

Honolulu, Hawaii

MAR 24 2006

RE: H.B. No. 3115
H.D. 2
S.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Housing,
to which was referred H.B. No. 3115, HD2, entitled:

"A BILL FOR AN ACT RELATING TO THE PETROLEUM INDUSTRY,"

begs leave to report as follows:

The purpose of this measure is to improve oversight of the
petroleum industry to prevent it from engaging in unfair
practices.

Among other things, this measure:

- (1) Establishes the petroleum industry monitoring, analysis,
and reporting program, which requires refiners and
distributors to report information to the Public
Utilities Commission;
- (2) Establishes the automated petroleum industry information
reporting system to be maintained by the Public
Utilities Commission;
- (3) Establishes the petroleum industry monitoring, analysis,
and reporting special fund and makes an appropriation to
the fund to establish the petroleum industry monitoring,
analysis, and reporting program;
- (4) Suspends the duties of the Public Utilities Commission
relating to the gasoline price cap program;



- (5) Repeals gasoline price caps, effective July 1, 2008; and
- (6) Prohibits misrepresentations and unlawful profiteering by the petroleum industry and makes them punishable as unlawful trade practices.

Your Committee received testimony in support of this measure from The Chamber of Commerce of Hawaii, the Department of Commerce and Consumer Affairs, Aloha Petroleum, Ltd., Mid Pac Petroleum, and one individual. Your committee received testimony in opposition to this measure from Citizens Against Gasoline Price Gouging, Kokua Council, and two individuals. Your Committee received comments on this measure from the Public Utilities Commission, the Department of Business, Economic Development and Tourism, the Department of Budget and Finance, Voter Owned Elections Hawaii, the Gas Company, Western States Petroleum Association, and Shell Oil.

Your Committee finds that the present gasoline pricing law has been working as intended. Pricing regulation has forced the oil companies, for the first time, to lower prices when mainland prices have fallen.

Your Committee finds, however, that in its present form, this measure is seriously flawed, riddled with loopholes for gasoline wholesalers who have gouged Hawaii consumers for years. The significant flaws in the measure fall into two areas. First, the measure claims to establish a system of transparency, but in fact reduces transparency by keeping the oil companies' pricing information confidential, and allowing them to withhold data from the Public Utilities Commission and the public that is essential to monitor the industry's behavior to preclude price fixing. Second, the measure has no teeth. It completely eliminates any mechanism to require the oil companies to lower prices. In essence, it would return the State to the past, when the oil companies reigned supreme in a noncompetitive market.

Despite the success of the present law, your Committee finds that there is a lack of political will to maintain the price ceiling in its present form. Critics have blamed the price ceiling for high gasoline prices. They have repeatedly stated that prices would be lower and more competitive if the State did not have gasoline price regulation in place. However, your Committee finds that Hawaii gasoline prices will not go down to



competitive levels without increased transparency and government pressure.

To effectuate a compromise between critics and supporters of the current gasoline pricing law, your Committee has amended this measure to suspend indefinitely the maximum wholesale price ceiling, while leaving mechanisms in place to ensure oil companies do not again raise prices artificially high. The oil companies would be able to set prices at whatever levels they want subject to certain safeguards to protect consumers.

As amended, the measure would create a fair price indicator based on a reformulation of the existing wholesale gasoline price ceiling under section 486H-13, Hawaii Revised Statutes. After the maximum wholesale price ceiling is suspended, the Public Utilities Commission still would be required to calculate and report this price ceiling as a benchmark to enable the public to see what the wholesale price would have been if a gasoline price ceiling were in effect. In addition, the fair price indicator would enable the public to hold the oil companies accountable for their pricing practices.

The fair price indicator would serve an additional purpose by providing a remedy if the oil companies return to their previous practices of overcharging Hawaii consumers. Under the proposed amendments, if the wholesale price of gasoline went above the fair price level and remained there for two consecutive weeks, it would trigger the reinstatement of the maximum wholesale price ceiling for two weeks, after which time the ceiling would be suspended again. This would ensure that if the oil companies did what their champions claim they will not do—namely, price above the fair price level—Hawaii's consumers will not be left defenseless.

Your Committee also amended this measure to create a true and effective system of transparency that would disclose actual wholesale prices and allow consumers to compare them with what prices would have been if a price ceiling were in place. As amended, the measure would ensure that elected officials and the public will have all of the data they need to effectively monitor the pricing schemes and anti-competitive practices of the oil industry.

Your Committee recognizes that a major goal of transparency is to raise the curtain of secrecy around industry-pricing practices to deter price-fixing and other anti-competitive



practices. As amended, the measure would require the industry to report to the Public Utilities Commission sales volumes and the effective date, time, and amount of changes in wholesale prices for gasoline and diesel. Within fourteen days of receipt of this information, the Public Utilities Commission would be required to use the best technology available to publicly disclose the sales and pricing data that the industry reports. The Public Utilities Commission still would keep the industry's legitimately confidential information under seal.

In adopting these amendments, your Committee is doing its best to accommodate the desire of members of the House of Representatives to adopt transparency and monitoring measures, to put on hold the mandatory price ceiling, and to give oil companies given greater latitude in setting prices. However, the amendments also address the belief of consumer advocates and this Committee that the State must have some kind of fallback mechanism in place to roll back prices should the oil companies resort to raising prices artificially high.

This measure would put the critics of the gasoline pricing law, especially gasoline wholesalers, to the test. The State will see how the oil companies respond if the gasoline price ceiling is suspended to give oil companies and wholesalers greater freedom in setting gasoline prices.

Your Committee has amended this measure by:

- (1) Providing increased industry transparency;
- (2) Suspending the current maximum wholesale price ceiling while leaving mechanisms in place to ensure oil companies do not further raise prices artificially high; and
- (3) Increasing savings for consumers if oil companies attempt to maintain artificially high prices, by creating a fair price indicator based on the following adjustments to the formula for the former maximum wholesale gasoline price:
 - (a) Adding the Singapore spot daily price to determinations of baseline prices, with the lowest three of the four average weekly geographic prices averaged for the state baseline;



- (b) In the event of a holiday or holidays, requiring the Public Utilities Commission to use average of remaining business days of the prior week;
- (c) Removing the location adjustment factor;
- (d) Reducing the marketing margin factor to 14 cents;
- (e) Allocating different percentages of zone price adjustments to different distributors performing different functions; and
- (f) Providing for adjustment of zone price adjustments and allocation of zone price adjustments on a zone by zone basis.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Housing that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 3115, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 3115, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Housing,


RON MENOR, Chair



