

S.B. NO. 910

JAN 25 2017

A BILL FOR AN ACT

RELATING TO RENEWABLE FUELS TAX CREDIT.

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

1 SECTION 1. The Legislature finds that section 235-110.31,
2 Hawaii Revised Statutes, enacted by Act 202, Session Laws of
3 Hawaii 2016, establishes a renewable fuels production tax credit
4 with the intent to create a stronger market for renewable fuels
5 and promote the production of locally grown feedstock. Under
6 this process, the department of business, economic development,
7 and tourism's requirements are as follows:

- 8 (1) Certify the amount and type of renewable fuels
9 produced and sold, including the purpose for which the
10 fuel was produced;
- 11 (2) Issue a certificate to the taxpayer verifying the
12 amount of renewable fuels produced and sold, the
13 credit amount certified for each taxable year, and the
14 cumulative amount of the tax credit during the credit
15 period;
- 16 (3) Administer the \$3,000,000 a year aggregate cap;
- 17 (4) Develop forms that renewable fuels taxpayers must
18 submit to both the department of taxation and the

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1 department of business, economic development, and
2 tourism prior to the production of any renewable fuels
3 submitted for consideration under this bill and, tax
4 credit.

5 (5) Collect data annually from the taxpayer of renewable
6 fuels producers, including the number of British
7 thermal units produced and sold; types of fuels;
8 feedstock used for renewable fuels production; number
9 of facility employees and each employee's state of
10 residency; projections for next year's British thermal
11 units production; and

12 (6) Submit written reports to the governor and state
13 legislature inclusive of:

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

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

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1 (C) The projected number of British thermal units of
2 renewable fuels production for the succeeding
3 year.

4 However, the department of business, economic development,
5 and tourism lacks: (i) expertise in tax accounting; (ii)
6 specific knowledge of fuels production industries sufficient to
7 verify the actual renewable fuels production; and (iii) the
8 required resources, including management database and budget and
9 human resource allocation, to administer the requirements. Such
10 resources or expertise would be required to effectively conduct
11 the department of business, economic development, and tourism's
12 certification and administration requirements per Act 202,
13 Session Laws of Hawaii 2016.

14 In order to address this discrepancy, this bill seeks to
15 replace the department of business, economic development, and
16 tourism's requirements associated with the certification,
17 administration, and verification of the renewable fuels
18 production tax credit with a survey of the renewable fuels
19 production tax credit. The survey would still allow the
20 department of business, economic development, and tourism to
21 assess the effectiveness of this tax credit and report its
22 findings to the governor and state legislature.

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1 SECTION 2. Section 235-110.31, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~235-110.31~~]~~ **Renewable fuels production tax credit.**

4 (a) As used in this section:

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

10 "Net income tax liability" means income tax liability
11 reduced by all other credits allowed under this chapter.

12 "Renewable feedstocks" means:

- 13 (1) Biomass crops;
14 (2) Agricultural residues;
15 (3) Oil crops, including but not limited to algae, canola,
16 jatropha, palm, soybean, and sunflower;
17 (4) Sugar and starch crops, including but not limited to
18 sugar cane and cassava;
19 (5) Other agricultural crops;
20 (6) Grease and waste cooking oil;
21 (7) Food wastes;
22 (8) Municipal solid wastes and industrial wastes;

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- 1 (9) Water; and
- 2 (10) Animal residues and wastes,
- 3 that can be used to generate energy.

4 "Renewable fuels" means fuels produced from renewable
5 feedstocks~~[+]~~, provided that~~[+]~~ such fuel:

6 (1) ~~[The fuels shall be]~~ Is sold as a fuel~~[+]~~ in Hawaii;
7 and

8 (2) ~~[The fuels meet]~~ Meets the relevant ASTM International
9 specifications ~~[for the particular fuel]~~ or other
10 industry specifications for ~~[liquid or gaseous fuels,]~~
11 the particular fuel, including but not limited to:

- 12 (A) Methanol, ethanol, or other alcohols;
- 13 (B) Hydrogen;
- 14 (C) Biodiesel or renewable diesel;
- 15 (D) Biogas;
- 16 (E) Other biofuels; or
- 17 (F) Renewable jet fuel or renewable gasoline.

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

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1 imposed by this chapter for the taxable year in which the credit
2 is properly claimed.

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

17 (c) [~~The department of business, economic development, and~~
18 ~~tourism shall:~~

19 ~~(1) Verify the amount and type of renewable fuels produced~~
20 ~~and sold, including the purpose for which the fuel was~~
21 ~~produced;~~

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

4 ~~(3) Certify the total amount of the tax credit for each~~
5 ~~taxable year and the cumulative amount of the tax~~
6 ~~credit during the credit period.~~

7 ~~Upon each determination, the department of business, economic~~
8 ~~development, and tourism shall issue a certificate to the~~
9 ~~taxpayer verifying the amount of renewable fuels produced and~~
10 ~~sold, the credit amount certified for each taxable year, and the~~
11 ~~cumulative amount of the tax credit during the credit period.~~

12 ~~The taxpayer shall file the certificate with the taxpayer's tax~~
13 ~~return with the department of taxation. Notwithstanding the~~
14 ~~department of business, economic development, and tourism's~~
15 ~~certification authority under this section, the director of~~
16 ~~taxation may audit and adjust the certification to conform to~~
17 ~~the facts.~~

18 ~~If in any year, the annual amount of certified credits~~
19 ~~reaches \$3,000,000 in the aggregate, the department of business,~~
20 ~~economic development, and tourism shall immediately discontinue~~
21 ~~certifying credits and notify the department of taxation. In no~~
22 ~~instance shall the total amount of certified credits exceed~~

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1 ~~\$3,000,000 per year. Notwithstanding any other law to the~~
2 ~~contrary, the verification and certification information~~
3 ~~compiled by the department of business, economic development,~~
4 ~~and tourism shall be available for public inspection and~~
5 ~~dissemination under chapter 92F.] Not later than thirty days~~
6 ~~following the close of the calendar year, every taxpayer~~
7 ~~claiming a credit under this section shall complete and file a~~
8 ~~certified statement with the department of business, economic~~
9 ~~development, and tourism in the form prescribed by the~~
10 ~~department of business, economic development, and tourism~~
11 ~~providing the following information:~~

- 12 (1) The type, quantity, and British Thermal Unit value,
13 using the lower heating value, of each qualified fuel,
14 broken down by the type of fuel, produced and sold
15 during the previous calendar year;
- 16 (2) The feedstock used for each type of qualified fuel;
- 17 (3) The proposed total amount of credit to which the
18 taxpayer is entitled;
- 19 (4) The number of full-time and number of part-time
20 employees of the facility and those employees' states
21 of residency, totaled per state; and

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1 (5) The number and location of all renewable fuel
2 production facilities within and outside of the State.

3 ~~(d) [If the credit under this section exceeds the~~
4 ~~taxpayer's net income tax liability, the excess of the credit~~
5 ~~over liability may be used as a credit against the taxpayer's~~
6 ~~net income tax liability in subsequent years until exhausted.~~
7 ~~All claims for a credit under this section shall be properly~~
8 ~~filed on or before the end of the twelfth month following the~~
9 ~~close of the taxable year for which the credit may be claimed.~~
10 ~~Failure to comply with the foregoing provision shall constitute~~
11 ~~a waiver of the right to claim the credit.]~~ Within thirty
12 calendar days after the due date of the statement required under
13 subsection (c), the department of business, economic
14 development, and tourism shall:

- 15 (1) Acknowledge receipt of such statement in writing; and
16 (2) Issue a certificate to the taxpayer reporting the
17 amount of renewable fuels produced and sold, the
18 amount of credit that the taxpayer is entitled to
19 claim for the previous calendar year, and the
20 cumulative amount of the tax credit during the credit
21 period.

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1 (e) ~~[Prior to production of any renewable fuels for the~~
2 ~~year, the taxpayer shall provide written notice of the~~
3 ~~taxpayer's intention to begin production of renewable fuels.~~
4 ~~The information shall be provided to the department of taxation~~
5 ~~and the department of business, economic development, and~~
6 ~~tourism on forms provided by the department of business,~~
7 ~~economic development, and tourism, and shall include information~~
8 ~~on the taxpayer, facility location, facility production~~
9 ~~capacity, anticipated production start date, and taxpayer's~~
10 ~~contact information. Notwithstanding any other law to the~~
11 ~~contrary, this taxpayer and facility information shall be~~
12 ~~available for public inspection and dissemination under chapter~~
13 92F.] The taxpayer shall file the certificate issued under
14 subsection (d) with the taxpayer's tax return with the
15 department of taxation. The director of taxation may audit and
16 adjust the certification to conform to the facts.

17 (f) ~~[The taxpayer shall provide written notice to the~~
18 ~~director of taxation and the director of business, economic~~
19 ~~development, and tourism within thirty days following the start~~
20 ~~of production. The notice shall include the production start~~
21 ~~date and expected renewable fuels production for the next twelve~~
22 ~~months. Notwithstanding any other law to the contrary, this~~

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1 ~~production information shall be available for public inspection~~
2 ~~and dissemination under chapter 92F-]~~ The total amount of tax
3 credits allowed under this section shall not exceed \$3,000,000
4 for all taxpayers in any taxable year. In the event that the
5 credit claims under this section exceed \$3,000,000 for all
6 eligible taxpayers in any given calendar year, the \$3,000,000
7 shall be divided between all eligible taxpayers for that year in
8 proportion to the total amount of renewable fuels produced by
9 all eligible taxpayers. Upon reaching \$3,000,000 in the
10 aggregate, the department of business, economic development, and
11 tourism shall immediately discontinue issuing certificates and
12 notify the department of taxation. In no instance shall the
13 total dollar amount of certificates issued exceed \$3,000,000 per
14 year.

15 (g) ~~[Each calendar year during the credit period, the~~
16 ~~taxpayer shall provide information to the director of business,~~
17 ~~economic development, and tourism on:~~

18 ~~(1) The number of British thermal units of renewable fuels~~
19 ~~produced and sold during the previous calendar year;~~

20 ~~(2) The type of fuels;~~

21 ~~(3) Feedstocks used for renewable fuels production;~~

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- 1 ~~(4) The number of employees of the facility and each~~
2 ~~employee's state of residency; and~~
- 3 ~~(5) The projected number of British thermal units of~~
4 ~~renewable fuels production for the succeeding year.]~~

5 Notwithstanding any other law to the contrary, the information
6 compiled by the department of business, economic development,
7 and tourism shall be available for public inspection and
8 dissemination subject to chapter 92F.

9 (h) ~~[In the case of a partnership, S corporation, estate,~~
10 ~~or trust, distribution and share of the renewable fuels~~
11 ~~production tax credit shall be determined pursuant to section~~
12 ~~704(b) (with respect to partner's distributive share) of the~~
13 ~~Internal Revenue Code.]~~ If the credit under this section
14 exceeds the taxpayer's net income tax liability, the excess of
15 the credit over liability may be used as a credit against the
16 taxpayer's net income tax liability in subsequent years until
17 exhausted. All claims for a credit under this section shall be
18 properly filed on or before the end of the twelfth month
19 following the close of the taxable year for which the credit may
20 be claimed. Failure to comply with the foregoing provision or
21 to provide the certified statement required under subsection (c)
22 shall constitute a waiver of the right to claim the credit.

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1 (i) ~~[Following each year in which a credit under this~~
2 ~~section has been claimed, the director of business, economic~~
3 ~~development, and tourism shall submit a written report to the~~
4 ~~governor and legislature regarding the production and sale of~~
5 ~~renewable fuels. The report shall include:~~

6 ~~(1) The number, location, and production of renewable~~
7 ~~fuels production facilities in the State and outside~~
8 ~~the State that have claimed a credit under this~~
9 ~~section;~~

10 ~~(2) The total number of British thermal units of renewable~~
11 ~~fuels, broken down by type of fuel, produced and sold~~
12 ~~during the previous year; and~~

13 ~~(3) The projected number of British thermal units of~~
14 ~~renewable fuels production for the succeeding year.]~~

15 Prior to production of any renewable fuels for the calendar
16 year, the taxpayer shall provide written notice of the
17 taxpayer's intention to begin production of renewable
18 fuels. The written notice shall be provided to the department
19 of taxation and the department of business, economic
20 development, and tourism, and shall include information on the
21 taxpayer, facility location, facility production capacity,
22 anticipated production start date, and the taxpayer's contact

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1 information. Notwithstanding any other law to the contrary, the
2 written notice described in this subsection, including taxpayer
3 and facility information, shall be available for public
4 inspection and dissemination subject to chapter 92F.

5 ~~(j) [The director of taxation shall prepare forms that may~~
6 ~~be necessary to claim a credit under this section. The director~~
7 ~~of taxation may require the taxpayer to furnish information to~~
8 ~~ascertain the validity of the claim for credit made under this~~
9 ~~section and may adopt rules necessary to effectuate the purposes~~
10 ~~of this section pursuant to chapter 91.] The taxpayer shall~~
11 provide written notice to the director of taxation and the
12 director of business, economic development, and tourism within
13 thirty days following the start of production. The notice shall
14 include the production start date and expected renewable fuels
15 production for the next twelve months. Notwithstanding any
16 other law to the contrary, the written notice described in this
17 subsection shall be available for public inspection and
18 dissemination subject to chapter 92F.

19 (k) In the case of a partnership, S corporation, estate,
20 or trust, distribution and share of the renewable fuels
21 production tax credit shall be determined pursuant to section
22 704(b) (with respect to a partner's distributive share) of the

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1 Internal Revenue Code of 1986, as amended. For a fiscal year
2 taxpayer, the taxpayer shall report such credit in the taxable
3 year in which the calendar year end is included.

4 (1) Following each calendar year in which a credit under
5 this section has been claimed, the director of business,
6 economic development, and tourism shall submit a written report
7 to the governor and legislature regarding the production and
8 sale of renewable fuels. The report shall include:

9 (1) The number and location of renewable fuels production
10 facilities in the State and outside the State that
11 have claimed a credit under this section;

12 (2) The total number of British thermal units of renewable
13 fuels, broken down by type of fuel produced and sold
14 during the previous calendar year; and

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

17 (m) The director of taxation shall prepare forms that may
18 be necessary to claim a credit under this section. The director
19 of taxation may require the taxpayer to furnish information to
20 ascertain the validity of the claim for credit made under this
21 section and may adopt rules necessary to effectuate the purposes
22 of this section pursuant to chapter 91."

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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act, upon its approval, shall apply to
4 taxable calendar years beginning after December 31, 2017.

5

6

INTRODUCED BY: W.M. III

7

BY REQUEST

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Report Title:

Tax Credit; Renewable Fuels Production.

Description:

To replace the Department of Business, Economic Development, and Tourism requirements related to the certification, administration and verification of the renewable fuels production tax credit with a survey.

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

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JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism.

TITLE: A BILL FOR AN ACT RELATING TO RENEWABLE FUELS TAX CREDIT.

PURPOSE: To amend the Renewable Fuels Production Tax Credit (established under Act 202, Session Laws of Hawaii of 2016) by replacing the Department of Business, Economic Development, and Tourism's (DBEDT) requirement for the tax credit's certification, administration, and verification with a survey. The survey would still allow DBEDT to assess the effectiveness of this tax credit and report its findings to the Governor and State Legislature.

MEANS: Amend section 235-110.31, Hawaii Revised Statutes.

JUSTIFICATION: DBEDT lacks the required resources or expertise to conduct its requirements under Act 202, Session Laws of Hawaii 2016. Specifically, DBEDT lacks: (1) expertise in tax accounting, (2) specific fuels production industry knowledge to verify the actual renewable fuels production, and (3) other required resources (including management database and budget and human resource allocation).

Further, executing this amendment, will enable DBEDT to complete its duties without necessitating an additional significant budget.

Impact on the public: None.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED-120.

OTHER AFFECTED
AGENCIES: Department of Taxation.

EFFECTIVE DATE: December 31, 2017.