

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND AFFORDABLE HOUSING
FEBRUARY 27, 2008**

MEASURE: S.B. No. 2630 S.D. 1
TITLE: RELATING TO PETROLEUM INDUSTRY MONITORING.

Chair Kokubun and Members of the Committee:

DESCRIPTION:

The purpose of this bill is to: 1) require distributors to report to the Public Utilities Commission ("Commission") their average crude oil costs and their average wholesale gasoline prices charged for each class of trade; 2) require the Commission to publish on a weekly basis, the information furnished by the distributors; pursuant to §486J-4.5, Hawaii Revised Statutes ("HRS"), categorized by island and distributor; and 3) require the Commission to publish on a weekly basis, the average retail gasoline prices for each island.

POSITION:

The Commission has serious concerns about this bill because it may adversely affect our ability to obtain the necessary information from the petroleum industry and respectfully offers the following comments on this bill.

COMMENTS:

- **This bill requires the Commission to publish all of the information received from the distributors under § 486J-4.5, HRS, notwithstanding any law to the contrary, namely § 486J-6, HRS, that protects confidential commercial information from disclosure.**
 - The Commission will defer to the Legislature's decision to publish all such information.
 - However, the industry or individual distributors will likely disagree with the public disclosure of their confidential commercial information, may refuse to cooperate, and may seek to withhold information from the Commission.
 - If any distributors fail to provide information required by the Commission, the distributors may be subject to fines of \$50,000 to \$100,000 per day under HRS § 486J-9(a), and the Commission is required to refer any such violations to the attorney general for appropriate action under HRS § 486J-9(d).
 - Additionally, the withholding of information by the industry would severely hamper the Commission's ability to efficiently collect the information necessary to implement the petroleum industry monitoring, analysis and reporting program.

Thank you for the opportunity to testify.



**TESTIMONY TO THE
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING
ON
SB 2630, SD1 RELATING TO PETROLEUM INDUSTRY REPORTING
Wednesday, February 27, 2008 at 2:45 p.m.
State Capitol, Room 414**

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

Chair Kokubun and Members of the Senate Committee on Commerce, Consumer Protection, and Affordable Housing, I am Robert F. Maynard, President and Chief Executive Officer of Aloha Petroleum, Ltd.

Aloha Petroleum, Ltd. opposes Senate Bill 2630, SD1 which (1) expands the information required to be reported to the Public Utilities Commission ("PUC") to include the average crude oil cost and the average wholesale gasoline prices charged by the distributor for each class of trade including, but not limited to, the bulk, rack, and dealer tank wagon transactions of each distributor; and (2) requires the PUC to publish specific information it receives from the petroleum industry under the Act.

SB 2630, 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 as reflected in the committee report of the Committee on Energy and Environment. 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.

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. 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 the potentially harmful disclosure requirement.

Thank you for the opportunity to testify in opposition to Senate Bill 2630, SD1.



Western States Petroleum Association

February 27, 2008

2:45 p.m.

Senate Committee on Commerce, Consumer Protection, and Affordable Housing
Room 229

Re: SB 2630, SD1 Relating to the Petroleum Industry Reporting

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 testifying in opposition to SB 2630, SD1.

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.

For example when companies engage in "sealed bidding," bidders must have a keen knowledge of their own direct and indirect costs, but if they had access to the same information for their competitors it could negate the effectiveness of the bidding process to the detriment of buyers.

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.

Under the PIMAR, the local petroleum companies submit volumes of information on at least 23 different aspects on their business activities, to the Public Utilities Commission ("PUC"). Providing this information on weekly and monthly reports consumes a considerable amount of time and resources. The PUC has the authority to review the information and provide comments, conclusions and analysis, while preserving the confidentiality of competitively sensitive and proprietary information. Based on the report issued to the legislature by the PUC, it appears the information has been useful in helping the PUC understand the detail and complexity of the local petroleum industry, that, when overlooked, can lead to false perceptions and conclusions.

In California, petroleum companies are required to submit at least 17 reports under that state's Petroleum Industry Information Reporting Act (PIIRA). PIIRA includes extensive protection for company specific confidential information.

The Department of Business, Economic Development & Tourism retained consultants to review the entire unsealed record of the state's anti-trust lawsuit against members of the petroleum industry and those consultants concluded that the "market isn't broken." If the purpose of requiring additional public disclosure of industry information is to assess whether anti-competitive behavior is being conducted, such a review has already been done by the state's own experts.

In conclusion, Hawaii's gasoline market has been the subject of numerous government and independent third-party studies that have identified a number of reasons for the high cost of petroleum products in Hawaii, including crude oil costs, long distances from crude oil sources, a small market, rent controls on service stations and high taxes. We are opposed to measures that might tend to have the consequence of being anti-competitive and, anti-consumer.

Thank you for the opportunity to testify in opposition to SB 2630, SD1.