A BILL FOR AN ACT

RELATING TO RENEWABLE FUELS TAX CREDIT.

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

| 1 | SECTION | 11. The legislature finds that section 235-110.31, |
|----|--------------|-------------------------------------------------------|
| 2 | Hawaii Revis | ed Statutes, enacted by Act 202, Session Laws of |
| 3 | Hawaii 2016, | establishes a renewable fuels production tax credit |
| 4 | with the int | ent 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) Ce | ertify the amount and type of renewable fuels |
| 9 | pr | coduced and sold, including the purpose for which the |
| 10 | fu | el was produced; |
| 11 | (2) Is | sue a certificate to the taxpayer verifying the |
| 12 | an | ount of renewable fuels produced and sold, the |
| 13 | cr | redit amount certified for each taxable year, and the |
| 14 | cu | mulative amount of the tax credit during the credit |
| 15 | pe | eriod; |
| | | |

(3) Administer the \$3,000,000 a year aggregate cap;



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| 1 | (4) | Develop forms that renewable fuels taxpayers must |
|----|-----|--------------------------------------------------------|
| 2 | | submit to both the department of taxation and the |
| 3 | | department of business, economic development, and |
| 4 | | tourism prior to the production of any renewable fuels |
| 5 | | submitted for consideration under this bill and tax |
| 6 | | credit; |
| 7 | (5) | Collect data annually from the taxpayer of renewable |
| 8 | | fuels producers, including the number of British |
| 9 | | thermal units produced and sold; types of fuels; |
| 10 | | feedstock used for renewable fuels production; number |
| 11 | | of facility employees and each employee's state of |
| 12 | | residency; and projections for next year's British |
| 13 | | thermal units production; and |
| 14 | (6) | Submit written reports to the governor and state |
| 15 | | legislature inclusive of: |
| 16 | | (A) The number, location, and production of renewable |
| 17 | | fuels production facilities in the State and |
| 18 | | outside the State that have claimed a credit |
| 19 | | under Act 202; |

1 The total number of British thermal units of (B) · 2 renewable fuels, broken down by type of fuel, 3 produced and sold during the previous year; and 4 (C) The projected number of British thermal units of 5 renewable fuels production for the succeeding 6 year. 7 However, the department of business, economic development, 8 and tourism lacks expertise in tax accounting, specific 9 knowledge of fuels production industries sufficient to verify 10 the actual renewable fuels production, and the required 11 resources, including management database and budget and human 12 resource allocation, to administer the requirements. Such

13 resources or expertise would be required to effectively conduct 14 the department of business, economic development, and tourism's 15 certification and administration requirements per Act 202, 16 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



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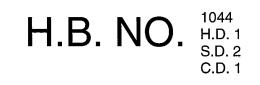
| 1 | production tax credit. The survey would still allow the |
|----|-------------------------------------------------------------------|
| 2 | department of business, economic development, and tourism to |
| 3 | assess the effectiveness of the tax credit and report its |
| 4 | findings to the governor and legislature. |
| 5 | SECTION 2. Section 235-110.31, Hawaii Revised Statutes, is |
| 6 | amended to read as follows: |
| 7 | "[$+$]§235-110.31[$+$] Renewable fuels production tax credit. |
| 8 | (a) As used in this section: |
| 9 | "Credit period" means a maximum period of five consecutive |
| 10 | years, beginning from the first taxable year in which a taxpayer |
| 11 | begins renewable fuels production at a level of at least fifteen |
| 12 | billion British thermal units of renewable fuels per calendar |
| 13 | year. |
| 14 | "Net income tax liability" means income tax liability |
| 15 | reduced by all other credits allowed under this chapter. |
| 16 | "Renewable feedstocks" means: |
| 17 | (1) Biomass crops; |
| 18 | (2) Agricultural residues; |
| 19 | (3) Oil crops, including but not limited to algae, canola, |
| 20 | jatropha, palm, soybean, and sunflower; |
| | |



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| 1 | (4) | Sugar and starch crops, including but not limited to | |
|----|-------------------------------------------------------|----------------------------------------------------------------------------------------------|--|
| 2 | | sugar cane and cassava; | |
| 3 | (5) | Other agricultural crops; | |
| 4 | (6) | Grease and waste cooking oil; | |
| 5 | (7) | Food wastes; | |
| 6 | (8) | Municipal solid wastes and industrial wastes; | |
| 7 | (9) | Water; and | |
| 8 | (10) | Animal residues and wastes, | |
| 9 | that can | be used to generate energy. | |
| 10 | "Renewable fuels" means fuels produced from renewable | | |
| 11 | feedstock | s[+], provided that[+] the fuel: | |
| 12 | (1) | [The fuels shall be] <u>Is</u> sold as a fuel[;] <u>in Hawaii;</u> | |
| 13 | | and | |
| 14 | (2) | [The fuels meet] Meets the relevant ASTM International | |
| 15 | | specifications [for the particular fuel] or other | |
| 16 | | industry specifications for [liquid or gaseous fuels,] | |
| 17 | | the particular fuel, including but not limited to: | |
| 18 | | (A) Methanol, ethanol, or other alcohols; | |
| 19 | | (B) Hydrogen; | |
| 20 | | (C) Biodiesel or renewable diesel; | |
| 21 | | (D) Biogas; | |



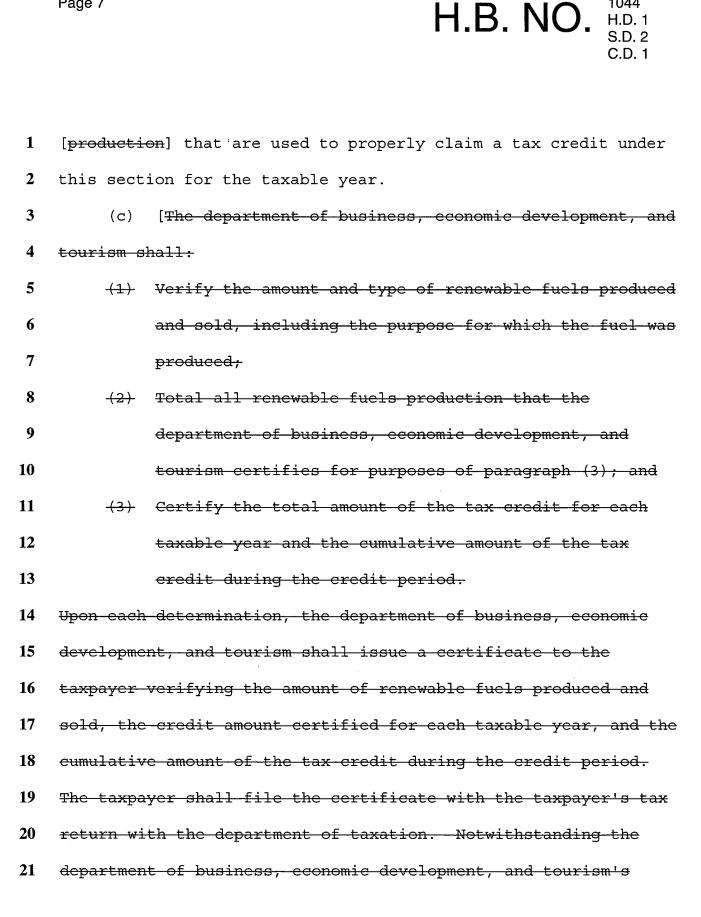


| 1 | (E) | Other bio | fuels; or | | |
|---|---------------|--------------|--------------|------------------------|------------|
| 2 | (F) | Renewable | jet fuel or | [.] renewable | gasoline. |
| 3 | (b) Eac | ch year duri | ng the credi | t period, | there shal |
| 4 | allowed to ea | ach taxpayer | subject to | the taxes | imposed by |

3 year during the credit period, there shall be 4 taxpayer subject to the taxes imposed by this 5 chapter, a renewable fuels production tax credit that shall be 6 applied to the taxpayer's net income tax liability, if any, 7 imposed by this chapter for the taxable year in which the credit 8 is properly claimed.

9 For each taxpayer producing renewable fuels, the annual 10 dollar amount of the renewable fuels production tax credit 11 during the five-year credit period shall be equal to 20 cents 12 per seventy-six thousand British thermal units of renewable 13 fuels using the lower heating value sold for distribution in 14 Hawaii; provided that the taxpayer's production of renewable 15 fuels is not less than fifteen billion British thermal units of 16 renewable fuels per calendar year; provided further that the 17 amount of the tax credit claimed under this section by a 18 taxpayer shall not exceed \$3,000,000 per taxable year. No other 19 tax credit may be claimed under this chapter for the costs 20 [related to] incurred in producing the renewable fuels







H.D. 1



1 certification authority under this section, the director of 2 taxation may audit and adjust the certification to conform to 3 the facts.

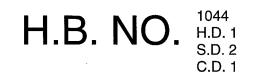
| 4 | If in any year, the annual amount of certified credits |
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| 5 | reaches \$3,000,000 in the aggregate, the department of business, |
| 6 | economic development, and tourism shall immediately discontinue |
| 7 | certifying credits and notify the department of taxation. In no |
| 8 | instance shall the total amount of certified credits exceed |
| 9 | \$3,000,000 per year. Notwithstanding any other law to the |
| 10 | contrary, the verification and certification information |
| 11 | compiled by the department of business, economic development, |
| 12 | and tourism shall be available for public inspection and |
| 13 | dissemination under chapter 92F.] Not later than thirty days |
| 14 | following the close of the calendar year, every taxpayer |
| 15 | claiming a credit under this section shall complete and file an |
| 16 | independent, third-party certified statement, at the taxpayer's |
| 17 | sole expense, with the department of business, economic |
| 18 | development, and tourism in the form prescribed by the |
| 19 | department of business, economic development, and tourism |
| 20 | providing the following information: |



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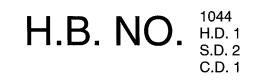
| 1 | (1) | The type, quantity, and British thermal unit value, |
|----|----------------------|--------------------------------------------------------|
| 2 | | using the lower heating value, of each qualified fuel, |
| 3 | | broken down by the type of fuel, produced and sold |
| 4 | | during the previous calendar year; |
| 5 | (2) | The feedstock used for each type of qualified fuel; |
| 6 | (3) | The proposed total amount of credit to which the |
| 7 | | taxpayer is entitled for each calendar year and the |
| 8 | | cumulative amount of the tax credit the taxpayer |
| 9 | | received during the credit period; |
| 10 | (4) | The number of full-time and number of part-time |
| 11 | | employees of the facility and those employees' states |
| 12 | | of residency, totaled per state; and |
| 13 | (5) | The number and location of all renewable fuel |
| 14 | | production facilities within and outside of the State. |
| 15 | (d) | [If the credit under this section exceeds the |
| 16 | taxpayer' | s net income tax-liability, the excess of the credit |
| 17 | over-liab | ility may be used as a credit against the taxpayer's |
| 18 | net incom | e tax liability in subsequent years until exhausted. |
| 19 | All claim | s for a credit under this section shall be properly |
| 20 | filed on | or before the end of the twelfth month following the |
| 21 | close of | the taxable year for which the credit may be claimed. |
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| 1 | Failure-te | o comply with the foregoing provision shall constitute |
|----|-----------------------|---------------------------------------------------------|
| 2 | a waiver (| of the right to claim the credit.] Within thirty |
| 3 | calendar o | days after the due date of the statement required under |
| 4 | subsection | n (c), the department of business, economic |
| 5 | developme | nt, and tourism shall: |
| 6 | (1) | Acknowledge receipt of the statement in writing; and |
| 7 | (2) | Issue a certificate to the taxpayer reporting the |
| 8 | | amount of renewable fuels produced and sold, the |
| 9 | | amount of credit that the taxpayer is entitled to |
| 10 | | claim for the previous calendar year, and the |
| 11 | | cumulative amount of the tax credit during the credit |
| 12 | | period. |
| 13 | (e) | [Prior to production of any renewable fuels for the |
| 14 | year, the | taxpayer shall provide written notice of the |
| 15 | taxpayer' | s intention-to-begin production of renewable fuels. |
| 16 | The infor | mation shall-be-provided to the department of taxation |
| 17 | and the d | epartment of business, economic development, and |
| 18 | tourism o | n forms provided by the department of business, |
| 19 | economic | development, and tourism, and shall include information |
| 20 | on the ta | xpayer, facility location, facility production |
| 21 | capacity, | anticipated production start date, and taxpayer's |
| | | |





| 1 | contact information. Notwithstanding any other law to the |
|----|-------------------------------------------------------------------|
| 2 | contrary, this taxpayer and facility information shall be |
| 3 | available for public inspection and dissemination under chapter |
| 4 | 92F.] The taxpayer shall file the certificate issued under |
| 5 | subsection (d) with the taxpayer's tax return with the |
| 6 | department of taxation. The director of taxation may audit and |
| 7 | adjust the certification to conform to the facts. |
| 8 | (f) [The taxpayer shall provide written notice to the |
| 9 | director of taxation and the director of business, economic |
| 10 | development, and tourism within thirty days following the start |
| 11 | of production. The notice shall include the production start |
| 12 | date and expected renewable fuels production for the next twelve |
| 13 | months. Notwithstanding any other law to the contrary, this |
| 14 | production information shall be available for public inspection |
| 15 | and dissemination under chapter 92F.] The total amount of tax |
| 16 | credits allowed under this section shall not exceed \$3,000,000 |
| 17 | for all eligible taxpayers in any calendar year. In the event |
| 18 | that the credit claims under this section exceed \$3,000,000 for |
| 19 | all eligible taxpayers in any given calendar year, the |
| 20 | \$3,000,000 shall be divided between all eligible taxpayers for |
| 21 | that year in proportion to the total amount of renewable fuels |



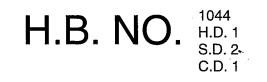
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| 1 | produced | by all eligible taxpayers. Upon reaching \$3,000,000 in |
|----|---------------------|----------------------------------------------------------|
| 2 | the aggre | gate, the department of business, economic development, |
| 3 | and touri | sm shall immediately discontinue issuing certificates |
| 4 | and notif | y the department of taxation. In no instance shall the |
| 5 | total dol | lar amount of certificates issued exceed \$3,000,000 per |
| 6 | year. | |
| 7 | (g) | [Each calendar year during the credit period, the |
| 8 | taxpayer | shall provide information to the director of business, |
| 9 | economic- | development, and tourism on: |
| 10 | (1) | The number of British thermal units of renewable fuels |
| 11 | | produced and sold during the previous calendar year; |
| 12 | (2) | The type of fuels; |
| 13 | (3) | Feedstocks used for renewable fuels production; |
| 14 | -(4)- | The number of employees of the facility and each |
| 15 | | employee's state of residency; and |
| 16 | (5) | The projected number of British thermal units of |
| 17 | | renewable fuels production for the succeeding year.] |
| 18 | Notwithst | anding any other law to the contrary, the information |
| 19 | collected | and compiled by the department of business, economic |
| 20 | developme | ent, and tourism under subsections (c) and (d) for the |
| 21 | purposes | of the renewable fuels production tax credit, shall be |
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| 1 | available for public inspection and dissemination subject to |
|----|-------------------------------------------------------------------------|
| 2 | chapter 92F. |
| 3 | (h) [In the case of a partnership, S corporation, estate, |
| 4 | or trust, distribution and share of the renewable fuels |
| 5 | production tax credit shall be determined pursuant to section |
| 6 | 704(b) (with respect to partner's distributive share) of the |
| 7 | Internal Revenue Code.] If the credit under this section exceeds |
| 8 | the taxpayer's net income tax liability, the excess of the |
| 9 | credit over liability may be used as a credit against the |
| 10 | taxpayer's net income tax liability in subsequent years until |
| 11 | exhausted. All claims for a credit under this section shall be |
| 12 | properly filed on or before the end of the twelfth month |
| 13 | following the close of the taxable year for which the credit may |
| 14 | be claimed. Failure to comply with the foregoing provision or |
| 15 | to provide the certified statement required under subsection (c) |
| 16 | shall constitute a waiver of the right to claim the credit. |
| 17 | (i) [Following each year in which a credit under this |
| 18 | section has been claimed, the director of business, economic |
| 19 | development, and tourism shall submit a written report to the |
| 20 | governor and legislature regarding the production and sale of |
| 21 | renewable fuels. The report shall include: |



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| 1 | (1) | The number, location, and production of renewable |
|----|----------------|--------------------------------------------------------|
| 2 | | fuels production facilities in the State and outside |
| 3 | | the State that have claimed a credit under this |
| 4 | | section; |
| 5 | (2) | The total number of British thermal units of renewable |
| 6 | | fuels, broken down-by-type of fuel, produced and sold |
| 7 | | during the previous year; and |
| 8 | (3) | The projected number of British thermal units of |
| 9 | | renewable fuels production for the succeeding year.] |
| 10 | Prior to | production of any renewable fuels for the calendar |
| 11 | year, the | taxpayer shall provide written notice of the |
| 12 | taxpayer' | s intention to begin production of renewable fuels. |
| 13 | The writt | en notice shall be provided to the department of |
| 14 | taxation | and the department of business, economic development, |
| 15 | and touri | sm, and shall include information on the taxpayer, |
| 16 | facility | location, facility production capacity, anticipated |
| 17 | productio | on start date, and the taxpayer's contact information. |
| 18 | Notwithst | anding any other law to the contrary, the written |
| 19 | notice de | scribed in this subsection, including taxpayer and |
| 20 | facility | information, shall be available for public inspection |
| 21 | and disse | mination subject to chapter 92F. |



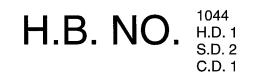


| 1 | (j) [The director of taxation shall prepare forms that may |
|----|------------------------------------------------------------------|
| 2 | be necessary to claim a credit under this section. The director |
| 3 | of taxation may require the taxpayer to furnish information to |
| 4 | ascertain the validity of the claim for credit made under this |
| 5 | section and may adopt rules necessary to effectuate the purposes |
| 6 | of this section pursuant to chapter 91.] The taxpayer shall |
| 7 | provide written notice to the director of taxation and the |
| 8 | director of business, economic development, and tourism within |
| 9 | thirty days following the start of production. The notice shall |
| 10 | include the production start date and expected renewable fuels |
| 11 | production for the next twelve months. Notwithstanding any |
| 12 | other law to the contrary, the written notice described in this |
| 13 | subsection shall be available for public inspection and |
| 14 | dissemination subject to chapter 92F. |
| 15 | (k) In the case of a partnership, S corporation, estate, |
| 16 | or trust, distribution and share of the renewable fuels |
| 17 | production tax credit shall be determined pursuant to section |
| 18 | 704(b) (with respect to a partner's distributive share) of the |
| 19 | Internal Revenue Code of 1986, as amended. For a fiscal year |
| 20 | taxpayer, the taxpayer shall report such credit in the taxable |
| 21 | year in which the calendar year end is included. |



| 1 | (1) | Following each calendar year in which a credit under | |
|----|-----------------------------------------------------------------|---------------------------------------------------------|--|
| 2 | this sect | ion has been claimed, the director of business, | |
| 3 | economic development, and tourism shall submit a written report | | |
| 4 | to the go | vernor and legislature regarding the production and | |
| 5 | sale of r | enewable fuels. The report shall include: | |
| 6 | (1) | The number and location of renewable fuels production | |
| 7 | | facilities in the State and outside the State that | |
| 8 | | have claimed a credit under this section; | |
| 9 | (2) | The total number of British thermal units of renewable | |
| 10 | | fuels, broken down by type of fuel produced and sold | |
| 11 | | during the previous calendar year; and | |
| 12 | (3) | The projected number of British thermal units of | |
| 13 | | renewable fuels production for the succeeding year. | |
| 14 | (m) | The director of taxation shall prepare forms that may | |
| 15 | be necess | ary to claim a credit under this section. The director | |
| 16 | of taxati | on may require the taxpayer to furnish information to | |
| 17 | ascertain the validity of the claim for credit made under this | | |
| 18 | section a | nd may adopt rules necessary to effectuate the purposes | |
| 19 | of this s | ection pursuant to chapter 91." | |
| 20 | SECTION 3. Statutory material to be repealed is bracketed | | |
| 21 | and stric | ken. New statutory material is underscored. | |





SECTION 4. This Act, upon its approval 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 process that requires the taxpayer to file a third-party certified statement with the Department. Applies to taxable years beginning after December 31, 2017. (HB1044 CD1)

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

