amount of the tax credit for each  
5           taxable year and the cumulative amount of the tax  
6           credit during the credit period.

7           Upon each determination, the department of business,  
8           economic development, and tourism shall issue a certificate to  
9           the taxpayer verifying the qualifying investment amounts, the  
10          credit amount certified for each taxable year, and the  
11          cumulative amount of the tax credit during the credit period.  
12          The taxpayer shall file the certificate with the taxpayer's tax  
13          return with the department of taxation. Notwithstanding the  
14          department of business, economic development, and tourism's  
15          certification authority under this section, the director of  
16          taxation may audit and adjust certification to conform to the  
17          facts.

18          If in any year, the annual amount of certified credits  
19          reaches \$12,000,000 in the aggregate, the department of  
20          business, economic development, and tourism shall immediately  
21          discontinue certifying credits and notify the department of  
22          taxation. In no instance shall the total amount of certified

1 credits exceed \$12,000,000 per year. Notwithstanding any other  
2 law to the contrary, this information shall be available for  
3 public inspection and dissemination under chapter 92F.

4 (e) If the credit under this section exceeds the  
5 taxpayer's income tax liability, the excess of credit over  
6 liability shall be refunded to the taxpayer; provided that no  
7 refunds or payments on account of the tax credit allowed by this  
8 section shall be made for amounts less than \$1. All claims for  
9 a credit under this section [~~must~~] shall be properly filed on or  
10 before the end of the twelfth month following the close of the  
11 taxable year for which the credit may be claimed. Failure to  
12 comply with the foregoing provision shall constitute a waiver of  
13 the right to claim the credit.

14 (f) If a qualifying [~~ethanol~~] biofuel production facility  
15 or an interest therein is acquired by a taxpayer prior to the  
16 expiration of the credit period, the credit allowable under  
17 subsection (a) for any period after such acquisition shall be  
18 equal to the credit that would have been allowable under  
19 subsection (a) to the prior taxpayer had the taxpayer not  
20 disposed of the interest. If an interest is disposed of during  
21 any year for which the credit is allowable under subsection (a),  
22 the credit shall be allowable between the parties on the basis

1 of the number of days during the year the interest was held by  
2 each taxpayer. In no case shall the credit allowed under  
3 subsection (a) be allowed after the expiration of the credit  
4 period.

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

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

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

5 ~~[(i)]~~ (h) 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]~~ biofuel fuel production for the next  
10 twenty-four months. Notwithstanding any other law to the  
11 contrary, this information shall be available for public  
12 inspection and dissemination under chapter 92F.

13 ~~[(j)]~~ (i) If a qualifying ~~[ethanol]~~ biofuel 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)]~~ (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]~~ and type of biofuel produced and sold during the  
7 previous calendar year, how much was sold in Hawaii versus  
8 overseas, percentage of Hawaii-grown feedstocks and other  
9 feedstocks used for ~~[ethanol]~~ biofuel production, the number of  
10 employees of the facility, and the projected ~~[number of]~~ gallons  
11 ~~[of ethanol]~~ and type of biofuel production for the succeeding  
12 year.

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

19 ~~[(m)]~~ (l) Following each year in which a credit under this  
20 section has been claimed, the director of business, economic  
21 development, and tourism shall ~~[submit a written]~~ include in its  
22 annual report to the governor and legislature ~~[regarding the~~

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1 ~~production and sale of ethanol. The report shall include:]~~ the  
2 following:

3 (1) The number, location, and nameplate capacities of  
4 qualifying ~~[ethanol]~~ biofuel production facilities in  
5 the State;

6 (2) The total number of gallons of ~~[ethanol]~~ biofuel  
7 produced and sold by those facilities during the  
8 previous year; and

9 (3) The projected number of gallons of ~~[ethanol production~~  
10 ~~for]~~ biofuel expected to be produced in the succeeding  
11 year.

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



SB. NO. 1245

**Report Title:**

Biofuel Facility Incentive

**Description:**

Modifies the existing tax incentive for ethanol production facilities to be available to other biofuel production facilities using locally grown agricultural feedstocks and removes the statewide production cap while retaining the per-facility incentive limit.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO RENEWABLE FUELS.

PURPOSE: To modify the existing ethanol facility tax credit to include other liquid and gaseous biofuels produced from locally grown agricultural feedstock, and to enable larger facilities to be eligible for the tax incentive for the first 15,000,000 gallons per year of production capacity.

MEANS: Amend section 235-110.3, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Fuels other than ethanol can help Hawaii to increase its use of non-fossil fuels, particularly for transportation purposes. Renewable biofuels such as biodiesel, renewable diesel, and renewable jet fuel are examples of other fuels that could be produced in Hawaii from locally grown feedstocks.

This measure would expand existing tax credits that currently apply only to Hawaii facilities that can produce ethanol and allow use of those tax credits by investors in facilities of all types of biofuels. This measure also removes the existing cap that suspended the tax credit when ethanol production reached a capacity of 40,000,000 gallons per year.

Impact on the public: As Hawaii moves aggressively to expand its portfolio of renewable energy projects to meet the goals set forth in the Hawaii Clean Energy Initiative, current statutory incentives should be broadened so that the public has a wide range of renewable fuel sources to meet our local energy needs.

Impact on the department and other agencies:  
The Department of Business, Economic Development, and Tourism will be responsible for certifying whether a biofuel facility qualifies for the tax credits and shall maintain records of and verify the qualifying and cumulative investments in qualifying facilities.

GENERAL FUND: \$12,000,000 per year tax credit cap already set in section 235-110.3, Hawaii Revised Statutes.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-120 SI.

OTHER AFFECTED AGENCIES: Department of Taxation and Department of Agriculture.

EFFECTIVE DATE: Upon approval.