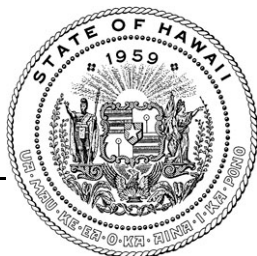


# HB 1044, HD1

RELATING TO RENEWABLE FUELS TAX CREDIT.

Replaces 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. (HB1044 HD1)



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

DAVID Y. IGE  
GOVERNOR

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Statement of  
**LUIS P. SALAVERIA**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEES ON TRANSPORTATION AND ENERGY  
AND  
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY**

March 22, 2017  
1:50 p.m.  
State Capitol, Conference Room 225

in consideration of  
**HB1044, HD1**  
**RELATING TO RENEWABLE FUELS TAX CREDIT.**

Chairs Inouye and Wakai, Vice Chairs Dela Cruz and Taniguchi, and Members of the Committees.

The Department of Business, Economic Development & Tourism (DBEDT) **supports and offers amendments** to HB1044, HD1, an Administration bill to amend Section 235-110.31 that replaces DBEDT's requirements associated with the certification, administration, and verification of the renewable fuels production tax credit with a survey of the renewable fuels production tax credit via a certified statement to be filed by the taxpayer to DBEDT.

DBEDT supports this bill because we lack the resources and expertise required to effectively conduct the certification, verification and administration requirements under the existing Section 235-110.31. Specifically, DBEDT lacks: (1) expertise in tax accounting; (2) specific knowledge of fuels production industries sufficient to verify the actual renewable fuels production and sale; and (3) the necessary resources, including management database, budget and human resources to administer its requirements.

Statutory amendments in this bill will align DBEDT's existing resources and expertise with statutory requirements while still providing for DBEDT to collect data about the tax credit effectiveness and report the findings to the Governor and Legislature.

DBEDT also respectfully proposes the following attached amendments (indicated in blue print) to this measure that would: (1) provide clarity that the taxpayer claiming the credit is required to file with DBEDT an independent third-party certified statement at their sole expense; (2) ensure that the necessary information is remitted by the taxpayer claiming the tax credit to enable DBEDT to issue the required certificate to the taxpayer to claim tax credit; (3) clarify that the \$3 million aggregate cap pertains to a calendar year; and (4) provide better clarity and consistency into what the required “information” DBEDT shall make available for public inspection and dissemination subject to chapter 92F.

DBEDT defers to the Department of Taxation on any impacts on its duties pertaining to the administration of the renewable fuels tax credit in this bill.

Thank you for the opportunity to offer these comments in support of HB1044, HD 1.

STATE OF HAWAII

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# A BILL FOR AN ACT

RELATING TO RENEWABLE FUELS TAX CREDIT.

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

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

- (1) Certify the amount and type of renewable fuels produced and sold, including the purpose for which the fuel was produced;
- (2) Issue a certificate to the taxpayer verifying the amount of renewable fuels produced and sold, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period;
- (3) Administer the \$3,000,000 a year aggregate cap;
- (4) Develop forms that renewable fuels taxpayers must submit to both the department of taxation and the department of business, economic development, and tourism

prior to the production of any renewable fuels submitted for consideration under this bill and tax credit;

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

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

(A) The number, location, and production of renewable fuels production facilities in the State and outside the State that have claimed a credit under Act 202;

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

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

However, the department of business, economic development, and tourism lacks: (i) expertise in tax accounting; (ii) specific knowledge of fuels production industries sufficient to verify the actual renewable fuels production; and (iii) the required resources, including management database and budget and human resource allocation, to administer the requirements. Such

resources or expertise would be required to effectively conduct the department of business, economic development, and tourism's certification and administration requirements per Act 202, Session Laws of Hawaii 2016.

In order to address this discrepancy, this Act seeks to replace the department of business, economic development, and tourism's requirements associated with the certification, administration, and verification of the renewable fuels production tax credit with a survey of the renewable fuels production tax credit. The survey would still allow the department of business, economic development, and tourism to assess the effectiveness of this tax credit and report its findings to the governor and legislature.

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

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

(a) As used in this section:

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

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

"Renewable feedstocks" means:

- (1) Biomass crops;
- (2) Agricultural residues;
- (3) Oil crops, including but not limited to algae, canola, jatropha, palm, soybean, and sunflower;
- (4) Sugar and starch crops, including but not limited to sugar cane and cassava;
- (5) Other agricultural crops;
- (6) Grease and waste cooking oil;
- (7) Food wastes;
- (8) Municipal solid wastes and industrial wastes;
- (9) Water; and
- (10) Animal residues and wastes, that can be used to generate energy.

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

- (1) ~~[The fuels shall be]~~ Is sold as a fuel~~[+]~~ in Hawaii;  
and
- (2) ~~[The fuels meet]~~ Meets the relevant ASTM International specifications ~~[for the particular fuel]~~ or other industry specifications for ~~[liquid or gaseous fuels,]~~ the particular fuel, including but not limited to:
  - (A) Methanol, ethanol, or other alcohols;
  - (B) Hydrogen;

- (C) Biodiesel or renewable diesel;
- (D) Biogas;
- (E) Other biofuels; or
- (F) Renewable jet fuel or renewable gasoline.

(b) Each year during the credit period, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, a renewable fuels production tax credit that shall be applied to the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

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



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

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

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

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

~~Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the amount of renewable fuels produced and sold, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation. Notwithstanding the department of business, economic development, and tourism's certification authority under this section, the director of taxation may audit and adjust the certification to conform to the facts.~~

~~If in any year, the annual amount of certified credits reaches \$3,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue~~

~~certifying credits and notify the department of taxation. In no instance shall the total amount of certified credits exceed \$3,000,000 per year. Notwithstanding any other law to the contrary, the verification and certification information compiled by the department of business, economic development, and tourism shall be available for public inspection and dissemination under chapter 92F.]~~ Not later than thirty days following the close of the calendar year, every taxpayer claiming a credit under this section shall complete and file an independent third-party certified statement, at the taxpayer's sole expense, with the department of business, economic development, and tourism in the form prescribed by the department of business, economic development, and tourism providing the following information:

- (1) The type, quantity, and British thermal unit value, using the lower heating value, of each qualified fuel, broken down by the type of fuel, produced and sold during the previous calendar year;
- (2) The feedstock used for each type of qualified fuel;
- (3) The proposed total amount of credit to which the taxpayer is entitled for each calendar year and the cumulative amount of the tax credit the taxpayer received during the credit period;

(4) The number of full-time and number of part-time employees of the facility and those employees' states of residency, totaled per state; and

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

~~(d) [If the credit under this section exceeds the taxpayer's net income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer's net income tax liability in subsequent years until exhausted. All claims for a credit under this section shall be properly filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.]~~

Within thirty calendar days after the due date of the statement required under subsection (c), the department of business, economic development, and tourism shall:

(1) Acknowledge receipt of the statement in writing; and

(2) Issue a certificate to the taxpayer reporting the amount of renewable fuels produced and sold, the amount of credit that the taxpayer is entitled to claim for the previous calendar year, and the cumulative amount of the tax credit during the credit period.

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

~~(f) [The taxpayer shall provide written notice to the director of taxation and the director of business, economic development, and tourism within thirty days following the start of production. The notice shall include the production start date and expected renewable fuels production for the next twelve months. Notwithstanding any other law to the contrary, this production information shall be available for public inspection and dissemination under chapter 92F.]~~ The total amount of tax

credits allowed under this section shall not exceed \$3,000,000 for all eligible taxpayers in any taxable calendar year. In the event that the credit claims under this section exceed \$3,000,000 for all eligible taxpayers in any given calendar year, the \$3,000,000 shall be divided between all eligible taxpayers for that year in proportion to the total amount of renewable fuels produced by all eligible taxpayers. Upon reaching \$3,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue issuing certificates and notify the department of taxation. In no instance shall the total dollar amount of certificates issued exceed \$3,000,000 per year.

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

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

Notwithstanding any other law to the contrary, the information collected and compiled by the department of business, economic development, and tourism under subsections (c) and (d) for the purposes of the renewable fuels production tax credit, shall be available for public inspection and dissemination subject to chapter 92F.

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

(i) [~~Following each year in which a credit under this section has been claimed, the director of business, economic development, and tourism shall submit a written report to the~~

~~governor and legislature regarding the production and sale of renewable fuels. The report shall include:~~

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

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

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

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

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

~~(j) [The director of taxation shall prepare forms that may be necessary to claim a credit under this section. The director~~

~~of taxation may require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.] The taxpayer shall provide written notice to the director of taxation and the director of business, economic development, and tourism within thirty days following the start of production. The notice shall include the production start date and expected renewable fuels production for the next twelve months. Notwithstanding any other law to the contrary, the written notice described in this subsection shall be available for public inspection and dissemination subject to chapter 92F.~~

(k) In the case of a partnership, S corporation, estate, or trust, distribution and share of the renewable fuels production tax credit shall be determined pursuant to section 704(b) (with respect to a partner's distributive share) of the Internal Revenue Code of 1986, as amended. For a fiscal year taxpayer, the taxpayer shall report such credit in the taxable year in which the calendar year end is included.

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



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

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

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

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

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

SECTION 4. This Act shall take effect on July 1, 2030, and shall apply to taxable years beginning after December 31, 2017.

**Report Title:**

Tax Credit; Renewable Fuels Production

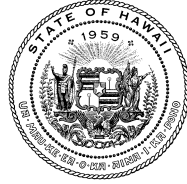
**Description:**

Replaces 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. Effective 7/1/2050. (HD1)

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

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



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MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

To: The Honorable Lorraine R. Inouye, Chair  
and Members of the Senate Committee on Transportation and Energy

The Honorable Glenn Wakai, Chair  
and Members of the Senate Committee on Economic Development, Tourism, and  
Technology

Date: Wednesday, March 22, 2017  
Time: 1:50 P.M.  
Place: Conference Room 225, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 1044, H.D. 1 Relating to Renewable Fuels Tax Credit

The Department of Taxation (Department) supports the intent of H.B. 1044, H.D. 1, an Administration measure, and provides the following comments for your consideration.

H.B. 1044, H.D. 1, amends the renewable fuels production tax credit to change the procedure by which claims for the credit are certified by the Department of Business, Economic Development, and Tourism (DBEDT). Instead of the former certification requirements, taxpayers claiming the tax credit must submit a survey providing information regarding the type of fuel produced, the feedstock used, the amount of credit, and the number of employees of the facility in which the fuel is produced. The measure has a defective effective date of July 1, 2030, and would otherwise apply to taxable years beginning after December 31, 2017.

The Department has no objection to the certification being conducted by survey as described in this measure and is able to implement this measure for taxable years beginning after December 31, 2017.

Thank you for the opportunity to provide comments

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Renewable Fuels Credit Administration

BILL NUMBER: HB 1044, HD-1

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Provides that DBEDT will no longer certify, administer, and verify claims for this credit. Instead, it would receive a survey from the credit claimant and would acknowledge its receipt. It would keep tabs on the annual aggregate cap, but complains that it lacks the required resources or expertise.

SYNOPSIS: Extensively amends HRS section 235-110.31 to replace the requirement that DBEDT certify, administer, and verify credit claims, with a survey. DBEDT would receive a survey from the credit claimant and would acknowledge its receipt, and would stop sending acknowledgments when the annual aggregate cap on the credit has been reached. DBEDT would report its findings to the Governor and Legislature.

EFFECTIVE DATE: July 1, 2030, applies to taxable years beginning after December 31, 2017.

STAFF COMMENTS: This measure is submitted by DBEDT as BED-13 (17).

The measure concerns the Renewable Fuels Production Tax Credit under Act 202, SLH 2016. Under the credit as enacted, DBEDT is tasked with initial verification and certification of credit claims, similar to what it now does with claims for the motion picture, digital media, and television film production credit (HRS section 235-17).

DBEDT is now complaining that it doesn't have either the expertise or resources to do this job, and wants out. That would seem consistent with its testimony last year before House Finance:

Further, DBEDT is also concerned about three issues regarding its responsibilities under this bill. First, DBEDT lacks the expertise and staffing to execute the required verification and certification requirement and would also require further clarity on the implementation of the verification and certification process.

Second, DBEDT lacks, and will require the necessary funding and budget allocation, to execute the responsibilities under the bill (i.e., DBEDT would require \$100,000 and at least a 0.5 full time equivalent staff each year for the duration of its responsibilities under this measure).

Third, given the annual cap of \$3,000,000 DBEDT would require further clarity on how to prioritize the aggregate tax credit, if all renewable fuel producers turn in the tax credit applications all at once.

Finally, regarding DBEDT's role in verifying and certifying the tax credits, DBEDT suggests that the Legislature consider having the renewable fuel producer(s) self-certify by providing required confirmation via an independent third party and impose upon participating renewable producers a performance penalty that is material enough to hold them accountable for meeting their stated self-certified renewable fuels production (i.e., a 200 percent recapture of all tax credit allocated and lifetime ban of any future tax credit participation in the State).

Some of these ideas should be considered as well as the offered idea of having the claimants turn in a survey.

Digested 3/17/2017

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 18, 2017 1:12 PM  
**To:** TRE Testimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB1044 on Mar 22, 2017 13:50PM\*

**HB1044**

Submitted on: 3/18/2017

Testimony for TRE/ETT on Mar 22, 2017 13:50PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)