

JAN 22 2016

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# A BILL FOR AN ACT

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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 ninety per cent of its energy and almost one  
6       hundred per cent of its transportation resources. The  
7       legislature finds that it is critical for Hawaii to ensure  
8       greater energy security by becoming more self-sufficient in its  
9       energy supply.

10       The purpose of this Act is to:

- 11       (1) Establish a renewable fuels production tax credit to  
12       achieve greater energy security for Hawaii; and  
13       (2) Repeal the ethanol facility tax credit.

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



1        "§235- Renewable fuels production tax credit. (a) As  
2 used in this section:

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

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

9        "Renewable feedstocks" means:

10        (1) Biomass crops;

11        (2) Agricultural residues;

12        (3) Oil crops, including but not limited to algae, canola,  
13 jatropha, palm, soybean, and sunflower;

14        (4) Sugar and starch crops, including but not limited to  
15 sugar cane and cassava;

16        (5) Other agricultural crops;

17        (6) Grease and waste cooking oil;

18        (7) Food wastes;

19        (8) Municipal solid wastes and industrial wastes;

20        (9) Water; and

21        (10) Animal residues and wastes,



1 that can be used to generate energy.

2 "Renewable fuels" means fuels produced from renewable  
3 feedstocks having its point of origin within the State; provided  
4 that:

5 (1) The fuels shall be sold as a fuel; and

6 (2) The fuels meet the relevant ASTM International  
7 specifications for the particular fuel or other  
8 industry specifications for liquid or gaseous fuels,  
9 including but not limited to:

10 (A) Methanol, ethanol, or other alcohols;

11 (B) Hydrogen;

12 (C) Biodiesel or renewable diesel;

13 (D) Biogas;

14 (E) Other biofuels; or

15 (F) Renewable jet fuel or renewable gasoline.

16 (b) Each year during the credit period, there shall be  
17 allowed to each taxpayer subject to the taxes imposed by this  
18 chapter, a renewable fuels production tax credit that shall be  
19 applied to the taxpayer's net income tax liability, if any,  
20 imposed by this chapter for the taxable year in which the credit  
21 is properly claimed.



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

14       (c) The department of business, economic development, and  
15       tourism shall:

16       (1) Verify the amount and type of renewable fuels produced  
17       and sold, including the purpose for which the fuel was  
18       produced;

19       (2) Total all renewable fuels production that the  
20       department of business, economic development, and  
21       tourism certifies for purposes of paragraph (3); and



1       (3) Certify the total amount of the tax credit for each  
2           taxable year and the cumulative amount of the tax  
3           credit during the credit period.

4   Upon each determination, the department of business, economic  
5   development, and tourism shall issue a certificate to the  
6   taxpayer verifying the amount of renewable fuels production, the  
7   credit amount certified for each taxable year, and the  
8   cumulative amount of the tax credit during the credit period.

9   The taxpayer shall file the certificate with the taxpayer's tax  
10   return with the department of taxation. Notwithstanding the  
11   department of business, economic development, and tourism's  
12   certification authority under this section, the director of  
13   taxation may audit and adjust the certification process as is  
14   necessary.

15       If in any year, the annual amount of certified credits  
16   reaches \$3,000,000 in the aggregate, the department of business,  
17   economic development, and tourism shall immediately discontinue  
18   certifying credits and notify the department of taxation. In no  
19   instance shall the total amount of certified credits exceed  
20   \$3,000,000 per year. Notwithstanding any other law to the  
21   contrary, the verification and certification information



1 compiled by the department of business, economic development,  
2 and tourism shall be available for public inspection and  
3 dissemination under chapter 92F.

4       (d) If the credit under this section exceeds the  
5 taxpayer's income tax liability, the excess of 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. All claims for  
9 a credit under this section shall be properly filed on or before  
10 the end of the twelfth month following the close of the taxable  
11 year for which the credit may be claimed. Failure to comply  
12 with the foregoing provision shall constitute a waiver of the  
13 right to claim the credit.

14       (e) Prior to production of any renewable fuels for the  
15 year, the taxpayer shall provide written notice of the  
16 taxpayer's intention to begin production of renewable fuels.  
17 The information shall be provided to the department of taxation  
18 and the department of business, economic development, and  
19 tourism on forms provided by the department of business,  
20 economic development, and tourism, and shall include information  
21 on the taxpayer, facility location, facility production



1 capacity, anticipated production start date, and taxpayer's  
2 contact information. Notwithstanding any other law to the  
3 contrary, this taxpayer and facility information shall be  
4 available for public inspection and dissemination under chapter  
5 92F.

6 (f) The taxpayer shall provide written notice to the  
7 director of taxation and the director of business, economic  
8 development, and tourism within thirty days following the start  
9 of production. The notice shall include the production start  
10 date and expected renewable fuels production for the next twelve  
11 months. Notwithstanding any other law to the contrary, this  
12 production information shall be available for public inspection  
13 and dissemination under chapter 92F.

14 (g) 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 British  
17 thermal units of renewable fuels produced and sold during the  
18 previous calendar year, the type of fuels, feedstocks used for  
19 renewable fuels production, the number of employees of the  
20 facility and each employee's state of residency, and the



1 projected number of British thermal units of renewable fuels  
2 production for the succeeding year.

3 (h) In the case of a partnership, S corporation, estate,  
4 or trust, distribution and share of the tax credit for renewable  
5 fuels production shall be determined pursuant to section 704(b)  
6 (with respect to partner's distributive share) of the Internal  
7 Revenue Code.

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

13 (1) The number, location, and production of renewable  
14 fuels production facilities in the State and outside  
15 the State that have claimed a credit under this  
16 section;

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

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





1        (j) The director of taxation shall prepare forms that may  
2        be necessary to claim a credit under this section. The director  
3        of taxation may require the taxpayer to furnish information to  
4        ascertain the validity of the claim for credit made under this  
5        section and may adopt rules necessary to effectuate the purposes  
6        of this section pursuant to chapter 91."

7        SECTION 3. Section 235-110.3, Hawaii Revised Statutes, is  
8        repealed.

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

16       ~~For each qualified ethanol production facility, the annual~~  
17       ~~dollar amount of the ethanol facility tax credit during the~~  
18       ~~eight year period shall be equal to thirty per cent of its~~  
19       ~~nameplate capacity if the nameplate capacity is greater than~~  
20       ~~five hundred thousand but less than fifteen million gallons. A~~



1 ~~taxpayer may claim this credit for each qualifying ethanol~~  
2 ~~facility; provided that:~~

- 3       ~~(1) The claim for this credit by any taxpayer of a~~  
4           ~~qualifying ethanol production facility shall not~~  
5           ~~exceed one hundred per cent of the total of all~~  
6           ~~investments made by the taxpayer in the qualifying~~  
7           ~~ethanol production facility during the credit period;~~  
8       ~~(2) The qualifying ethanol production facility operated at~~  
9           ~~a level of production of at least seventy five per~~  
10           ~~cent of its nameplate capacity on an annualized basis;~~  
11       ~~(3) The qualifying ethanol production facility is in~~  
12           ~~production on or before January 1, 2017; and~~  
13       ~~(4) No taxpayer that claims the credit under this section~~  
14           ~~shall claim any other tax credit under this chapter~~  
15           ~~for the same taxable year.~~

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

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



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



~~1 excludes land costs and includes any investment for which the  
2 taxpayer is at risk, as that term is used in section 465 of the  
3 Internal Revenue Code (with respect to deductions limited to  
4 amount at risk).~~

~~5 "Nameplate capacity" means the qualifying ethanol  
6 production facility's production design capacity, in gallons of  
7 motor fuel grade ethanol per year.~~

~~8 "Net income tax liability" means net income tax liability  
9 reduced by all other credits allowed under this chapter.~~

~~10 "Qualifying ethanol production" means ethanol produced from  
11 renewable, organic feedstocks, or waste materials, including  
12 municipal solid waste. All qualifying production shall be  
13 fermented, distilled, gasified, or produced by physical chemical  
14 conversion methods such as reformation and catalytic conversion  
15 and dehydrated at the facility.~~

~~16 "Qualifying ethanol production facility" or "facility"  
17 means a facility located in Hawaii which produces motor fuel  
18 grade ethanol meeting the minimum specifications by the American  
19 Society of Testing and Materials standard D 4806, as amended.~~

~~20 (c) In the case of a taxable year in which the cumulative  
21 claims for the credit by the taxpayer of a qualifying ethanol~~



~~1 production facility exceeds the cumulative investment made in~~  
~~2 the qualifying ethanol production facility by the taxpayer, only~~  
~~3 that portion that does not exceed the cumulative investment~~  
~~4 shall be claimed and allowed.~~

~~5 (d) The department of business, economic development, and~~  
~~6 tourism shall:~~

~~7 (1) Maintain records of the total amount of investment~~  
~~8 made by each taxpayer in a facility;~~

~~9 (2) Verify the amount of the qualifying investment;~~

~~10 (3) Total all qualifying and cumulative investments that~~  
~~11 the department of business, economic development, and~~  
~~12 tourism certifies; and~~

~~13 (4) Certify the total amount of the tax credit for each~~  
~~14 taxable year and the cumulative amount of the tax~~  
~~15 credit during the credit period.~~

~~16 Upon each determination, the department of business,~~  
~~17 economic development, and tourism shall issue a certificate to~~  
~~18 the taxpayer verifying the qualifying investment amounts, the~~  
~~19 credit amount certified for each taxable year, and the~~  
~~20 cumulative amount of the tax credit during the credit period.~~

~~21 The taxpayer shall file the certificate with the taxpayer's tax~~



1 ~~return with the department of taxation. Notwithstanding the~~  
2 ~~department of business, economic development, and tourism's~~  
3 ~~certification authority under this section, the director of~~  
4 ~~taxation may audit and adjust certification to conform to the~~  
5 ~~facts.~~

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

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



1 ~~with the foregoing provision shall constitute a waiver of the~~  
2 ~~right to claim the credit.~~

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

16 ~~(g) Once the total nameplate capacities of qualifying~~  
17 ~~ethanol production facilities built within the State reaches or~~  
18 ~~exceeds a level of forty million gallons per year, credits under~~  
19 ~~this section shall not be allowed for new ethanol production~~  
20 ~~facilities. If a new facility's production capacity would cause~~  
21 ~~the statewide ethanol production capacity to exceed forty~~



1 ~~million gallons per year, only the ethanol production capacity~~  
2 ~~that does not exceed the statewide forty million gallon per year~~  
3 ~~level shall be eligible for the credit.~~

4 ~~(h) Prior to construction of any new qualifying ethanol~~  
5 ~~production facility, the taxpayer shall provide written notice~~  
6 ~~of the taxpayer's intention to begin construction of a~~  
7 ~~qualifying ethanol production facility. The information shall~~  
8 ~~be provided to the department of taxation and the department of~~  
9 ~~business, economic development, and tourism on forms provided by~~  
10 ~~the department of business, economic development, and tourism,~~  
11 ~~and shall include information on the taxpayer, facility~~  
12 ~~location, facility production capacity, anticipated production~~  
13 ~~start date, and the taxpayer's contact information.~~

14 ~~Notwithstanding any other law to the contrary, this information~~  
15 ~~shall be available for public inspection and dissemination under~~  
16 ~~chapter 92F.~~

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





1 ~~four months. Notwithstanding any other law to the contrary,~~  
2 ~~this information shall be available for public inspection and~~  
3 ~~dissemination under chapter 92F.~~

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

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



1 ~~the projected number of gallons of ethanol production for the~~  
2 ~~succeeding year.~~

3 ~~(1) In the case of a partnership, S corporation, estate,~~  
4 ~~or trust, the tax credit allowable is for every qualifying~~  
5 ~~ethanol production facility. The cost upon which the tax credit~~  
6 ~~is computed shall be determined at the entity level.~~

7 ~~Distribution and share of credit shall be determined pursuant to~~  
8 ~~section 235-110.7(a).~~

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

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

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

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

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



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

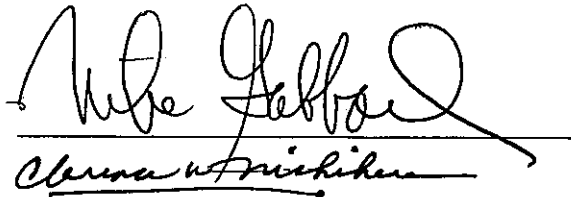
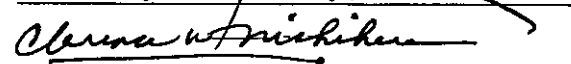
9 SECTION 4. If any provision of this Act, or the  
10 application thereof to any person or circumstance, is held  
11 invalid, the invalidity does not affect other provisions or  
12 applications of the Act that can be given effect without the  
13 invalid provision or application, and to this end the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

15 SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on July 1, 2016, and  
18 shall apply to taxable years beginning after December 31, 2016;  
19 provided that section 2 shall be repealed on December 31, 2021.

20  
INTRODUCED BY:

 Suzanne Curren

 Mike Jeffers  
 Claudia R. Smith



S.B. NO. 2652

*Samuel H. Slane*

*Michelle Telani*

*Bruce Vanit*

*El Ruviero*

*Math*



# S.B. NO. 2662

**Report Title:**

Tax Credit; Renewable Fuels Production; Ethanol Facility Tax  
Credit Repeal

**Description:**

Establishes a five-year 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 taxable year. Caps the credit at \$3,000,000 per year in aggregate. Requires DBEDT 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 DOTAX to create forms for the tax credit. Applies to taxable years beginning after December 31, 2016. Repeals the tax credit on 12/31/2021.

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

