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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[-];  
18 provided that one gallon shall be equal to 76,330 British



1 thermal units, as defined by the United States Department of  
2 Energy Advanced Fuels Data Center, which is the energy content  
3 per gallon of ethanol. A taxpayer may claim this credit for  
4 each qualifying [~~ethanol~~] renewable fuels facility; provided  
5 that:

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

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

16 (3) The qualifying [~~ethanol~~] renewable fuels production  
17 facility is in production on or before January 1,  
18 [~~2017,~~] 2020; and

19 (4) No taxpayer that claims the credit under this section  
20 shall use the investment upon which the claim under



1           this section is made to claim any other tax credit  
2           under this chapter for the same taxable year.

3           (b) As used in this section:

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

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



1 personnel, utility costs during construction, property taxes,  
2 costs relating to negotiation of commercial agreements not  
3 related to development or construction, or service costs that  
4 can be identified specifically with a service department or  
5 function or that directly benefit or are incurred by reason of a  
6 service department or function. For the purposes of determining  
7 a 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 net production design  
16 capacity, in gallons of [~~meter~~] fuel grade [~~ethanol~~] renewable  
17 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 renewable fuel" means a fuel created from  
21 renewable feedstocks.



1 "Qualifying ~~[ethanol]~~ renewable fuels production" means  
2 ~~[ethanol]~~ fuel produced or generated from renewable~~[, organic]~~  
3 feedstocks~~[, or waste materials, including municipal solid~~  
4 waste]. All qualifying production shall be fermented,  
5 distilled, transesterified, gasified, pyrolized, combusted, or  
6 produced by physical, chemical, biochemical, or thermochemical  
7 conversion methods ~~[such as reformation and catalytic conversion~~  
8 ~~and dehydrated]~~ at the facility.

9 "Qualifying ~~[ethanol]~~ renewable fuels production facility"  
10 or "facility" means a facility located in Hawaii ~~[which]~~ that  
11 produces ~~[methanol]~~ or generates, directly from renewable  
12 feedstocks, fuel grade ~~[ethanol]~~ renewable fuels meeting the  
13 ~~[minimum specifications by the American Society of Testing and~~  
14 ~~Materials standard D 4806, as amended.]~~ relevant ASTM  
15 International specifications for the particular fuel or other  
16 industry specifications for liquid or gaseous fuels, including  
17 but not limited to:

- 18 (1) Methanol, ethanol, or other alcohols;
- 19 (2) Hydrogen;
- 20 (3) Biodiesel or renewable diesel;
- 21 (4) Biogas;



- 1        (5) Other biofuels; or
- 2        (6) Renewable jet fuel or renewable gasoline.

3        "Renewable feedstocks" means:

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

16       that can be used to generate energy.

17       (c) In the case of a taxable year in which the cumulative  
 18       claims for the credit by the taxpayer of a qualifying [~~ethanol~~]  
 19       renewable fuels production facility [~~exceeds~~] exceed the  
 20       cumulative investment made in the qualifying [~~ethanol~~] renewable  
 21       fuels production facility by the taxpayer, only that portion



1 that does not exceed the cumulative investment shall be claimed  
2 and allowed."

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

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

17 (g) Once the total nameplate capacities of qualifying  
18 [~~ethanol~~] renewable fuels production facilities built within the  
19 State reaches or exceeds a level of forty million gallons per  
20 year, credits under this section shall not be allowed for new  
21 [~~ethanol~~] renewable fuels production facilities. If a new



1 facility's production capacity would cause the statewide  
2 [~~ethanol~~] renewable fuels production capacity to exceed forty  
3 million gallons per year, only the [~~ethanol~~] renewable fuels  
4 production capacity that does not exceed the statewide forty  
5 million gallon per year level shall be eligible for the credit.

6 (h) Prior to construction of any new qualifying [~~ethanol~~]  
7 renewable fuels production facility, the taxpayer shall provide  
8 written notice of the taxpayer's intention to begin construction  
9 of a qualifying [~~ethanol~~] renewable fuels production facility.

10 The information shall be provided to the department of taxation  
11 and the department of business, economic development, and  
12 tourism on forms provided by the department of business,  
13 economic development, and tourism, and shall include information  
14 on the taxpayer, facility location, facility production  
15 capacity, anticipated production start date, and the taxpayer's  
16 contact information. Notwithstanding any other law to the  
17 contrary, this information shall be available for public  
18 inspection and dissemination under chapter 92F.

19 (i) The taxpayer shall provide written notice to the  
20 director of taxation and the director of business, economic  
21 development, and tourism within thirty days following the start





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

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

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



1 overseas, feedstocks used for [~~ethanol~~] renewable fuels  
2 production, the number of employees of the facility, and the  
3 projected number of gallons of [~~ethanol~~] renewable fuels  
4 production for the succeeding year.

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

11 (m) 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 of [~~ethanol~~] renewable  
20 fuels produced and sold during the previous year; and



1           (3) The projected number of gallons of [~~ethanol~~  
2           ~~production~~] renewable fuels expected to be produced  
3           for the succeeding year."

4           SECTION 2. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

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

8



**Report Title:**

Renewable Fuels Facility Tax Credit

**Description:**

Amends the existing ethanol facility income tax credit to include facilities that produce other renewable fuels. Clarifies that one gallon shall be equal to 76,330 British thermal units. Clarifies that the qualifying renewable fuels production facility must be in in production on or before January 1, 2020. Effective July 1, 2030. (SD1)

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

