

HB
1467

A BILL FOR AN ACT

RELATING TO MOTOR VEHICLES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 243-4, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§243-4 License taxes.** (a) Every distributor shall, in
4 addition to any other taxes provided by law, pay a license tax
5 to the department of taxation for each gallon of liquid fuel
6 refined, manufactured, produced, or compounded by the
7 distributor and sold or used by the distributor in the State or
8 imported by the distributor, or acquired by the distributor from
9 persons who are not licensed distributors, and sold or used by
10 the distributor in the State. Any person who sells or uses any
11 liquid fuel, knowing that the distributor from whom it was
12 originally purchased has not paid and is not paying the tax
13 thereon, shall pay such tax as would have applied to such sale
14 or use by the distributor. The rates of tax imposed are as
15 follows:
16 (1) For each gallon of diesel or biodiesel oil, 1 cent;



- 1 (2) For each gallon of gasoline or other aviation fuel
2 sold for use in or used for airplanes, 1 cent;
- 3 (3) For each gallon of naphtha sold for use in a power-
4 generating facility, 2 cents;
- 5 (4) For each gallon of liquid fuel, other than fuel
6 mentioned in paragraphs (1), (2), and (3), and other
7 than an alternative fuel, sold or used in the city and
8 county of Honolulu, or sold in any county for ultimate
9 use in the city and county of Honolulu, the greater of
10 16 cents state tax[7] or a tax of per cent of
11 the wholesale price to the retailer per gallon of
12 liquid fuel; provided that if the tax based on the
13 percentage of wholesale price is applied, the monetary
14 amount of tax paid by a wholesaler on any gallon of
15 liquid fuel sold to a retailer shall not be less than
16 the monetary amount of tax paid per gallon of liquid
17 fuel by the retailer to whom the wholesaler charges
18 the highest price per gallon of liquid fuel, and in
19 addition thereto an amount, to be known as the "city
20 and county of Honolulu fuel tax", as shall be levied
21 pursuant to section 243-5;



1 (5) For each gallon of liquid fuel, other than fuel
2 mentioned in paragraphs (1), (2), and (3), and other
3 than an alternative fuel, sold or used in the county
4 of Hawaii, or sold in any county for ultimate use in
5 the county of Hawaii, the greater of 16 cents state
6 tax[7] or a tax of _____ per cent of the wholesale
7 price to the retailer per gallon of liquid fuel;
8 provided that if the tax based on the percentage of
9 wholesale price is applied, the monetary amount of tax
10 paid by a wholesaler on any gallon of liquid fuel sold
11 to a retailer shall not be less than the monetary
12 amount of tax paid per gallon of liquid fuel by the
13 retailer to whom the wholesaler charges the highest
14 price per gallon of liquid fuel, and in addition
15 thereto an amount, to be known as the "county of
16 Hawaii fuel tax", as shall be levied pursuant to
17 section 243-5;

18 (6) For each gallon of liquid fuel, other than fuel
19 mentioned in paragraphs (1), (2), and (3), and other
20 than an alternative fuel, sold or used in the county
21 of Maui, or sold in any county for ultimate use in the



1 county of Maui, the greater of 16 cents state tax[7]
2 or a tax of per cent of the wholesale price to
3 the retailer per gallon of liquid fuel; provided that
4 if the tax based on the percentage of wholesale price
5 is applied, the monetary amount of tax paid by a
6 wholesaler on any gallon of liquid fuel sold to a
7 retailer shall not be less than the monetary amount of
8 tax paid per gallon of liquid fuel by the retailer to
9 whom the wholesaler charges the highest price per
10 gallon of liquid fuel, and in addition thereto an
11 amount, to be known as the "county of Maui fuel tax",
12 as shall be levied pursuant to section 243-5; and

13 (7) For each gallon of liquid fuel, other than fuel
14 mentioned in paragraphs (1), (2), and (3), and other
15 than an alternative fuel, sold or used in the county
16 of Kauai, or sold in any county for ultimate use in
17 the county of Kauai, the greater of 16 cents state
18 tax[7] or a tax of per cent of the wholesale
19 price to the retailer per gallon of liquid fuel;
20 provided that if the tax based on the percentage of
21 wholesale price is applied, the monetary amount of tax



1 paid by a wholesaler on any gallon of liquid fuel sold
2 to a retailer shall not be less than the monetary
3 amount of tax paid per gallon of liquid fuel by the
4 retailer to whom the wholesaler charges the highest
5 price per gallon of liquid fuel, and in addition
6 thereto an amount, to be known as the "county of Kauai
7 fuel tax", as shall be levied pursuant to
8 section 243-5.

9 If it is shown to the satisfaction of the department, based
10 upon proper records and from any other evidence as the
11 department may require, that liquid fuel, other than fuel
12 mentioned in paragraphs (1), (2), and (3), is used for
13 agricultural equipment that does not operate upon the public
14 highways of the State, the user thereof may obtain a refund of
15 all taxes thereon imposed by this section in excess of 1 cent
16 per gallon. The department shall adopt rules to administer such
17 refunds.

18 (b) Every distributor of diesel or biodiesel oil, in
19 addition to the tax required by subsection (a), shall pay a
20 license tax to the department for each gallon of diesel or
21 biodiesel oil sold or used by the distributor for operating a



1 motor vehicle or motor vehicles upon public highways of the
2 State. The rates of the additional tax imposed are as follows:

3 (1) For each gallon of diesel or biodiesel oil sold or
4 used in the city and county of Honolulu, or sold in
5 any other county for ultimate use in the city and
6 county of Honolulu, the greater of 15 cents state
7 tax[7] or a tax of _____ per cent of the wholesale
8 price to the retailer per gallon of diesel or
9 biodiesel oil; provided that if the tax based on a
10 percentage of wholesale price is applied, the monetary
11 amount of tax paid by a wholesaler on any gallon of
12 diesel or biodiesel oil sold to a retailer shall not
13 be less than the monetary amount of tax paid per
14 gallon of diesel or biodiesel oil by the retailer to
15 whom the wholesaler charges the highest price per
16 gallon of diesel or biodiesel oil, and in addition
17 thereto an amount, to be known as the "city and county
18 of Honolulu fuel tax", as shall be levied pursuant to
19 section 243-5;

20 (2) For each gallon of diesel or biodiesel oil sold or
21 used in the county of Hawaii, or sold in any other



1 county for ultimate use in the county of Hawaii, the
2 greater of 15 cents state tax[7] or a tax of _____ per
3 cent of the wholesale price to the retailer per gallon
4 of diesel or biodiesel oil; provided that if the tax
5 based on a percentage of wholesale price is applied,
6 the monetary amount of tax paid by a wholesaler on any
7 gallon of diesel or biodiesel oil sold to a retailer
8 shall not be less than the monetary amount of tax paid
9 per gallon of diesel or biodiesel oil by the retailer
10 to whom the wholesaler charges the highest price per
11 gallon of diesel or biodiesel oil, and in addition
12 thereto an amount, to be known as the "county of
13 Hawaii fuel tax", as shall be levied pursuant to
14 section 243-5;

15 (3) For each gallon of diesel or biodiesel oil sold or
16 used in the county of Maui, or sold in any other
17 county for ultimate use in the county of Maui, the
18 greater of 15 cents state tax, or a tax of _____ per
19 cent of the wholesale price to the retailer per gallon
20 of diesel or biodiesel oil; provided that if the tax
21 based on a percentage of wholesale price is applied,



1 the monetary amount of tax paid by a wholesaler on any
2 gallon of diesel or biodiesel oil sold to a retailer
3 shall not be less than the monetary amount of tax paid
4 per gallon of diesel or biodiesel oil by the retailer
5 to whom the wholesaler charges the highest price per
6 gallon of diesel or biodiesel oil, and in addition
7 thereto an amount, to be known as the "county of Maui
8 fuel tax", as shall be levied pursuant to section
9 243-5; and

10 (4) For each gallon of diesel or biodiesel oil sold or
11 used in the county of Kauai, or sold in any other
12 county for ultimate use in the county of Kauai, the
13 greater of 15 cents state tax[7] or a tax of per
14 cent of the wholesale price to the retailer per gallon
15 of diesel or biodiesel oil; provided that if the tax
16 based on a percentage of wholesale price is applied,
17 the monetary amount of tax paid by a wholesaler on any
18 gallon of diesel or biodiesel oil sold to a retailer
19 shall not be less than the monetary amount of tax paid
20 per gallon of diesel or biodiesel oil by the retailer
21 to whom the wholesaler charges the highest price per



1 gallon of diesel or biodiesel oil, and in addition
2 thereto an amount, to be known as the "county of Kauai
3 fuel tax", as shall be levied pursuant to section
4 243-5.

5 If any user of diesel or biodiesel oil furnishes a
6 certificate, in a form that the department shall prescribe, to
7 the distributor or if the distributor who uses diesel or
8 biodiesel oil signs the certificate, certifying that the diesel
9 or biodiesel oil is for use in operating a motor vehicle or
10 motor vehicles in areas other than upon the public highways of
11 the State, the tax as provided in paragraphs (1) to (4) shall
12 not be applicable. If a certificate is not or cannot be
13 furnished and the diesel or biodiesel oil is in fact for use for
14 operating a motor vehicle or motor vehicles in areas other than
15 upon public highways of the State, the user thereof may obtain a
16 refund of all taxes thereon imposed by the foregoing paragraphs.
17 The department shall adopt rules to administer the refunding of
18 such taxes.

19 For the purposes of subsection (a) and this subsection, the
20 term "wholesale price" means the amount a wholesaler of liquid



1 fuel, diesel oil, or biodiesel oil charges a retailer prior to
2 the inclusion of any taxes.

3 (c) The tax shall not be collected in respect to any
4 benzol, benzene, toluol, xylol, or alternative fuel sold for use
5 other than for operating internal combustion engines. With
6 respect to these products, other than alternative fuels, the
7 department, by rule, shall provide for the reporting and payment
8 of the tax and for the keeping of records in such a manner as to
9 collect, for each gallon of each product sold for use in
10 internal combustion engines for the generation of power, or so
11 used, the same tax or taxes as apply to each gallon of diesel
12 oil. With respect to alternative fuels, the only tax collected
13 shall be that provided in paragraphs (1), (2), and (3) of this
14 subsection. This subsection shall not apply to aviation fuel
15 sold for use in or used for airplanes.

16 (1) Every distributor of any alternative fuel for
17 operation of an internal combustion engine shall pay a
18 license tax to the department of one-quarter of 1 cent
19 for each gallon of alternative fuel sold or used by
20 the distributor;



1 (2) Every distributor, in addition to the tax required
2 under paragraph (1) of this subsection, shall pay a
3 license tax to the department for each gallon of
4 alternative fuel sold or used by the distributor for
5 operating a motor vehicle or motor vehicles upon the
6 public highways of the State at a rate proportional to
7 that of the rates applicable to diesel oil in
8 subsection (b), rounded to the nearest one-tenth of a
9 cent, as follows:

10 (A) Ethanol, 0.145 times the rate for diesel;

11 (B) Methanol, 0.11 times the rate for diesel;

12 ~~[(C) Biodiesel, 0.25 times the rate for diesel;~~

13 ~~-(D)]~~ (C) Liquefied petroleum gas, 0.33 times the rate
14 for diesel; and

15 ~~-(E)]~~ (D) For other alternative fuels, the rate shall
16 be based on the energy content of the fuels as
17 compared to diesel fuel, using a lower heating
18 value of one hundred thirty thousand British
19 thermal units per gallon as a standard for
20 diesel, so that the tax rate, on an energy



1 content basis, is equal to one-quarter the rate
2 for diesel fuel.

3 The taxes so paid shall be paid into the state
4 treasury and deposited in special funds or paid over
5 in the same manner as provided in subsection (b) in
6 respect of the tax on diesel oil;

7 (3) If any user of alternative fuel furnishes to the
8 distributor a certificate, in a form that the
9 department shall prescribe or if the distributor who
10 uses alternative fuel signs the certificate,
11 certifying that the alternative fuel is for use in
12 operating a motor vehicle or motor vehicles in areas
13 other than upon the public highways of the State, the
14 tax as provided by paragraphs (1) and (2) of this
15 subsection shall not be applicable; provided that no
16 certificate shall be required if the alternative fuel
17 is used for fuel and heating purposes in the home. If
18 a certificate is not or cannot be furnished and the
19 alternative fuel is in fact used for operating an
20 internal combustion engine or operating a motor
21 vehicle or motor vehicles in areas other than upon the



1 public highways of the State, the user thereof may
2 obtain a refund of all taxes thereon imposed by the
3 foregoing paragraphs. The department shall adopt
4 rules to administer the refunding of these taxes.

5 (d) No tax shall be collected in respect to any liquid
6 fuel, including diesel oil, biodiesel oil, and liquefied
7 petroleum gas, shown to the satisfaction of the department to
8 have been sold for use in and actually delivered to, or sold in,
9 the county of Kalawao."

10 SECTION 2. Section 243-10, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§243-10 Statements and payments.** Each distributor and
13 each person subject to section 243-4(b), on or before the
14 twentieth day of each calendar month, shall file with the
15 director of taxation, on forms prescribed, prepared, and
16 furnished by the director, a statement, authenticated as
17 provided in section 231-15, showing separately for each county
18 and for the island of Lanai and the island of Molokai within
19 which and whereon fuel is sold or used during each preceding
20 month of the calendar year, the following:



- 1 (1) The total number of gallons of fuel refined,
2 manufactured, or compounded by the distributor or
3 person within the State and sold or used by the
4 distributor or person, and if for ultimate use in
5 another county or on either island, the name of that
6 county or island;
- 7 (2) The total number of gallons of fuel acquired by the
8 distributor or person during the month from persons
9 not subject to the tax on the transaction or only
10 subject to tax thereon at the rate of 1 cent per
11 gallon, as the case may be, and sold or used by the
12 distributor or person, and if for ultimate use in
13 another county or on either island, the name of that
14 county or island;
- 15 (3) The total number of gallons of fuel sold by the
16 distributor or person to the United States or any
17 department or agency thereof, or to any other person
18 or entity, or used in any manner, the effect of which
19 sale or use is to exempt the fuel from the tax imposed
20 by this chapter;



1 (4) Additional information relative to the acquisition,
2 purchase, manufacture, or importation into the State,
3 and the sale, use, or other disposition, of diesel or
4 biodiesel oil by the distributor or person during the
5 month, as the department of taxation by rule shall
6 prescribe.

7 At the time of submitting the foregoing report to the
8 department, each distributor and person shall pay the tax on
9 each gallon of fuel (including diesel or biodiesel oil) sold or
10 used by the distributor or person in each county and on the
11 island of Lanai and the island of Molokai during the preceding
12 month, as shown by the statement and required by this chapter;
13 provided that the tax shall not apply to any fuel exempted and
14 so long as the same is exempted from the imposition of the tax
15 by the Constitution or laws of the United States; and the tax
16 shall be paid only once upon the same fuel; provided further
17 that a licensed distributor shall be entitled, in computing the
18 tax the licensed distributor is required to pay, to deduct from
19 the gallons of fuel reported for the month for each county or
20 for the island of Lanai or the island of Molokai, as the case
21 may be, one gallon for each ninety-nine gallons of like liquid



1 fuel sold by retail dealers in that county or on that island
2 during the month, as shown by certificates furnished by the
3 retail dealers to the distributor and attached to the
4 distributor's report. All taxes payable for any month shall be
5 delinquent after the expiration of the twentieth day of the
6 following month.

7 Statements filed under this section concerning the number
8 of gallons of fuel refined, manufactured, compounded, imported,
9 sold or used by the distributor or person are public records."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect on January 1, 2020.

13

INTRODUCED BY:



JAN 24 2019



H.B. NO. 1467

Report Title:

State Fuel Tax; Assessment Bases; Reporting

Description:

Changes the assessment of the state fuel tax from a specified cents per gallon to the greater of a specified cents per gallon or a specified percentage of the wholesale price per gallon to the retailer, subject to a minimum monetary amount of tax based upon the tax paid by certain retailers. Subjects biodiesel oil to the same tax rates and reporting requirements as diesel oil.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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Phone: (808) 587-1540 / Fax: (808) 587-1560

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To: The Honorable Roy M. Takumi, Chair
and Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 6, 2019
Time: 2:00 P.M.
Place: Conference Room 329, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1467, Relating to Motor Vehicles

The Department of Taxation (Department) offers the following comments on H.B. 1467 for the Committee's consideration.

H.B. 1467 amends the State fuel tax by changing the mechanism for calculating fuel license tax rates and by subjecting biodiesel oil to the same tax rates and reporting requirements as diesel oil. A summary of key provisions are as follows:

- Amends section 243-4, Hawaii Revised Statutes (HRS), to change subsection (a)'s tax rates of certain categories of liquid fuel from a specified amount of cents per gallon to either a specified amount of cents per gallon, or an unspecified percentage of the wholesale price, whichever is greater;
- Provides that if the tax based on a percentage of wholesale price is applied instead of the tax based on a specified amount of cents per gallon, the amount of tax paid by a wholesaler on any liquid gallon of fuel sold to a retailer shall not be less than the amount of tax paid per gallon of liquid fuel by the retailer to whom the wholesaler charges the highest price per gallon of liquid fuel;
- Makes the additional tax rates and requirements imposed on diesel oil distributors by subsection (b) applicable to biodiesel oil distributors as well;
- Similarly amends the additional tax on diesel oil and biodiesel oil in subsection (b) by changing the rate from a specified amount of cents per gallon to either a specified amount of cents per gallon, or an unspecified percentage of the wholesale price, whichever is greater; with another provision requiring that if the tax based on a percentage of wholesale price is applied, the amount of tax paid by a wholesaler on any liquid gallon of diesel oil or biodiesel oil sold to a retailer shall not be less than the amount of tax paid per gallon of diesel oil or biodiesel oil by the retailer to whom the wholesaler charges the highest price per gallon of diesel oil or biodiesel oil;
- Defines "wholesale price" as the amount a wholesaler of liquid fuel, diesel oil, or

- biodiesel oil charges a retailer prior to the inclusion of any taxes;
- Repeals the separate, higher rate for biodiesel distributors in subsection (c)(2);
- Prohibits the collecting of tax on biodiesel oil sold for use in Kalawao County;
- Amends section 243-10, HRS, to subject biodiesel oil distributors to monthly fuel tax reporting requirements; and
- Effective January 1, 2020.

While the Department appreciates the desire to adjust the fuel tax rate to the cost of fuel, the Department suggests a simple adjustment to the rate instead. The adjustment provided in this bill will create confusion for taxpayers and administrative challenges both in ensuring compliance and in educating taxpayers regarding the change in the law. The wholesale and retail prices of liquid fuels change frequently, and it will be difficult for the Department to verify that the correct amounts of taxes are assessed by distributors to wholesalers and retailers if the taxes are based on unique individual costs that were paid. A "choose the greater of the two" system adds an additional layer of complexity that may hamper effective tax administration.

By contrast, a rate change by a set amount is relatively easy for the Department to administer. Whether the rate change is flat or graduated, however, the Department will need to change its forms and instructions, and therefore appreciates the time provided by the effective date of January 1, 2020.

Additionally, the Department notes that it is unable to determine the Legislature's intent in including language throughout Section 1 stating that when the tax based on percentage of wholesale price is applied, the tax paid by a wholesaler shall not be less than the tax paid by the retailer to whom the wholesaler charges the highest price per gallon of liquid fuel. The provision is ambiguous, and it is unclear how this provision will be monitored and enforced or how wholesalers will determine their "highest price" charged in a given taxable year or time period. It is also unclear when retailers would be subject to the fuel license tax. If the intent of the Legislature is to restrict wholesalers from artificially inflating prices or "passing on" to retailers more tax than allowable, the Department recommends amending those provisions throughout Section 1 to read as follows:

"provided that if the tax based on the percentage of wholesale price is applied, a wholesaler shall not pass on to a retailer any amount of tax per gallon greater than the amount of tax per gallon of [fuel type] that the wholesaler paid on the highest price per gallon of [same fuel type] sold by the wholesaler to any retailer during the taxable year."

The Department also notes that Section 1, subsection (c) of the measure states that "[w]ith respect to alternative fuels, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection." Although this measure reclassifies biodiesel oil alongside diesel oil for purposes of the fuel tax and deletes biodiesel from subsection (c)(2), chapter 243's definitions section in section 243-1, HRS, still lists biodiesel as one of several "alternative fuels." To avoid any confusion, the Department suggests amending the next-to-last sentence in subsection (c)'s first paragraph to read as follows:

"With respect to alternative fuels other than biodiesel, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection."

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
CONSUMER PROTECTION & COMMERCE

Wednesday, February 6, 2019
2:00 PM

State Capitol, Conference Room 329

In consideration of
HOUSE BILL 1467
RELATING TO MOTOR VEHICLES

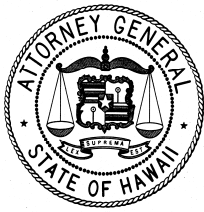
House Bill 1467 proposes to change the assessment of the State Fuel Tax from a specified cents per gallon to the greater of a specified cents per gallon or a specified percentage of the wholesale price per gallon to the retailer, subject to a minimum monetary amount of tax based upon the tax paid by certain retailers. The bill also proposes to subject biodiesel oil to the same tax rates and reporting requirements as diesel oil. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and provides the following comments.**

Under Section 248-8, Hawaii Revised Statutes (HRS), 0.3% of the Highway Fuel Tax (Liquid Fuel Tax/State Fuel Tax), but not more than \$250,000 collected under Chapter 243, HRS, is allocated each fiscal year for the purposes of management, maintenance, and development of trails and trail accesses under the jurisdiction of the Department established under Section 198D-2, HRS.

Na Ala Hele (NAH), Hawaii Statewide Trail and Access Program, is designated to be the recipient of the \$250,000. NAH has nearly 3,500 miles of inventoried road and trails throughout the State, serving approximately 3 million visitors and residents alike. Keeping up with the rising demand for trail use remains a constant challenge. This funding source addresses maintenance and trail restoration projects throughout Hawaii. Not only are trails used by residents and visitors, but in many cases access for emergency and land management purposes too. As the general and visitor populations continue to grow, so do the needs to utilize these trails, which require ongoing maintenance to keep them from becoming dangerous to use.

Due to these consistent pressures on these trail systems, the Department requests that any increases in the State Fuel Tax proportionately increase the funds to NAH.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 1467, RELATING TO MOTOR VEHICLES.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Wednesday, February 6, 2019 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Clare E. Connors, Attorney General, or
Mary Bahng Yokota, Deputy Attorney General

Chair Takumi and Members of the Committee:

The Department of the Attorney General provides the following technical comments.

This bill:

- (1) Changes certain fuel tax rates from a specified rate to the greater of a specified rate or a percentage of the wholesale price per gallon to the retailer;
- (2) Requires distributors of biodiesel oil to pay a license tax under section 243-4(a), Hawaii Revised Statutes (HRS), and an additional license tax under section 243-4(b), HRS, at the same rates as distributors of diesel oil;
- (3) Eliminates an alternative fuel tax rate specifically for biodiesel under section 243-4(c), HRS; and
- (4) Subjects the distributors of biodiesel oil to the same reporting and payment requirements as distributors of diesel oil under section 243-10, HRS.

This bill changes certain fuel tax rates in section 243-4(a), HRS, from a specified rate to the greater of a specified rate or a percentage (not yet specified) of “the wholesale price to the retailer per gallon of liquid fuel; provided that if the tax based on

the percentage of wholesale price is applied, the monetary amount of the tax paid by a wholesaler on any gallon of liquid fuel sold to a retailer shall not be less than the monetary amount of tax paid per gallon of liquid fuel by the retailer to whom the wholesaler charges the highest price per gallon of liquid fuel.” Page 2, lines 9-18; page 3, lines 5-14; page 4, lines 1-10; page 4, line 17, through page 4, line 5. There is similar wording relating to the additional license tax rate on distributors of diesel or biodiesel oil in section 243-4(b), HRS. Page 6, lines 6-16; page 7, lines 2-11; page 7, line 17, through page 8, line 6; page 8, line 12, through page 9, line 1. The meaning of these amendments is unclear, especially as they use the terms “wholesalers” and “retailers” when section 243-4(a) and (b), HRS, requires payment of license taxes by “distributors.” We recommend clarification.

Biodiesel is an “alternative fuel” as defined in section § 243-1, HRS. Section 243-4(c), HRS, provides in part that “[w]ith respect to alternative fuels, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection.” Page 10, lines 12-14. This bill, however, requires distributors of biodiesel oil to pay license taxes under subsections (a) and (b) of section 243-4, HRS. Thus, we recommend that the quoted sentence be clarified. For example, it may be amended to read as follows:

With respect to alternative fuels other than biodiesel, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection.

We add that distributors of biodiesel would be subject to the taxes in subsection (c) in addition to subsections (a) and (b) of section 243-4, HRS. Although the bill eliminates the specific tax rate for biodiesel in subsection (c), paragraph 2 (page 11, line 12), biodiesel is not expressly excluded and would be included as “alternative fuel” or “other alternative fuels.” If it is not the intent of the bill to subject distributors of biodiesel to taxes under subsection (c) of the statute, we recommend that this subsection of the statute in the bill be clarified by expressly excluding biodiesel when referencing “alternative fuel.”

We respectfully ask that the bill be clarified as recommended above.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Tax Hike

BILL NUMBER: HB 1467

INTRODUCED BY: YAMASHITA

EXECUTIVE SUMMARY: Changes the assessment of the state fuel tax from a specified cents per gallon to the greater of a specified cents per gallon or a percentage of the wholesale price per gallon to the retailer, subject to a minimum monetary amount of tax based upon the tax paid by certain retailers. Subjects biodiesel oil to the same tax rates and reporting requirements as diesel oil.

SYNOPSIS: Amends section 243-4, HRS, to change the formula for assessment of state liquid fuel tax. Instead of being a set amount per gallon of fuel, the tax will be the greater of (1) the preexisting set amount per gallon or (2) an as yet unspecified percentage of the wholesale price, provided that if option (2) is used the tax shall not be less than the monetary amount of tax paid per gallon of liquid fuel by the retailer to whom the wholesaler charges the highest price per gallon of liquid fuel.

Also deletes the separate rate for biodiesel.

Makes conforming amendments.

EFFECTIVE DATE: January 1, 2020.

STAFF COMMENTS: The proposed formula appears to be complex and difficult to administer. It should be noted that liquid fuel prices at the wholesale level change frequently following national and world markets.

Digested 2/4/2019



TO: HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

FROM: Thomas Grimes
President of Aloha Petroleum, Ltd.

HEARING

DATE: Wednesday, February 6, 2019

TIME: 2:00 p.m.

PLACE: State Capitol, Conference Room 329

RE: Testimony in Opposition to H.B. No. 1467 Relating to the Motor Vehicles

Chair, Vice Chair, and Members of the House Committee on CONSUMER PROTECTION & COMMERCE, I am Thomas Grimes, President of Aloha Petroleum, Ltd. ("Aloha Petroleum").

Aloha Petroleum opposes H.B. No. 1467 ("Bill"), which seeks to change the assessment of the fuel license tax (1) on liquid fuel sold or used in the State of Hawaii ("State") and (2) on diesel oil sold or used for operating motor vehicles on State public highways. The Bill proposes to increase taxes from \$0.16 cents per gallon on liquid fuel and \$0.15 cents per gallon on diesel oil to the greater of the specified cents per gallon or a currently undisclosed percentage of the wholesale price per gallon, subject to a minimum tax based upon the highest taxes assessed to retailers. H.B. No. 1467 also subjects biodiesel to the same tax rates and reporting requirements as petroleum diesel oil.

H.B. No. 1467 proposes to change the flat per gallon fuel license tax rates into a much more complicated "greater of" structure that includes a tax based on an undisclosed percentage of wholesale prices. One outcome of this structure would be that, as fuel costs increase, fuel taxes will increase. Notably, the Bill does not specify the proposed percentage rate on the wholesale price per gallon for both liquid fuel and diesel oil and biodiesel. This alone is sufficient grounds to reject the Bill for lack of transparency.

The proposed amendments to the fuel license taxes in the Bill are problematic for several reasons. First, a "greater of" tax structure that includes a percentage based tax would be difficult if not impossible to administer as accounting systems are not set up to



deal with “higher of” structures, particularly one that includes a percentage tax. Assessing and collecting taxes under this structure would unnecessarily complicate the operations of all fuel distributors as well as the State’s tax collectors. It would also increase costs for distributors, wholesalers, retailers, and, ultimately, all retail fuel customers in Hawaii as taxes are generally passed through to end users.

Second, the taxes assessed under this Bill could vary significantly from one retailer to another based in part on the retailer’s location. As a result, the taxes assessed under this Bill could result in unequal tax burdens because some retailers could pay higher taxes on their fuel purchases than their competitors.

Third, it will be difficult, if not impossible, for the State to verify that the correct taxes are assessed by distributors to wholesalers and retailers since the taxes are based on the unique individual prices paid by the wholesalers and retailers. The State will also be challenged to forecast tax collections and to budget accordingly due to the volatile and unpredictable nature of fuel prices. In fact, several states which experimented with percentage-based fuel taxes have abandoned this approach because of the volatility in collections.

Fourth, this bill is anti-consumer and is inherently regressive – that is, low- and middle-income families generally pay a much larger share of their income in motor fuel taxes compared to wealthier consumers. While this bill is clearly designed to raise state fuel taxes, it will hurt those who can least afford it.

Lastly, to the extent the State is intent on increasing fuel license taxes as a means to generate highway tax revenue and secure matching federal funds, this is an unnecessarily complicated and burdensome approach, which will be fraught with potential errors. If the State’s goal is to increase fuel taxes, then we suggest that the rate currently in place be raised to generate the desired income. This approach would be easy for both businesses and tax authorities to understand and to administer and for consumers to understand.

For these reasons, please vote no on H.B. No. 1467.

Thank you for the opportunity to testify in opposition to this Bill.

HB-1467

Submitted on: 2/5/2019 1:07:30 PM

Testimony for CPC on 2/6/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edsel Eshima	GP Energy Company LLC	Oppose	No

Comments:

HB-1467

Submitted on: 2/1/2019 6:59:30 PM

Testimony for CPC on 2/6/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Winslow	Individual	Support	No

Comments:

HB-1467

Submitted on: 2/5/2019 10:32:15 PM

Testimony for CPC on 2/6/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brett Kulbis	Honolulu County Republican Party	Oppose	No

Comments:



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February 6, 2019

TESTIMONY IN OPPOSITION TO HB 1467

RELATING TO MOTOR VEHICLES

Chair Takumi, Vice Chair Ichiyama
House Conference Room 329
February 6, 2019 2:00pm

Pacific Biodiesel strongly opposes HB 1467

The renewable fuel industry in the US has been ravaged by the current Federal administration, while the fossil fuel industry has been handed large incentives and subsidies. The EPA has effectively dismantled the Renewable Fuel Standard, the only federal incentive today for renewables, by giving “small producer hardship waivers” to anyone requesting one. Those receiving waivers include Exxon Mobil, Chevron, and our Hawaii refinery.

Faced with this attack on renewable fuels, many states have increased their in-state support.

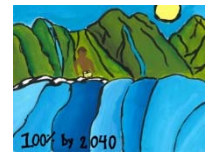
I was both shocked and disappointed to see a bill such as this one being introduced in Hawaii. Passage of this bill incentivizes fossil fuels at the expense of local renewable fuels.

I encourage you to hold HB 1467.

Mahalo,

Robert King, President
Pacific Biodiesel Technologies, LLC

renewable • sustainable • community-based



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

February 6, 2019, 2:00 P.M.

Room 329

(Testimony is 4 pages long)

TESTIMONY IN OPPOSITION TO HB 1467

Aloha Chair Takumi, Vice Chair Ichiyama, and Committee members:

Blue Planet Foundation is opposed to HB 1467, to the extent which the measure extends the existing fuel taxes to include locally produced biodiesel. This proposed policy is antithetical to the state's goal of achieving net zero carbon emissions by 2045 (Act 15 of 2018), as well as other clean energy goals. We respectfully request that the Committee on Consumer Protection & Commerce hold this measure. If the bill advances, however, we ask that the committee consider some suggested amendments (included at the end of this testimony).

Locally produced biodiesel is key to achieving clean energy and climate goals

Biodiesel will likely play a major role in Hawaii's clean energy future—particularly as a substitute for petroleum-based transportation fuels. Hawaii's transportation sector (cars, trucks, ships, and planes) accounts for approximately two-thirds of the imported oil consumed. In the year preceding December 2018, the over one million registered vehicles in Hawaii burned 511.2 million gallons of gasoline and diesel fuel¹, producing more than 10 billion pounds of climate-changing carbon dioxide in the process. Over the past five years, carbon emissions from Hawaii's transportation sector have increased. Locally produced biodiesel can help address this.

Biodiesel from local waste or plant sources is a drop-in, low-carbon replacement for diesel fuel. It is already in use in thousands of vehicles statewide, as well as burned in power plants to generate electricity. Because it is produced from plant sources that recently consumed carbon dioxide, biodiesel has a far smaller carbon footprint than diesel, which originates from organic matter that is millions of years old. Because biodiesel can be locally produced and used in so many applications—from cars and trucks to stationary generating equipment—the fuel will likely serve a key role in achieving our clean energy future.

Passage of HB 1467, to the extent that it applies to locally produced biodiesel, will make achieving our clean energy and carbon goals more difficult.

¹ Department of Business, Economic Development, and Tourism. Monthly Energy Trends (<http://dbedt.hawaii.gov/economic/energy-trends-2/>)

Locally produced biodiesel promotes Hawaii-based business and creates jobs

Biodiesel is a Hawaii clean energy success story. Maui-based Pacific Biodiesel launched in the mid-1990s with a vision of producing local fuel from waste products. They quickly established themselves as a nationwide industry leader (they were so early in the sector that they were able to claim the domain “biodiesel.com” in July 1997, and have used it since). For nearly 25 years Pacific Biodiesel has been producing millions of gallons of biodiesel annually from recycled cooking grease and oils or from feedstocks grown locally—most recently from Hawaii’s first sunflower crop on Maui. Their Big Island Biodiesel facility—a zero-waste processing plant—produces the highest quality biodiesel made in the United States. The company produces enough fuel to displace 5% of transportation diesel fuel sold in the state.

Other local companies are also beginning to produce biodiesel. One local start-up, TerViva, is growing an oilseed crop called pongamia on the North Shore of Oahu. After extracting the oil for fuel, the residual pongamia seed cake, which is high in both nitrogen and protein, will be used as a fertilizer and animal feed supplement.

Passage of HB 1467, to the extent that it applies to locally produced biodiesel, will negatively impact these local businesses, as well as the jobs and local economy that they support.

This measure incentivizes fossil fuels over renewable fuels

Hawaii’s fuel tax law currently provides for significant reductions in the tax for what the statute defines as “alternative fuels.” These alternative fuels, however, are not equivalent to clean or low-carbon fuels. In fact, the definition of alternative fuels in HRS §243-1 includes

- alcohols with gasoline or other fuels;
- natural gas;
- liquefied petroleum gas; and
- coal-derived liquid fuels.

These fuels are neither clean nor alternative to fossil sources—they are fossil-based.

The myth that natural gas is a “clean energy” resource has been scientifically debunked. “Natural” gas is comprised primarily of methane (CH₄). Methane is a potent greenhouse gas – more potent than CO₂. According to the U.S. EPA, “methane emissions released to the atmosphere (without burning) are about 21 times more powerful than CO₂ in terms of their warming effect on the atmosphere.”² This is critical, because natural gas production is known to release large quantities of methane into the atmosphere, long before the natural gas reaches the power plant or engine to be burned. For example, on January 3, 2013, the highly respected scientific journal *Nature* reported on findings presented by NOAA scientists who measured

² See <http://www.epa.gov/cleanenergy/energy-resources/refs.html>

methane leakage rates from natural gas wells. The title of that report is “Methane leaks erode green credentials of natural gas.”³ Among other things, the report notes that the NOAA scientists measured methane leakage from natural gas wells in Utah equating to 9% of well production. This is approximately three times higher than “the 3.2% threshold beyond which gas becomes worse for the climate than coal.”⁴ Studies of other well fields and natural gas systems have similarly reported methane leakage exceeding the 3.2% threshold.⁵

Similarly, coal is the dirtiest fossil fuel and is responsible for the most manmade carbon dioxide in the atmosphere (with significant upstream environmental impacts as well).

Providing significant tax exemptions to these high-carbon fossil fuels makes little sense given the state’s climate and clean energy targets. Continuing these exemptions while increasing taxes on locally produced, low-carbon biodiesel, as HB 1467 proposes, defies logic.

This measure exacerbates the existing misaligned incentives in state law, encouraging the use of some fossil fuels over clean, renewable alternatives.

SUGGESTED AMENDMENTS

Blue Planet Foundation respectfully requests that the Committee on Consumer Protection & Commerce hold this measure. If this measure advances, however, we ask that the committee consider the following amendments:

1. Delete the proposed expansion of the existing fuel taxes in HRS §243 to biodiesel throughout HB 1467.
2. Amend the definition of “alternative fuel” in HRS §243-1 as follows:

“Alternative fuel” means **biofuels as defined in section 269-91; [methanol, denatured ethanol, and other alcohols;] biofuel** mixtures containing eighty-five per cent or more by volume of methanol, **[denatured]** ethanol, and other alcohols with gasoline or other fuels; **[natural gas; liquefied petroleum gas;] hydrogen produced from renewable energy sources; [coal-derived liquid fuels;]**

³ See Tollefson, Methane Leaks Erode Green Credentials of Natural Gas, NATURE (January 3, 2013) (reporting “alarmingly high” leaks of 9% of well production).

⁴ See Alvarez et al., Greater focus needed on methane leakage from natural gas infrastructure, PROC. NAT’L ACAD. SCI. (April 24, 2012).

⁵ See, e.g., Pétron et al., Hydrocarbon emissions characterization in the Colorado Front Range: A pilot study, J. GEOPHYS. RES. 117; (2012); Howarth et al., Methane Emissions from Natural Gas Systems, Background Paper Prepared for the National Climate Assessment, Ref. no. 2011-0003, available at <http://www.eeb.cornell.edu/howarth/Howarth%20et%20al.%20--%20National%20Climate%20Assessment.pdf>

biodiesel[;] mixtures containing twenty per cent or more by volume of biodiesel with diesel or other fuels; ~~[fuels (other than alcohol) derived from biological materials;]~~ and any other fuel that is substantially not a petroleum product and that the governor determines would yield substantial energy security benefits or substantial environmental benefits.”

3. Amend section 243-4(c)(2) to read as follows:

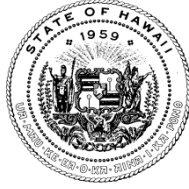
“(2) Every distributor, in addition to the tax required under paragraph (1) of this subsection, shall pay a license tax to the department for each gallon of alternative fuel sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate proportional to that of the rates applicable to diesel oil in subsection (b), rounded to the nearest one-tenth of a cent, as follows:

- (A) Ethanol, 0.145 times the rate for diesel;
- (B) Methanol, 0.11 times the rate for diesel;
- (C) Biodiesel, 0.25 times the rate for diesel;
- (D) ~~[(D) Liquefied petroleum gas, 0.33 times the rate for diesel;]~~ and
- (E) ~~[(E)]~~ (D) For other alternative fuels, the rate shall be based on the energy content of the fuels as compared to diesel fuel, using a lower heating value of one hundred thirty thousand British thermal units per gallon as a standard for diesel, so that the tax rate, on an energy content basis, is equal to one-quarter the rate for diesel fuel.

The taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil;”

Blue Planet Foundation would welcome the opportunity to work with this committee on these and any other amendments if the committee decides to advance this measure.

Thank you for the opportunity to testify.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

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

February 6, 2019
2:00 p.m.
State Capitol, Room 329

H.B. 1467
RELATING TO MOTOR VEHICLES

House Committee on Consumer Protection & Commerce

The Department of Transportation (DOT) **supports** this bill.

The bill proposes to change the assessment of the state fuel tax from a specified cents per gallon to the greater of a specified cents per gallon or a specified percentage of the wholesale price per gallon to the retailer, subject to a minimum monetary amount of tax based upon the tax paid by certain retailers. Subjects biodiesel oil to the same tax rates and reporting requirements as diesel oil.

The potential increase in revenues for the State Highway Fund will improve the Department's ability to construct, operate and maintain the State Highway System. This would enable the Department to increase the highways capital improvement project and special maintenance programs. The improvement of maintenance of the system is required by FHWA, and federal funding may be impacted without proper maintenance.

The increase in revenues will allow DOT to provide more infrastructure enhancements for all users including pedestrians, bicyclists, transit users and motorists and would positively impact the department's ability to qualify state matching funds for the highways federal-aid program. The normal federal share for projects on the interstate system is 90 per cent and for other eligible roadways it is 80 per cent.

Thank you for the opportunity to provide testimony.



Testimony of Jim Yates,
President of the Hawaii Petroleum Marketers Association

**IN OPPOSITION TO HB BILL 1467,
RELATING TO MOTOR VEHICLES**

House Committee on Consumer Protection & Commerce
The Honorable Roy Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

Wednesday, February 6, 2019 at 2:00 p.m.
Hawaii State Capitol, Conference Room 329

Chair Takumi, Vice Chair Ichiyama and Members of the Committee,

I am Jim Yates, president of the Hawaii Petroleum Marketers Association (“HPMA”). HPMA is a non-profit trade association comprised of members who directly market liquid motor fuel products across the Hawaiian Islands. Our membership includes individuals and companies who operate as independent marketers, jobbers or distributors of petroleum products and who buy liquid motor fuel products at the wholesale level and sell or distribute products to retail customers, other wholesalers, and other bulk consumers. HPMA’s primary purpose is to protect and advance its members’ legislative and regulatory interests in Hawaii and Washington, DC.

HPMA is opposed to House Bill 1467, Relating to Motor Vehicles for its lack of transparency and recommends that the State continue to use the current method of assessing a specified cents per gallon of fuel when increasing the tax.

HB 1467 changes the assessment of the state fuel tax from a specified cents per gallon to the greater of a specified cents per gallon or a specified percentage of the wholesale price per gallon to the retailer, subject to a minimum monetary amount of tax based upon the tax paid by certain retailers. The bill also subjects biodiesel oil to the same tax rates and reporting requirements as diesel oil.

HPMA cites the following issues with this measure as comprehensively outlined in the testimony of Aloha Petroleum, Ltd.:

- Administering a “greater of” tax structure that includes a percentage-based tax would be burdensome, add complexity, and in the end, will increase costs for distributors, wholesalers, retailers, and, ultimately, all retail fuel customers in Hawaii.

Testimony in opposition to H.B. 1467, Relating to Motor Vehicles
Presented by Jim Yates, President
Hawaii Petroleum Marketers Association
House Committee on Consumer Protection & Commerce
Hawaii State Capitol, Room 329
Wednesday, February 6, 2019 at 2:00 p.m.
Page 2

- Taxes that vary from one retailer to another based in part on the retailer's location could result in inequitable tax treatment.
- The proposed assessment process would make it difficult for the State to verify the accuracy of taxes being assessed, since taxes are based on the unique individual prices paid by the wholesalers and retailers.
- Relatively speaking, low- and middle-income families pay a greater share of their income in motor fuel taxes when compared to high-income consumers. While this bill is clearly designed to raise state fuel taxes, it will hurt those who can least afford it.
- An overly complex tax assessment process can beget errors and make unintended violators out of fuel distributors, wholesalers and retailers.

Ultimately, having such a complex process would be difficult for paying consumers to follow; hence, our contention that the measure lacks transparency. To raise funds for the State Highway Fund, it would be best to denote a specific cents-per-gallon increase.

Thank you for considering the HPMA's viewpoints in opposing HB 1467, Relating to Motor Vehicles and for providing this opportunity to testify.



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February 6, 2019

TESTIMONY IN OPPOSITION TO HB 1467

RELATING TO MOTOR VEHICLES

Chair Takumi, Vice Chair Ichiyama
House Conference Room 329
February 6, 2019 2:00pm

Pacific Biodiesel strongly opposes HB 1467

Hawaii is the first state in the nation to mandate being powered by 100% renewable energy by 2045. Additionally, all of the State's Mayors committed last year to a shared goal of 100% renewable ground transportation by 2045. Biodiesel is an important part of the renewables mix in our state.

It is disappointing to see the introduction of this bill – with a proposed tax on biodiesel – in our state, which declares to be commitment to renewables.

There are multiple economic and environmental benefits of biodiesel:

- It is a 100% renewable, biodegradable and non-toxic.
- Reduces emissions by 86% compared to petroleum diesel.
- Supports energy security and helps reduce reliance on imported petroleum fuel.
- Creates local jobs.
- Diverts waste cooking oils from local landfills.

Please stay committed to helping Hawaii fight climate change and achieve a clean energy future!
We urge you to hold HB 1467.

Mahalo,

A handwritten signature in blue ink, appearing to read "Joy Galatro", with a long, sweeping underline.

Joy Galatro, Marketing Director
Pacific Biodiesel