

SB 1233



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

In reply, please refer to:
File:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

S.B. 1233, RELATING TO VEHICULAR EMISSIONS

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

**February 12, 2009
4:00 p.m.**

1 **Department's Position:** The Department of Health appreciates the intent of this measure; however, given
2 the implementation issues of this bill and the current fiscal difficulties, it is not prudent to pursue enactment
3 at this time.

4 **Fiscal Implications:** No funding and permanent position counts have been provided. It is unknown at this
5 time as to the amount of funding and personnel required to develop and administer the program.

6 **Purpose and Justification:** In an effort to address global climate change, this bill requires the Department
7 to adopt rules by January 1, 2011, establishing emissions and fuel efficiency standards that meet or exceed
8 those found in California's Low Emissions Vehicle, Phase II program, otherwise known as LEV II-Pavley.
9 The rules are to apply to all new motor vehicles sold or offered for lease in the state of Hawaii beginning
10 with model year 2011 or later. The rules should include provisions for enforcement and be periodically
11 updated to maintain levels consistent with California's program.

12 California's Low Emissions Vehicle, Phase II program, otherwise known as LEV II-Pavley, is a
13 comprehensive program for regulating greenhouse gases (GHGs), as well as ozone precursors (nonmethane
14 organic gases, nitrogen oxides), carbon monoxide, particulate matter, and hazardous air emissions from
15 new motor vehicles. Although the Department supports the reduction of vehicle emissions, the bill has a
16 number of legal and execution issues that may affect implementation within the state.

1 The federal Clean Air Act (CAA) limits which states can adopt California standards. Under the
2 CAA, essentially there are only two types of cars that are allowed to be manufactured in the U.S., those that
3 meet “federal” emissions standards and those that meet “California” standards. Section 177, of the CAA
4 allows only non-attainment states, those that do not meet the federal ambient air quality standards, to opt
5 into the stricter California vehicle standards which would further the means towards compliance. Since
6 non-attainment states already have an active mobile source program for regulating vehicle emissions,
7 opting into and incorporating the California program can be readily accomplished. Since Hawaii has
8 historically met the federal air standards and is classified as attainment, there is uncertainty whether
9 Hawaii, as with other non-attainment states, is legally able to opt into the California motor vehicle program
10 or to adopt stricter standards.

11 Irrespective of the legal uncertainty, if the Department is required to adopt the California program,
12 the bill does not provide any funding or position counts to develop and implement this new motor vehicle
13 program. To initiate such an extensive program with no resources and a highly optimistic schedule makes
14 this measure impossible to fulfill.

15 The Department suggests that this matter be referred to the Greenhouse Gas Emissions Reduction
16 Task Force, established under Act 234 of the 2007 Legislature. The task force is expected to prepare a
17 work plan and a regulatory scheme by December 2009, and should be given the opportunity to review the
18 various options, including the adoption of the California program for reducing greenhouse gas emissions
19 from motor vehicles. Also, with the condition of the economy, it would be more prudent to wait and see
20 how California and the other states vehicle programs develop to avoid any startup problems that may be
21 encountered. It should be easier to opt into a vehicle program at a later date as legal issues are resolved,
22 and the vehicle manufacturers are complying and producing the lower emitting vehicles.

23 Thank you for this opportunity to testify.

24

25



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 1233, RELATING TO VEHICULAR EMISSIONS.

BEFORE THE:

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

DATE: Thursday, February 12, 2009 **TIME:** 4:00 PM

LOCATION: State Capitol, Room 225

TESTIFIER(S): Mark J. Bennett, Attorney General
or William F. Cooper, Deputy Attorney General

Chair Gabbard and Members of the Committee:

The Department of the Attorney General has several concerns about this measure.

This measure will adopt statewide requirements for vehicle emissions and fuel efficiency that meet or exceed the standards found in the motor vehicle emission standards established in the California Code of Regulations for passenger cars, light duty trucks, and medium duty passenger vehicles. Under Title 42 U.S.C. section 7543 (section 209 of the federal Clean Air Act), no State or political subdivision thereof, besides California if it obtains a waiver to do so, shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines.

This measure relies on Title 42 U.S.C. section 7507 (section 177 of the federal Clean Air Act) in order for the State of Hawaii to adopt and enforce the motor vehicle emission program standards of the State of California if California is granted a waiver. Title 42 U.S.C. section 7507 is titled, "New motor vehicle emission standards in nonattainment areas." It allows states, other than California, that are in nonattainment in certain areas and have United States Environmental Protection Agency plans for their nonattainment areas, to

adopt California's approved motor vehicle emission standards. A state is considered to be in nonattainment when it is currently not able to meet one or more of the National Ambient Air Quality Standards for the criteria pollutants designated in the Clean Air Act. Hawaii currently does meet all of the National Ambient Air Quality Standards for all criteria pollutant designated in the Clean Air Act and is considered to be in attainment.

Since Hawaii is currently considered to be in attainment, Hawaii's adoption and enforcement of this measure could be challenged on the basis that it is not allowed to do so under Title 42 U.S.C. section 7543 and does not qualify for the California waiver under Title 42 U.S.C. section 7507.

The second concern is that even if Hawaii was found to be in non-attainment, it would not be able to adopt statewide requirements for vehicular emissions "that meet or exceed" the standards for vehicular emissions found in the California low emission vehicle program. Title 42 U.S.C. section 7507 clearly limits States that are in non-attainment to only be able to adopt emission standards that are "identical to the California standards for which a waiver has been granted for such model year". These emission standards can not be such that they "meet or exceed" California's standards, they must be "identical" to California's standards.

The final concern about this measure is that it intends to establish statewide "fuel efficiency" standards. The federal government has already established national motor vehicle fuel efficiency standards with its Corporate Average Fuel Efficiency (C.A.F.E.) standards found in 49 USC CHAPTER 329, and has explicitly preempted every state from establishing alternative automotive fuel efficiency standards under 49 U.S.C. Section 32919.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:
GARY M. SLOVIN
CHRISTOPHER G. PABLO
ANNE T. HORIUCHI
MIHOKO E. ITO

ALI PLACE, SUITE 1800 • 1099 ALAKEA STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880
info@goodsill.com • www.goodsill.com

INTERNET:
gslovin@goodsill.com
cpablo@goodsill.com
ahoriuchi@goodsill.com
meito@goodsill.com

MEMORANDUM

TO: Senator Mike Gabbard
Chair, Committee on Energy and Environment

FROM: Anne T. Horiuchi

DATE: February 11, 2009

RE: **S.B. 1233 – Relating to Vehicular Emissions**
Hearing: Thursday, February 12, 2009 at 4:00 p.m., Room 225

I am Anne Horiuchi testifying on behalf of the Alliance of Automobile Manufacturers (“Alliance”). The Alliance strongly opposes S.B. 1233, calling for the implementation of the California Low Emissions Vehicle Program – or CA LEV – in Hawaii.

The Alliance is a trade association representing eleven car and light truck manufacturers including: BMW, Chrysler, Ford, GM, Jaguar Land Rover, Mazda, Mitsubishi, Mercedes-Benz, Porsche, Toyota, and Volkswagen.

To begin a discussion of the technical and policy implications associated with CA LEV, it is important to understand the three components of the program.

The first component is the Low Emission Vehicle program, or LEV II. LEV II regulates smog and ozone-forming emissions such as exhaust PM_{2.5}, NO_x, volatile organic compounds, carbon monoxide, and air toxics.

The second component is the Zero Emission Vehicle Mandate, or ZEV Mandate. The ZEV Mandate is a battery-powered/hydrogen fuel cell mandate also intended to reduce smog and ozone-forming emissions.

These two smog and ozone forming emissions provisions in the California program provide NO MEASURABLE environmental or clean air benefit beyond the existing federal program, called Tier 2, which Hawaii already follows. Often the adoption of the CA LEV standards is painted as an effort to “clean the air;” however, that misrepresents the benefit that the CA LEV program provides. A new car is a clean car –

February 11, 2009

Page 2

whether it is sold in California or Hawaii, and both the California and federal programs provide a 70% reduction in tailpipe emissions.

It is the third component – the proposed fuel economy standards – that most people associate with CA LEV. These standards are also referred to as California's greenhouse gas emissions standards, AB 1493, or the Pavley standards. Current law does not allow any state, including California, to enforce California's fuel economy standards at this time for reasons outlined below.

The automobile industry shares the goals of S.B. 1233 – a clean environment, energy independence, and greatly reduced greenhouse gas emissions. We just disagree on the methods of achieving them. The Alliance strongly supports an aggressive, comprehensive, and national approach to the climate change issue as opposed to the California standards, which will likely result in product restrictions, relinquishes Hawaii's authority to California, and establishes a patchwork of constantly changing regulations.

The Alliance's commitment to reducing greenhouse gas emissions through a national solution lead to the Alliance's strong support of the Energy Independence and Security Act of 2007, or EISA.

The centerpiece of EISA is a requirement that automakers achieve an unprecedented minimum 40 percent increase in Corporate Average Fuel Economy (CAFE) standards by 2020, resulting in a minimum 30 percent reduction in CO₂ emissions. It is important to emphasize the word *minimum* as EISA calls for regulatory agencies to set standards through 2020 based on the maximum feasible technology available to auto manufacturers.

In April 2008, the National Highway Traffic Safety Administration, or NHTSA, responded to EISA and released its proposal for national fuel economy standards through 2015. This proposal calls for an annual 4.5 percent increase in fuel economy over a five year period, far exceeding the 3.3 percent annual increase proposed by Congress in EISA. ***NHTSA's proposed rule sets federal fuel economy standards for the car and light truck fleet that are higher than CA LEV's proposed standards in model years 2011, and then again in 2013 – 2015.***

While the single, national standard that was established by EISA and is being promulgated by NHTSA is shaping up to be just as effective as California's

February 11, 2009

Page 3

proposed fuel economy program, it still provides the flexibility necessary for automakers to meet the aggressive standards.

On January 26, President Obama directed the Department of Transportation (DOT) and NHTSA to quickly finalize the new CAFE standards for model year 2011. In order to adhere to appropriate lead time requirements for manufacturers, the model year 2011 standards must be finalized by March 30, 2009. Additionally, President Obama directed DOT and NHTSA to thoroughly review the proposed standards for subsequent model years to ensure that all comments and legal considerations are reflected in the final rule.

The auto industry shares President Obama's urgency in finalizing these standards and would further encourage DOT and NHTSA to release all model year standards simultaneously.

With the adoption of EISA in December 2007, U.S. EPA recognized the establishment of a strong national program and denied California's request to implement its own fuel economy regulations as part of the existing CA LEV program. This action prohibits California and all other states from implementing CA LEV's proposed fuel economy regulations at this time.

Again, on January 26, President Obama directed EPA to review its decision regarding California's waiver request; however the outcome of that review remains in question. The President's assurance that he's seeking a "comprehensive approach that makes our economy stronger and our nation more secure," positively reflects the auto industry's position that EISA is the appropriate mechanism to regulate transportation sector greenhouse gases, not the California standards.

Until a resolution is reached on the California waiver, states that adopt CA LEV will only be able to implement its smog and ozone forming emissions programs, which again, provide no environmental benefit above and beyond the existing federal emissions program.

In lieu of all the recent federal activity pertaining to both state and national fuel economy standards and the arguments outlined above, the Alliance believes that implementing CA LEV through S.B. 1233 is the wrong public policy choice for the following reasons:

February 11, 2009
Page 4

1. The California program will result in product restrictions.

You may be asking why automakers believe EISA is better than California's proposed fuel economy standards. The answer is simple. California's program is too aggressive too soon for the time frame automakers need to design and launch our vehicles. The only cost-effective way to comply with California's program is to *restrict the sale of specific vehicles*.

A national standard allows manufacturers to balance Hawaii's fleet, which leans toward trucks, against California's fleet, which leans toward cars. The California standards call for each state to conform to California's designated fuel economy averages. In order to comply in Hawaii, automakers will likely rely on product restrictions. This will severely limit the availability of the light trucks and SUVs that Hawaii residents favor.

2. The ZEV Mandate is the most expensive regulation in the history of the California Air Resources Board.

The latest estimate by CARB is that this regulation may cost upwards of \$1 billion dollars for just the six largest automakers alone for "zero emission vehicles" every single year. And this is just in California.

But the ZEV Mandate isn't just expensive for manufacturers – it requires a commitment by the state for the infrastructure necessary to support the advanced technology vehicles mandated in this regulation. Hydrogen fueling stations and battery electric charging stations are necessary if the state adopts a program that mandates electric and hydrogen fuel cell vehicles.

3. Hawaii should not cede its regulatory authority to California.

CA LEV is a California program designed by California legislators and regulators – none of whom are accountable to Hawaii or its residents. By adopting CA LEV, Hawaii is ceding its authority to a state that is vastly different and tying itself to all future regulatory changes that California makes.

EISA applies a high standard to all 50 states that is good for both consumers and energy security. Individually, states also have an important role to play in addressing transportation sector greenhouse gases. Among other initiatives, the Alliance

February 11, 2009

Page 5

believes that states can supplement the federal government's work by incentivizing the purchase and use of alternative fuel and advanced technology vehicles, as well as investigate fleet modernization programs to get older, higher emitting vehicles off the road.

Our engineers have been handed a very challenging mandate in EISA. We ask that you allow our experts to work towards achieving EISA's aggressive goal without being sidelined by the burden of complying with individual state programs designed to meet the same goal. The Alliance asks that you hold S.B. 1233 in committee.

The Alliance has extensive information regarding our position on CA LEV. For more information please contact Laura Dooley with the Alliance, or contact Gary Slovin, the Alliance's local representative.

Laura Dooley
Director, State Affairs
Alliance of Automobile Manufacturers
1401 I Street, NW
Washington, DC 20005
202-326-5543
ldooley@autoalliance.org

Gary Slovin, Esq.
Managing Partner
Goodsill Anderson Quinn & Stifel LLP
1099 Alakea Street, Suite 1800
Honolulu, HI 96813
808-547-5746
gslovin@goodsill.com

**SENATE COMMITTEE ON
ENERGY AND ENVIRONMENT**

February 12, 2009

Senate Bill 1233 Relating to Vehicular Emissions

Chair Gabbard and members of the Senate Committee on Energy and Environment, I am Rick Tsujimura, representing General Motors Corporation (GM). GM opposes Senate Bill 1233 Relating to Vehicular Emissions, legislation that proposes to require adoption of the California vehicle emissions standards.

GM, as well as its trade association the Alliance of Automobile Manufacturers which includes other major automobile manufacturers, supports a nationwide program to address fuel economy and greenhouse gas emissions, and we are ready to work with the Obama Administration on developing a strong national program. We have already seen fuel economy standards proposed by the previous Administration that are tougher than California standards on trucks, and about the same for the car plus truck fleet combined. And as the Obama Administration considers the final standards that it will issue, it will be guided by the Energy Independence and Security Act of 2007 that requires that the Federal government adopt standards that are the maximum feasible.

In the meantime, GM is continuing to develop and bring to market advanced technologies to reduce emissions and improve fuel efficiency, and bringing forward these advanced technologies nationally and globally – not just in California. For smog-forming emissions, today's new vehicles, whether Federally certified or California certified, are 99% cleaner compared to pre-control vehicles. For fuel efficiency and greenhouse gas emissions, GM is aggressively pursuing a broad array of technologies over the near-, mid-, and long-term. For example, GM continues to increase production of vehicles equipped with Active Fuel Management, a technology that shuts off fuel to cylinders when full power from the engine is not needed. GM has developed multiple hybrid propulsion systems which are being deployed in a variety of models ranging from mid-size cars to SUVs and pickups to buses. The Saturn Vue Green Line, Saturn Aura Green Line and Chevy Malibu, are equipped with the GM Hybrid System and are available today. The Chevy Tahoe, GMC Yukon and Cadillac Escalade full size hybrid SUVs, and Chevy Silverado and GMC Sierra full-size pickups, all equipped with the 2-Mode Hybrid System, are also on the market now. And GM is developing the Chevy Volt as fast as it can, with introduction expected late in 2010. The Chevy Volt is an extended range electric vehicle, traveling 40 miles on a single charge of electricity from the battery. It is also equipped with a small internal combustion engine that kicks-in only to provide energy to the battery to extend the range. And GM has placed over 100 Chevy Equinox fuel cell vehicles in service by the end of 2008 as part of a program known as Project DriveWay, the largest program of its type to date. These vehicles will provide valuable customer feedback that will be used to help guide future fuel cell vehicle development.

With all of these advanced technologies, the point is that GM is developing them for national and global markets. These technologies are not being developed solely for states that

have adopted California standards. In terms of advanced technology vehicle availability, fuel economy, and reductions in greenhouse gas and smog-forming emissions, Hawaii has nothing to gain by adopting California's emission standards. But it does have something to lose.

Flex-fuel vehicles powered by E85 ethanol, a technology that can do the most to reduce petroleum usage and greenhouse gas emissions in the near-term, are being restricted in all states that have adopted California standards. This is due to the inflexible nature of California's smog emission standards. No manufacturer has achieved California's most stringent smog emission standard category, Super Ultra Low Emission Vehicle or SULEV, which is required for about 40% of a manufacturer's fleet. This is an impediment to GM's plans to provide more and more FFVs to consumers. GM has over 3.5 million E85 FFVs on U.S. roads today. GM is building about 500,000 E85 FFVs annually, and expects to increase production by over 50% by 2010. And by 2012, GM has committed to making half of its North American production as E85 FFVs. GM is also actively working with businesses and governments in numerous states to get E85 refueling stations installed. Fueling FFVs with E85 represents the best opportunity to reduce greenhouse gas emissions, particularly in the near-term. Instead of gasoline, if an FFV is refueled with E85 with the ethanol being derived from corn, greenhouse gas emissions are reduced by about 20%¹. Refueling with E85 with the ethanol being derived from cellulosic sources reduces greenhouse gas emissions by over 60%². Unfortunately, GM expects the sales restrictions for E85 FFVs to increase once California adopts its third generation of smog-emission standards, LEV III. And if Hawaii were to adopt California standards it would be bound to adopt LEV III as well, and for that matter any other changes that California makes in the future as Hawaii would be required to maintain identical standards to California's.

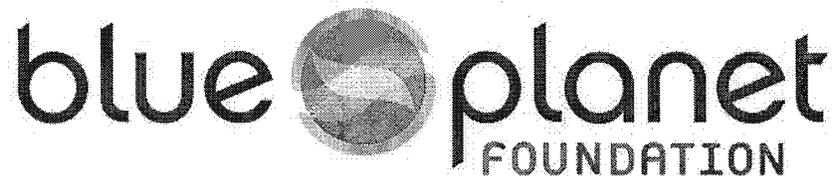
In addition, Federal law generally prohibits a state from adopting or attempting to enforce any standard relating to the control of emissions from new motor vehicles or motor vehicle engines. Federal law does allow a state to adopt and enforce a motor vehicle emission program enacted in California, if California is granted a waiver by the Federal government, IF the state is in a "nonattainment" area. Hawaii does not fit the Federal definition of a "nonattainment" area and thus would not be able to enact the California standards under Federal law.

In conclusion I want to reiterate that GM supports the goals of Hawaii to reduce emissions and improve fuel economy. GM disagrees that the right approach for achieving these goals is by adopting the California program. GM supports a national program to address both vehicle emissions and vehicle fuel efficiency. GM believes that petroleum-based fuels can no longer be the single source of energy for automobiles. Policies need to support alternative fuels and vehicles and not restrict their use. GM is working aggressively to become part of the solution with our many efforts on pushing advanced technology forward. But this must be combined with policies to help consumers adopt this technology, and make alternative fuels available to consumers to enable them to utilize these fuels.

Thank you for the opportunity to present this testimony.

¹ Michael Wang, Argonne National Laboratory.

² Ibid.



SENATE COMMITTEE ON ENERGY & ENVIRONMENT

February 12, 2008, 4:00 P.M.

Room 225

(Testimony is 2 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 1233

Chair Gabbard and members of the committee:

The Blue Planet Foundation strongly supports Senate Bill 1233, adopting California's "Clean Cars Act." Passage of this measure is the single most basic, effective action that the legislature can take this session to increase the efficiency of vehicles sold in the future in Hawaii.

Hawaii has an opportunity to make Hawaii's future cars go much further on a gallon of gas. Just last week, President Barack Obama issued a clear directive to his Environmental Protection Agency to move forward on allowing states to adopt higher fuel efficiency standards for cars and trucks. California and 13 other states have adopted "clean car" standards in an effort to push automakers to further improve fuel efficiency. With the critical mass of states joining the effort to require cleaner cars, automakers globally will be forced to produce vehicles that produce less greenhouse gas pollution and cost less to operate.

Senate Bill 1233 is modeled after California's Clean Car law, passed in 2002. That law requires automakers to cut emissions by nearly a third by 2016—the equivalent of boosting the average fuel economy of cars and light trucks to 35 miles per gallon from the current average of 27.

Since California enacted the Clean Cars law, 13 additional states adopted identical fuel efficiency provisions. Those states, in addition to California, have been prevented from implementing their laws, however. The Bush Administration's Environmental Protection Agency (EPA) refused to grant the necessary waiver to allow the states' to adopt more stringent standards than federal law provides. The Obama Administration indicated a change in that position today, however, with a clear directive to the EPA to move quickly on investigating whether to grant the waiver to California and the other states. Granting the waiver—as is anticipated—would enable Hawaii to adopt the same aggressive fuel economy standards—if the legislature approves SB 1233.

California estimates that the Clean Cars program will reduce overall greenhouse gas emission from passenger cars by 18 percent in 2020 and 27 percent cut in 2030. The regulations do not

Jeff Mikulina, executive director • jeff@blueplanetfoundation.org

55 Merchant Street 17th Floor • Honolulu, Hawaii 96813 • 808-954-6142 • blueplanetfoundation.org

call for radical vehicle changes. They are designed instead to tap technologies, methods, and cleaner fuels available now to reduce emissions of four chief greenhouse gases (GHG) contributing to global warming:

- carbon dioxide,
- methane,
- nitrous oxide, and
- hydrofluorocarbons.

The standards apply to new motor vehicles and require declining fleetwide average emissions.

This is precisely the time for Hawai'i to add its voice to the other states, since it sends a clear policy signal to stimulate market demand for clean, fuel efficient vehicles. As more states join the initiative, this becomes the de facto national standard, and avoids the potential political gridlock in Washington. Passing the bill now also sends a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.

Beyond the national policy benefits of passing this legislation, there are several important benefits to the state of Hawai'i.

1. First, the majority of our oil is used in transportation, and we will simply be unable to meaningfully reduce our oil dependence unless we adopt efficiency standards for automobiles that go beyond the federal Corporate Average Fuel Economy standards.
2. Second, Hawaii will be unable to meet its climate change targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.

Now is the time to act, to join the rest of the country in showing leadership in energy independence and economic revitalization.

Senate Bill 1233 is a smart measure for Hawaii—it helps us achieve our clean energy goals without spending a dime of taxpayers' dollars. Please give the Clean Cars Act the green light.

Thank you for the opportunity to testify.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON ENERGY & ENVIRONMENT

February 12, 2008, 4:00 P.M.

(Testimony is 3 pages long)

TESTIMONY IN SUPPORT OF SB 1233

Chair Gabbard and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, *supports* SB 1233 with an amendment, which requires the adoption of the State of California motor vehicle emission standards. Failure to do so will virtually guarantee that Hawai'i becomes the repository of "rejected" vehicles -- less efficient and more polluting SUVs and trucks -- that can no longer be sold in California and 13 other states.

Legal Background

When Congress enacted the Clean Air Act ("CAA"), codified at 42 U.S.C. §§ 7401 et seq., it expressly preempted all state regulation of new motor vehicle emissions. *See id.* § 7543(a) (codifying § 209(a) of the CAA). However, as an exception to this general preemption, Congress allowed California alone among the states to implement its own vehicle emissions standards, subject to certain conditions. *See id.* § 7543(b) (codifying § 209(b) of the CAA). Under § 209 of the act, California may request a waiver of preemption from the EPA for its emissions standards once California has determined that those standards are no less protective of public health than federal regulations. *See id.* The EPA must grant the waiver unless it finds that California's "no less protective" determination was arbitrary and capricious or that the standards are not necessary to meet compelling and extraordinary conditions. *See id.*

In 1977, Congress added another limited exception to the general preemption stated in § 209(a) of the CAA. Section 177 of the act, codified at 42 U.S.C. § 7507,¹ permits any state to adopt emissions standards if (1) the standards are "identical to California standards for which a waiver has been granted" and (2) such standards are adopted at least two years before commencement of the particular model year to which they apply.

There is nothing in this language indicating Hawai'i has to be an attainment or nonattainment state to proceed under this provision.

Underlying Principles

California and thirteen other states, including New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, Oregon, and Washington have adopted the California standards. Three other states have indicated they plan to adopt the California standard.² Together, these states account for **about half of the American market for**

¹ Specifically, this provision states:

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if - (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator). Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

42 U.S.C. § 7507 (Jan. 2003).

² See <http://www.nytimes.com/2009/01/26/us/politics/26calif.html?pagewanted=2&r=1&hp>

cars and light trucks. Plainly joining this large swatch of America will not have a disastrous impact on our economy. Rather, it prevents Hawai`i from becoming a dumping ground for inefficient automobiles that cannot be sold anywhere else.

Beyond the national policy benefits of passing this legislation, there are several important benefits to the state of Hawai`i.

1. First, the majority of our oil is used in transportation, and we will simply be unable to meaningfully reduce our oil dependence unless we adopt efficiency standards for automobiles that go beyond the federal Corporate Average Fuel Economy standards.
2. Second, Hawai`i will be unable to meet its climate change targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.

Now is the time to act and to join the rest of the country in showing leadership in energy independence and economic revitalization. Hawai`i needs clean and highly efficient vehicles powered by sustainable and steadily lower carbon fuels and clean electricity as well as communities with accessible and convenient alternatives to driving. Please give this Bill the "green light."

Proposed Amendment:

To maintain consistency with the federal rules authorizing this standard, the Sierra Club suggest revising page 3, lines 11 - 13 to state "requirements for vehicle emissions and fuel efficiency that are identical to [~~meet or exceed~~] the standards for vehicle emissions and fuel efficiency found in the California low emission vehicle program."

Thank you for the opportunity to testify.

From: Dave Rolf [drof@hawaiidealer.com]
Sent: Wednesday, February 11, 2009 4:06 PM
To: ENETestimony
Subject: Testimony in STRONG OPPOSITION to SB1233 and SB1174
Attachments: patchworkproven.pdf

February 11, 2009

Testimony in OPPOSITION to portions of SB 1233
Relating to Vehicular Emissions
And In OPPOSITION to SB 1174
Relating to Motor Vehicles
Presented to the Senate Committee on Energy and the Environment

At the hearing 4 p.m. Thursday, February 12, 2009
in Conference Room 225, Hawaii State Capitol

Submitted by David H. Rolf, for the Hawaii Automobile Dealers Association
Hawaii's Franchised New Car Dealers

Chair Gabbard members of the committee,

Our previous testimony has expressed our serious concerns about these two measures (SB 1233 and SB1174). We send the background documents from the National Automobile Dealers Association to familiarize the committee with the serious problems such a "patchwork" approach will have for automakers and specifically for Hawaii consumers. Please see the attachment.

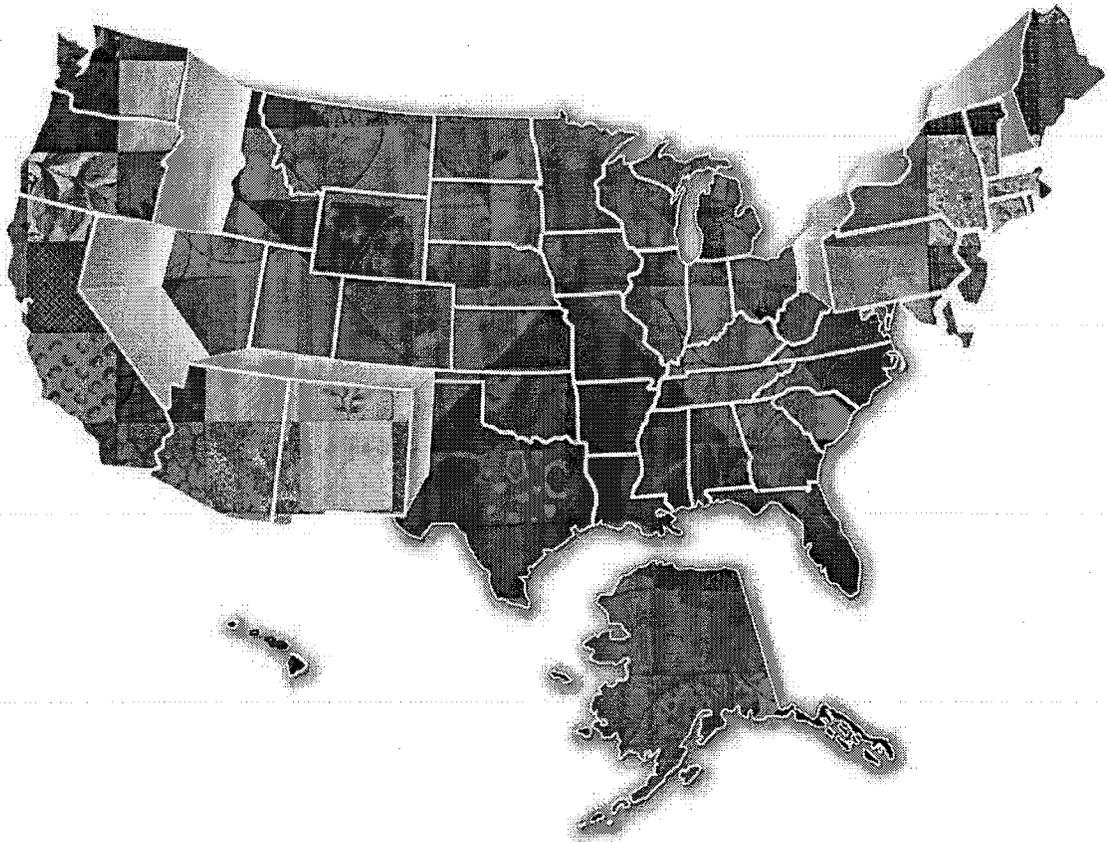
We respectfully request you HOLD SB 1233 and SB1174. Please see the attachment submitted as testimony OPPOSED.

Respectfully submitted,

David H. Rolf
For the Hawaii Automobile Dealers Association
1100 Alakea St. Suite 2601 Honolulu, Hawaii 96813 Tel: 808 593-0031

PATCHWORK PROVEN

**WHY A SINGLE NATIONAL FUEL ECONOMY STANDARD
IS BETTER FOR AMERICA THAN A PATCHWORK OF
STATE REGULATIONS**



January 2009

ABOUT THIS REPORT

This report was written by the staff of the National Automobile Dealers Association.

ABOUT THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION

The National Automobile Dealers Association, founded in 1917, represents more than 19,700 new car and truck dealers, both domestic and international, with more than 43,000 separate franchises. NADA provides guidance on legal and regulatory matters for auto dealers, represents dealers on Capitol Hill, gathers research data on the retail automobile industry, and operates training and service programs to improve dealership business operations, sales and service practices.

This report is available for download on the Web at www.nada.org/patchwork

For additional information concerning this report, please contact the NADA Legislative Affairs office at 202-547-5500.

© 2009 by the National Automobile Dealers Association. All rights reserved. No part of this document may be reproduced or used in any form or by any means, electronic or mechanical, including photography, recording, or by information exchange and retrieval systems, without written permission of the National Automobile Dealers Association.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1-4
PREFACE: CURRENT CHALLENGES FACING THE AUTO INDUSTRY	5-6
BACKGROUND.....	7-12
THE CLEAN AIR ACT.....	7-8
CORPORATE AVERAGE FUEL ECONOMY (CAFE).....	8-10
<i>Chart: Fleet-Wide Fuel Economy Standards of the CARB and CAFE programs</i>	9
<i>Map of the "CARB" States and Jurisdictions</i>	10
SETTING FUEL ECONOMY BY REGULATING CO ₂	11-12
PROBLEMS WITH THE PATCHWORK.....	12-23
ANATOMY OF THE PATCHWORK.....	12-14
ROAD TO NOWHERE: MIX SHIFTING.....	14-15
UNIQUE STATE FLEETS MAKE A PATCHWORK UNAVOIDABLE.....	15-17
<i>Chart: Market Share of Certain Chrysler Vehicles in CA, NJ and RI</i>	16
PATCHWORK IN PRACTICE: VERMONT	17-20
PATCHWORK IN PRACTICE: WASHINGTON D.C.....	20-22
<i>Chart: Comparison of Ford's CARB-regulated fleets in CA and DC</i>	21
PATCHWORK IN PRACTICE: NEW MEXICO.....	22-23
ARGUMENTS DENYING THE PATCHWORK.....	23-24
THERE IS NO "CALIFORNIA CAR" FOR FUEL ECONOMY/GHG PURPOSES	24-26
INFERENCE OF THE PATCHWORK: REGIONAL COMPLIANCE	26-27
THE CROSS BORDER SALES LOOPHOLE	27-29
CONCLUSION.....	29-31
PATCHWORK PROVEN: HOW IT WORKS	31-34
FEDERAL STANDARD.....	32
STATES THAT BASE COMPLIANCE ON CALIFORNIA.....	32
STATES THAT BASE COMPLIANCE ON IN-STATE SALES	32-34
LOCAL JURISDICTIONS THAT HAVE ADOPTED CARB REGULATIONS.....	34

EXECUTIVE SUMMARY

On March 6, 2008, the administrator of the Environmental Protection Agency (EPA) denied the California Air Resources Board's (CARB) waiver request to implement its fuel economy/motor vehicle greenhouse gas regulation. During consideration of CARB's waiver request, a key issue emerged: whether granting the waiver would lead to a "patchwork" of state fuel economy regulatory regimes. CARB and its supporters argue that automakers need only comply with "at most" two regulatory regimes: a federal standard set by Congress and the CARB regime in states that adopt it. Conversely, supporters of a single, national federal fuel economy standard contend that state regulation of fuel economy/greenhouse gases (GHGs) would produce multiple state regulatory regimes, resulting in reduced consumer choice, economic harm to auto dealers and manufacturers, and the undermining of the recently reformed national corporate average fuel economy (CAFE) program.

Whether a regulatory patchwork would emerge can be determined by a thorough analysis of the regulations of the state and local governing bodies that adopted CARB's rule. After conducting such an analysis, this report finds that there would be a regulatory patchwork made up of all of the "California" or CARB states, except Pennsylvania.

There is a regulatory patchwork made up of every CARB state, except Pennsylvania.

This report also identifies serious policy flaws in CARB's regulation that have not been the subject of vigorous national debate or scrutiny.

Compliance with CARB's regulation is based on an automaker "delivering for sale" a fleet in each CARB state that achieves a certain fleet-wide GHG emissions average. As different vehicles emit different GHG levels, and consumers buy different vehicles in different quantities, an automaker's fleet-wide GHG emissions average will vary by state. A regulatory patchwork is thus created when a state adopts CARB's regulation and bases compliance on what an automaker "delivers for sale" in that state, with the variation in state fleets

forming the basis for the patchwork. Application of CARB's regulation means that an automaker could comply in California and offer the exact same choice of vehicles in another CARB state, and yet still not be in compliance, solely due to differing consumer demand.

A state-by-state patchwork of regulations would be complicated to comply with and would result in direct conflicts, as the federal government and CARB battle for regulatory supremacy. But these concerns pale in comparison to some of the patchwork's unintended consequences. For instance, as CARB's standard increases in stringency, the patchwork is likely to cause widespread "mix shifting," whereby an automaker manipulates the composition of its own fleet in a state solely to comply with CARB's GHG emissions average. Mix shifting includes rationing the availability of larger vehicles, discounting smaller size models, and other pricing strategies. With the passage of a much higher federal CAFE standard in 2007, mix shifting is the only realistic avenue for an automaker to ensure compliance in each CARB state. The fuel economy gains once contemplated by CARB's regulation have been supplanted by the new CAFE program, which is national in scope and cannot be evaded by mix shifting. If implemented, the legacy of CARB's regulation will be pervasive mix shifting, which distorts the auto market and does nothing to decrease GHGs or improve fuel economy on a national basis.

Mix shifting also reduces consumer choice in CARB states, as automakers are forced to ration larger vehicles to comply with CARB's statewide fleet GHG average. This reduction in consumer choice gives rise to another patchwork-related problem, the "cross-border sales loophole." This loophole will arise when new car buyers seek to purchase vehicles in neighboring states that are unavailable in their home state due to rationing. This loophole undermines the efficacy of each state's program, as vehicles purchased out of state are not counted towards an automakers' state GHG emissions average under CARB's rules. Thus one of the goals of CARB's program, i.e., to reduce in-state

emissions of GHGs, will be frustrated and can be easily evaded. This new loophole also will distort the new vehicle marketplace.

Enforcement of CARB's regulation will be particularly onerous in small CARB states due to the size of the fleets there (e.g., BMW's 2007 new light duty fleet in Maine was under 400 vehicles; Nissan's 2007 new light duty fleet in

Should America's fuel economy standard be set by Congress or one state agency?

Vermont was approximately 1,100 vehicles). Because automakers must maintain a separate fleet GHG average in each CARB state, brisk sales of popular models below the fuel economy standard in those states could force an otherwise complying automaker out of compliance. The regulation of such small fleets affords automakers little cushion to achieve the "right" sales mix necessary to comply with CARB's regulation. This result is an unavoidable consequence of applying a regulation written and designed exclusively for the nation's largest auto market (California) to states with much smaller markets and different vehicle sales mixes.

This report also examines the practical application of CARB's patchwork regime. In New Mexico, automakers would have to comply statewide and again in one county. In the District of Columbia, the design of CARB's regulation makes it nearly impossible for Ford to comply, while not affecting any other manufacturer. And at a time when Congress is directly aiding the domestic automakers by providing them tens of billions of dollars in loans, CARB exempts some of their competitors from regulation until 2016, provided they limit their sales into California.

Since over 40 percent of all new vehicle sales in the U.S. occur in CARB states, any granting of the California waiver would undermine the newly restructured federal CAFE program, as automakers struggle to comply with two competing and contradictory regulatory systems. Additionally, CARB's

patchwork regime seems particularly gratuitous since the National Highway Traffic Safety Administration, as directed by Congress in 2007, is moving to raise fuel economy standards above what CARB proposes. In effect, the enactment of a new federal CAFE standard has rendered CARB's motor vehicle GHG regulation a costly and unnecessary burden on an industry already reeling from the present economic downturn.

To date, the debate over the California waiver has centered on the process by which it was denied, and the stringency of CARB's regulation compared to the proposed CAFE rule (the final rule is due out no later than April 1, 2009). Little debate and analysis has focused on how CARB's regulation would actually work in practice.

As this report shows, the *structure* of a fuel economy system is as important as the *stringency* it sets. If nearly half of the American auto market is going to be regulated twice for fuel economy under two different systems, policymakers must clearly understand what the ramifications are of such a policy. With the overall fuel economy of our nation's fleet poised to rise substantially irrespective of the California waiver, the utility of CARB's entire GHG program must be called into question. Due to mix shifting and market-distorting loopholes and exemptions, CARB's regulation cannot be characterized as a harmless appendage to the national CAFE program. Finally, the potential practical impact of CARB's regulation raises the important policy question of whether fuel economy regulation should remain under the dominion of Congress, where competing national interests can be balanced, or if such regulation should be ceded to a single state agency.

PREFACE: CURRENT CHALLENGES FACING THE AUTO INDUSTRY

The year 2008 was a tumultuous one for America's auto industry. Auto sales dropped 18 percent, resulting in the lowest level of U.S. new vehicle sales since 1992.¹ These sales losses directly translated into job losses. Approximately 900 dealerships closed their doors in 2008, putting about 50,000 people out of work. Another 1,100 dealerships are expected to close in 2009. On the manufacturing side, since 2005, domestic automakers have shed 149,000 hourly jobs, and shuttered 35 plants permanently. Many other factories, including those of international automakers, have been idled, reduced shifts, or have delayed opening.²

No automaker has been immune from the present economic downturn. Five of the six biggest selling automakers in America (General Motors, Toyota, Ford, Chrysler, and Nissan) experienced double digit sales declines in 2008. Toyota posted its first-ever operating loss, and General Motors and Chrysler requested and received bridge loans from the federal government to continue operations. Economists forecast even weaker auto sales in 2009.

In addition to the worst economic conditions in a generation, the auto industry faces a new burden in 2009: a proposed 25 percent increase in fuel economy standards, costing about \$47 billion.³ This increase was ordered by Congress in December 2007.⁴

Against this backdrop of economic distress and despite a federal fuel economy mandate that will significantly reduce motor vehicle GHGs, CARB continues to seek to impose its own fuel economy standards, but on a patchwork basis, and involving a completely different regulatory scheme.

¹ Kendra Marr, "U.S. Auto Sales Fell 36% in December, Declines Expected to Continue in '09," The Washington Post, January 6, 2009.

² Lindsay Chappell, "Toyota halts U.S. Prius project," Automotive News, December 15, 2008.

³ Harry Stoffer, "Bush Leaves CAFE Decision for Obama," Automotive News, January 7, 2009.

⁴ Pub. L. No.110-140, 121 Stat. 1492 (2007)

Touted by CARB as a “better national solution” when compared to the newly restructured CAFE program,⁵ the cost of CARB’s regulation outside of California is virtually unknown, as there has been scant analysis of its impacts on employment, on the environment, or on highway safety nationally.⁶ In fact, basic questions, such how much new vehicle prices will be raised if CARB’s regulation is implemented simultaneously with the national CAFE standard remain unanswered. Aside from imposing new costs, the public may question the wisdom of regulating fuel economy twice under two completely different systems: one national in application affecting all automakers, and one on a patchwork basis affecting only American automakers, the largest Japanese automakers, and BMW.

⁵ CARB, “*Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and California, An Enhanced Technical Assessment*,” February 25, 2008, page vii.

⁶ CARB dismissed evidence showing the likelihood of job losses at manufacturing plants in other States as “outside the scope of [CARB’s] analysis, which focused on California impact.” See CARB, “*Regulations to Control Greenhouse Gas Emissions from Motor Vehicles: Final Statement of Reasons*.” August 4, 2005, page 273.

BACKGROUND: THE CLEAN AIR ACT

The Clean Air Act (CAA) requires EPA to set limits on air pollutants emitted from new motor vehicles.⁷ This law expressly preempts states and localities from setting their own vehicle emissions regulations,⁸ with one exception.⁹ Because its motor vehicle air pollution laws predate the CAA and due to certain unique air quality conditions present in the state, the CAA permits California to set its own standards, but only after obtaining a preemption waiver from EPA.¹⁰ The state agency that regulates mobile source air pollution is the California Air Resources Board (CARB). In 1977, Congress amended the CAA to allow other states to adopt and enforce standards set by CARB, if covered by an EPA preemption waiver.¹¹

This dual system of regulating air pollution from vehicles was designed to combat smog and other localized pollutants. Under this system, automakers manufacture two types of vehicles: (1) those that meet CARB's standards (so-called "California cars") and (2) those that meet EPA's federal emissions standards (so-called "Federal cars" or "49-state cars").¹² To date, CARB's anti-smog regulations have not resulted in a burdensome regulatory patchwork because an automaker can certify a "California car" that is different from a "Federal car".¹³ This "California car" can then be delivered to "California" states. Also, in a "California" states, automakers are not required to meet both federal and CARB air pollution standards, only CARB standards.

⁷ 42 U.S.C. § 7521(a).

⁸ 42 U.S.C. § 7543(a)

⁹ 42 U.S.C. § 7543(b)(1)

¹⁰ U.S. Environmental Protection Agency, *Fact Sheet on Vehicle Greenhouse Gas Emissions*, updated June 3, 2008.

¹¹ 42 U.S.C. § 7507

¹² There are some cars that meet (and are pre-certified to meet) both the CARB and EPA standards. These cars are often referred to as "50-state cars."

¹³ Physical differences aside, since the full implementation of EPA's "Tier 2" emissions standards in 2007, "California" cars are no longer "cleaner" than federal cars. Passenger vehicles sold today are 99% cleaner than the 1970s fleet.

In contrast, CARB's fuel economy/greenhouse gas (GHG) regulation is markedly different than its air pollution regulations. First, the predominant GHG gas that CARB seeks to regulate, CO₂, is neither a localized pollutant¹⁴ nor a component of smog. Second, CARB's fuel economy/GHG regulation does not regulate individual vehicles, so any passenger vehicle may potentially comply. There is no distinct "California car" for purposes of CARB's fuel economy/GHG rule. Third, compliance is not based on what an automaker builds, but on what mix of vehicles are "delivered for sale" in each "California" or CARB state. Finally, CARB states cannot opt out of compliance with federal CAFE rules.

BACKGROUND: CAFE

In 1975, Congress enacted the Energy Policy and Conservation Act (EPCA).¹⁵ Included in this law was the CAFE program, which mandated for the first time fuel economy standards for passenger cars and light duty trucks.¹⁶ To ensure uniformity, and to avoid a patchwork of state regulations, Congress explicitly preempted all states -- including California -- from adopting or enforcing laws "related to" fuel economy.¹⁷

As proposed, the federal CAFE standards are higher than CARB's vehicle GHG standards.

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA) was signed into law.¹⁸ In addition to restructuring the federal CAFE program, EISA requires a new fleet-wide combined fuel economy average of at least 35 miles per gallon by 2020 -- an increase of at least 40 percent.¹⁹ EISA also will reduce CO₂ tailpipe emissions by at least 30 percent due to the close and direct mathematical relationship between increases in fuel economy and

¹⁴ "...a ton of greenhouse gases emitted in the United States has the same impact as a ton emitted in Malaysia." Robert R. Nordhaus and Kyle W. Danish, Pew Center on Global Climate Change, *Designing a Mandatory Greenhouse Gas Reduction Program for the U.S.* (2003), page 2.

¹⁵ 49 U.S.C. § 32901 et seq.

¹⁶ 49 U.S.C. § 32902

¹⁷ 49 U.S.C. § 32919(a)

¹⁸ Pub. L. No.110-140, 121 Stat. 1492 (2007)

¹⁹ Id., § 102(b)(2)(A)

decreases in CO₂ tailpipe emissions. In fact, if fuel economy had not increased above the 1975 level, cars and light trucks would have emitted an additional 11 billion metric tons of CO₂ into the atmosphere between 1975 and 2005.²⁰

On May 2, 2008, the National Highway Traffic Safety Administration (NHTSA) proposed new higher fuel economy standards as mandated in EISA.²¹ If adopted as proposed, this rule, which covers model years 2011-15, will save 55 billion gallons of fuel and prevent 521 million metric tons of CO₂ from being emitted.²² On a national level, the new federal CAFE standards will be higher than what CARB has adopted, as shown in the chart below:

Fleet-Wide Fuel Economy Standard (mpg)²³

Model Year	CAFE (proposed) ²⁴	CARB ²⁵
2011	27.8	26.7
2012	29.2	29.5
2013	30.5	29.9
2014	31.0	30.4
2015	31.6	31.3

²⁰ 73 Fed. Reg. 24357 (May 2, 2008)

²¹ Id., at 24352

²² Id., at 24456

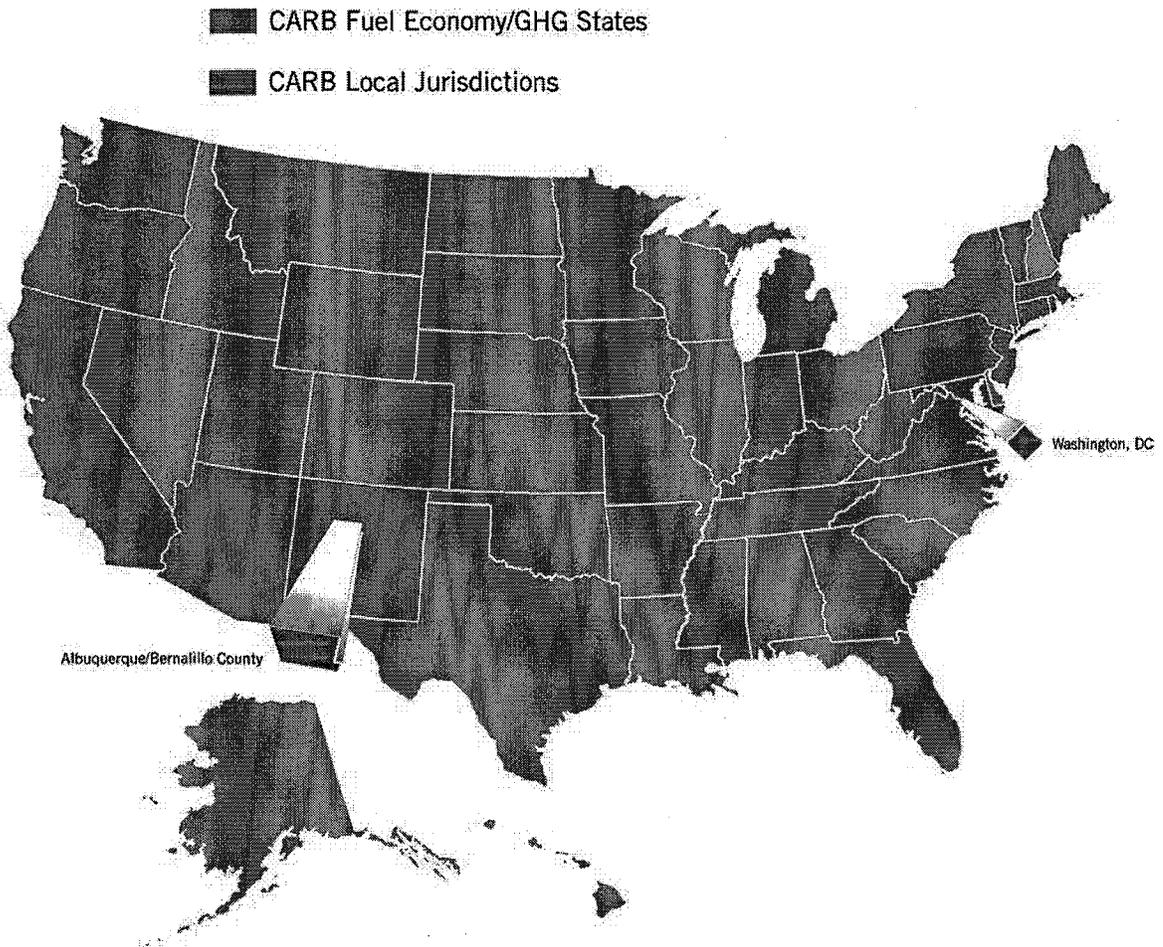
²³ This table presents comparisons drawn from NHTSA and CARB documents that average across all manufacturers, all product lines and all States. Depending on the mix of vehicles they sell in a given State and other factors, manufacturers will have to take steps to comply with the state fleet average standards for greenhouse gases, over and above what would be required to comply with the federal fuel economy standards. For example, in New Mexico, enforcement of the state greenhouse gas standards will result in significant reductions in the number and types of passenger cars sold in New Mexico, whose greenhouse gas standards for such vehicles are 10 to 20 percent more stringent in model year 2015 than the federal fuel economy standards for those vehicles proposed by NHTSA. This is why CARB claims that in some States “fuel economy is lower under the new federal fuel economy standard than under the Pavley (i.e., CARB) rules.” See CARB, “*Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and California, An Enhanced Technical Assessment*,” February 25, 2008, page 8. On a nationwide basis, and averaging all manufacturers and vehicle types together, the CARB program loses its advantage, as shown in this table.

²⁴ 73 Fed. Reg. 24355 (May 2, 2008)

²⁵ CARB, “*Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and California, An Enhanced Technical Assessment*,” February 25, 2008, pages 8-10. This figure excludes California, where CARB estimates a fleet-wide fuel economy of 34.5 mpg. The figure for California is higher than the other 49 states because CARB assumes a fleet mix of 70 percent passenger cars, which generally have a higher fuel economy rating. CARB’s figures also apparently do not factor in the manufacturers its regulation exempts.

In 2004, CARB issued its fuel economy/GHG rules and petitioned EPA for the CAA preemption waiver necessary to implement them.²⁶ Subsequently, 13 states and two jurisdictions adopted CARB's regulation.²⁷ On March 6, 2008, EPA denied CARB's petition.²⁸

Map of the CARB States/Jurisdictions



²⁶ Letter from Catherine Witherspoon, Executive Officer, CARB, (December 21, 2005).

²⁷ Although Pennsylvania is a "California" or "CARB" state, it did not adopt CARB's GHG fleet average, and hence is not part of CARB's patchwork. Accordingly, all references in this report to the impacts of the patchwork on CARB states exclude Pennsylvania.

²⁸ 73 Fed Reg. 12156 (Mar. 6, 2008).

SETTING FUEL ECONOMY BY REGULATING CO₂

Under federal law, “a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy....”²⁹ In 2002, California legislators passed a law (AB 1493) requiring CARB to regulate motor vehicle GHGs (primarily CO₂).³⁰ As CO₂ emitted from the tailpipe of a motor

Regulating motor vehicle greenhouse gases is tantamount to regulating fuel economy.

vehicle is the natural by-product of the combustion of fuel, increasing a vehicle’s fuel economy (i.e., burning less fuel) is the only practical way of significantly reducing motor vehicle CO₂ emissions. “The only real way to reduce carbon dioxide emissions is to reduce the amount of carbon being put in the gas tank; greenhouse gas regulations for cars and trucks would force manufacturers to build and sell vehicles with higher fuel economy,” wrote a former EPA official who supported granting the California waiver, in testimony before a Senate committee.³¹ In a similar vein, a *New York Times* editorial praising CARB’s regulation soon after its release stated:

“Since carbon dioxide and other gases linked to global warming cannot be filtered in the same way that catalytic converters filter out harmful smog-forming particles, the only way to cut global warming emissions is to reduce fuel use. *That means making more fuel-efficient cars.*” [emphasis added]³²

In addition to CO₂, CARB also seeks to regulate three other vehicle GHGs -- methane, nitrous oxide, and hydrofluorocarbons (HFCs). But these non-CO₂ GHGs are trivial, as CO₂ comprises 97%³³ of vehicle GHGs.³⁴ In fact, the relationship between fuel economy and tailpipe CO₂ emissions is so close that

²⁹ 49 U.S.C. § 32919(a)

³⁰ Cal. Health & Safety Code § 43018.5

³¹ *An Update on the Science of Global Warming and its Implications Before the Senate Environment and Public Works Committee*, 110th Cong., 2nd Sess. (2007) (statement of Jason Burnett, former Associate Deputy Administrator, EPA, at page 11).

³² “*California Leads on Warming*,” *New York Times* editorial, June 15, 2004

³³ This figure excludes water vapor, a greenhouse gas emitted from motor vehicles and the most abundant greenhouse gas in the atmosphere. This gas was not regulated by CARB. See National Oceanic and Atmospheric Administration, *Greenhouse Gases, Frequently Asked Questions*, <http://www.ncdc.noaa.gov/oa/climate/globalwarming.html> (last accessed November 14, 2008).

³⁴ Thomas C. Austin, et al., “Review of the August 2004 Proposed CARB Regulations to Control Greenhouse Gas Emissions from Motor Vehicles: Cost Effectiveness for the Vehicle Owner or Operator, Appendix C” September 24, 2004, page 8.

compliance with CAFE is assessed by measuring the amount of carbon emitted from a vehicle's tailpipe.³⁵ Simply put, compliance with CARB's regulation requires significantly lowering the CO₂ emissions of an automaker's fleet, which means significantly raising the fuel economy of that fleet – an activity already regulated at the federal level.³⁶ Absent a significant increase in new vehicle fleet fuel economy, it is impossible to comply with CARB's regulation.

ANATOMY OF THE PATCHWORK

Under CARB's regime, building a more fuel efficient fleet (which is required for compliance under CAFE) is insufficient to ensure compliance. Instead compliance is based on an automaker's fleet-wide GHG emissions average for vehicles "delivered for sale" in each CARB state. Delivery of vehicles with fuel economy ratings below the CARB standard will decrease an automaker's fleet average, while delivery of vehicles with fuel economy ratings above the CARB standard will increase the fleet average. Since the fleet average is sales weighted, it is vital for an automaker to "deliver for sale" sufficient vehicles in each CARB state with fuel economy ratings above the CARB standard to offset vehicles delivered for sale with ratings below.

Being in compliance in California will not guarantee compliance in any other CARB state.

"Each individual vehicle is *not* [emphasis in the original] required to meet the regulations. A manufacturers' fleet as a whole must meet the requirement so one type of vehicle can offset another," states a fact sheet produced by the office of California Attorney General Jerry Brown on CARB's regulation.³⁷

³⁵ Ken Bensinger, "California emission waiver looms for carmakers," Los Angeles Times, January 19, 2009. The article states: "Simply put, reduced carbon emissions track very closely with higher fuel efficiency since they are measured in grams of carbon per mile."

³⁶ No appeals court, nor the Supreme Court, has ruled on whether CARB's motor vehicle GHG regulatory regime is preempted by EPCA. The Supreme Court decision *Massachusetts v. EPA* is silent on the subject.

³⁷ Office of the California Attorney General, http://ag.ca.gov/globalwarming/myths/too_hard.php. Last accessed November 13, 2008.

While CARB sets the overall standard and writes the rules, each CARB state will pose a different regulatory challenge for automakers, because consumer appetites vary from state to state, and therefore no two state fleets are alike. Accordingly, the mix of vehicles automakers “deliver for sale” in California differs from what they “deliver for sale” in other states. These differences mean that being in compliance in California, and offering the exact same choice of vehicles nationwide will not guarantee compliance in any other CARB state. Thus, the more states that opt into the CARB regime, the more cumbersome the patchwork would become. If CARB’s regulation were to take effect in all 50 states, the resulting 50-state patchwork would require automakers to manage 50 unique state fleets and to individually meet CARB’s standard 50 different ways.³⁸

Generally, CARB’s regime would pressure automakers to “deliver for sale” small vehicles in each CARB state (irrespective of consumer demand) to offset

If adopted by all 50 states, CARB’s regulation would still result in a patchwork, as even national compliance with CARB’s standard would bring no guarantee of compliance in any state.

the sale of larger vehicles.³⁹ CARB’s regulation favors the sale of light, smaller vehicles, as the less massive a car is, the less fuel it consumes, and consequently, the less CO₂ it emits.

This bias in favor of small vehicles, instead of more fuel efficient vehicles (as CAFE contemplates), would reduce consumer choice in CARB states.

By comparison, the newly modernized CAFE program does not reward “gaming the system” by encouraging automakers to restrict sales in certain jurisdictions or “juggling product” to comply (“mix shifting”). Instead, the revised CAFE law forces automakers to increase the fuel efficiency of their overall fleet to

³⁸ CARB envisions their regulatory regime being adopted by all 50 states and Canada. See *Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and California Air Resources Board Greenhouse Gas Regulations*, page viii, February 25, 2008.

³⁹ Barry Penner, the environmental minister for British Columbia, which adopted CARB’s regulation, stated: “The [CARB] 2016 standard doesn’t depend on new technology. Manufacturers could meet it today by selling *more* [emphasis added] of their existing compact, subcompact and hybrid vehicles, lowering their fleet average [CO₂ emissions] while still offering bigger and higher-performance vehicles.” See Tom Fletcher, *B.C. adopts California tailpipe standards*, Victoria [B.C.] News, May 9, 2008.

comply. This approach will not unduly impact consumer demand, as it allows automakers to build the vehicles they believe will best meet the needs of their customers. State by state sales disparities, or sales in a particular county, are not a factor under CAFE.

ROAD TO NOWHERE: MIX SHIFTING

The number and types of models automakers “deliver for sale” in a CARB state is of crucial importance in determining compliance.⁴⁰ But complications are certain to arise if consumers disproportionately purchase popular models with fuel economy ratings below the CARB standard in a CARB state. This situation all but forces an automaker to “mix shift” to comply. Mix shifting is a compliance strategy whereby an automaker manipulates the composition of its own fleet in a state solely to comply with the fleet-wide GHG emissions average. This is done by rationing larger vehicles, discounting smaller models for quick sale, or other pricing strategies that distort the auto market.⁴¹ Because of CARB’s patchwork design, some degree of mix shifting will be necessary for automakers to achieve the required fleet average GHG emissions levels. Mix shifting, however, does nothing to decrease GHGs or improve fuel economy on a national basis.

CARB’s regulation will result in the rationing of larger vehicles, the discounting of smaller models, or both.

CARB maintains that mix shifting is unlikely to occur, contending that since the law (AB 1493) governing its regulation directs model availability not be impacted, “there would be no need to resort to mix shifting.”⁴² But merely decreeing mix shifting away does not lessen its suitability or viability as a

⁴⁰ Further complicating compliance with CARB’s patchwork structure, Rhode Island’s regulation is more expansive, as it bases compliance on vehicles “sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received, or registered in the State of Rhode Island.” Vermont also regulates “leased” vehicles.

⁴¹ “*Clean Cars Bill Will Help Improve State’s Air Quality*,” The Capital (Annapolis, MD), February 1, 2007. This editorial in favor of CARB’s regulation states: “If state standards for cutting [GHG] emissions aren’t met, there could be fines – although auto companies would presumably try to avoid this by *slashing prices on cars with lower emissions* [emphasis added].”

⁴² CARB, “*Regulations to Control Greenhouse Gas Emissions from Motor Vehicles: Final Statement of Reasons*.” August 4, 2005, page 177.

compliance option. Similarly, the Florida Department of Environmental Protection claims that “mix shifting [is] unlikely by design” because the “technologies required” to comply are “achievable.”⁴³ But with the passage of EISA, CARB’s regulation can now be met entirely by mix shifting, as it neither requires nor forces deployment of any fuel saving technologies.

Mix shifting is an unattractive compliance option to the extent that it is economically disruptive and produces no national environmental or energy security benefit. But the new federal CAFE standard has made mix shifting, once merely a likely compliance option, the only practical alternative for automakers should they be required to meet CARB’s standard on a state by state basis. Under a single CAFE standard, automakers cannot mix shift their way to compliance, as compliance is based on what automakers build for sale nationwide, not what models they sell in a particular state.

UNIQUE STATE FLEETS MAKES A PATCHWORK UNAVOIDABLE

One of the most unusual aspects of the patchwork is that automakers complying in California could offer the exact same choice of vehicles in another CARB state, and still be out of compliance in that state. Only if consumers in every CARB state were to buy vehicles in the same proportion as California consumers would automakers complying in California also be in compliance in every other CARB state. However, new vehicle sales for each automaker differ from state to state, as illustrated by the following table:

⁴³ Florida Department of Environmental Protection, “*Greenhouse Gas Emission Standards for New Motor Vehicles*,” powerpoint presentation, September 29, 2008.

**Market Share of the Top Ten Most Popular Chrysler Vehicles in California
Compared to Chrysler's Fleets in Rhode Island and New Jersey (2007)**

Vehicle	Market Share Rank in California	Combined Fuel Economy (MPG)	California Percentage of Fleet	Rhode Island Percentage of Fleet	New Jersey Percentage of Fleet
Dodge Ram	1	18.7	20.66%	9.46%	8.43%
Chrysler 300	2	24.4	11.26%	4.65%	5.11%
Jeep Wrangler	3	21.2	9.99%	15.15%	9.79%
Dodge Charger	4	24.4	7.56%	2.48%	3.01%
PT Cruiser	5	26.2	5.41%	2.89%	2.01%
Jeep Grand Cherokee	6	20.2	5.23%	11.23%	16.26%
Dodge Nitro	7	22.6	4.07%	3.97%	4.00%
Chrysler Town & Country	8	24.4	3.68%	5.48%	6.84%
Jeep Liberty	9	22.7	3.47%	6.94%	7.41%
Jeep Commander	10	19.4	3.41%	3.29%	5.46%

Source: R.L. Polk & Co.; Chrysler LLC

In 2007, Chrysler's top sellers in California, Rhode Island and New Jersey were all different models. The Jeep Grand Cherokee has over three times the market share in New Jersey as compared to California. Chrysler's top selling car in California, the 300, garnered over twice the market share than in Rhode Island and New Jersey. The PT Cruiser, which sells well in California, did not make the top ten in sales in Rhode Island or New Jersey. Similarly, a moderately popular model in Rhode Island and New Jersey, the Dodge Caravan, did not rank in California's top ten for sales.

In practical terms, if Chrysler built its fleet to comply in California, compliance in other states would still not be assured because consumers buy different Chrysler vehicles in different quantities, which means Chrysler would have a different fleet-wide GHG average in each state. If new car buyers do not buy the "right" mix of an automaker's vehicles, this situation would force an automaker to either ration vehicles their customers want, and/or discount other models, solely to generate sales for compliance reasons. Both choices distort

the retail auto market for no commensurate reduction in overall GHGs or improvements in fuel economy.

PATCHWORK IN PRACTICE: VERMONT

CARB's regulation was written specifically by California regulators for the California auto market. The size and make-up of auto markets in other states, along with their unique consumer demands, and the potential for job loss outside of California were not considered by CARB when it adopted its regulation.⁴⁴ Because California's auto market is the largest in the nation, the adoption of CARB's regulation by states with small auto markets produces peculiar and unfair policy results, especially when CARB's exemption policy is applied.

In 2007, 1.39 million new vehicles were sold in California. Such a vast market would afford automakers some regulatory breathing room to "average out" their fleets to comply with CARB's regulation. The size of a manufacturer's fleet in a state is important, as the smaller the fleet is, the more susceptible an automaker is to changes in consumer preferences, which can decrease its GHG average. As Vermont's new car market is 39 times smaller than California's market, a thousand customers in Vermont buying one particular make will have a much larger impact on an automaker's GHG average than a thousand customers buying the same vehicle in California. This disparity, however, is not recognized under CARB's rules.

Because of its size, the patchwork could hit Vermont hardest.

CARB's rules exempt until 2016 vehicle manufacturers which deliver for sale in California less than 60,000 vehicles per year, on average for three years.⁴⁵ After 2016, exempt automakers would lose their exemption, but they

⁴⁴ In contrast, under federal law, NHTSA must consider national economic factors, such as national job loss, the economic health of the automakers, and consumer affordability when setting a fuel economy standard.

⁴⁵ CARB, *Regulations to Control Greenhouse Gas Emissions From Motor Vehicles, Final Statement of Reasons*, pages 321-22, August 4, 2005.

would still receive preferential treatment, as they will be subject to a lower standard than some of their better-selling competitors.

As a CARB state, Vermont would be required to follow CARB's regulation without exception, which would make for some notable incongruities. For example:

- CARB stated that complying with its regulation would be "very difficult" for some of the automakers it exempts. In Vermont, every manufacturer sells fewer than the 60,000 vehicles threshold and no single automaker sold more than 10,000 vehicles there in 2007. Yet General Motors, Ford, Chrysler, Nissan, Toyota, BMW and Honda would not be exempt in Vermont.
- There is one BMW dealership in Vermont. The variety and quantity of new vehicles delivered to this dealership alone will largely determine whether BMW is in compliance in Vermont. With less than 400 vehicles sold in 2007 in Vermont, BMW will have to closely monitor sales to ensure that a requisite amount of vehicles above the CARB standard (from an mpg perspective) are delivered. If new car buyers do not buy a "balanced fleet" of BMW vehicles from this one dealership, BMW likely would have to curtail the delivery of certain vehicles to ensure compliance.⁴⁶ Yet a Vermonter could drive to a bordering state and legally purchase a "curtailed" CARB-certified BMW and register it in Vermont. This vehicle would not count against BMW's fleet-wide GHG emissions average in Vermont, however, because it was not "delivered for sale" in Vermont.

⁴⁶ While there are other compliance options, they are dependent on factors beyond BMW's (or any automaker's) control. For example, one compliance option is credit trading. This strategy will only succeed however if BMW's competitors (1) have excess credits to sell; and (2) desire to aid a competitor. The "E-85 option" whereby automakers accrue credits when their customers purchase the alternative fuel E-85 is not a viable option, as Vermont has no E-85 filling stations. And because of their minute levels, eliminating emissions of the three other greenhouse gases regulated cannot ensure compliance.

- Vehicle rationing is likely to occur in Vermont, because the market is so small for all automakers. In states with small markets (e.g., Rhode Island and Maine) slight shifts in consumer preferences towards larger vehicles could wreak havoc with a manufacturer's fleet-wide state GHG emissions average. As the nation's largest single state market, California is probably least likely to experience vehicle rationing.
- Other incongruities abound in Vermont and other CARB states. Based on new car vehicle registrations in California, Hyundai/Kia would likely be exempt in California, making it exempt in all other CARB states. Yet except in Connecticut and California, Hyundai/Kia outsells BMW (which is not exempt) in every CARB state. In fact, in some CARB states, Hyundai sells two to four times more vehicles than BMW.
- Based on the most recent new car registration data for California, Ferrari, Jaguar, Land Rover, Suzuki, Maserati, Mitsubishi, Lotus and Isuzu also would be exempt. If sales for these brands remain steady or show moderate growth in California, these manufacturers would remain exempt until 2016. Manufacturers on the cusp of being covered by CARB's rules (e.g., Volkswagen) would lose their exemption if their sales grow a modest amount in California. Consequently, automakers in this situation would face the unpalatable choice of either limiting sales in California or losing their exemption, with the potential for noncompliance penalties.
- Other makes could be exempt. If General Motors sells its Hummer division⁴⁷ to a currently exempt entity, it is likely that all Hummers would be exempt until 2016. Similarly, new entrants from China or India⁴⁸ merely have to project less than 60,000 in annual sales in California to qualify for

⁴⁷ Sharon Terlap, "GM further modifies production; hires broker for Hummer," The Detroit News, June 23, 2008.

⁴⁸ Justin Hyde, "Calif. Fuel Law to Benefit Some Foreign Automakers," Detroit Free Press, May 21, 2008.

a CARB state exemption, helping them to gain a foothold into the American market.⁴⁹

The above examples illustrate the irrationality of basing regulatory exemptions on a factor (i.e., sales in California) that is completely arbitrary outside of California. The unintended results of CARB's exemption policy should hardly be unexpected, given that it is designed to apply in California and is predictably ill-suited for application in other states, especially small states such as Vermont. By comparison, the federal CAFE law only exempts vehicle manufacturers that make fewer than 10,000 vehicles annually worldwide.⁵⁰

A potential exemption for Hummer, courtesy of the patchwork.

PATCHWORK IN PRACTICE: WASHINGTON, D.C.

The District of Columbia is home to one new car dealership, Martens Cars of Washington, that sells two brands, Volvo (owned by the Ford Motor Company) and Volkswagen. Because D.C.'s new car market is so dissimilar to California's, application of CARB's patchwork regime in the District would produce some nonsensical results. For example:

- Ford and Volkswagen would be the only automakers affected by D.C.'s adoption of the CARB regulation, because they are the only automakers delivering new vehicles for sale in the District. All other automakers would be exempt solely because they do not deliver new vehicles for sale within D.C. city limits.
- Based on current sales data, Volkswagen likely would be exempt in California from CARB's regulation, and thus would similarly be exempt in D.C. Volvo would not be exempt in either place, because its sales,

⁴⁹ CARB, *Report to Legislature and Governor on Regulations to Control Greenhouse Gas Emissions from Motor Vehicles*, December 2004, page 31.

⁵⁰ 49 U.S.C. § 32902(d)

counted along with Ford's sales in California, are above 60,000 per year. Thus, CARB's patchwork likely would produce the unusual result of D.C.'s sole auto dealer selling one brand exempt from regulation along side a regulated brand -- based on sales a continent away.

Compliance in D.C. would be difficult for Ford, as its compliance would be based almost entirely on sales at a single Volvo dealership. In other words, any fuel economy gains achieved by Ford from its other brands other than Volvo would not count for purposes of compliance with D.C.'s law. For example, the Ford Escape hybrid achieves excellent fuel economy, but because it is not delivered for sale in the District, Ford would receive no "credit" for producing it. Ford's dilemma is compounded by the fact that District residents can purchase "unregulated" Ford vehicles in neighboring Virginia and register them in the District.

Ford vehicles that achieve high fuel economy, such as the Ford Escape hybrid, would not count towards its compliance in D.C.

The chart below dramatizes why the existence of the patchwork cannot be dismissed by claiming "there can only be at most two standards." This chart illustrates that even if Ford's fleet fully complied with CARB's regulation in California, the automaker would have difficulty complying in the District.

Top 10 New Car Registrations of CARB-Regulated Ford Vehicles in California and the District of Columbia, 2007

Rank	California	District of Columbia
1.	Ford F Series	Volvo S40
2.	Ford Mustang	Volvo XC90
3.	Ford Escape	Volvo XC70
4.	Ford Focus	Volvo S60
5.	Ford Edge	Volvo S80
6.	Ford Fusion	Volvo C70
7.	Ford Expedition	Volvo V70
8.	Ford Ranger	Volvo V50
9.	Ford Explorer	Volvo C30
10.	Volvo XC90	(No model)

Source: R.L. Polk & Co. 2007 new vehicle registration data

While CARB aspires for its regulation to be national in application, in the nation's capital (and elsewhere), it is obviously a poor fit.⁵¹ The previous chart again demonstrates why a single, national federal fuel economy standard is the best (and most coherent) way to save fuel and reduce motor vehicle GHGs.

PATCHWORK IN PRACTICE: NEW MEXICO

CARB's patchwork regime has been taken to an entirely new level in part of New Mexico. As with other CARB states, in New Mexico covered automakers will have to meet CARB's fleet-wide GHG emissions average based on the fleets

A county in New Mexico takes the patchwork to a new level.

they deliver for sale statewide. But Bernalillo County, New Mexico also has adopted CARB's regulation, requiring automakers to meet CARB's standard separately there, based on the fleets they deliver for sale in that county. Therefore, under CARB's regulation, vehicles delivered for sale in Bernalillo County would count towards an automakers' fleet-wide state GHG emissions average, but vehicles delivered for sale outside of Bernalillo County in New Mexico would not count towards compliance at the county level, as they were not "delivered for sale" there. Accordingly, an automaker could be in compliance statewide, but out of compliance in Bernalillo County, or vice versa.

The triple regulation of fuel economy in Bernalillo County – on a federal, state, and county level -- is precisely the situation Congress chose to explicitly avoid when it enacted the CAFE law. Should CARB receive a preemption waiver, it would permit the enforcement of its GHG rules in Bernalillo County and potentially in other counties or regions as well.

⁵¹ CARB estimates that its regulation will save 400,000 metric tons of carbon dioxide from being emitted in the District by 2016. See CARB, *Addendum to January 2 Technical Assessment*, January 23, 2008, page 4. But as CARB's rule would only regulate 300-400 Volvos in the District per year, this may be an unrealistic estimate. Motor vehicle GHGs will be reduced in the District, however, under the new CAFE standard.

The examples of Vermont, D.C. and New Mexico demonstrate the flaws and limitations of regulating fuel economy under a patchwork regime. Yet despite the potential for wildly differing results in each CARB jurisdiction, CARB officials maintain there is no “patchwork.”

ARGUMENTS DENYING THE PATCHWORK

CARB officials suggest that because there is no federal GHG standard, there can be no patchwork.⁵² This is incorrect, as the lack of a federal GHG standard is irrelevant to whether a patchwork would exist or not. The mere adoption by other states of CARB’s regulation and basing compliance on what an automaker delivers for sale in that state creates a patchwork. As shown in the Ford and Chrysler examples, what an automaker delivers for sale in California and what an automaker delivers for sale in another state can vary dramatically. This variation creates the patchwork.

A second argument made by supporters of the CARB approach is that under federal law, there can only be two standards: the federal standard and the CARB standard.⁵³ Adherents to this argument claim that since there can only be two standards, a patchwork cannot possibly exist. Once again, this argument ignores that each time a state adopts CARB’s regulation and bases compliance on what automakers deliver for sale in that state, the patchwork grows. In addition, the federal CAFE standard remains overlaid on top of this patchwork.

Another argument denying the patchwork was made by Governor Jon Corzine (D-N.J.), who stated:

⁵² Richard Simon and Janet Wilson, *EPA Denies California's Right to Mandate Emissions*, Los Angeles Times, December 20, 2007. The article stated: “CARB Chairwoman Mary Nichols, whose agency requested the waiver two years ago, said there was no ‘patchwork’ of standards. ‘There is a California greenhouse gas standard . . . which 16 [sic] other states would adopt, whereas there is no federal greenhouse gas standard.’”

⁵³ “Finally, the committee should not be misled by EPA’s press statement, which claimed that approving the California waiver would lead to a ‘confusing patchwork of state rules.’ There are only two possible standards: Federal or California.” Submitted testimony of Gov. M. Jodi Rell (R-CT), U.S. Senate Environment and Public Works Committee, January 24, 2008.

“However, there are only two standards -- the California standard and the federal standard. While these two standards are similar, they serve different purposes. The new energy bill [EISA] will regulate fuel economy standards, but the California standard focuses primarily on regulating greenhouse gas emissions... Instead, the only patchwork created would be the geographic distribution of the two programs.”⁵⁴

Governor Corzine is correct that CARB's regulation is similar to the CAFE program, as both seek to regulate the same activity: fuel economy. However, the fact that they may have different stated purposes (fuel economy vs. GHG reduction) is immaterial to whether a regulatory patchwork exists under CARB's regime.

The foregoing arguments are all fatally flawed because even in the absence of *any* federal standard, a patchwork is created once a state adopts CARB's regulation and bases compliance on what automakers deliver for sale in that state. The unique state-by-state fleets of each automaker create the basis for the patchwork, not the standard itself.

THERE IS NO “CALIFORNIA CAR” FOR FUEL ECONOMY/GHG PURPOSES

Many policymakers have been apparently misled to believe that regulating criteria air pollutants that contribute to smog is similar to regulating GHGs such as CO₂, which is not a component of smog. They note California's history of regulating motor vehicle emissions did not create a burdensome regulatory patchwork when adopted by other states. Historically, CARB's rules simply required manufacturers to ensure that they deliver vehicles modified for sale in California (“California cars”) into “California” states, while delivering “Federal” cars in non-California states.

⁵⁴ Submitted testimony of Gov. Jon Corzine before the U.S. Senate Committee on Environment and Public Works, January 24, 2008.

Regulating GHGs is entirely different from regulating criteria air pollutants. Absent mix shifting, the only way to comply with CARB's fuel economy/GHG regulation is to deliver for sale in each CARB state a new vehicle *fleet* that, on average, emits significantly less CO₂, which can only be achieved by significantly improving fuel economy. Unlike for smog-producing air pollutants, there is no economically practical way to capture CO₂ onboard a motor vehicle.⁵⁵ Moreover, no device akin to a catalytic converter exists to turn CO₂ into a non-GHG.

Some supporters of CARB's regime apparently assume that CARB's fuel economy/GHG rule works the same as its criteria air pollutant regulations. This is an incorrect assumption. An example of this erroneous assumption can be found in a letter the governors of the CARB states wrote to the EPA Administrator on January 23, 2008, stating:

"There is no patchwork. Rather, there continues to be the two-car system that Congress intended – California cars and federal cars. The federal government has not yet established a greenhouse gas emissions standard for vehicles. If they do, manufacturers will continue to produce, at most, two vehicle types – one certified for sale in California and the states that have adopted California's standard, and one federally-certified for the remainder of the states."⁵⁶

The governors' letter omits a crucial fact about CARB's regulation and whether a patchwork exists. As California Attorney General Jerry Brown's website states, "Each individual vehicle is *not* [emphasis in the original] required to meet the regulations." Since compliance is based on fleet averages, and not on individual vehicles meeting a certain emission standard, the certified "California car" concept does not apply for fuel economy/GHG purposes.

⁵⁵ Tony Lewin, *Researchers Test Capturing CO₂ Before It Leaves The Car*, Automotive News, July 7, 2008 at pg. 18L.

⁵⁶ Letter from Gov. Arnold Schwarzenegger (R-CA) and 13 other Governors Regarding U.S. EPA's Denial of California's Tailpipe Emissions Waiver Request (January 23, 2008). Available at <http://gov.ca.gov/index.php?/press-release/8596/>

In this vein, some also suggest that granting the California waiver would create fleets delivered to CARB states of super fuel efficient “California” vehicles different than and unavailable in non-CARB states. An example of this perception can be found in a recent study submitted to the Florida Department of Environmental Protection.⁵⁷ This study speculates that the sale in Florida of

More fuel efficient cars are coming to the CARB states – thanks to the new CAFE standard Congress enacted in 2007.

more fuel efficient “California cars” will attract out-of-state consumers, thereby offsetting the negative effects of the cross border sales loophole.⁵⁸ However, for any given make/model there will be no difference

between federal and California cars for fuel economy/GHG purposes. Alabama and Georgia new car buyers will not only have access to the same vehicles as their Florida neighbors, they will probably enjoy a greater selection of vehicles, as CARB’s regulation is likely to limit consumer choice in states that adopt it.

The reality is that there would be no “California car” for fuel economy/GHG purposes. The only likely difference between CARB and non-CARB states will be that CARB states will have more small vehicles delivered for sale (whether or not consumer demand exists for them) and fewer new large vehicles.

On a make by make basis, the notion that citizens in CARB states will have access to more fuel-efficient vehicles than citizens in non-CARB states is false. More fuel efficient cars are coming to CARB states though, (and all of America) because of the new higher CAFE standard Congress enacted in 2007.

INFERENCE OF THE PATCHWORK: REGIONAL COMPLIANCE

On May 12, 2008, CARB Chairman Mary Nichols announced that she was open to discussing with automakers the setting of "regional" rather than state-by-

⁵⁷ Eastern Research Group, Inc, *Economic Analysis of Impacts of Adopting the California Low Emission Vehicle Program in Florida*, September 5, 2008.

⁵⁸ *Ibid.*, page 22.

state standards.⁵⁹ Under a “regional compliance” option, an automaker would be allowed to be out of compliance in one or more CARB states so long as it was in compliance in a “region.” The rules in one CARB state, Maryland, allows for a regional compliance regime.⁶⁰ Such a proposal begs the question: If no patchwork would be created, what purpose would adopting a “regional compliance” scheme serve?

Chairman Nichols’ offer and Maryland’s regulation tacitly admit that a patchwork would be created, because the only clear public policy reason for entering into a regional compliance arrangement would be to blunt the negative economic impacts and compliance costs of regulating on a state by state basis. However, going from regulating on a state basis to a regional basis will only transfer all the flaws of the patchwork from a state level to a regional level. Logically, if regional regulation of fuel economy is superior to state regulation, it would make sense to have the entire country be one “region.” Of course, Congress put precisely such a system in place when it enacted the CAFE program in 1975.

CARB denies the existence of the patchwork, and then offers to discuss a partial solution to it.

THE CROSS BORDER SALES LOOPHOLE

CARB Chairman Mary Nichols raised the “regional compliance” option in the context of addressing the new cross-border sales loophole CARB’s patchwork would create.⁶¹ The “cross border sales loophole” will arise if certain vehicles are either unavailable or hard to obtain in CARB states due to mix shifting.⁶² If automakers are forced to ration vehicles in CARB states to comply,

⁵⁹ David Shepardson, *California May Alter Emission Controls; State is Willing to Consider Regional Approach rather than State-by-State Regulations*, Detroit News, May 13, 2008.

⁶⁰ Code of Md. Regs. § 26.11.34, Section 8(C). The District of Columbia’s law also contemplates entering into a regional compliance scheme. D.C. Law 17-0151, Section 2(3).

⁶¹ The cross border sales loophole is not the only loophole in CARB’s regulation. This regulation would also create a state-based “SUV loophole,” as CARB’s stringency for passenger cars is 15.9 mpg higher than light trucks in 2016.

⁶² CARB claims that it would be “unlikely” for automakers to restrict availability of their most profitable models in CARB states. But because of the cross border sales loophole, automakers can mix shift and still

new car buyers may legally purchase rationed vehicles out-of-state.⁶³

Consumers may further seek to purchase new vehicles out of state if, as CARB acknowledges, its regulations causes the cost of new vehicles in CARB states to be higher.⁶⁴ The loophole itself undermines the efficacy of CARB's regulation, because out of state vehicle sales would not count towards an automaker's CARB state GHG fleet average.⁶⁵

The cross border sales loophole is likely to be especially prevalent in New England and the mid-Atlantic states, as new car buyers from these states will be

A new loophole created by the patchwork.

able to travel short distances to neighboring states to purchase vehicles unavailable in their home states due to the patchwork. In sum, if due to mix shifting consumers in CARB states turn to out-of-state purchases when faced with increased vehicle prices and limited vehicle selection, it will significantly disrupt retail sales with no net improvement in overall fuel economy/GHG benefits. Moreover, consumers are likely to hold onto their older vehicles longer or to purchase slightly used vehicles (defined as vehicles with more than 7,500 miles) as they are not regulated. This consequence of CARB's approach would also frustrate a goal of CARB's regulation, as increased sales of used vehicles delays introduction into the fleet of new and more fuel economical vehicles that emit fewer GHGs.⁶⁶

not lose overall sales, although auto dealers in CARB states are at risk to lose home state sales. See CARB, *"Regulations to Control Greenhouse Gas Emissions from Motor Vehicles: Final Statement of Reasons."* August 4, 2005, page 178

⁶³ EPA regulations for model years 2004 and later allow auto dealers in any state that borders a state that has adopted California standards to sell California-certified cars as well. See David Bookbinder, David Doniger, and Seth Kaplan, *"Legal Issues Pertaining to the Adoption of California GHG Emission Standards by Other States,"* September 24, 2002, page 5.

⁶⁴ CARB, *Regulations to Control Greenhouse Gas Emissions From Motor Vehicles, Final Statement of Reasons,* page 5, August 4, 2005

⁶⁵ Rhode Island's regulation is a possible exception to the cross border sales loophole, as it bases compliance on vehicles "sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received, or registered in the State of Rhode Island." R.I. Air Poll. Ctrl Reg. 37.2.3. While Rhode Island may have closed this loophole, it will have done so only by creating a new problem, as it is unclear the method by which Rhode Island regulators expect automakers to account for vehicles obtained outside of Rhode Island for compliance purposes.

⁶⁶ This phenomenon is called the "jalopy effect."

The exception to the patchwork is Pennsylvania. Under Pennsylvania's regulation, an automaker is deemed to be in compliance if it is compliant in California, based on the premise that "the vehicle fleet mix in this Commonwealth is similar to California's, and the Commonwealth anticipates it will realize similar GHG emissions reductions in this Commonwealth because the fleet vehicles mix in this Commonwealth is similar to California's."⁶⁷ Because being in compliance in California makes an automaker compliant in Pennsylvania, this state has avoided the patchwork and the attendant economic dislocation it will cause. Additionally, it is conceivable that Pennsylvania auto dealers would experience a windfall because of CARB's regulation as car buyers from New Jersey, New York and Maryland seek vehicles that are in short supply in their home states.

The regulatory hodgepodge described above clearly demonstrates why Congress determined in 1975 that motor vehicle fuel economy should be regulated nationally. With the national CAFE program, there is no cross border sales loophole, as the program is national in scope.

CONCLUSION

Based on the actual state regulations implementing CARB's fuel economy/GHG regulatory regime, the granting of the California waiver would result in a regulatory patchwork involving all CARB states, except Pennsylvania. A regulatory patchwork is created when a state adopts CARB's regulation and bases compliance on what automakers "deliver for sale" in that state, with the variation in state fleets forming the basis for the patchwork. If the California waiver is granted, an automaker could be in compliance in one CARB state, yet be out of compliance in others despite offering the exact same choice of vehicle makes in all CARB states, due to varying consumer demand. This inconsistent result is the regulatory patchwork.

⁶⁷ 36 Pa.B. 7424

CARB's regulation likely will compel automakers to boost sales in CARB states of small vehicles by offering discounts, limit sales of large passenger cars and large light trucks by rationing their availability, or a combination of both.

The new proposed CAFE standard has relegated CARB's regulation to a very expensive shell game.

Moreover, exempt manufacturers may benefit by poaching market share from their regulated competitors. In addition, the cross border sales loophole, which allows consumers to cross state lines to obtain rationed vehicles, will predictably diminish purported fuel economy/GHGs gains.

The patchwork will be particularly harmful in small markets, such as Vermont, Rhode Island, and Maine. Absent vehicle rationing, brisk sales of large vehicles in these states could force automakers out of compliance.

Given the patchwork design of CARB's regulation, automakers will have to engage in some level of mix shifting to ensure compliance. In contrast, automakers have already begun building their fleets to comply with the federal CAFE standard, where mix shifting is not a compliance option. In essence, the enactment of EISA has relegated CARB's regulation to a very expensive shell game – and one which auto dealers, consumers, and automakers can ill afford.

CARB's push for its own fuel economy/GHG regulation arguably can be credited for serving as an impetus for the enactment of EISA, which will raise fuel economy by at least 40 percent by 2020. But while there was a vigorous debate over the ideal CAFE standard in the last Congress, it has long been settled policy that fuel economy is regulated by Congress alone and that a single national fuel economy standard is preferable to a patchwork of state regulations. Putting aside the millions of auto industry-related jobs currently in jeopardy, it would make no sense for Congress to enact a robust new CAFE program, only to allow it to be undermined a short time later by a patchwork approach.

It is a time of unprecedented economic stress for the automotive industry. At a minimum, regulatory stability, efficiency and certainty are necessary if the difficult fuel economy goal set in EISA is to be achieved. A single national fuel economy standard provides stability, efficiency, and certainty that will give manufacturers a road map to produce the fuel efficient cars of tomorrow. A patchwork regime – with its exemptions, loopholes and unintended consequences – would only exacerbate the economic turmoil in the auto sector, for little to no environmental or energy security benefit. As the California waiver is reconsidered, the new President and Congress must consider whether the wisest course for all America is a single national fuel economy standard set by the Obama Administration.

Patchwork Proven: How It Works

1. **Federal Standard** – “The Secretary shall prescribe a separate average fuel economy standard for passenger automobiles and a separate average fuel economy standard for non-passenger automobiles⁶⁸ for each model year beginning with model year 2011 to achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet of passenger and non-passenger automobiles **manufactured for sale in the United States** for that model year. – Title 49, United States Code, Section 32902

States That Base Compliance on Vehicles Sold in California

2. **California** -- “Each manufacturer’s PC and LDT1 fleet average Greenhouse Gas value for the total number of PCs⁶⁹ and LDT1s⁷⁰ **produced and delivered for sale in California**, (emphasis added) including vehicles certified in accordance with section 1960.5 and vehicles certified in accordance with section 1961(a)(14) shall be calculated as follows...” – Title 13, California Code of Regulations, Section 1961.1⁷¹
 - a. **Pennsylvania** – “This final-form rulemaking does not include a Pennsylvania GHG fleet average requirement. Overall, the vehicle fleet mix in this Commonwealth is similar to California’s, and the Commonwealth anticipates it will realize similar GHG emissions reductions in this Commonwealth because the fleet vehicles mix in this Commonwealth is similar to California’s.” – 36 Pa.B. 7424

States That Base Compliance on Vehicles Sold in Their State

3. **Arizona** – “Each manufacturer would be required to demonstrate that all of its passenger cars and light-duty trucks **delivered for sale in Arizona** on or after January 1, 2011, meet an average emission standard for GHG, as detailed in CCR, Title 13, section 1961.1,⁷² incorporated in R18-2-1803. – 18 A.A.C. 2
4. **Connecticut** – “The fleet average greenhouse gas exhaust emission levels for passenger cars, light-duty trucks, and medium-duty passenger vehicles that are **produced and delivered for sale in the State of Connecticut** by a large volume manufacturer for each 2009 and subsequent model year are established as, and

⁶⁸ “Non-passenger automobile” = light duty truck

⁶⁹ “PCs” = passenger cars

⁷⁰ “LDT1s” = light duty truck under 3751 pounds

⁷¹ The language regulating LDT2s (light duty trucks above 3751 pounds) and medium duty passenger vehicles are identical to this section, and omitted for the sake of brevity.

⁷² Section 1961.1 is the provision in the California Code of Regulations that attempts to regulate fuel economy/greenhouse gases.

shall be determined in accordance with, the provisions set forth in California Code of Regulations, Title 13, section 1961.1.” -- Conn. Admin. Code § 22a-174-36b

5. **Maine** -- The fleet average greenhouse gas exhaust emission levels for passenger cars, light-duty trucks, and medium-duty passenger vehicles that are **produced and delivered for sale in the State of Maine** by a large volume manufacturer for each 2009 and subsequent model-year are established as, and shall be determined in accordance with, the provisions set forth in California Code of Regulations, Title 13, section 1961.1. – 06 Code of Maine Rules § 127
6. **Maryland** – “Effective with model year 2011...compliance with the California Fleet Average Greenhouse Gas Requirements shall be demonstrated by each motor vehicle manufacturer. Compliance with...[this] regulation shall be based on the number of vehicles...**produced and delivered for sale in Maryland by each manufacturer.**” Code of Md. Regs. § 26.11.34, Section 8(A) and (B).
7. **Massachusetts** – “Effective for 2009 and subsequent model years, each manufacturer shall comply with the fleet average greenhouse gas emission levels from passenger cars, light-duty trucks and medium-duty passenger vehicles...in accordance with Title 13 CCR, 1961.1, **based on vehicles delivered for sale in Massachusetts.**” – 310 Code of Mass. Regs. 7.40(2)(a)(6)
8. **New Jersey** – “The following documents and sources are incorporated by reference within this subchapter: Section 1961.1: Greenhouse Gas Exhaust Emission Standards and Test Procedures – 2009 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.” -- NJ Admin. Code §§ 7:27-29.13
9. **New Mexico** – “Effective model year 2011 and each model year thereafter, each manufacturer subject to this part shall comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for passenger car, light-duty truck, medium-duty passenger vehicle weight classes, and other requirements of CCR, Section 1961.1, for vehicles **produced and delivered for sale in New Mexico.**” -- 20 NM Admin. Code, Chapter 2, Part 88
10. **New York** – “The fleet average greenhouse gas exhaust emission levels from passenger cars, light-duty trucks and medium-duty passenger vehicles **produced and delivered for sale in New York** by a manufacturer each model-year shall not exceed the number set forth in California Code of Regulations, title 13, section 1961.1.” – 6 NY Code, Rules & Regs., Part 218-8.3
11. **Oregon** – “For purposes of applying the incorporated section of the California Code of Regulations, “**California**” means “**Oregon**”. **Each manufacturer subject to the greenhouse gas provisions of this regulation must comply with the emissions standards, fleet average greenhouse gas exhaust mass emission requirements** for passenger car, light duty truck, medium duty passenger vehicle

weight classes, and other requirements of CCR, Title 13, section 1961.1” – Or. Admin. Rules § 340-257

12. **Rhode Island** – “The greenhouse gas emission standards of Title 13 CCR 1961.1 and related provisions of this regulation shall apply to all 2009 and subsequent model year passenger cars, light duty trucks, and medium duty vehicles **sold, leased, offered for sale or lease, imported, delivered, purchased, rented, acquired, received, or registered in the State of Rhode Island.** – RI Air Poll. Ctrl Reg. 37.2.3
13. **Vermont** – “Each manufacturer shall meet the following fleet requirements for the new vehicles **delivered for sale or lease in Vermont.** Effective for the 2009 and subsequent model-year passenger cars, light-duty trucks, and medium-duty passenger vehicles, each manufacturer shall comply with the with the fleet average emission greenhouse gas requirements.... in accordance with Title 13, California Code of Regulations Section 1961.1” – Vt Air Poll. Ctrl Regs., Subchapter XI, 5-1106(a)(5)
14. **Washington** – “The fleet average of greenhouse gas exhaust emission levels for passenger cars, light-duty trucks, and medium duty passenger vehicles **produced and delivered for sale in the state of Washington** by a large volume manufacturer for each 2009 and subsequent model year are established in the California Code of Regulations, Title 13, section 1961.1.” – Wash. Admin. Code §173.423-090(2).

Local Jurisdictions That Have Adopted the CARB Regulation

15. **City of Albuquerque-Bernalillo County, NM** – “Effective model year 2011 and each model year thereafter, each manufacturer subject to 20.11.104 NMAC shall comply with emissions standards, fleet average greenhouse gas exhaust mass emission requirements for passenger car, light-duty truck, medium-duty passenger vehicle weight classes, and other requirements of CCR Section 1961.1, **for vehicles delivered for sale in Bernalillo county {sic}.**” -- 20 NM Admin. Code, Chapter 11, Part 104
16. **District of Columbia** – “The Mayor [s]hall establish and maintain a low-emissions vehicle program by adopting California emissions standards and compliance requirements applicable to vehicles of model year 2012, and each model year thereafter, pursuant to section 177 of the Clean Air Act...” – D.C. Law 17-0151



COLLEGE OF SOCIAL SCIENCES
HAWAII ENERGY POLICY FORUM
UNIVERSITY OF HAWAII AT MĀNOA

Hawai'i Energy Policy Forum

Mr. Robbie Alm, HECO
Ms. Amy Asselbayer, Ofc of US Rep.
Neil Abercrombie
Ms. Madeleine Austin, World Business
Academy
Ms. Catherine Awakuni, Div. of
Consumer Advocacy
Mr. Warren Bollmeier
Hi Renewable Energy Alliance
Mr. Carlito Caliboso, PUC (Observer)
Mr. Albert Chee, Chevron
Ms. Elizabeth Cole, Kohala Center
Mr. Kyle Datta, U.S. Biofuels
Mr. Mark Duda, HSEA
Ms. Lynne Ebisui, Gas Company
Sen. Kalani English, HI State Senate
Mr. Mitch Ewan, UH HNEI
Mr. Carl Freedman
Haiku Design and Analysis
Sen. Mick Gabbard, HI State Senate
Mr. Mark Glick, OHA
Dr. Michael Hammett, RCUH
Mr. Robert Harris, Sierra Club
Ms. Paula Helfrich, EDAA
Mr. William Kaneko, HI Institute for
Public Affairs
Mr. Darren Kimura, Energy Industries
Holdings
Mr. Daniel Kitamura, Ofc of US Sen.
Daniel K. Akaka
Mr. Kal Kobayashi, Maui County
Mr. Laurence Lau, DOH
Mr. Allyn Lee, C&C of HNL
Mr. Aaron Leong, Ofc of US Senator
Daniel K. Inouye
Dr. Stephen Meder, AIA-Honolulu
Sen. Ron Menor, HI State Senate
Dr. Bruce Miller, UH Ofc of
Sustainability
Dr. Sharon Miyashiro, Social
Sciences Public Policy Ctr.
Rep. Hermina Morita, HI State
House of Representatives
Mr. Tim O'Connell, USDA/Rural
Development
Mr. Richard Paglinawan
Pa Kū'i A Lua
Ms. Melissa Pavlicek, Western States
Petroleum Assn
Mr. Ted Peck, DBEDT
Mr. Randy Perreira, HI State AFL-CIO
Mr. Rick Reed, Inter-Island
Solar Supply
Dr. Rick Rocheleau, UH HNEI
Mr. Peter Rosegg, HECO
Mr. Steven Rymsha, KIUC
Mr. Riley Saito, PowerLight Corp.
Mr. Glenn Sato, Kauai County OED
Mr. Bill Short, BIA of Hawaii
Ms. Joelle Simonpietri, Simonpietri
Enterprises
Mr. Ray Starling, HI Energy Grp
Mr. Lance Tanaka, Tesoro HI Corp
Ms. Val Tavai, HCAP
Dr. Don Thomas, UH Center for the
Study of Active Volcanoes
Mr. Murray Towill, Hawai'i
Hotel Assn
Mr. Josh Wisch, Ofc. Of US Rep. Mazie
Hirono

Testimony of
Kyle Datta

Co-Chair –Energy Efficiency Working Group
Hawai'i Energy Policy Forum

Senate Committee on Energy and the Environment
Tuesday February 12, 2009
4:00 pm
Conference Room 225

IN SUPPORT OF SB 1233 – Relating to Vehicular Emissions

I am Kyle Datta, Co-Chair of the Renewable Energy Working Group of the Hawaii Energy Policy Forum ("Forum"). The Forum is comprised of 46 representatives from the electric utilities, oil and natural gas suppliers, environmental and community groups, renewable energy industry, and federal, state and local government, including representatives from the neighbor islands. We have been meeting since 2002 and have adopted a common vision and mission, and a comprehensive "10 Point Action Plan," which serves as a framework and guide for meeting our preferred energy vision and goals. The Forum generally supports the intent of SB 1233 as it does address one of the goals of the Forum to increase transportation energy efficiency, reduce oil dependence and meet Act 234 climate change targets.

Simply put, Hawaii will not be able to end its oil dependence or meet its greenhouse gas targets without addressing vehicle efficiency. Given that the price of oil was over \$100/bbl just six months ago, and maintained these levels for over seven months highlights the economic risks we face.

Forum members respectfully note the concerns raised by DOH and the automobile manufacturers. We note that two other states, Maine and Vermont, that are in attainment of CAA, passed Clean Car Bills, which would appear to address the Section 177 issues. We suggest that these states may serve as a basis for model legislation that Hawaii could adopt.

We further note that the Obama Administration has requested that NHTSA promulgate more stringent efficiency standards (due to be finalized by March 30, 2009). To the extent these final NHTSA standards require more efficient vehicles in every year, then this legislation would be moot, and can be held by the Legislature later in this session.. To the extent that the NHTSA standard is more efficient in only one or two years, we respectfully note that acceleration of vehicle efficiency is a desirable policy goal. In January 2009, the Obama Administration requested the EPA rule on the right of states to regulate GHG emissions (addressing the preemption issue previously raised, but addressed by the Supreme Court). We would expect that this remaining uncertainty would be addressed before the end of the session.



COLLEGE OF SOCIAL SCIENCES
HAWAII ENERGY POLICY FORUM
UNIVERSITY OF HAWAII AT MĀNOA

Hawai'i Energy Policy Forum

Mr. Robbie Alm, HECO
Ms. Amy Asselbaye, Ofc of US Rep.
Neil Abercrombie
Ms. Madeleine Austin, World Business Academy
Ms. Catherine Awakuni, Div. of Consumer Advocacy
Mr. Warren Bollmeier
Hi Renewable Energy Alliance
Mr. Carlito Caliboso, PUC (Observer)
Mr. Albert Chee, Chevron
Ms. Elizabeth Cole, Kohala Center
Mr. Kyle Datta, U.S. Biofuels
Mr. Mark Duda, HSEA
Ms. Lynne Ebisui, Gas Company
Sen. Kalani English, HI State Senate
Mr. Mitch Ewan, UH HNEI
Mr. Carl Freedman
Haiku Design and Analysis
Sen. Miek Gabbard, HI State Senate
Mr. Mark Glick, OHA
Dr. Michael Hammett, RCUH
Mr. Robert Harris, Sierra Club
Ms. Paula Helfrich, EDAA
Mr. William Kaneko, HI Institute for Public Affairs
Mr. Darren Kimura, Energy Industries Holdings
Mr. Mike Kitamura, Ofc of US Sen.
Daniel K. Akaka
Mr. Kal Kobayashi, Maui County
Mr. Laurence Lau, DOH
Mr. Allyn Lee, C&C of HNL
Mr. Aaron Leong, Ofc of US Senator Daniel K. Inouye
Dr. Stephen Meder, AIA-Honolulu
Sen. Ron Menor, HI State Senate
Dr. Bruce Miller, UH Ofc of Sustainability
Dr. Sharon Miyashiro, Social Sciences Public Policy Ctr.
Rep. Hermina Morita, HI State House of Representatives
Mr. Tim O'Connell, USDA/Rural Development
Mr. Richard Paglinawan
Pa Ku'i A Lua
Ms. Melissa Pavlicek, Western States Petroleum Assn
Mr. Ted Peck, DBEDT
Mr. Randy Perreira, HI State AFL-CIO
Mr. Rick Reed, Inter-Island Solar Supply
Dr. Rick Rocheleau, UH HNEI
Mr. Peter Rosegg, HECO
Mr. Steven Rymsha, KIUC
Mr. Riley Saito, PowerLight Corp.
Mr. Glenn Sato, Kauai County OED
Mr. Bill Short, BIA of Hawaii
Ms. Joelle Simonpietri, Simonpietri Enterprises
Mr. Ray Starling, HI Energy Grp
Mr. Lance Tanaka, Tesoro HI Corp
Ms. Val Tavai, HCAP
Dr. Don Thomas, UH Center for the Study of Active Volcanoes
Mr. Murray Towill, Hawai'i Hotel Assn
Mr. Josh Wisch, Ofc. Of US Rep. Mazie Hirono

Based on the DOH and automobile manufacturer concerns, we suggest that some amendments be made to the bill:

- 1) Provide funding and permanent positions for DOH to administer the provisions of this bill.
- 2) Modify the standards to adopt *only* the greenhouse gas emissions standards adopted by California and the other states as criteria pollutants. This avoids concerns raised by both DOH and automobile manufacturers regarding strict adherence to LEV-II and III, eliminates the concern over prevention of flex fuel vehicles running on ethanol, sets a consistent standard for GHG emissions for clean cars *and* meets the state's interest in improving vehicle efficiency. The modification to Section 343 would be read "vehicle greenhouse gas emissions and fuel efficiency.
- 3) Modify the timing to 2012 to allow DOH to learn from the California experience.

The Forum supports passage of SB 1233 for the above cited reasons and respectfully requests that it be passed.

Thank you for this opportunity to testify.

This testimony reflects the position of the Forum as a whole and not necessarily of the individual Forum members or their companies or organization

From: Dr R Yonover [seerescue@juno.com]
Sent: Wednesday, February 11, 2009 2:08 PM
To: ENETestimony
Subject: Testimony in Support of 1233 and 1174

To Whom It May Concern,

I strongly Support Bills 1233 and 1174 for many reasons, including:

- The Clean Car Act (SB 1233 and SB 1174) will help reduce Hawaii's dependence on foreign fossil oil.
- The Clean Car Act will reduce emissions greenhouse gases contributing to global warming.
- Hawaii will be unable to meet its climate change emissions targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.
- The Clean Car Act helps us achieve our clean energy goals without spending a dime of taxpayers' dollars.
- Hawaii will join the 13 other states that followed California's lead in adopting Clean Cars Bill.
- President Obama made it a priority to clear the way for state's to take the lead on adopting clean car standards.
- Passing the Act now will send a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.

It is critical that we get more efficient cars. I have personally driven only 5-speed cars with no A/C for years to attain 30 to 35 mpg.

Please feel free to contact me for further information. Thanks for your consideration.

Aloha,

Dr. Robert Yonover
President
SEE/RESCUE Corporation

tel. 808-395-1688
e-mail: SeeRescue@juno.com
licensee/product website: www.RescueStreamer.com

HOUSE COMMITTEE ON ENERGY & ENVIRONMENT
February 12th, 2009, 4:00 P.M.
Room 225

TESTIMONY IN STRONG SUPPORT OF SB 1233 and SB 1174

Chair Gabbard and members of the committee:

I would like to express my support for cleaner cars which will provide us with cleaner air to breathe and minimizing illnesses plaguing our population due to polluted breathing air.

The Clean Car Act (SB 1233 and SB 1174) will help reduce Hawaii's dependence on foreign fossil oil.

The Clean Car Act will reduce emissions greenhouse gases contributing to global warming.

Hawaii will be unable to meet its climate change emissions targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.

The Clean Car Act helps us achieve our clean energy goals without spending a dime of taxpayers' dollars.

Hawaii will join the 13 other states that followed California's lead in adopting Clean Cars Bill. President Obama made it a priority to clear the way for state's to take the lead on adopting clean car standards.

Passing the Act now will send a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.

Thank you for the opportunity to testify.

Cynthia Ho

From: EEPtestimony
Sent: Wednesday, February 11, 2009 11:07 AM
To: ENETestimony
Subject: FW: Clean car act

From: Danielle Frohlich [mailto:dsfrohlich@hotmail.com]
Sent: Wednesday, February 11, 2009 7:48 AM
To: EEPtestimony
Subject: Clean car act

Hello-

I am writing to support the Clean Car Act (SB 1233 and SB 1174). This measure, which would allow Hawaii to participate in the nationwide movement towards more efficient vehicle standards, would be a crucial step in reducing our dependence on oil and would help Hawaii reach the targeted goals of Act 234. Hawaii, because of its particular vulnerability to fluctuations in energy costs, should be at the forefront of the movement towards greater energy efficiency.

Thanks,
Danielle Frohlich
Kailua, HI

Windows Live™: E-mail. Chat. Share. Get more ways to connect. [Check it out.](#)

From: EEPtestimony
Sent: Wednesday, February 11, 2009 11:38 AM
To: ENETestimony
Subject: FW: Testimony Supporting SB 1233 and SB 1174

From: Susan Schofield [mailto:honolulususan@yahoo.com]
Sent: Wednesday, February 11, 2009 10:58 AM
To: EEPtestimony
Subject: Testimony Supporting SB 1233 and SB 1174

HOUSE COMMITTEE ON ENERGY & ENVIRONMENT
February 12th, 2009, 4:00 P.M.
Room 225

TESTIMONY IN STRONG SUPPORT OF SB 1233 and SB 1174

Chair Gabbard and members of the committee:

- The Clean Car Act (SB 1233 and SB 1174) will help reduce Hawaii's dependence on foreign fossil oil.
- The Clean Car Act will reduce emissions greenhouse gases contributing to global warming.
- Hawaii will be unable to meet its climate change emissions targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.
- The Clean Car Act helps us achieve our clean energy goals without spending a dime of taxpayers' dollars.
- Hawaii will join the 13 other states that followed California's lead in adopting Clean Cars Bill.
- President Obama made it a priority to clear the way for state's to take the lead on adopting clean car standards.
- Passing the Act now will send a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.

Sincerely,
Susan R.S. Schofield
Honolulu, Hawai'i

From: EEPtestimony
Sent: Wednesday, February 11, 2009 10:52 AM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174

From: Aimee Gaines [mailto:aimeegaines@yahoo.com]
Sent: Wednesday, February 11, 2009 12:22 AM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

HOUSE COMMITTEE ON ENERGY & ENVIRONMENT
February 12th, 2009, 4:00 P.M.
Room 225

TESTIMONY IN STRONG SUPPORT OF SB 1233 and SB 1174

Chair Gabbard and members of the committee:

President Obama made it a priority to clear the way for states to take the lead on adopting clean car standards. At the same time, Hawaii will be unable to meet its climate change emissions targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency. The Clean Car Act (SB 1233 and SB 1174) will not only help to reduce global warming pollution, but will also reduce Hawaii's dependence on foreign fossil oil. The Clean Car Act will help us to achieve our clean energy goals without spending a dime of taxpayers' dollars. Hawaii should join the 13 other states that followed California's lead in adopting the Clean Cars Bill.

Thank you for the opportunity to testify.

Sincerely,

Aimee Gaines
2016 Pacific Heights Rd, Unit A
Honolulu, HI 96813
(808) 499-5304

From: EEPtestimony
Sent: Wednesday, February 11, 2009 10:53 AM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174

-----Original Message-----

From: Karin Gill [mailto:karingill@yahoo.com]
Sent: Tuesday, February 10, 2009 10:10 PM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

The Hawai'i Clean Car Act makes sure that future cars in Hawaii go much further on a gallon of gas. Modeled after California's, the bill requires that automakers provide cars and trucks that produce 30% less greenhouse gas emissions by 2016, the equivalent to boosting average fuel economy of cars and light trucks to 35 miles per hour from the current average of 27. This will reduce Hawaii's dependency on imported oil and save residents money at the pump.

Today, 13 other states have followed California's lead by adopting clean car standards. But their efforts have been stymied by the previous White House. Until now. In his first week in office, President Obama directed his Administration to move rapidly to allow states to implement their clean car plans. Now is Hawaii's turn.

Karin Gill
Honolulu

From: EEPtestimony
Sent: Wednesday, February 11, 2009 11:01 AM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174

From: Russ Mcgee [mailto:rmcgee05@comcast.net]
Sent: Wednesday, February 11, 2009 2:58 AM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

Please support this legislation. We need to do everything we can to get Global Warming under control. This is a good step in that direction.

Russell McGee

From: EEPtestimony
Sent: Wednesday, February 11, 2009 10:54 AM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174

From: A McLoughlin [mailto:austinm@etiaudience.com]
Sent: Wednesday, February 11, 2009 5:19 AM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

Dear Sir/ Madame-

I believe that we must move towards cleaner burning – zero emission vehicles, soon... and Hawaii is the ideal place to start. If Hawaii can move towards using less gasoline and much less Jet Fuel then eventually the mainland can follow the examples and really get the country on the right track.

Also for these reasons:

The Clean Car Act (SB 1233 and SB 1174) will help **reduce Hawaii's dependence on foreign fossil oil.**
The Clean Car Act will **reduce emissions greenhouse gases** contributing to global warming.
Hawaii will be unable to **meet its climate change emissions targets adopted by the legislature in Act 234 (2007)** without addressing transportation efficiency.
The Clean Car Act **helps us achieve our clean energy goals without spending a dime of taxpayers' dollars.**
Hawaii will join the 13 other states that followed California's lead in adopting Clean Cars Bill.
President **Obama made it a priority to clear the way for state's to take the lead on adopting clean car standards.**
Passing the Act now will **send a clear signal to Detroit** that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.

Thank you for your consideration.

Best Regards,
Austin McLoughlin
Buffalo, New York

From: EEPtestimony
Sent: Wednesday, February 11, 2009 11:38 AM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174

-----Original Message-----

From: don blackwell [mailto:averyblackwell@yahoo.com]
Sent: Wednesday, February 11, 2009 10:55 AM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

I would like to inquire as to why Hawaii does not have industry in place to manufacture solar panels for electricity.....more miles to the gallon is not the solution to green house effect. Perhaps laying electrical grids over existing roadways as to run electric cars in much the same manner as street cars.....like slot cars we used to race as kids.

From: EEPtestimony
Sent: Wednesday, February 11, 2009 10:52 AM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174

From: Jennifer Homcy [mailto:jen@tr3ees.com]
Sent: Tuesday, February 10, 2009 11:37 PM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

I support SB1233 and SB1174. This legislation will help Hawaii become a more sustainable and resource independent state. The Hawai'i Clean Car Act makes sure that future cars in Hawaii go much further on a gallon of gas. Since the bill requires that automakers provide cars and trucks that produce 30% less greenhouse gas emissions by 2016, the equivalent to boosting average fuel economy of cars and light trucks to 35 miles per hour from the current average of 27, this will reduce Hawaii's dependency on imported oil and save residents money at the pump. California and other states have passed this type of legislation, and Hawaii should continue to take a leadership role in responsible consumerism and be good stewards of the environment.

Please support SB 1233 and SB 1174.

Sincerely,
Jennifer Homcy

Jennifer Homcy
TR3EES Founding Partner
"Time to Rethink, 3volve, Engage, Educate, Sustain"
PO Box 671
Haleiwa, Hawaii 96712
(808) 375-7460 (c)
(808) 888-0605 (o)
www.tr3ees.com
jen@tr3ees.com

Save a TR3EE! Think before you print.

COMMITTEE ON ENERGY AND ENVIRONMENT

Sen. Mike Gabbard, Chair
Sen. J. Kalani English, Vice Chair

DATE: Thursday, Feb. 12, 1009

TIME: 4:00 pm

PLACE: Conference Room 225 _____ Copies to members

BILL: SB 1233 RELATING TO VEHICULAR EMISSIONS

SUPPORT

Aloha Chair Gabbard, Vice Chair English, and Members of the Committee:

We support this bill. Since we aren't leading the way, Hawaii should at least pick a good state to follow.

Thank you.

Duane & Sarah Preble
3347 Anoaia Place
Honolulu HI 96822 988-7500

From: Jeff Sacher [jsacher@kona.net]
Sent: Wednesday, February 11, 2009 3:00 PM
To: ENETestimony
Subject: SB 1233 and SB 1174

Aloha,

Very simply: Please pass SB 1233 and SB 1174 out of Committee. Clean energy is far too important for our state.

Mahalo,
Jeff Sacher
Kawaihae, Big Island

From: Laurens Laudowicz [lau@100pg.com]
Sent: Wednesday, February 11, 2009 4:07 PM
To: ENETestimony
Cc: jeff@blueplanetfoundation.org
Subject: Testimony in Support of 1233 and 1174

TESTIMONY IN STRONG SUPPORT OF SB 1233 AND SB 1174 Chair Gabbard and members of the committee

100% Green strongly supports Senate bills 1233 and 1174, adopting California's "Clean Cars Act." Passage of these measures is the single most basic, effective action that the legislature can take this session to increase the efficiency of vehicles sold in the future in Hawaii.

Hawaii has an opportunity to make Hawaii's future cars go much further on a gallon of gas. Just last week, President Barack Obama issued a clear directive to his Environmental Protection Agency to move forward on allowing states to adopt higher fuel efficiency standards for cars and trucks. California and 13 other states have adopted "clean car" standards in an effort to push automakers to further improve fuel efficiency.

With the critical mass of states joining the effort to require cleaner cars, automakers globally will be forced to produce vehicles that produce less greenhouse gas pollution and cost less to operate. Senate bills 1233 and 1174 are modeled after California's Clean Car law, passed in 2002. That law requires automakers to cut emissions by nearly a third by 2016—the equivalent of boosting the average fuel economy of cars and light trucks to 35 miles per gallon from the current average of 27. Since California enacted the Clean Cars law, 13 additional states adopted identical fuel efficiency provisions. Those states, in addition to California, have been prevented from implementing their laws, however

The Bush Administration's Environmental Protection Agency (EPA) refused to grant the necessary waiver to allow the states' to adopt more stringent standards than federal law provides. The Obama Administration indicated a change in that position today, however, with a clear directive to the EPA to move quickly on investigating whether to grant the waiver to California and the other states.

Granting the waiver—as is anticipated—would enable Hawaii to adopt the same aggressive fuel economy standards—if the legislature approves SB 1233 and SB 1174.

California estimates that the Clean Cars program will reduce overall greenhouse gas emission from passenger cars by 18 percent in 2020 and 27 percent cut in 2030. The regulations do not call for radical vehicle changes. They are designed instead to tap technologies, methods, and cleaner fuels available now to reduce emissions of four chief greenhouse gases (GHG) contributing to global warming:

- carbon dioxide,
- methane,
- nitrous oxide, and
- hydrofluorocarbons.

The standards apply to new motor vehicles and require declining fleetwide average emissions. This is precisely the time for Hawaii to add its voice to the other states, since it sends a clear policy signal to stimulate market demand for clean, fuel efficient vehicles. As more states join the initiative, this becomes the de facto national standard, and avoids the potential political gridlock in Washington.

Passing the bill now also sends a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need. Beyond the national policy benefits of passing this legislation, there are several important benefits to the state of Hawai'i.

1. First, the majority of our oil is used in transportation, and we will simply be unable to meaningfully reduce our oil dependence unless we adopt efficiency standards for automobiles that go beyond the federal Corporate Average Fuel Economy standards.

2. Second, Hawaii will be unable to meet its climate change targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.

Now is the time to act, to join the rest of the country in showing leadership in energy independence and economic revitalization. Senate bills 1233 and 1174 are smart measures for Hawaii—they help us achieve our clean energy goals without spending a dime of taxpayers' dollars. Please give the Clean Cars Act the green light.

Thank you for the opportunity to testify.

Sustainably,

Laurens Laudowicz

Life is beautiful, i don't want to miss a moment of it. I respond to emails twice a week. If you need to talk to me immediately, please try my cell at 808.351.2891

100% GREEN

"A society grows great when old men plant trees in whose shade they will never sit."

www.100pg.com

Toll-free: 800.483.4125
skype: hundredpercentgreen

CONFIDENTIALITY NOTICE

This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

From: Christine Watanabe [cwatanabe@aloharecruiting.com]
Sent: Wednesday, February 11, 2009 5:27 PM
To: ENETestimony
Subject: Testimony in strong support of SB 1233 and SB 1174

SENATE COMMITTEE ON ENERGY & ENVIRONMENT
February 12th, 2009, 4:00 P.M.
Room 225

TESTIMONY IN STRONG SUPPORT OF SB 1233 and SB 1174

Chair Gabbard and members of the committee:

- The Clean Car Act helps us achieve our clean energy goals without spending a dime of taxpayers' dollars.
 - Hawaii will join the 13 other states that followed California's lead in adopting Clean Cars Bill.
 - President Obama made it a priority to clear the way for state's to take the lead on adopting clean car standards.
 - Passing the Act now will send a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.
- Thank you for the opportunity to testify.



<http://www.aloharecruiting.com>

From: Susan Schofield [honolulususan@yahoo.com]
Sent: Wednesday, February 11, 2009 5:00 PM
To: ENETestimony
Subject: Fw: Testimony Supporting SB 1233 and SB 1174

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENT

February 12th, 2009, 4:00 P.M.
Room 225

TESTIMONY IN STRONG SUPPORT OF SB 1233 and SB 1174

Chair Gabbard and members of the Committee:

- The Clean Car Act (SB 1233 and SB 1174) will help reduce Hawaii's dependence on foreign fossil oil.
- The Clean Car Act will reduce emissions greenhouse gases contributing to global warming.
- Hawaii will be unable to meet its climate change emissions targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.
- The Clean Car Act helps us achieve our clean energy goals without spending a dime of taxpayers' dollars.
- Hawaii will join the 13 other states that followed California's lead in adopting Clean Cars Bill.
- President Obama made it a priority to clear the way for state's to take the lead on adopting clean car standards.
- Passing the Act now will send a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.

Sincerely,
Susan R.S. Schofield
Honolulu, Hawai'i

From: EEPtestimony
Sent: Wednesday, February 11, 2009 10:45 PM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174



From: Denis Markian Wichar [mailto:deedub@webtv.net]
Sent: Wednesday, February 11, 2009 5:45 PM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

I live in Washington State & helped make our state a Green Car state. Please, Hawai'i. Join us.
Mahalo!

Den Mark Wichar
Vancouver WA

From: Barb Morgan [bmorgan@punahou.edu]
Sent: Thursday, February 12, 2009 7:37 AM
To: ENETestimony
Cc: pfmorgan@aol.com
Subject: Testimony in Support of 1233 and 1174

Our family is deeply concerned about the impact of global warming on Hawaii and have taken many personal steps to reduce our "carbon footprint" and live more sustainably (solar water, photovoltaics, water catchment, grey water, vegetable gardens, worms and compost, Prius and Honda Hybrids).

We believe our legislature should be doing everything possible to incentivise individuals and institutions to change their actions in energy, transportation, waste and supporting the local economy. We also believe that regulations as well as public expenditures will be necessary for some of the changes to take place. The partnership of the federal and local governments is essential – and the time is NOW. We will pay dearly – especially in Hawaii – for any delay or procrastination. Our isolation, our shoreline exposure, and our limited land mass are all reasons for us to realize the urgency of a drastic change in our individual and collective behavior.

Barb and Paul Morgan
2891 Oahu Avenue
Honolulu, HI 96822

From: EEPtestimony
Sent: Thursday, February 12, 2009 8:58 AM
To: ENETestimony
Subject: FW: Testimony in Support of 1233 and 1174

1174

-----Original Message-----

From:Carolynn Bell-Tuttle [mailto:cbell@assets-school.net]
Sent: Thursday, February 12, 2009 8:55 AM
To: EEPtestimony
Subject: Testimony in Support of 1233 and 1174

HOUSE COMMITTEE ON ENERGY & ENVIRONMENT
February 12th, 2009, 4:00 P.M.
Room 225

TESTIMONY IN STRONG SUPPORT OF SB 1233 and SB 1174

Chair Gabbard and members of the committee:

- * The Clean Car Act (SB 1233 and SB 1174) will help reduce Hawaii's dependence on foreign fossil oil.

- * The Clean Car Act will reduce emissions greenhouse gases contributing to global warming.

- * Hawaii will be unable to meet its climate change emissions targets adopted by the legislature in Act 234 (2007) without addressing transportation efficiency.

- * The Clean Car Act helps us achieve our clean energy goals without spending a dime of taxpayers' dollars.

- * Hawaii will join the 13 other states that followed California's lead in adopting Clean Cars Bill.

- * President Obama made it a priority to clear the way for state's to take the lead on adopting clean car standards.

- * Passing the Act now will send a clear signal to Detroit that their bailout restructuring plan must include retooling their factories to produce the clean cars Americans want and need.

Thank you for the opportunity to testify.

Carolynn Bell-Tuttle, Honolulu, HI

From: Dave Rolf [drolf@hawaiiidealer.com]
Sent: Thursday, February 12, 2009 10:35 AM
To: ENETestimony
Subject: Supplemental testimony in OPPOSITION to SB 1233 and SB1174



February 12, 2009

Supplemental Testimony in OPPOSITION to SB 1233 and SB1174
Presented to the Senate committee on Energy and Environment

At the hearing 4 p.m. Thursday, February 12, 2009
In Conference Room 225, Hawaii State Capitol

Submitted by David H. Rolf, for the Hawaii Automobile Dealers Association
Hawaii's Franchised New Car Dealers

Chair Gabbard and members of the committee,

Background

The Hawaii Automobile Dealers Association has worked with members of Congress to help create a national standard for fleet mileage requirements to address clean air issues and the need to help the country and our state move away from fossil fuels.

Any patchwork, state-by-state, approach to reaching a solution would be problematic in that it would slow the already significant efforts made toward energy independence. The Corporate Average Fuel Economy (CAFE) standards in place now give automakers breathing room to develop high mileage cars while maintaining financial, albeit wobbly, viability.

For the reasons that such a piecemeal approach may topple America's much needed manufacturing base for new vehicles, HADA opposes this bill.

In 2007, Congress passed the Energy Independence and Security Act (EISA), a law that increased the CAFE standard by 40 percent, to at least 35 mpg by 2020. Because increasing fuel economy is the only way to significantly decrease greenhouse gas (GHG) emissions from motor vehicles, this new standard will decrease GHG tailpipe emissions by 30 percent by 2020.

Pursuant to EISA, a new fuel economy standard was proposed (to be finalized by the Obama administration no later than April 2009) that is higher than California's (31.6 mpg v. 31.3 mpg).

Individual state efforts to regulate fuel economy by regulating GHG emissions from motor vehicles are unnecessary since the passage of EISA and will undermine the new CAFE law.

This effort, led by the California Air Resources Board (CARB):

Creates a Patchwork – CARB's regulation will result in a patchwork of state regulatory regimes, as compliance with their regulation is based on what each automaker delivers for sale in each "California" state. What an automaker "delivers for sale" varies because consumer demand for certain vehicles differs from state to state, meaning compliance in California is no guarantee of compliance in any other state.

Exemptions – CARB’s regulation exempts until 2016 (and then regulates these now exempt automakers at a lesser standard) major global manufacturers.

Vehicle Rationing – To comply with CARB’s regulation, every automaker must sell the “right” mix of vehicles – some vehicles above the standard and some vehicles below the standard. If consumers do not buy the right mix of vehicles, the only realistic way for an automaker to comply will be to ration sales of certain models, or deeply discount other models. Both options distort the market and hurt dealers.

Cross-Border Sales Loophole – Because of vehicle rationing, consumers will go to other states to purchase vehicles unavailable in their state. Except in Rhode Island, vehicles bought in one state and registered in another are unregulated under CARB’s regulation. This loophole is non-existent under CAFE.

Perhaps most applicable to Hawaii’s situation is this: under federal law, no state can set up standards on its own. California, which had grandfathered clean air regulations, was permitted to do so. No so-called “third program” is allowed. Federal law permits another state to adopt the California standards, but ONLY IF THAT STATE HAS A CLEAN AIR NON-ATTAINMENT AREA. **[CLEAN AIR ACT SECTION 177 (42 U.S.C. 7507)]**

Sec. 177. Notwithstanding section 209(a), any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 209(a) respecting such vehicles if-

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator). Nothing in this section or in title II of this Act shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a “third vehicle”) or otherwise create such a “third vehicle.”

For these reasons, and others, we respectfully urge that SB1233 and SB 1174 be held.

Respectfully submitted,

The Hawaii Automobile Dealers Association

David H. Rolf

1100 Alakea St. Suite 2601, Honolulu, Hawaii, 96813 Tel: 808 593-0031

Appendix D

Statutory Sections Relevant to the Regulation of New Mobile-Source Emissions

[CLEAN AIR ACT SECTION 209 (42 U.S.C. 7543)]

Sec. 209.

(a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b)(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that-

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at

least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) in the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this title.

(c) Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 207(a)(2), no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad Engines or Vehicles.-

(1) Prohibition on certain state standards.- No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act-

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives. Subsection (b) shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles.-

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that-

(i) the determination of California is arbitrary and capricious,

[CLEAN AIR ACT SECTION 177 (42 U.S.C. 7507)]

Sec. 177. Notwithstanding section 209(a), any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 209(a) respecting such vehicles if-

- (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and
- (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator). Nothing in this section or in title II of this Act shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle."