



GOV. MSG. NO. 1286

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 1, 2015

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 1, 2015, the following bill was signed into law:

SB359 SD1 HD1 CD1

RELATING TO THE ENVIRONMENTAL
RESPONSE, ENERGY, AND FOOD SECURITY
TAX
ACT 185 (15)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

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STATE OF HAWAII

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A BILL FOR AN ACT

RELATING TO THE ENVIRONMENTAL RESPONSE, ENERGY, AND FOOD SECURITY TAX.

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

1 PART I

2 SECTION 1. The legislature finds that, due to Hawaii's
3 reduced demand for fossil fuels, revenues from the barrel tax
4 have decreased over several years. Such decreases are expected
5 with the increased fuel efficiency of vehicles, use of hybrid
6 and electric vehicles, as well as renewable energy efforts in
7 other sectors of Hawaii's economy. However, the need to respond
8 to environmental issues has not diminished. In recent years,
9 funding for the programs supported by the environmental response
10 revolving fund have proven to be a challenge, as the revenues it
11 receives from its share of the barrel tax have decreased. The
12 legislature finds that funding environmental protection
13 projects, emergency response cleanups, and other efforts which
14 provide for public health by mitigating environmental health
15 hazards are a critical public service.

16 The purpose of this part is to ensure ongoing funding for
17 environmental projects, in a transparent and stable manner, by



1 imposing the environmental response, energy, and food security
2 tax on fossil fuel and allocating it to advance Hawaii's clean
3 energy, food security, and climate change policies.

4 SECTION 2. Section 243-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "distributor" to read as
6 follows:

7 "Distributor" means:

- 8 (1) Every person who refines, manufactures, produces, or
9 compounds liquid fuel or fossil fuel in the State and
10 sells or uses the same therein;
- 11 (2) Every person who imports or causes to be imported into
12 the State any liquid fuel or fossil fuel and sells it
13 therein, whether in the original packages or
14 containers in which it is imported or otherwise than
15 in [~~such~~] the original packages or containers, or who
16 imports any [~~such~~] liquid fuel or fossil fuel for the
17 person's own use in the State;
- 18 (3) Every person who acquires liquid fuel or fossil fuel
19 from a person not a licensed distributor and sells or
20 uses it, whether in the original package or container



1 in which it was imported (if imported) or otherwise
 2 than in [~~such~~] the original package or container; and
 3 (4) Every person who acquires liquid fuel or fossil fuel
 4 from a licensed distributor as a wholesaler thereof
 5 and sells or uses it."

6 SECTION 3. Section 243-3.5, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "§243-3.5 Environmental response, energy, and food
 9 security tax; uses. (a) In addition to any other taxes
 10 provided by law, subject to the exemptions set forth in section
 11 243-7, there is hereby imposed a state environmental response,
 12 energy, and food security tax on each barrel or fractional part
 13 of a barrel of petroleum product sold by a distributor to any
 14 retail dealer or end user of petroleum product, other than a
 15 refiner. The tax shall be \$1.05 on each barrel or fractional
 16 part of a barrel of petroleum product that is not aviation fuel;
 17 provided that of the tax collected pursuant to this subsection:

18 (1) 5 cents of the tax on each barrel shall be deposited
 19 into the environmental response revolving fund
 20 established under section 128D-2;



1 (2) 15 cents of the tax on each barrel shall be deposited
2 into the energy security special fund established
3 under section 201-12.8;

4 (3) 10 cents of the tax on each barrel shall be deposited
5 into the energy systems development special fund
6 established under section [†]304A-2169.1[†]; and

7 (4) 15 cents of the tax on each barrel shall be deposited
8 into the agricultural development and food security
9 special fund established under section 141-10.

10 The tax imposed by this subsection shall be paid by the
11 distributor of the petroleum product.

12 (b) In addition to subsection (a), the tax shall also be
13 imposed on each one million British thermal units of fossil fuel
14 sold by a distributor to any retail dealer or end user, other
15 than a refiner, of fossil fuel. The tax shall be 19 cents on
16 each one million British thermal units of fossil fuel; provided
17 that of the tax collected pursuant to this subsection:

18 (1) 4.8 per cent of the tax on each one million British
19 thermal units shall be deposited into the
20 environmental response revolving fund established
21 under section 128D-2;



1 (2) 14.3 per cent of the tax on each one million British
2 thermal units shall be deposited into the energy
3 security special fund established under section 201-
4 12.8;

5 (3) 9.5 per cent of the tax on each one million British
6 thermal units shall be deposited into the energy
7 systems development special fund established under
8 section 304A-2169.1; and

9 (4) 14.3 per cent of the tax on each one million British
10 thermal units shall be deposited into the agricultural
11 development and food security special fund established
12 under section 141-10.

13 The tax imposed by this subsection shall be paid by the
14 distributor of the fossil fuel.

15 (c) The tax imposed under subsection (b) shall not apply
16 to coal used to fulfill a signed power purchase agreement
17 between an independent power producer and an electric utility
18 that is in effect as of June 30, 2015. An independent power
19 producer shall be permitted to pass the tax imposed under
20 subsection (b) on to an electric utility. In which case, the
21 electric utility may recover the cost of the tax through an



1 appropriate surcharge to the end user that is approved by the
2 public utilities commission.

3 (d) A gas utility shall be allowed to recover the cost of
4 the tax imposed under subsection (b) as part of its fuel cost in
5 its fuel adjustment charge without further approval by the
6 public utilities commission.

7 [~~b~~] (e) Each distributor subject to the tax imposed by
8 subsection (a) [~~r~~] or (b), on or before the last day of each
9 calendar month, shall file with the director, on forms
10 prescribed, prepared, and furnished by the director, a return
11 statement of the tax under this section for which the
12 distributor is liable for the preceding month. The form and
13 payment of the tax shall be transmitted to the department of
14 taxation in the appropriate district.

15 [~~e~~] (f) Notwithstanding section 248-8 to the contrary,
16 the environmental response, energy, and food security tax
17 collected under this section shall be paid over to the director
18 of finance for deposit as provided in subsection (a) [~~r~~] or (b),
19 as the case may be.

20 [~~d~~] (g) Every distributor shall keep in the State and
21 preserve for five years a record in [~~sueh~~] a form as the



1 department of taxation shall prescribe showing the total number
2 of barrels, and the fractional part of barrels, of petroleum
3 product or the total number of one million British thermal units
4 of fossil fuel, as the case may be, sold by the distributor
5 during any calendar month. The record shall show [such] any
6 other data and figures relevant to the enforcement and
7 administration of this chapter as the department may require.

8 (h) For the purposes of this section:

9 "Barrel" may be converted to million British thermal units,
10 using the United States Department of Energy, Energy Information
11 Administration annual energy review or annual energy outlook.

12 "Fossil fuel" means a hydrocarbon deposit, such as coal,
13 natural gas, or liquefied natural gas, derived from the
14 accumulated remains of ancient plants or animals and used for
15 fuel; provided that the term specifically does not include
16 petroleum product."

17 SECTION 4. Act 73, Session Laws of Hawaii 2010, as amended
18 by Act 107, Session Laws of Hawaii 2014, is amended as follows:

19 1. By amending section 14 to read:

20 "SECTION 14. This Act shall take effect on July 1, 2010[+
21 ~~provided that sections 2, 3, 4, and 7 of this Act shall be~~



1 ~~repealed on June 30, 2030, and sections 128D-2, 201-12.8, and~~
2 ~~243-3.5, Hawaii Revised Statutes, shall be reenacted in the form~~
3 ~~in which they read on June 30, 2010]. "~~

4 2. By repealing section 10:

5 " ~~[SECTION 10. Any unexpended or unencumbered funds~~
6 ~~remaining in the agricultural development and food security~~
7 ~~special fund established by this Act, as of the close of~~
8 ~~business on June 30, 2030, shall lapse to the credit of the~~
9 ~~general fund.] "~~

10 PART II

11 SECTION 5. The purpose of this part is to address the
12 environmental response revolving fund, the primary source of
13 revenues of which is the environmental response, energy, and
14 food security tax.

15 More specifically, this part:

16 (1) Authorizes the expenditure of moneys from the
17 environmental response revolving fund to be used for
18 specific purposes;

19 (2) Provides for the transfer of excess moneys in the
20 environmental response revolving fund under certain
21 conditions; and



1 (3) Repeals the requirement that certain positions be
 2 funded by the environmental response revolving fund.
 3 The legislature intends that the positions be
 4 authorized and funded in accordance with the general
 5 appropriations act, as may be amended by the
 6 supplemental appropriations act; and

7 (4) Requires the director of health to submit reports to
 8 the legislature regarding the environmental response
 9 revolving fund.

10 The legislature finds that this part is necessary to better
 11 direct and focus the use of the environmental response revolving
 12 fund in light of the projected reduction of revenues from the
 13 environmental response, energy, and food security tax.

14 SECTION 6. Section 128D-2, Hawaii Revised Statutes, is
 15 amended to read as follows:

16 "§128D-2 Environmental response revolving fund; uses. (a)
 17 There is created within the state treasury an environmental
 18 response revolving fund, which shall consist of moneys
 19 appropriated to the fund by the legislature, moneys paid to the
 20 fund as a result of departmental compliance proceedings, moneys
 21 paid to the fund pursuant to court-ordered awards or judgments,



1 moneys paid to the fund in court-approved or out-of-court
2 settlements, all interest attributable to investment of money
3 deposited in the fund, moneys deposited in the fund from the
4 environmental response, energy, and food security tax pursuant
5 to section 243-3.5, and moneys allotted to the fund from other
6 sources.

7 (b) Moneys from the fund shall be expended by the
8 department for [~~response actions and preparedness, including~~
9 ~~removal and remedial actions, consistent with this chapter,~~
10 ~~provided that the revenues generated by the environmental~~
11 ~~response, energy, and food security tax deposited into the~~
12 ~~environmental response revolving fund.~~] the following:

13 (1) [~~Shall be used:~~

14 (A) ~~For oil spill planning, prevention, preparedness,~~
15 ~~education, research, training, removal, and]~~
16 Removal, remediation[?], and detection of oil and
17 pollutant or contaminant releases;

18 [~~B) For direct support for county used oil recycling~~
19 ~~programs; and]~~

20 (2) [~~May also be used to support environmental protection~~
21 ~~and natural resource protection programs, including~~



1 ~~energy conservation and alternative energy~~
 2 ~~development, and to address concerns related to air~~
 3 ~~quality, global warming, clean water, polluted runoff,~~
 4 ~~solid and] Removal and remediation of hazardous~~
 5 ~~waste [, drinking water, and underground storage tanks,~~
 6 ~~including support for the underground storage tank~~
 7 ~~program of the department and funding for the~~
 8 ~~acquisition by the State of a soil remediation site~~
 9 ~~and facility.] and any other solid, liquid, or gaseous~~
 10 ~~substance that may harm the environment; and~~

11 (3) The payment of costs listed under section 128D-4(c).

12 (c) The unexpended and unencumbered moneys in the fund in
 13 excess of \$1,250,000 on June 30 of each fiscal year shall be
 14 transferred by the director of finance into and become a
 15 realization of the general fund on that date."

16 SECTION 7. Section 128D-2.5, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "[+]§128D-2.5[+] Toxicologists. The department may
 19 establish permanent exempt positions known as toxicologists for
 20 the purpose of assessing human health risk. The positions shall
 21 be appointed by the director without regard to chapter 76. [The



1 ~~funds for these positions shall come from the environmental~~
2 ~~response revolving fund established in section 128D-2.] "~~

3 SECTION 8. Section 128D-2.6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~]§128D-2.6[~~f~~] Ecological risk assessor. The department
6 may establish a permanent exempt position for an ecological risk
7 assessor for the purpose of assessing ecological risks and
8 damages. The position shall be appointed by the director
9 without regard to chapter 76. [~~The funds for this position~~
10 ~~shall come from the environmental response revolving fund~~
11 ~~established in section 128D-2; provided that the duties of the~~
12 ~~ecological risk assessor shall bear a rational nexus to the~~
13 ~~intent and purposes of [this chapter].]~~ "

14 SECTION 9. (a) The director of health shall submit to the
15 legislature, by February 1, 2016, a report listing the following
16 for the environmental response revolving fund:

- 17 (1) The actual expenditures and encumbrances from July 1,
18 2015, to December 31, 2015;
- 19 (2) The planned expenditures from January 1, 2016, to
20 June 30, 2016; and



1 (3) The contingency amount planned to be held in reserve
2 throughout the fiscal year for expenditure in the
3 event of a major release. For the purpose of this
4 paragraph, "release" means the same as defined under
5 section 128D-1, Hawaii Revised Statutes.

6 (b) The director of health shall also submit to the
7 legislature, at least twenty days prior to the convening of the
8 regular session of 2017, a report listing the following for the
9 environmental response revolving fund for fiscal year 2015-2016:

- 10 (1) Actual revenues;
- 11 (2) Actual expenditures;
- 12 (3) Unexpended encumbrances as of June 30, 2016, and the
13 dates of encumbrances of the unexpended amounts; and
- 14 (4) The amount, if any, transferred to the general fund on
15 June 30, 2016, pursuant to section 128D-2(c), Hawaii
16 Revised Statutes.

17 The report shall also specify whether, during fiscal year 2015-
18 2016, the governor increased the ceiling of the revolving fund
19 pursuant to the authority established under section 128D-4(e),
20 Hawaii Revised Statutes.



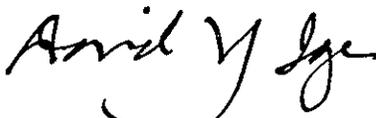
1 (c) The reports required under this section shall be in
2 addition to the annual report required under section 128D-13,
3 Hawaii Revised Statutes.

4 PART III

5 SECTION 10. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect on July 1, 2015.

APPROVED this 1 day of JUL , 2015



GOVERNOR OF THE STATE OF HAWAII