

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND
ENERGY & ENVIRONMENTAL PROTECTION
FEBRUARY 15, 2011**

MEASURE: H.B. No. 1455
TITLE: Relating to Petroleum Products.

Chairs Herkes and Morita and Members of the Committees:

DESCRIPTION:

This bill adds a new section to Chapter 486H, Hawaii Revised Statutes ("HRS"), which authorizes gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases, pursuant to rules adopted by the Public Utilities Commission ("Commission") and an agreement entered into between the participants.

POSITION:

The Commission defers to the Legislature on whether the State should allow such cooperative gasoline purchasing agreements between gasoline dealers, but respectfully opposes the portion of the bill that would require the Commission to adopt rules and accordingly oversee these cooperative purchasing agreements and offers comments for your committees' consideration.

COMMENTS:

Allowing cooperative purchasing agreements contemplated in this bill raises anti-trust issues under both State and Federal anti-trust laws, as this bill expressly provides that these cooperative purchasing agreements for gasoline would not be in restraint of trade. The Commission, however, defers to the Office of the Attorney General on these anti-trust matters.

However, if the Legislature determines that there is a need for the State to allow such agreements, and accordingly, requires the Commission to establish and adopt rules to oversee these gasoline cooperative purchasing agreements, the Legislature should ensure that the Commission is adequately staffed and funded, so that it is sufficiently equipped to satisfy these additional responsibilities, without detracting from the Commission's other high priority duties.

The Commission and its staff do not have any experience or expertise in supervising and overseeing gasoline cooperative purchase agreements and gasoline dealers involved in such agreements. Nor does the Commission have any investigative or enforcement personnel trained for and allocated towards the enforcement of any cooperative gasoline purchase agreement laws and rules.

Additional funding and personnel would be required for the Commission to undertake these additional rulemaking, and possibly supervisory, investigative and enforcement activities, and would therefore require the Commission to expend significant additional resources and training to be able to properly establish rules to oversee cooperative gasoline purchase agreements, and to supervise, and investigate and enforce them. Undertaking these additional duties would also detract from the higher priority energy policy matters currently before the Commission.

Accordingly, the Commission respectfully opposes the portion of this bill that requires the Commission to establish and adopt rules to oversee gasoline cooperative purchase agreements between gasoline dealers.

Thank you for the opportunity to testify.

Re: HB 1455

Maile Cox [cox011@hawaii.rr.com]

Sent: Monday, February 14, 2011 1:14 PM**To:** CPCTestimony**Categories:** Yellow Category

February 14, 2011

Mailelani Cox
3470 Lala Place
Lihue, HI 96766

n Support of HB 1455 – Allows gasoline dealers to enter into cooperative purchasing to acquire discounts on gasoline purchases. I am Maile Cox, an independent Petroleum gasoline dealer on the island of Kauai, and am testifying in support of HB

I give independent dealers the opportunity to form a co-op to purchase large quantities of manufacturers in order to get the same volume discounts from manufacturers that are given to big box retailers and company owned and operated stations.

level the playing field so that independent dealers will then be able to charge customers the same as big box retailers and company owned and operated stations who receive volume discounts from manufacturers. Consumers will benefit because they will have a choice between an independent dealer and the big box retailers and pay the same prices.

Independent dealers are afforded price breaks because they presumably purchase their product in large quantities. However, current Hawaii law limits the amount of gas that a tanker can hold and deliver at one time, to a maximum of 10,000 gallons. Therefore, even if a big box retailer presumably purchases more product than an independent retailer, it will take the same amount of tankers to haul the product.

Independent dealers are not given the same discount for volume purchases even though he/she may purchase a large volume of gas or more. Independent dealers need the ability to receive the same discounts given to the big box retailers and gasoline company owned and operated stations in order to compete in this market as they must pay higher prices per gallon when buying product and cannot lower their prices to consumers without going out of business.

Maile Mart LLC.

February 15, 2011

To: Rep. Robert Herkes, Chair of the Committee on Consumer Protection and Commerce, and
Rep. Gilbert Keith-Agaran, Chair of the Committee on Judiciary

From: Stan Morinaka, Independent service station dealer from Kauai

Re: Testimony in favor of HB 1455 and HB1456

Mr. Chairmen and Members of the Committees on Consumer Protection and Commerce and the Committee on Judiciary. I wish that I could be here to testify in person today. Unfortunately, I am in the process of renegotiating the lease for my station. I am strongly in favor of House Bills 1455 and 1456.

To give you a perspective on what's happened on the island of Kauai, forty years ago when I started my business, we had so many independent dealers that we were able to form an association. Today, there are only 2 independent service stations dealers left on our island and I am one of them. The rest of the stations are company owned and operated. And if I am not able to renegotiate a favorable lease, they will force me out of business as well. So without your help, it won't be long before all of the service stations on Kauai will be controlled by the oil companies.

HB 1455 would permit independent dealers to form a co-op which would give us the ability to negotiate bulk purchasing prices for gasoline. I strongly support this bill. This would go a long way towards helping businesses like mine.

Currently, I have to compete with Costco as well as other big box retailers who are planning to expand the number of their stations on the island. Without the ability to form a co-op, small independent dealers like me will not be able to offer product to the consumers at competitive prices. Since the inception of the giant retailers, I have seen my volume drop down from 250,000 gallons to 150,000 gallons **per month!** A co-op would allow me to offer my gas at the same price as my competitors. I can't do that now because my base cost is higher than theirs.

So with a higher cost basis and an increase in lease rental of the station, I will not be able to compete and will have to close my business. If that happens, the company will take over the operation and run it. How are local businesses expected to survive under these conditions?

During times of hardship and disasters, it has been the small local businesses that have stayed open and helped the community. Who will be there for the people of Kauai if there is another crisis in the future and the small mom and pops are no longer there? Also, the income that we generate goes back to support the local economy. So if small businesses like mine are forced to close, where will the tax revenue that supports the County and the State come from?

I know that there are state laws that are supposed to regulate the industry but they are virtually useless because they are never enforced. Changing the penalty provisions to make enforcement possible will help to level the playing field. That is why I support HB 1456. It is at least a step in the right direction.

I humbly ask that you pass HB 1455 and HB 1456 and help us to keep local businesses alive and thriving. Thank you.

Testimony for HB1455 on 2/15/2011 10:00:00 AM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 14, 2011 3:43 PM
To: CPCtestimony
Cc: ashleyching@hawaii.rr.com
Attachments: WSPA Testimony for HB1455 ~1.doc (78 KB)

Testimony for CPC/EEP 2/15/2011 10:00:00 AM HB1455

Conference room: 325
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Melissa Pavlicek
Organization: Western States Petroleum Association
Address:
Phone:
E-mail: ashleyching@hawaii.rr.com
Submitted on: 2/14/2011

Comments:



Western States Petroleum Association

House Committee on Consumer Protection & Commerce
and
House Committee on Energy & Environmental Protection

DATE: Tuesday, February 15, 2011
TIME: 10:00 a.m.
PLACE: Conference Room 325
RE: HB1455: Relating to Petroleum Products

I am testifying on behalf of the Western States Petroleum Association (known as WSPA) in opposition to HB 1455. WSPA is a non-profit trade association representing a broad spectrum of petroleum industry companies in Hawaii and five other western states. The purpose of HB 1455 is to allow gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases

WSPA is opposed to this measure on the basis that it is special interest legislation designed to protect a select group of competitors from the antitrust laws. State and federal antitrust laws are designed to protect consumers from anticompetitive practices. In addition, Hawaii can enact an exemption from its own antitrust laws, but Federal law also prohibits agreements in restraint of trade and Hawaii cannot create an exemption from Federal law.

Thank you for giving WSPA the opportunity to testify today.