

# HB 1455, HD2

**Measure Title:** RELATING TO PETROLEUM PRODUCTS.

**Report Title:** Gasoline Dealers; Cooperative Purchasing

**Description:** Allows gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases. Effective July 1, 2030. (HB1455 HD2)

**Companion:**

**Package:** None

**Current Referral:** CPN



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2011**

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ON THE FOLLOWING MEASURE:

H.B. NO. 1455, H.D. 2, RELATING TO PETROLEUM PRODUCTS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, April 5, 2011 TIME: 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): David M. Louie, Attorney General, or  
Rodney I. Kimura, Deputy Attorney General

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Chair Baker and Members of the Committee:

The Department of the Attorney General is concerned that this bill may not provide gasoline dealers with the intended protection from antitrust scrutiny. We therefore recommend that this bill be held.

The apparent purpose of this bill is to foster the ability of gasoline dealers to purchase gasoline via a cooperative purchasing agreement. The bill accomplishes this by providing that such an agreement and the participants involved are not in violation of the antitrust laws.

We do not offer any opinion on the effect of the agreements on consumers or markets. However, we do have a concern that this bill may not have the desired effect because the conduct it authorizes could still be subject to scrutiny under federal antitrust law.

Both state and federal laws govern what constitutes a violation of the antitrust law. Certain private conduct permitted by state law might violate federal law. However, under the "state action" doctrine, private parties may be immune from federal antitrust scrutiny if their anticompetitive acts are the product of state regulation.

In order for anticompetitive conduct to be shielded from the antitrust laws, this doctrine requires that the conduct be pursuant to a clearly articulated and affirmatively expressed state policy, and actively supervised by the State.

This bill declares that the contemplated agreements and their participants are not in violation of the antitrust laws. It does not, however, provide for any active supervision of the conduct of the participants by the State.

We are therefore concerned that this bill may provide protection for these cooperative purchasing agreements and their participants only under state law. It may leave the agreements and the participants subject to investigation by the United States Department of Justice and the Federal Trade Commission under the federal antitrust laws, and subject to prosecution, depending on the agreements established.

Finally, there are some technical issues posed by the bill. First, it is unclear whether and to what extent any cost savings realized from the cooperative purchasing agreements must be passed on to consumers, in order for the agreements to be deemed compliant. Second, gasoline dealers may not be able to take advantage of the provisions if their franchise requires that they only sell specified petroleum products.

For these reasons, we recommend that this bill be held.

WRITTEN ONLY

**TESTIMONY OF HERMINA MORITA  
CHAIR, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
APRIL 5, 2011**

**MEASURE: H.B. No. 1455 H.D. 2**  
**TITLE: Relating to Petroleum Products.**

Chair Baker and Members of the Committee:

**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 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 and provides comments on the bill.

**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.

Thank you for the opportunity to testify.

Charlotte A. Carter-Yamauchi  
Acting Director

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Fax (808) 587-0681




LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
415 S. Beretania Street, Room 446  
Honolulu, Hawaii 96813

March 17, 2011

## MEMORANDUM

**TO:** Honorable Pono Chong  
Representative, 49th District

**FROM:** Matthew Coke  
Research Attorney 

**SUBJECT:** Cooperative Purchasing Agreements

You requested this office to draft a proposed House Bill No. 1455, H.D. 2, S.D. 1, that provides for oversight of cooperative purchasing agreements to gasoline dealers for the purchase of motor vehicle fuel. Your request was based on the need to amend the bill to avoid prohibitions on state actions that restrain trade in violation of federal antitrust laws (Sherman Antitrust Act).<sup>1</sup>

Generally speaking, a state action that restrains trade or is anticompetitive may be exempt from the federal Sherman Antitrust Act if the action is taken to further legitimate state policy goals. To be exempt, the state action must meet specific criteria:

- (1) The state must act as a sovereign, rather than a commercial participant in the market;
- (2) The state action must be clearly articulated and expressed as an affirmative state policy; and
- (3) The policy must be actively supervised by the state itself.<sup>2</sup>

Accordingly, we have prepared the proposed draft in a manner that attempts to meet these criteria. First, the State would act as a sovereign, regulating the agreements rather than

<sup>1</sup> 15 U.S.C §§1-7

<sup>2</sup> See Parker v. Brown, 317 U.S. 341 (1943) and Cal. Retail Liquor Dealers Assoc. v. Midcal Aluminum, Inc., 445 U.S. 97 (1980).

Honorable Pono Chong

-2-

.March 17, 2011

participating in the fuel market. Second, we have added a purpose section that sets forth state policy and describes the Legislature's intent to stabilize fuel prices and, thereby, the state economy. Third, the proposed draft requires the Public Utilities Commission to oversee and approve cooperative purchasing agreements. We have also included a severability clause that would preserve as much of the bill as possible, even if part is deemed a violation of federal law.

Please note, however, that the exemption criteria described above are general ones, nuances of which have been developed by many judicial decisions over the years. In the time that we have had to prepare this proposed draft, we have had limited time to research the issue for you, and cannot state conclusively that the proposed draft, if enacted, would withstand a legal challenge, in whole or in part.

If you have any questions, please contact me by phone at 587-0666 or by email at [coke@capitol.hawaii.gov](mailto:coke@capitol.hawaii.gov).

APPROVED:



Charlotte A. Carter-Yamauchi  
Acting Director

Enc.

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

**H.B. NO.**

1455  
H.D. 2  
S.D. 1  
Proposed

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# A BILL FOR AN ACT

RELATING TO PETROLEUM PRODUCTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that sudden changes in  
2 petroleum markets have profound effects on the price that  
3 gasoline dealers must pay for petroleum products. Price  
4 increases paid by gasoline dealers are passed on to other  
5 businesses and to consumers who must then pay a higher price to  
6 fuel their vehicles. High retail fuel prices, in turn, have a  
7 broad economic impact on other sectors of the economy, by  
8 limiting the amount of money that businesses and consumers have  
9 available to spend on other goods and services. Volatile fuel  
10 prices also undermine the predictability necessary for  
11 businesses and consumers to enter into commercial and other  
12 agreements.

13           The legislature also finds that cooperative purchasing  
14 agreements would provide gasoline dealers with greater  
15 negotiating power and purchasing leverage by allowing them to  
16 collectively purchase larger quantities of fuel at prices lower  
17 than they would pay if purchasing individually. The legislature  
18 intends this measure to both reduce and stabilize fuel prices in



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H.B. NO. 1455  
H.D. 2  
S.D. 1  
Proposed

1 Hawaii, and in turn, to stabilize the broader economy of the  
2 State. The legislature finds that, with proper oversight by the  
3 public utilities commission, cooperative purchasing agreements  
4 for gasoline will help achieve this state policy goal.

5 The purpose of this Act is to authorize gasoline dealers to  
6 enter into cooperative purchasing agreements for the purchase of  
7 motor vehicle fuel, subject to the approval and oversight of the  
8 public utilities commission.

9 SECTION 2. Chapter 486H, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§486H- Cooperative purchasing authorized. (a) A  
13 gasoline dealer who operates an independent retail station or  
14 stations may participate in, sponsor, conduct, or administer a  
15 cooperative purchasing agreement for the purchase of motor  
16 vehicle fuel with one or more gasoline dealers pursuant to an  
17 agreement entered into between the participants. Cooperative  
18 purchasing agreements under this section shall be for the  
19 purpose of providing gasoline dealers purchasing power to  
20 acquire discounts on purchases of motor vehicle fuel and thereby  
21 lower costs for dealers and consumers. The cooperative





H.B. NO. 1455  
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Proposed

1 purchasing may include joint or multi-party contracts between  
2 gasoline dealers.

3 (b) No gasoline dealer who enters into a cooperative  
4 purchasing agreement in compliance with this section shall be  
5 deemed to commit a conspiracy or combination in restraint of  
6 trade or an illegal monopoly, or an attempt to lessen  
7 competition or fix prices arbitrarily, or the creation of a  
8 combination or pool, or to accomplish any improper or illegal  
9 purpose. No cooperative purchasing agreement authorized under  
10 this section shall be considered illegal, in restraint of trade,  
11 or part of a conspiracy or combination to accomplish an illegal  
12 purpose or act.

13 (c) The commission shall have jurisdiction to require that  
14 cooperative purchasing agreements for motor vehicle fuel  
15 purchases are established solely for the purpose set forth in  
16 subsection (a). The parties to an agreement shall submit the  
17 proposed cooperative purchasing agreement to the commission for  
18 review. No cooperative purchasing agreement shall take effect  
19 without the prior approval of the commission.

20 (d) The commission shall collect a fee of \$ from each  
21 gasoline dealer that is a party to a cooperative purchasing



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Proposed

1 agreement. Fees collected by the commission shall be deposited  
2 into the public utilities commission special fund.

3 (e) The public utilities commission shall adopt rules  
4 pursuant to chapter 91 for the purposes of this section. The  
5 rules shall include necessary terms and requirements for  
6 cooperative purchasing agreements and shall ensure the  
7 protection of consumers and prevention of unfair trade  
8 practices."

9 SECTION 3. There is appropriated out of the general  
10 revenues of the State of Hawaii the sum of \$ or so much  
11 thereof as may be necessary for fiscal year 2011-2012 and the  
12 same sum or so much thereof as may be necessary for fiscal year  
13 2012-2013 for the purpose of approval and oversight of  
14 cooperative purchasing agreements, including the hiring  
15 of full-time equivalent employees to carry out this  
16 purpose.

17 The sums appropriated shall be expended by the public  
18 utilities commission for the purposes of this Act.

19 SECTION 4. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or  
22 applications of the Act that can be given effect without the



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**H.B. NO.** 1455  
H.D. 2  
S.D. 1  
Proposed

1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 5. New statutory material is underscored.

4 SECTION 6. This Act shall take effect on July 1, 2030.



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**H.B. NO.** 1455  
H.D. 2  
S.D. 1  
Proposed

**Report Title:**

Gasoline Dealers; Cooperative Purchasing; Appropriation

**Description:**

Allows gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on motor vehicle fuel purchases. Requires agreements to be approved by the PUC. Directs the PUC to adopt rules that ensure consumer protection and prevention of unfair trade practices. Appropriates funds. Effective 7/1/2030. (SD1 PROPOSED)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





**Western States Petroleum Association**

Senate Committee on Commerce and Consumer Protection

DATE: Tuesday, April 5, 2011  
TIME: 9:00 a.m.  
PLACE: Conference Room 229  
RE: HB1455 HD2: Relating to Petroleum Products

I am testifying on behalf of the Western States Petroleum Association (known as WSPA) in opposition to HB1455 HD2. 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 HB1455 HD2 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. This measure may also be unconstitutional to the extent that it interferes with any existing contractual agreements.

Thank you for giving WSPA the opportunity to testify today.

April 5, 2011

To: Senate Committee on Commerce and Consumer Protection

**Re: Testimony on HB 1455 HD2**

Good morning.

My name is Brian Marumoto and I am here on behalf of a friend who runs a service station located at 130 West Kam Ave. on the Island of Maui. I am here to testify in favor of HB1455 HD2. For many years my friend has tried to sell gasoline at his station at a price that would be competitive with any other location on our island. He felt that customers would be attracted by a lower price and what he didn't make in margin would be offset by the increased volume.

COSTCO and other low priced marketers, particularly company operated locations, have made this a difficult proposition as margins and volume have declined at his location. House Bill 1455 HD2 would offer him a chance to once again be competitive as he could buy gasoline at a reduced cost which would allow him to offer lower street prices. His customers would be happy as they would reduce their automotive costs and he should be able to reverse the trend of declining volume at his station.

I have also talked to some of the other independent dealers and they have also voiced their concerns to me. They worry that down the road there will be no more independent dealers because they would not be able to compete against the big box stores and corporate owned stations.

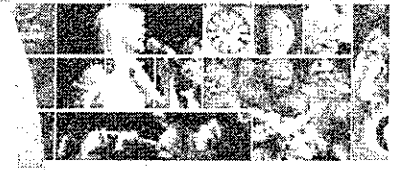
I love going to my friend's station because of the interaction between staff and customer just like the good ole Mom and Pop stores that made the islands unique!

This bill, which would offer him the chance to be competitive and would also give him a feeling of security as predatory pricing by company operated stations would be less of an issue. I urge passage of this measure.

**Attachment: Copy of an article from the Maui News, February 27, 2011.**

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# Aloha Petroleum to open its first station on Maui

## Gas prices rise around island

February 27, 2014 - 5p by BRIAN PERRY, City Editor

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KAHULUI - Even as the cost of fueling up on Maui topped \$4 per gallon for regular unleaded gas last week on Maui, Aloha Petroleum is developing a new gas station and a 2,000-square-foot convenience store next to Home Depot in Kahului.

Not far from there, Costco is laying the groundwork for its own gas station near its store in Kahului. (See following story.)

The coming of two new players has not gone unnoticed by competitors in the island's tough market to provide fuel to motorists. And, it comes at a time when Maui's current gas providers are struggling, said Terry McBarnet, vice president of Maui Oil Co.

"I don't think any service station on Maui is growing," he said. "They're either hanging where they are or fighting not to go smaller."

"Having another station come into town is going to put more pressure on everybody," he said.

But, in a free market, it's "everybody's right to compete. . . . If somebody wants to build a station, they have every right to do so."

Aloha Petroleum's new station is being built on a little more than a half-acre owned by Home Depot. The goal is to open it as early as the end of June, said Richard Parry, Aloha Petroleum's president and chief executive officer.

The station would be Aloha Petroleum's first on Maui, he said. The company already has 43 stations on Oahu and 11 on the Big Island.

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Aloha Petroleum has the infrastructure to deliver fuel to its station after buying the Hawaii retail and terminal assets of Shell Oil Products and Honolulu Terminal LLC in May.

It was a strategic decision to locate Aloha's first gas station at the intersection of Pakaula Street - the access road to Home Depot off Dairy Road - and the expected alignment of the Kahului Airport access road, Parry said. Being located near the planned access road, the new station would be located in a prime spot to entice visitors wanting to refill their rental car tanks before catching flights out of Kahului Airport.

It remained uncertain, however, when the state would build the long-awaited Kahului Airport access road, which would bypass congested Dairy Road and provide motorists a direct route to the airport from Kuihelani and Mokulele highways.

The new station will have four pumps and eight fueling positions, Parry said.

The convenience store will offer typical items such as soda, snacks, other food and cigarettes. Aloha Petroleum probably will seek a liquor license, he added.

The station also might offer souvenirs, T-shirts and other items for tourists, he said.

Parry said there would be a "bit of experimentation early on" to see what sells well.

The new station will be open 24 hours a day and probably provide jobs to 12 to 15 employees, he said.

Parry acknowledged that Aloha Petroleum would like to "expand in the market" on Maui. The company has invested more than \$2 million to establish a foothold on Maui and is committed to establishing a loyal base of local customers, he said.

"We try to offer competitive prices and a quality buying experience," he said. "We really do cater to local customers and have that local name recognition."

Parry said it's a daunting task to build a gas station now with "very exacting standards" to safeguard against leaking fuel storage tanks.

Underground storage tanks need to be double-walled, for example, he said. And, leak detection equipment needs to be in place so operators of the station "know exactly what's going on underground."

"Gas stations have become quite sophisticated," he said. "We want to make sure we don't spill the product."

Aloha Petroleum is a privately held company based in Honolulu.



McBarnet said the current rise in gas prices can be attributed to the turmoil in the Middle East.

"If there is a fear of instability that will adversely affect the price in the future, it's going to affect the price today," he said.

McBarnet said there's no immediate problem with U.S. supplies of oil; the country has at least 90 days of supply available.

The fear is of a problem with supply in the future, he said.

"The energy business does not look at today," he said. "It looks at tomorrow and down the road."

McBarnet said he expects consumers will react with conservative spending as the price of unleaded regular gas rises above \$4 per gallon

"When prices go up, you sell less fuel because people are using less fuel," he said.

Drivers take fewer trips, car pool and find other ways to conserve, he said.

"People are more careful how much they drive," he said. "With gas more expensive, people make more careful decisions."

\* Brian Perry can be reached at citydesk@mauinews.com.

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April 4, 2011

The Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 230  
415 S. Beretania Street  
Honolulu, Hawaii 96813

The Honorable Brian T. Taniguchi, Vice Chair  
Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 219  
415 S. Beretania Street  
Honolulu, Hawaii 96813

**Re: House Bill 1455, House Draft 2: Support**

Dear Senator Baker, Senator Taniguchi, and Members of the Committee:

My name is Frederick W. Rohlfing III and I am an attorney in private practice. I am appearing today on behalf of my client, Kapunakea Partners, which owns and operates a service station in Lahaina known as West Maui Shell.

My legal practice is concentrated in the area of business litigation, and I have litigated a number of cases involving both state and federal competition law issues. I am a member of the Antitrust Section of the American Bar Association.

During the 1980s and 1990s, one of my clients was Texaco Refining & Marketing, Inc., which I represented in a number of matters up until the time the company sold its Hawaii assets to U.S. Restaurants Inc. and left the Hawaii market.

I have represented Kapunakea Partners since 2008. Kapunakea Partners supports House Bill 1455, House Draft 2.

The bill will authorize gasoline dealers who operate independent retail stations to participate in a cooperative purchasing agreement for the purchase of gasoline. The bill declares further that cooperative purchasing agreements reached in accordance with this legislation are not in restraint of trade.

*The Honorable Rosalyn H. Baker, Chair*  
*The Honorable Brian T. Taniguchi, Vice Chair*  
April 4, 2011  
Page 2

This bill will help level the playing field for independent gasoline retailers by enabling them to band together to negotiate for reduced prices for petroleum products from wholesale suppliers.

In testimony before this Committee concerning the companion Senate Bill, SB 1431, Deputy Attorney General Rodney Kimura stated that the Attorney General is "concerned that this bill may only provide protection for these cooperative purchasing agreements and their participants under state law, leaving the agreements and the participants subject to investigation by the United States Department of Justice and the Federal Trade Commission under the federal antitrust laws, and subject to prosecution depending on the agreements established."

My client agrees with the Attorney General that this bill would provide protection for these purchasing agreements and their participants under state law. That is the purpose of the bill. The bill is not intended to exempt these purchasing agreements from complying with federal antitrust laws.

I believe any potential federal antitrust law issues can be mitigated through careful organization and operation of the cooperative purchasing group contemplated by HB 1455. Group purchasing organizations are not generally viewed with suspicion under federal antitrust laws. The United States Supreme Court has stated that wholesale purchasing cooperatives "are not a form of concerted activity characteristically likely to result in predominantly anticompetitive effects. Rather, such cooperative arrangements would seem to be 'designed to increase economic efficiency and render markets more, rather than less, competitive.'" *Northwest Wholesale Stationers v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 295 (1985), quoting *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1, 20 (1979).

I therefore ask your Committee amend this bill to take effect upon its approval, and to recommend its passage so that independent gasoline dealers can focus their attention on complying with federal antitrust laws in structuring and operating cooperative arrangements for the purchase of gasoline from wholesale suppliers without the need to also worry about additional issues in complying with our state's antitrust laws.

Sincerely,



Frederick W. Rohlifing III

April 5, 2011

To: Senator Roz Baker, Chair, Senate Committee on Commerce and Consumer Protection and Members of the Committee

From: Stan Morinaka

Re: Testimony in favor of HB 1455 HD2

My name is Stan Morinaka and I am an independent gasoline dealer on the island Of Kauai and I am strongly in favor of the passage of HB 1455 HD2.

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 HD2 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 humbly ask that you pass HB 1455 HD2. For us, it will make the difference of our business surviving or not.

**Re: HB 1455, HD2**

Mailelani Cox [cox011@hawaii.rr.com]

April 5, 2011

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**Testimony in Support of HB 1455 HD2– Allows gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases.**

Aloha Chair Baker and Members of the Committee. I am Maile Cox, an independent gasoline dealer on the island of Kauai, and am testifying in support of HB 1455HD2.

HB 1455 HD1 will give independent dealers the opportunity to form a co-op to purchase large quantities of product from manufacturers in order to get the same volume discounts from manufacturers that are currently only given to big box retailers and company owned and operated stations.

This will level the playing field so that independent dealers will then be able to charge customers the same prices 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.

Big box retailers 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 any given time, to a maximum of 10,000 gallons. Therefore, even if a big box retailer presumably orders more product than an independent retailer, it will take the same amount of tankers to haul the fuel to the stations.

Independent dealers are not given the same discount for volume purchases even though he/she may buy the same 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 survive and compete in this market as they must pay higher prices per gallon when buying product and therefore cannot lower their prices to consumers without going out of business.

April 5, 2011

To: Senator Roz Baker, Chair, Committee on Commerce and Consumer Protection and Members of the Committee

From: Brian Arakawa

Re: Testimony in Favor of HB 1455, HD2

HB1455,HD2 would give independent gasoline dealers the opportunity to form a co-op to pool quantity purchases in order to get volume discounts. This will help to level the playing field so that the small independent dealers can compete with company operated gas stations and big box retailers.

The law limits the amount of gas that a tanker can hold and deliver at any given time to a maximum of 10,000 gallons. So why shouldn't the independent dealers receive the same discount as COSTCO or the company operated stations if they order the same quantity?

Currently, many independent dealers are charged more for their gas than the company operated stations with whom they must compete. Add to this situation the large retailers like COSTCO who receive volume discounts and you can see that it is just a matter of time before the small dealers will be forced out of business.

Madam Chair, at the last hearing on this bill, the Attorney General testified:

“In order for anticompetitive conduct to be shielded from the antitrust laws, this doctrine requires that the conduct be pursuant to a clearly articulated and affirmatively expressed state policy, and actively supervised by the State.”

House Draft 2 of this measure removed all reference to the Public Utilities Commission and its oversight should the co-op bill become law. That action renders the bill, in its current form, defective and subject to anti-trust violations. I therefore respectfully request that the proposed amendment which is attached to my testimony be considered and that the bill be amended accordingly.

Thank you for your time and attention to this matter.



Dennis M. Blake  
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To: Senate Committee on Commerce and Consumer Protection

Re: House Bill 1455 – Cooperative Gasoline Purchasing

I am writing in strong support of House Bill 1455. I worked my entire 36 year career with Shell Oil in their retail marketing department as a sales representative. Thirty-three of those years were spent in the Hawaiian Islands. During that period I called on retail service station dealers on Oahu, Maui, Hawaii and Kauai and assisted them in all aspects of their business. I retired in 2002 but I have kept up with the petroleum business as it affects Hawaii,

I remembered the 1970's and 1980's as a period of vigorous competition between the four major oil companies: Shell Chevron, Texaco, and UNOCAL and the primary independents Powerine and Aloha Petroleum. No company had a market share that exceeded the low twenty percent level. The dealer class of trade was healthy and there was balanced competition.

Today that scenario has changes. Only one major brand oil company, Chevron, remains in the islands. The UNOCAL assets were purchased by Mid Pacific Petroleum, the Texaco brand disappeared, although most of the stations were bought by Aloha Petroleum, and the Shell locations were also acquired by Aloha Petroleum. The Powerine stations were bought by PRI, then sold to BHP and subsequently purchased by Tesoro. One company, Aloha Petroleum, now controls nearly forty percent of the gasoline market in the State of Hawaii. While these consolidations were occurring the dealer class of trade shrunk dramatically as many stations were either converted to company operations or were permanently closed. Why? Many dealers could not operate profitably in this changed marketing environment as they were competing with company operated stations. The group most affected by this change is the motoring public as now there is little competition among the remaining companies and prices are uniformly high.

House Bill 1455 offers the best possible solution to this competitive problem as it would allow dealers to get a better discount when buying gasoline as a cooperative group. With a better buying price dealers could then be more competitive with company operations as well as the COSTCO's, Sam Clubs, and soon to be opened Safeway's locations that are gaining volume with lower prices.

Cooperative efforts are nothing new in the Islands. In the mid to late 90's Shell and UNOCAL reached an agreement whereby Shell loaded gasoline at UNOCAL's Kawaihae facility and repaid UNOCAL with gasoline at Shell's Nawiliwili plant. Both companies saved money through this cooperative arrangement.

Competition is the heart beat of American business. The beneficiary is the public. Passage of House Bill 1455 will provide greater competition in the marketplace and ultimately lead to lower costs for the consumer. I urge your committee to pass this bill.

Sincerely,

*Dennis Blake*

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