

STAND. COM. REP. NO. 2541

Honolulu, Hawaii

FEB 15 2008

RE: S.B. No. 2913
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committee on Economic Development and Taxation, to which was referred S.B. No. 2913 entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose of this measure is to exempt from general excise and use taxes the fuel sold from a foreign-trade zone for intrastate air transportation by common carriers.

Testimony in support of this measure was received from the Governor's Tourism Liaison, The Chamber of Commerce of Hawaii, Aloha Airlines and one of its pilots, Hawaiian Airlines, the Hawaii Fueling Facilities Corporation, the International Association of Machinists and Aerospace Workers, the Transport Workers Union, March of Dimes Hawaii Chapter. The Department of the Attorney General, the Department of Taxation, and the Tax Foundation of Hawaii submitted comments.

The Department of Taxation (Department) stated that this measure will result in a revenue loss of approximately \$5,100,000 in fiscal year 2009, \$5,300,000 in fiscal year 2010, and \$5,500,000 in fiscal year 2011. The Department also stated that 110,000,000 gallons of fuel were sold on Oahu in fiscal year 2007, and approximately fifty-five per cent of this was of non-exempt fuel. General excise revenue from fuel was calculated to be \$4,800,000 (110 million gallons x 55% non-exempt x \$2 per gallon x 4% excise tax rate), with inflation factored in for the relevant fiscal years.

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Your Committee had heard that, however intended, this measure may not accomplish its purpose. It adds a definition of "interstate air transportation", which is defined as transportation by air between two places in Hawaii through a place outside Hawaii. The Department has noted, however, that in general, court cases conclude that transportation from one point in a state through international territory and back to another point in the same state is not interstate commerce. Therefore, the Department could still interpret this measure to preclude the exemption because an interisland flight may not be flying sufficiently through a "place outside Hawaii". The resulting enforcement confusion could lead to disputes between the Department and airlines over whether flights are sufficiently "outside Hawaii" in order to receive the exemption.

Your Committee has also considered amendments to Hawaii's tax law, an alternative proposed and reviewed by this Committee in 2007. Your Committee finds that further review of the alternatives will be beneficial as the legislative session continues.

Your Committee has amended this measure accordingly, by:

- (1) Adding a new section in chapter 237, Hawaii Revised Statutes, to exempt from the general excise tax amounts received from the sales of aviation fuel categorized as privileged foreign merchandise, non-privileged foreign merchandise, domestic merchandise, or zone-restricted merchandise, which is admitted into a foreign-trade zone and purchased in a foreign-trade zone for use in air transportation between two points in the State;
- (2) Amending the definition of "use" in chapter 238, Hawaii Revised Statutes, Hawaii's use tax law, to include the same language; and
- (3) Amending the findings and purpose section to reflect these changes.

As affirmed by the record of votes of the members of your Committee on Economic Development and Taxation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2913, as amended herein, and recommends that it be referred to the Committee on Ways and Means, in the form attached hereto as S.B. No. 2913, S.D. 1.



Respectfully submitted on
behalf of the members of the
Committee on Economic
Development and Taxation,

Carol Fukunaga

CAROL FUKUNAGA, Chair



