

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 ENERGY & ENVIRONMENTAL PROTECTION
TESTIMONY REGARDING HB 371
RELATING TO TAXATION**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 3, 2009

TIME: 2:45M

ROOM: 225

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 Department of Taxation (Department) takes **no position** on this matter but **opposes its revenue impact**.

This legislation would result in a revenue loss of \$1.0 million in FY 2010 and \$2.1 million in FY 2011 and after.

Testimony Before the House Committee on
Energy & Environmental Protection

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

Tuesday, February 3, 2009, 9:00 am
Conference Room #325

House Bill No. 371 – Relating to Taxation

To the Honorable Hermina M. Morita, Chair; Denny Coffman, 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 HB 371 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 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
(RELATING TO TAXATION)
BEFORE THE
COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE
HAWAII STATE LEGISLATURE
February 3, 2007**

Dear Chair Morita, Vice Chair Coffman, 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 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 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.

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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: SB 447; HB 371 (Identical)

INTRODUCED BY: SB by Hooser and 7 Democrats; HB 371 by Tokioka, Carroll, Evans, Hanohano, Herkes, McKelvey, Morita, Nakashima, Tsuji and 3 Democrats

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 2/2/09