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# A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 SECTION 1. Section 235-110.3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~§235-110.3~~ ~~[Ethanol]~~ Renewable fuels facility tax credit.

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

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]~~  
15 five-year period shall be equal to ~~[thirty per cent of its~~  
16 ~~nameplate capacity if the nameplate capacity is greater than~~  
17 ~~five hundred thousand but less than fifteen million gallons.]~~ 30  
18 cents per one hundred fifteen thousand British thermal units of



1 renewable fuels using the lower heating value produced for  
2 distribution in Hawaii; provided that the nameplate capacity of  
3 the renewable fuels production facility is not less than 28.750  
4 billion British thermal units of renewable fuels; and provided  
5 further that the amount of tax credit claimed under this section  
6 by a taxpayer shall not exceed \$3,000,000 per taxable year. A  
7 taxpayer may claim this credit for each qualifying [~~ethanol~~]  
8 renewable fuels production facility; provided that:

9 (1) The claim for this credit by any taxpayer of a  
10 qualifying [~~ethanol~~] renewable fuels production  
11 facility shall not exceed one hundred per cent of the  
12 total of all investments made by the taxpayer in the  
13 qualifying [~~ethanol~~] renewable fuels production  
14 facility during the credit period;

15 (2) The qualifying [~~ethanol~~] renewable fuels production  
16 facility operated at a level of production of at least  
17 [~~seventy-five~~] fifty per cent of its nameplate  
18 capacity on an annualized basis; and

19 [~~(3) The qualifying ethanol production facility is in~~  
20 ~~production on or before January 1, 2017; and~~



1       ~~(4)~~ (3) No taxpayer that claims the credit under this  
2                   section shall claim any other tax credit under this  
3                   chapter for the same taxable year.

4       (b) As used in this section:

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

10       "Investment" means a nonrefundable capital expenditure  
11 related to the development and construction of any qualifying  
12 ~~[ethanol]~~ renewable fuels production facility, including  
13 processing equipment, waste treatment systems, pipelines,  
14 geothermal wells, and liquid storage tanks at the facility or  
15 remote locations, including expansions or modifications.

16 Capital expenditures shall be those direct and certain indirect  
17 costs determined in accordance with section 263A of the Internal  
18 Revenue Code, relating to uniform capitalization costs, but  
19 shall not include expenses for compensation paid to officers of  
20 the taxpayer, pension and other related costs, rent for land,  
21 the costs of repairing and maintaining the equipment or  
22 facilities, training of operating personnel, utility costs



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

14 "Nameplate capacity" means the qualifying [~~ethanol~~]  
15 renewable fuels production facility's production design  
16 capacity, in [~~gallons~~] British thermal units of [~~meter~~] fuel  
17 grade [~~ethanol~~] renewable fuels per year.

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

20 "Qualifying [~~ethanol~~] renewable fuel production" means  
21 [~~ethanol produced from renewable, organic feedstocks, or waste~~  
22 ~~materials, including municipal solid waste.~~ All qualifying



1 ~~production shall be fermented, distilled, gasified, or produced~~  
2 ~~by physical chemical conversion methods such as reformation and~~  
3 ~~catalytic conversion and dehydrated at the facility.] production~~  
4 of renewable fuels from renewable feedstocks; provided that the  
5 renewable fuel shall be sold in the State.

6 "Qualifying [~~ethanol~~] renewable fuels production facility"  
7 or "facility" means a facility located in Hawaii [~~which~~] that  
8 produces [~~meter~~] from renewable feedstocks fuel grade [~~ethanol~~  
9 ~~meeting the minimum specifications by the American Society of~~  
10 ~~Testing and Materials standard D 4806, as amended.] renewable~~  
11 fuels meeting the relevant ASTM International specifications for  
12 the particular fuel or other industry specifications for  
13 production of:

- 14 (1) Methanol, ethanol, or other alcohols;
- 15 (2) Propane;
- 16 (3) Hydrogen;
- 17 (4) Biodiesel or renewable diesel;
- 18 (5) Biofuels derived from biological materials, including  
19 algae; or
- 20 (6) Renewable jet fuel, renewable gasoline, or liquid or  
21 gaseous fuels.



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 renewable fuels production facility exceeds the cumulative  
4 investment made in the qualifying [~~ethanol~~] renewable fuels  
5 production facility by the taxpayer, only that portion that does  
6 not exceed the cumulative investment shall be claimed and  
7 allowed.

8 (d) The department of business, economic development, and  
9 tourism shall:

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

12 (2) Verify the amount [~~of the qualifying investment,~~] and  
13 type of renewable fuels produced, including the  
14 purpose for which the fuel was produced;

15 (3) Total all qualifying [~~and cumulative investments~~]  
16 renewable fuel production that the department of  
17 business, economic development, and tourism certifies;  
18 and

19 (4) Certify the total amount of the tax credit for each  
20 taxable year and the cumulative amount of the tax  
21 credit during the credit period.



1           Upon each determination, the department of business,  
2 economic development, and tourism shall issue a certificate to  
3 the taxpayer verifying the qualifying [~~investment amounts,~~  
4 amounts of renewable fuel production, the credit amount  
5 certified for each taxable year, and the cumulative amount of  
6 the tax credit during the credit period. The taxpayer shall  
7 file the certificate with the taxpayer's tax return with the  
8 department of taxation. Notwithstanding the department of  
9 business, economic development, and tourism's certification  
10 authority under this section, the director of taxation may audit  
11 and adjust certification to conform to the facts.

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

20           (e) If the credit under this section exceeds the  
21 taxpayer's income tax liability, the excess of credit over  
22 liability shall be refunded to the taxpayer; provided that no



1 refunds or payments on account of the tax credit allowed by this  
2 section shall be made for amounts less than \$1. All claims for  
3 a credit under this section must be properly filed on or before  
4 the end of the twelfth month following the close of the taxable  
5 year for which the credit may be claimed. Failure to comply  
6 with the foregoing provision shall constitute a waiver of the  
7 right to claim the credit.

8 (f) If a qualifying [~~ethanol~~] renewable fuels production  
9 facility or an interest therein is acquired by a taxpayer prior  
10 to the expiration of the credit period, the credit allowable  
11 under subsection (a) for any period after such acquisition shall  
12 be 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 production facilities built within the State reaches or~~





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

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

21       ~~(i)~~ (h) The taxpayer shall provide written notice to the  
22 director of taxation and the director of business, economic



1 development, and tourism within thirty days following the start  
2 of production. The notice shall include the production start  
3 date and expected [~~ethanol~~] renewable fuel production for the  
4 next twenty-four months. Notwithstanding any other law to the  
5 contrary, this information shall be available for public  
6 inspection and dissemination under chapter 92F.

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

18 [~~(k)~~] (j) Each calendar year during the credit period, the  
19 taxpayer shall provide information to the director of business,  
20 economic development, and tourism on the number of [~~gallons~~]  
21 British thermal units of [~~ethanol~~] renewable fuels produced and  
22 sold during the previous calendar year, how much was sold in



1 Hawaii versus overseas, feedstocks used for ~~[ethanol]~~ renewable  
 2 fuel production, the number of employees of the facility, and  
 3 the projected number of ~~[gallons]~~ British thermal units of  
 4 ~~[ethanol]~~ renewable fuel production for the succeeding year.

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

11 ~~[(m)]~~ (l) Following each year in which a credit under this  
 12 section has been claimed, the director of business, economic  
 13 development, and tourism shall submit a written report to the  
 14 governor and legislature regarding the production and sale of  
 15 ~~[ethanol]~~ renewable fuels. The report shall include:

- 16 (1) The number, location, and nameplate capacities of
- 17 qualifying ~~[ethanol]~~ renewable fuels production
- 18 facilities in the State;
- 19 (2) The total number of ~~[gallons]~~ British thermal units of
- 20 ~~[ethanol]~~ renewable fuels produced and sold during the
- 21 previous year; and

1           (3) The projected number of [~~gallons~~] British thermal  
2           units of [~~ethanol~~] renewable fuel production for the  
3           succeeding year.

4           [~~(n)~~] (m) The director of taxation shall prepare forms  
5           that may be necessary to claim a credit under this section.

6           Notwithstanding the department of business, economic  
7           development, and tourism's certification authority under this  
8           section, the director may audit and adjust certification to  
9           conform to the facts. The director may also require the  
10          taxpayer to furnish information to ascertain the validity of the  
11          claim for credit made under this section and may adopt rules  
12          necessary to effectuate the purposes of this section pursuant to  
13          chapter 91."

14          SECTION 2. Statutory material to be repealed is bracketed  
15          and stricken. New statutory material is underscored.

16          SECTION 3. This Act shall take effect on July 1, 2030, and  
17          shall apply to taxable years beginning after December 31, 2012.



**Report Title:**

Renewable Fuels; Feedstock; Tax Credit

**Description:**

Amends the ethanol facility income tax credit to apply to various types of renewable fuel, with production and minimum required capacity to be measured in British thermal units. Increases maximum available amount of tax credit available to an individual facility to \$3,000,000. Decreases minimum production required to claim the tax credit. Applies to taxable years beginning after December 31, 2012. Effective July 31, 2030.  
(HB2262 HD2)

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

