

JAN 21 2011

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 green diesel,
2 biodiesel, biojet, and ethanol are examples of fuels that could
3 be produced in Hawaii from locally grown feedstock. The local
4 production of these biofuels could contribute to Hawaii's
5 renewable liquid fuel objectives, reduce the impact of world oil
6 price volatility, provide a measure of energy security, provide
7 economic diversification, and circulate Hawaii's energy
8 expenditures within Hawaii's economy.

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

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

16 1. By amending its title and subsections (a) to (c) to
17 read:



1 "§235-110.3 ~~[Ethanol]~~ Biofuel facility tax credit. (a)
2 Each year during the credit period, there shall be allowed to
3 each taxpayer subject to the taxes imposed by this chapter, ~~[an~~
4 ~~ethanol]~~ a biofuel facility tax credit that shall be applied to
5 the taxpayer's net income tax liability, if any, imposed by this
6 chapter for the taxable year in which the credit is properly
7 claimed.

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

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



1 (2) The qualifying [~~ethanol~~] biofuel production facility
2 operated at a level of production of at least seventy-
3 five per cent of its nameplate capacity on an
4 annualized basis;

5 (3) The qualifying biofuel production facility uses
6 agricultural feedstock for at least seventy-five per
7 cent of its production output;

8 [~~(3)~~] (4) The qualifying [~~ethanol~~] biofuel production
9 facility is in production on or before January 1,
10 2017; and

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

14 (b) As used in this section:

15 "Agricultural feedstock" includes but is not limited to:

16 (1) Sugar cane, byproducts from sugar cane, sweet sorghum,
17 sugar beets, biomass, oil, fiber, and other materials
18 grown on farms that were not previously used for other
19 purposes; and

20 (2) Unused byproducts of food, feed, fiber, or other
21 products, or electricity production;



1 provided that used cooking oils shall not be considered
2 agricultural feedstock.

3 "Biofuel" means ethanol, biodiesel, diesel, jet fuel, or
4 any other liquid fuel that meets the relevant fuel
5 specifications of the American Society for Testing and Materials
6 International or specifications for electrical generation and is
7 produced from agricultural feedstock.

8 "Credit period" means a maximum period of eight years
9 beginning from the first taxable year in which the qualifying
10 [~~ethanol~~] biofuel production facility begins production, even if
11 actual production is not at seventy-five per cent of nameplate
12 capacity.

13 "Investment" means a nonrefundable capital expenditure
14 related to the development and construction of any qualifying
15 [~~ethanol~~] biofuel production facility, including processing
16 equipment, waste treatment systems, pipelines, and liquid
17 storage tanks at the facility or remote locations, including
18 expansions or modifications[-]; provided that the term
19 "investment" shall include direct capital expenditures in
20 agricultural infrastructure, including irrigation and drainage
21 systems, land clearing and leveling, establishment of crops,
22 planting, and cultivation where the biofuel production facility



1 and agricultural operations are integrated. Capital
2 expenditures shall be those direct and certain indirect costs
3 determined in accordance with section 263A of the Internal
4 Revenue Code, relating to uniform capitalization costs, and
5 utility costs incurred during construction that are capitalized
6 and not expensed, but shall not include expenses for
7 compensation paid to officers of the taxpayer, pension and other
8 related costs, rent for land, the costs of repairing and
9 maintaining the equipment or facilities, training of operating
10 personnel, [~~utility costs during construction,~~] property taxes,
11 costs relating to negotiation of commercial agreements not
12 related to development or construction, or service costs that
13 can be identified specifically with a service department or
14 function or that directly benefit or are incurred by reason of a
15 service department or function. For the purposes of determining
16 a capital expenditure under this section, the provisions of
17 section 263A of the Internal Revenue Code shall apply as it read
18 on March 1, 2004. For purposes of this section, investment
19 excludes land costs and includes any investment for which the
20 taxpayer is at risk, as that term is used in section 465 of the
21 Internal Revenue Code (with respect to deductions limited to
22 amount at risk).



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

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

6 "Qualifying ~~[ethanol]~~ biofuel production" means ~~[ethanol]~~
7 biofuel produced from ~~[renewable, organic feedstocks, or waste~~
8 ~~materials, including municipal solid waste.]~~ agricultural
9 feedstock. All qualifying production shall be fermented,
10 distilled, transesterified, gasified, pyrolized, or produced by
11 other physical, chemical, biochemical, or thermochemical
12 conversion methods ~~[such as reformation and catalytic conversion~~
13 ~~and dehydrated at the facility]~~.

14 "Qualifying ~~[ethanol]~~ biofuel production facility" or
15 "facility" means a facility located in Hawaii ~~[which]~~ that
16 produces ~~[motor]~~ fuel grade ~~[ethanol meeting the minimum~~
17 ~~specifications by the American Society of Testing and Materials~~
18 ~~standard D-4806, as amended.]~~ biofuel meeting the relevant
19 American Society for Testing and Materials International
20 specifications for the particular fuel or other specifications
21 for electrical production.



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

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

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

21 (g) Once the total nameplate capacities of qualifying
22 [~~ethanol~~] biofuel production facilities built within the State



1 reaches or exceeds a level of forty million gallons per year,
2 credits under this section shall not be allowed for new
3 [~~ethanol~~] biofuel production facilities. If a new facility's
4 production capacity would cause the statewide [~~ethanol~~] biofuel
5 production capacity to exceed forty million gallons per year,
6 only the [~~ethanol~~] biofuel production capacity that does not
7 exceed the statewide forty million gallon per year level shall
8 be eligible for the credit.

9 (h) Prior to construction of any new qualifying [~~ethanol~~]
10 biofuel production facility, the taxpayer shall provide written
11 notice of the taxpayer's intention to begin construction of a
12 qualifying [~~ethanol~~] biofuel production facility. The
13 information shall be provided to the department of taxation and
14 the 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 (i) 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 [~~ethanol fuel~~] biofuel production for the next
6 twenty-four months. Notwithstanding any other law to the
7 contrary, this information shall be available for public
8 inspection and dissemination under chapter 92F.

9 (j) If a qualifying [~~ethanol~~] biofuel production facility
10 fails to achieve an average annual production of at least
11 seventy-five per cent of its nameplate capacity for two
12 consecutive years, the stated capacity of that facility may be
13 revised by the director of business, economic development, and
14 tourism to reflect actual production for the purposes of
15 determining [~~statewide production capacity under subsection (g)~~
16 ~~and~~] allowable credits for that facility under subsection (a).
17 Notwithstanding any other law to the contrary, this information
18 shall be available for public inspection and dissemination under
19 chapter 92F.

20 (k) Each calendar year during the credit period, the
21 taxpayer shall provide information to the director of business,
22 economic development, and tourism on the [~~number of~~] gallons [~~of~~



1 ~~ethanol~~] and type of biofuel produced and sold during the
2 previous calendar year, how much was sold in Hawaii versus
3 overseas, [~~feedstocks~~] the percentage of Hawaii-grown feedstock
4 and other feedstock used for [~~ethanol~~] biofuel production, the
5 number of employees of the facility, and the projected [~~number~~
6 ~~of~~] gallons [~~of ethanol~~] and type of biofuel production for the
7 succeeding year.

8 (1) In the case of a partnership, S corporation, estate,
9 or trust, the tax credit allowable is for every qualifying
10 [~~ethanol~~] biofuel production facility. The cost upon which the
11 tax credit is computed shall be determined at the entity level.
12 Distribution and share of tax credit shall be determined
13 pursuant to section 235-110.7(a).

14 (m) 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~~] include in its
17 annual report to the governor and legislature [~~regarding the~~
18 ~~production and sale of ethanol. The report shall include:~~] the
19 following:

20 (1) The number, location, and nameplate capacities of
21 qualifying [~~ethanol~~] biofuel production facilities in
22 the State;



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

4 (3) The projected number of gallons of [~~ethanol production~~
 5 ~~for~~] biofuel expected to be produced in the succeeding
 6 year[-] and expected total biofuels sales in the
 7 succeeding year."

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

10 SECTION 4. This Act shall take effect upon its approval
 11 and shall apply to taxable years beginning after December 31,
 12 2010.

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Report Title:

Biofuel Facilities; Income Tax; Tax Credit

Description:

Amends the ethanol facility income tax credit to include other liquid biofuels and to enable larger facilities to be eligible for the tax incentive.

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