LINDA LINGLE
GOVERNOR

BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

IN REPLY REFER TO:

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

February 11, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 371 H.D. 1

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

House Bill 371 will repeal the sunset provision relating to the one cent tax on naphtha fuel used in a power generating facility.

The Department does not take a position on the naphtha fuel issue outlined in this bill.

However, **the Department does support** the language that deletes the repeal date such that the one cent increase in the state fuel tax approved as part of Act 103, Session Laws of Hawaii 2007 remains in place so as not to reduce the amount of revenue into the State Highway Fund.

Currently, this 1-cent increase generates $5 to $7 million each year in State Highway Fund revenues. If the fuel tax rate was lowered, we would lose this revenue. At a time when the Highways Division is looking for new ways to generate revenue and maintain current revenue levels, any decrease would be detrimental to the health of the State Highway Fund. The revenue from the fuel tax accounts for more than 40% of the State Highway Fund revenues and is the primary means of funding the operations and maintenance, and construction of our state highways.

A
LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
TESTIMONY REGARDING HB 371 HD 1
RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: FEBRUARY 11, 2009
TIME: 2PM
ROOM: 325

This legislation eliminates the repeal date for Act 103, Session Laws of Hawaii 2007, which extends the one-cent per gallon fuel tax rate on naphtha fuel used for the generation of electricity.

The House Committee on Energy & Environmental Protection amended the measure by providing an introductory discussion on the background of the tax rate.

The Department of Taxation (Department) takes **no position** on this matter.

This legislation would result in foregone revenue of approximately $6.7 million per year.

LINDA LINGLE
GOVERNOR OF HAWAII

CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Consumer Protection and Commerce

HB 371, HD1, Relating to Taxation

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

February 11, 2009
2:00 p.m.

Department's Position: The Department provides comments on this measure which continues to provide a lower tax rate for naphtha when used as a fuel for power generation.

Fiscal Implications: We defer to the Department of Taxation on revenue consequences. We do not see a direct fiscal impact on our department.

Purpose and Justification: This bill removes the sunset provision of Act 103, Session Laws of Hawaii 2007. This action would allow naphtha to continue to be taxed at the same rate of one cent per gallon as that applied to diesel oil, gasoline and aviation fuel.

The department encourages the use of naphtha since it is a petroleum-based fuel that has a lower sulfur content than other liquid fossil fuels typically used in power generation and is therefore environmentally cleaner. In addition, the burning of naphtha emits lower levels of carbon dioxide as compared to distillate or residual fuel oil. Both, Hamakua Energy Partners and the Kauai Island Utility Cooperative Kapaia generating station, have air pollution control permits which require the burning of naphtha resulting in lower stack emissions. The passage of this bill would assure that naphtha remains a viable fuel for the power generating facilities.

Thank you for the opportunity to testify on this measure.

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, Rate on naphtha used for power generation

BILL NUMBER: HB 371, HD-1

INTRODUCED BY: House Committee on Energy and Environmental Protection

BRIEF SUMMARY: Amends Act 103, SLH 2007, to repeal the provision sunsetting the 1 cent tax on naphtha fuel used in a power generating facility.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: The legislature by Act 103, SLH 2007, provided that naphtha used in a power generating facility shall be taxed at the rate of one cent per gallon until December 31, 2009. This measure would make this provision permanent by repealing the sunset provision of Act 103.

It should be remembered that receipts of the fuel tax are realizations of the state's transportation funds, largely the state highway fund. Since naphtha used to generate electricity does not utilize the highway infrastructure, such fuel should remain 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 naphtha fuel used to generate electricity has contributed to rising energy costs for all taxpayers including government.

Digested 2/10/09

Testimony Before the House Committee on
Consumer Protection and Commerce

By: Randall J. Hee, P.E.
President and Chief Executive Officer
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Wednesday, February 11, 2009, 2:00 p.m.
Conference Room #325

House Bill No. 371, H.D. 1 – Relating to Taxation

To the Honorable Robert N. Herkes, Chair; Glenn Wakai, Vice-Chair,
and members of the Committee:

Thank you for the opportunity to testify on this measure. I am Randy Hee, President and CEO at Kauai Island Utility Cooperative. I am here today to testify on HB371, HD1 that would repeal the sunset provision on Act 103 on 2007 Legislative session, which clarifies that naphtha fuel, used in a power-generating facility, is subject to the fuel tax at a rate of 1 cent per gallon.

Act 103 was the result of a question raised regarding interpretation of language contained in HRS §243 pertaining to which types of liquid fuels are subject to which types of taxes.

Specifically at issue is how naphtha should, or should not, be taxed.

KIUC believes that the primary purpose of the fuel tax is to provide funds for highway construction and maintenance (or in the case of aviation fuels, funds for airport construction and maintenance). This has been accomplished over the years by imposing the tax on fuel sold for on-highway use. KIUC believes that the intent of the law is to exclude Naphtha sold and used for power generation purposes from the state vehicle transportation and respective county fuel taxes.

Act 103 clarified this interpretation.

KIUC annually uses approximately 15 million gallons of naphtha annually in the generation of electricity, which represents approximately 50% of KIUC's yearly electrical energy production.

Applying the current 16¢/gallon state transportation tax to the 15 million gallons of naphtha KIUC annually uses would result in a $2.4 million annual tax liability that would need to be passed on to KIUC's customers.

Applying the current 13¢/gallon county of Kauai fuel tax to the 15 million gallons of naphtha KIUC annually uses would result in a $2.0 million annual tax liability that would be passed on to KIUC's customers.

The additional $4.4 million tax expense would have increased KIUC's cost of purchased fuel. For the year 2006, the increased fuel cost would have raised KIUC customers' energy bills by almost 7%.

As you know, KIUC is a member-owned electric cooperative. Unlike for profit corporations (i.e. investor owned utilities), cooperatives are non-for-profit and member run. Without the need for profits and shareholder dividends, cooperatives are free to invest what would normally be profits (cooperatives call them "margins") in the business by allocating margins to the cooperative's members as capital credit contributions, or, eventually, by making patronage capital refunds to its members; and otherwise generally using the monies collected for the general welfare of the cooperative members. Any additional expenses would be passed through to our members and reduce KIUC margins that would impact patronage capital refunds back to our members.

KIUC is also committed to reducing its dependency on imported fossil fuels as KIUC Strategic Plan calls for 50% renewable generation by 2023. However this will take time as any investment in renewable energy will be borne by KIUC member/shareholders and economics and reliability should be properly evaluated.

For these reasons, KIUC supports HB371, HD1 and, therefore asks that this bill be passed.

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

TESTIMONY OF IAN L. SANDISON
ON BEHALF OF HAMAKUA ENERGY PARTNERS, L.P.
ON HB 371, HD 1
(RELATING TO TAXATION)
BEFORE THE
COMMITTEE ON CONSUMER PROTECTION & COMMERCE
HOUSE
HAWAII STATE LEGISLATURE

February 11, 2009

Dear Chair Herkes, Vice Chair Wakai, and Members of the Committee:

My name is Ian Sandison and on behalf of Hamakua Energy Partners, L.P., I am pleased to have this opportunity to testify in favor of HB 371, HD1 Relating to Taxation. This bill amends Section 243-4 of the Hawaii Revised Statutes by repealing the sunset provision relating to the 1¢ per gallon tax on naphtha fuel used in a power-generating facility and thereby making it clear that naphtha used for producing electrical power is taxed at 1¢ per gallon.

Hamakua Energy Partners operates a 60 megawatt power plant near Honokaa on the Island of Hawaii. That power plant currently supplies approximately one third of all the electricity consumed on the Big Island. Because it produces electricity with naphtha (as required by its Clean Air Act Permit), it is also the lowest cost and has the lowest air emissions of any fossil fuel power plant on the Big Island. To accomplish these things, the plant consumes between 27 and 30 million gallons of naphtha every year.

Hamakua Energy Partners supports HB 371, HD 1 which is the product of a joint effort by Hamakua Energy Partners and Kauai Island Utility Cooperative (the only other user of naphtha in Hawaii). The bill clarifies the legislature's intent that naphtha used in power-generating facilities, such as Hamakua Energy Partners' plant, is taxed at 1¢ per gallon under section 243-4 of the Hawaii Revised Statutes. If section 243-4 were to be interpreted otherwise and the full license tax applied to naphtha, then it could result in significant hardship for the electricity consumers on the Big Island and a potential increase in air emissions resulting from the substitution of other fuels. Accordingly, Hamakua Energy Partners strongly urges your favorable consideration of this bill.

Thank you very much for the opportunity to submit this testimony to your Committee.