
A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 PART I

2 SECTION 1. Various federal courts have found, and the
3 petroleum industry itself acknowledges, that the wholesale
4 gasoline industry in this state is an uncompetitive oligopoly
5 with industry parties enjoying supra-competitive margins in
6 their wholesale transactions, all to the detriment of Hawaii's
7 consumers. It was for this reason that the legislature enacted
8 Act 77, Session Laws of Hawaii 2002, establishing a maximum pre-
9 tax wholesale gasoline price program, codified as chapter 486H,
10 Hawaii Revised Statutes. Prior to the implementation of the
11 program, the legislature enacted Act 242, Sessions Laws of
12 Hawaii 2004, amending chapter 486H and the process by which the
13 maximum pre-tax wholesale gasoline price was to be determined.

14 However, in establishing the maximum pre-tax wholesale
15 gasoline price program, the legislature recognized that the
16 daily dynamics of the gasoline market did not allow for the
17 legislature to take timely action to make the necessary course
18 corrections in the implementation of chapter 486H. It was with



1 this in mind that the legislature granted the public utilities
2 commission substantial latitude in the implementation of chapter
3 486H. In determining the baseline gasoline price, the public
4 utilities commission had discretion in using the geographic
5 markets set forth in the statute or any other geographic market
6 or markets it felt were more relevant. It was also granted
7 latitude to use the price information service named in the
8 statute or another price information service of its choice. In
9 addition, the public utilities commission in implementing
10 chapter 486H had the discretion to change the location
11 adjustment factor, the marketing margin factor, and the mid-
12 grade and premium adjustment factors. Furthermore, the public
13 utilities commission was granted the sole authority to establish
14 the various zone price adjustments for the various zones
15 established throughout the state.

16 Unfortunately and in some case contrary to the advice and
17 recommendations of its own consultant, the public utilities
18 commission failed to use its discretion in the best interests of
19 Hawaii's consumers and simply relied on the numerical factors
20 and adjustments contained in the statute. This lack of a
21 proactive implementation of chapter 486H may have resulted in
22 unnecessarily higher margins in the maximum pre-tax wholesale



1 gasoline prices and higher gasoline costs to Hawaii's consumers.
2 Accordingly, the legislature finds that certain amendments may
3 be required for the proper implementation of chapter 486H.

4 The legislature further finds that the establishment of a
5 petroleum industry monitoring, analysis, and reporting program
6 to oversee the petroleum industry in the state would be an
7 important additional approach to ensuring that Hawaii's
8 consumers enjoy fair and competitive gasoline prices. The
9 collection, aggregation, analysis, and reporting on real time
10 data and information relating all facets of the petroleum
11 industry in the state may make the gasoline pricing program
12 imposed by chapter 486H unnecessary. However, the legislature
13 does not feel that the gasoline pricing program should be
14 repealed until the petroleum industry monitoring, analysis, and
15 reporting program is established and proves that it can ensure
16 the delivery of fair and competitive gasoline prices for
17 Hawaii's consumer.

18 Another approach that may be used along with the
19 monitoring, analysis, and reporting program to ensure that
20 Hawaii's consumer enjoy fair and competitive gasoline prices is
21 to clearly delineate what constitutes unfair trade practices in
22 the petroleum industry.



1 Accordingly, the purposes of this Act are to:

2 (1) Delineate unfair trade practices in the petroleum
3 industry;

4 (2) Amend sections 486H-13 and 486H-16, Hawaii Revised
5 Statutes, by:

6 (A) Adding the Singapore spot daily price of gasoline
7 in determining the baseline gasoline price, with
8 the lowest three of the four geographic market
9 average weekly prices averaged for the State's
10 baseline gasoline price;

11 (B) In the event of a holiday or holidays in a week,
12 requiring that the public utilities commission
13 use the average of the remaining business days in
14 that week;

15 (C) Deleting the location adjustment factor;

16 (D) Reducing the marketing margin factor;

17 (E) Allocating different percentages of the zone
18 price adjustment to different distributors
19 performing different functions in the
20 distribution system; and



- 1 (F) Allowing the zone price adjustments and the
2 allocation of the zone price adjustments to be
3 adjusted on a zone by zone basis;
- 4 (3) Establish the petroleum industry monitoring, analysis,
5 and reporting program;
- 6 (4) Establish the petroleum industry monitoring, analysis,
7 and reporting special fund;
- 8 (5) Suspend the maximum pre-tax wholesale gasoline pricing
9 program; and
- 10 (6) Repeal the maximum pre-tax wholesale gasoline pricing
11 program, effective January 1, 2011.

12 PART II

13 SECTION 2. The Hawaii Revised Statutes is amended by
14 adding a new chapter to be appropriately designated and to read
15 as follows:

16 "CHAPTER

17 UNFAIR PETROLEUM INDUSTRY TRADE PRACTICES

18 § -1 **Definitions.** As used in this chapter, unless the
19 context otherwise requires:

20 "Advertising" includes the use of any banner, sign,
21 placard, poster, streamer, card, or any publication in the
22 media.



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

4 "Person" means an individual, corporation, government, or
5 governmental subdivision or agency, business trust, estate,
6 trust, partnership, unincorporated association, two or more of
7 any of the foregoing having a joint or common interest, or any
8 other legal or commercial entity.

9 "Petroleum products" means gasoline, diesel fuel, liquefied
10 petroleum gas only when used as a motor fuel, kerosene, thinner,
11 solvent, liquefied natural gas, pressure appliance fuel, white
12 gasoline, or any motor fuel, or any oil represented as engine
13 lubricant, engine oil, lubricating or motor oil, or any oil used
14 to lubricate transmissions, gears, or axles.

15 "Sell" or any of its variants means attempt to sell, offer
16 for sale or assist in the sale of, permit to be sold or offered
17 for sale or delivery, offer for delivery, trade, barter, or
18 expose for sale.

19 § -2 **Misrepresentations.** (a) It is unlawful for any
20 person to make any deceptive, false, or misleading statement by
21 any means whatsoever regarding quality, quantity, performance,
22 price, discount, profit, or savings used in the sale or selling



1 of any petroleum product regulated pursuant to this chapter or
2 chapter 486H or 486J.

3 (b) It is unlawful for any person offering to sell any
4 petroleum product that is regulated by this chapter or chapter
5 486H or 486J to commit or permit any of the following
6 misleading, unfair, or deceptive acts or practices:

7 (1) Misrepresenting the brand, grade, quality, or price of
8 a petroleum product;

9 (2) Using false or deceptive representations or
10 designations in connection with the pricing, profits,
11 or sale of petroleum products;

12 (3) Advertising petroleum products or services and not
13 selling them as advertised;

14 (4) Advertising petroleum products of a designated brand,
15 grade, trademark, or trade name not actually sold or
16 available for sale;

17 (5) Making false, deceptive, or misleading statements
18 concerning conditions of sale, price reductions, costs
19 of operations, profits, or failing to disclose
20 business relationships within the petroleum industry
21 that affect the wholesale pricing of petroleum
22 products;



1 (6) Representing that the consumer will receive a rebate,
2 discount, or other economic benefit and then failing
3 to give that rebate, discount, or other economic
4 benefit; or

5 (7) Forging or falsifying any records or documents
6 required by this chapter or chapter 486H or 486J or
7 knowingly keeping, using, or displaying the false or
8 forged records or documents.

9 § -3 **Unlawful profiteering.** Any person who sells
10 petroleum products and who, with intent to enhance the price or
11 restrict the supply of petroleum products:

12 (1) Wilfully destroys or permits preventable waste in the
13 production, manufacture, storage, or distribution of
14 petroleum products;

15 (2) Prevents, limits, lessens, or restricts the
16 manufacture, production, supply, or distribution of
17 petroleum products;

18 (3) Enters into any contract, combination, or conspiracy
19 in restraint of trade or commerce;

20 (4) Exacts or demands any unjust or unreasonable profit in
21 the sale, exchange, or handling of petroleum products;
22 or



1 regular unleaded, mid-grade, or premium gasoline to a dealer
2 retail station, an independent retail station, or to another
3 jobber or wholesaler at a price above the maximum pre-tax
4 wholesale prices established pursuant to subsection (b). The
5 commission shall publish the maximum pre-tax wholesale prices by
6 means that shall include the Internet website for the State of
7 Hawaii.

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

18 (c) The baseline price for regular unleaded gasoline
19 referred to in subsection (b) shall be determined on a weekly
20 basis and shall be equal to the average of[+] the three lowest
21 of the four weekly averages of the spot daily price for



1 conventional regular unleaded gasoline or its equivalent
2 standard:

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

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

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

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

14 as reported and published by the Oil Price Information Service
15 for the five business days of the preceding week; provided that
16 if the preceding week contains a holiday or holidays, then the

17 average of the remaining business days of the preceding week

18 shall be used; and provided further that the commission, in its
19 discretion, may determine a more appropriate baseline or a more
20 appropriate price information reporting service[-] or use

21 multiple price information reporting services.



1 ~~[(d) The location adjustment factor referred to in~~
2 ~~subsection (b) shall be \$.04 per gallon or as otherwise~~
3 ~~determined by the commission and shall thereafter be subject to~~
4 ~~adjustment pursuant to section 486H-16(a).~~

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

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

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

17 ~~[(h)]~~ (g) For purposes of this chapter, the [~~State~~] state
18 shall be divided into the following zones:

- 19 (1) Zone 1 shall include the island of Oahu;
20 (2) Zone 2 shall include the island of Kauai;
21 (3) Zone 3 shall include the island of Maui, except the
22 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 (i) The zone price adjustments for zones 2 through 8,
15 established in subsection (g) shall be allocated 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.

16 (l) Any manufacturer, wholesaler, or jobber who knowingly
17 violates any requirement imposed or rule adopted under this
18 section, except for subsection (j), shall be subject to a civil
19 penalty, for each violation, equal to three times the amount of
20 the overcharge or \$250,000, whichever is greater, and shall be
21 liable for the costs of the action and reasonable attorney's
22 fees as determined by the court. Within two years from the date



1 the commission obtains actual knowledge of the violation, the
2 commission may institute a civil action in a court of competent
3 jurisdiction to collect the civil penalty, the costs, and
4 attorney's fees. In the case of ongoing violation, the two-year
5 period shall start from the date of the last violation. The
6 commission may refer any such action to the attorney general as
7 it deems appropriate. As used in this subsection, "overcharge"
8 means the number of gallons of gasoline sold, times the
9 wholesale price at which the manufacturer or jobber sold regular
10 unleaded, mid-grade, or premium gasoline to a dealer retail
11 station, an independent retail station, or another jobber or
12 wholesaler, less taxes assessed, less the maximum pre-tax
13 wholesale price established pursuant to subsection (b).

14 (m) The commission shall have the power to determine the
15 extent to which a manufacturer, wholesaler, or jobber is
16 complying with any requirement imposed or rule adopted under
17 this section, including the power to compel a manufacturer,
18 wholesaler, or jobber to submit documents, data, and information
19 necessary and appropriate for the commission to determine [~~such~~]
20 compliance. The commission may use data collected [~~by the~~
21 ~~department of business, economic development, and tourism]~~



1 pursuant to chapter 486J[, ~~as well as obtain the assistance of~~
2 ~~that department~~] in determining [~~such~~] compliance.

3 (n) The commission shall report to the governor and the
4 legislature, in a timely manner, on any significant aberrations,
5 trends, or conditions that may adversely impact the gasoline
6 consumers in the [~~State.~~] state.

7 (o) The commission [~~shall~~] may adopt rules pursuant to
8 chapter 91 as may be necessary to implement this section and
9 section 486H-16."

10 SECTION 4. Section 486H-16, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

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



1 amount of any adjustment. The adjustments shall be determined
2 as follows:

3 (1) The value of the baseline price shall be equal to the
4 average of [÷] the three lowest of the four weekly
5 averages of the spot daily price for conventional
6 regular unleaded gasoline or its equivalent standard:

7 (A) The weekly average of the spot daily price for
8 conventional regular unleaded gasoline for Los
9 Angeles;

10 (B) The weekly average of the spot daily price for
11 conventional regular unleaded gasoline for New
12 York Harbor; ~~and~~

13 (C) The weekly average of the spot daily price for
14 conventional regular unleaded gasoline for the
15 United States Gulf Coast [÷]; and

16 (D) The weekly average of the spot daily price for
17 conventional regular unleaded gasoline for
18 Singapore,

19 as reported and published by the Oil Price Information
20 Service for the five business days of the preceding
21 week; provided that if the preceding week contains a
22 holiday or holidays, the average of the remaining



1 business days of the preceding week shall be used; and
2 provided further that the commission, in its
3 discretion, may determine a more appropriate baseline
4 or a more appropriate price information reporting
5 service[+] or use multiple price information reporting
6 services;

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



1 ~~party for delivery of such gasoline into a terminal~~
2 ~~located on the island of Oahu;~~

3 ~~(3)]~~ (2) The value of the marketing margin factor in
4 effect at the time the petition is filed shall be
5 adjusted by adding to such value the difference
6 between:

7 (A) The average of the difference over the prior
8 twelve-month period between:

9 (i) The dealer tank wagon price for sales for
10 resale for "regular" gasoline; and

11 (ii) The bulk price for sales for resale for
12 "regular" gasoline,

13 for Petroleum Administration for Defense (PAD)
14 District V, as reported and published by the
15 Energy Information Administration or its
16 successor in Table 31 - "Motor Gasoline Prices by
17 Grade, Sales Type, PAD District, and State" or
18 other source containing the same information;
19 less

20 (B) The average of the difference over the period
21 from 1994 until the most current year between:



1 (i) The dealer tank wagon price for sales for
2 resale for "regular" gasoline; and
3 (ii) The bulk price for sales for resale for
4 "regular" gasoline,
5 for Petroleum Administration for Defense (PAD)
6 District V, as reported and published by the
7 Energy Information Administration or its
8 successor in Table 31 - "Motor Gasoline Prices by
9 Grade, Sales Type, PAD District, and State" or
10 other source containing the same information;
11 [~~4~~] (3) The value of the mid-grade and premium adjustment
12 factors in effect at the time the petition is filed
13 shall be adjusted by any material change in the mid-
14 grade and premium adjustment factor as published by an
15 appropriate price information reporting service; and
16 [~~5~~] (4) The value of any zone price adjustment on a zone-
17 by-zone basis or zone price adjustment allocation,
18 pursuant to section 486H-13(i), on a zone-by-zone
19 basis, in effect at the time the petition is filed,
20 shall be adjusted based upon material changes in the
21 operating costs for a zone, such as terminaling,



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

3 PART IV

4 SECTION 5. Chapter 486J, Hawaii Revised Statutes, is
5 amended by adding three new sections to be appropriately
6 designated and to read as follows:

7 "§486J-A Informational cost reports. (a) Each refiner,
8 on a semi-annual basis, at such reporting dates as the
9 commission may establish, shall file with the commission, on
10 forms prescribed, prepared, and furnished by the commission, a
11 certified statement of operating and overhead costs for the
12 refiner's Hawaii operations that shall include but not be
13 limited to the following:

- 14 (1) Crude oil costs and sources;
15 (2) Other feedstock costs and sources;
16 (3) Refinery operating expenses;
17 (4) Marketing operating expenses by petroleum product;
18 (5) Distribution expenses by petroleum product;
19 (6) Corporate overhead expenses; and
20 (7) The percentage of the total number of wholesale
21 gallons of unleaded regular and premium unleaded
22 gasoline sold during the reporting period at wholesale



1 prices per gallon that exceed two hundred per cent of
2 the total costs and expenses reported in this
3 subsection on a per gallon basis.

4 (b) In addition to the reporting required under subsection
5 (a), each distributor shall file with the commission all
6 Securities and Exchange Commission Forms 10-K, 10-Q, annual
7 reports, quarterly reports, and earnings supplements published
8 by the distributor.

9 (c) Each distributor, except a distributor who is so
10 defined solely by criteria in paragraph (4) of that definition
11 in section 486J-1, who sells liquid fuel only at retail and is
12 not a refiner, shall file with the commission, on a semi-annual
13 basis by such reporting dates as the commission may establish,
14 on forms prescribed, prepared, and furnished by the commission,
15 a certified statement of operating and overhead costs that shall
16 include the following:

17 (1) Gasoline purchases and exchanges and sources;

18 (2) Diesel purchases and exchanges and sources;

19 (3) Marketing expenses; and

20 (4) Distribution expenses.

21 §486J-B Petroleum industry monitoring, analysis, and
22 reporting program. The commission shall establish a petroleum



1 industry monitoring, analysis, and reporting program that
2 includes development and maintenance of an automated reporting
3 system that meets the requirements of government, industry, and
4 the public while promoting sound policy-making and consumer
5 information and protection. The purpose of the petroleum
6 industry monitoring, analysis, and reporting program is to
7 conduct and facilitate the efficient analysis and reporting of
8 all information and data provided by the petroleum industry
9 pursuant to this chapter. The commission shall develop the
10 petroleum industry monitoring, analysis, and reporting program
11 in a manner that will result in greater market transparency and
12 provide useful information to the commission and any other
13 affected agency in conducting oversight of the petroleum
14 industry and ensure compliance with all relevant laws.

15 **§486J-C Petroleum industry monitoring, analysis, and**
16 **reporting special fund.** (a) There is established a petroleum
17 industry monitoring, analysis, and reporting special fund to be
18 administered by the commission.

19 (b) The legislature may make appropriations from the
20 general revenues of the State of Hawaii, not to exceed
21 \$2,000,000 in any fiscal year, for the petroleum industry
22 monitoring, analysis, and reporting special fund.



- 1 (c) Moneys in the special fund shall be used to:
- 2 (1) Administer the petroleum industry monitoring,
- 3 analysis, and reporting program pursuant to this
- 4 chapter; and
- 5 (2) Establish full-time staff positions in the
- 6 commission to implement and maintain the petroleum
- 7 industry monitoring, analysis, and reporting program,
- 8 including the automated reporting system, established
- 9 by section 486J-B."

10 SECTION 6. Section 486J-1, Hawaii Revised Statutes, is
 11 amended as follows:

12 1. By adding five new definitions to be appropriately
 13 inserted and to read:

14 "Classes of retail trade" means the separate subdivisions,
 15 or "classes", of outlets or methods of retail sales of liquid
 16 fuels, typically but not limited to gasoline and diesel for
 17 motor vehicles, and includes any:

- 18 (1) Company-operated station that is a retail service
- 19 station owned and operated by a refiner or wholesale
- 20 distributor and where retail prices are set by that
- 21 refiner or wholesale distributor;

1 (2) Lessee dealer-operated station that is a retail
2 service station owned by a refiner or wholesale
3 distributor and operated by a qualified gasoline
4 dealer other than a refiner or wholesale distributor
5 under a franchise; or

6 (3) Owner-operated station that is a retail service
7 station not owned by a refiner or wholesale
8 distributor and operated by a qualified gasoline
9 dealer.

10 "Commission" means the public utilities commission.

11 "Corporate overhead expenses" means the expenses or costs
12 allocated by refiners that reflect their Hawaii business units'
13 share of corporate staff costs, including legal, finance,
14 accounting, information technology, and similar costs.

15 "Liquid fuel" means fuels in liquid form, commercially
16 usable for energy needs, power generation, and fuels manufacture
17 that may be manufactured, produced, or imported into the state
18 or that may be exported from the state, including petroleum and
19 petroleum products and all fuel alcohols.

20 "Wholesale liquid fuel prices" means the prices at which
21 liquid fuel is sold at wholesale for resale at wholesale or



1 retail, typically but not limited to gasoline and diesel for
2 motor vehicles, and includes:

3 (1) The "refiner wholesale price" that means the wholesale
4 price at which liquid fuel is sold by a refiner to any
5 distributor, not a refiner, for resale at any
6 subsequent wholesale or retail transaction;

7 (2) The "nonrefiner wholesale price" that means the
8 wholesale price at which liquid fuel is sold by any
9 distributor, not a refiner, to any other distributor,
10 not a refiner, for resale at any subsequent wholesale
11 or retail transaction; and

12 (3) The "dealer tank wagon price" that means the wholesale
13 price at which liquid fuel is sold to any retail
14 outlet by any distributor priced on a delivered basis
15 to a retail outlet."

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

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

19 (1) Every person who refines, manufactures, produces, or
20 compounds fuel in the [~~State,~~] state, and sells it at
21 wholesale or at retail, or who [~~utilizes~~] uses it



- 1 directly in the manufacture of products or for the
2 generation of power;
- 3 (2) Every person who imports or causes to be imported into
4 the [~~State~~] state, or exports or causes to be exported
5 from the [~~State~~] state, any fuel; [~~and~~]
- 6 (3) Every person who acquires fuel through exchanges with
7 another distributor[~~-~~]; or
- 8 (4) Every person who purchases fuel for resale at
9 wholesale or retail from any person described in
10 paragraph (1), (2), or (3).

11 "Fuel" means [~~and includes~~] fuels, whether liquid, solid,
12 or gaseous, commercially usable for energy needs, power
13 generation, and fuels manufacture, that may be manufactured,
14 grown, produced, or imported into the [~~State~~] state or that may
15 be exported [~~therefrom~~] from the state, including petroleum and
16 petroleum products and gases, coal, coal tar, vegetable
17 ferments, and all fuel alcohols.

18 "Person"[~~-~~] means any person, firm, association,
19 organization, partnership, business trust, corporation, or
20 company[~~-. "Person" also~~] and includes any city, county, public
21 district or agency, the State or any department or agency



1 [~~thereof,~~] of the State, and the United States to the extent
2 authorized by federal law.

3 "Refiner" means any person who owns, operates, or controls
4 the operations of one or more refineries[~~-~~] in Hawaii."

5 3. By repealing the definition of "petroleum
6 commissioner".

7 [~~"Petroleum commissioner" or "commissioner" means the
8 administrator of the energy, resources, and technology division
9 of the department of business, economic development, and
10 tourism."~~]

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

13 "**§486J-2 Distributors to register.** Every distributor, and
14 any person before becoming a distributor, shall register [~~as~~
15 ~~such~~] with the [~~commissioner~~] commission on forms to be
16 prescribed, prepared, and furnished by the [~~commissioner.~~]
17 commission."

18 SECTION 8. Section 486J-3, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§486J-3 Statements.** (a) Each distributor [~~shall, at~~
21 ~~such~~] by reporting dates [~~as the commissioner may establish,~~]
22 established by the commission, shall file with the



1 ~~[commissioner,]~~ commission, on forms prescribed, prepared, and
2 furnished by the ~~[commissioner,]~~ commission, a certified
3 statement showing separately for each county and for the islands
4 of Lanai and Molokai within which and ~~[whereon]~~ where fuel is
5 sold or used during the last preceding reporting period, the
6 following:

7 (1) The total number of gallons or units of fuel, by type
8 or grade, refined, manufactured, or compounded by the
9 distributor within the ~~[State and sold or used by the~~
10 ~~distributor,]~~ state and, if for ultimate ~~[use]~~ sale or
11 consumption in another county or on another island,
12 ~~[the name of that county or island,]~~ the number of
13 gallons or units of fuel, by type or grade, sold,
14 exchanged, or otherwise transferred or used in each
15 county or island;

16 (2) The total number of gallons or units of fuel, by type
17 or grade, imported or exported by the distributor ~~[or~~
18 ~~sold];~~ the total volumes of fuel, by type or grade,
19 sold, exchanged, or otherwise transferred or used by
20 the distributor[,]; and, if for ultimate ~~[use]~~ sale or
21 consumption in another county or on another island,
22 ~~[the name of that]~~ the number of gallons or units of



1 fuel, by type or grade, sold, exchanged, or otherwise
2 transferred or used in each county or island;

3 (3) The total number of gallons or units of fuel sold as
4 liquid fuel, aviation fuel, diesel fuel, and other
5 types of fuel as required by the [~~commissioner~~]
6 commission;

7 (4) The total number of gallons or units of fuel [~~and the~~
8 ~~types thereof~~], by type or grade, and their respective
9 sales prices for all fuel sold to[+] federal, state,
10 and county agencies, ships stores, or base exchanges,
11 commercial agricultural accounts, commercial
12 nonagricultural accounts, retail dealers, and other
13 customers as required by the [~~commissioner~~]
14 commission;

15 (5) Monthly weighted average acquisition cost per barrel
16 and volumes of foreign or domestic crude oil or other
17 liquid fuels, finished or unfinished, imported to
18 Hawaii, including information identifying the source
19 of the crude oil or other liquid fuels;

20 [~~(5) Monthly Hawaii~~] (6) Weekly weighted average wholesale
21 prices and sales volumes of finished [~~leaded regular~~]
22 unleaded regular[7] and premium motor gasoline, and of



1 each 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;~~] distributors;

5 (7) Weekly weighted average retail prices, and sales
6 volumes of finished unleaded regular and premium motor
7 gasoline, and of each other grade of gasoline sold, by
8 island, by retail distributor outlets of all classes
9 of retail trade and by any distributor to other end-
10 users. The commission may purchase retail price data
11 from data service companies that the commission may
12 use to substitute some or all data to meet the
13 reporting requirement for retail price data under this
14 paragraph;

15 [~~(6) Monthly Hawaii~~] (8) Weekly weighted average wholesale
16 prices, and sales volumes [~~for residential sales,~~
17 ~~commercial and institutional sales, industrial sales,~~
18 ~~sales through company-operated retail outlets, sales~~
19 ~~to other end-users, and wholesale sales of No. 2~~
20 ~~diesel fuel and No. 2 fuel oil; and] of No. 2 diesel
21 fuel and No. 2 fuel oil, by island, to retail
22 distributor outlets, by classes of retail trade, and~~



1 to all other wholesale distributors. Weighted average
2 wholesale prices and sales volumes shall be reported
3 by type of wholesale liquid fuel price;

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

13 ~~(7)~~ (10) Monthly [~~Hawaii~~] weighted average prices, and
14 sales volumes for retail sales and wholesale sales, by
15 island, of No. 1 distillate, kerosene, finished
16 aviation gasoline, kerosene-type jet fuel, No. 4 fuel
17 oil, residual fuel oil, and consumer grade propane~~-~~;
18 and

19 (11) The gross margins or spreads between a refiner's
20 average weighted acquisition price for each gallon of
21 crude oil and blendstock refined within the state and
22 the average weighted prices for each gallon or unit of



1 fuel sold, by county or island, to another
2 distributor, retail dealers, end-users, and consumers.
3 For each distributor that is not a refiner, the gross
4 margins or spreads between the distributor's average
5 weighted price for each gallon or unit of fuel
6 acquired by the distributor and the average weighted
7 prices for each gallon or unit of fuel sold, by county
8 or island, to another distributor, retail dealers,
9 end-users, or consumers.

10 The [~~commissioner~~] commission shall prescribe [~~by rule when the~~
11 ~~first report shall be submitted.~~] standards and practices for
12 reporting to facilitate uniformity, consistency, and
13 comparability of the data to be submitted.

14 ~~[(b) In addition to the above reporting, each distributor~~
15 ~~shall file with the commissioner, Federal Form FEO-1000 or an~~
16 ~~equivalent state form to be prescribed, prepared, and furnished~~
17 ~~by the commissioner, showing the expected supply of fuel~~
18 ~~products for the coming month, and their intended distribution~~
19 ~~as categorized by Form FEO-1000 or the equivalent state form.~~
20 ~~The state form shall be supplied in the event that the Federal~~
21 ~~Mandatory Petroleum Allocation Regulations should expire, be~~



1 ~~revoked, or be amended to delete or substantially change the~~
2 ~~reporting requirements provided therein.~~

3 ~~(e)]~~ (b) Each major marketer shall submit to the
4 ~~[commissioner,]~~ commission, at a time and in a form as the
5 ~~[commissioner]~~ commission shall prescribe, information,
6 including petroleum and petroleum product receipts, exchanges,
7 inventories, and distributions. ~~[The commissioner shall~~
8 ~~prescribe by rule when the first report shall be submitted.~~

9 ~~(d)]~~ (c) The ~~[commissioner]~~ commission may request
10 additional information as and when ~~[the commissioner]~~ the
11 commission deems necessary to perform ~~[the commissioner's]~~ the
12 commission's responsibilities under this chapter."

13 SECTION 9. Section 486J-4, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§486J-4 Informational reports.** (a) Each major oil
16 producer, refiner, marketer, oil transporter, and oil storer
17 shall submit to the ~~[commissioner,]~~ commission, in such form as
18 the ~~[commissioner]~~ commission shall prescribe, information
19 ~~[which]~~ that includes the following:

20 (1) Major oil transporters shall report on petroleum by
21 reporting the capacities of each major transportation
22 system, the amount transported by each system, and



1 inventories thereof. The provision of the information
2 shall not be construed to increase and decrease any
3 authority the [~~commissioner~~] commission may otherwise
4 have;

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

8 (3) Refiners shall report on facility capacity and
9 utilization and method of transportation of refinery
10 receipts and distributions; and

11 (4) Major oil marketers shall report on facility capacity
12 and methods of transportation of receipts and
13 distributions.

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

16 (b) The [~~commissioner~~] commission may request additional
17 information as and when [~~the commissioner~~] the commission
18 deems it necessary to perform [~~the commissioner's~~] the
19 commission's responsibilities under this chapter."

20 SECTION 10. Section 486J-5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§486J-5 **Analysis of information; [~~audits and~~**
2 **~~inspections,~~] summary reports.** (a) The [~~petroleum~~
3 ~~commissioner,~~] commission, with the [~~commissioner's~~]
4 commission's own staff and other support staff with expertise
5 and experience in, or with, the petroleum industry, shall
6 gather, analyze, and interpret the information submitted to it
7 pursuant to sections 486J-3 [~~and~~], 486J-4, and 486J-A and other
8 information relating to the supply [~~and price~~], prices, margins,
9 and profits of petroleum products, with particular emphasis on
10 motor vehicle fuels, including[~~]~~ but not limited to[~~]~~ all of
11 the following:

12 (1) The nature, cause, and extent of any petroleum or
13 petroleum [~~products shortage~~] product situation or
14 condition affecting supply[~~]~~, price, margins, or
15 profits;

16 [~~(2) The economic and environmental impacts of any~~
17 ~~petroleum and petroleum product shortage or condition~~
18 ~~affecting supply;~~

19 [~~(3) Petroleum or petroleum product demand and supply~~
20 ~~forecasting methodologies utilized by the petroleum~~
21 ~~industry in Hawaii;~~



1 ~~(4)~~ (2) The ~~[prices,]~~ prices of petroleum or petroleum
2 products, with particular emphasis on wholesale and
3 retail motor vehicle fuel prices, and any significant
4 changes in prices charged by the petroleum industry
5 for petroleum or petroleum products sold in Hawaii and
6 the reasons for such changes;

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

17 ~~(6)~~ (4) The emerging trends relating to supply, demand,
18 ~~[and conservation of petroleum and petroleum products;~~

19 ~~(7) The nature and extent of efforts of the petroleum~~
20 ~~industry to expand refinery capacity and to make~~
21 ~~acquisitions of additional supplies of petroleum and~~
22 ~~petroleum products; and~~



1 ~~(8) The development of a petroleum and petroleum products~~
2 ~~information system in a manner which will enable the~~
3 ~~State to take action to meet and mitigate any~~
4 ~~petroleum or petroleum products shortage or condition~~
5 ~~affecting supply.~~

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

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

20 [~~(d)~~] (c) The [~~commissioner~~] commission shall publish
21 annually and submit to the governor and the legislature twenty
22 days prior to the [~~first day~~] convening of [~~the current~~] each



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

11 SECTION 11. Section 486J-6, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§486J-6 Confidential information.** (a) Confidential
14 commercial information [~~presented~~] provided to the
15 [~~commissioner~~] commission pursuant to this chapter shall be held
16 in confidence by the [~~commissioner~~] commission or aggregated to
17 the extent necessary to [~~assure~~] ensure confidentiality as
18 governed by chapter 92F, 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)~~ (b) Unless otherwise provided by law, with respect to
2 data provided pursuant to ~~[sections]~~ section 486J-3 ~~[and]~~, 486J-
3 4, or 486J-A, neither the ~~[commissioner]~~ commission, nor any
4 employee of the ~~[department]~~ commission, may do any of the
5 following:

- 6 (1) Use the information furnished under ~~[sections]~~ section
7 486J-3 ~~[and]~~, 486J-4, or 486J-A for any purpose other
8 than the statistical purposes for which it is
9 supplied;
- 10 (2) Make any publication whereby the data furnished by any
11 ~~[particular establishment or individual]~~ person under
12 ~~[sections]~~ section 486J-3 ~~[and]~~, 486J-4, or 486J-A
13 ~~[can]~~ may be identified; or
- 14 (3) Permit ~~[anyone]~~ any person to examine the individual
15 reports provided under ~~[sections]~~ section 486J-3
16 ~~[and]~~, 486J-4, or 486J-A, other than the ~~[public~~
17 ~~utilities]~~ commission, the department of taxation, the
18 attorney general, and the consumer advocate, and the
19 authorized representatives and employees of each."

20 SECTION 12. Section 486J-7, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§486J-7 Confidential information obtained by another**
2 **state agency.** Any confidential information pertinent to the
3 responsibilities of the [~~commissioner~~] commission specified in
4 this chapter that is obtained by another state agency, including
5 the department of taxation, [~~the public utilities commission,~~
6 the attorney general, and the consumer advocate, shall be made
7 available only to the attorney general, the attorney general's
8 authorized representatives, and the [~~commissioner~~] commission,
9 and shall be treated in a confidential manner."

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

12 **"§486J-8 Sharing of information obtained by the**
13 [~~commissioner~~] commission. The [~~commissioner~~] commission shall
14 make [~~all~~] any information obtained by the [~~commissioner~~]
15 commission under this chapter, including confidential
16 information, available only to the attorney general, the
17 department of taxation, [~~the public utilities commission,~~ the
18 consumer advocate, the department of business, economic
19 development, and tourism, and the authorized representative of
20 each, who shall safeguard the confidentiality of all
21 confidential information received."



1 SECTION 14. Section 486J-9, Hawaii Revised Statutes, is
2 amended to read as follows:

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

21 (b) Any person who wilfully makes any false statement,
22 representation, or certification in any record, report, plan, or



1 other document filed with the [~~commissioner~~] commission shall be
2 subject to a civil penalty not to exceed \$500,000[7] and shall
3 be deemed to have committed an unfair or deceptive act or
4 practice in the conduct of a trade or commerce and subject to
5 the penalties specified in chapter 480.

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

10 [~~(c)~~] (d) For the purposes of this section, "person"
11 means, in addition to the definition contained in section
12 486J-1, any responsible corporate officer."

13 SECTION 15. Section 486J-10, Hawaii Revised Statutes, is
14 amended as follows:

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

16 "(a) The [~~commissioner~~] director shall adopt rules in
17 accordance with chapter 91 to require that gasoline sold in the
18 [~~State~~] state for use in motor vehicles contain ten per cent
19 ethanol by volume. The amounts of gasoline sold in the [~~State~~]
20 state containing ten per cent ethanol shall be in accordance
21 with rules as the [~~commissioner~~] director may deem appropriate.
22 The [~~commissioner~~] director may authorize the sale of gasoline



1 that does not meet these requirements as provided in subsection
2 (d)."

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

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

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

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

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

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

18 (2) The amount of ethanol-blended fuel sold by the
19 distributor;

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



1 (4) Any other information the [~~commissioner~~] director
2 shall require for the purposes of compliance with this
3 section.

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

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

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

11 SECTION 16. Section 486J-12, Hawaii Revised Statutes, is
12 repealed.

13 [~~"§486J-12 Rules. The commissioner shall adopt, amend, or
14 repeal such rules as [the commissioner] may deem proper to fully
15 effectuate this chapter."~~]

16 PART V

17 SECTION 17. Chapter 486H, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By repealing section 486H-13.

20 [~~"§486H-13 Maximum pre-tax wholesale price for the sale of
21 gasoline; civil actions. (a) Notwithstanding any law to the
22 contrary, no manufacturer, wholesaler, or jobber may sell~~]



1 ~~regular unleaded, mid-grade, or premium gasoline to a dealer~~
2 ~~retail station, an independent retail station, or to another~~
3 ~~jobber or wholesaler at a price above the maximum pre-tax~~
4 ~~wholesale prices established pursuant to subsection (b). The~~
5 ~~commission shall publish the maximum pre-tax wholesale prices by~~
6 ~~means that shall include the Internet website for the State of~~
7 ~~Hawaii.~~

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

18 ~~(c) The baseline price for regular unleaded gasoline~~
19 ~~referred to in subsection (b) shall be determined on a weekly~~
20 ~~basis and shall be equal to the average of:~~

21 ~~(1) The weekly average of the spot daily price for regular~~
22 ~~unleaded gasoline for Los Angeles;~~



1 ~~(2) The weekly average of the spot daily price for regular~~
2 ~~unleaded gasoline for New York Harbor; and~~

3 ~~(3) The weekly average of the spot daily price for regular~~
4 ~~unleaded gasoline for the United States Gulf Coast;~~
5 ~~as reported and published by the Oil Price Information Service~~
6 ~~for the five business days of the preceding week; provided that~~
7 ~~the commission, in its discretion, may determine a more~~
8 ~~appropriate baseline or a more appropriate price information~~
9 ~~reporting service.~~

10 ~~(d) The location adjustment factor referred to in~~
11 ~~subsection (b) shall be \$.04 per gallon or as otherwise~~
12 ~~determined by the commission and shall thereafter be subject to~~
13 ~~adjustment pursuant to section 486H-16(a).~~

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

18 ~~(f) The mid-grade adjustment factor shall be \$.05 per~~
19 ~~gallon or as otherwise determined by the commission and shall~~
20 ~~thereafter be subject to adjustment pursuant to section 486H-~~
21 ~~16(a).~~



1 ~~(g) The premium adjustment factor shall be \$.09 per gallon~~
2 ~~or as otherwise determined by the commission and shall~~
3 ~~thereafter be subject to adjustment pursuant to section 486H-~~
4 ~~16(a).~~

5 ~~(h) For purposes of this chapter, the State shall be~~
6 ~~divided into the following zones:~~

7 ~~(1) Zone 1 shall include the island of Oahu;~~

8 ~~(2) Zone 2 shall include the island of Kauai;~~

9 ~~(3) Zone 3 shall include the island of Maui, except the~~
10 ~~district of Hana;~~

11 ~~(4) Zone 4 shall include the district of Hana on the~~
12 ~~island of Maui;~~

13 ~~(5) Zone 5 shall include the island of Molokai;~~

14 ~~(6) Zone 6 shall include the island of Lanai;~~

15 ~~(7) Zone 7 shall include the districts of Puna, south~~
16 ~~Hilo, north Hilo, and Hamakua on the island of Hawaii;~~
17 ~~and~~

18 ~~(8) Zone 8 shall include the districts of north Kohala,~~
19 ~~south Kohala, north Kona, south Kona, and Kau on the~~
20 ~~island of Hawaii.~~



1 ~~(i) The commission shall establish zone price adjustments~~
2 ~~to the maximum pre-tax wholesale regular unleaded, mid-grade,~~
3 ~~and premium gasoline prices on a zone by zone basis.~~

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.~~

16 ~~(l) Any manufacturer, wholesaler, or jobber who knowingly~~
17 ~~violates any requirement imposed or rule adopted under this~~
18 ~~section, except for subsection (j), shall be subject to a civil~~
19 ~~penalty, for each violation, equal to three times the amount of~~
20 ~~the overcharge or \$250,000, whichever is greater, and shall be~~
21 ~~liable for the costs of the action and reasonable attorney's~~
22 ~~fees as determined by the court. Within two years from the date~~



1 ~~the commission obtains actual knowledge of the violation, the~~
2 ~~commission may institute a civil action in a court of competent~~
3 ~~jurisdiction to collect the civil penalty, the costs, and~~
4 ~~attorney's fees. In the case of ongoing violation, the two-year~~
5 ~~period shall start from the date of the last violation. The~~
6 ~~commission may refer any such action to the attorney general as~~
7 ~~it deems appropriate. As used in this subsection, "overcharge"~~
8 ~~means the number of gallons of gasoline sold, times the~~
9 ~~wholesale price at which the manufacturer or jobber sold regular~~
10 ~~unleaded, mid-grade, or premium gasoline to a dealer retail~~
11 ~~station, an independent retail station, or another jobber or~~
12 ~~wholesaler, less taxes assessed, less the maximum pre-tax~~
13 ~~wholesale price established pursuant to subsection (b).~~

14 ~~(m) The commission shall have the power to determine the~~
15 ~~extent to which a manufacturer, wholesaler, or jobber is~~
16 ~~complying with any requirement imposed or rule adopted under~~
17 ~~this section, including the power to compel a manufacturer,~~
18 ~~wholesaler, or jobber to submit documents, data, and information~~
19 ~~necessary and appropriate for the commission to determine such~~
20 ~~compliance. The commission may use data collected by the~~
21 ~~department of business, economic development, and tourism~~



1 ~~pursuant to chapter 486J, as well as obtain the assistance of~~
2 ~~that department in determining such compliance.~~

3 ~~(n) The commission shall report to the governor and the~~
4 ~~legislature, in a timely manner, on any significant aberrations,~~
5 ~~trends, or conditions that may adversely impact the gasoline~~
6 ~~consumers in the State.~~

7 ~~(o) The commission shall adopt rules pursuant to chapter~~
8 ~~91 as may be necessary to implement this section and section~~
9 ~~486H-16."]~~

10 2. By repealing section 486H-15.

11 [~~**§486H-15 Governor's emergency powers.**~~ (a)

12 ~~Notwithstanding any law to the contrary, the governor may~~
13 ~~suspend, in whole or in part, section 486H-13 or any rule~~
14 ~~adopted pursuant to that section whenever the governor issues a~~
15 ~~written determination that strict compliance with the section or~~
16 ~~a rule will cause a major adverse impact on the economy, public~~
17 ~~order, or the health, welfare, or safety of the people of~~
18 ~~Hawaii. In the written determination, the governor shall state~~
19 ~~the specific provision of the section or rule that strict~~
20 ~~compliance with will cause a major adverse impact on the~~
21 ~~economy, public order, or the health, welfare, or safety of the~~
22 ~~people of the State, along with specific reasons for that~~



1 ~~determination. The governor shall publish this determination in~~
2 ~~accordance with section 1-28.5. The suspension shall take~~
3 ~~effect upon issuance of the written determination by the~~
4 ~~governor.~~

5 ~~(b) Except as provided in subsection (c), the suspension~~
6 ~~under subsection (a) shall remain in effect until the earlier~~
7 ~~of:~~

8 ~~(1) The adjournment of the next regular or special session~~
9 ~~of the legislature; or~~

10 ~~(2) The effective date of any legislative enactment~~
11 ~~intended to address the major adverse impact;~~

12 ~~provided that if the legislature has passed legislation to~~
13 ~~address the major adverse impact, and the governor vetoes the~~
14 ~~presented legislation, the suspension shall terminate on the~~
15 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~
16 ~~prices in effect immediately prior to the issuance of the~~
17 ~~written determination by the governor shall take effect on the~~
18 ~~day after the date of the veto; and provided further that if no~~
19 ~~action is taken by the legislature during the regular or special~~
20 ~~session to address the major adverse impact, then the maximum~~
21 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~
22 ~~the issuance of the written determination by the governor shall~~



1 ~~take effect on the day after adjournment sine die of the regular~~
2 ~~or special session.~~

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

6 ~~(1) The adjournment of that session of the legislature; or~~

7 ~~(2) The effective date of any legislative enactment~~

8 ~~intended to address the major adverse impact;~~

9 ~~provided that if the legislature has passed legislation to~~

10 ~~address the major adverse impact, and the governor vetoes the~~

11 ~~presented legislation, the suspension shall terminate on the~~

12 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~

13 ~~prices in effect immediately prior to the issuance of the~~

14 ~~written determination by the governor shall take effect on the~~

15 ~~day after the date of the veto; and provided further that if no~~

16 ~~action is taken by the legislature during the regular or special~~

17 ~~session to address the major adverse impact, then the maximum~~

18 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~

19 ~~the issuance of the written determination by the governor shall~~

20 ~~take effect on the day after adjournment sine die of the regular~~

21 ~~or special session."]~~

22 3. By repealing section 486H-16.



1 ~~["§486H-16 Adjustments. (a) A manufacturer, wholesaler,~~
2 ~~or jobber may petition the commission to adjust the maximum pre-~~
3 ~~tax wholesale price of regular unleaded, mid-grade, or premium~~
4 ~~gasoline in the event of a change in the value of the baseline~~
5 ~~price for regular unleaded gasoline, the location adjustment~~
6 ~~factor, the marketing margin factor, the mid-grade adjustment~~
7 ~~factor, the premium adjustment factor, or a zone price~~
8 ~~adjustment. The petitioner shall bear the burden of proof to~~
9 ~~establish by clear and convincing evidence the need for and the~~
10 ~~amount of any adjustment. The adjustments shall be determined~~
11 ~~as follows:~~

12 ~~(1) The value of the baseline price shall be equal to the~~
13 ~~average of:~~

14 ~~(A) The weekly average of the spot daily price for~~
15 ~~regular unleaded gasoline for Los Angeles;~~

16 ~~(B) The weekly average of the spot daily price for~~
17 ~~regular unleaded gasoline for New York Harbor;~~
18 ~~and~~

19 ~~(C) The weekly average of the spot daily price for~~
20 ~~regular unleaded gasoline for the United States~~
21 ~~Gulf Coast,~~

1 ~~as reported and published by the Oil Price Information~~
2 ~~Service for the five business days of the preceding~~
3 ~~week; provided that the commission, in its discretion,~~
4 ~~may determine a more appropriate baseline or a more~~
5 ~~appropriate price information reporting service;~~

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



1 ~~(3) 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 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~~

21 ~~(ii) The bulk price for sales for resale for~~
22 ~~"regular" gasoline,~~



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

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

12 ~~(5) The value of any zone price adjustment in effect at~~
13 ~~the time the petition is filed shall be adjusted based~~
14 ~~upon material changes in the operating costs for a~~
15 ~~zone, such as terminaling, storage, or distribution~~
16 ~~costs, and other empirical data the commission deems~~
17 ~~appropriate.~~

18 ~~(b) If the commission adjusts the maximum pre-tax~~
19 ~~wholesale gasoline prices, the commission shall publish its~~
20 ~~findings and the adjusted prices by means that shall include the~~
21 ~~Internet website for the State of Hawaii.~~



1 fiscal year 2006-2007 to establish the petroleum industry
2 monitoring, analysis, and reporting program established under
3 section 486J-B, Hawaii Revised Statutes.

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

6 PART VII

7 SECTION 21. In codifying the new sections added by section
8 5 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 22. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 23. This Act shall take effect on July 1, 2020.



SB NO. 3186 SD2
HD2

Report Title:

Energy; Maximum Pre-tax Wholesale Gasoline; Petroleum Industry Monitoring

Description:

(1) Adds Singapore spot daily price in determination of baseline price, with lowest three of the four average weekly geographic prices averaged for State baseline; (2) in event of a holiday or holidays, requires PUC to use average of remaining business days of the week; (3) removes the location adjustment factor; (4) reduces the marketing margin factor to 14 cents; (5) allocates different percentages of zone price adjustments to different distributors performing different functions; (6) provides for adjustment of zone price adjustments and allocation of zone price adjustments on a zone by zone basis; (7) establishes (a) petroleum industry monitoring, analysis, and reporting program; (b) petroleum industry monitoring, analysis, and reporting special fund; and (c) unfair practices by petroleum industry; (8) suspends enforcement of gasoline pricing program by PUC; and (9) repeals gasoline pricing program 1/1/11. Effective date July 1, 2020. (SB3186 HD2)

