

ACT 73

H.B. NO. 2421

A Bill for an Act Relating to Government.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Hawaii is at a crossroads. As the most geographically isolated state in the country, we are dangerously dependent on imports for basic food and energy. We import about eighty-five per cent of our food and ninety-five per cent of our energy. It has been estimated that Hawaii exported \$8,600,000,000 for food and oil in 2008, and every dollar exported is a lost opportunity to support and invest in local businesses. Our dependence on imports also exposes residents and businesses to volatile food and energy costs as oil prices fluctuate.

In addition, the mass consumption of fossil fuels, driven by our dependence on food and energy imports, contributes to climate change and the deterioration of the environment, including severe storm events, less rainfall, warmer temperatures that favor invasive species, a rise in sea levels, and ocean acidification that hampers coral growth. These climate changes will likely impose major, but not fully understood, costs and other impacts on Hawaii's people and the natural capital we depend upon to support our lives in the middle of the Pacific Ocean. Nowhere is it more obvious than in remote island chains like Hawaii that our lives and the economy are intertwined with the health and function of the natural world around us.

Although Hawaii has available renewable resources like solar, wind, ocean, and geothermal energy, we as a community have not taken full advantage of alternative-energy and energy-efficiency solutions to make the state more energy-independent. As an example, despite year-round sunshine, only thirty per cent of Hawaii's residents have solar water heaters.

Similarly, many acres of highly productive agricultural lands are not being farmed. Currently, Hawaii has a fresh supply of produce for no more than ten days. Ninety per cent of the beef, sixty-seven per cent of fresh vegetables, sixty-five per cent of fresh fruits, and seventy per cent of all milk consumed in the state are imported. While Hawaii may never produce one hundred per cent of its food, the risks and costs to society for dependence on imported food cannot be ignored.

Like energy, producing local food would reduce Hawaii's demand for fossil fuels, keep money in our community, and decrease the State's vulnerability to food-supply disruptions caused by natural disasters or worldwide economic events.

Now is the time for bold action to squarely address Hawaii's energy and food requirements and plan for and address the inevitable effects of climate change. It will require long-term commitment, dedication, and the investment of capital and human resources by government, the private sector, and Hawaii's people to dramatically shift our present course of importing food and energy toward a more energy-independent and agriculturally sustainable society. As a state and as a people, we must decide whether we will continue to be dependent on external sources for our basic needs, or whether we will build, invest in, and develop the capacity to become food- and energy-independent.

The legislature finds that it is in the best interests of Hawaii's people to build the capacity we need to become self-sufficient in our energy and food needs and to protect the health and function of our environment. As discussed in the "Hawaii 2050 Sustainability Plan" and the "Hawaii Clean Energy Initiative," Hawaii has all the necessary assets to significantly improve the state's energy and food sustainability and independence over the next twenty years if appropriate personnel resources and funding are used wisely. To succeed, the State must ensure that our long-term strategy is well-resourced, coordinated, and focused.

The purpose of this Act is to:

- (1) Promote economic development for local food and energy businesses by providing necessary funding, guidance, and infrastructure;
- (2) Ensure Hawaii is energy and food self-sufficient and sustainable to the maximum extent feasible;
- (3) Help Hawaii's natural resources and population adapt and be resilient to the inevitable challenges brought on by climate change caused by carbon dioxide and other greenhouse gas emissions from burning fossil fuels;
- (4) Create a Hawaii economic development task force to accelerate and support public and private efforts to make Hawaii energy- and food-self-sufficient, consistent with the "Hawaii 2050 Sustainability Plan," the "Hawaii Clean Energy Initiative," and other government and community planning efforts. The legislature intends for the Hawaii economic development task force to take an interdisciplinary approach to seeking the most efficient and effective pathways for interagency coordination, to ensure that energy and food policy development will be integrated within the overall economic, social, environmental, and cultural aspects of society. With an understanding of these overlapping goals and resources, the State

can maximize the opportunities to ensure food and energy security for generations to come;

- (5) Establish an agricultural development and food security special fund to fund activities intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the state; and
- (6) Establish a clean energy initiative to manage the state's transition to a clean energy economy.

The legislature finds that undertaking the important task of energy and food security requires a long-term commitment and the investment of substantial financial resources. To that end, this Act also increases the per-barrel tax on petroleum products under the environmental response, energy, and food security tax, formerly known as the environmental response tax.

PART II

ENVIRONMENTAL RESPONSE, ENERGY, AND FOOD SECURITY TAX

SECTION 2. Section 128D-2, Hawaii Revised Statutes, is amended to read as follows:

“§128D-2 Environmental response revolving fund; uses. (a) There is created within the state treasury an environmental response revolving fund, which shall consist of moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, all interest attributable to investment of money deposited in the fund, moneys ~~generated by~~ deposited in the fund from the environmental response, energy, and food security tax [established in] pursuant to section 243-3.5, and moneys allotted to the fund from other sources; ~~provided that when the total balance of the fund exceeds \$20,000,000, the department of health shall notify the department of taxation of this fact in writing within ten days. The department of taxation then shall notify all distributors liable for collecting the tax imposed by section 243-3.5 of this fact in writing, and the imposition of the tax shall be discontinued beginning the first day of the second month following the month in which notice is given to the department of taxation. If the total balance of the fund thereafter declines to less than \$3,000,000, the department of health shall notify the department of taxation which then shall notify all distributors liable for collecting the tax imposed by section 243-3.5 of this fact in writing, and the imposition of the tax shall be reinstated beginning the first day of the second month following the month in which notice is given to the department of taxation.~~

(b) Moneys from the fund shall be expended by the department for response actions and preparedness, including removal and remedial actions, consistent with this chapter; ~~provided that the revenues generated by the [“environmental response tax” and]~~ environmental response, energy, and food security tax deposited into the environmental response revolving fund:

- (1) Shall ~~also~~ be used:
 - (A) For oil spill planning, prevention, preparedness, education, research, training, removal, and remediation; and
 - (B) For direct support for county used oil recycling programs; and
 - ~~[(C) For deposit into the energy security special fund, established under section 201-12.8, as may be appropriated by the legislature; and]~~

- (2) May also be used to support environmental protection and natural resource protection programs, including ~~[but not limited to]~~ energy conservation and alternative energy development, and 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 and funding for the acquisition by the State of a soil remediation site and facility.”

SECTION 3. Section 201-12.8, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§201-12.8~~ **Energy security special fund; uses.** (a) There is created within the state treasury an energy security special fund, which shall consist of:

- (1) The portion of the environmental response, energy, and food security tax specified under section 243-3.5;
- ~~[(1)]~~ (2) Moneys appropriated to the fund by the legislature;
- ~~[(2)]~~ (3) All interest attributable to investment of money deposited in the fund; and
- ~~[(3)]~~ (4) Moneys allotted to the fund from other sources.

(b) ~~[Moneys]~~ Subject to legislative appropriation, moneys from the fund ~~[shall]~~ may be expended by the department of business, economic development, and tourism for the following purposes and ~~[shall be]~~ used for no other purposes, except for those set forth in this section:

- (1) To support ~~[its]~~ the Hawaii clean energy initiative program, including its energy division, including funding staff positions within the division, and projects that ensure dependable, efficient, and economical energy, promote energy self-sufficiency, and provide greater energy security for the ~~[State; and]~~ state;
- (2) To fund the renewable energy facilitator pursuant to section 201-12.5 and any other positions necessary for the purposes of paragraph (1) as determined by the legislature~~[-]; and~~
- (3) To fund, to the extent possible, the greenhouse gas emissions reduction task force, climate change task force, grants-in-aid to the economic development boards of each county, and grants-in-aid to economic development agencies of each county to meet the stated objectives of the Hawaii clean energy initiative program.

(c) The department of business, economic development, and tourism shall submit a report to the legislature, no later than twenty days prior to the convening of each regular session, on the status and progress of existing programs and activities and the status of new programs and activities funded by the energy security special fund. The report shall also include:

- (1) The spending plan of the energy security special fund;
- (2) All expenditures of energy security special fund moneys; and
- (3) The targeted markets of the expenditures, including the reason for selecting those markets; the persons to be served; and the specific objectives of the expenditures, including measurable outcomes.”

SECTION 4. Section 243-3.5, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“§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 ~~[at times provided in section 128D-2]~~ a state environmental response, energy, and food security tax ~~[of 5 cents]~~ on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user~~[-]~~ of petroleum product, other than a refiner~~[-]~~ of petroleum product~~[-]~~. The tax shall be \$1.05 on each barrel or fractional part of a barrel of petroleum product that is not aviation fuel; provided that of the tax collected pursuant to this subsection:

- (1) 5 cents of the tax on each barrel shall be ~~[used pursuant to section 128D-2 to address concerns relating to drinking water.]~~ deposited into the environmental response revolving fund established under section 128D-2;
- (2) 15 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 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-

The tax imposed by this subsection shall be paid by the distributor of the petroleum product.”

2. By amending subsection (c) to read:

“(c) 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 ~~[into the environmental response revolving fund established by section 128D-2.]~~ as provided in subsection (a).”

SECTION 5. Section 304A-2169, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The special fund shall be funded by:

- (1) Appropriations from the legislature; ~~[and]~~
- (2) The portion of the environmental response, energy, and food security tax specified under section 243-3.5; and
- ~~(2)~~ (3) Investment earnings, gifts, donations, or other income received by the ~~[[Hawaii natural energy]]~~ institute.”

PART III HAWAII ECONOMIC DEVELOPMENT TASK FORCE

SECTION 6. (a) There is established the Hawaii economic development task force within the department of business, economic development, and tourism for administrative purposes. The purpose of the Hawaii economic development task force shall be to facilitate the accelerated adoption and completion of renewable-energy projects, energy-efficiency programs, agricultural infrastructure and development, and other measures to meet the purposes of this Act. The Hawaii economic development task force shall develop and maintain a broad overview of energy and food security issues that apply an interdisciplinary approach to ensure that Hawaii’s energy and food policy and program development is integrated within the overall economic, social, environmental, and cultural aspects of society. The Hawaii economic development task force shall, with the assistance of the department of business, economic development, and tourism:

- (1) Identify and review each state and county agency's policy objectives, mandates, organizational structure, and resources to address energy and food security issues;
- (2) Identify all federal and private funds available to the State and counties to address energy and food security issues;
- (3) Identify effective measures for interagency cooperation, coordinate efforts with the counties, and promote public- and private-sector partnerships to achieve the objective of energy and food security;
- (4) Identify existing programs and agreements addressing energy and food security that may be enhanced through legislation;
- (5) Investigate alternative institutional mechanisms to promote the efficient execution and implementation of a multi-year strategy to achieve energy and food security;
- (6) Investigate the streamlining of administrative processes to accelerate and achieve energy and food security;
- (7) Provide an appropriate forum for all affected or interested parties to address energy and food security issues;
- (8) Recommend appropriate legislation resulting from its findings to improve, accelerate, and achieve the objective of energy and food security;
- (9) Review whether:
 - (A) The apportionment of the environmental response, energy, and food security tax among the funds listed under section 243-3.5, Hawaii Revised Statutes, is appropriate;
 - (B) The apportionment should be changed; and
 - (C) Any additional special, trust, or revolving fund should receive a share of the tax; and
- (10) Perform any other function necessary to effectuate the purposes of this part.
 - (b) The Hawaii economic development task force shall consist of the following members:
 - (1) The director of business, economic development, and tourism or the director's designee, who shall chair the Hawaii economic development task force;
 - (2) The chairperson of the board of agriculture or the chairperson's designee;
 - (3) The director of the office of planning or the director's designee;
 - (4) The chairperson of the board of land and natural resources or the chairperson's designee;
 - (5) The dean of the University of Hawaii college of tropical agriculture and human resources or the dean's designee;
 - (6) Three members to be designated by the speaker of the house of representatives;
 - (7) Three members to be designated by the president of the senate; and
 - (8) A representative from each county's private economic development board.
 - (c) The Hawaii economic development task force's members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.
 - (d) In the performance of its duties, the Hawaii economic development task force shall consult with appropriate private, nonprofit, community, and government stakeholders.

(e) The department of business, economic development, and tourism may contract with the University of Hawaii for any services to support the work of the Hawaii economic development task force.

(f) The Hawaii economic development task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2011.

The task force shall also submit a follow-up report to the legislature no later than twenty days prior to the convening of the regular session of 2012. The report shall include a description of the activities funded by the environmental response, energy, and food security tax, progress made toward energy and food self-sufficiency, and any additional action necessary to achieve energy and food self-sufficiency.

(g) The Hawaii economic development task force shall cease to exist on June 30, 2012.

PART IV

AGRICULTURAL DEVELOPMENT AND FOOD SECURITY

SECTION 7. Chapter 141, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§141- Agricultural development and food security special fund; establishment. (a) There is established within the state treasury the agricultural development and food security special fund.

(b) The following moneys shall be deposited into the special fund:

- (1) The portion of the environmental response, energy, and food security tax specified under section 243-3.5;
- (2) Any appropriation by the legislature into the special fund;
- (3) Any grant or donation made to the special fund; and
- (4) Any interest earned on the balance of the special fund.

(c) Subject to legislative appropriation, moneys in the special fund may be expended for the following purposes:

- (1) The awarding of grants to farmers for agricultural production or processing activity;
- (2) The acquisition of real property for agricultural production or processing activity;
- (3) The improvement of real property, irrigation systems, and transportation networks necessary to promote agricultural production or processing activity;
- (4) The purchase of equipment necessary for agricultural production or processing activity;
- (5) The conduct of research on and testing of agricultural products and markets;
- (6) The funding of agricultural inspector positions within the department of agriculture;
- (7) The promotion and marketing of agricultural products grown or raised in the state; and
- (8) Any other activity intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the state.

(d) The department of agriculture shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the status and progress of existing programs and activities and the status of new

programs and activities funded under the agricultural development and food security special fund. The report shall also include:

- (1) The spending plan of the agricultural development and food security special fund;
- (2) All expenditures of agricultural development and food security special fund moneys;
- (3) The targeted markets of the expenditures, including the reason for selecting those markets;
- (4) The persons to be served using the expenditures; and
- (5) The specific objectives of the expenditures, including measurable outcomes.”

PART V
HAWAII CLEAN ENERGY INITIATIVE

SECTION 8. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§196- Hawaii clean energy initiative program. (a) There is established within the department of business, economic development, and tourism, a Hawaii clean energy initiative program to manage the state’s transition to a clean energy economy. The clean energy program shall design, implement, and administer activities that include:

- (1) Strategic partnerships for the research, development, testing, deployment, and permitting of clean and renewable technologies;
- (2) Engineering and economic evaluations of Hawaii’s potential for near-term project opportunities for the state’s renewable energy resources;
- (3) Electric grid reliability and security projects that will enable the integration of a substantial increase of electricity from renewable-energy resources;
- (4) A statewide clean energy public education and outreach plan to be developed in coordination with Hawaii’s institutions of public education;
- (5) Promotion of Hawaii’s clean and renewable resources to potential partners and investors;
- (6) A plan, to be implemented from 2011 to 2030, to transition the state to a clean energy economy; and
- (7) A plan, to be implemented from 2011 to 2030, to assist each county in transitioning to a clean energy economy.

(b) Prior to the initiation of any activities authorized under subsection (a), the department of business, economic development, and tourism shall develop a plan of action with the intent of promoting effective prioritization and focusing of efforts consistent with the State’s energy programs and objectives.

(c) The department of business, economic development, and tourism shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the status and progress of new and existing clean energy initiatives. The report shall also include:

- (1) The spending plan of the Hawaii clean energy initiative program;
- (2) All expenditures of energy security special fund moneys; and
- (3) The targeted markets of the expenditures, including reasons for selecting those markets, the persons to be served, specific objectives of the program, and program expenditures, including measurable outcomes.”

PART VI

SECTION 9. Subject to the availability of federal funding for energy programs provided by grants, and subject to the constraints, oversight, and reporting requirements of those federal programs, the governor is authorized to establish positions necessary to accomplish the management of those energy projects funded by federal grants; provided that the positions shall be exempt from chapters 76 and 89, Hawaii Revised Statutes; and provided further that the governor shall submit a report to the legislature on all positions established as of December 31 and June 30 of each fiscal year that the positions exist and are occupied.

PART VII

SECTION 10. Any unexpended or unencumbered funds remaining in the agricultural development and food security special fund established by this Act, as of the close of business on June 30, 2015, shall lapse to the credit of the general fund.

PART VIII

SECTION 11. The department of business, economic development, and tourism shall study and analyze the environmental response, energy, and food security tax in section 4 of this Act, including its amount and allocation, and its effectiveness in accomplishing the goals and objectives of this Act. The department shall report its findings and recommendations, including any proposed legislation, to the legislature at least twenty days prior to the convening of each regular session, ending with the regular session of 2015.

PART IX

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 14. This Act shall take effect on July 1, 2010; provided that sections 2, 3, 4, and 7 of this Act shall be repealed on June 30, 2015, and sections 128D-2, 201-12.8, and 243-3.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2010.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.