

HB1454 HD1

Measure Title: RELATING TO THE PETROLEUM INDUSTRY.

Report Title: Gasoline Dealers; Volume Discount; Cooperative Purchasing Agreement

Description: Requires motor vehicle fuel wholesalers and similar entities that offer volume discounts to any retail service station to offer the same volume discounts to all retail service stations. Allows gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases. Effective July 1, 2012. (HB1454 HD1)

Companion:

Package: None

Current Referral: CPN

Introducer(s): CHONG, Har, B. Oshiro, Tokioka

Sort by Date		Status Text
1/26/2011	H	Introduced and Passed First Reading
1/28/2011	H	Referred to CPC, FIN, referral sheet 3
1/31/2011	H	Re-referred to CPC/EEP, FIN, referral sheet 5
12/1/2011	D	Carried over to 2012 Regular Session.
2/13/2012	H	Re-referred to FIN, referral sheet 26
2/24/2012	H	Proposed draft of Bill scheduled to be heard by FIN on Monday, 02-27-12 10:00AM in House conference room 308. Copy of proposed draft available at www.capitol.hawaii.gov .
2/27/2012	H	The committees on FIN recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 16 Ayes: Representative(s) Oshiro, M. Lee, Choy, Cullen, Giugni, Har, Hashem, Ichiyama, Jordan, Kawakami, C. Lee, Morikawa, Tokioka, Yamashita; Ayes with reservations: Representative(s) Marumoto, Riviere; Noes: none; and 1 Excused: Representative(s) Ward.
3/2/2012	H	Reported from FIN (Stand. Com. Rep. No. 718-12) as amended in HD 1, recommending passage on Second Reading and placement on the

		calendar for Third Reading.
3/2/2012	H	Passed Second Reading as amended in HD 1; placed on the calendar for Third Reading with Representative(s) Ching, Fontaine, Marumoto, Pine, Riviere, Thielen, Ward voting aye with reservations; none voting no (0) and Representative(s) Oshiro, Wooley excused (2).
3/6/2012	H	Passed Third Reading with Representative(s) Ching, Fontaine, Johanson, Pine, Riviere, Ward voting aye with reservations; none voting no (0) and none excused (0). Transmitted to Senate.
3/8/2012	S	Received from House (Hse. Com. No. 53).
3/8/2012	S	Passed First Reading.
3/8/2012	S	Referred to CPN.
3/14/2012	S	The committee(s) on CPN has scheduled a public hearing on 03-28-12 9:30AM in conference room 229.

email to CPNtestimony@Capitol.hawaii.gov or fax 586-6071

TESTIMONY TO THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

By
Mark Leong, President
Hawaii Petroleum Marketers Association

Committee on Commerce and Consumer Protection

Chair: Senator Rosalyn H. Baker
Vice Chair: Senator Brian T. Taniguchi

HB 1454, HD1 Relating to the Petroleum Industry

Hearing Date: Wednesday, March 28, 2012
Time: 9:30 a.m.
Place: Conference Room 229
State Capitol, 415 South Beretania

Copies requested: 1

Chair Baker and Members of the Senate Committee on Commerce and Consumer Protection, I am Mark Leong, President of Hawaii Petroleum Marketers Association ("HPMA"). This bill will allow independent fuel dealers to form buying co-ops, and will require fuel suppliers to give equal volume discounts to all retailers (*i.e.*, same volume discounts to Costco and a co-op of stations with similar volumes).

HPMA opposes HB 1454, HD1 Relating to the Petroleum Industry for the following reasons:

- HB1454, HD1 is vague and poorly written, and if passed, will be difficult to enforce.
- HB1454 HD1 fails to provide for all factors that must be taken into account when setting prices (*i.e.*, volume is not the only determinant of discounts, but we also need to take into account credit worthiness, the ownership of the station assets and/or land, branding, and payment terms, etc.).
- There is no certainty that co-op buying groups may be created due to franchise requirements that branded dealers may only sell certain types of fuel.
- There is no certainty that any lower cost will be passed on to the consumer.
- This bill will not exempt dealers and co-ops from federal antitrust laws.
- There may be unintended consequences. For example, when fuel suppliers negotiate prices with the largest volume resellers (such as Costco), they will have to anticipate giving similar volume discounts to buying co-ops that may have much higher costs (multiple locations, farther delivery distances, smaller delivery sizes, supplier investments, etc.) and different credit risks, when determining prices. Rather than subsidizing the higher cost co-ops, one possible unintended consequence may be that large volume resellers may end up paying a higher price for fuel, which will translate into higher consumer prices and ultimately hurt consumers rather than help them.

Thank you for the opportunity to testify in opposition to House Bill 1454, HD1 Relating to the Petroleum Industry.



Western States Petroleum Association

Senate Committee on Commerce and Consumer Protection

DATE: March 28, 2012
TIME: 9:30 a.m.
PLACE: Conference Room 229
RE: HB1454, HD1: Relating to Petroleum Products

I am testifying on behalf of the Western States Petroleum Association (known as WSPA) in opposition to HB1454, HD1. 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 HB1454, HD1 is to require motor vehicle fuel wholesalers and similar entities that offer volume discounts to any retail service station to offer the same volume discounts to all retail service stations. This measure is also intended to allow gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases.

WSPA has opposed the cooperative purchasing agreement provisions in this measure many times 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. This measure may also be unconstitutional to the extent that it interferes with any existing contractual agreements.

This bill now contains "volume discount" provisions that are ambiguous and leave many unanswered questions as a result of not recognizing the various classes of trade, and the existing contracts between parties, some of which are regulated by the Federal Petroleum Marketers Protection Act. The Federal statute expressly pre-empts any inconsistent state laws (15 U.S.C. Section 2806). It is therefore unclear exactly how or when the "negotiations" contemplated by H.B. 1454 would actually take place. Suppose, for example, that a supplier currently gives a lower price to:

- (i) a retailer who operates under the retailer's own brand, operates 10 stations owned by the retailer, and picks up at terminal

as compared to the price charged to:

- (ii) a retailer with a single station operating under supplier's brand which the retailer leases from the supplier with the supplier delivering motor fuel to the station.

Can this arrangement be challenged as a "volume discount"? Questions like this could lead to unintended consequences and possibly litigation that will take a lot of time and money to work out in the courts. Simplistic attempts to interfere with complex market forces don't work and have unforeseen negative consequences. Please reject this bill.

Thank you for giving WSPA the opportunity to testify today.