



Western States Petroleum Association

April 01, 2008

10:15 a.m.

**Senate Committee on Ways and Means
Conference Room 211**

HB 2811, SD 1 - Relating to Energy.

Western States Petroleum Association is a non-profit trade association representing a broad spectrum of petroleum industry companies in Hawaii and five other western states. We are opposing ***HB 2811, SD1***.

We are concerned that this measure requires publication of sensitive proprietary information.

Hawaii member companies have been cooperating with the PUC and are not aware of any confirmed instances in which a reporting entity has failed to comply with the PIMAR program requirements. The PUC earlier this year released their initial findings based upon their analysis of the data and found no signs to suggest any wrongdoing by market participants. In fact, the report authored by ICF validated many of the findings of previous studies that advised against regulatory actions, such as the gas cap, that negatively impacted the local petroleum market to the detriment of consumers.

Local petroleum companies are understandably concerned that their competitively sensitive information be treated as such, and that the state's reporting requirements do not unwittingly result in a disclosure of competitively sensitive information that could lead to market distortions and negatively impact the companies and consumers.

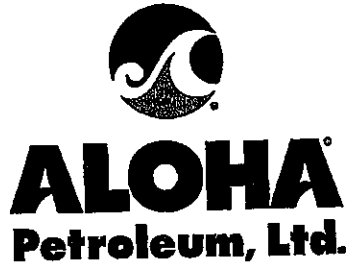
We want to bring to your attention certain legal issues stemming from this bill. These proposals threaten trade secret property rights protected by the takings clause of the United States Constitution.

- The existing Petroleum Industry Monitoring and Reporting act ("PIMAR") requires each distributor to file weekly reports with the Hawaii Public Utilities Commission ("Commission").
- The weekly reports must include "the average crude oil cost and the average wholesale gasoline prices charged by the distributor for each class of trade..."
- This measure would require the Commission to publish the information filed by distributors in their weekly reports.
- The information required to be reported under PIMAR is trade secret information. Courts "have recognized that information related to cost and pricing can be trade secret." (*Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1455 (2002)).

- The Hawaii Supreme Court has recognized that trade secrets are property rights protected by the Uniform Trade Secret Act, which has been adopted by Hawaii. (*Teller v. Teller*, 99 Haw. 101, 108-109 53 P.3d 240 (2002).
- The Takings Clause of the U.S. Constitution prohibits the government from taking property without just compensation. Trade secret property rights recognized under state law are property rights protected by the Takings Clause. (*Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1000-1004 (1984).
- In order to preserve their trade secret rights, distributors would have to make “efforts that are reasonable under the circumstances to maintain its secrecy.” (HRS § 482B-2.) That means distributors may find it necessary to seek judicial protection for the cost and price information prior to reporting it for publication, as is consistent with prior rulings.

Thus far under the Petroleum Industry Monitoring and Reporting Act (“PIMAR”), local petroleum companies have submitted information under protective orders negotiated with the PUC. In this manner, companies can be assured that information that they provide in response to PIMAR cannot be used by competitors to gain an advantage over them in the marketplace.

Thank you for the opportunity to testify in opposition to *HB 2811, SD1*.



**TESTIMONY TO THE
SENATE COMMITTEE ON WAYS AND MEANS
ON
HB 2811, SD1 RELATING TO ENERGY
Tuesday, April 1, 2008 at 10:15 a.m.
State Capitol, Room 211**

**By
Robert F. Maynard
President and Chief Executive Officer
Aloha Petroleum, Ltd.**

Chair Baker and Members of the Senate Committee on Ways and Means, I am Robert F. Maynard, President and Chief Executive Officer of Aloha Petroleum, Ltd.

Aloha Petroleum, Ltd. strongly opposes that portion of HB 2811, SD1 which requires the PUC to publish specific proprietary and confidential information it receives from individual companies in the petroleum industry.

HB 2811, SD1 effectively eliminates the confidentiality of certain proprietary company specific information filed with the PUC, with the ultimate intent, we believe, to force disclosure of all confidential information under the Act. The forced release of proprietary and confidential information to the general public serves no purpose other than to cause competitive harm to stakeholders and presents the risk of causing market disruptions within the industry, while in no way serving the stated objective of providing consumers with a better understanding of the Hawaii gasoline marketplace.

The responsibility for the analysis of the voluminous and complex data filed with the PUC rightly belongs with that agency and its consultants, not the general public.

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Hearing: 4/1/08 at 10:15 a.m.
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Because the complexity and volume of data is so great, the objectives of transparency can only be achieved through careful professional analysis by experts such as the PUC and its consultants. Exposing this complex data to public scrutiny will run a significant risk of misinterpretation and even misuse. Moreover, in some cases, the data will provide confidential proprietary information to competitors thereby disrupting normal market relationships and creating unfair competitive advantages and disadvantages.

Hundreds of thousands of Hawaii taxpayer dollars have already been spent on an independent consultant, who has unrestricted access to the unsealed reports and data filed with the PUC and who conducted thorough studies of Hawaii's petroleum market. The PUC's consultant (as did all of the State's other previous consultants) found no evidence the petroleum industry in Hawaii is broken or that market participants realize excessive profits.

Aloha Petroleum, Ltd. has no objection to the inclusion of the "class of trade" distinctions provided in this bill, but we do vigorously object to this harmful disclosure requirement.

Thank you for the opportunity to testify in opposition to House Bill 2811, SD1.

testimony

From: Bob Swartz [bob@keltd.com]

Sent: Saturday, March 29, 2008 3:10 PM

To: testimony

Subject: Testimony on HB2811, SD1 before the WAM Committee on 04-01-2008 at 10:00 AM.

Aloha Chair Baker, Vice-Chair Tsutsui and Members of the Senate Committee on Ways and Means,

I am an independent Chevron Dealer operating two Chevron Branded Service Stations on the Windward side of O'ahu. I have been in the retail service station business for over 46 years.

I am totally against passage of HB2811, SD1.

The wholesale price information that the bill requests of a retail distributor is already available to the PUC through the current reporting required by law.

The retail price information that the bill requests of a retail distributor is already available to the PUC and the public by reading the price signs posted at each service station in the state.

Passage of this law WILL increase the cost of doing business, which WILL be passed on to the consumer, either at a wholesale level, or if incurred, at a retail level.

Just one more example of an anti-business law, enacted by the Hawaii State Legislature. Anti-business IS Anti-consumer.

Please vote NO on HB2811, SD1.

Aloha,

Bob Swartz

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Bob Swartz

Ko'olau Enterprises Limited dba

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TESTIMONY ON HOUSE BILL NO. 2811 SD - RELATING TO ENERGY

POSITION: Opposed to proposed language

PRESENTATION OF
BARNABY ROBINSON, OWNER, WAIALAE CHEVRON

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON WAYS AND MEANS

Senator Rosalyn H. Baker, Chair
Senator Shan S. Tsutsui, Vice Chair

Monday, March 31, 2008

Increased Government intervention, onerous legislation concerning radius competition and control of investment dollars, mandated reporting of proprietary information, and ignoring of previous studies all add costs that hinder industry's ability and desire to provide a stable and steady supply of energy to keep this state on a forward path.

The proposed language in this HB2811 SD1 continues to forward an agenda that creates more intrusive disclosure of confidential trade data and creates increased administrative and litigation costs. At the end of the day, the result of study after study, law suit after law suit, disclosure after disclosure will be the same: The Hawaii petroleum market is normal and functioning properly. In fact, the one constant that continues to add costs to doing business in Hawaii is government intervention.

Creating public perception of wrongdoing or collusion has been festered by government actions. The reality of why gasoline costs what it does has been largely ignored and swept under the rug. It appears that smoke and mirrors are preferred over reality.

The proposed language in this bill does nothing to reduce the cost of fuel in Hawaii, and appears to be a precursor to inflame perception in the attempt to reinstate the infamous gas cap legislation.

Please do not allow this bill to pass out of committee.

Lance N. Tanaka
Manager, Government Relations



Tesoro Hawaii Corporation
91-325 Komohana Street
Kapolei, Hawaii 96707-1713
808 547 3111
808 547 3145 Fax

March 31, 2008

The Honorable Rosalyn H. Baker, Chair
The Honorable Shan S. Tsutsui, Vice Chair
and members of the Senate Committee on Ways & Means

Re: Testimony in Opposition to House Bill 2811, Senate Draft I, Relating to Energy
Tuesday, April 1, 2008, 10:15 a.m., Conference Room 211

Chair Baker, Vice Chair Tsutsui and Committee members:

Thank you for this opportunity to submit written testimony opposing House Bill 2811, Senate Draft I. My name is Lance Tanaka, manager of government relations for Tesoro Hawaii Corporation. Tesoro Hawaii is part of the Tesoro Corporation, a petroleum refining and marketing organization headquartered in San Antonio, Texas with refinery operations in six western U.S. states.

Tesoro Hawaii is complying fully with Hawaii Public Utilities Commission (PUC) requirements set forth under the state's Petroleum Industry Monitoring, Analysis and Reporting (PIMAR) program. Tesoro Hawaii currently furnishes the PUC with competitively sensitive information, such as crude oil costs and wholesale gasoline prices, under protective court order. We are therefore concerned that H.B. 2811, S.D. 1, as amended, will require the PUC to publicly disclose individual petroleum companies' proprietary and confidential information.

This raises the prospect that competitors, who would be able to see one another's information, may inadvertently or purposely alter their production, marketing and/or pricing strategies – a consequence that could conceivably hurt consumers in the long run. Tesoro Hawaii believes that disclosure requirements in the existing law that incorporate thoughtful protections of data universally accepted as proprietary, balance the objective of transparency without risking damage to the free-market enterprise system.

H.B. 2811, S.D. 1 should not be advanced in its current format, and so we respectfully urge your Committee to hold this bill. Thank you for allowing me to present Tesoro Hawaii's views for your consideration.

Yours very truly,

Lance N. Tanaka
Manager, Government Relations
Tesoro Hawaii Corporation

testimony

From: Richardakana@aol.com
Sent: Monday, March 31, 2008 11:55 AM
To: testimony
Subject: TESTIMONY TO HB 2811 SD1 RELATING TO ENERGY

Testimony of Richard Akana
President
Akana Petroleum Inc.

TO THE SENATE COMMITTEE ON
WAYS AND MEANS
Senator Rosalyn H. Baker, Chair
Senator Shan S. Tsutsui, Vice Chair

Date: Tuesday, April 1, 2008
Time: 10:15 a.m.
Place: Conference Room 211
State Capitol
415 South Beretania Street

Measure: HB No.. 2811 S.D. 1
(Of what it may become)
Relating to the Petroleum Industry Monitoring

Akana Petroleum Inc. and its employees are strongly opposes this legislation for;
One: NO JUDGE or JURY would submit to this intuitions.
Two: NO POLITITION in his or her right mind submits to this intuition.
Three: NO OTHER intuition is required to submit or mandated to this intuition.
Four: FOR WHAT IT MAY BECOME.

For a company of 10 people this is a time consuming project, not to mention labor draining exercise that provides a service to the Big Island of Hawaii, operating out of two zones, and it is an expensive endeavor in personnel and material which has to accounted for some how.

Respectfully Submitted
Richard Akana
and its Employees

Create a Home Theater Like the Pros. [Watch the video on AOL Home.](#)

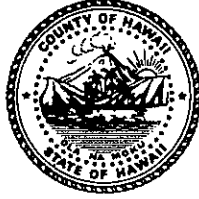
BOB JACOBSON

Councilmember

Chair, Environmental Management Committee

Vice-Chair, Finance Committee

Vice-President Hawai'i State Association of Counties



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HAWAI'I COUNTY COUNCIL

County of Hawai'i

March 31, 2008

Committee on Ways and Means

Senator Rosalyn H. Baker, Chair

Senator Shan S. Tsutsui, Vice Chair

And, Members

Hearing Scheduled for Tuesday, April 1, 2008 at 10:15 am

Conference Room 211

State Capitol

415 South Beretania Street

Honolulu, HI

Re: HB 2811, SD 1 RELATING TO ENERGY

I wholeheartedly support HB 2811, SD1. It is clear that the current system for promoting clean and sustainable energy needs our support and accountability. I am hopeful this bill will accomplish these goals.

I urge you to pass HB 2811

Aloha,

Bob Jacobson