Testimony Before the House Committee on
Energy & Environmental Protection

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

House Bill No. 370 – 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 before you. I am Randy, President and CEO of Kaua`i Island Utility Cooperative (KIUC). I am here today to testify on HB 370, 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 HB 370 that has placed the tax on diesel used by power generation facilities to produce electricity at one-cent.

For these reasons, KIUC supports HB 370.

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

L E G I S L A T I V E

TAXBILLSERVICE

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SUBJECT: FUEL, Diesel oil for power generation

BILL NUMBER: SB 450; HB 370 (Identical)

INTRODUCED BY: SB by Hooser, Baker and 7 Democrats; HB by Tokioka, Carroll, Chang, Evans, Hanohano, Herkes, McKelvey, Morita, Nakashima and 2 Democrats

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: 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 2/2/09