HB 2740, HD1

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON ENERGY & ENVIRONMENT

MARCH 15, 2012

MEASURE: H.B. No. 2740, H.D. 1
TITLE: Relating to Taxation

Chair Gabbard and Members of the Committee:

DESCRIPTION:

This measure proposes to extend to December 31, 2015, the sunset date for the lower fuel license tax rate set in Act 103, SLH 2007, and amended in Act 198, SLH 2009 ("Act 103/198 Sunset"), for naphtha fuel sold for use in power-generation facilities.

POSITION:

The Commission supports this measure and would like to offer the following comments for the Committee's consideration.

COMMENTS:

The Commission supports the removal of the Act 103/198 Sunset date. The Commission is extremely concerned that the fuel license tax rate on naphtha, which is currently being assessed on fuel used solely for power generation, is an unfair burden on Hawaii's electricity ratepayer.

The Commission understands adequate funding is essential in maintaining the State's highway infrastructure and roadway systems, however, the electricity ratepayer should not be burdened with costs that are unrelated to the production, transmission, and/or distribution of electricity. Volatile and continuously rising fossil fuel costs already have a significant impact on electricity pricing in Hawaii.

Thank you for the opportunity to testify on this measure.

Testimony Before the Senate Committee on
Energy and Environment

By Michael Yamane, P.E.
Chief of Operations
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Thursday, March 15, 2012, 3:00 p.m.
Conference Room #225

House Bill No. 2740, H.D. 1– 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 on this measure. I am Michael Yamane, Chief of Operations at Kauai Island Utility Cooperative ("KIUC"). KIUC stands in strong support on House Bill No. 2740, H.D. 1, that extends the sunset date initially established in Act 103, Session Laws of Hawaii 2007, as further extended until December 31, 2012 by Act 198, Session Laws of Hawaii, 2009 and leaves naphtha, a fuel used in a power-generating facility, to the fuel tax at a rate of 2 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 continues to believe 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 and be treated similar to diesel with a 1 cent per gallon tax.

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 uses annually would result in a $2.4 million annual tax liability that would need to be passed on to KIUC's members.

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 members.

The additional $4.4 million tax expense would have increased KIUC's cost of purchased fuel and raised KIUC member s' energy bills by approximately 7%.

As you know, KIUC is a member-owned electric cooperative. Unlike for-profit corporations (i.e. investor owned utilities), cooperatives are not-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's 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 members/shareholders and economics and reliability should be properly evaluated.

For these reasons, KIUC stands in strong supports House Bill No. 2740, H.D. 1 and, therefore asks that this bill be passed.

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, Rate on naphtha used for power generation

BILL NUMBER: HB 2740, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Extends the sunset provision of Act 198, SLH 2009, relating to the tax on naphtha sold for use in a power-generating facility from December 31, 2012 to December 31, 2015.

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. The legislature by Act 198, SLH 2009, increased the tax on naphtha fuel used in a power generating facility from 1 cent to 2 cents per gallon effective 7/1/09 and extended the sunset date of Act 103, SLH 2007, from 12/31/09 to 12/31/12. Rather than making this provision permanent by repealing the sunset provision of Act 198, SLH 2009, as originally proposed, this measure extends the repeal date from December 31, 2012 to December 31, 2015.

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 for 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.

It should be noted when Hawaii enjoyed a vibrant agricultural industry, fuel used by the industry off the paved public highways received a refund of the fuel tax. On the other hand, commercial fishers are granted a tax credit for purchases of fuel used in the commercial fishing vessels albeit applied against the net income tax.

Digested 3/13/12