

JAN 22 2010

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# A BILL FOR AN ACT

RELATING TO THE FUNDING OF THE STATE PROGRAMS.

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

1           SECTION 1. The legislature finds that regardless of  
2 whether a solution is implemented in time to restore lost  
3 instructional days for the 2009-2010 school year, seventeen  
4 instructional days for ten-month non-charter public school  
5 students and twenty-one instructional days for twelve-month non-  
6 charter public school remain scheduled to be canceled for the  
7 2010-2011 school year. The legislature finds that any approach  
8 to restoring instructional days should be forward-thinking to  
9 prevent short-sighted solutions and that a combination of  
10 appropriations from the Hawaii hurricane relief fund, the  
11 emergency and budget reserve fund, and the federal troubled  
12 asset relief program; and an increase in general excise taxes  
13 would provide a viable means of restoring instructional days.

14           The legislature declares that the appropriations made under  
15 this Act shall not be construed to mean that the legislature, in  
16 any way, intends to interfere with the processes of public



1 sector collective bargaining as authorized under the state  
2 constitution and chapter 89, Hawaii Revised Statutes.

3 **PART I**

4 SECTION 2. The purpose of this part is to appropriate  
5 Hawaii hurricane relief funds, emergency and budget reserve  
6 funds, and federal troubled asset relief program funds to  
7 restore as many instructional days until January 1, 2011, of the  
8 2010-2011 school year as possible.

9 SECTION 3. Notwithstanding provisions of chapter 431P,  
10 Hawaii Revised Statutes, to the contrary, there is appropriated  
11 out of the Hawaii hurricane relief fund the sum of \$  
12 or so much thereof as may be necessary for fiscal year 2010-2011  
13 to restore as many instructional days until January 1, 2011, of  
14 the 2010-2011 school year as possible.

15 The sum appropriated shall be expended by the department of  
16 education for the purposes of this Act.

17 SECTION 4. Any unexpended or unencumbered balance of the  
18 appropriation made by section 3 of this Act as of the close of  
19 business on June 30, 2011, shall lapse to the credit of the  
20 Hawaii hurricane relief fund.

21 SECTION 5. For purposes of this Act, section 328L-3(e)(3),  
22 Hawaii Revised Statutes, shall be suspended beginning on the



1 effective date of this Act and ending at the close of business  
2 on June 30, 2011.

3 SECTION 6. Notwithstanding section 328L-3(e)(3), Hawaii  
4 Revised Statutes, there is appropriated out of the emergency and  
5 budget reserve fund of the State of Hawaii the sum of  
6 \$ or so much thereof as may be necessary for fiscal  
7 year 2010-2011 to restore as many instructional days until  
8 January 1, 2011, of the 2010-2011 school year as possible.

9 The sum appropriated shall be expended by the department of  
10 education for the purposes of this Act.

11 SECTION 7. Any unexpended or unencumbered balance of the  
12 appropriation made by section 6 of this Act as of the close of  
13 business on June 30, 2011, shall lapse to the credit of the  
14 emergency and budget reserve fund.

15 SECTION 8. There is appropriated out of federal troubled  
16 asset relief program funds allocated to the State the sum of  
17 \$ or so much thereof as may be necessary for fiscal  
18 year 2010-2011 to restore as many instructional days until  
19 January 1, 2011, of the 2010-2011 school year as possible.

20 The sum appropriated shall be expended by the department of  
21 education for the purposes of this Act.



1 SECTION 9. Any unexpended or unencumbered balance of the  
2 appropriation made by section 8 of this Act as of the close of  
3 business on June 30, 2011, shall lapse to the credit of the  
4 State's portion of federal troubled asset relief program funds.

5 PART II

6 SECTION 10. The purpose of this part is to:

- 7 (1) Increase the general excise tax by one per cent to  
8 restore as many instructional days beginning on  
9 January 1, 2011, of the 2010-2011 school year as  
10 possible; and
- 11 (2) Offset the effects of the general excise tax increase  
12 by:
- 13 (A) Establishing an excise tax credit for the  
14 purchase of food items; and
- 15 (B) Increasing the state standard income tax  
16 deduction amounts.

17 SECTION 11. Chapter 235, Hawaii Revised Statutes, is  
18 amended by adding a new section to be appropriately designated  
19 and to read as follows:

20 "§235- Credit for the purchase of food items. (a) Each  
21 individual taxpayer who files an individual income tax return  
22 for a taxable year, and who is not claimed or is not otherwise



1 eligible to be claimed as a dependent by another for state or  
2 federal income tax purposes, may claim a nonrefundable credit  
3 against the tax otherwise due under this chapter for the  
4 purchase of food items, as defined in this section.

5 (b) The amount of the tax credit shall be \$ .  
6 Total tax credits claimed by all qualified individual taxpayers  
7 in any taxable year shall not exceed \$50,000,000.

8 (c) If the tax credit under this section exceeds the  
9 individual's tax liability, the excess of credit over liability  
10 shall not be refunded to the taxpayer. All claims, including  
11 any amended claims, for a tax credit under this section shall be  
12 filed on or before the end of the twelfth month following the  
13 close of the taxable year for which the credit may be claimed.  
14 Failure to comply with the foregoing provision shall constitute  
15 a waiver of the right to claim the credit.

16 (d) The director shall provide by rule written  
17 documentation or other evidence required to establish  
18 eligibility for the tax credit authorized in this section.

19 (e) The department of taxation shall prepare forms as may  
20 be necessary to claim the credit under this section.

21 (f) For purposes of this section, "food items" means any  
22 food or food product for home consumption except alcoholic



1 beverages, tobacco, and food products prepared at the place of  
2 sale or at another location and sold primarily for immediate or  
3 nearly immediate consumption. In the case of those persons who  
4 are sixty-five years of age or older or who receive supplemental  
5 security income benefits under Title XVI of the Social Security  
6 Act (42 U.S.C. §1381 et. seq.), and their spouses, "food items"  
7 includes meals prepared by and served in senior citizens'  
8 centers, apartment buildings occupied primarily by senior  
9 citizens, private nonprofit establishments (eating or otherwise)  
10 that feed senior citizens, private establishments that contract  
11 with the appropriate agency of the State to offer meals for  
12 senior citizens at concessional prices, and meals prepared for  
13 and served to residents of federally subsidized housing for the  
14 elderly.

15 The phrase "food items" may be further defined by the  
16 department of taxation by rule through the enumeration of  
17 items."

18 SECTION 12. Section 235-2.4, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) Section 63 (with respect to taxable income defined)  
21 of the Internal Revenue Code shall be operative for the purposes  
22 of this chapter, subject to the following:



- 1           (1) Sections 63(c)(1)(B) (relating to the additional  
2           standard deduction), 63(c)(1)(C) (relating to the real  
3           property tax deduction), 63(c)(1)(D) (relating to the  
4           disaster loss deduction), 63(c)(4) (relating to  
5           inflation adjustments), 63(c)(7) (defining the real  
6           property tax deduction), 63(c)(8) (defining the  
7           disaster loss deduction), and 63(f) (relating to  
8           additional amounts for the aged or blind) of the  
9           Internal Revenue Code shall not be operative for  
10          purposes of this chapter;
- 11          (2) Section 63(c)(2) (relating to the basic standard  
12          deduction) of the Internal Revenue Code shall be  
13          operative, except that the standard deduction amounts  
14          provided therein shall instead mean:
- 15                (A) [~~\$4,000~~] \$8,000 in the case of:
- 16                    (i) A joint return as provided by section  
17                        235-93; or
- 18                    (ii) A surviving spouse (as defined in section  
19                        2(a) of the Internal Revenue Code);
- 20                (B) [~~\$2,920~~] \$5,840 in the case of a head of  
21                    household (as defined in section 2(b) of the  
22                        Internal Revenue Code);



1 (C) [~~\$2,000~~] \$4,000 in the case of an individual who  
2 is not married and who is not a surviving spouse  
3 or head of household; or

4 (D) [~~\$2,000~~] \$4,000 in the case of a married  
5 individual filing a separate return;

6 (3) Section 63(c)(5) (limiting the basic standard  
7 deduction in the case of certain dependents) of the  
8 Internal Revenue Code shall be operative, except that  
9 the limitation shall be the greater of [~~\$500~~] \$1,000  
10 or such individual's earned income; and

11 (4) The standard deduction amount for nonresidents shall  
12 be calculated pursuant to section 235-5."

13 SECTION 13. Section 235-2.4, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) Section 63 (with respect to taxable income defined)  
16 of the Internal Revenue Code shall be operative for the purposes  
17 of this chapter, subject to the following:

18 (1) Sections 63(c)(1)(B) (relating to the additional  
19 standard deduction), 63(c)(1)(C) (relating to the real  
20 property tax deduction), 63(c)(1)(D) (relating to the  
21 disaster loss deduction), 63(c)(4) (relating to  
22 inflation adjustments), 63(c)(7) (defining the real





1 property tax deduction), 63(c)(8) (defining the  
2 disaster loss deduction), and 63(f) (relating to  
3 additional amounts for the aged or blind) of the  
4 Internal Revenue Code shall not be operative for  
5 purposes of this chapter;

6 (2) Section 63(c)(2) (relating to the basic standard  
7 deduction) of the Internal Revenue Code shall be  
8 operative, except that the standard deduction amounts  
9 provided therein shall instead mean:

10 (A) [~~\$4,400~~] \$8,800 in the case of:

11 (i) A joint return as provided by section  
12 235-93; or

13 (ii) A surviving spouse (as defined in section  
14 2(a) of the Internal Revenue Code);

15 (B) [~~\$3,212~~] \$6,424 in the case of a head of  
16 household (as defined in section 2(b) of the  
17 Internal Revenue Code);

18 (C) [~~\$2,200~~] \$4,400 in the case of an individual who  
19 is not married and who is not a surviving spouse  
20 or head of household; or

21 (D) [~~\$2,200~~] \$4,400 in the case of a married  
22 individual filing a separate return;



1           (3) Section 63(c)(5) (limiting the basic standard  
2           deduction in the case of certain dependents) of the  
3           Internal Revenue Code shall be operative, except that  
4           the limitation shall be the greater of [~~\$500~~] \$1,000  
5           or such individual's earned income; and

6           (4) The standard deduction amount for nonresidents shall  
7           be calculated pursuant to section 235-5."

8           SECTION 14. Section 237-13, Hawaii Revised Statutes, is  
9           amended to read as follows:

10           "**§237-13 Imposition of tax.** There is hereby levied and  
11           shall be assessed and collected annually privilege taxes against  
12           persons on account of their business and other activities in the  
13           State measured by the application of rates against values of  
14           products, gross proceeds of sales, or gross income, whichever is  
15           specified, as follows:

16           (1) Tax on manufacturers.

17           (A) Upon every person engaging or continuing within  
18           the State in the business of manufacturing,  
19           including compounding, canning, preserving,  
20           packing, printing, publishing, milling,  
21           processing, refining, or preparing for sale,  
22           profit, or commercial use, either directly or



1 through the activity of others, in whole or in  
2 part, any article or articles, substance or  
3 substances, commodity or commodities, the amount  
4 of the tax to be equal to the value of the  
5 articles, substances, or commodities,  
6 manufactured, compounded, canned, preserved,  
7 packed, printed, milled, processed, refined, or  
8 prepared for sale, as shown by the gross proceeds  
9 derived from the sale thereof by the manufacturer  
10 or person compounding, preparing, or printing  
11 them, multiplied by one-half of one per cent.

12 (B) The measure of the tax on manufacturers is the  
13 value of the entire product for sale, regardless  
14 of the place of sale or the fact that deliveries  
15 may be made to points outside the State.

16 (C) If any person liable for the tax on manufacturers  
17 ships or transports the person's product, or any  
18 part thereof, out of the State, whether in a  
19 finished or unfinished condition, or sells the  
20 same for delivery to points outside the State  
21 (for example, consigned to a mainland purchaser  
22 via common carrier f.o.b. Honolulu), the value of



1 the products in the condition or form in which  
2 they exist immediately before entering interstate  
3 or foreign commerce, determined as hereinafter  
4 provided, shall be the basis for the assessment  
5 of the tax imposed by this paragraph. This tax  
6 shall be due and payable as of the date of entry  
7 of the products into interstate or foreign  
8 commerce, whether the products are then sold or  
9 not. The department shall determine the basis  
10 for assessment, as provided by this paragraph, as  
11 follows:

12 (i) If the products at the time of their entry  
13 into interstate or foreign commerce already  
14 have been sold, the gross proceeds of sale,  
15 less the transportation expenses, if any,  
16 incurred in realizing the gross proceeds for  
17 transportation from the time of entry of the  
18 products into interstate or foreign  
19 commerce, including insurance and storage in  
20 transit, shall be the measure of the value  
21 of the products;



1                   (ii) If the products have not been sold at the  
2                   time of their entry into interstate or  
3                   foreign commerce, and in cases governed by  
4                   clause (i) in which the products are sold  
5                   under circumstances such that the gross  
6                   proceeds of sale are not indicative of the  
7                   true value of the products, the value of the  
8                   products constituting the basis for  
9                   assessment shall correspond as nearly as  
10                  possible to the gross proceeds of sales for  
11                  delivery outside the State, adjusted as  
12                  provided in clause (i), or if sufficient  
13                  data are not available, sales in the State,  
14                  of similar products of like quality and  
15                  character and in similar quantities, made by  
16                  the taxpayer (unless not indicative of the  
17                  true value) or by others. Sales outside the  
18                  State, adjusted as provided in clause (i),  
19                  may be considered when they constitute the  
20                  best available data. The department shall  
21                  prescribe uniform and equitable rules for  
22                  ascertaining the values;



1 (iii) At the election of the taxpayer and with the  
2 approval of the department, the taxpayer may  
3 make the taxpayer's returns under clause (i)  
4 even though the products have not been sold  
5 at the time of their entry into interstate  
6 or foreign commerce; and

7 (iv) In all cases in which products leave the  
8 State in an unfinished condition, the basis  
9 for assessment shall be adjusted so as to  
10 deduct the portion of the value as is  
11 attributable to the finishing of the goods  
12 outside the State.

13 (2) Tax on business of selling tangible personal property;  
14 producing.

15 (A) Upon every person engaging or continuing in the  
16 business of selling any tangible personal  
17 property whatsoever (not including, however,  
18 bonds or other evidence of indebtedness, or  
19 stocks), there is likewise hereby levied, and  
20 shall be assessed and collected, a tax equivalent  
21 to [~~four~~] five per cent of the gross proceeds of  
22 sales of the business; provided that insofar as



1 the sale of tangible personal property is a  
2 wholesale sale under section [†]237-4(a)(8)[†],  
3 the sale shall be subject to section 237-13.3.  
4 Upon every person engaging or continuing within  
5 this State in the business of a producer, the tax  
6 shall be equal to one-half of one per cent of the  
7 gross proceeds of sales of the business, or the  
8 value of the products, for sale, if sold for  
9 delivery outside the State or shipped or  
10 transported out of the State, and the value of  
11 the products shall be determined in the same  
12 manner as the value of manufactured products  
13 covered in the cases under paragraph (1)(C).

14 (B) Gross proceeds of sales of tangible property in  
15 interstate and foreign commerce shall constitute  
16 a part of the measure of the tax imposed on  
17 persons in the business of selling tangible  
18 personal property, to the extent, under the  
19 conditions, and in accordance with the provisions  
20 of the Constitution of the United States and the  
21 Acts of the Congress of the United States which  
22 may be now in force or may be hereafter adopted,



1 and whenever there occurs in the State an  
2 activity to which, under the Constitution and  
3 Acts of Congress, there may be attributed gross  
4 proceeds of sales, the gross proceeds shall be so  
5 attributed.

6 (C) No manufacturer or producer, engaged in such  
7 business in the State and selling the  
8 manufacturer's or producer's products for  
9 delivery outside of the State (for example,  
10 consigned to a mainland purchaser via common  
11 carrier f.o.b. Honolulu), shall be required to  
12 pay the tax imposed in this chapter for the  
13 privilege of so selling the products, and the  
14 value or gross proceeds of sales of the products  
15 shall be included only in determining the measure  
16 of the tax imposed upon the manufacturer or  
17 producer.

18 (D) When a manufacturer or producer, engaged in such  
19 business in the State, also is engaged in selling  
20 the manufacturer's or producer's products in the  
21 State at wholesale, retail, or in any other  
22 manner, the tax for the privilege of engaging in





1 the business of selling the products in the State  
2 shall apply to the manufacturer or producer as  
3 well as the tax for the privilege of  
4 manufacturing or producing in the State, and the  
5 manufacturer or producer shall make the returns  
6 of the gross proceeds of the wholesale, retail,  
7 or other sales required for the privilege of  
8 selling in the State, as well as making the  
9 returns of the value or gross proceeds of sales  
10 of the products required for the privilege of  
11 manufacturing or producing in the State. The  
12 manufacturer or producer shall pay the tax  
13 imposed in this chapter for the privilege of  
14 selling its products in the State, and the value  
15 or gross proceeds of sales of the products, thus  
16 subjected to tax, may be deducted insofar as  
17 duplicated as to the same products by the measure  
18 of the tax upon the manufacturer or producer for  
19 the privilege of manufacturing or producing in  
20 the State; provided that no producer of  
21 agricultural products who sells the products to a  
22 purchaser who will process the products outside



1 the State shall be required to pay the tax  
2 imposed in this chapter for the privilege of  
3 producing or selling those products.

4 (E) A taxpayer selling to a federal cost-plus  
5 contractor may make the election provided for by  
6 paragraph (3) (C), and in that case the tax shall  
7 be computed pursuant to the election,  
8 notwithstanding this paragraph or paragraph (1)  
9 to the contrary.

10 (F) The department, by rule, may require that a  
11 seller take from the purchaser of tangible  
12 personal property a certificate, in a form  
13 prescribed by the department, certifying that the  
14 sale is a sale at wholesale; provided that:

15 (i) Any purchaser who furnishes a certificate  
16 shall be obligated to pay to the seller,  
17 upon demand, the amount of the additional  
18 tax that is imposed upon the seller whenever  
19 the sale in fact is not at wholesale; and

20 (ii) The absence of a certificate in itself shall  
21 give rise to the presumption that the sale



1 is not at wholesale unless the sales of the  
2 business are exclusively at wholesale.

3 (3) Tax upon contractors.

4 (A) Upon every person engaging or continuing within  
5 the State in the business of contracting, the tax  
6 shall be equal to [~~four~~] five per cent of the  
7 gross income of the business.

8 (B) In computing the tax levied under this paragraph,  
9 there shall be deducted from the gross income of  
10 the taxpayer so much thereof as has been included  
11 in the measure of the tax levied under  
12 subparagraph (A), on:

13 (i) Another taxpayer who is a contractor, as  
14 defined in section 237-6;

15 (ii) A specialty contractor, duly licensed by the  
16 department of commerce and consumer affairs  
17 pursuant to section 444-9, in respect of the  
18 specialty contractor's business; or

19 (iii) A specialty contractor who is not licensed  
20 by the department of commerce and consumer  
21 affairs pursuant to section 444-9, but who  
22 performs contracting activities on federal



1 military installations and nowhere else in  
2 this State;

3 provided that any person claiming a deduction  
4 under this paragraph shall be required to show in  
5 the person's return the name and general excise  
6 number of the person paying the tax on the amount  
7 deducted by the person.

8 (C) In computing the tax levied under this paragraph  
9 against any federal cost-plus contractor, there  
10 shall be excluded from the gross income of the  
11 contractor so much thereof as fulfills the  
12 following requirements:

13 (i) The gross income exempted shall constitute  
14 reimbursement of costs incurred for  
15 materials, plant, or equipment purchased  
16 from a taxpayer licensed under this chapter,  
17 not exceeding the gross proceeds of sale of  
18 the taxpayer on account of the transaction;  
19 and

20 (ii) The taxpayer making the sale shall have  
21 certified to the department that the  
22 taxpayer is taxable with respect to the



1 gross proceeds of the sale, and that the  
2 taxpayer elects to have the tax on gross  
3 income computed the same as upon a sale to  
4 the state government.

5 (D) A person who, as a business or as a part of a  
6 business in which the person is engaged, erects,  
7 constructs, or improves any building or  
8 structure, of any kind or description, or makes,  
9 constructs, or improves any road, street,  
10 sidewalk, sewer, or water system, or other  
11 improvements on land held by the person (whether  
12 held as a leasehold, fee simple, or otherwise),  
13 upon the sale or other disposition of the land or  
14 improvements, even if the work was not done  
15 pursuant to a contract, shall be liable to the  
16 same tax as if engaged in the business of  
17 contracting, unless the person shows that at the  
18 time the person was engaged in making the  
19 improvements the person intended, and for the  
20 period of at least one year after completion of  
21 the building, structure, or other improvements  
22 the person continued to intend to hold and not



1 sell or otherwise dispose of the land or  
2 improvements. The tax in respect of the  
3 improvements shall be measured by the amount of  
4 the proceeds of the sale or other disposition  
5 that is attributable to the erection,  
6 construction, or improvement of such building or  
7 structure, or the making, constructing, or  
8 improving of the road, street, sidewalk, sewer,  
9 or water system, or other improvements. The  
10 measure of tax in respect of the improvements  
11 shall not exceed the amount which would have been  
12 taxable had the work been performed by another,  
13 subject as in other cases to the deductions  
14 allowed by subparagraph (B). Upon the election  
15 of the taxpayer, this paragraph may be applied  
16 notwithstanding that the improvements were not  
17 made by the taxpayer, or were not made as a  
18 business or as a part of a business, or were made  
19 with the intention of holding the same. However,  
20 this paragraph shall not apply in respect of any  
21 proceeds that constitute or are in the nature of  
22 rent; all such gross income shall be taxable



1 under paragraph (9); provided that insofar as the  
2 business of renting or leasing real property  
3 under a lease is taxed under section 237-16.5,  
4 the tax shall be levied by section 237-16.5.

5 (4) Tax upon theaters, amusements, radio broadcasting  
6 stations, etc.

7 (A) Upon every person engaging or continuing within  
8 the State in the business of operating a theater,  
9 opera house, moving picture show, vaudeville,  
10 amusement park, dance hall, skating rink, radio  
11 broadcasting station, or any other place at which  
12 amusements are offered to the public, the tax  
13 shall be equal to [~~four~~] five per cent of the  
14 gross income of the business, and in the case of  
15 a sale of an amusement at wholesale under section  
16 237-4(a)(13), the tax shall be subject to section  
17 237-13.3.

18 (B) The department may require that the person  
19 rendering an amusement at wholesale take from the  
20 licensed seller a certificate, in a form  
21 prescribed by the department, certifying that the  
22 sale is a sale at wholesale; provided that:



1 (i) Any licensed seller who furnishes a  
2 certificate shall be obligated to pay to the  
3 person rendering the amusement, upon demand,  
4 the amount of additional tax that is imposed  
5 upon the seller whenever the sale is not at  
6 wholesale; and

7 (ii) The absence of a certificate in itself shall  
8 give rise to the presumption that the sale  
9 is not at wholesale unless the person  
10 rendering the sale is exclusively rendering  
11 the amusement at wholesale.

12 (5) Tax upon sales representatives, etc. Upon every  
13 person classified as a representative or purchasing  
14 agent under section 237-1, engaging or continuing  
15 within the State in the business of performing  
16 services for another, other than as an employee, there  
17 is likewise hereby levied and shall be assessed and  
18 collected a tax equal to [~~four~~] five per cent of the  
19 commissions and other compensation attributable to the  
20 services so rendered by the person.

21 (6) Tax on service business.





1 (A) Upon every person engaging or continuing within  
2 the State in any service business or calling  
3 including professional services not otherwise  
4 specifically taxed under this chapter, there is  
5 likewise hereby levied and shall be assessed and  
6 collected a tax equal to [~~four~~] five per cent of  
7 the gross income of the business, and in the case  
8 of a wholesaler under section 237-4(a)(10), the  
9 tax shall be equal to one-half of one per cent of  
10 the gross income of the business.

11 Notwithstanding the foregoing, a wholesaler under  
12 section 237-4(a)(10) shall be subject to section  
13 237-13.3.

14 (B) The department may require that the person  
15 rendering a service at wholesale take from the  
16 licensed seller a certificate, in a form  
17 prescribed by the department, certifying that the  
18 sale is a sale at wholesale; provided that:

19 (i) Any licensed seller who furnishes a  
20 certificate shall be obligated to pay to the  
21 person rendering the service, upon demand,  
22 the amount of additional tax that is imposed



1 upon the seller whenever the sale is not at  
2 wholesale; and

3 (ii) The absence of a certificate in itself shall  
4 give rise to the presumption that the sale  
5 is not at wholesale unless the person  
6 rendering the sale is exclusively rendering  
7 services at wholesale.

8 (C) Where any person is engaged in the business of  
9 selling interstate or foreign common carrier  
10 telecommunication services within and without the  
11 State, other than as a home service provider, the  
12 tax shall be imposed on that portion of gross  
13 income received by a person from service which is  
14 originated or terminated in this State and is  
15 charged to a telephone number, customer, or  
16 account in this State notwithstanding any other  
17 state law (except for the exemption under section  
18 237-23(a)(1)) to the contrary. If, under the  
19 Constitution and laws of the United States, the  
20 entire gross income as determined under this  
21 paragraph of a business selling interstate or  
22 foreign common carrier telecommunication services



1 cannot be included in the measure of the tax, the  
2 gross income shall be apportioned as provided in  
3 section 237-21; provided that the apportionment  
4 factor and formula shall be the same for all  
5 persons providing those services in the State.

6 (D) Where any person is engaged in the business of a  
7 home service provider, the tax shall be imposed  
8 on the gross income received or derived from  
9 providing interstate or foreign mobile  
10 telecommunications services to a customer with a  
11 place of primary use in this State when such  
12 services originate in one state and terminate in  
13 another state, territory, or foreign country;  
14 provided that all charges for mobile  
15 telecommunications services which are billed by  
16 or for the home service provider are deemed to be  
17 provided by the home service provider at the  
18 customer's place of primary use, regardless of  
19 where the mobile telecommunications originate,  
20 terminate, or pass through; provided further that  
21 the income from charges specifically derived from  
22 interstate or foreign mobile telecommunications



1 services, as determined by books and records that  
2 are kept in the regular course of business by the  
3 home service provider in accordance with section  
4 239-24, shall be apportioned under any  
5 apportionment factor or formula adopted under  
6 subparagraph (C). Gross income shall not  
7 include:

8 (i) Gross receipts from mobile  
9 telecommunications services provided to a  
10 customer with a place of primary use outside  
11 this State;

12 (ii) Gross receipts from mobile  
13 telecommunications services that are subject  
14 to the tax imposed by chapter 239;

15 (iii) Gross receipts from mobile  
16 telecommunications services taxed under  
17 section 237-13.8; and

18 (iv) Gross receipts of a home service provider  
19 acting as a serving carrier providing mobile  
20 telecommunications services to another home  
21 service provider's customer.



1           For the purposes of this paragraph, "charges for  
2           mobile telecommunications services", "customer",  
3           "home service provider", "mobile  
4           telecommunications services", "place of primary  
5           use", and "serving carrier" have the same meaning  
6           as in section 239-22.

7           (7) Tax on insurance producers. Upon every person engaged  
8           as a licensed producer pursuant to chapter 431, there  
9           is hereby levied and shall be assessed and collected a  
10          tax equal to 0.15 per cent of the commissions due to  
11          that activity.

12          (8) Tax on receipts of sugar benefit payments. Upon the  
13          amounts received from the United States government by  
14          any producer of sugar (or the producer's legal  
15          representative or heirs), as defined under and by  
16          virtue of the Sugar Act of 1948, as amended, or other  
17          Acts of the Congress of the United States relating  
18          thereto, there is hereby levied a tax of one-half of  
19          one per cent of the gross amount received; provided  
20          that the tax levied hereunder on any amount so  
21          received and actually disbursed to another by a  
22          producer in the form of a benefit payment shall be



1           paid by the person or persons to whom the amount is  
2           actually disbursed, and the producer actually making a  
3           benefit payment to another shall be entitled to claim  
4           on the producer's return a deduction from the gross  
5           amount taxable hereunder in the sum of the amount so  
6           disbursed. The amounts taxed under this paragraph  
7           shall not be taxable under any other paragraph,  
8           subsection, or section of this chapter.

9           (9) Tax on other business. Upon every person engaging or  
10          continuing within the State in any business, trade,  
11          activity, occupation, or calling not included in the  
12          preceding paragraphs or any other provisions of this  
13          chapter, there is likewise hereby levied and shall be  
14          assessed and collected, a tax equal to [~~four~~] five per  
15          cent of the gross income thereof. In addition, the  
16          rate prescribed by this paragraph shall apply to a  
17          business taxable under one or more of the preceding  
18          paragraphs or other provisions of this chapter, as to  
19          any gross income thereof not taxed thereunder as gross  
20          income or gross proceeds of sales or by taxing an  
21          equivalent value of products, unless specifically  
22          exempted."



1 SECTION 15. Section 237-15, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§237-15 **Technicians.** When technicians supply dentists or  
4 physicians with dentures, orthodontic devices, braces, and  
5 similar items which have been prepared by the technician in  
6 accordance with specifications furnished by the dentist or  
7 physician, and such items are to be used by the dentist or  
8 physician in the dentist's or physician's professional practice  
9 for a particular patient who is to pay the dentist or physician  
10 for the same as a part of the dentist's or physician's  
11 professional services, the technician shall be taxed as though  
12 the technician were a manufacturer selling a product to a  
13 licensed retailer, rather than at the rate of [~~four~~] five per  
14 cent which is generally applied to professions and services."

15 SECTION 16. Section 237-16.5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) This section relates to the leasing of real property  
18 by a lessor to a lessee. There is hereby levied, and shall be  
19 assessed and collected annually, a privilege tax against persons  
20 engaging or continuing within the State in the business of  
21 leasing real property to another, equal to [~~four~~] five per cent  
22 of the gross proceeds or gross income received or derived from



1 the leasing; provided that where real property is subleased by a  
2 lessee to a sublessee, the lessee, as provided in this section,  
3 shall be allowed a deduction from the amount of gross proceeds  
4 or gross income received from its sublease of the real property.  
5 The deduction shall be in the amount allowed under this section.

6 All deductions under this section and the name and general  
7 excise tax number of the lessee's lessor shall be reported on  
8 the general excise tax return. Any deduction allowed under this  
9 section shall only be allowed with respect to leases and  
10 subleases in writing and relating to the same real property."

11 SECTION 17. Section 237-18, Hawaii Revised Statutes, is  
12 amended by amending subsection (f) to read as follows:

13 "(f) Where tourism related services are furnished through  
14 arrangements made by a travel agency or tour packager and the  
15 gross income is divided between the provider of the services and  
16 the travel agency or tour packager, the tax imposed by this  
17 chapter shall apply to each such person with respect to such  
18 person's respective portion of the proceeds, and no more.

19 As used in this subsection "tourism related services" means  
20 catamaran cruises, canoe rides, dinner cruises, lei greetings,  
21 transportation included in a tour package, sightseeing tours not  
22 subject to chapter 239, admissions to luaus, dinner shows,





1  extravaganzas, cultural and educational facilities, and other  
2  services rendered directly to the customer or tourist, but only  
3  if the providers of the services other than air transportation  
4  are subject to a [~~four~~] five per cent tax under this chapter or  
5  chapter 239."

6       SECTION 18.  There is appropriated out of the general  
7  revenues of the State of Hawaii a sum equivalent to the  
8  additional general excise tax revenue generated under this Act  
9  or so much thereof as may be necessary for fiscal year 2010-2011  
10 and the same sum or so much thereof as may be necessary for  
11 fiscal year 2011-2012 to restore as many instructional days  
12 beginning on January 1, 2011, of the 2010-2011 school year as  
13 possible; provided that of the remaining additional general  
14 excise tax revenues generated under this Act:

- 15       (1)  \$                   shall be expended by the department of  
16           human services for child-related programs;
- 17       (2)  \$                   shall be expended by the department of  
18           health for children's health programs;
- 19       (3)  \$                   shall be allocated to the unemployment  
20           compensation fund, established under section 383-121,  
21           Hawaii Revised Statutes, for a period of three years;



1           (4)   \$                   shall be allocated to the Hawaii hurricane  
2                   relief fund, established under section 431P-2, Hawaii  
3                   Revised Statutes, to reimburse the Hawaii hurricane  
4                   relief fund over a period of five years for money  
5                   appropriated from the fund under section 3 of this  
6                   Act; and

7           (5)   \$                   shall be allocated to the emergency and  
8                   budget reserve fund, established under section 328L-3,  
9                   Hawaii Revised Statutes, to reimburse the emergency  
10                  and budget reserve fund over a period of five years  
11                  for money appropriated from the fund under section 6  
12                  of this Act;

13 provided further that the sums appropriated shall not be used to  
14 supplant funding amounts authorized prior to July 1, 2008.

15           SECTION 19. This Act shall take effect on July 1, 2010;  
16 provided that:

17           (1) The amendments made to section 235-2.4(a), Hawaii  
18                  Revised Statutes, by section 12 of this Act shall be  
19                  repealed on January 1, 2011; and

20           (2) Section 13 of this Act shall take effect on January 1,  
21                  2011, and shall apply to taxable years beginning after  
22                  December 31, 2010; provided that the amendments made





**Report Title:**

Restore Instructional Days; GET; Appropriation

**Description:**

Makes an appropriation from the Hawaii hurricane relief, emergency and budget reserve, and federal troubled asset relief program funds to restore as many instructional days until January 1, 2011, of the 2010-11 school year as possible. Increases the general excise tax by one per cent to restore as many instructional days beginning on January 1, 2011, of the 2010-11 school year as possible. Increases all state standard income tax deductions and provides tax credits for the purchase of food items. Appropriates additional general excise tax revenues.

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

