



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

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# 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

