HB 370 HD2

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

SENATE COMMITTEE ON ENERGY & ENVIRONMENT
TESTIMONY REGARDING HB 370 HD 2
RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)
DATE: MARCH 17, 2009
TIME: 3PM
ROOM: 225

This legislation specifies that the fuel tax rate on diesel fuel used in electricity generation shall be one-cent per gallon.

The Department of Taxation has **opposes this measure's potential revenue impact**.

CURRENT LAW—There currently exists a one-cent per gallon fuel tax rate on naphtha fuel used for the generation of electricity. The naphtha fuel tax rate is set to expire on December 31, 2009. The Department points out that this legislation may be unnecessary due to the current naphtha fuel tax rate. Should the Legislature desire this rate for electricity generation, it could simply pass HB 371, which eliminates the repeal date on the naphtha tax rate.

PREFERENCE FOR NAPHTHA ONLY—The Department prefers the naphtha-specific fuel tax rate in the fuel tax law because naphtha, the Department understands, is cleaner than ordinary diesel. Due to environmental benefits, it may be best to provide a naphtha-only preferential fuel tax rate for electricity generation.

CONSUMER PROTECTION ELEMENT—The Department appreciates that this measure involves the Public Utilities Commission and a certificate that the preferential tax rate benefits customers.

OPPOSITION FOR POTENTIAL COSTS—The Department opposes this measure to the extent it provides additional unbudgeted tax benefits. Based upon the Department's projections, and assuming a current effective date, this legislation will result in no impact in Fiscal Year 2009, a revenue loss of $1.6 million in Fiscal Year 2010, and a loss of $1.079 million in Fiscal Year 2011 and after.

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

March 17, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 370 H.D. 2

COMMITTEE ON ENERGY AND ENVIRONMENT

House Bill 370 H.D. 2 clarifies that the additional one cent license tax added to diesel fuel is not applicable to diesel oil that is sold for use in electric power generation by a power-generating facility.

The Department opposes this bill. This legislation will decrease the fuel tax revenues from non-transportation fuel uses by an estimated \$1.6 million for fiscal year 2010 and by \$1.079 million in fiscal year 2011 and each year thereafter.

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 fuel tax revenue account for more than 40% of the State Highway Fund revenues and is the primary means of funding to support the operations and maintenance, and construction of the State Highway System.

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: HB 370, HD-2

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 243-4 to provide that diesel oil sold for use in electric power generation by a power-generating facility regulated by the public utilities commission shall be taxed at 1 cent per gallon. Requires each entity that uses diesel oil in a power generating facility to certify to the public utilities commission annually that the reduced rate by the entity reduces costs to ratepayers.

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: July 1, 2020 applicable to tax years beginning after December 31, 2008

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 to 2 cents per gallon. 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 in a power generating facility shall be taxed at the rate of 1 cent per gallon.

While the proposed measure proposes to restore the 1 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 3/13/09

Testimony Before the House Committee on
Energy and Environment

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, March 17, 2009, 3:00 p.m.
Conference Room #225

House Bill No. 370, HD2 – Relating to Taxation

To the Honorable Mike Gabbard, Chair; J. Kalani English, Vice-Chair,
and members of the Committee:

Thank you for the opportunity to testify before you. I am Randy, President and CEO of Kaua`i Island Utility Cooperative (KIUC). I am here today to testify on HB370, HD2, 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.

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.

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 HB370, HD2 that has placed the tax on diesel used by power generation facilities to produce electricity at one-cent.

For these reasons, KIUC supports HB370, HD2.

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