

# SB1431

**Measure  
Title:**

**RELATING TO PETROLEUM PRODUCTS.**

**Report  
Title:**

**Gasoline Dealers; Cooperative Purchasing**

**Description:**

**Allows gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases.**

**Companion:**

**Package:**

**None**

**Current  
Referral:**

**CPN**



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

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ON THE FOLLOWING MEASURE:  
S.B. NO. 1431, RELATING TO PETROLEUM PRODUCTS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 25, 2011 TIME: 9:00 a.m.

LOCATION: State Capitol, Room 229

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

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Chair Baker and Members of the Committee:

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

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

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

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

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

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

While the bill envisions the Public Utilities Commission having a rulemaking role, this limited role may not be sufficient to constitute active supervision. Additionally, the bill does not provide guidance on the scope and content of the rules.

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

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

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

Thank you for the opportunity to testify on this measure.

**TESTIMONY OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
FEBRUARY 25, 2011**

**MEASURE: S.B. No. 1431**

**TITLE: Relating to Petroleum Products.**

Chair Baker and Members of the Committee:

**DESCRIPTION:**

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

**POSITION:**

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

**COMMENTS:**

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

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

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

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

However, if the Legislature determines that there is a need for the State to allow such agreements, the Commission respectfully requests your Committee to amend this draft of the bill and consider the language in HB1455 HD1, which removes the reference "to rules adopted but the public utilities commission."

Thank you for the opportunity to testify.



**Western States Petroleum Association**

Senate Committee on Commerce and Consumer Protection

DATE: Friday, February 25, 2011  
TIME: 9:00 a.m.  
PLACE: Conference Room 229  
RE: SB1431: Relating to Petroleum Products

I am testifying on behalf of the Western States Petroleum Association (known as WSPA) in opposition to SB 1431. WSPA is a non-profit trade association representing a broad spectrum of petroleum industry companies in Hawaii and five other western states. The purpose of SB 1431 is to allow gasoline dealers to enter into cooperative purchasing agreements to acquire discounts on gasoline purchases

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

Thank you for giving WSPA the opportunity to testify today.

Testimony for Senate Committee on  
Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair

SB1431

Good morning,

My Name is Jason Kim and I run 2 service stations located at 94-673 Kupuohi Street, Waipahu and 94-609 Ukee Street, Waipahu on the Island of Oahu. I am here to testify in favor of Senate Bill 1431. For many years I have tried to sell gasoline at my station at a price that would be competitive with any other location on my island. I felt that customers would be attracted by a lower price and what I didn't make in margin would be offset by the increased volume.

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

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

February 25, 2011

TO: Commerce on Consumer Protection  
Sen. Rosalyn Baker, Chair and  
Sen. Brian Taniguchi, Vice Chair and  
Committee on Judiciary

From: Brian Arakawa

**Testimony on SB #1431**

Ms. Chair and Members

I am here today to testify in favor of SB #1431, **Gasoline Dealers; Cooperative Purchasing.**

Cooperative purchasing under the guidelines of this bill will allow independent retail stations the capability to gain "purchasing power" similar to the box store such as Costco or Safeway.

In turn this would allow the independent station the capability to compete with the box store fuel retail prices; therefore benefiting the consumer.

Should we continue in the present direction and not allow Cooperative Purchasing for the independent retail station the Box Store will close the independent station like they have closed the small grocery store, hardware store and the countless other connected business once run by local family businesses.

Thank You