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# A BILL FOR AN ACT

RELATING TO THE PETROLEUM INDUSTRY.

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

1           SECTION 1. The legislature finds that the oil industry has  
2 in the past, and if unchecked, will likely in the future, use  
3 oligopolistic powers to set artificially high prices in Hawaii  
4 for motor fuel and other petroleum products. Disadvantaged by  
5 the secrecy in the industry, elected officials and the public  
6 are denied accurate assessments of the true causes of higher  
7 prices. True and effective transparency would be an effective  
8 tool to prevent the use of price maintenance schemes or other  
9 illegal behavior that artificially raises consumer prices.

10           While true transparency should provide benefits for Hawaii  
11 consumers, the legislature further finds that the combination of  
12 the State's geographical isolation and the market control  
13 exercised by the oil companies necessitate additional measures  
14 to safeguard the public. While the effectiveness of the  
15 increased transparency is tested, the current maximum wholesale  
16 price of gasoline should be suspended but the governor should  
17 have the ability to reinstate it in the event transparency does



1 not provide the relief needed and the oil industry maintains  
2 excessively high prices. The governor should have the authority  
3 to reinstate the maximum wholesale price upon publication of a  
4 finding that its reinstatement is beneficial to the economic  
5 well-being, health, and safety of the people of the State.

6 The legislature further finds that the method for  
7 calculating the maximum wholesale price should be refined to  
8 maximize savings to consumers in the event that the governor  
9 reinstates the maximum price. As was more than evident during  
10 the aftermath of hurricanes Katrina and Rita and the refinery  
11 fires in Texas, natural and man-caused disasters halfway around  
12 the world can cause volatility and instability in the wholesale  
13 gasoline prices in Hawaii. The State must prevent disasters in  
14 other far-away locations from unreasonably influencing its  
15 wholesale gasoline prices. To reduce instability, an additional  
16 geographic market needs to be added to provide more flexibility  
17 in establishing the baseline gasoline price.

18 In setting a maximum pre-tax wholesale price of gasoline,  
19 the legislature inserted a location adjustment factor to take  
20 into account the added costs of doing business in Hawaii.  
21 However, in the implementation of the gasoline price control



1 program, the public utilities commission established zone price  
2 adjustments for the eight geographic zones established in the  
3 State, including a zone price adjustment for zone one, the  
4 Honolulu base zone. These zone price adjustments, adopted by  
5 the public utilities commission, were determined by using the  
6 highest actual costs of doing business by wholesaler  
7 distributors in the various zones. Accordingly, the location  
8 adjustment factor became redundant.

9 A sustained review of the spot daily price for conventional  
10 regular unleaded gasoline in a number of mainland markets and a  
11 review of wholesale prices in those markets published by the  
12 United States Department of Energy indicates that the marketing  
13 margin factor may have been set too high.

14 Further, with regard to the zone price adjustments, some  
15 distributors were taking more than an equitable share of the  
16 zone price adjustment to the detriment of other distributors in  
17 the chain of distribution. To ensure that there is an equitable  
18 sharing of the zone price adjustment, the zone price adjustments  
19 must be divided by wholesale distributors based upon the  
20 functions that each provides in the chain of distribution.



1           It cannot be overemphasized that the entire reason for this  
2 Act, amending Act 242, Session Laws of Hawaii 2004, as codified,  
3 which amended Act 77, Session Laws of Hawaii 2002, is the need  
4 to protect the gasoline consumers in this State from the  
5 predatory practices of an oligopolistic petroleum industry. The  
6 various courts have found, and the parties themselves  
7 acknowledge, that the wholesale gasoline industry in this State  
8 is an uncompetitive oligopoly with the industry parties enjoying  
9 exorbitant profit margins in their wholesale transactions, all  
10 to the detriment of the Hawaii consumer. Therefore, the  
11 legislature reiterates that the objective of Act 242 is to  
12 enhance the consumer welfare by fostering the opportunity for  
13 prices to reflect and correlate with competitive market  
14 conditions.

15           The legislature further finds that the establishment and  
16 allocation of adequate resources for a vigorous state watchdog  
17 system to monitor and oversee the petroleum industry and  
18 gasoline market is a prerequisite to ensure an efficient market.  
19 The public disclosure, collection, aggregation, and analyses of  
20 current data relating to Hawaii petroleum fuel prices, volumes,  
21 costs, and profits, and the subsequent reporting of this



1 information to planning and enforcement agencies, such as the  
2 departments of the attorney general, business, economic  
3 development, and tourism, and taxation, for review and  
4 assessment, is critical in ensuring compliance with the letter  
5 and spirit of the laws and regulations designed to promote fair  
6 and competitive gasoline prices for Hawaii's consumers.

7 To ensure that oil companies do not further raise prices  
8 artificially high, the suspension of the maximum wholesale  
9 gasoline price will not suspend or affect the duty of the public  
10 utilities commission to calculate and publish what the maximum  
11 wholesale price would be under the statutory formula.

12 Publication of this fair price indicator will ensure that the  
13 governor has the information necessary to determine whether  
14 reinstatement of the maximum wholesale price would benefit the  
15 people of the State. Further, the public utilities commission  
16 is directed to proactively enforce the petroleum industry  
17 monitoring, analysis, and reporting program and the provisions  
18 of the unfair trade practices to enable the consumers of Hawaii  
19 to enjoy the lowest possible prices for gasoline, while allowing  
20 the refiners, jobbers, and wholesalers to make a reasonable  
21 return on their investments.



1 The purposes of this Act are to:

2 (1) Require true transparency by the oil industry to  
3 increase competition and provide the public and  
4 elected officials with the necessary monitoring  
5 capability to discourage the industry from using price  
6 maintenance schemes or other anti-competitive  
7 practices that artificially raise consumer prices;

8 (2) Suspend the maximum gasoline wholesale price while  
9 leaving the governor the ability to reinstate it if  
10 oil companies maintain excessively high prices that  
11 are detrimental to the economic well-being, health,  
12 and safety of the people of the State;

13 (3) Refine the method for calculating the maximum  
14 wholesale gasoline price to increase consumer savings  
15 if the governor reinstates the maximum price, by:

16 (A) Adding the Singapore spot price weekly average  
17 price of conventional regular unleaded gasoline  
18 to the baseline price determination, with the  
19 three lowest weekly averages being averaged, to  
20 determine the baseline price for regular unleaded  
21 gasoline;



- 1 (B) In the event of a holiday or holidays in the  
2 prior week, requiring the public utilities  
3 commission to average the prices of the days that  
4 were not holidays;
- 5 (C) Eliminating the location adjustment factor;
- 6 (D) Reducing the marketing margin factor to 14 cents;
- 7 (E) Allocating percentages of zone price adjustment  
8 in zones 2 through 8 to distributors based upon  
9 different functions; and
- 10 (F) Providing for adjustments of zone price  
11 adjustments and allocations of zone price  
12 adjustments on a zone by zone basis;
- 13 (4) Establish the petroleum industry monitoring, analysis,  
14 and reporting special fund;
- 15 (5) Require the public utilities commission to develop and  
16 maintain the petroleum industry monitoring, analysis,  
17 and reporting program, including an automated  
18 petroleum industry information reporting system;
- 19 (6) Redelineate the types of information that the  
20 petroleum industry must submit to the public utilities  
21 commission;



- 1 (7) Make an appropriation into and an appropriation from  
2 the petroleum industry monitoring, analysis, and  
3 reporting special fund to be expended by the public  
4 utilities commission to establish and maintain the  
5 petroleum industry monitoring, analysis, and reporting  
6 program; and
- 7 (8) Prohibit unfair trade practices by the petroleum  
8 industry.

## PART I

9  
10 SECTION 2. Chapter 486J, Hawaii Revised Statutes, is  
11 amended by adding three new sections to be appropriately  
12 designated and to read as follows:

13 **"§486J-A Informational cost reports.** (a) Each refiner,  
14 on a semi-annual basis, at reporting dates as the commission may  
15 establish, shall file with the commission, on forms prescribed,  
16 prepared, and furnished by the commission, a certified statement  
17 of operating and overhead costs for the refiner's Hawaii  
18 operations that shall include but not be limited to the  
19 following:

- 20 (1) Crude oil costs and sources;
- 21 (2) Other feedstock costs and sources;

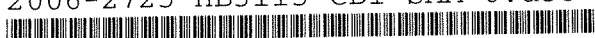




- 1        (3) Refinery operating expenses;  
2        (4) Marketing operating expenses by petroleum product;  
3        (5) Distribution expenses by petroleum product;  
4        (6) Corporate overhead expenses; and  
5        (7) The percentage of the total number of wholesale  
6        gallons of unleaded regular and premium unleaded  
7        gasoline sold during the reporting period at wholesale  
8        prices per gallon that exceed the maximum pre-tax  
9        wholesale price calculated by the commission under  
10       section 486H-13.

11       (b) In addition to the reporting required under subsection  
12       (a), each distributor shall file with the commission all  
13       Securities and Exchange Commission Forms 10-K, 10-Q, annual  
14       reports, quarterly reports, and earnings supplements published  
15       by the distributor.

16       (c) Each distributor, except a distributor who is so  
17       defined solely by criteria in paragraph (4) of that definition  
18       in section 486J-1, who sells liquid fuel only at retail and is  
19       not a refiner, shall file with the commission, on a semi-annual  
20       basis at reporting dates as the commission may establish, on  
21       forms prescribed, prepared, and furnished by the commission, a



1 certified statement of operating and overhead costs that shall  
2 include the following:

- 3 (1) Gasoline purchases and exchanges and sources;
- 4 (2) Diesel purchases and exchanges and sources;
- 5 (3) Marketing expenses; and
- 6 (4) Distribution expenses.

7 **§486J-B Petroleum industry monitoring, analysis, and**  
8 **reporting program.** The commission shall establish the petroleum  
9 industry monitoring, analysis, and reporting program that  
10 includes development and maintenance of an automated petroleum  
11 industry information reporting system that meets the  
12 requirements of government, industry, and the public while  
13 promoting sound policy making and consumer information and  
14 protection. The purpose of the petroleum industry monitoring,  
15 analysis, and reporting program is to conduct and facilitate the  
16 efficient analysis and reporting of all information and data  
17 provided by the petroleum industry pursuant to this chapter.  
18 The commission shall develop the petroleum industry monitoring,  
19 analysis, and reporting program in a manner that will result in  
20 greater market transparency and provide useful information to  
21 the general public and those agencies that are authorized to

1 conduct oversight of the petroleum industry and ensure  
2 compliance with all relevant laws.

3 **§486J-C Petroleum industry monitoring, analysis, and**  
4 **reporting special fund.** (a) There is established a petroleum  
5 industry monitoring, analysis, and reporting special fund to be  
6 administered by the commission.

7 (b) The legislature may make appropriations from the  
8 general revenues of the State of Hawaii, not to exceed  
9 \$2,000,000 in any fiscal year, for the petroleum industry  
10 monitoring, analysis, and reporting special fund.

11 (c) Moneys in the special fund shall be used to:

12 (1) Administer the petroleum industry monitoring,  
13 analysis, and reporting program pursuant to this  
14 chapter; and

15 (2) Establish full-time staff positions in the  
16 commission to implement and maintain the petroleum  
17 industry monitoring, analysis, and reporting program,  
18 including the automated petroleum industry information  
19 reporting system established by section 486J-B."

20 SECTION 3. Section 486J-1, Hawaii Revised Statutes, is  
21 amended as follows:



1 1. By adding eight new definitions to be appropriately  
2 inserted and to read:

3 "Classes of retail trade" means the separate subdivisions,  
4 or "classes," of outlets or methods of retail sales of liquid  
5 fuels, typically but not always limited to gasoline and diesel  
6 for motor vehicles, and includes any:

7 (1) Company-operated station that is a retail service  
8 station owned and operated by a refiner or wholesale  
9 distributor and where retail prices are set by that  
10 refiner or wholesale distributor;

11 (2) Lessee dealer-operated station that is a retail  
12 service station owned by a refiner or wholesale  
13 distributor and operated by a qualified gasoline  
14 dealer other than a refiner or wholesale distributor  
15 under a franchise; or

16 (3) Owner-operated station that is a retail service  
17 station not owned by a refiner or wholesale  
18 distributor and operated by a qualified gasoline  
19 dealer.

20 "Commission" means the public utilities commission.



1       "Corporate overhead expenses" means the expenses or costs  
2 allocated by the refiners that reflect their Hawaii business  
3 units' share of corporate staff costs, such as legal, finance,  
4 accounting, information technology, and similar costs.

5       "Dealer tank wagon price" means the wholesale price at  
6 which liquid fuel is sold to any retail outlet by any  
7 distributor priced on a delivered basis to a retail outlet.

8       "Liquid fuel" means fuels in liquid form, commercially  
9 usable for energy needs, power generation, and fuels that may be  
10 manufactured, produced, or imported into the State or that may  
11 be exported therefrom, including petroleum and petroleum  
12 products and all fuel alcohols.

13       "Nonrefiner wholesale price" means the wholesale price at  
14 which liquid fuel is sold by any distributor, not a refiner, to  
15 any other distributor, not a refiner, for resale at any  
16 subsequent wholesale or retail transaction.

17       "Refiner wholesale price" means the wholesale price at  
18 which liquid fuel is sold by a refiner to any distributor, not a  
19 refiner, for resale at any subsequent wholesale or retail  
20 transaction.



1       "Wholesale liquid fuel prices" means the prices at which  
2 liquid fuel is sold at wholesale for resale at wholesale or  
3 retail, typically but not limited to gasoline and diesel for  
4 motor vehicles, and include "dealer tank wagon price,"  
5 "nonrefiner wholesale price," and "refiner wholesale price.""

6       2. By amending the definitions of "distributor," "fuel,"  
7 "person," and "refiner" to read:

8       "Distributor" means [~~and includes~~]:

9       (1) Every person who refines, manufactures, produces, or  
10       compounds fuel in the State[~~]~~ and sells it at  
11       wholesale or at retail[~~]~~ or who [~~utilizes~~] uses it  
12       directly in the manufacture of products or for the  
13       generation of power;

14       (2) Every person who imports or causes to be imported into  
15       the State, or exports or causes to be exported from  
16       the State, any fuel; [~~and~~]

17       (3) Every person who acquires fuel through exchanges with  
18       another distributor[~~]~~; or

19       (4) Every person who purchases fuel for resale at  
20 wholesale or retail from any person described in  
21 paragraph (1), (2), or (3); provided that



1           "distributor" shall not include a marina, lessee  
2           dealer-operated station, owner-operated station, or  
3           other retailer that retails fuel only to end users or  
4           the public.

5           "Fuel" means [~~and includes~~] fuels, whether liquid, solid,  
6 or gaseous, commercially usable for energy needs, power  
7 generation, and fuels manufacture, that may be manufactured,  
8 grown, produced, or imported into the State or that may be  
9 exported therefrom[+], including petroleum and petroleum  
10 products and gases, coal, coal tar, vegetable ferments, and all  
11 fuel alcohols.

12           "Person"[+] means any person, firm, association,  
13 organization, partnership, business trust, corporation, or  
14 company. "Person" also includes any city, county, public  
15 district or agency, the State, or any department or agency  
16 thereof, and the United States to the extent authorized by  
17 federal law.

18           "Refiner" means any person who owns, operates, or controls  
19 the operations of one or more refineries[+] in Hawaii."

20           3. By deleting the definition of "petroleum commissioner."



1        [~~"Petroleum commissioner" or "commissioner"~~ means the  
2 administrator of the energy, resources, and technology division  
3 of the department of business, economic development, and  
4 tourism." ]

5        SECTION 4. Section 486J-2, Hawaii Revised Statutes, is  
6 amended to read as follows:

7        **"§486J-2 Distributors to register.** Every distributor, and  
8 any person before becoming a distributor, shall register as such  
9 with the [~~commissioner~~] commission on forms to be prescribed,  
10 prepared, and furnished by the [~~commissioner.~~] commission."

11        SECTION 5. Section 486J-3, Hawaii Revised Statutes, is  
12 amended to read as follows:

13        **"§486J-3 Statements.** (a) Each week every distributor  
14 [~~shall, at such~~], on the reporting dates as the [~~commissioner~~]  
15 commission may establish, shall file with the [~~commissioner,~~]  
16 commission, on forms prescribed, prepared, and furnished by the  
17 [~~commissioner,~~] commission, a certified statement showing  
18 separately for each county and for the islands of Lanai and  
19 Molokai within which and whereon fuel is sold or used during the  
20 last preceding reporting [~~period,~~] week, the following:





- 1           (1) The total number of gallons or units of fuel, by type  
2           or grade, refined, manufactured, or compounded by the  
3           distributor within the State [~~and sold or used by the~~  
4           ~~distributor,~~] and, if for ultimate [~~use~~] sale or  
5           consumption in another county or on another island,  
6           [~~the name of that county or island,~~] the number of  
7           gallons or units of fuel, by type or grade, sold,  
8           exchanged, or otherwise transferred or used by the  
9           distributor in each county or island;
- 10          (2) The total number of gallons or units of fuel, by type  
11          or grade, imported or exported by the distributor [~~or~~  
12          ~~sold~~]; the total volumes of fuel, by type or grade,  
13          sold, exchanged, or otherwise transferred or used by  
14          the distributor[~~;~~]; and if for ultimate [~~use~~] sale or  
15          consumption in another county or on another island,  
16          [~~the name of that~~] the number of gallons or units of  
17          fuel, by type or grade, sold, exchanged, or otherwise  
18          transferred or used by the distributor in each county  
19          or island;
- 20          (3) The total number of gallons or units of fuel sold as  
21          liquid fuel, aviation fuel, diesel fuel, and other



- 1 types of fuel as required by the [~~commissioner,~~  
2 commission;
- 3 (4) The total number of gallons or units of fuel [~~and the~~  
4 types thereof], by type or grade, and their respective  
5 sales prices for all fuel sold to[+] federal, state,  
6 and county agencies, ships stores, or base exchanges,  
7 commercial agricultural accounts, commercial  
8 nonagricultural accounts, retail dealers, and other  
9 customers as required by the [~~commissioner,~~  
10 ~~(5) Monthly Hawaii~~] commission;
- 11 (5) Weekly weighted average acquisition cost per barrel  
12 and volumes of foreign or domestic crude oil or other  
13 liquid fuels, finished or unfinished, imported to  
14 Hawaii, including information identifying the source  
15 of the crude oil or other liquid fuels;
- 16 (6) The effective date and time, and the amount of change  
17 in cents per gallon, of any increase or decrease in  
18 wholesale price occurring during the week and the  
19 weekly weighted average wholesale prices and sales  
20 volumes of finished [~~leaded regular,~~] unleaded  
21 regular[~~7~~] and premium motor gasoline, and of each



1 other grade of gasoline sold [~~through company~~  
2 ~~operated~~], by island, to retail outlets, [to other  
3 ~~end-users,~~] by classes of retail trade, and to  
4 wholesale [customers,  
5 ~~(6) Monthly Hawaii]~~ distributors;  
6 (7) Weekly weighted average retail prices, and sales  
7 volumes of finished unleaded regular and premium motor  
8 gasoline, and of each other grade of gasoline sold, by  
9 island, by retail distributor outlets of all classes  
10 of retail trade and by any distributor to other  
11 end-users; provided that the commission may purchase  
12 retail price data from data service companies that the  
13 commission may use to substitute some or all data to  
14 meet the reporting requirement for retail price data  
15 under this paragraph;  
16 (8) The effective date and time, and the amount of change  
17 in cents per gallon, of any increase or decrease in  
18 wholesale price occurring during the week and the  
19 weekly weighted average wholesale prices, and sales  
20 volumes [for residential sales, commercial and  
21 institutional sales, industrial sales, sales through



1 ~~company operated retail outlets, sales to other end-~~  
2 ~~users, and wholesale sales of No. 2 diesel fuel and~~  
3 ~~No. 2 fuel oil; and~~

4 ~~(7) Monthly Hawaii]~~ of No. 2 diesel fuel and No. 2 fuel  
5 oil, by island, to retail distributor outlets, by  
6 classes of retail trade, and to all other wholesale  
7 distributors. Weighted average wholesale prices and  
8 sales volumes shall be reported by type of wholesale  
9 liquid fuel price;

10 (9) Weekly weighted average retail prices, and sales  
11 volumes of No. 2 diesel fuel and No. 2 fuel oil sold,  
12 by island, by retail distributor outlets of all  
13 classes of retail trade and by any distributor to  
14 other end-users. The commission may purchase retail  
15 price data from data service companies that the  
16 commission may use to substitute some or all data to  
17 meet the reporting requirement for retail price data  
18 under this paragraph;

19 (10) Weekly weighted average prices, and sales volumes for  
20 retail sales and wholesale sales, by island, of No. 1  
21 distillate, kerosene, finished aviation gasoline,



1 kerosene-type jet fuel, No. 4 fuel oil, residual fuel  
2 oil, and consumer grade propane[-];

3 (11) For each distributor that is a refiner, the gross  
4 margins or spreads between a refiner's average  
5 weighted acquisition price for each gallon of crude  
6 oil and blendstock refined within the State and the  
7 average weighted prices for each gallon or unit of  
8 fuel sold, by county or island, to another  
9 distributor, a retail dealer, end-user, and consumer;  
10 and

11 (12) For each distributor that is not a refiner, the gross  
12 margins or spreads between the distributor's average  
13 weighted price for each gallon or unit of fuel  
14 acquired by the distributor and the average weighted  
15 prices for each gallon or unit of fuel sold, by county  
16 or island, to another distributor, a retail dealer,  
17 end-user, or consumer.

18 The [~~commissioner~~] commission shall prescribe [~~by rule when the~~  
19 ~~first report shall be submitted.~~

20 ~~(b) In addition to the above reporting, each distributor~~  
21 ~~shall file with the commissioner, Federal Form FEO-1000 or an~~



1 ~~equivalent state form to be prescribed, prepared, and furnished~~  
2 ~~by the commissioner, showing the expected supply of fuel~~  
3 ~~products for the coming month, and their intended distribution~~  
4 ~~as categorized by Form FEO 1000 or the equivalent state form.~~  
5 ~~The state form shall be supplied in the event that the Federal~~  
6 ~~Mandatory Petroleum Allocation Regulations should expire, be~~  
7 ~~revoked, or be amended to delete or substantially change the~~  
8 ~~reporting requirements provided therein.~~

9 ~~(e)]~~ applicable standards and practices for reporting to  
10 facilitate uniformity, consistency, and comparability of the  
11 data to be submitted.

12 (b) Each major marketer shall submit to the  
13 ~~[commissioner,]~~ commission, at a time and in a form as the  
14 ~~[commissioner]~~ commission shall prescribe, information,  
15 including petroleum and petroleum product receipts, exchanges,  
16 inventories, and distributions. ~~[The commissioner shall~~  
17 ~~prescribe by rule when the first report shall be submitted.~~

18 ~~(d)]~~ (c) The ~~[commissioner]~~ commission may request  
19 additional information as and when ~~[the commissioner]~~ the  
20 commission deems necessary to perform ~~[the commissioner's]~~ the  
21 commission's responsibilities under this chapter.



1        (d) Information in the statements filed pursuant to this  
 2 section shall be collected and maintained for the purpose of  
 3 facilitating the analysis required by section 486J-5; provided  
 4 that the commission shall make available to the public the  
 5 information contained in the statements but not the statements  
 6 themselves, as provided in sections 486J-6 and 486J-8."

7        SECTION 6. Section 486J-4, Hawaii Revised Statutes, is  
 8 amended to read as follows:

9        **"§486J-4 Informational reports.** (a) Each major oil  
 10 producer, refiner, marketer, oil transporter, and oil storer  
 11 shall submit to the [~~commissioner,~~] commission, in [~~such~~] a form  
 12 as the [~~commissioner~~] commission shall prescribe, information  
 13 [~~which~~] that includes the following:

14        (1) Major oil transporters shall report on petroleum by  
 15 reporting the capacities of each major transportation  
 16 system, the amount transported by each system, and  
 17 inventories thereof. The provision of the information  
 18 shall not be construed to increase and decrease any  
 19 authority the [~~commissioner~~] commission may otherwise  
 20 have;



1 (2) Major oil storers shall report on storage capacity,  
2 inventories, receipts and distributions, and methods  
3 of transportation of receipts and distributions;

4 (3) Refiners shall report on facility capacity and  
5 utilization and method of transportation of refinery  
6 receipts and distributions; and

7 (4) Major oil marketers shall report on facility capacity  
8 and methods of transportation of receipts and  
9 distributions.

10 ~~[The commissioner shall prescribe by rule when the first report~~  
11 ~~shall be submitted.]~~

12 (b) The ~~[commissioner]~~ commission may request additional  
13 information as and when ~~[the commissioner]~~ the commission  
14 deems it necessary to perform ~~[the commissioner's]~~ the  
15 commission's responsibilities under this chapter."

16 SECTION 7. Section 486J-5, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§486J-5 Analysis of information; ~~[audits and~~**  
19 **~~inspections;]~~ summary reports.** (a) The ~~[petroleum~~  
20 ~~commissioner,]~~ commission, with the ~~[commissioner's]~~  
21 commission's own staff and other support staff with expertise





1 and experience in, or with, the petroleum industry, shall  
2 gather, analyze, and interpret the information submitted to it  
3 pursuant to sections 486J-3 [~~and~~], 486J-4, and 486J-A and other  
4 information relating to the supply [~~and price~~], prices, margins,  
5 and profits of petroleum products, with particular emphasis on  
6 motor vehicle fuels, including~~[7]~~ but not limited to~~[7]~~ all of  
7 the following:

8 (1) The nature, cause, and extent of any petroleum or  
9 petroleum [~~products shortage~~] product situation or  
10 condition affecting supply~~[7]~~, price, margins, or  
11 profits;

12 [~~(2)~~] ~~The economic and environmental impacts of any~~  
13 ~~petroleum and petroleum product shortage or condition~~  
14 ~~affecting supply;~~

15 ~~(3)~~ ~~Petroleum or petroleum product demand and supply~~  
16 ~~forecasting methodologies utilized by the petroleum~~  
17 ~~industry in Hawaii;~~

18 ~~(4)]~~ (2) The prices, with particular emphasis on wholesale  
19 and retail motor vehicle fuel prices, and any  
20 significant changes in prices charged by the petroleum



1 industry for petroleum or petroleum products sold in  
2 Hawaii and the reasons for [~~such~~] the changes;

3 [~~(5)~~] (3) The income, expenses, margins, and profits~~[7]~~ in  
4 Hawaii, both before and after taxes, [~~of the industry~~  
5 ~~as a whole and of major firms within it, including a~~  
6 ~~comparison with other major industry groups and major~~  
7 ~~firms within them as to profits, return on equity and~~  
8 ~~capital, and price earnings ratio;~~] of each  
9 distributor and the income, expenses, margins, and  
10 profits, both before and after taxes, of major oil  
11 companies in other regions of the United States and  
12 other countries; and

13 [~~(6)~~] (4) The emerging trends relating to supply, demand,  
14 [~~and conservation of petroleum and petroleum products;~~

15 ~~(7) The nature and extent of efforts of the petroleum~~  
16 ~~industry to expand refinery capacity and to make~~  
17 ~~acquisitions of additional supplies of petroleum and~~  
18 ~~petroleum products; and~~

19 ~~(8) The development of a petroleum and petroleum products~~  
20 ~~information system in a manner which will enable the~~  
21 ~~State to take action to meet and mitigate any~~



1           ~~petroleum or petroleum products shortage or condition~~  
2           ~~affecting supply.~~

3           ~~(b) The commissioner shall conduct random or periodic~~  
4           ~~audits and inspections of any supplier or suppliers of oil or~~  
5           ~~petroleum products to determine whether they are unnecessarily~~  
6           ~~withholding supplies from the market or are violating applicable~~  
7           ~~policies, laws, or rules. The commissioner may solicit~~  
8           ~~assistance of the department of taxation in any such audit. The~~  
9           ~~commissioner shall cooperate with other state and federal~~  
10           ~~agencies to ensure that any audit or inspection conducted by the~~  
11           ~~commissioner is not duplicative of the data received by any of~~  
12           ~~their audits or inspections which is available to the~~  
13           ~~commissioner.] price, margins, and profits.~~

14           ~~[(e)]~~ (b) The ~~[commissioner]~~ commission shall analyze the  
15           ~~[impacts]~~ effects of state and federal policies, rules, and  
16           regulations upon the supply and pricing of petroleum products.

17           ~~[(d)]~~ (c) The ~~[commissioner]~~ commission shall publish  
18           annually and submit to the governor and the legislature twenty  
19           days prior to the first day of ~~[the current]~~ each regular  
20           legislative session a summary, including any analysis and  
21           interpretation of the information submitted to it pursuant to



1 this chapter, and any other activities taken by the  
2 [~~commissioner,~~] commission, including civil penalties imposed  
3 and referrals of violations to the attorney general under  
4 section 486J-9. Any person may submit comments in writing  
5 regarding the accuracy or sufficiency of the information  
6 submitted. [~~At the option of the director, this report may be~~  
7 ~~combined with reporting required by section 196-4(11), in the~~  
8 ~~director's role as state energy resources coordinator.]"~~

9 SECTION 8. Section 486J-6, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§486J-6 Confidential information.** (a) Confidential  
12 commercial information [~~presented~~] provided to the  
13 [~~commissioner~~] commission pursuant to this chapter that is  
14 exempt from public disclosure under section 92F-13(4) shall be  
15 held in confidence by the [~~commissioner~~] commission or  
16 aggregated to the extent necessary to [~~assure~~] ensure  
17 confidentiality as [~~governed~~] required by chapter 92F[~~7~~  
18 ~~including its penalty provisions~~].

19 (b) No data or information submitted to the commissioner  
20 shall be deemed confidential if the person submitting the  
21 information or data has made it public.



1 (c) Unless otherwise provided by law, with respect to data  
2 that the commission obtains or is provided pursuant to  
3 ~~[sections]~~ section 486J-3 [and], 486J-4, 486J-5, or 486J-A,  
4 neither the ~~[commissioner,]~~ commission nor any employee of the  
5 ~~[department,]~~ commission may do any of the following:

6 (1) Use the information furnished or obtained ~~[under~~  
7 ~~sections 486J-3 and 486J-4]~~ for any purpose other than  
8 the ~~[statistical]~~ purposes for which it is supplied;

9 (2) Make any publication whereby the data furnished by any  
10 ~~[particular establishment or individual under sections~~  
11 ~~486J-3 and 486J-4]~~ person can be identified; or

12 (3) Permit ~~[anyone]~~ any person other than the commission,  
13 the department of taxation, the attorney general, the  
14 consumer advocate, the department of business,  
15 economic development and tourism, and the authorized  
16 representatives and employees of each to examine the  
17 individual reports or statements provided ~~[under~~  
18 ~~sections 486J-3 and 486J-4 other than the public~~  
19 ~~utilities commission, the attorney general, and the~~  
20 ~~consumer advocate, and the authorized representatives~~  
21 ~~and employees of each]."~~



1 SECTION 9. Section 486J-7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§486J-7 Confidential information obtained by another**  
4 **state agency.** Any confidential information pertinent to the  
5 responsibilities of the [~~commissioner~~] commission specified in  
6 this chapter that is obtained by another state agency, including  
7 the department of taxation, [~~the public utilities commission,~~]  
8 the attorney general, and the consumer advocate, shall be  
9 available only to the attorney general, the attorney general's  
10 authorized representatives, the department of business, economic  
11 development and tourism, and the [~~commissioner~~] commission and  
12 shall be treated in a confidential manner."

13 SECTION 10. Section 486J-8, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§486J-8 Sharing of information obtained by the**  
16 [~~commissioner.~~] commission. [~~The commissioner~~] (a) Except as  
17 provided in subsections (b) and (c), the commission shall make  
18 [all] any information obtained by the [~~commissioner~~] commission  
19 under this chapter, including confidential information,  
20 available only to the attorney general, the department of  
21 taxation, [~~the public utilities commission,~~] the consumer



1 advocate, the department of business, economic development and  
2 tourism, an appropriate legislative committee, and the  
3 authorized representative of each, who shall safeguard the  
4 confidentiality of all confidential information received.

5 (b) Notwithstanding any law to the contrary, including any  
6 other section of this chapter, no later than fourteen days after  
7 the reporting date established by the commission under section  
8 486J-3, the commission shall disclose to the public, using the  
9 best readily available technology, the information contained in  
10 the statements, but not the statements themselves, that are  
11 filed pursuant to section 486J-3.

12 (c) Nothing in this section shall be construed to prohibit  
13 the implementation of the petroleum industry monitoring,  
14 analysis, and reporting program under section 486J-B or the  
15 public disclosure of the analysis of information and reports  
16 described in section 486J-5."

17 SECTION 11. Section 486J-9, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§486J-9 Failure to timely provide information; failure to**  
20 **make and file statements; false statements; penalties; referral**  
21 **to the attorney general. (a) The [~~petroleum commissioner~~]**



1 commission shall notify those persons who have failed to timely  
2 provide the information specified in section 486J-3 [~~or~~],  
3 486J-4, or 486J-A or requested by the [~~commissioner~~] commission  
4 under section 486J-3 [~~or~~], 486J-4[-], or 486J-A. If, within  
5 five business days after being notified of the failure to  
6 provide the specified or requested information, the person fails  
7 to supply the specified or requested information, the person  
8 shall be subject to a civil penalty of not less than \$50,000 per  
9 day nor more than \$100,000 per day for each day the submission  
10 of information is refused or delayed[, ~~unless the person has~~  
11 ~~timely filed objections with the commissioner regarding the~~  
12 ~~information and the commissioner has held a hearing and,~~  
13 ~~following a ruling by the commissioner, the person has properly~~  
14 ~~submitted the issue to a court of competent jurisdiction for~~  
15 ~~review~~].

16 (b) Any person, or any employee of any person, who  
17 wilfully makes any false statement, representation, or  
18 certification in any record, report, plan, or other document  
19 filed with the [~~commissioner~~] commission shall be subject to a  
20 civil penalty not to exceed \$500,000[-] and shall be deemed to  
21 have committed an unfair or deceptive act or practice in the





1 conduct of a trade or commerce and subject to the penalties  
2 specified in chapter 480.

3 (c) The [~~commissioner~~] commission shall refer any matter  
4 under [~~this~~] subsection (a) or (b) to the attorney general, who  
5 may exercise any appropriate legal or equitable remedies that  
6 may be available to the State.

7 [~~(e)~~] (d) For the purposes of this section, "person"  
8 means, in addition to the definition contained in section  
9 486J-1, any responsible corporate officer."

10 SECTION 12. Section 486J-10, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By amending subsection (a) to read:

13 "(a) The [~~commissioner~~] director shall adopt rules in  
14 accordance with chapter 91 to require that gasoline sold in the  
15 State for use in motor vehicles contain ten per cent ethanol by  
16 volume. The amounts of gasoline sold in the State containing  
17 ten per cent ethanol shall be in accordance with rules as the  
18 [~~commissioner~~] director may deem appropriate. The  
19 [~~commissioner~~] director may authorize the sale of gasoline that  
20 does not meet these requirements as provided in subsection (d)."

21 2. By amending subsections (d), (e), and (f) to read:



1           "(d) The [~~commissioner~~] director may authorize the sale of  
2 gasoline that does not meet the provisions of this section:

3           (1) To the extent that sufficient quantities of  
4 competitively-priced ethanol are not available to meet  
5 the minimum requirements of this section; or

6           (2) In the event of any other circumstances for which the  
7 [~~commissioner~~] director determines compliance with  
8 this section would cause undue hardship.

9           (e) Each distributor, at [~~such~~] reporting dates as the  
10 [~~commissioner~~] director may establish, shall file with the  
11 [~~commissioner~~,] director, on forms prescribed, prepared, and  
12 furnished by the [~~commissioner~~,] director, a certified statement  
13 showing:

14           (1) The price and amount of ethanol available;

15           (2) The amount of ethanol-blended fuel sold by the  
16 distributor;

17           (3) The amount of non-ethanol-blended gasoline sold by the  
18 distributor; and

19           (4) Any other information the [~~commissioner~~] director  
20 shall require for the purposes of compliance with this  
21 section.



1 (f) Provisions with respect to confidentiality of  
2 information shall be the same as provided in section [~~486J-7.~~]  
3 486J-6."

4 3. By amending subsection (h) to read:

5 "(h) The [~~commissioner,~~] director, in accordance with  
6 chapter 91, shall adopt rules for the administration and  
7 enforcement of this section."

8 SECTION 13. Section 486J-12, Hawaii Revised Statutes, is  
9 repealed.

10 [~~"**486J-12 Rules.** The commissioner shall adopt, amend, or~~  
11 ~~repeal such rules as [the commissioner] may deem proper to fully~~  
12 ~~effectuate this chapter."~~]

13 SECTION 14. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$1, or so much  
15 thereof as may be necessary for fiscal year 2006-2007, to be  
16 deposited into the petroleum industry monitoring, analysis, and  
17 reporting special fund.

18 The sum appropriated shall be expended by the public  
19 utilities commission for the purposes of this part.

20 SECTION 15. There is appropriated out of the petroleum  
21 industry monitoring, analysis, and reporting special fund the



1 sum of \$1, or so much thereof as may be necessary for fiscal  
2 year 2006-2007, to establish the petroleum industry monitoring,  
3 analysis, and reporting program established under chapter 486J,  
4 Hawaii Revised Statutes.

5 The sum appropriated shall be expended by the public  
6 utilities commission for the purposes of this part.

7 Part II

8 SECTION 16. Section 486H-1, Hawaii Revised Statutes, is  
9 amended by adding a new definition to be appropriately inserted  
10 and to read as follows:

11 "Conventional gasoline" means a gasoline formulation with  
12 properties having the closest similarities to the gasoline then  
13 sold in the State."

14 SECTION 17. Section 486H-13, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§486H-13 Maximum pre-tax wholesale price for the sale of**  
17 **gasoline; civil actions.** (a) Notwithstanding any law to the  
18 contrary, no manufacturer, wholesaler, or jobber may sell  
19 regular unleaded, mid-grade, or premium gasoline to a dealer  
20 retail station, an independent retail station, or to another  
21 jobber or wholesaler at a price above the maximum pre-tax



1 wholesale prices established pursuant to subsection (b). The  
2 Commission shall publish the maximum pre-tax wholesale prices by  
3 means that shall include the Internet website for the State of  
4 Hawaii.

5 (b) On a weekly basis, the commission shall determine the  
6 maximum pre-tax wholesale price of regular unleaded, mid-grade,  
7 and premium gasoline as follows: the maximum pre-tax wholesale  
8 price of regular unleaded gasoline shall consist of the baseline  
9 price for regular unleaded gasoline, plus [~~the location~~  
10 ~~adjustment factor,~~] the marketing margin factor[~~,~~] and the zone  
11 price adjustment, and for mid-grade and premium gasoline, the  
12 applicable mid-grade and premium adjustment factor, such that  
13 the maximum pre-tax wholesale gasoline prices reflect and  
14 correlate with competitive market conditions.

15 (c) The baseline price for regular unleaded gasoline  
16 referred to in subsection (b) shall be determined on a weekly  
17 basis and shall be equal to the average of[+] the three lowest  
18 of the four weekly averages of the spot daily price for  
19 conventional regular unleaded gasoline or its equivalent  
20 standard:



- 1 (1) The weekly average of the spot daily price for  
2 conventional regular unleaded gasoline for Los  
3 Angeles;
- 4 (2) The weekly average of the spot daily price for  
5 conventional regular unleaded gasoline for New York  
6 Harbor; [~~and~~]
- 7 (3) The weekly average of the spot daily price for  
8 conventional regular unleaded gasoline for the United  
9 States Gulf Coast; and
- 10 (4) The weekly average of the spot daily price for  
11 conventional regular unleaded gasoline for Singapore,  
12 as reported and published by the Oil Price Information Service  
13 for the five business days of the preceding week; provided that  
14 if the preceding week contains a holiday or holidays, then the  
15 average of the remaining business days of the preceding week  
16 shall be used; and provided further that the commission, in its  
17 discretion, may determine a more appropriate baseline or a more  
18 appropriate price information reporting service[-
- 19 ~~(d) The location adjustment factor referred to in~~  
20 ~~subsection (b) shall be \$.04 per gallon or as otherwise~~  
21 ~~determined by the commission and shall thereafter be subject to~~



1 ~~adjustment pursuant to section 486H-16(a).~~ or use multiple  
2 price information reporting services.

3 ~~(e)~~ (d) The marketing margin factor referred to in  
4 subsection (b) shall be [~~\$.18~~] 14 cents per gallon or as  
5 otherwise determined by the commission and shall thereafter be  
6 subject to adjustment pursuant to section 486H-16(a).

7 ~~(f)~~ (e) The mid-grade adjustment factor shall be [~~\$.05~~]  
8 5 cents per gallon or as otherwise determined by the commission  
9 and shall thereafter be subject to adjustment pursuant to  
10 section 486H-16(a).

11 ~~(g)~~ (f) The premium adjustment factor shall be [~~\$.09~~] 9  
12 cents per gallon or as otherwise determined by the commission  
13 and shall thereafter be subject to adjustment pursuant to  
14 section 486H-16(a).

15 ~~(h)~~ (g) For purposes of this chapter, the State shall be  
16 divided into the following zones:

- 17 (1) Zone 1 shall include the island of Oahu;  
18 (2) Zone 2 shall include the island of Kauai;  
19 (3) Zone 3 shall include the island of Maui, except the  
20 district of Hana;



1 (4) Zone 4 shall include the district of Hana on the  
2 island of Maui;

3 (5) Zone 5 shall include the island of Molokai;

4 (6) Zone 6 shall include the island of Lanai;

5 (7) Zone 7 shall include the districts of Puna, south  
6 Hilo, north Hilo, and Hamakua on the island of Hawaii;  
7 and

8 (8) Zone 8 shall include the districts of north Kohala,  
9 south Kohala, north Kona, south Kona, and Kau on the  
10 island of Hawaii.

11 [~~(i)~~] (h) The commission shall establish zone price  
12 adjustments to the maximum pre-tax wholesale regular unleaded,  
13 mid-grade, and premium gasoline prices on a zone by zone basis.

14 [~~(j)~~] (i) The zone price adjustments for zones 2 through  
15 8, set forth in subsection (g), shall be divided as follows:

16 (1) Thirty per cent of the zone price adjustment shall be  
17 allocated to the shipper of the gasoline from zone to  
18 zone;

19 (2) Twenty per cent of the zone price adjustment shall be  
20 allocated to the terminal holding the gasoline in  
21 zones 2 through 8; and





1       (3) Fifty per cent of the zone price adjustments shall be  
2           allocated to the person or entity that delivers the  
3           gasoline to the retail station in zones 2 through 8.

4       (j) Every manufacturer, wholesaler, or jobber, upon the  
5 request of the commission, shall furnish to the commission, in  
6 the form requested, all documents, data, and information the  
7 commission may require to make its determination on zone price  
8 adjustments. Any person who refuses or fails to comply with a  
9 request for information by the commission shall be subject to a  
10 fine of up to \$50,000 per day. Each day a violation continues  
11 shall constitute a separate offense.

12       (k) The maximum pre-tax wholesale gasoline price imposed  
13 by this section shall take effect on September 1, 2005,  
14 notwithstanding the lack of the adoption of rules pursuant to  
15 this section[-]; provided that notwithstanding any law to the  
16 contrary, the maximum pre-tax wholesale price under this section  
17 shall be suspended indefinitely upon the effective date of  
18 Act       , Session Laws of Hawaii 2006, and shall not thereafter  
19 become effective until and unless the governor publishes a  
20 notice statewide in accordance with section 1-28.5 that the  
21 reinstatement of the maximum pre-tax wholesale price under this



1 section is beneficial to the economic well-being, health, and  
2 safety of the people of the State. The maximum pre-tax  
3 wholesale price shall become effective five days after the  
4 publication of the notice by the governor unless otherwise  
5 specified by the governor, and shall remain in effect for thirty  
6 days, after which time it shall be automatically suspended.  
7 Thereafter, the governor may reinstate the maximum pre-tax  
8 wholesale price for thirty-day periods on the same conditions as  
9 set forth above. Upon a finding that the maximum pre-tax  
10 wholesale price would impose a financial hardship upon a  
11 distributor within a zone, the governor, in the governor's  
12 discretion, may increase the maximum pre-tax wholesale price for  
13 the zone in an amount determined necessary to eliminate the  
14 financial hardship on any affected distributor who does not  
15 operate a refinery within the State. Any increase in the  
16 maximum pre-tax wholesale price shall be included in the notice  
17 published by the Governor.

18 (1) The suspension of the maximum pre-tax wholesale  
19 gasoline price shall suspend the commission's duty to calculate  
20 and publish the maximum pre-tax wholesale gasoline price that



1 would have been in effect but for the suspension, but shall not  
2 suspend or affect:

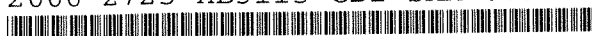
3 (1) Any duty to register, timely provide information, make  
4 a report, or file a statement under chapter 486J; or

5 (2) Any duty of the commission to:

6 (A) Timely obtain, analyze, or publicly disclose or  
7 report information under chapter 486J; and

8 (C) Enforce chapter \_\_\_\_\_.

9 [~~(l)~~] (m) Any manufacturer, wholesaler, or jobber who  
10 knowingly violates any requirement imposed or rule adopted under  
11 this section, except for subsection (j), shall be subject to a  
12 civil penalty, for each violation, equal to three times the  
13 amount of the overcharge or \$250,000, whichever is greater, and  
14 shall be liable for the costs of the action and reasonable  
15 attorney's fees as determined by the court. Within two years  
16 from the date the commission obtains actual knowledge of the  
17 violation, the commission may institute a civil action in a  
18 court of competent jurisdiction to collect the civil penalty,  
19 the costs, and attorney's fees. In the case of ongoing  
20 violation, the two-year period shall start from the date of the  
21 last violation. The commission may refer any such action to the



1 attorney general as it deems appropriate. As used in this  
2 subsection, "overcharge" means the number of gallons of gasoline  
3 sold, times the wholesale price at which the manufacturer or  
4 jobber sold regular unleaded, mid-grade, or premium gasoline to  
5 a dealer retail station, an independent retail station, or  
6 another jobber or wholesaler, less taxes assessed, less the  
7 maximum pre-tax wholesale gasoline price established pursuant to  
8 subsection (b).

9 ~~[(m)]~~ (n) The commission shall have the power to determine  
10 the extent to which a manufacturer, wholesaler, or jobber is  
11 complying with any requirement imposed or rule adopted under  
12 this section, including the power to compel a manufacturer,  
13 wholesaler, or jobber to submit documents, data, and information  
14 necessary and appropriate for the commission to determine such  
15 compliance. The commission may use data collected ~~[by the~~  
16 ~~department of business, economic development, and tourism]~~  
17 pursuant to chapter 486J~~[, as well as obtain the assistance of~~  
18 ~~that department]~~ in determining such compliance.

19 ~~[(n)]~~ (o) The commission shall report to the governor and  
20 the legislature, in a timely manner, on any significant



1 aberrations, trends, or conditions that may adversely impact the  
2 gasoline consumers in the State.

3 ~~[(e)]~~ (p) The commission ~~[shall]~~ may adopt rules pursuant  
4 to chapter 91 as may be necessary to implement this section and  
5 section 486H-16."

6 SECTION 18. Section 486H-16, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) A manufacturer, wholesaler, or jobber may petition  
9 the commission to adjust the maximum pre-tax wholesale price of  
10 regular unleaded, mid-grade, or premium gasoline in the event of  
11 a change in the value of the baseline price for regular unleaded  
12 gasoline, ~~[the location adjustment factor,]~~ the marketing margin  
13 factor, the mid-grade adjustment factor, the premium adjustment  
14 factor, ~~[(e)]~~ a zone price adjustment~~[-]~~ on a zone by zone basis,  
15 or an allocation of a zone price adjustment on a zone by zone  
16 basis. The petitioner shall bear the burden of proof to  
17 establish by clear and convincing evidence the need for and the  
18 amount of any adjustment. The adjustments shall be determined  
19 as follows:

20 (1) The value of the baseline price shall be equal to the  
21 average of~~[-]~~ the three lowest of the four weekly



1 averages of the spot daily price for conventional  
2 regular unleaded gasoline or its equivalent standard:

3 (A) The weekly average of the spot daily price for  
4 conventional regular unleaded gasoline for Los  
5 Angeles;

6 (B) The weekly average of the spot daily price for  
7 conventional regular unleaded gasoline for New  
8 York Harbor; [~~and~~]

9 (C) The weekly average of the spot daily price for  
10 conventional regular unleaded gasoline for the  
11 United States Gulf Coast[~~7~~]; and

12 (D) The weekly average of the spot daily price for  
13 conventional regular unleaded gasoline for  
14 Singapore,

15 as reported and published by the Oil Price Information  
16 Service for the five business days of the preceding  
17 week; provided that if the preceding week contains a  
18 holiday or holidays, the average of the remaining  
19 business days of the preceding week shall be used; and  
20 provided further that the commission, in its  
21 discretion, may determine a more appropriate baseline



1 or a more appropriate price information reporting  
2 service[+  
3 ~~(2) The value of the location adjustment factor in effect~~  
4 ~~at the time the petition is filed shall be adjusted to~~  
5 ~~reflect the average of the actual acquisition cost to~~  
6 ~~non-refiner marketers to obtain gasoline from refiners~~  
7 ~~or importers for sale on the island of Oahu over the~~  
8 ~~prior twelve month period, which cost shall be taken~~  
9 ~~from arm's length transactions between non-refiner~~  
10 ~~marketers, and refiners or importers, such as exchange~~  
11 ~~agreements, sales agreements, or other similar~~  
12 ~~agreements; provided that the location adjustment~~  
13 ~~factor shall not exceed the reasonable cost of~~  
14 ~~importing gasoline to the island of Oahu. As used in~~  
15 ~~this paragraph, "actual acquisition cost" means the~~  
16 ~~amount over the base price of regular unleaded~~  
17 ~~gasoline that a non-refiner marketer pays to a third~~  
18 ~~party for delivery of such gasoline into a terminal~~  
19 ~~located on the island of Oahu;~~  
20 ~~(3)] or use multiple price information reporting services;~~



1        (2) The value of the marketing margin factor in effect at  
2                    the time the petition is filed shall be adjusted by  
3                    adding to [~~such~~] the value the difference between:  
4                    (A) The average of the difference over the prior  
5                    twelve-month period between:  
6                    (i) The dealer tank wagon price for sales for  
7                    resale for "regular" gasoline; and  
8                    (ii) The bulk price for sales for resale for  
9                    "regular" gasoline,  
10                    for Petroleum Administration for Defense (PAD)  
11                    District V, as reported and published by the  
12                    Energy Information Administration or its  
13                    successor in Table 31 - "Motor Gasoline Prices by  
14                    Grade, Sales Type, PAD District, and State" or  
15                    other source containing the same information;  
16                    less  
17                    (B) The average of the difference over the period  
18                    from 1994 until the most current year between:  
19                    (i) The dealer tank wagon price for sales for  
20                    resale for "regular" gasoline; and



1 (ii) The bulk price for sales for resale for  
2 "regular" gasoline,  
3 for Petroleum Administration for Defense (PAD)  
4 District V, as reported and published by the  
5 Energy Information Administration or its  
6 successor in Table 31 - "Motor Gasoline Prices by  
7 Grade, Sales Type, PAD District, and State" or  
8 other source containing the same information;

9 ~~[(4)]~~ (3) The value of the mid-grade and premium adjustment  
10 factors in effect at the time the petition is filed  
11 shall be adjusted by any material change in the  
12 mid-grade and premium adjustment factor as published  
13 by an appropriate price information reporting service;  
14 and

15 ~~[(5)]~~ (4) The value of any zone price adjustment on a zone  
16 by zone basis or zone price adjustment allocation,  
17 pursuant to section 486H-13(i), on a zone by zone  
18 basis, in effect at the time the petition is filed,  
19 shall be adjusted based upon material changes in the  
20 operating costs for a zone, such as terminaling,



1 storage, or distribution costs, and other empirical  
2 data the commission deems appropriate."

3 SECTION 19. Section 486H-15, Hawaii Revised Statutes, is  
4 repealed.

5 ~~["5486H-15 Governor's emergency powers. (a)~~

6 ~~Notwithstanding any law to the contrary, the governor may~~  
7 ~~suspend, in whole or in part, section 486H-13 or any rule~~  
8 ~~adopted pursuant to that section, whenever the governor issues a~~  
9 ~~written determination that strict compliance with the section or~~  
10 ~~a rule will cause a major adverse impact on the economy, public~~  
11 ~~order, or the health, welfare, or safety of the people of~~  
12 ~~Hawaii. In the written determination, the governor shall state~~  
13 ~~the specific provision of the section or rule that strict~~  
14 ~~compliance with will cause a major adverse impact on the~~  
15 ~~economy, public order, or the health, welfare, or safety of the~~  
16 ~~people of the State, along with specific reasons for that~~  
17 ~~determination. The governor shall publish this determination in~~  
18 ~~accordance with section 1-28.5. The suspension shall take~~  
19 ~~effect upon issuance of the written determination by the~~  
20 ~~governor.~~



1       ~~(b) Except as provided in subsection (c), the suspension~~  
2 ~~under subsection (a) shall remain in effect until the earlier~~  
3 ~~of:~~

4       ~~(1) The adjournment of the next regular or special session~~  
5       ~~of the legislature; or~~

6       ~~(2) The effective date of any legislative enactment~~  
7       ~~intended to address the major adverse impact,~~  
8 ~~provided that if the legislature has passed legislation to~~  
9 ~~address the major adverse impact, and the governor vetoes the~~  
10 ~~presented legislation, the suspension shall terminate on the~~  
11 ~~date of that veto, and the maximum pre tax wholesale gasoline~~  
12 ~~prices in effect immediately prior to the issuance of the~~  
13 ~~written determination by the governor shall take effect on the~~  
14 ~~day after the date of the veto; and provided further that if no~~  
15 ~~action is taken by the legislature during the regular or special~~  
16 ~~session to address the major adverse impact, then the maximum~~  
17 ~~pre tax wholesale gasoline prices in effect immediately prior to~~  
18 ~~the issuance of the written determination by the governor shall~~  
19 ~~take effect on the day after adjournment sine die of the regular~~  
20 ~~or special session.~~



1       ~~(c) If the written determination is issued while the~~  
2 ~~legislature is in session, the suspension under subsection (a)~~  
3 ~~shall remain in effect until the earlier of:~~

4       ~~(1) The adjournment of that session of the legislature; or~~  
5       ~~(2) The effective date of any legislative enactment~~  
6               ~~intended to address the major adverse impact;~~  
7 ~~provided that if the legislature has passed legislation to~~  
8 ~~address the major adverse impact, and the governor vetoes the~~  
9 ~~presented legislation, the suspension shall terminate on the~~  
10 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~  
11 ~~prices in effect immediately prior to the issuance of the~~  
12 ~~written determination by the governor shall take effect on the~~  
13 ~~day after the date of the veto; and provided further that if no~~  
14 ~~action is taken by the legislature during the regular or special~~  
15 ~~session to address the major adverse impact, then the maximum~~  
16 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~  
17 ~~the issuance of the written determination by the governor shall~~  
18 ~~take effect on the day after adjournment sine die of the regular~~  
19 ~~or special session." ]~~

20       SECTION 20. If section 486H-13, Hawaii Revised Statutes,  
21 is not reinstated by the governor within one hundred eighty days



1 of September 1, 2006, the governor shall submit a report to the  
2 legislature no later than twenty days prior to the convening of  
3 the next regular session explaining:

4 (1) The reasons, along with all relevant facts and  
5 statistics, why the governor did not believe that the  
6 operation of section 486H-13 during the previous  
7 fiscal year would have been beneficial to the economic  
8 well-being, health, and safety of the people of the  
9 State; and

10 (2) All efforts the administration has undertaken during  
11 the prior fiscal year to:

12 (A) Increase competition in the gasoline wholesale  
13 market in the State;

14 (B) Reduced the pre-tax wholesale price of gasoline  
15 in the State; and

16 (C) Otherwise improve the market for gasoline in the  
17 State.

18 PART III

19 SECTION 21. The Hawaii Revised Statutes is amended by  
20 adding a new chapter to be appropriately designated and to read  
21 as follows:



## 1 "CHAPTER

## 2 UNFAIR TRADE PRACTICES BY PETROLEUM INDUSTRY

3 § -1 Definitions. As used in this chapter, unless the  
4 context otherwise requires:

5 "Advertising" includes the use of any banner, sign,  
6 placard, poster, streamer, card, or any publication in the  
7 media.

8 "Gasoline" means a volatile mixture of liquid hydrocarbons,  
9 generally containing small amounts of additives, suitable for  
10 use as a fuel in spark-ignition internal combustion engines.

11 "Person" means an individual, corporation, government, or  
12 governmental subdivision or agency, business trust, estate,  
13 trust, partnership, unincorporated association, two or more of  
14 any of the foregoing having a joint or common interest, or any  
15 other legal or commercial entity.

16 "Petroleum product" means gasoline, diesel fuel, liquefied  
17 petroleum gas only when used as a motor fuel, kerosene, thinner,  
18 solvent, liquefied natural gas, pressure appliance fuel, white  
19 gasoline, or any motor fuel, or any oil represented as engine  
20 lubricant, engine oil, lubricating or motor oil, or any oil used  
21 to lubricate transmissions, gears, or axles.



1 "Sell" or any of its variants means attempt to sell, offer  
2 for sale or assist in the sale of, permit to be sold or offered  
3 for sale or delivery, offer for delivery, trade, barter, or  
4 expose for sale.

5 **§ -2 Misrepresentations.** (a) It is unlawful for any  
6 person to make any deceptive, false, or misleading statement by  
7 any means whatsoever regarding quality, quantity, performance,  
8 price, discount, profit, or savings used in the sale or selling  
9 of any petroleum product regulated pursuant to this chapter or  
10 chapters 486H and 486J.

11 (b) The following deceptive, false, or misleading acts or  
12 practices committed or permitted by any person offering to sell  
13 any petroleum product that is regulated by this chapter or  
14 chapters 486H and 486J are also a violation of this section:

- 15 (1) Misrepresenting the brand, grade, quality, or price of  
16 a petroleum product;
- 17 (2) Using false or deceptive representations or  
18 designations in connection with the pricing, profits,  
19 or sale of a petroleum product;
- 20 (3) Advertising petroleum products or services and not  
21 selling them as advertised;



- 1 (4) Advertising petroleum products of a designated brand,  
2 grade, trademark, or trade name not actually sold or  
3 available for sale;
- 4 (5) Making false, deceptive, or misleading statements  
5 concerning conditions of sale, price reductions, costs  
6 of operations, profits, or failing to disclose  
7 business relationships within the petroleum industry  
8 that affect the wholesale pricing of petroleum  
9 products;
- 10 (6) Representing that the consumer will receive a rebate,  
11 discount, or other economic benefit and then failing  
12 to give that rebate, discount, or other economic  
13 benefit; and
- 14 (7) Forging or falsifying any records or documents  
15 required by this chapter or chapter 486H or 486J or  
16 knowingly keeping, using, or displaying the false or  
17 forged records or documents.

18 **§ -3 Unlawful profiteering.** Any person who sells  
19 petroleum products and who, with intent to enhance the price or  
20 restrict the supply of petroleum products:





- 1 (1) Wilfully causes or permits preventable waste in the
- 2 production, manufacture, storage, or distribution of
- 3 petroleum products;
- 4 (2) Prevents, limits, lessens, or restricts the
- 5 manufacture, production, supply, or distribution of
- 6 petroleum products;
- 7 (3) Enters into any contract, combination, or conspiracy
- 8 in restraint of trade or commerce;
- 9 (4) Exacts or demands any unjust or unreasonable profit in
- 10 the sale, exchange, or handling of petroleum products;
- 11 or
- 12 (5) In any way aids or abets the doing of any act
- 13 prohibited in paragraphs (1) to (4),
- 14 commits an unlawful trade practice.

15 **§ -4 Penalty.** Any person who violates this chapter  
 16 shall be fined not more than \$10,000 for each violation or  
 17 imprisoned for not more than five years, or both.

18 **§ -5 Injunctions.** Any person who violates this chapter  
 19 may be enjoined by the circuit court by a mandatory injunction  
 20 or temporary restraining order necessary or proper to effectuate  
 21 the purposes of this chapter in a suit brought by the attorney



1 general in the name of the State or by any private person in the  
2 person's own name.

3       **§ -6 Remedies cumulative.** The remedies prescribed in  
4 this chapter are cumulative and in addition to any other  
5 remedies provided by law."

6       SECTION 22. In codifying the new sections added by section  
7 2 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10       SECTION 23. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12       SECTION 24. This Act shall take effect upon approval.



HB 3115  
HD 2  
SD 2 CD1

**Report Title:**

Petroleum Industry Monitoring, Analysis, and Reporting Program and Special Fund; Indefinite Suspension of Maximum Pre-tax Wholesale Gasoline Price until Reinstatement by Governor; Unfair Practices by Petroleum Industry

**Description:**

- (1) Provides increased industry transparency;
- (2) Indefinitely suspends the maximum wholesale gasoline price and the public utilities commission's duty to calculate it;
- (3) Gives the governor the authority to reinstate the maximum wholesale gasoline price upon publication of a finding that its reinstatement is beneficial to the economic well-being, health, and safety of the people of the State;
- (4) Increases the savings potential for consumers if the governor reinstates the maximum price, by deleting the location adjustment factor and reducing the marketing margin factor;
- (5) Gives the governor the authority, upon reinstatement, to increase the maximum wholesale gasoline price within a zone;
- (6) Establishes the petroleum industry monitoring, analysis, and reporting program and special fund;
- (7) Prohibits unfair practices by petroleum industry; and
- (8) Makes appropriations. (CD1)

