



NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
INTERIM DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

COMMITTEE ON FINANCE

March 1, 2011
1:00 p.m.
State Capitol, Conference Room 308

in consideration of
HB 1090
RELATING TO CHAPTER 243, HAWAII REVISED STATUTES

HB1090 amends the fuel tax law, Chapter 243, to clarify that the entire fuel tax return is a public record and available for public inspection.

The Department of Business, Economic Development, and Tourism (DBEDT) supports this bill as it will allow us to access fuel data that are essential in energy planning and policy development.

The availability of such public records will enhance the effectiveness of the Energy Resources Coordinator (ERC) in performing its statutory functions pursuant HRS §196-4, and specifically in reference to HRS §196-4(17), which requires the ERC to develop and maintain a comprehensive and systematic quantitative and qualitative capacity to analyze the status of energy resources, systems, and markets, both in-state and those to which Hawaii is directly tied, particularly in relation to the State's economy, and to recommend, develop proposals for, and assess the effectiveness of policy and regulatory decisions, and conduct energy emergency planning.

DBEDT supports the passage of this bill. Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
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HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 1090 RELATING TO CHAPTER 243, HRS

TESTIFIER: FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR
DESIGNEE)
COMMITTEE: FIN
DATE: MARCH 1, 2011
TIME: 1:00PM
POSITION: SUPPORT

This measure clarifies Hawaii fuel tax law, Chapter 243, Hawaii Revised Statutes, by amending the term "statement" with the term "return" and ensuring that the entire fuel tax return data is a public record, which the Department interprets as the intent of current law.

This measure also conforms the statute of limitations for assessment and refund of the Environmental Response, Energy, and Food Security Tax to 3 years—the same as the other fuel tax provisions.

The Department of Taxation (Department) supports this measure.

CLARIFIES EXISTING LAW THAT MAKES FUEL TAX DATA PUBLIC—This measure clarifies existing law that makes fuel tax returns public records.

According to certain interpretations, current law can be construed narrowly to allow disclosure of only certain information contained on the fuel tax return. Under this interpretation, only information concerning the number of gallons of fuel refined, manufactured, compounded, imported, sold or used by the distributor is public. Under another interpretation, the entire "statement" that concerns the data is public.

In the interest of making fuel tax data more transparent and to carry out the legislative intent to make the fuel tax returns public, this measure clarifies the law to ensure that the entire return is public.

Likewise, information associated with the Environmental Response, Energy, and Food Security Tax is amended to be a public record. As additional programs in the pursuit of alternative

energy production in Hawaii develop, additional public data on fuel usage will become more important. This bill ensures that the flow of data is available for policymakers and administrators.

CLARIFICATION OF THE ENVIRONMENTAL RESPONSE TAX STATUTE OF LIMITATIONS—Second, this bill clarifies the statute of limitations for the assessment or refund of Environmental Response, Energy, and Food Security Tax by conforming to the three-year statute of limitations for the fuel tax contained in chapter 243, HRS. As currently written, the law reads as though only the actual fuel tax is subject to a three year statute of limitations. The Department believes both taxes should be subject to this statute.

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: FUEL, Clarify provisions

BILL NUMBER: SB 1317; HB 1090 (Identical)

INTRODUCED BY: SB by Tsutsui by request; HB by Say by request

BRIEF SUMMARY: Amends various sections of HRS chapter 243 to replace the term "statements" with "return." Clarifies that fuel tax returns are public records subject to inspection. Also clarifies the statute of limitations for the assessment or refund of the environmental response, energy, and food security tax.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This is an administration measure submitted by the department of transportation TRN-03(11). The proposed measure merely clarifies that the entire fuel tax return is a public record and available for public inspection. The measure also clarifies that the environmental response, energy, and food security tax shall be subject to the three-year statute of limitations of the fuel tax law.

Digested 2/1/11



Western States Petroleum Association

House Committee on Finance

DATE: Tuesday, March 1, 2011
TIME: 1:00 p.m.
PLACE: Conference Room 308
RE: HB 1090: Relating to Chapter 243, Hawaii Revised Statutes

I am testifying on behalf of the Western States Petroleum Association (known as WSPA) with comments in opposition to HB 1090. WSPA is a non-profit trade association representing a broad spectrum of petroleum industry companies in Hawaii and five other western states.

HB 1090 amends the fuel tax law to clarify that the entire fuel tax return is a public record available for public inspection and clarifies the statute of limitations for the assessment or refund of the environmental response, energy, and food security tax.

In 2010, the Department of Business, Economic Development & Tourism advocated for substantial public disclosure of monthly reports containing confidential and proprietary business information from the petroleum industry. The legislature considered, and ultimately passed, HB 2631 which became Act 152 (2010) which required that the industry provide monthly reports but provided that those reports should be subject to confidentiality, protecting the sensitive and competitive information contained therein from disclosure to competitors and to the public.

Much of the information contained in companies' confidential fuel tax returns could be used to derive sensitive and proprietary data by competitors. The former chair of the California Energy Commission, William J. Keese has previously testified to the Hawaii state legislature that "as states consider the means to understand petroleum markets better, it is essential that they not inadvertently or otherwise divulge confidential information that would damage those markets." Former Chair Keese went on to say that both California and Congress "acknowledged that virtually all of the data required to be submitted by petroleum companies is of a confidential nature and that its release in an un-aggregated form, identifiable to individual companies, would be highly anti-competitive, hurting consumers and the individual companies."

HB 1090 is supported by DBEDT to "recommend, develop proposals for, assess the effectiveness of policy and regulatory decisions and conduct energy emergency planning. These goals can be achieved through the aggregation of data already collected and maintained on a confidential basis through DBEDT."

Therefore, we respectfully oppose this measure.



Chevron

GARLOW PETROLEUM, INC
JOBBER, CHEVRON PRODUCTS COMPANY
P.O. Box 29967, Honolulu, Hawaii 96820

Statement of
Edsel Eshima
Controller
Garlow Petroleum, Inc.
before the

COMMITTEE OF FINANCE

Tuesday, March 1, 2011
1:00 p.m.
State Capitol, Conference Room 308

in opposition of
HB1090
Relating to Chapter 243, Hawaii Revised Statutes

Good Afternoon, Chair Oshiro, Vice Chair Lee, and Members of the Committee.

HB1090 amends the fuel tax law, Chapter 243, to clarify that the entire fuel tax return is a public record and available for public inspection.

I oppose this bill as it is in direct conflict with protecting taxpayer's confidentiality, which is the core of America's tax system. I strongly urge the Committee to preserve the confidentiality of fuel tax returns and return-related information. The public disclosure of fuel tax returns would effectively represent the outsourcing of a core governmental function -- the examination of tax returns -- to the public or media. Public disclosure would prompt well-meaning but uninformed members of the public to raise issues that would distract the Hawaii State Government from doing its job and require expenditure of significant corporate and government resources to address. Public disclosure of fuel tax returns would also reveal proprietary information, which includes monthly gallons sold, type of fuel sold and jurisdiction. Disclosure would clearly aid a company's competitors enormously in understanding the company's business practices. In conclusion, if the State Legislature were to mandate the public disclosure of fuel tax returns, it would be ignoring the compelling need to shield the taxpayers from the political use of tax information.

Thank you for the opportunity to testify in opposition of this bill.



**TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
ON
HB 1090, RELATING TO CHAPTER 243, HAWAII REVISED STATUTES.
By
Richard Parry
President and Chief Executive Officer
Aloha Petroleum, Ltd.**

Chair Oshiro and Members of the House Committee on Finance, I am Richard Parry, President and Chief Executive Officer of Aloha Petroleum, Ltd.

Aloha Petroleum opposes House Bill 1090, which amends the fuel tax law to require that the entire fuel tax return is a public record available for public inspection.

As you know, a tax return by its very nature contains private and confidential information. Simply making tax returns public records will have adverse and unintended consequences. First, the general public will have access to sensitive information but not know how to interpret such information; this will lead to confusion and public misperceptions about our industry. Second, the information is competitive in nature and will provide competitors with sensitive information not previously available to them.

Most, if not all, of the requested fuel information is already being provided to DBEDT under the Energy Industry Information Reporting Act. If there are gaps in the current reporting system which we are not aware of, DBEDT should request such information under the Energy Industry Information Reporting Act in order to keep the

fuel tax returns confidential and to ensure that fuel tax information is interpreted and used properly.

Thank you for the opportunity to testify in opposition to House Bill 1090.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Subject: Monday, February 28, 2011 3:15 PM
To: FINTestimony
Cc: sayle.hirashima@midpacpetroleum.com
Subject: Testimony for HB1090 on 3/1/2011 1:00:00 PM

Testimony for FIN 3/1/2011 1:00:00 PM HB1090

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Sayle Hirashima
Organization: Mid Pac Petroleum, LLC
Address:
Phone:
E-mail: sayle.hirashima@midpacpetroleum.com
Submitted on: 2/28/2011

Comments:

We respectfully oppose the provisions in this legislation that would require companies to disclose the proprietary and confidential information contained in their liquid fuel tax return to the general public. This information is highly sensitive and we are not in favor of disclosing because it could hurt our competitive ability.