



GOV. MSG. NO. **861**

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

May 29, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 29, 2007, the following bill was signed into law:

SB992 SD1 HD2 CD1

A BILL FOR AN ACT RELATING TO ENERGY.
(ACT 103)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on MAY 29 2007

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

ACT 103

S.B. NO. 992
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 SECTION 1. The legislature finds that current technology
2 allows for a variety of liquid fuels to be used in electric-
3 power generation. Where older electric power generation
4 technology used diesel fuel or fuel oil, newer technologies now
5 allow for the use of multiple types of liquid fuels, some of
6 which were previously used solely for transportation needs.

7 The legislature also finds that naphtha is the only liquid
8 fuel, when used for electric-power generation, whose taxation is
9 not explicit under section 243-4, Hawaii Revised Statutes.

10 The purpose of this Act is to clarify the taxation rate for
11 naphtha, which is sold for use in electric power generation.

12 SECTION 2. Section 243-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By adding a new definition to be appropriately inserted
15 and to read:

16 "Power-generating facility" means any electricity-
17 generating facility that requires a permit issued under the



1 Federal Clean Air Act (42 U.S.C. 7401-7671g), the Hawaii air
2 pollution control law (chapter 342B), or both."

3 2. By amending the definitions of "aviation fuel",
4 "distributor", "liquid fuel", "person", "retail dealer", and
5 "use" to read:

6 "Aviation fuel" means [~~and includes~~] all liquid substances
7 of whatever chemical composition usable for the propulsion of
8 airplanes.

9 "Distributor" means [~~and includes~~]:

10 (1) Every person who refines, manufactures, produces, or
11 compounds liquid fuel in the State[7] and sells or
12 uses the same therein;

13 (2) Every person who imports or causes to be imported into
14 the State any liquid fuel and sells it therein,
15 whether in the original packages or containers in
16 which it is imported or otherwise than in such
17 original packages or containers, or who imports any
18 such fuel for the person's own use in the State;

19 (3) Every person who acquires liquid fuel from a person
20 not a licensed distributor and sells or uses it,
21 whether in the original package or container in which



1 it was imported (if imported) [7] or otherwise than in
2 such original package or container; and

3 (4) Every person who acquires liquid fuel from a licensed
4 distributor as a wholesaler thereof and sells or uses
5 it.

6 "Liquid fuel" or "fuel" means [~~and includes~~] all liquids
7 ordinarily, practically, and commercially usable in internal
8 combustion engines for the generation of power and includes
9 liquefied petroleum gases, all distillates of and condensates
10 from petroleum, natural gas, coal, coal tar, and vegetable
11 ferments, such distillates and condensates being ordinarily
12 designated as a gasoline, naphtha, benzol, benzine, and alcohols
13 so usable but not restricted to such designation. All aviation
14 fuel [~~which~~] that is sold for use in or used for airplanes is
15 deemed to be "liquid fuel" or "fuel" whether or not coming
16 within the definition contained in the foregoing sentence.

17 "Person", except where the context or sense otherwise
18 requires, means [~~and includes~~] individuals, firms, associations,
19 corporations, trusts, estates, partnerships, or other entities.

20 "Retail dealer" means [~~and includes~~] a person who purchases
21 liquid fuel from a licensed distributor[7] and sells the liquid



1 fuel at retail. Only sales of liquid fuel for consumption or
2 used by the purchaser, and not for resale, are sales at retail.

3 "Use", either as a noun or verb, and derivative
4 expressions, means [~~and includes~~] distribution or other
5 disposition of fuel, or any other use thereof, whether with or
6 without compensation [~~therefor~~]."

7 SECTION 3. Section 243-4, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§243-4 License taxes. (a) Every distributor shall, in
10 addition to any other taxes provided by law, pay a license tax
11 to the department of taxation for each gallon of liquid fuel
12 refined, manufactured, produced, or compounded by the
13 distributor and sold or used by the distributor in the State or
14 imported by the distributor, or acquired by the distributor from
15 persons who are not licensed distributors, and sold or used by
16 the distributor in the State. Any person who sells or uses any
17 liquid fuel, knowing that the distributor from whom it was
18 originally purchased has not paid and is not paying the tax
19 thereon, shall pay such tax as would have applied to such sale
20 or use by the distributor. The rates of tax [~~hereby~~] imposed
21 are as follows:

22 (1) For each gallon of diesel 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, 1 cent;
- 5 ~~(3)~~ (4) For each gallon of liquid fuel, other than fuel
- 6 mentioned in paragraphs (1) ~~and~~, (2), and (3), and
- 7 other than an alternative fuel, sold or used in the
- 8 city and county of Honolulu, or sold in any county for
- 9 ultimate use in the city and county of Honolulu, 16
- 10 cents state tax, and in addition thereto ~~such~~ an
- 11 amount, to be known as the "city and county of
- 12 Honolulu fuel tax", as shall be levied pursuant to
- 13 section 243-5;
- 14 ~~(4)~~ (5) For each gallon of liquid fuel, other than fuel
- 15 mentioned in paragraphs (1) ~~and~~, (2), and (3), and
- 16 other than an alternative fuel, sold or used in the
- 17 county of Hawaii, or sold in any county for ultimate
- 18 use in the county of Hawaii, 16 cents state tax, and
- 19 in addition thereto ~~such~~ an amount, to be known as
- 20 the "county of Hawaii fuel tax", as shall be levied
- 21 pursuant to section 243-5;



1 ~~[(5)]~~ (6) For each gallon of liquid fuel, other than fuel
2 mentioned in paragraphs (1) ~~[and]~~, (2), and (3), and
3 other than an alternative fuel, sold or used in the
4 county of Maui, or sold in any county for ultimate use
5 in the county of Maui, 16 cents state tax, and in
6 addition thereto ~~[such]~~ an amount, to be known as the
7 "county of Maui fuel tax", as shall be levied pursuant
8 to section 243-5; and

9 ~~[(6)]~~ (7) For each gallon of liquid fuel, other than fuel
10 mentioned in paragraphs (1) ~~[and]~~, (2), and (3), and
11 other than an alternative fuel, sold or used in the
12 county of Kauai, or sold in any county for ultimate
13 use in the county of Kauai, 16 cents state tax, and in
14 addition thereto ~~[such]~~ an amount, to be known as the
15 "county of Kauai fuel tax", as shall be levied
16 pursuant to section 243-5.

17 If it is shown to the satisfaction of the department, based
18 upon proper records and from ~~[such]~~ any other evidence as the
19 department may require, that liquid fuel, other than fuel
20 mentioned in paragraphs (1) ~~[and]~~, (2), and (3), is used for
21 agricultural equipment that does not operate upon the public
22 highways of the State, the user thereof may obtain a refund of



1 all taxes thereon imposed by this section in excess of 1 cent
2 per gallon. The department shall adopt rules to administer such
3 refunds.

4 (b) Every distributor of diesel oil, in addition to the
5 tax required by subsection (a), shall pay a license tax to the
6 department for each gallon of [~~such~~] diesel oil sold or used by
7 the distributor for operating a motor vehicle or motor vehicles
8 upon public highways of the State. The rates of the additional
9 tax [~~hereby~~] imposed are as follows:

10 (1) For each gallon of diesel oil sold or used in the city
11 and county of Honolulu, or sold in any other county
12 for ultimate use in the city and county of Honolulu,
13 15 cents state tax, and in addition thereto [~~such~~] an
14 amount, to be known as the "city and county of
15 Honolulu fuel tax", as shall be levied pursuant to
16 section 243-5;

17 (2) For each gallon of diesel oil sold or used in the
18 county of Hawaii, or sold in any other county for
19 ultimate use in the county of Hawaii, 15 cents state
20 tax, and in addition thereto [~~such~~] an amount, to be
21 known as the "county of Hawaii fuel tax", as shall be
22 levied pursuant to section 243-5;



1 (3) For each gallon of diesel oil sold or used in the
2 county of Maui, or sold in any other county for
3 ultimate use in the county of Maui, 15 cents state
4 tax, and in addition thereto [sueh] an amount, to be
5 known as the "county of Maui fuel tax", as shall be
6 levied pursuant to section 243-5; and

7 (4) For each gallon of diesel oil sold or used in the
8 county of Kauai, or sold in any other county for
9 ultimate use in the county of Kauai, 15 cents state
10 tax, and in addition thereto [sueh] an amount, to be
11 known as the "county of Kauai fuel tax", as shall be
12 levied pursuant to section 243-5.

13 If any user of diesel oil furnishes a certificate, in
14 [sueh] a form [as] that the department shall prescribe, to the
15 distributor[7] or if the distributor who uses diesel oil signs
16 [sueh] the certificate, certifying that the diesel oil is for
17 use in operating a motor vehicle or motor vehicles in areas
18 other than upon the public highways of the State, the tax as
19 provided in paragraphs (1) to (4) shall not be applicable. [~~In~~
20 ~~the event~~] If a certificate is not or cannot be furnished and
21 the diesel oil is in fact for use for operating a motor vehicle
22 or motor vehicles in areas other than upon public highways of



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

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

18 (1) Every distributor of any alternative fuel for
19 operation of an internal combustion engine shall pay a
20 license tax to the department of one-quarter of [~~one~~]
21 1 cent for each gallon of [~~such~~] alternative fuel sold
22 or used by 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) Liquefied petroleum gas, 0.33 times the rate for
14 diesel; and
15 (E) For other alternative fuels, the rate shall be
16 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
21 content basis, is equal to one-quarter the rate
22 for diesel fuel.



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

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



1 paragraphs. The department shall adopt rules to
2 administer the refunding of [~~such~~] these taxes
3 [~~imposed~~].

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

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval;
11 provided that:

12 (1) The amendments made to this Act to:

13 (A) The definition of "power-generating facility" in
14 section 243-1, Hawaii Revised Statutes; and

15 (B) Section 243-4(a), Hawaii Revised Statutes;
16 shall be repealed on December 31, 2009, and section
17 243-4(a), Hawaii Revised Statutes, shall be reenacted
18 in the form in which it read on the day before the
19 effective date of this Act; and

20 (2) The rate of tax for naphtha as provided for in section
21 243-4(a)(3), Hawaii Revised Statutes, shall be
22 effective retroactively and apply to any imposition of



1 the fuel tax on naphtha sold for use in a power-
2 generating facility.



GOVERNOR OF THE STATE OF HAWAII

Approved this day: MAY 29 2007

