

HB 142, HD 1



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
Senate Committee on Transportation, International and Intergovernmental Affairs
Wednesday, March 18, 2009
1:45 PM
State Capitol, Conference Room 224

in consideration of

HB 142, HD1 RELATING TO INTRA-STATE AVIATION.

The Department of Business, Economic Development, and Tourism (DBEDT) is pleased to comment on H.B. 142, H.D. 1, relating to intra-state aviation. This measure would exempt all fuel from general excise and use taxes sold from a foreign-trade zone to common carriers for use in interisland air transportation.

The Foreign-Trade Zone program, established by the U.S. Congress over 70 years ago, was intended to encourage U.S. participation in international trade. Air transportation between two points within the State is not considered international trade. Accordingly, we recommend that any references to foreign-trade zones be deleted as it could affect the long-term integrity of the program.

Thank you for the opportunity to present these comments.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



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**SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL &
INTERGOVERNMENTAL AFFAIRS
TESTIMONY REGARDING HB 142 HD 1
RELATING TO INTRA-STATE AVIATION**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 17, 2009

TIME: 1:45PM

ROOM: 224

This bill proposes to exempt aviation fuel purchased from a foreign trade zone from the state general excise and use taxes for fuel used in inter-island travel.

The Department of Taxation (Department) has the following comments.

ELIMINATE SECTION 1, PURPOSE CLAUSE—The Department opposes Section 1 because it is legally and factually inaccurate. The Department strongly disagrees with the statement suggesting that the taxes assessed on aviation fuel—which is a self-assessed tax—is anyway inaccurate or illegal under the Federal Aviation Act. The Department is concerned that if this legislation does not pass, or does pass with this language, that an unwarranted advantage in favor of taxpayers could negatively impact the Department's rights.

UNBUDGETED REVENUE LOSS— The Department points out that the tax provision in this measure is not factored into the budget. The Department must be cognizant of the biennium budget and financial plan. This measure has not been factored into either. Given the forecasted decrease in revenue collections, this measure would add to the budget shortfall.

Assuming a current effective date, this legislation is estimated to result in a revenue loss of \$5 million per year.

AIRLINES COMMITTEE OF HAWAII



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March 18, 2009

The Honorable J. Kalani English, Chair
The Honorable Mike Gabbard, Vice Chair
Senate Committee on Transportation, International and Intergovernmental Affairs

Re: HB 142, HD1 - Relating to Intra-State Aviation – SUPPORT
Committee on Transportation, International and Intergovernmental Affairs
Conference Room 224, Wednesday, March 18, 2009

Aloha Chair English, Vice Chair Gabbard and Members of the Committee:

The Airlines Committee of Hawaii*, which is made up of 21 signatory air carriers that underwrite the Hawaii State Airport System, supports HB 142, HD1, Relating to Intra-State Aviation.

This bill exempts the general excise and use taxes on fuel sold from a foreign-trade zone to common carriers for use in inter-island air transportation.

Under current statute, aviation fuel purchased in Hawaii's Foreign Trade Zone for use on flights originating in Hawaii and terminating outside of Hawaii is exempt from state excise tax. This exemption should be evenly applied to include all intrastate flights since all common use carriers, including Hawaii-based carriers, are regulated by the same federal laws that govern interstate commerce.

In closing, we respectfully urge your support for HB 142, HD1. As always, we are grateful for the opportunity to share our views with you.

**ACH members are Air Canada, Air New Zealand, Air Pacific, Alaska Airlines, All Nippon Airways, American Airlines, China Airlines, Continental Airlines, Delta Air Lines, Federal Express, go!, Hawaiian Airlines, Japan Airlines, Korean Air, Northwest Airlines, Philippine Airlines, Qantas Airways, United Airlines, United Parcel Service, US Airways, and Westjet.*

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SUBJECT: GENERAL EXCISE, USE, Exempt Foreign Trade Zone aviation fuel

BILL NUMBER: HB 142, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Adds a new section to HRS chapter 237 and a new paragraph to the definition of “use” under HRS section 238-1 to provide that the sales of aviation fuel categorized as privileged foreign merchandise, non-privileged foreign merchandise, domestic merchandise, or zone-restricted merchandise that is admitted into a foreign trade zone and purchased in a foreign trade zone and is made directly to or used by any common carrier for consumption or use in air transportation between two points in the state, shall be exempt from the state’s general excise and use tax laws.

This act shall not be construed to imply that any law prior to the effective date of this act is inconsistent with this act.

EFFECTIVE DATE: July 1, 2020

STAFF COMMENTS: Currently aviation fuel is imported and stored in Hawaii Fueling Facilities Corporation (HFFC) storage tanks. HFFC was established in 1969 to provide fuel storage and distribution to its member airlines. On September 1, 1997, the HFFC began operating under the Foreign Trade Zone (FTZ) at the Honolulu International Airport. Fuel purchased from HFFC for use in aircraft of HFFC members is exempt from the imposition of the general excise, use, and fuel taxes since they are operating in the FTZ. When the fuel is then pumped through the HFFC’s bonded fuel lines and provided to the aircraft, the fuel remains in interstate commerce and technically is outside the jurisdiction of the state and the imposition of state taxes. The current exemption from taxes for product within the FTZ but sold for consumption outside the state applies only when the consumption of such product occurs out of state where sales are made to any common carrier in interstate or foreign commerce. Exempting the fuel used for intrastate air transportation would help level the playing field and create a fairer market for all airlines.

While it is the federal law that confers exempt status on products in the FTZ, recognizing that the products have not entered the country, it is understood that the states can further define that recognition with respect to use of products that have FTZ exempt status. This is what this measure proposes with respect to tax laws imposed by the state.

Digested 3/17/09

Island Air would like to submit testimony in support of HB 142.

Over the last 2 years the airlines industry has been challenged by rising fuel prices, increased facility charges and landing fees, costly regulatory requirements and most recently a down turn in travel due to the global economic crisis. Island Air has weathered the storm but not without employee concessions and cutbacks.

Island Air's exclusive business is providing inter-island transportation within the Hawaiian Islands. Currently, inter-island carriers are paying taxes on fuel while transpacific carriers are exempt. We are in full agreement with 142 whereby interisland carriers should be exempt as well, from the general excise and use taxes for sales of fuel from a foreign-trade zone for interisland flights. The passage of HB 142 would have a significant benefit to a company such as Island Air.

Please consider the following information as to why we would like you to support bill 142:

- Interisland ticket prices provide much lower yields than mainland tickets and the interisland revenue base is also smaller than mainland carriers.
- Incentive to mainland carriers to fly to Hawaii with this fuel tax exemption while not affording this to Interisland carriers is unjust with no rational.
- Providing interisland carriers with this fuel tax exemption will have minimal impact on the States Tax revenues but would provide needed financial assistance
- Interisland carriers such as Island Air play an integral part in Hawaii's economy as it provides needed air transportations between the rural communities in this Island State.
- The passage of HB 142 would be beneficial and just.

Thank you for your time, effort and consideration of HB 142