



GOV. MSG. NO. 869

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 16, 2009

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

Dear Madam President and Members of the Senate:

Re: House Bill No. 371 HD2 SD2 CD1

On July 15, 2009, House Bill No. 371, entitled "A Bill for an Act Relating to Taxation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to extend the exemption of naphtha fuel used in electrical generation from the transportation fuel tax. This measure retains the exemption until December 31, 2012. I support this exemption but believe the sunset date should have been removed in its entirety.

Naphtha, a bi-product of the manufacture of gasoline, is recognized as a low-carbon emission fuel, preferable to other fossil fuel sources. This legislation recognizes the importance of naphtha as a fuel source used in the State today.

However, this legislation also doubles the tax imposed on naphtha fuel used to generate electricity on Kauai and along the Hamakua coast. This increase, which totals an estimated \$440,000 per year for both facilities, will be passed along to rate payers in each jurisdiction.

The increase from 1 cent to 2 cents per gallon, even though some will consider it small, is a 100% increase or a doubling of the tax on this fuel. What is particularly troubling is the increase comes at a time when our families and residents are most vulnerable to additional costs, even small costs, as they struggle with lay-offs, business closures, downsizing, and increasing State and county taxes.

The amount of additional tax is not enough to significantly assist the highway program and does not contribute to closing the State general fund budget gap. Thus, it has no measurable fiscal benefit to the State, while adversely impacting those communities that receive electricity

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and Members of the Senate  
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from naphtha-burning power plants. However, if this law did not go into effect, then the much larger highway fuel tax would apply to naphtha starting January 1, 2010.

For the foregoing reasons, I allowed House Bill No. 371 to become law as Act 198, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that current technology  
2 in generating electric power allows for a variety of liquid  
3 fuels. While diesel fuel and fuel oil are used in older  
4 electric power generation technology, newer technology permits  
5 the use of multiple types of liquid fuel, some of which were  
6 previously used for transportation purposes, such as naphtha.

7           Upon finding that the State's highway tax law did not  
8 specifically address naphtha when it is used for electric-power  
9 generation, the legislature passed Act 103, Session Laws of  
10 Hawaii 2007 (Act 103), that imposed a 1 cent per gallon tax on  
11 naphtha when sold for use in a power-generating facility. The  
12 provision imposing the 1 cent per gallon tax is scheduled to  
13 sunset on December 31, 2009.

14           The purpose of this Act is to:

- 15           (1) Extend by three years the sunset provision in Act 103  
16 relating to the tax on naphtha sold for use in a  
17 power-generating facility; and



1           (2) Increase the tax from 1 cent per gallon to 2 cents per  
2           gallon.

3           SECTION 2. Section 243-4, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

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

- 17           (1) For each gallon of diesel oil, 2 cents;  
18           (2) For each gallon of gasoline or other aviation fuel  
19           sold for use in or used for airplanes, 2 cents;  
20           (3) For each gallon of naphtha sold for use in a power-  
21           generating facility, [~~1-cent,~~] 2 cents;



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



1 fuel tax", as shall be levied pursuant to section 243-  
2 5; and

3 (7) For each gallon of liquid fuel, other than fuel  
4 mentioned in paragraphs (1), (2), and (3), and other  
5 than an alternative fuel, sold or used in the county  
6 of Kauai, or sold in any county for ultimate use in  
7 the county of Kauai, 17 cents state tax, and in  
8 addition thereto an amount, to be known as the "county  
9 of Kauai fuel tax", as shall be levied pursuant to  
10 section 243-5.

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

20 SECTION 3. Act 103, Session Laws of Hawaii 2007, is  
21 amended by amending section 5 to read as follows:



1 "SECTION 5. This Act shall take effect upon its approval;  
2 provided that:

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

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

6 (B) Section 243-4(a), Hawaii Revised Statutes~~[7]~~,  
7 shall be repealed on December 31, ~~[2009]~~ 2012, and  
8 section 243-4(a), Hawaii Revised Statutes, shall be  
9 reenacted in the form in which it read on the day  
10 before the effective date of this Act; and

11 (2) The rate of tax for naphtha as provided for in section  
12 243-4(a)(3), Hawaii Revised Statutes, shall be  
13 effective retroactively and apply to any imposition of  
14 the fuel tax on naphtha sold for use in a power-  
15 generating facility."

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2009.



H.B. NO. 371  
H.D. 2  
S.D. 2  
C.D. 1

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APPROVED this            day of            , 2009

GOVERNOR OF THE STATE OF HAWAII