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# A BILL FOR AN ACT

RELATING TO ENERGY.

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

1           SECTION 1. The legislature finds that current technology  
2 allows for a variety of liquid fuels to be used in electric-  
3 power generation. Where older electric power generation  
4 technology used diesel fuel or fuel oil, newer technologies now  
5 allow for the use of multiple types of liquid fuels, some of  
6 which were previously used solely for transportation needs.

7           The legislature also finds that naphtha is the only liquid  
8 fuel, when used for electric-power generation, whose taxation is  
9 not explicit under section 243-4, Hawaii Revised Statutes.

10           The purpose of this Act is to clarify the taxation rate for  
11 naphtha that is sold for use in electric power generation.

12           SECTION 2. Section 243-1, Hawaii Revised Statutes, is  
13 amended as follows:

14           1. By adding a new definition to be appropriately inserted  
15 and to read:

16           ""Power-generating facility" means any electricity-  
17 generating facility that requires a permit issued under the



1 Federal Clean Air Act (42 U.S.C. 7401-7671g), or the Hawaii air  
2 pollution control law pursuant to chapter 342B, or both."

3 2. By amending the definition of "aviation fuel" to read:

4 "Aviation fuel" means [~~and includes~~] all liquid substances  
5 of whatever chemical composition usable for the propulsion of  
6 airplanes."

7 3. By amending the definition of "distributor" to read:

8 "Distributor" means [~~and includes~~]:

9 (1) Every person who refines, manufactures, produces, or  
10 compounds liquid fuel in the State[~~7~~] and sells or  
11 uses the same therein;

12 (2) Every person who imports or causes to be imported into  
13 the State any liquid fuel and sells it therein,  
14 whether in the original packages or containers in  
15 which it is imported or otherwise than in such  
16 original packages or containers, or who imports any  
17 such fuel for the person's own use in the State;

18 (3) Every person who acquires liquid fuel from a person  
19 not a licensed distributor and sells or uses it,  
20 whether in the original package or container in which  
21 it was imported (if imported) [~~7~~] or otherwise than in  
22 such original package or container; and



1 (4) Every person who acquires liquid fuel from a licensed  
2 distributor as a wholesaler thereof and sells or uses  
3 it."

4 4. By amending the definition of "liquid fuel" to read:

5 ""Liquid fuel" or "fuel" means [~~and includes~~] all liquids  
6 ordinarily, practically, and commercially usable in internal  
7 combustion engines for the generation of power and includes  
8 liquefied petroleum gases, all distillates of and condensates  
9 from petroleum, natural gas, coal, coal tar, and vegetable  
10 ferments, such distillates and condensates being ordinarily  
11 designated as a gasoline, naphtha, benzol, benzine, and alcohols  
12 so usable but not restricted to such designation. All aviation  
13 fuel [~~which~~] that is sold for use in or used for airplanes is  
14 deemed to be "liquid fuel" or "fuel" whether or not coming  
15 within the definition contained in the foregoing sentence."

16 5. By amending the definition of "person" to read:

17 ""Person", except where the context or sense otherwise  
18 requires, means [~~and includes~~] individuals, firms, associations,  
19 corporations, trusts, estates, partnerships, or other entities."

20 6. By amending the definitions of "retail dealer" and  
21 "use" to read:



1        ""Retail dealer" means [~~and includes~~] a person who  
2 purchases liquid fuel from a licensed distributor[7] and sells  
3 the liquid fuel at retail. Only sales of liquid fuel for  
4 consumption or used by the purchaser, and not for resale, are  
5 sales at retail.

6        "Use", either as a noun or verb, and derivative  
7 expressions, means [~~and includes~~] distribution or other  
8 disposition of fuel, or any other use thereof, whether with or  
9 without compensation [~~therefor~~]."

10       SECTION 3. Section 243-4, Hawaii Revised Statutes, is  
11 amended to read as follows:

12        "**§243-4 License taxes.** (a) Every distributor shall, in  
13 addition to any other taxes provided by law, pay a license tax  
14 to the department of taxation for each gallon of liquid fuel  
15 refined, manufactured, produced, or compounded by the  
16 distributor and sold or used by the distributor in the State or  
17 imported by the distributor, or acquired by the distributor from  
18 persons who are not licensed distributors, and sold or used by  
19 the distributor in the State. Any person who sells or uses any  
20 liquid fuel, knowing that the distributor from whom it was  
21 originally purchased has not paid and is not paying the tax  
22 thereon, shall pay such tax as would have applied to such sale



1 or use by the distributor. The rates of tax [~~hereby~~] imposed  
2 are as follows:

3 (1) For each gallon of diesel oil, 1 cent;

4 (2) For each gallon of gasoline or other aviation fuel  
5 sold for use in or used for airplanes, 1 cent;

6 (3) For each gallon of naphtha sold for use in a power-  
7 generating facility, 1 cent;

8 [~~(3)~~] (4) For each gallon of liquid fuel, other than fuel  
9 mentioned in paragraphs (1) [~~and~~], (2), and (3), and  
10 other than an alternative fuel, sold or used in the  
11 city and county of Honolulu, or sold in any county for  
12 ultimate use in the city and county of Honolulu, 16  
13 cents state tax, and in addition thereto [~~such~~] an  
14 amount, to be known as the "city and county of  
15 Honolulu fuel tax", as shall be levied pursuant to  
16 section 243-5;

17 [~~(4)~~] (5) For each gallon of liquid fuel, other than fuel  
18 mentioned in paragraphs (1) [~~and~~], (2), and (3), and  
19 other than an alternative fuel, sold or used in the  
20 county of Hawaii, or sold in any county for ultimate  
21 use in the county of Hawaii, 16 cents state tax, and  
22 in addition thereto [~~such~~] an amount, to be known as



1 the "county of Hawaii fuel tax", as shall be levied  
2 pursuant to section 243-5;

3 [~~(5)~~] (6) For each gallon of liquid fuel, other than fuel  
4 mentioned in paragraphs (1) [~~and~~], (2), and (3), and  
5 other than an alternative fuel, sold or used in the  
6 county of Maui, or sold in any county for ultimate use  
7 in the county of Maui, 16 cents state tax, and in  
8 addition thereto [~~such~~] an amount, to be known as the  
9 "county of Maui fuel tax", as shall be levied pursuant  
10 to section 243-5; and

11 [~~(6)~~] (7) For each gallon of liquid fuel, other than fuel  
12 mentioned in paragraphs (1) [~~and~~], (2), and (3), and  
13 other than an alternative fuel, sold or used in the  
14 county of Kauai, or sold in any county for ultimate  
15 use in the county of Kauai, 16 cents state tax, and in  
16 addition thereto [~~such~~] an amount, to be known as the  
17 "county of Kauai fuel tax", as shall be levied  
18 pursuant to section 243-5.

19 If it is shown to the satisfaction of the department, based  
20 upon proper records and from [~~such~~] any other evidence as the  
21 department may require, that liquid fuel, other than fuel  
22 mentioned in paragraphs (1) [~~and~~], (2), and (3), is used for



1 agricultural equipment that does not operate upon the public  
2 highways of the State, the user thereof may obtain a refund of  
3 all taxes thereon imposed by this section in excess of 1 cent  
4 per gallon. The department shall adopt rules to administer such  
5 refunds.

6 (b) Every distributor of diesel oil, in addition to the  
7 tax required by subsection (a), shall pay a license tax to the  
8 department for each gallon of [~~such~~] diesel oil sold or used by  
9 the distributor for operating a motor vehicle or motor vehicles  
10 upon public highways of the State. The rates of the additional  
11 tax [~~hereby~~] imposed are as follows:

12 (1) For each gallon of diesel oil sold or used in the city  
13 and county of Honolulu, or sold in any other county  
14 for ultimate use in the city and county of Honolulu,  
15 15 cents state tax, and in addition thereto [~~such~~] an  
16 amount, to be known as the "city and county of  
17 Honolulu fuel tax", as shall be levied pursuant to  
18 section 243-5;

19 (2) For each gallon of diesel oil sold or used in the  
20 county of Hawaii, or sold in any other county for  
21 ultimate use in the county of Hawaii, 15 cents state  
22 tax, and in addition thereto [~~such~~] an amount, to be



1 known as the "county of Hawaii fuel tax", as shall be  
2 levied pursuant to section 243-5;

3 (3) For each gallon of diesel oil sold or used in the  
4 county of Maui, or sold in any other county for  
5 ultimate use in the county of Maui, 15 cents state  
6 tax, and in addition thereto [~~such~~] an amount, to be  
7 known as the "county of Maui fuel tax", as shall be  
8 levied pursuant to section 243-5; and

9 (4) For each gallon of diesel oil sold or used in the  
10 county of Kauai, or sold in any other county for  
11 ultimate use in the county of Kauai, 15 cents state  
12 tax, and in addition thereto [~~such~~] an amount, to be  
13 known as the "county of Kauai fuel tax", as shall be  
14 levied pursuant to section 243-5.

15 If any user of diesel oil furnishes a certificate, in  
16 [~~such~~] a form [~~as~~] that the department shall prescribe, to the  
17 distributor[~~r~~] or if the distributor who uses diesel oil signs  
18 [~~such~~] the certificate, certifying that the diesel oil is for  
19 use in operating a motor vehicle or motor vehicles in areas  
20 other than upon the public highways of the State, the tax as  
21 provided in paragraphs (1) to (4) shall not be applicable. [~~In~~  
22 ~~the event~~] If a certificate is not or cannot be furnished and





1 the diesel oil is in fact for use for operating a motor vehicle  
2 or motor vehicles in areas other than upon public highways of  
3 the State, the user thereof may obtain a refund of all taxes  
4 thereon imposed by the foregoing paragraphs. The department  
5 shall adopt rules to administer the refunding of such taxes.

6 (c) The tax shall not be collected in respect to any  
7 benzol, benzene, toluol, xylol, or alternative fuel sold for use  
8 other than for operating internal combustion engines. With  
9 respect to these products, other than alternative fuels, the  
10 department, by rule, shall provide for the reporting and payment  
11 of the tax and for the keeping of records [~~in respect thereto,~~]  
12 in such a manner as to collect, for each gallon of [~~such~~] each  
13 product sold for use in internal combustion engines for the  
14 generation of power, or so used, the same tax or taxes as apply  
15 to each gallon of diesel oil. With respect to alternative  
16 fuels, the only tax collected shall be that provided in  
17 paragraphs (1), (2), and (3) of this subsection. This  
18 subsection shall not apply to aviation fuel sold for use in or  
19 used for airplanes.

20 (1) Every distributor of any alternative fuel for  
21 operation of an internal combustion engine shall pay a  
22 license tax to the department of one-quarter of [~~one~~]



1           1 cent for each gallon of [~~such~~] alternative fuel sold  
2           or used by the distributor;

3           (2) Every distributor, in addition to the tax required  
4           under paragraph (1) of this subsection, shall pay a  
5           license tax to the department for each gallon of  
6           alternative fuel sold or used by the distributor for  
7           operating a motor vehicle or motor vehicles upon the  
8           public highways of the State at a rate proportional to  
9           that of the rates applicable to diesel oil in  
10          subsection (b), rounded to the nearest one-tenth of a  
11          cent, as follows:

- 12          (A) Ethanol, 0.145 times the rate for diesel;
- 13          (B) Methanol, 0.11 times the rate for diesel;
- 14          (C) Biodiesel, 0.25 times the rate for diesel;
- 15          (D) Liquefied petroleum gas, 0.33 times the rate for  
16          diesel; and
- 17          (E) For other alternative fuels, the rate shall be  
18          based on the energy content of the fuels as  
19          compared to diesel fuel, using a lower heating  
20          value of one hundred thirty thousand British  
21          thermal units per gallon as a standard for  
22          diesel, so that the tax rate, on an energy



1                   content basis, is equal to one-quarter the rate  
2                   for diesel fuel.

3                   The taxes so paid shall be paid into the state  
4                   treasury and deposited in special funds or paid over  
5                   in the same manner as provided in subsection (b) in  
6                   respect of the tax on diesel oil;

7           (3) If any user of alternative fuel furnishes to the  
8           distributor a certificate, in ~~[such]~~ a form ~~[as]~~ that  
9           the department shall prescribe~~[7]~~ or if the  
10           distributor who uses alternative fuel signs ~~[such]~~ the  
11           certificate, certifying that the alternative fuel is  
12           for use in operating a motor vehicle or motor vehicles  
13           in areas other than upon the public highways of the  
14           State, the tax as provided by paragraphs (1) and (2)  
15           of this subsection shall not be applicable; provided  
16           that no certificate shall be required if the  
17           alternative fuel is used for fuel and heating purposes  
18           in the home. ~~[In the event]~~ If a certificate is not  
19           or cannot be furnished and the alternative fuel is in  
20           fact used for operating an internal combustion engine  
21           or operating a motor vehicle or motor vehicles in  
22           areas other than upon the public highways of the



1 State, the user thereof may obtain a refund of all  
2 taxes thereon imposed by [~~such~~] the foregoing  
3 paragraphs. The department shall adopt rules to  
4 administer the refunding of [~~such~~] these taxes  
5 [~~imposed~~].

6 (d) No tax shall be collected in respect to any liquid  
7 fuel, including diesel oil and liquefied petroleum gas, shown to  
8 the satisfaction of the department to have been sold for use in  
9 and actually delivered to, or sold in, the county of Kalawao."

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect on July 1, 2020;  
13 provided that the amendments to the following sections of Hawaii  
14 Revised Statutes shall be repealed on December 31, 2009:

15 (1) The definition of "power-generating facility" in  
16 section 243-1; and

17 (2) Section 243-4(a); provided that the subsection shall  
18 be reenacted in the form in which it read on June 30,  
19 2007.



**Report Title:**

Electric Power Generation; Fuel Tax Rate

**Description:**

Clarifies that naphtha fuel, used in a power-generating facility, is subject to the fuel tax at a rate of 1 cent per gallon. Adds definition of "power-generating facility". Effective July 1, 2020, and repealed on December 31, 2009. (SB992 HD2)

