

SB 17

RELATING TO FOSSIL FUELS.

Amends section 243-3.5, HRS, to levy the environmental response, energy, and food security tax on liquid or gaseous fossil fuels. Repeals 6/30/2015.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

Thursday, January 31, 2013
2:45 p.m.
State Capitol, Conference Room 225

in consideration of
SB 17
RELATING TO FOSSIL FUELS.

Chair Gabbard, Vice Chair Ruderman, and Members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) provides comments on SB 17, which expands the Environmental Response, Energy, and Food Security Tax ("barrel tax") to all liquid and gaseous fossil fuels, including liquefied natural gas, and changes the unit being taxed from "barrels" to "British Thermal Units." We believe it is prudent to maintain the unit of taxation as "barrel" for petroleum products already being taxed for clarity.

DBEDT is proposing a suggested amendment for Section 2 to clarify the intent of SB 17 to maintain existing implementation of the barrel tax on petroleum products, and add a new paragraph for the taxation of liquefied natural gas or gaseous fossil fuels.

DBEDT defers to the Department of Taxation on the administration of the tax.

Thank you for the opportunity to offer these comments and suggested amendment on SB 17.

SECTION 2. Section 243-3.5, Hawaii Revised Statutes, is amended 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~~] fossil fuel product sold by a distributor to any retail dealer or end user of [~~petroleum~~] fossil fuel product, other than a refiner. The fossil fuel products to be taxed are as follows:

- (1) petroleum product; and
- (2) liquefied natural gas or gaseous fossil fuel, provided that each barrel is equivalent to 5.8 million british thermal units.

(b) The tax shall be \$1.05 on each barrel or fractional part of a barrel of [~~petroleum~~] fossil fuel product that is not aviation fuel; provided that of the tax collected pursuant to this subsection:

- (1) [~~5~~] 10 cents of the tax on each barrel shall be deposited into the environmental response revolving fund established under section 128D-2;

- (2) [~~15~~] 42.5 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 304A-2169; and
- (4) [~~15~~] 42.5 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~~] fossil fuel product.

~~[(b)]~~ (c) Each distributor subject to the tax imposed by subsection (a), 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.

~~[(e)]~~ (d) 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).

~~[(d)]~~ (e) Every distributor shall keep in the State and preserve for five years a record in such form as the department of taxation shall prescribe showing the total number of barrels and the fractional part of barrels of ~~[petroleum]~~ fossil fuel product sold by the distributor during any calendar month. The record shall show such other data and figures relevant to the enforcement and administration of this chapter as the department may require."

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

S.B. 17, RELATING TO FOSSIL FUELS

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

January 31, 2013
2:45 P.M.

1 **Department's Position:** The Department of Health strongly supports this measure since it will further
2 the State goals of energy and food self-sufficiency and environmental response activities.

3 **Fiscal Implications:** The measure will result in the potential additional revenue to the agricultural
4 development and food security special fund; the energy security special fund; the energy systems
5 development fund and the environmental response revolving fund. The Department defers to the
6 Department of Taxation (TAX), Department of Agriculture (AG), and the Department of Business,
7 Economic Development, and Tourism (DBEDT) to determine more specific details of the potential
8 revenues.

9 **Purpose and Justification:** The Department uses the environmental response revolving fund to
10 respond to and clean up hazardous material releases to the environment which may also affect public
11 health. Other uses of the fund include protection of state waters and regulation of solid and hazardous
12 wastes. Over the last several years, there has been a steady decrease in the environmental response
13 revolving fund revenues due to various factors, such as the global recession, an increase in more fuel
14 efficient and hybrid vehicles, and the trend towards alternative non-petroleum-based energy sources.

Promoting Lifelong Health & Wellness

1 The current 5 cents per barrel that goes to the environmental response revolving fund will not provide
2 sufficient funding to support the Departments' statutorily mandated mission of protecting human health
3 and the environment given the decline in funding. Therefore the proposed measure to include imported
4 liquefied natural gas (LNG) as part of the environmental response, energy, and food security tax is
5 critical to providing the necessary resources and to reduce the state's dependence on imported energy
6 resources.

7 Thank you for the opportunity to testify on this important measure.



UNIVERSITY OF HAWAII SYSTEM
Legislative Testimony

Written Testimony Presented Before the
Senate Committee on Energy & Environment
Thursday, January 31, 2013

by

Richard Rocheleau, Director
Hawai'i Natural Energy Institute
School of Ocean and Earth Science and Technology
University of Hawai'i at Mānoa

SB 17 – RELATING TO FOSSIL FUELS

Chair Gabbard, Vice-Chair Ruderman, and members of the committee:

My name is Richard Rocheleau, Director of the Hawai'i Natural Energy Institute at the University of Hawai'i at Mānoa. We support SB 17 which proposes to amend section 243-3.5, HRS to redefine the products on which the state environmental response, energy, and food security tax is levied as "each barrel equivalent of liquid or gaseous fossil fuels".

The portion of the barrel tax that is devoted to energy is crucial in advancing policy initiatives and new efficient and economic energy technologies and will help ensure that Hawai'i continues to move forward to meet its clean energy goals. Amending the law to define the taxed product as "each barrel equivalent of liquid or gaseous fossil fuels" will ensure the intent of the law is not averted, and the revenue stream it provides will not be diminished should liquefied natural gas, or other fossil fuel products not covered by the current law, be imported to the state and displace a portion of our use of petroleum products.

NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



FREDERICK D. PABLO
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STATE OF HAWAII
DEPARTMENT OF TAXATION

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To: The Honorable Mike Gabbard, Chair
and Members of the Senate Committee on Energy and Environment

Date: Thursday, January 31, 2013
Time: 2:45 P.M.
Place: Conference Room 225, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 17, Relating to Fossil Fuels

The Department appreciates the intent of S.B. 17 and provides the following information and comments for your consideration.

S.B. 17 amends the environmental response, energy, and food security tax such that it would apply to "liquid or gaseous fossil fuels" rather than to "petroleum products."

The Department notes that the environmental response, energy, and food security tax currently applies to "petroleum products" as that term is defined in Section 243-2, Hawaii Revised Statutes. However, the current definition of "petroleum products," includes only products of the processing of crude oil that are liquids at standard temperature and pressure; therefore, it would not apply to liquid natural gas or other fuels that may be utilized within the State.

The Department suggests that the term "fossil fuels" be defined to clarify the forms of fuel subject to tax to ease administration of the tax. S.B. 17 applies the environmental response, energy, and food security tax to "liquid or gaseous fossil fuels," a term which is not defined in Chapter 243, Hawaii Revised Statutes.

The Department also notes that the environmental response, energy, and food security tax currently applies to products of petroleum refining, is levied on a per-barrel basis, and is well-understood by taxpayers. The department suggests that application of the tax to other forms of fuel be done in a different section of the chapter 243. Separating "petroleum products" and "liquid and gaseous fossil fuels" into different paragraphs would allow taxpayers to continue paying the tax on petroleum products without confusion regarding the energy content of those fuels while also applying the tax to liquid and gaseous fossil fuels based on the energy content of those fuels.

Thank you for the opportunity to provide comments.

SB17

Submitted on: 1/29/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Marjorie Ziegler	Conservation Council for Hawai'i	Support	No

Comments:

SB17

Submitted on: 1/30/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Henry Curtis	Ililani Media	Support	No

Comments:

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Environmental response, energy and food security tax on liquid or gaseous fossil fuels

BILL NUMBER: SB 17; HB 451 (Identical)

INTRODUCED BY: SB by Gabbard and 2 Democrats; HB by Lee

BRIEF SUMMARY: Amends HRS section 243-3.5(a) to provide that the environmental response, energy and food security tax shall be imposed on liquid or gaseous fossil fuel that have an energy content of 5,800,000 BTUs.

This act shall be repealed on June 30, 2015 and HRS 243-3.5 shall be reenacted in the form in which it read on June 30, 2010.

EFFECTIVE DATE: July 1, 2013

STAFF COMMENTS: The legislature by Act 300, SLH 1993, enacted an environmental response tax of 5 cents per barrel on petroleum products sold by a distributor to any retail dealer or end user. The legislature by Act 73, SLH 2010, increased the amount of the tax to \$1.05 per barrel and provided that 5 cents of the tax shall be deposited into the environmental response revolving fund; 15 cents shall be deposited into the energy security special fund, 10 cents shall be deposited into the energy systems development special fund; 15 cents shall be deposited into the agricultural development and food security special fund; and the residual of 60 cents shall be deposited into the general fund between 7/1/10 and 6/30/15. This measure would add liquid or gaseous fossil fuel to petroleum products imported into the state as the liquid gas alternative is being explored as a replacement for petroleum. As such, this proposal is nothing more than another attempt to generate more funds for the state or in other words, a tax increase.

It should be remembered that when the environmental response tax was initially adopted, it was established for the purpose of setting up a reserve should an oil spill occur on the ocean waters that would affect Hawaii's shoreline. The nexus was between the oil importers and the possibility that a spill might occur as the oil product was being imported into the state. While this measure would impose the environmental response tax on all liquid and gaseous fossil fuels beginning on July 1, 2013, the remedial action due to a "gas leak" is no where as hazardous to the environment as other fossil fuels, it is questionable why they would be subject to same tax rate.

Now that the fund has become a cash cow, lawmakers have placed other responsibilities on the fund, including environmental protection and natural resource protection programs, such as energy conservation and alternative energy development, to address concerns related to air quality, global warming, clean water, polluted runoff, solid and hazardous waste, drinking water, and underground storage tanks, including support for the underground storage tank program of the department of health.

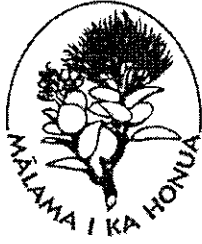
It should be noted that the enactment of the barrel tax for the environmental response revolving fund is the classic effort of getting one's foot in the door as it was initially enacted with a palatable and acceptable tax rate of 5 cents and subsequently increasing the tax rate once it was enacted which is what it has morphed into as evidenced by the \$1.05 tax rate. Because the tax is imposed at the front end of the product chain, the final consumer does not know that the higher cost of the product is due to the tax. Thus, there is little, if any, accountability between the lawmakers who enacted the tax and the vast majority of the public that ends up paying the tax albeit indirectly. Proponents ought to be ashamed that they are promoting a less than transparent tax increase in the burden on families all in the name of environmental protection and food security.

It should be remembered that the State Auditor has singled out the environmental response revolving fund as not meeting the criteria established and recommended that it be repealed. The Auditor criticized the use of such funds as they hide various sums of money from policymakers as they are not available for any other use and tend to be tacitly acknowledged in the budget process. More importantly, it should be recognized that it is not only the users of petroleum products who benefit from a cleaner environment, but it is the public who benefits. If this point can be accepted, then the public, as a whole, should be asked to pay for the clean up and preservation of the environment.

Funds deposited into a revolving fund are not subject to close scrutiny as an assumption is made that such funds are self-sustaining. It should be remembered that earmarking of funds for a specific program represents poor public finance policy as it is difficult to determine the adequacy of the revenue source for the purposes of the program. To the extent that earmarking carves out revenues before policymakers can evaluate the appropriateness of the amount earmarked and spent, it removes the accountability for those funds. There is no reason why such programs should not compete for general funds like all other programs which benefit the community as a whole.

Rather than perpetuating the problems of the barrel tax, it should be repealed and all programs that are funded out of the environmental response fund should be funded through the general fund. At least program managers would then have to justify their need for these funds. By continuing to special fund these programs, it makes a statement that such programs are not a high priority for state government. This sort of proliferation of public programs needs to be checked as it appears to be growing out of hand and at the expense of the taxpayer. Again, this proposal is nothing more than another effort to expand state government at the expense of the taxpayer and the economy.

Digested 1/30/13



Sierra Club Hawai'i Chapter

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SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

January 31, 2013, 2:45 P.M.
(Testimony is 1 page long)

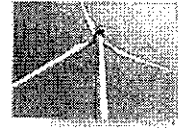
TESTIMONY IN SUPPORT OF SB 17 WITH PROPOSED AMENDMENT

Aloha Chair Gabbard and members of the Committee:

The Sierra Club, Hawaii Chapter, with over 10,000 dues paying members and supporters statewide, respectfully *supports* SB 1130. This measure ensure fairness by applying the barrel tax to other forms of liquid fossil fuels, rather than simply taxing one fuel source: oil. The bill is a smart and needed improvement to Hawaii's historic carbon tax and ensures we don't favor one fossil fuel over another.

This bill could be improved. We suggest including language to impose a proportionate fee on coal imported into the state. As coal provides approximately 10-15% of power in Hawaii, this change would increase the funding available to invest in commonsense measures to advance clean energy, phase out life-threatening oil and coal, clean up Hawaii's air and water, protect our families, and create new jobs. By making such a change, dirty coal could pave the way for a clean and prosperous future for Hawaii.

Mahalo for the opportunity to testify.



SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

January 31, 2013, 2:45 P.M.

Room 225

(Testimony is 2 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 17

Chair Gabbard and members of the Energy and Environment Committee:

The Blue Planet Foundation strongly supports SB 17, ensuring that the environmental response, energy, and food security tax (the “barrel tax”) on petroleum imports will also be levied on liquid and gaseous fossil fuels. Blue Planet **requests one amendment** to the bill, because we believe it would be equitable and responsible to extend the barrel tax to liquid, gaseous, and solid fossil fuels such as coal.

Hawaii’s barrel tax law is keystone clean energy policy that provides for dedicated investment in clean energy, funding the critical planning, development, and implementation of clean energy programs that will foster energy security for Hawaii. Blue Planet believes the best way to provide investment funds is by tapping the source of our problem—imported fossil fuel. We have also found, through three separate surveys commissioned by Blue Planet, that Hawaii residents strongly support this taxing policy.

As drafted, the legislative intent of SB 17 is to ensure that if Hawai’i chooses to import industrial liquefied methane (i.e. natural gas, or “LNG”) barrel tax revenues will not be detrimentally impacted. This is sensible and responsible. The petroleum products currently covered by the barrel tax are fossil fuels, just like LNG. The environmental response, energy, and food security issues addressed by the barrel tax are no less threatened by LNG imports than by any other fossil fuel. Indeed, scientists from the National Oceanic and Atmospheric Administration and elsewhere have recently reported that the process of drilling for LNG can release so much methane into the atmosphere that the climate impact of LNG is *even worse* than other fossil fuels, such as oil and coal.¹ It would be unfair, and make little analytical sense, to exempt LNG and other liquid/gaseous fossil fuels from the barrel tax.

¹ See, e.g., Tollefson, *Methane Leaks Erode Green Credentials of Natural Gas*, NATURE (January 3, 2013) (reporting “alarmingly high” leaks of 9% of well production); see also Pétron et al., *Hydrocarbon emissions*

Blue Planet Requests One Amendment:

In their current form, Haw. Rev. Stat. § 243-3.5 and SB 17 essentially provide a “free pass” to coal imports to Hawai‘i. Those coal imports are substantial; Hawai‘i burns more than 700,000 tons per year.²

To address the free pass currently provided to hundreds of thousands of tons of coal, we propose the following amendment to SB 17. This would bolster the equity of the barrel tax, by levying the exact same charge on each BTU (or barrel equivalent) of oil, gas, or coal burned in Hawai‘i.

(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 equivalent of liquid, solid, or gaseous fossil fuels having an energy content of 5,800,000 British Thermal Units sold by a distributor to any retail dealer or end user of fossil fuels, other than a refiner. The tax shall be \$1.05 on each barrel equivalent of liquid, solid, or gaseous fossil fuels having an energy content of 5,800,000 British Thermal Units or fractional part of a barrel equivalent of liquid, solid, or gaseous fossil fuels that is not aviation fuel; provided that of the tax collected pursuant to this subsection:

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

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

(3) 10 cents of the tax on each barrel equivalent shall be deposited into the energy systems development special fund established under section 304A-2169; and

(4) 15 cents of the tax on each barrel equivalent 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 fossil fuel.

. . .

characterization in the Colorado Front Range: A pilot study, J. GEOPHYS. RES. 117; (2012) (reporting methane leakage exceeding 4% of well production); Alvarez et al., *Greater focus needed on methane leakage from natural gas infrastructure*, PROC. NAT'L ACAD. SCI. (April 24, 2012) (calculating that when total methane leakage exceeds 3.2% of well production, “gas becomes worse for the climate than coal for at least some period of time”).

² See Energy Information Administration, *available at* <http://www.eia.gov/beta/state/data.cfm?sid=HI#Consumption>.

(d) Every distributor shall keep in the State and preserve for five years a record in such form as the department of taxation shall prescribe showing the total amount of British Thermal Units of liquid, solid, or gaseous fossil fuels by type of liquid, solid, or gaseous fossil fuels sold by the distributor during any calendar month. The record shall show such other data and figures relevant to the enforcement and administration of this chapter as the department may require.

Please forward SB 17 with this proposed amendment.

Thank you for the opportunity to testify.

SB17

Submitted on: 1/30/2013

Testimony for ENE on Jan 31, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments: