

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

Bill No. HD 2130

Support Y (N)

CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

Date 1/29/10

Time 1710

Cat AF (AS) AX BC File: please refer to:

Type 1 (2) WI

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

H.B. 2130, Relating to Taxation

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

January 26, 2010
8:00 A.M.

- 1 **Department's Position:** The Department of Health has reservations about the measure.
- 2 **Fiscal Implications:** Unclear. We are very concerned that the Environmental Response Revolving
- 3 Fund (ERRF) may in fact receive less than the current 5 cents per barrel petroleum tax.
- 4 **Purpose and Justification:** This measure proposes to change the responsibility for collecting and
- 5 paying the existing Environmental Response Revolving Fund (ERRF) tax of 5 cents per barrel or
- 6 fractional part of a barrel petroleum product from the distributor where it is sold to an end user, to the
- 7 marine terminal operator when it is received at a marine terminal by means of a vessel in State waters.
- 8
- 9 Given that petroleum enters into the state via vessels as refined and crude products and is distributed
- 10 throughout the State via vessels to end users, the bill will result in multiple taxing of some petroleum
- 11 products that pass through more than one marine terminal. This may result in higher income to the
- 12 ERRF. However, if oil companies pass the tax along to the consumer, and given that Hawaii residents
- 13 pay the highest gas prices in the nation, additional fuel taxes may depress consumption and may actually
- 14 reduce ERRF revenues. The net practical result of the bill is thus uncertain.

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The ERRF is very important for Hawaii's environment. Our department uses it to respond to and cleanup hazardous materials releases to the environment which may also affect public health. The fund also supports 40 positions in the department. We are apprehensive about any measure that may reduce the existing 5 cents per barrel tax rate allocated to the ERRF and ask the Legislature to avoid reducing income to the the ERRF.

We defer to the Department of Taxation on the rest of the measure.

Thank you for the opportunity to testify in this important measure.



Western States Petroleum Association

House Committee on Energy & Environmental Protection

DATE: Tuesday, January 26, 2010
TIME: 8:00a.m.
PLACE: Conference Room 325
RE: HB 2130

Bill No. HB 2130

Support Y (N)

Date 1/25/10

Time 1546

Cat AF AS AX (BC)

I am testifying on behalf of the Western States Petroleum Association (known as WSPA) in opposition to HB 2130. WSPA is a non-profit trade association representing a broad spectrum of petroleum industry companies in Hawaii and five other western states. Type 1 (2) WI

HB 2130 would shift the collection of the state's emergency response tax so that it would be collected by the marine terminal operator from the owner of the petroleum product, based upon each barrel of petroleum product received by means of a vessel operating in, through, or across the waters of the State. The change impacts not only who collects the tax, but what is taxed.

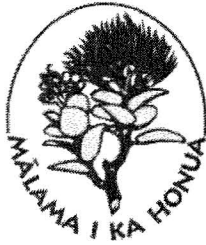
The Import-Export Clause of the U.S. Constitution prohibits a state from imposing taxes or duties on imports: No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws.

In addition, the Commerce Clause of the U.S. Constitution directly limits the power of the states to discriminate against interstate commerce. The U.S. Supreme Court has previously struck down discriminatory tax laws enacted by Hawaii.

When Hawaii attempted to exempt locally produced alcoholic beverages from the state's excise tax on liquor sales, the Supreme Court found that the state legislation was economic protectionism designed to aid Hawaii industry, and was clearly discriminatory. A finding that state legislation constitutes economic protectionism may be made on the basis of either discriminatory purpose, or discriminatory effect.

The U.S. Court of Appeals for the Ninth Circuit (which includes the federal courts in Hawaii) has held that both the Commerce Clause and Import-Export Clause limit a state's ability to impose a fee based on the volume of petroleum entering state land. Such volume-based charges are a disguised revenue raising measure and violate the Commerce Clause by imposing an undue burden on interstate commerce. The result is the same under the Import-Export Clause: [A]lthough the state regulations do not, by their terms, single out imported goods for assessment, this is the inevitable result. **A charge that is nondiscriminatory on its face may well have the effect of discriminating against foreign goods.**

Thank you for giving WSPA the opportunity to testify today.



Sierra Club Hawai'i Chapter

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Bill No. HB 2130

Support Y N

Date 1/25/10

Time 1042

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

January 26, 2010, 8:00 A.M.

Cat. AF AS AX BC

Type 1 WI

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 2130

Aloha Chair Morita and Committee Members -

The Hawai'i Chapter of the Sierra Club supports HB 2130, which eliminates a tax loophole contained in our environmental response special fund.

Our environmental response fund is smart tax-shifting policy that encourages resource conservation and increases our ability to protect Hawaii's environment by adopting a "polluter pays" model. There is an unfortunate loophole contained in this statute, however, which allows for some petroleum products to avoid the tax. This bill is designed to eliminate this tax loophole and ensure that all potential pollution sources are treated fairly under the system.

Thank you for the opportunity to testify.