

JAN 23 2015

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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 vulnerable to soaring prices or  
2 disruptions of its energy imports, which can hinder, cripple, or  
3 even devastate the State's economy and the well-being of its  
4 inhabitants. As the most isolated land mass on earth, Hawaii  
5 imports nearly 90 per cent of its energy needs and almost 100  
6 per cent of its transportation needs. The legislature finds  
7 that it is critical for Hawaii to ensure greater energy security  
8 by becoming more self-sufficient in its energy supply.

9 The purpose of this Act is to:

10 (1) Establish a renewable fuels production tax credit to  
11 achieve greater energy security for Hawaii; and

12 (2) Repeal the ethanol facility tax credit.

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

16 "§235- Renewable fuels production tax credit. (a) Each  
17 year during the credit period, there shall be allowed to each



1 taxpayer subject to the taxes imposed by this chapter, a  
2 renewable fuels production tax credit that shall be applied to  
3 the taxpayer's net income tax liability, if any, imposed by this  
4 chapter for the taxable year in which the credit is properly  
5 claimed.

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

20 (b) As used in this section:



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

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

8       "Qualifying renewable fuels" means production of fuel grade  
9 renewable fuels.

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

16       "Renewable fuels" means fuels produced within the State  
17 from renewable feedstocks at the production facility located  
18 within the State; provided that the fuels shall be sold in the  
19 State as a fuel; provided further that the renewable fuels meet  
20 the relevant ASTM International specifications for the



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

- 3       (1) Methanol, ethanol, or other alcohols;
- 4       (2) Hydrogen;
- 5       (3) Biodiesel or renewable diesel;
- 6       (4) Biogas;
- 7       (5) Other biofuels; or
- 8       (6) Renewable jet fuel or renewable gasoline.
- 9       (c) The department of business, economic development, and

10 tourism shall:

- 11       (1) Verify the amount and type of renewable fuels produced  
12       and sold, including the purpose for which the fuel was  
13       produced;
- 14       (2) Total all qualifying renewable fuels production that  
15       the department of business, economic development, and  
16       tourism certifies for purposes of paragraph (3); and
- 17       (3) Certify the total amount of the tax credit for each  
18       taxable year and the cumulative amount of the tax  
19       credit during the credit period.

20 Upon each determination, the department of business, economic  
21 development, and tourism shall issue a certificate to the



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

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

20 (d) If the credit under this section exceeds the  
21 taxpayer's income tax liability, the excess of credit over



1 liability shall be refunded to the taxpayer; provided that no  
2 refunds or payments on account of the tax credit allowed by this  
3 section shall be made for amounts less than \$1. All claims for  
4 a 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 fuels  
10 for the year, the taxpayer shall provide written notice of the  
11 taxpayer's intention to begin production of qualifying renewable  
12 fuels. The information shall be provided to the department of  
13 taxation and the department of business, economic development,  
14 and tourism on forms provided by the department of business,  
15 economic development, and tourism, and shall include information  
16 on the taxpayer, facility location, facility production  
17 capacity, anticipated production start date, and taxpayer's  
18 contact information. Notwithstanding any other law to the  
19 contrary, this taxpayer and facility information shall be  
20 available for public inspection and dissemination under chapter  
21 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 fuels production for the next twelve  
6 months. Notwithstanding any other law to the contrary, this  
7 production information shall be available for public inspection  
8 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 fuels produced and sold during the  
13 previous calendar year, the type of fuels, feedstocks used for  
14 renewable fuels production, the number of employees of the  
15 facility and each employee's state of residency, and the  
16 projected number of British thermal units of renewable fuels  
17 production for the succeeding year.

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



1 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 fuels. The report shall include:

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

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

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

15 (j) 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 of taxation may audit and adjust the  
20 certification process as is necessary. The director of taxation  
21 may also require the taxpayer to furnish information to





1 ascertain the validity of the claim for credit made under this  
2 section and may adopt rules necessary to effectuate the purposes  
3 of this section pursuant to chapter 91."

4 SECTION 3. Section 235-110.3, Hawaii Revised Statutes, is  
5 repealed.

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

13 For each qualified ethanol production facility, the annual  
14 dollar amount of the ethanol facility tax credit during the  
15 eight 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. A  
18 taxpayer may claim this credit for each qualifying ethanol  
19 facility, provided that:

20 (1) The claim for this credit by any taxpayer of a  
21 qualifying ethanol production facility shall not



1           ~~exceed one hundred per cent of the total of all~~  
2           ~~investments made by the taxpayer in the qualifying~~  
3           ~~ethanol production facility during the credit period;~~  
4       ~~(2) The qualifying ethanol production facility operated at~~  
5           ~~a level of production of at least seventy five per~~  
6           ~~cent of its nameplate capacity on an annualized basis;~~  
7       ~~(3) The qualifying ethanol production facility is in~~  
8           ~~production on or before January 1, 2017; and~~  
9       ~~(4) No taxpayer that claims the credit under this section~~  
10           ~~shall claim any other tax credit under this chapter~~  
11           ~~for the same taxable year.~~

12       ~~(b) As used in this section:~~

13           ~~"Credit period" means a maximum period of eight years~~  
14       ~~beginning from the first taxable year in which the qualifying~~  
15       ~~ethanol production facility begins production even if actual~~  
16       ~~production is not at seventy five per cent of nameplate~~  
17       ~~capacity.~~

18           ~~"Investment" means a nonrefundable capital expenditure~~  
19       ~~related to the development and construction of any qualifying~~  
20       ~~ethanol production facility, including processing equipment,~~  
21       ~~waste treatment systems, pipelines, and liquid storage tanks at~~



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



1       ~~"Nameplate capacity" means the qualifying ethanol~~  
2 ~~production facility's production design capacity, in gallons of~~  
3 ~~motor fuel grade ethanol 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 production" means ethanol produced from~~  
7 ~~renewable, organic feedstocks, or waste materials, including~~  
8 ~~municipal solid waste. All qualifying production shall be~~  
9 ~~fermented, distilled, gasified, or produced by physical chemical~~  
10 ~~conversion methods such as reformation and catalytic conversion~~  
11 ~~and dehydrated at the facility.~~

12       ~~"Qualifying ethanol production facility" or "facility"~~  
13 ~~means a facility located in Hawaii which produces motor fuel~~  
14 ~~grade ethanol meeting the minimum specifications by the American~~  
15 ~~Society of Testing and Materials standard D 4806, as amended.~~

16       ~~(c) In the case of a taxable year in which the cumulative~~  
17 ~~claims for the credit by the taxpayer of a qualifying ethanol~~  
18 ~~production facility exceeds the cumulative investment made in~~  
19 ~~the qualifying ethanol production facility by the taxpayer, only~~  
20 ~~that portion that does not exceed the cumulative investment~~  
21 ~~shall be claimed and allowed.~~



1       ~~(d) The department of business, economic development, and~~  
2 ~~tourism shall:~~

3       ~~(1) Maintain records of the total amount of investment~~  
4       ~~made by each taxpayer in a facility;~~

5       ~~(2) Verify the amount of the qualifying investment;~~

6       ~~(3) Total all qualifying and cumulative investments that~~  
7       ~~the department of business, economic development, and~~  
8       ~~tourism certifies; and~~

9       ~~(4) Certify the total amount of the tax credit for each~~  
10       ~~taxable year and the cumulative amount of the tax~~  
11       ~~credit during the credit period.~~

12       ~~Upon each determination, the department of business,~~  
13       ~~economic development, and tourism shall issue a certificate to~~  
14       ~~the taxpayer verifying the qualifying investment amounts, the~~  
15       ~~credit amount certified for each taxable year, and the~~  
16       ~~cumulative amount of the tax credit during the credit period.~~

17       ~~The taxpayer shall file the certificate with the taxpayer's tax~~  
18       ~~return with the department of taxation. Notwithstanding the~~  
19       ~~department of business, economic development, and tourism's~~  
20       ~~certification authority under this section, the director of~~



1 ~~taxation may audit and adjust certification to conform to the~~  
2 ~~facts.~~

3 ~~If in any year, the annual amount of certified credits~~  
4 ~~reaches \$12,000,000 in the aggregate, the department of~~  
5 ~~business, economic development, and tourism shall immediately~~  
6 ~~discontinue certifying credits and notify the department of~~  
7 ~~taxation. In no instance shall the total amount of certified~~  
8 ~~credits exceed \$12,000,000 per year. Notwithstanding any other~~  
9 ~~law to the contrary, this information shall be available for~~  
10 ~~public inspection and dissemination under chapter 92F.~~

11 ~~(e) If the credit under this section exceeds the~~  
12 ~~taxpayer's income tax liability, the excess of credit over~~  
13 ~~liability shall be refunded to the taxpayer; provided that no~~  
14 ~~refunds or payments on account of the tax credit allowed by this~~  
15 ~~section shall be made for amounts less than \$1. All claims for~~  
16 ~~a credit under this section must be properly filed on or before~~  
17 ~~the end of the twelfth month following the close of the taxable~~  
18 ~~year for which the credit may be claimed. Failure to comply~~  
19 ~~with the foregoing provision shall constitute a waiver of the~~  
20 ~~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~~



1 ~~that does not exceed the statewide forty million gallon per year~~  
2 ~~level shall be eligible for the credit.~~

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

16 ~~(i) The taxpayer shall provide written notice to the~~  
17 ~~director of taxation and the director of business, economic~~  
18 ~~development, and tourism within thirty days following the start~~  
19 ~~of production. The notice shall include the production start~~  
20 ~~date and expected ethanol fuel production for the next twenty~~  
21 ~~four months. Notwithstanding any other law to the contrary,~~





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

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

14 ~~(k) Each calendar year during the credit period, the~~  
15 ~~taxpayer shall provide information to the director of business,~~  
16 ~~economic development, and tourism on the number of gallons of~~  
17 ~~ethanol produced and sold during the previous calendar year, how~~  
18 ~~much was sold in Hawaii versus overseas, feedstocks used for~~  
19 ~~ethanol production, the number of employees of the facility, and~~  
20 ~~the projected number of gallons of ethanol production for the~~  
21 ~~succeeding year.~~



1       ~~(l) In the case of a partnership, S corporation, estate,~~  
2 ~~or trust, the tax credit allowable is for every qualifying~~  
3 ~~ethanol production facility. The cost upon which the tax credit~~  
4 ~~is computed shall be determined at the entity level.~~  
5 ~~Distribution and share of credit shall be determined pursuant to~~  
6 ~~section 235-110.7(a).~~

7       ~~(m) Following each year in which a credit under this~~  
8 ~~section has been claimed, the director of business, economic~~  
9 ~~development, and tourism shall submit a written report to the~~  
10 ~~governor and legislature regarding the production and sale of~~  
11 ~~ethanol. The report shall include:~~

12       ~~(1) The number, location, and nameplate capacities of~~  
13 ~~qualifying ethanol production facilities in the State;~~

14       ~~(2) The total number of gallons of ethanol produced and~~  
15 ~~sold during the previous year; and~~

16       ~~(3) The projected number of gallons of ethanol production~~  
17 ~~for the succeeding year.~~

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

20 ~~Notwithstanding the department of business, economic~~  
21 ~~development, and tourism's certification authority under this~~



1 ~~section, the director may audit and adjust certification to~~  
 2 ~~conform to the facts. The director may also require the~~  
 3 ~~taxpayer to furnish information to ascertain the validity of the~~  
 4 ~~claim for credit made under this section and may adopt rules~~  
 5 ~~necessary to effectuate the purposes of this section pursuant to~~  
 6 ~~chapter 91." ]~~

7 SECTION 4. If any provision of this Act, or the  
 8 application thereof to any person or circumstance, is held  
 9 invalid, the invalidity does not affect other provisions or  
 10 applications of the Act that can be given effect without the  
 11 invalid provision or application, and to this end the provisions  
 12 of this Act are severable.

13 SECTION 5. Statutory material to be repealed is bracketed  
 14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act, upon its approval, shall apply to  
 16 taxable years beginning after December 31, 2015.

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INTRODUCED BY:

~~D.C. Kirk~~  
 Will Zygo  
 Ross E Rd

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# S.B. NO. 349

**Report Title:**

Tax Credit; Renewable Fuels Production

**Description:**

Establishes a renewable fuels production tax credit and repeals the ethanol facility tax credit. Allows qualifying taxpayers to claim a refundable income tax credit equal to 20 cents per seventy six thousand British thermal units of renewable fuel, capped at \$3,000,000 per year for up to five years. Caps the credit at \$12,000,000 per year in aggregate. Requires the department of business, economic development, and tourism to certify all tax credits and submit a report regarding the production and sale of renewable fuels to the governor and legislature each year. Directs the department of taxation to create forms for the tax credit. Applies to taxable years beginning after December 31, 2015.

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

