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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 [~~motor~~] 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, pyrolyzed, 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 ~~[motor]~~ 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 (e) through (m) to read:

4 "(e) If the credit under this section exceeds the  
5 taxpayer's income tax liability, the excess of the 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.~~] may be used as  
9 a credit against the taxpayer's income tax liability in  
10 subsequent years until exhausted. All claims for a credit under  
11 this section must be properly filed on or before the end of the  
12 twelfth month following the close of the taxable year for which  
13 the credit may be claimed. Failure to comply with the foregoing  
14 provision shall constitute a waiver of the right to claim the  
15 credit.

16 (f) If a qualifying [~~ethanol~~] renewable fuels production  
17 facility or an interest therein is acquired by a taxpayer prior  
18 to the expiration of the credit period, the credit allowable  
19 under subsection (a) for any period after [~~such~~] the acquisition  
20 shall be equal to the credit that would have been allowable  
21 under subsection (a) to the prior taxpayer had the taxpayer not



1 disposed of the interest. If an interest is disposed of during  
2 any year for which the credit is allowable under subsection (a),  
3 the credit shall be allowable between the parties on the basis  
4 of the number of days during the year the interest was held by  
5 each taxpayer. In no case shall the credit allowed under  
6 subsection (a) be allowed after the expiration of the credit  
7 period.

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

18 (h) Prior to construction of any new qualifying ~~[ethanol]~~  
19 renewable fuels production facility, the taxpayer shall provide  
20 written notice of the taxpayer's intention to begin construction  
21 of a qualifying ~~[ethanol]~~ renewable fuels production facility.





1 The information shall be provided to the department of taxation  
2 and the department of business, economic development, and  
3 tourism on forms provided by the department of business,  
4 economic development, and tourism, and shall include information  
5 on the taxpayer, facility location, facility production  
6 capacity, anticipated production start date, and the taxpayer's  
7 contact information. Notwithstanding any other law to the  
8 contrary, this information shall be available for public  
9 inspection and dissemination under chapter 92F.

10 (i) The taxpayer shall provide written notice to the  
11 director of taxation and the director of business, economic  
12 development, and tourism within thirty days following the start  
13 of production. The notice shall include the production start  
14 date and expected [~~ethanol-fuel~~] renewable fuels production for  
15 the next twenty-four months. Notwithstanding any other law to  
16 the contrary, this information shall be available for public  
17 inspection and dissemination under chapter 92F.

18 (j) If a qualifying [~~ethanol~~] renewable fuels production  
19 facility fails to achieve an average annual production of at  
20 least seventy-five per cent of its nameplate capacity for two  
21 consecutive years, the stated capacity of that facility may be



1 revised by the director of business, economic development, and  
2 tourism to reflect actual production for the purposes of  
3 determining statewide production capacity under subsection (g)  
4 and allowable credits for that facility under subsection (a).  
5 Notwithstanding any other law to the contrary, this information  
6 shall be available for public inspection and dissemination under  
7 chapter 92F.

8 (k) Each calendar year during the credit period, the  
9 taxpayer shall provide information to the director of business,  
10 economic development, and tourism on the number of gallons and  
11 type of [~~ethanol~~] renewable fuels produced and sold during the  
12 previous calendar year, how much was sold in Hawaii versus  
13 overseas, feedstocks used for [~~ethanol~~] renewable fuels  
14 production, the number of employees of the facility, and the  
15 projected number of gallons of [~~ethanol~~] renewable fuels  
16 production for the succeeding year.

17 (l) In the case of a partnership, S corporation, estate,  
18 or trust, the tax credit allowable is for every qualifying  
19 [~~ethanol~~] renewable fuels production facility. The cost upon  
20 which the tax credit is computed shall be determined at the



1 entity level. Distribution and share of credit shall be  
2 determined pursuant to section 235-110.7(a).

3 (m) 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 ~~[ethanol]~~ renewable fuels. The report shall include:

- 8 (1) The number, location, and nameplate capacities of  
9 qualifying ~~[ethanol]~~ renewable fuels production  
10 facilities in the State;
- 11 (2) The total number of gallons of ~~[ethanol]~~ renewable  
12 fuels produced and sold during the previous year; and
- 13 (3) The projected number of gallons of ~~[ethanol]~~  
14 ~~production]~~ renewable fuels expected to be produced  
15 for the succeeding year."

16 SECTION 2. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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



**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 production on or before January 1, 2020. Makes the tax credit nonrefundable. Effective July 1, 2030. (SD2)

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

