DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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To: The Honorable Glenn Wakai, Chair;
The Honorable Bennette E. Misalucha, Vice Chair;
and Members of the Senate Committee on Energy, Economic Development, and Tourism

The Honorable Chris Lee, Chair;
The Honorable Lorraine R. Inouye, Vice Chair;
and Members of the Senate Committee on Transportation

From: Isaac W. Choy, Director
Department of Taxation

Date: Monday, February 7, 2022
Time: 3:00 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 2721, Relating to Energy Tax

The Department of Taxation (Department) offers the following comments on S.B. 2721 for the committee's consideration.

S.B. 2721 amends the environmental response, energy, and food security tax in section 243-3.5, Hawaii Revised Statutes, to apply to aviation fuel, which is currently excluded from the statute. The measure is effective on January 1, 2023.

The Department notes that under federal law, revenues from state and local taxes on aviation fuel enacted after December 30, 1987 are restricted to use either for airport-related purposes or for State aviation programs. Revenues from the environmental response, energy, and food security tax are currently allocated by law to four different funds that are unrelated to aviation. Depositing aviation fuel tax revenue into these funds would likely violate federal law. Please see the Federal Aviation Association's *Policy and Procedures Concerning the Use of Airport Revenue*, published in the Federal Register at 64 F.R. 7696[1], for more information.

Thank you for the opportunity to provide comments.

1 https://www.govinfo.gov/content/pkg/FR-1999-02-16/pdf/99-3529.pdf

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022

ON THE FOLLOWING MEASURE:
S.B. NO. 2721, RELATING TO ENERGY TAX.

BEFORE THE:
SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM AND ON TRANSPORTATION

DATE: Monday, February 7, 2022 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 224, Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Mary Bahng Yokota, Deputy Attorney General

Chairs Wakai and Lee and Members of the Committees:

The Department of the Attorney General provides the following comments.

Section 243-3.5, Hawaii Revised Statutes (HRS), currently imposes the environmental response, energy, and food security tax on petroleum products expressly *excluding* aviation fuel. This bill amends the statute to impose the tax on petroleum products specifically *including* aviation fuel (page 1, line 10).

The bill does not amend the provision of section 243-3.5, HRS, that provides how the tax collected under the statute will be deposited (page 1, line 11, to page 2, line 9). Thus, under the bill, taxes collected on petroleum products, *including aviation fuel,* will be deposited into the environmental response revolving fund, the energy security special fund, the energy systems development special fund, and the electric vehicle charging system subaccount.

Under federal law, however, the taxes collected on aviation fuel may only be used for a limited purpose:

> **(a) Prohibition.**--*Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of--*
> *(1) the airport;*
> *(2) the local airport system; or*
> *(3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is*

> *directly and substantially related to the air transportation of passengers or property.*
>
> **(b) Exceptions.**--
>
> > **(1) Prior laws and agreements.**--Subsection (a) shall not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.
>
> . . . .
>
> **(c) Rule of construction.**--Nothing in this section may be construed to prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

49 U.S.C. § 47133 (emphasis added).

The Supremacy Clause of the United States Constitution expressly provides that "the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Constitution, art. VI, cl. 2 (emphases added). According to the preemption doctrine, the Supremacy Clause invalidates state laws that interfere with, or are contrary to, federal law. Jack's Tours, Inc. v. Kilauea Military Camp, 112 Hawai'i 150, 152 n.4, 145 P.3d 693, 695 n.4 (2006).

Under the bill, the taxes collected on aviation fuel will be deposited into various funds and a subaccount that are not exclusively used for the operating or capital costs related to airports or airport systems, in conflict with the restrictions of title 49 United States Code section 47133. Thus, we believe this bill, in its current form, would be subject to challenge under the Supremacy Clause.

We recommend that this bill be amended to comport with title 49 United States Code section 47133. For example, the concern may be addressed by amending the bill to expressly provide that the taxes collected on aviation fuel will be used exclusively for one or more of the permitted uses listed in title 49 United States Code section 47133.

Thank you for the opportunity to offer these comments.

Testimony Presented Before the
Senate Committee on Energy, Economic Development, and Tourism
and
Senate Committee on Transportation
Monday, February 7, 2022 at 3:00 p.m.
By
Richard Rocheleau, Director
Hawaiʻi Natural Energy Institute
And
Michael Bruno, PhD
Provost
University of Hawaiʻi at Mānoa

SB 2721 – RELATING TO ENERGY TAX

Chairs Wakai and Lee, Vice Chairs Misalucha and Inouye, and members of the committees:

The Hawaiʻi Natural Energy Institute (HNEI) **supports** SB 2721 to subject aviation fuel to the Environmental Response, Energy, and Food Security Tax with the recommendation that any additional tax collected be used to support the development of sustainable aviation for Hawaiʻi.

Imported aviation fuel products and/or production of aviation fuels from imported crude oil account for a significant fraction of Hawaii's fossil fuel usage with a corresponding contribution to Hawaii's greenhouse gas emissions. Sustainable aviation will also require additional reduction of GHG emissions from ground-based operations such as airport vehicles and ground support equipment and auxiliary power units.

While measurable progress is being made to reduce fossil fuel usage in the power sector and plans for reduction in the ground transportation are moving forward, reduction of fossil fuel usage in the aviation sector is progressing more slowly, attributable at least in part, to the difficulty of the problem.

This Bill, in its current form, allocates a portion of this additional tax to the Hawaiʻi Natural Energy Institute. Should HNEI receive funds attributable to a tax on aviation fuel we are committed to expending it solely for the purpose of development of a more sustainable aviation industry. Since 2016, HNEI has, with funding from the Federal Aviation Administration and cost share from its current barrel tax allocation, participated in collaborative research with other universities and stakeholders to further the development of sustainable aviation fuels. Preliminary analysis of the technical potential for development of sustainable aviation fuels in Hawaiʻi indicates that dedication of a significant fraction of the agricultural land use district and utilization of urban wastes would provide a modest fraction (< 20%) of Hawaii's current aviation fuel consumption but have wider impacts.

Current methods for production of sustainable aviation fuels (i.e., ASTM International Standard D4054 approved) provide a slate of coproducts that include renewable diesel, naphtha, and in some cases, propane. These coproducts would also contribute to renewable energy and sustainability goals elsewhere in the Hawaiʻi aviation sector, including airport ground support services and upstream components of the renewable fuel value chain.

The impact on Hawaii's agricultural community and energy independence could be significant. Transition of this potential to the development of a Hawaiʻi fuels industry will require coordination among the many stakeholders, additional planning including detailed assessment of needed infrastructure, and when appropriate, field trials to identify optimal mixes of crops and fuel production technologies. Guidance from life cycle-based analyses of greenhouse gas emissions and energy productivity would also be necessary.

Sustainable aviation is a high priority of the US Departments of Transportation, Energy, and Agriculture as illustrated by their memorandum of understanding on the sustainable aviation fuel grand challenge (https://www.energy.gov/sites/default/files/2021-09/S1-Signed-SAF-MOU-9-08-21_0.pdf). To the extent possible, any dollars expended from SB2721 funds would be leveraged with federal dollars. Federal funding and partnerships will be needed to identify and implement solutions for increasing the sustainability of Hawaii's aviation industry.

Thank you for the opportunity to provide this testimony on SB 2721.

DAVID Y. IGE
GOVERNOR

TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

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

February 7, 2022
3:00 p.m.
State Capitol, Teleconference

S.B. 2721
RELATING TO ENERGY TAX

House Committees on Energy & Environmental Protection and Transportation

The Department of Transportation (DOT) **opposes** this bill which imposes a state environmental response, energy, and food security tax on each barrel or fractional part of a barrel of petroleum product, which shall include aviation fuel.

From the Airports perspective, the DOT offers the following comments to this bill:

The FAA published the Revenue Use Policy in 1999, which is incorporated as grant assurance 25. It reads, "All revenue generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport…" with some exceptions. In 2017, the FAA required all sponsors to examine aviation fuel taxes to be compliant.

Therefore, a new tax on aviation fuel cannot be deposited into other funds, otherwise it is a violation of grant assurance, which would require the airport to either reverse the diverted fuel tax, or return all prior federal grants.

Thank you for the opportunity to provide testimony.

HAWAII STATE ENERGY OFFICE
STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF ENERGY OFFICER

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Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804 Web: energy.hawaii.gov

Testimony of
SCOTT J. GLENN, Chief Energy Officer

before the
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND
COMMITTEE ON TRANSPORTATION

Monday, February 7, 2022
3:00 PM
State Capitol, Conference Room 224 & Videoconference

COMMENTS
SB 2721
RELATING TO ENERGY TAX.

Chairs Wakai and Lee, Vice Chairs Misalucha and Inouye, and Members of the Committees, the Hawaiʻi State Energy Office (HSEO) offers comments on SB 2721, which subjects aviation fuel to the Environmental Response, Energy, and Food Security Tax.

HSEO's testimony is guided by its mission to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient, clean energy, decarbonized economy.

According to Climate Action Network (CAN) and International Coalition for Sustainable Aviation (ICSA)[1] "The aviation sector is a top-ten global emitter whose emissions are expected to rise dramatically by mid-century. Under current scenarios, the aviation sector could emit 56 GtCO2 over the period 2016-2050. ... It is critical that the global aviation sector contribute its fair share towards achieving a 1.5°C future. … Aviation emissions are 2.1% of the global share, but when non-CO_2 effects are included, aviation contributes an estimated 4.9% to the global warming problem. Hence,

[1] Climate Action Network (CAN) and International Coalition for Sustainable Aviation (ICSA) Joint input to the Talanoa Dialogue.
https://unfccc.int/sites/default/files/resource/156_CAN%20ICSA%20Aviation%20TD%20submission.pdf

the global aviation sector must have both zero CO_2 emissions and zero non-CO_2 effects on the climate by the end of the century."

In Hawaiʻi, aviation accounted for nearly 23% of net greenhouse gas (GHG) emissions (including sinks) in 2017[2]. This demonstrates the disproportional impact the sector has on the state's GHG emissions. Recognizing its vulnerability to the acute effects of climate change, Hawaiʻi has emerged as a climate leader, setting the aggressive and necessary statewide target to sequester more atmospheric carbon and greenhouse gases than emitted within the State as quickly as practicable, but no later than 2045.

An aviation fuel tax invites those that travel to Hawaiʻi to partner with residents to reduce the harmful impacts of aviation and continue progress towards the State's carbon negative target.

The Hawaiʻi Department of Taxation reports the 2021 liquid fuel tax base for aviation fuel to be 258,227,618 gallons[3] (6,148,277 barrels). A $1.05 per barrel tax on this volume would provide more than $6 million in collections annually, which could be used towards the development and implementation of sustainable aviation projects.

HSEO stands ready to partner with stakeholders in identifying innovative approaches to keeping Hawaiʻi connected with the world, while protecting and preserving Hawaiʻi's unique and limited natural resources. All sectors need to contribute for Hawaiʻi to achieve a resilient, clean energy, decarbonized economy.

HSEO defers to the appropriate agencies for comment on aviation tax administration.

Thank you for the opportunity to testify.

[2] State of Hawaiʻi. Department of Health. Hawaiʻi Greenhouse Gas Program, Emissions Report for 2017. https://health.hawaii.gov/cab/files/2021/04/2017-Inventory_Final-Report_April-2021.pdf
[3] State of Hawaiʻi. Department of Taxation. Current Monthly Tax Reports. Liquid Fuel Tax Base and Collections. Jan-Dec 2021. https://tax.hawaii.gov/stats/a5_3txcolrpt/

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Subject Aviation Fuel to Barrel Tax

BILL NUMBER: SB 2721

INTRODUCED BY: LEE, KEITH-AGARAN, MISALUCHA, Gabbard, Shimabukuro, Wakai

EXECUTIVE SUMMARY: Subjects aviation fuel to the Environmental Response, Energy, and Food Security Tax.

SYNOPSIS: Amends section 243-3.5, HRS, to provide that the environmental response, energy, and food security tax (barrel tax) also applies to aviation fuel.

EFFECTIVE DATE: January 1, 2023

STAFF COMMENTS: The amendment in this bill is likely preempted by federal law.

In mid-2010, the Air Transport Association sued in federal court and petitioned the U.S. Department of Transportation to rule that an inspection fee that was then imposed under section 150A-5.3, HRS, was preempted by federal law, specifically the Airline Deregulation Act of 1978, 49 U.S.C. §41713, and the Anti-Head Tax Act, 49 U.S.C. §40116. (Because of the latter act, the U.S. Supreme Court felled the Hawaii Public Service Company Tax in 1983 as it applied to income from air transportation of passengers and cargo.)

In 2012, the USDOT ruled (https://www.regulations.gov/document?D=DOT-OST-2010-0243-0029) that the inspection fee was indeed preempted. The State settled with the airline industry association and refunded the fees that had been collected.

The USDOT ruling set forth requirements for an exaction levied on air carriers to be valid. The fee or tax would have to be (1) imposed by the airport operator, in this case the State; (2) wholly used for airport or aeronautical purposes; and (3) reasonable, nondiscriminatory, and not unreasonably burdensome to interstate commerce. Of these elements, item (2) would be violated because the barrel tax is not wholly used for airport or aeronautical purposes.

Amendments are necessary to address the federal requirements.

Digested: 2/3/2022

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February 7, 2022

The Honorable Glenn Wakai, Chair
The Honorable Bennette E. Misalucha, Vice Chair
Hawai'i Senate Committee on Energy, Economic Development and Tourism

The Honorable Chris Lee, Chair
The Honorable Lorraine R. Inouye, Vice Chair
Hawai'i Senate Committee on Transportation

Re: SB 2721

Dear Chairs Wakai and Lee and Vice Chairs Misalucha and Inouye and Members of the Committees on Economic Development and Tourism and Transportation:

On behalf of the members of Airlines for America (A4A)[1] – the primary trade organization of the U.S. passenger and cargo airlines – I write to respectfully oppose SB 2721, which would extend the state's environmental response, energy and food security tax to aviation fuel. While A4A opposes the bill because such tax increases negatively affect commercial aviation, we are also concerned that the bill appears to violate Federal law on the use of revenue derived from taxes imposed on aviation fuel.

More Taxes Hurt Aviation

Hawai'i is already a very high-tax state when it comes to taxes on commercial aviation fuel, and this bill would only make it worse. A4A estimates that the state has the ninth highest tax burden on jet fuel of all 50 states. Applying the current general excise tax rates, fuel purchased at HNL is already subject to more than 13 cents a gallon in state and local taxes, and this bill would add more than two cents per gallon at a time when the price of fuel is rising.

The specter of increased costs could not come at a worse time for the industry. Commercial aviation was hit hard by the pandemic, and the recovery has been slow. Ticket sales are rising, but demand for corporate and long-haul international travel continues to lag, leaving revenues depressed. Moreover, Hawai'i's aviation sector continues to suffer. Through-put at TSA checkpoints in Hawai'i was down more than 22 percent in December 2021 versus the same month in 2019.

Even in good economic times, aviation runs on small margins, and the imposition of added tax costs would mean less money to invest in cleaner and more-efficient aircraft, new routes and employees. Those investments mean more economic growth and, prior to the pandemic, aviation was a driving force of the state's economy. In fact, commercial aviation is vital to Hawai'i's economic health, more so than any other state. According to FAA statistics from 2016 (the latest available), commercial aviation accounted for 20.7 percent of the state's GDP and 215,000 jobs, which was 23.5 percent of the state's total. Overall, commercial aviation contributed a total annual economic impact of more than $30 billion to Hawai'i.

[1] A4A members include: Alaska Airlines, Inc., American Airlines, Inc., Atlas Air, Inc., Delta Air Lines, Inc., Federal Express Corp., Hawaiian Airlines, JetBlue Airways Corp., Southwest Airlines Co., United Airlines, Inc. and United Parcel Service Co.; Air Canada is an associate member.

Adding a new tax to fuel would only raise the cost of doing business in Hawai'i, harming recovery for both the industry and the state, as well as jeopardizing the economic benefits that flow to the state.

Federal Law Governs the Use of Aviation Fuel Tax Revenues

Federal law requires that the revenue from any tax on aviation fuel enacted or increased after 1987 be used solely for aviation purposes. SB 2721 would deposit aviation fuel tax revenues into the environmental response revolving fund, the energy security special fund, the energy systems development special fund, and the electric vehicle charging system subaccount. These accounts do not appear to benefit aviation, versus other state environmental and energy purposes, and would therefore amount to an impermissible diversion of fuel tax revenue. The Federal Aviation Administration actively monitors compliance with the federal law and can impose sanctions on the state including withholding Airport Improvement Program (AIP) grants or civil penalties.[2]

A4A strongly supports these rules, agreeing with Congress's intent that states should not burden air transportation with taxes to support unrelated purposes when passengers and shippers are already paying their fair share for the system through Federal taxes that fund airports and the management of the national air space.

We respectfully urge you to reject SB 2721 for these reasons. Thank you for your time and consideration of this important matter. If you have questions or need further information, please contact me.

Sincerely

Sean Williams
Vice President, State and Local Government Affairs
swilliams@airlines.org
(202) 626-4007

[2] *See* 49 USC 47133(b); 49 USC 47107; and the FAA Policies and Procedures Concerning the Use of Airport Revenues, 64 Fed. Reg. 7696 (Feb. 16, 1999) as clarified by 78 Fed. Reg. 69789 (Nov. 21, 2013) and 79 Fed. Reg. 66282 (Nov. 7, 2014).

LATE

THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2022
COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
And
COMMITTEE ON TRANSPORTATION
TESTIMONY **ON SENATE** BILL **NO. 2721**, RELATING TO **ENERGY TAX**

Position: **Comments**

To the Honorable Senator Glenn Wakai, Chair and Senator Bennette E. Misalucha, Vice Chair; and the Honorable Senator Chris Lee, Chair; Senator Lorraine R. Inouye, Vice Chair; and Members of the Committees:

Our company was the convenor for the first-ever Hawaii Aviation and Climate Action Summit, which was held December 3rd 2019. At this Summit, which was free and open to the public, nearly 100 representatives from major airlines, local fuel and transportation industry leaders, environmental advocates, and officials from the State of Hawaii met to discuss actions to be taken to reduce the greenhouse gas (GHG) emissions from international airlines serving Hawaii. Attendees reviewed the mandate established by the International Civil Aviation Organization (ICAO)'s Carbon Offset and Reduction Scheme for International Aviation (CORSIA). CORSIA, the aviation equivalent of the Paris Climate Accord, applies to all international flights including those to and from Hawaii, and requires commercial airlines to reduce the GHG intensity of their operations by 50% below 2005 levels by 2050. Commercial airlines began benchmark reporting in 2019 and the program becomes mandatory for developed countries' airlines in 2022.

At the Summit, attendees voted on several potential state policy measures to facilitate sustainable aviation fuel production in Hawaii for airlines serving Hawaii. "Apply barrel tax funds to support infrastructure investments" was the measure that received the highest ranking. "Expanding HTDC's matching funding program" was the mechanism that achieved the greatest consensus. These and other findings and recommendations are published online. In the workshop discussion, the consensus was to apply the portion of the barrel tax funds that currently go to the General Fund. This would support HTDC's new sustainable aviation fuel program without adversely affecting other HTDC programs.

I offer two comments and would like to recommend a modification to the bill language, specifically to insert a provision into the barrel tax funds to direct a portion of the "barrel tax" to the Technology Development Fund in order to establish a long-term funding mechanism for the Hawaii State Sustainable Aviation Fuel Program which was enacted in the 2020 Session and placed at the at the Hawaii Technology Development Corporation, but was not funded at the time due to the pandemic economic disruptions.

As such

Comments:

1) Applying a direct state tax to aviation fuel has consistently been found to be unconstitutional, as it violates the interstate commerce clause of the U.S. constitution.
2) If the legislative intent is to provide funding for investment and action to reduce greenhouse gas emissions on transportation fuel, in a way that also incentivizes action for aviation fuel, then the Legislature should consider a type of policy called a Low Carbon Fuel Standard (LCFS) or Clean Fuel Program (CFP). These policies have been enacted in the States of California, Oregon, and Washington. California's mandate has successfully survived legal challenge in the 9th circuit and found to be constitutional and within states' rights. My company and others are sponsoring a panel discussion on LCFS/CFP policy to be held on Feb 28th 10am-2pm online at the Bioeconomy Hawaii Forum. Registration for this Forum is free and open to the public.
3) Recommended language modification of this bill:

HRS 206M-24 shall be modified as follows:

[§206M-24] Sustainable aviation fuel program; established.

(a) There is established the sustainable aviation fuel program, through which the development corporation may provide matching grants to any small business in the State that is developing products related to sustainable aviation fuel or greenhouse gas reduction from commercial aviation operations and requires assistance for any of the following items:

(1) Business planning;
(2) Technology development;
(3) Engineering; or
(4) Research.

(b) In reviewing grant applications pursuant to this section, the development corporation shall analyze each application to determine whether the item to be undertaken will be economically viable and beneficial to the State.

(c) For the purposes of the program, product development activities eligible for matching funds grants shall reduce commercial aviation greenhouse gas emissions through:

(1) Sustainable aviation fuel production;
(2) Airborne operations fuel efficiency;
(3) Ground support equipment fuel replacement;
(4) Ground support equipment fuel efficiency; or
(5) Airport operations support to reduce overall jet fuel consumption.

(d) Hawaii jet fuel baseline carbon intensity shall be set at eighty-nine grams of carbon dioxide equivalent per megajoule, in line with the benchmark established by the International Civil Aviation Organization. This carbon intensity may be revised upon recommendation from the Hawaii state energy office based upon future revisions to the United States Department of Energy's Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation full life-cycle model; provided that carbon intensity shall be measured in the units of grams of carbon dioxide equivalent per megajoule.

(e) All moneys necessary to carry out the purposes of this section shall be appropriated by the legislature ~~through appropriations out of the state general fund~~ <u>from the environmental response, energy, and food security tax</u>. <u>Up to ten percent of the funds may be used by the</u>

Hawaii Technology Development Corporation for program administration. The balance of the funds shall be used for grant funding under this section.

~~(e)~~ (g) For the purposes of this section:

"Grant" means financial assistance provided to Hawaii small businesses ~~innovation research, small business technology transfer~~, and other agency and private sector awardees and applicants under the terms and conditions provided in this chapter.

"Hawaii small business innovation research", "small business technology transfer", and "sustainable aviation fuel program" means the programs administered by the development corporation to encourage participation by enterprises in federal research and development programs.

"Other agency" means an entity that receives an award or contract granted by the United States Departments of Agriculture, Transportation, Energy, Defense, or Commerce, or other federal agencies for activities consistent with those defined in this section.

"Small business" shall have the same meaning as in section 201M-1.

"Sustainable aviation fuel" means American Society for Testing and Materials D7566-compliant renewable aviation turbine fuel derived from biofuels, as defined in section 269-91, and with a greenhouse gas lifecycle carbon intensity lower than the baseline for jet fuel defined by the International Civil Aviation Organization.

(f) "state funds" provided under this Program are for feasibility or planning studies as defined in HRS §343-5.

And

HRS 243-3.5 shall be modified as follows:

§243-3.5 Environmental response, energy, and food security tax; uses. (a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed a state environmental response, energy, and food security tax on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user of petroleum product, other than a refiner. The tax shall be $1.05 on each barrel or fractional part of a barrel of petroleum product that is not aviation fuel; provided that of the tax collected pursuant to this subsection:

(1) 5 cents of the tax on each barrel shall be deposited into the environmental response revolving fund established under section 128D-2;

(2) 4 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;

(3) 8 cents of the tax on each barrel shall be deposited into the energy systems development special fund established under section 304A-2169.1; and

[(4)] 3 cents of the tax on each barrel shall be deposited into the electric vehicle charging system subaccount established pursuant to section 269-33(e).

(5) __[TBD] cents of the tax on each barrel shall be deposited into the Technology Special Fund for the Sustainable Aviation Fuel Program as established in HRS §206M-24.

The tax imposed by this subsection shall be paid by the distributor of the petroleum product.

(b) In addition to subsection (a), the tax shall also be imposed on each one million British thermal units of fossil fuel sold by a distributor to any retail dealer or end user, other than a refiner, of fossil fuel. The tax shall be 19 cents on each one million British thermal units of fossil fuel; provided that of the tax collected pursuant to this subsection:

(1) 4.8 per cent of the tax on each one million British thermal units shall be deposited into the environmental response revolving fund established under section 128D-2;

(2) 14.3 per cent of the tax on each one million British thermal units shall be deposited into the energy security special fund established under section 201-12.8; and

(3) 9.5 per cent of the tax on each one million British thermal units shall be deposited into the energy systems development special fund established under section 304A-2169.1.

<u>(4) __[TBD] percent of the tax on each one million British thermal units shall be deposited into the Technology Special Fund for the Sustainable Aviation Fuel Program as established in HRS §206M-24.</u>

The tax imposed by this subsection shall be paid by the distributor of the fossil fuel.

Effective date: July 1, 2022.

Thank you for your consideration of this testimony.

Sincerely,

Marie-Joelle Simonpietri
President

About Simonpietri Enterprises

Simonpietri Enterprises is a boutique contracting/consulting company focused on technical innovation and first-of-kind project development of emerging clean and renewable technologies. We help established industrial companies improve the environmental and economic sustainability of their operations through technical and business advice in renewable energy conversion, waste reduction and re-use, and greenhouse gas lifecycle impact reduction. Simonpietri Enterprises is the voluntary convenor of the Federal Aviation Administration's public-private Commercial Aviation Alternative Fuels Initiative (www.CAAFI.org) focal for Hawaii and tropical regions, and serves as an industry advisory committee member of the Federal Aviation Administration's Aviation Sustainability Center of Excellence on renewable aviation fuel production and certification (www.ascent.aero).

SB-2721
Submitted on: 2/3/2022 9:09:35 AM
Testimony for EET on 2/7/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Tawn Keeney	Individual	Support	No

Comments:

Aviation Greenhouse Gas emissions of travelers to and from Hawaii in 2019 accouted for 2x the total emissions of all of Hawaii's stationary combustion (electicity generation and petroleum refining) and all ground transportation. Even though arrivals would not be included in this tax, only departures, it should include international departures. Please prioritize reducing emissions from Hawaii's air travel.

Tawn Keeney MD

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
SENAT COMMITTEE ON TRANSPORTATION
February 7, 2022, 3 PM

LATE

TESTIMONY IN <u>SUPPORT</u> OF SB 2721

Chair Wakai, Chair Lee, Vice Chair Misalucha, Vice Chair Inouye, and Committee Members:

My name is Richard Wallsgrove and I am a professor of law at the William S. Richardson School of Law, University of Hawai'i at Mānoa, where I teach energy law and policy along with various other business law and environmental law courses. Prior to joining the law school, I was a frequent participant in regulatory proceedings before the Hawai'i Public Utilities Commission (PUC). This testimony is submitted in my personal capacity.[1] I thank the Committee for allowing me this opportunity to participate in its consideration of this bill.

I am writing to **support** SB 2721, because it can kick start progress on sustainable aviation fuels at Hawai'i's airports. Such progress is desperately needed in the face of state and federal decarbonization goals that acknowledge the reality of the climate crisis. Moreover, economists widely agree that taxing sources of carbon pollution—such as aviation fuels—is an efficient and important component of effective energy policy. In the legal realm, this is consistent with the "polluter pays" principles, which is designed to address negative externalities that are not reflected in the price of fossil fuels.

To ensure that the bill complies with federal law,[2] it should be amended to clarify that a sustainable aviation fuels program is an inevitable component of airport operations. Taxes collected on aviation fuels should be directed to such program via the Department of Transportation. H.R.S. § 243-3.5 should be amended accordingly.

A sustainable aviation fuels program funded by this mechanism would have reasonably wide latitude to design and implement the program. For example, aviation fuel tax revenues could be directed to airport operational and capital expenses such as developing sustainable fuel supply chains, and acquiring infrastructure like fuel blending equipment. Federal law also allows the tax revenues to be "used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport."[3] Thus, tax revenues could create opportunities for local components of a sustainable aviation fuels program. Other components of a sustainable aviation airport program could involve electricity. Mokulele Airlines is among a variety of airlines that have actively tested electrified air travel. A well-funded sustainable aviation fuels program could prepare airport facilities for this evolution of air travel, via equipment to generate, store, and manage clean electricity for this purpose (and for other airport purposes).

Thank you for this opportunity to submit testimony. And thank you for thinking closely about the critical need to support sustainable aviation fuels in Hawai'i.

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[1] This testimony is submitted solely on my own behalf and not on behalf of the University of Hawai'i nor any other entity.

[2] *See* 49 U.S.C. § 47133 (requiring that airport revenues must be spent on airport operations and capital expenses, and other facilities directly and substantially related to air transportation).

[3] U.S. Dept. Transportation, Policy and Procedures Concerning the Use of Airport Revenue, 64 F.R. 7696, 7710, *available at* https://www.govinfo.gov/content/pkg/FR-1999-02-16/pdf/99-3529.pdf.