LINDA LINGLE
GOVERNOR

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IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 26, 2008

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 2922

COMMITTEE ON FINANCE

We oppose this bill. The fuel tax revenues from non-transportation fuel uses amounted to $1.2 million for fiscal year 2007. At a time when the Highways Division is looking for new ways to generate revenue and maintain current revenue levels, any proposed decrease would be detrimental to the health of the State Highway Fund.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

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HOUSE COMMITTEE ON FINANCE

TESTIMONY REGARDING HB 2922
RELATING TO FUEL TAX

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 26, 2008
TIME: 10:00AM
ROOM: 308

This bill would exempt power-generating facilities utilizing diesel fuel from the license tax on liquid fuel.

The House Committee on Transportation passed this measure unamended.

The House Committee on Energy & Environmental Protection passed this measure unamended.

The Department of Taxation ("Department") **provides comments.**

I. SAVINGS PASSED ON TO CONSUMERS.

As has been noted by other legislative committees considering fuel tax relief for energy producers in the past, the tax on fuel used by power-generating facilities is passed on to consumers.

This Committee, then, should be cognizant of the fact that this bill does not provide any mechanism to assure the tax exemption is passed on to consumers. It is the Department's position that only market forces will dictate whether the tax savings is passed on to consumers. The Department would be very disappointed if the tax exemption provided in this legislation were not likewise passed on to consumers.

II. DEFINITIONAL ERROR

The Department points out that the definition of "power-generating facilities" contained at HRS § 243-1 repeals on December 31, 2009. There would be no definition thereafter. Based upon this bill, these amendments will not repeal with the other tax incentives provided to other power-generating facilities (*e.g.*, naptha tax rate). A permanent definition should be provided.

III. EFFECTIVE DATE

To allow the Department to administer the exemption in an orderly fashion, the effective date should be delayed until October 1, 2008.

IV. FISCAL IMPACT.

This legislation will reduce highway fund revenue by about $1.2 million in fiscal year 2009 and by about $600,000 in fiscal year 2010.

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L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Diesel oil for power generation

BILL NUMBER: SB 2519; HB 2922 (Similar)

2/7 EDP 1/30 TRN 2/7 EEP 2/26 FIN

INTRODUCED BY: SB by Hooser; HB by Tokioka and Morita

BRIEF SUMMARY: Amends HRS section 243-4 to provide that diesel oil sold for use in electric power generation shall be taxed at 1 cent per gallon.

HB 2922 further stipulates that the amendments made by this act shall not be repealed when this section is repealed and reenacted on December 31, 2009 by Act 103, SLH 2007.

EFFECTIVE DATE: SB - Tax years beginning after December 31, 2007; HB - Upon approval

STAFF COMMENTS: The legislature by Act 209, SLH 2007, reenacted a general excise tax exemption for the sale of alcohol fuels which expired December 31, 2006. While Act 209, SLH 2007, took effect on July 1, 2007, the Act also increased the state fuel tax by one cent per gallon, including each gallon of diesel oil. This measure proposes that the fuel tax imposed on diesel oil used to generate electricity shall be taxed at 1 cent per gallon. It should be noted that Act 103, SLH 2007, provided that naphtha used to in a power generating facility shall be taxed at the rate of one cent per gallon.

While the proposed measure proposes to restore the one cent per gallon rate on diesel oil used to generate electricity, there is no logical reason for that tax to be paid as the receipts of the fuel tax are realizations of the state's transportation funds, largely the state highway fund. Since fuel used to generate electricity does not utilize the highway infrastructure, such fuel should be exempt from the state fuel tax.

Setting out that fuel used to generate electricity is subject to the state fuel tax to fund the transportation infrastructure further underscores the inappropriateness of imposing the tax on non-highway use. Thanks to our legislators, the cost of the additional tax on diesel fuel used to generate electricity has contributed to rising energy costs for all taxpayers including government.

Digested 1/29/08

Testimony Before the House Committee on Finance

By Michael V. Yamane P.E.
Senior Electrical Engineer
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Tuesday, February 26, 2008, 10:00a.m.
Conference Room #308

House Bill No. 2922 – Relating to Fuel Tax

To the Honorable Marcus R. Oshiro, Chair; Marilyn B. Lee, Vice-Chair, and members of the Committee:

Thank you for the opportunity to testify before you. I am Michael Yamane, representing Kaua`i Island Utility Cooperative (KIUC). I am here today to testify on HB 2922 that would clarify the intent of Act 209 of the 2007 regular session that the additional one-cent added to the license tax of diesel fuel was not intended for diesel oil sold or used for power generation purposes.

KIUC believes that the intent of Act 209 was to promote the use of transportation fuels containing alcohol through an exemption of the excise tax on retail sale of fuels containing at least 10% alcohol. Tax revenues would be balanced by an increase in tax of other non-alcohol fuels by an additional one-cent. KIUC believes that the intent was to tax other transportation related non-alcohol fuels by the additional one-cent and believes that the intent was not to increase the tax on fuels used for the generation of electricity by utility power-generating facilities.

KIUC is a member-owned not-for-profit electric cooperative. Margins or what would be considered "profits" by an investor owned company, are invested back into the business by allocating margins to the cooperative's members as capital credit contributions. KIUC has also made annual patronage capital refunds to its members in the amount of 25% of net margins each year since it was founded.

KIUC currently generates about one-half of its annual production of electricity by burning No. 2 diesel fuel. This amounts to an annual usage of about 15 million gallons of diesel. KIUC is a regulated utility and fuel costs are passed on to its customers. The additional one-cent tax adds about $150,000 annual burden to KIUC's ratepayers.

As previously stated, KIUC believes the intent of Act 209 was to increase transportation related fuels by one-cent to off set the exemption of fuel containing alcohol used for transportation. KIUC therefore requests and seeks passage of HB 2922 that could place the tax on diesel used by power generation facilities to produce electricity at one-cent.

For these reasons, KIUC supports HB 2922 and, therefore asks that this bill be passed.

Thank you again for the opportunity to inform you of KIUC's position on this matter.