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

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

PART I

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

The purpose of this part is to ensure ongoing funding for environmental projects, in a transparent and stable manner, by
imposing the environmental response, energy, and food security
tax on fossil fuel and allocating it to advance Hawaii's clean
energy, food security, and climate change policies.

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

"Distributor" means:

(1) Every person who refines, manufactures, produces, or
compounds liquid fuel or fossil fuel in the State and
sells or uses the same therein;

(2) Every person who imports or causes to be imported into
the State any liquid fuel or fossil fuel and sells it
therein, whether in the original packages or
containers in which it is imported or otherwise than
in the original packages or containers, or who
imports any liquid fuel or fossil fuel for the
person's own use in the State;

(3) Every person who acquires liquid fuel or fossil fuel
from a person not a licensed distributor and sells or
uses it, whether in the original package or container
in which it was imported (if imported) or otherwise
than in [such] the original package or container; and

(4) Every person who acquires liquid fuel or fossil fuel
from a licensed distributor as a wholesaler thereof
and sells or uses it."

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

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

(1) 5 cents of the tax on each barrel shall be deposited
into the environmental response revolving fund

established under section 128D-2;"
(2) 15 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;

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

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

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

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

(1) 4.8 per cent of the tax on each one million British thermal units shall be deposited into the environmental response revolving fund established 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
appropriate surcharge to the end user that is approved by the public utilities commission.

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

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

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

(g) Every distributor shall keep in the State and preserve for five years a record in a form as the
department of taxation shall prescribe showing the total number
of barrels, and the fractional part of barrels, of petroleum
product or the total number of one million British thermal units
of fossil fuel, as the case may be, sold by the distributor
during any calendar month. The record shall show any
other data and figures relevant to the enforcement and
administration of this chapter as the department may require.

(h) For the purposes of this section:

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

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

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

1. By amending section 14 to read:

"SECTION 14. This Act shall take effect on July 1, 2010[+] provided that sections 2, 3, 4, and 7 of this Act shall be
repealed on June 30, 2030, and sections 128D-2, 201-12.8, and
243-3.5, Hawaii Revised Statutes, shall be reenacted in the form
in which they read on June 30, 2010]."

2. By repealing section 10:

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

PART II

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

More specifically, this part:

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

(2) Provides for the transfer of excess moneys in the
environmental response revolving fund under certain
conditions; and
Repeals the requirement that certain positions be funded by the environmental response revolving fund. The legislature intends that the positions be authorized and funded in accordance with the general appropriations act, as may be amended by the supplemental appropriations act; and

Requires the director of health to submit reports to the legislature regarding the environmental response revolving fund.

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

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

"§128D-2 Environmental response revolving fund; uses. (a) There is created within the state treasury an environmental response revolving fund, which shall consist of moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments,
moneys paid to the fund in court-approved or out-of-court settlements, all interest attributable to investment of money deposited in the fund, moneys deposited in the fund from the environmental response, energy, and food security tax pursuant to section 243-3.5, and moneys allotted to the fund from other sources.

(b) Moneys from the fund shall be expended by the department for [response-actions and preparedness, including removal and remedial actions, consistent with this chapter; provided that the revenues generated by the environmental response, energy, and food security tax deposited into the environmental-response-revolving-fund+] the following:

(1) [Shall be used+

(A) For oil-spill planning, prevention, preparedness, education, research, training, removal, and ]

Removal, remediation[~], and detection of oil and pollutant or contaminant releases;

[(B) For direct support for county-used-oil-recycling programs; and]

(2) [May also be used to support environmental protection and natural-resource-protection programs, including]
energy-conservation and alternative-energy
development, and to address concerns related to air
quality, global warming, clean water, polluted runoff,
solid-and removal and remediation of hazardous
waste[, drinking water, and underground storage tanks,]
including support for the underground storage tank
program of the department and funding for the
acquisition by the State of a soil remediation site
and facility.] and any other solid, liquid, or gaseous
substance that may harm the environment; and

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

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

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

"[4]§128D-2.5[4] Toxicologists. The department may
establish permanent exempt positions known as toxicologists for
the purpose of assessing human health risk. The positions shall
be appointed by the director without regard to chapter 76. [The
funds for these positions shall come from the environmental response revolving fund established in section 128D-2.]

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

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

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

(1) The actual expenditures and encumbrances from July 1, 2015, to December 31, 2015;

(2) The planned expenditures from January 1, 2016, to June 30, 2016; and
(3) The contingency amount planned to be held in reserve throughout the fiscal year for expenditure in the event of a major release. For the purpose of this paragraph, "release" means the same as defined under section 128D-1, Hawaii Revised Statutes.

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

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

The report shall also specify whether, during fiscal year 2015-2016, the governor increased the ceiling of the revolving fund pursuant to the authority established under section 128D-4(e), Hawaii Revised Statutes.
(c) The reports required under this section shall be in addition to the annual report required under section 128D-13, Hawaii Revised Statutes.

PART III

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

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

APPROVED this 1 day of JUL, 2015

GOVERNOR OF THE STATE OF HAWAII