
A BILL FOR AN ACT

RELATING TO OVERSIGHT OF THE PETROLEUM MARKET.

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

1 SECTION 1. In 2002, following the settlement of Anzai v.
2 Chevron, and at the urging of the administration at that time,
3 the legislature enacted Act 77, Session Laws of Hawaii 2002,
4 which imposed price controls on regular unleaded gasoline at the
5 wholesale level and sold at retail on a self serve basis, but
6 deferred implementation of these price caps until July 1, 2004.
7 In addition to imposing price controls on regular gasoline, Act
8 77 established the position of state petroleum commissioner,
9 required the department of business, economic development, and
10 tourism to conduct random and periodic audits and inspections of
11 the petroleum industry, and removed the authority to collect and
12 analyze petroleum data from the director of business, economic
13 development, and tourism. From the initial assignment of
14 petroleum industry data and information functions to the
15 department, through and including the Act 77 expansion of these
16 mandated functions, the department received no implementation
17 funding.



1 Act 77 also required the department to do a comprehensive
2 study of the petroleum industry, gasoline market, and price
3 controls and other policy options to lower gasoline prices.
4 With a team of experts -- United States Federal Trade
5 Commission, Stillwater Associates, LLC (Stillwater), National
6 Conference of State Legislatures' energy program, and the
7 department of the attorney general, the department did the
8 study, completed a report, and delivered it to the legislature
9 in September 2003. The report recommended against gasoline
10 price controls, and other recommendations included:

- 11 1. Eliminate the state petroleum commissioner's role and
12 restore these important petroleum industry data
13 functions to the director of business, economic
14 development, and tourism as contained in the statute
15 prior to Act 77;
- 16 2. Repeal the divorcement law that restricts conversion
17 of dealer-operated stations (lessee stations) to
18 company-operated stations by refiners and wholesalers
19 and repeal the geographic restrictions on building
20 retail service stations by refiners and wholesalers;
- 21 3. Repeal the department's mandate to conduct random
22 audits and inspections of Hawaii's petroleum



1 companies, found to be redundant to existing functions
2 of the department of the attorney general and
3 department of taxation, and thus, are inefficient and
4 unnecessary. These regulatory and enforcement
5 functions are also inconsistent with the department's
6 business advocacy role; and,

- 7 4. Institute a state watchdog system to monitor and
8 increase oversight of the petroleum industry and
9 gasoline market. It would include data acquisition,
10 analysis and reporting by the department for greater
11 market and industry transparency, which requires
12 revisions of existing petroleum industry data
13 reporting requirements and adequate implementation
14 funding.

15 Collection of price and volumes data in detail on all
16 products and all classes and levels of trade, and industry cost
17 data and other information would enable an appropriately
18 designed system to produce price, product, and profit data, and
19 information for enforcement agencies' scrutiny and use. It
20 would also provide other important value-added data and
21 information appropriate for use by various end-users, like
22 policymakers and the public.



1 The report emphasized that funding for staff and operations
2 is absolutely essential to obtain, analyze, and report the type
3 of petroleum industry data and information that the legislature,
4 enforcement agencies, and the public have sought for years, but
5 have never received on a consistent and systematic basis.
6 Accordingly, the administration has included in its biennium
7 budget submittal to the legislature what was found to be the
8 minimum funding required for the department of business,
9 economic development, and tourism to implement these mandated
10 functions under chapter 486J, Hawaii Revised Statutes.

11 Acknowledging agreement with the report's finding that
12 competition exists in Hawaii's retail gasoline market, the
13 legislature repealed the retail price controls imposed by Act
14 77. However, expressing concern with what has since been found
15 to be an outdated conclusion of lack of competition in the
16 wholesale gasoline market, the legislature enacted Act 242,
17 Session Laws of Hawaii 2004. Thus, Act 242 imposed price
18 controls at the wholesale level for all grades of gasoline, and
19 included the retail price cap repeal.

20 Uncertain as to the efficacy and appropriateness of the
21 gasoline price control benchmarks, the implementation and
22 adjustment methodologies, and the zone price adjustments in Act



1 242, the legislature provided the public utilities commission
2 broad latitude and authority in this regard. The law gives the
3 public utilities commission extensive discretion to make any
4 necessary adjustments to the benchmark markets, baseline prices,
5 location adjustment factor, marketing margin factor, and mid-
6 grade and premium adjustment factors, and to set the values of
7 the eight zone price adjustments. Recognizing the complexity
8 and dynamics of the gasoline market, the legislature also
9 empowered the public utilities commission, without exception, to
10 make other adjustments the commission deems necessary to attempt
11 to get the price cap process to "reflect and correlate with
12 competitive market conditions." In essence, the public
13 utilities commission was given discretion to change all of the
14 components of the Act 242 wholesale gasoline price control
15 scheme, and the scheme itself.

16 The public utilities commission is also to support a
17 special task force to determine the appropriateness of the
18 various zones and zone price adjustments, among other areas of
19 concern. Allowing more time to assess and adjust Act 242's
20 wholesale price caps, the legislature again postponed
21 implementation of gasoline price controls to September 2005.



1 In parallel, the department of business, economic
2 development, and tourism, the United States Federal Trade
3 Commission, and Stillwater continued to analyze this issue, and
4 worked on further refinements of the results of the September
5 2003 report, much of which the department presented to the
6 legislature in its testimony, during the 2004 regular session.
7 In June 2004, following the enactment of Act 242, the
8 department, the United States Federal Trade Commission, and
9 Stillwater conducted an analysis of the bill and concluded that
10 implementation of the caps on the wholesale price of all grades
11 of gasoline would have significantly greater adverse impacts on
12 Hawaii's consumers, economy, and petroleum industry than the
13 price controls in Act 77.

14 The June 2004 analysis of the revised price controls
15 established by Act 242 determined that, if implemented, the
16 following adverse effects on Hawaii's gasoline consumers could
17 be expected:

18 First, the price caps will bring unwanted and unwarranted
19 volatility to the Hawaii market. Act 242's price caps are
20 benchmarked to gasoline spot prices in three volatile spot
21 markets: New York, United States Gulf Coast, and Los Angeles.
22 These markets also exhibit seasonal pricing changes that have no



1 factual nexus to Hawaii. In effect, Act 242 links Hawaii to
2 external and unrelated markets with significantly more volatile
3 gasoline prices.

4 Second, the new benchmark prices will increase the risk of
5 supply shortages beyond the risks posed by the repealed Act 77
6 price caps. The use of price caps, coupled with what the United
7 States Federal Trade Commission found to be an unrealistically
8 low location adjustment factor of \$.04 per gallon for shipping,
9 will motivate Hawaii refiners to ship all grades of gasoline to
10 higher value West Coast markets, because selling gasoline at
11 lower capped prices in Hawaii would be impossible to rationalize
12 to their shareholders.

13 Third, wholesale caps alone will not achieve the objective
14 "to enhance the consumer welfare by fostering the opportunity
15 for prices that reflect and correlate with competitive market
16 conditions." Even if the wholesale price caps could somehow
17 lower wholesale prices, there is no guarantee that they would
18 "enhance consumer welfare", which is presumed to mean lower
19 retail prices. It is more likely that integrated wholesale or
20 retail marketers would recoup losses from capped wholesale
21 prices by raising uncapped retail prices in their retail
22 outlets. Further, wholesale or retail marketers would likely



1 view the price caps as an "implied permission" to price at what
2 government allows, as has been the case in Newfoundland, Canada.

3 Fourth, Act 242 fails to recognize that Hawaii's wholesale
4 gasoline market has a diverse, complicated, and intricate
5 structure, which cannot be artificially determined or defined by
6 geographic zones. An inaccurately differentiated wholesale
7 price cap could cause major structural market changes. This
8 could mean potential loss of service to small jobbers and their
9 customers, e.g., commercial and agricultural end users, and
10 small, remote neighbor island dealers. It is also likely to re-
11 concentrate the wholesale market, reducing or eliminating
12 improvements in wholesale competition. In addition, relative to
13 retail sales where prices are posted on service station signs
14 and transactions are simple, wholesale gasoline sales
15 transactions are opaque and conditions vary considerably, which
16 makes any wholesale market less transparent for purposes of
17 monitoring and enforcing price caps.

18 Finally, contrary to the findings, upon which Act 242 was
19 based, the analysis concluded that Hawaii's wholesale market has
20 become significantly more competitive. Since the 1998 opening
21 of the Aloha terminal, and subsequent import parity price-level
22 supply agreements between refiners and co-marketers, the



1 gasoline market in Hawaii follows world market trends closer
2 than before.

3 The Anzai v. Chevron antitrust litigation, settled on
4 April 30, 2002, focused on Hawaii's industry behavior and data
5 up to very early 1999, and Aloha Petroleum was not included.
6 Act 242 cited this case as a key source of evidence that
7 Hawaii's wholesale market is uncompetitive, and ascribed the
8 problem of high gasoline prices primarily to a lack of vigorous
9 competition in Hawaii's wholesale market.

10 However, Aloha Petroleum's import terminal spurred
11 wholesale competition in Hawaii, and made previous data
12 obsolete. The company first imported low-price gasoline and, in
13 2001, used the terminal to leverage a supply agreement with a
14 local refinery at or below import parity price. Increased
15 wholesale competition has pushed retail prices downward for a
16 large and growing Aloha customer, Costco, which benefits by low-
17 price bulk purchase and high-volume retail sales on Oahu and the
18 Big Island.

19 Aloha Petroleum is not the lone, wholesale competitor to
20 Hawaii's two refiners. The analysis found that the three other
21 principal non-refiner wholesalers joined in the 2001 major shift
22 to import parity price-level supply contracts, and away from the



1 exchange agreement supply arrangements (geographic swaps of
2 product), which were antitrust targets in Anzai v. Chevron.

3 The June 2004 study found significant reductions of Hawaii
4 differential dealer tank wagon prices: 9 cents per gallon
5 reduction over California and 5 cents per gallon reduction over
6 the United States average. While Hawaii's market is not quite
7 as responsive to external market factors; e.g., crude oil
8 swings, as United States and California, increased wholesale
9 competition since 1999 drove this significant price shift.

10 Artificial price controls did not stimulate the post-1998
11 wholesale competition in Hawaii, nor can they accurately mimic
12 the forces that do. The logic behind Act 242 is now found to be
13 flawed, and, thus, setting wholesale caps cannot achieve the
14 bill's objective "to enhance the consumer welfare by fostering
15 the opportunity for prices that reflect and correlate with
16 competitive market conditions."

17 Gasoline price controls are found to be neither an
18 effective nor efficient approach to lower Hawaii gasoline
19 prices. Those policies are viewed as "anti-business", which
20 discourage potential competition and investment.

21 Instead of gasoline price controls, the legislature has
22 found the establishment and allocation of adequate resources for



1 a vigorous state watchdog system to monitor and oversee the
2 petroleum industry and gasoline market is a more potent policy
3 alternative and less costly and complicated measure than
4 gasoline price controls. It would give policymakers a deeper
5 understanding of the market and provide enforcement agencies
6 detailed industry information previously unavailable on a
7 systematic basis.

8 Monitoring fuel prices and volumes and industry data on
9 costs and profits, and analysis and reporting of this
10 information to enforcement agencies -- the department of the
11 attorney general, department of taxation, and relevant federal
12 agencies, if appropriate -- can be more effective than price
13 caps at preventing "excess" profit taking. The public can use
14 this information to make informed, competitive fuel purchase
15 decisions. Although implementation resources have been
16 requested by the administration, additional refinements to the
17 current data and information requirements in the law are
18 essential to enable the department of business, economic
19 development, and tourism to conduct these more penetrating
20 analytic functions.

21 The legislature also finds no evidence that restrictions on
22 the vertical integration of gasoline refiners and wholesalers,



1 and retailers, first instituted in Hawaii in 1991, have led to
2 lowering Hawaii's gasoline prices. In 2000, an United States
3 Federal Trade Commission staff analysis instead found evidence
4 that these divorcement policies actually sacrifice market
5 efficiencies and harm consumers, because they have raised
6 gasoline prices. This econometric analysis examined the effects
7 of divorcement policies in Hawaii, Connecticut, Delaware,
8 Maryland, Nevada, Virginia, and the District of Columbia. The
9 analysis concluded that divorcement added about 2.7 cents per
10 gallon at retail (self-serve) on regular unleaded gasoline,
11 costing consumers an estimated \$100,000,000 annually.

12 Therefore, the purposes of this Act are to:

- 13 (1) Repeal the gasoline price caps as contained in Act
14 242, Session Laws of Hawaii 2004;
- 15 (2) Repeal the restriction on refiners or wholesalers in
16 operating service stations;
- 17 (3) Amend the Petroleum Industry Reporting Act to:
 - 18 (A) Eliminate the state petroleum commissioner's role
19 by restoring those duties and responsibilities to
20 the director of business, economic development,
21 and tourism;

1 (B) Repeal the petroleum commissioner's statutory
 2 requirement to conduct random and periodic audits
 3 and inspections of the petroleum industry; and

4 (C) Revise existing petroleum industry data reporting
 5 requirements so as to establish an effective
 6 statewide system of "watchdog" monitoring,
 7 analysis, and reporting of petroleum industry
 8 data and information to increase market
 9 transparency, oversight, and enforcement.

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

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

- 19 (1) Crude oil costs;
- 20 (2) Other feedstock costs;
- 21 (3) Refinery operating expenses;
- 22 (4) Marketing expenses;



1 (5) Distribution expenses; and

2 (6) Corporate overhead expenses.

3 (b) In addition to the reporting required under subsection

4 (a), each distributor shall file with the director all

5 Securities and Exchange Commission Form 10-K and Form 10-Q, as

6 well as annual reports, quarterly reports, and earnings

7 supplements published by the distributor.

8 (c) Each distributor, except a distributor who is so

9 defined solely by criteria in paragraph (4) of that definition

10 in section 486J-1, who sells liquid fuel only at retail and is

11 not a refiner, shall file with the director, at such reporting

12 dates as the director may establish, on forms prescribed,

13 prepared, and furnished by the director, a certified statement

14 of operating and overhead costs, which shall include but shall

15 not be limited to the following:

16 (1) Gasoline purchases;

17 (2) Diesel purchases;

18 (3) Marketing expenses; and

19 (4) Distribution expenses.

20 (d) The director may require reports of additional

21 information when the director deems it necessary."



1 SECTION 3. Chapter 486J, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§486J-B Petroleum industry information reporting system.

5 The department shall develop and maintain an automated petroleum
6 industry information reporting system. The purpose of the
7 petroleum industry information reporting system is to conduct
8 and facilitate the efficient reporting analysis of information
9 described in section 486J-5. The department shall develop the
10 petroleum industry information reporting system in a manner that
11 will result in greater market transparency and provide useful
12 information to those agencies that are authorized to conduct
13 oversight of the petroleum industry and ensure compliance with
14 all relevant laws."

15 SECTION 4. Section 486H-10.4, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~§486H-10.4 [Restrictions on manufacturers or jobbers in~~
18 ~~operating service stations; lease] Lease rent controls;~~
19 ~~definitions. [(a) Beginning August 1, 1997, no manufacturer or~~
20 ~~jobber shall convert an existing dealer retail station to a~~
21 ~~company retail station; provided that nothing in this section~~
22 ~~shall limit a manufacturer or jobber from.~~



1 ~~(1) Continuing to operate any company operated retail~~
2 ~~service stations legally in existence on July 31,~~
3 ~~1997;~~

4 ~~(2) Constructing and operating any new retail service~~
5 ~~stations as company retail stations constructed after~~
6 ~~August 1, 1997, subject to subsection (b); or~~

7 ~~(3) Operating a former dealer retail station for up to~~
8 ~~twenty four months until a replacement dealer can be~~
9 ~~found if the former dealer vacates the service~~
10 ~~station, cancels the franchise, or is properly~~
11 ~~terminated or not renewed.~~

12 ~~(b) No new company retail station shall be located within~~
13 ~~one eighth mile of a dealer retail station in an urban area, and~~
14 ~~within one quarter mile in other areas.~~

15 ~~(e)]~~ (a) All leases as part of a franchise as defined in
16 section 486H-1, existing on August 1, 1997, or entered into
17 thereafter, shall be construed in conformity with the following:

- 18 (1) ~~[Such]~~ The renewal shall not be scheduled more
19 frequently than once every three years; and
20 (2) Upon renewal, the lease rent payable shall not exceed
21 fifteen per cent of the gross sales, except for
22 gasoline, which shall not exceed fifteen per cent of

1 the gross profit of product, excluding all related
2 taxes by the dealer~~[operated]~~ retail ~~[service]~~ station
3 as defined in section 486H-1~~[and 486H-10.4 plus]~~, and
4 in the case of a retail ~~[service]~~ station at a
5 location where the manufacturer or jobber is the
6 lessee and not the owner of the ground lease, a
7 percentage increase equal to any increase which the
8 manufacturer or jobber is required to pay the lessor
9 under the ground lease for the service station. For
10 the purposes of this subsection, "gross amount" means
11 all monetary earnings of the dealer from a dealer
12 ~~[operated]~~ retail ~~[service]~~ station after all
13 applicable taxes, excluding income taxes, are paid.

14 The provisions of this subsection shall not apply to any
15 existing contracts that may be in conflict with its provisions.

16 ~~[(d)]~~ (b) Nothing in this section shall prohibit a dealer
17 from selling a retail service station in any manner."

18 SECTION 5. Section 486H-10.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 " ~~[f]~~ §486H-10.5 ~~[f]~~ **Violation; penalties.** Any person who
21 violates section ~~[486H-10]~~ 486H-10.4 shall be assessed a civil
22 penalty of not more than \$1,000 per day for each violation."



1 SECTION 6. Section 486H-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[[~~ §486H-11 ~~]]~~ Enforcement of prohibition. ~~[(a) The~~
4 ~~attorney general shall commence a civil action to enforce~~
5 ~~section 486H-10, by seeking injunctive or any other appropriate~~
6 ~~relief. The civil action shall be brought in the circuit court~~
7 ~~of the circuit where the alleged violation occurred, or where~~
8 ~~the defendant resides or is doing business.~~

9 ~~(b)~~ Any person who is injured in another person's
10 business or property by the violation of section ~~[486H-10,]~~
11 486H-10.4, may bring a civil action for damages or injunctive
12 relief, or both, against the person violating section ~~[486H-10.]~~
13 486H-10.4. If the plaintiff prevails, the plaintiff shall be
14 awarded reasonable attorneys and expert witness fees ~~[7]~~, if
15 applicable; provided that if a court awards only nominal damages
16 to the plaintiff, those fees, in the court's discretion, need
17 not be awarded to the plaintiff. Any action brought under this
18 subsection shall be brought in the circuit court of the circuit
19 where the alleged violation occurred ~~[7]~~ or where the defendant
20 resides or is doing business."

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



1 "§486J-1 Definitions. As used in this chapter:

2 "Aviation fuel" means and includes all liquid substances of
3 whatever chemical composition usable for the propulsion of
4 airplanes.

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

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

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

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

21 "Competitively priced" means fuel-grade ethanol for which
22 the wholesale price, minus the value of all applicable federal,



1 state, and county tax credits and exemptions, is not more than
2 the average posted rack price of unleaded gasoline of comparable
3 grade published in the State.

4 "Business overhead expenses" means the expenses or costs
5 allocated by the refiners to reflect their Hawaii business
6 unit's share of corporate staff costs such as legal, financial,
7 accounting, and information technology.

8 "Department" means the department of business, economic
9 development, and tourism.

10 "Director" means the director of business, economic
11 development, and tourism.

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

13 (1) Every person who refines, manufactures, produces, or
14 compounds fuel in the State, and sells it at wholesale
15 or at retail, or who utilizes it directly in the
16 manufacture of products or for the generation of
17 power;

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

21 (3) Every person who acquires fuel through exchanges with
22 another distributor [~~-~~]; or



1 (4) Every person who purchases fuel for resale at
2 wholesale or retail from any person described in
3 paragraph (1), (2), or (3).

4 "Energy" means work or heat that is, or may be, produced
5 from any fuel or source whatsoever.

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

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

18 "Major marketer" means any person who sells natural gas,
19 propane, synthetic natural gas, or oil in amounts determined by
20 the department as having a major effect on energy supplies.



1 "Major oil producer" means any person who produces oil in
2 amounts determined by the department as having a major effect on
3 energy supplies.

4 "Major oil storer" means any person who stores oil or other
5 petroleum products in amounts determined by the department as
6 having a major effect on energy supplies.

7 "Major oil transporter" means any person who transports oil
8 or other petroleum products in amounts determined by the
9 department as having a major effect on energy supplies.

10 "Month" or "calendar month" means ~~[each]~~ a full month of
11 the calendar year.

12 "Person" ~~[7]~~ means any ~~[person,]~~ individual, firm,
13 association, organization, partnership, business trust,
14 corporation, or company. "Person" also includes any city,
15 county, public district or agency, the State or any department
16 or agency thereof, and the United States to the extent
17 authorized by federal law.

18 ~~["Petroleum commissioner" or "commissioner" means the~~
19 ~~administrator of the energy, resources, and technology division~~
20 ~~of the department of business, economic development, and~~
21 ~~tourism.]~~



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

3 "Refinery" means any industrial plant, regardless of
4 capacity, processing crude oil feedstock and manufacturing oil
5 products.

6 "Wholesale liquid fuel prices" means the prices at which
7 liquid fuel is sold at wholesale for resale at wholesale or
8 retail, typically but not limited to gasoline and diesel for
9 motor vehicles, and includes:

10 (1) "Refiner wholesale price" which means the wholesale
11 price at which liquid fuel is sold by a refiner to any
12 distributor who is not a refiner, for resale at any
13 subsequent wholesale or retail transaction;

14 (2) "Non-refiner wholesale price" which means the
15 wholesale price at which liquid fuel is sold by any
16 distributor who is not a refiner, to any other
17 distributor, not a refiner, for resale at any
18 subsequent wholesale or retail transaction; and

19 (3) "Dealer tank wagon price" means the wholesale price at
20 which liquid fuel is sold to any retail outlet by any
21 distributor priced on a delivered basis to a retail
22 outlet."



1 SECTION 8. Section 486J-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§486J-2 Distributors to register. Every distributor, and
4 any person before becoming a distributor, shall register as such
5 with the [~~commissioner~~] director on forms to be prescribed,
6 prepared, and furnished by the [~~commissioner~~.] director."

7 SECTION 9. Section 486J-3, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§486J-3 Statements. (a) Each distributor [~~shall~~], at
10 such reporting dates as the [~~commissioner~~] director may
11 establish, shall file with the [~~commissioner~~,] director, on
12 forms prescribed, prepared, and furnished by the [~~commissioner~~,]
13 director, a certified statement showing, separately for each
14 county and for the islands of Lanai and Molokai within which and
15 whereon fuel is sold or used during the last preceding reporting
16 period, the following:

- 17 (1) The total number of gallons or units of fuel refined,
18 manufactured, or compounded by the distributor within
19 the State and sold or used by the distributor, and if
20 for ultimate use [~~in another county or~~] on [~~another~~]
21 island, the name of that [~~county or~~] island;



1 (2) The total number of gallons or units of fuel imported
 2 or exported by the distributor or sold or used by the
 3 distributor, and if for ultimate use [~~in another~~
 4 ~~county or~~] on another island, the name of that [~~county~~
 5 ~~or~~] island;

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

10 (4) The total number of gallons or units of fuel and the
 11 types thereof sold to: federal, state, and county
 12 agencies, ships stores, or base exchanges, commercial
 13 agricultural accounts, commercial nonagricultural
 14 accounts, retail dealers, and other customers as
 15 required by the [~~commissioner,~~ director];

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

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



1 motor gasoline, and of each other grade of gasoline
2 sold [~~through company operated~~], by island, to retail
3 distributor outlets, [~~to other end users,~~] by class of
4 retail trade, and to all other wholesale [~~customers,~~]
5 distributors. Weighted average wholesale prices and
6 sales volumes shall be reported by type of wholesale
7 liquid fuel price;

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

18 [~~(6) Monthly Hawaii]~~ (8) Weekly weighted average
19 wholesale prices, and sales volumes [~~for residential~~
20 sales, ~~commercial and institutional sales, industrial~~
21 sales, sales through company operated retail outlets,
22 sales to other end users, and wholesale sales] of No.



1 2 diesel fuel and No. 2 fuel oil [~~7~~ and], by island, to
2 retail distributor outlets, by class of retail trade,
3 and to all other wholesale distributors. Weighted
4 average wholesale prices and sales volumes shall be
5 reported by type of wholesale liquid fuel price;
6 (9) Weekly weighted average retail prices and sales
7 volumes of No. 2 diesel fuel and No. 2 fuel oil sold,
8 by island, by retail distributor outlets of all
9 classes of retail trade, and by any distributor to
10 other end-users. The department may purchase retail
11 price data from data service companies, that the
12 department may use to substitute some or all data to
13 meet the reporting requirement for retail price data
14 under this section; and
15 [~~(7)~~] (10) Monthly [Hawaii] weighted average prices and sales
16 volumes for retail sales and wholesale sales, by
17 island, of No. 1 distillate, kerosene, finished
18 aviation gasoline, kerosene-type jet fuel, No. 4 fuel
19 oil, residual fuel oil, and consumer grade propane.
20 The [~~commissioner~~] director shall prescribe by rule when the
21 first report shall be submitted.



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

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

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



1 SECTION 10. Section 486J-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§486J-4 Informational reports. (a) Each major oil
4 producer, refiner, major oil marketer, major oil transporter,
5 and major oil storer shall submit to the [~~commissioner,~~]
6 director, in such form as the [~~commissioner~~] director shall
7 prescribe, information [~~which~~] that includes the following:

8 (1) Major oil transporters shall report on petroleum by
9 reporting the capacities of each major transportation
10 system, the amount transported by each system, and
11 inventories thereof. The provision of the information
12 shall not be construed to increase and decrease any
13 authority the [~~commissioner~~] director may otherwise
14 have;

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

18 (3) Refiners shall report on facility capacity and
19 utilization and method of transportation of refinery
20 receipts and distributions; and

1 (4) Major oil marketers shall report on facility capacity
2 and methods of transportation of receipts and
3 distributions.

4 The [~~commissioner~~] director shall prescribe by rule when the
5 first report shall be submitted.

6 (b) The [~~commissioner~~] director may [~~request~~] require
7 reports of additional information [~~as and~~] when [~~the~~
8 ~~commissioner~~] the director deems it necessary [~~to perform the~~
9 ~~commissioner's~~] ~~responsibilities under this chapter~~]."

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

12 "§486J-5 Analysis of information; [~~audits and~~
13 ~~inspections,]~~ summary reports. (a) The [~~petroleum~~
14 ~~commissioner,~~] director, with the [~~commissioner's~~] director's
15 own staff and other [~~support staff~~] persons with expertise and
16 experience in, or with, the petroleum industry, shall gather,
17 analyze, and interpret the information submitted to it pursuant
18 to sections 486J-3 [~~and~~], 486J-4, and 486J-A and other
19 information relating to the supply and [~~price~~] prices of
20 petroleum products, with particular emphasis on motor vehicle
21 fuels, including, but not limited to, all of the following:



- 1 (1) The nature, cause, and extent of any petroleum or
2 petroleum products shortage or condition affecting
3 supply[+] and prices;
- 4 (2) The economic and environmental impacts of any
5 petroleum and petroleum product shortage or condition
6 affecting supply[+] and prices;
- 7 (3) Petroleum or petroleum product demand and supply
8 forecasting methodologies utilized by the petroleum
9 industry in Hawaii;
- 10 (4) The prices, with particular emphasis on wholesale and
11 retail motor vehicle fuel prices, and any significant
12 changes in prices charged by the petroleum industry
13 for petroleum or petroleum products sold in Hawaii and
14 the reasons for such changes;
- 15 (5) The income, expenses, and profits, both before and
16 after taxes, of the industry as a whole and of major
17 firms within it, including a comparison with other
18 major industry groups and major firms within them as
19 to profits, return on equity and capital, and price-
20 earnings ratio;

1 (6) The emerging trends relating to supply, demand,
2 prices, and conservation of petroleum and petroleum
3 products; and

4 (7) The nature and extent of efforts of the petroleum
5 industry to expand refinery capacity and to make
6 acquisitions of additional supplies of petroleum and
7 petroleum products [~~7~~ and

8 ~~(8) The development of a petroleum and petroleum products~~
9 ~~information system in a manner which will enable the~~
10 ~~State to take action to meet and mitigate any~~
11 ~~petroleum or petroleum products shortage or condition~~
12 ~~affecting supply.~~

13 ~~(b) The commissioner shall conduct random or periodic~~
14 ~~audits and inspections of any supplier or suppliers of oil or~~
15 ~~petroleum products to determine whether they are unnecessarily~~
16 ~~withholding supplies from the market or are violating applicable~~
17 ~~policies, laws, or rules. The commissioner may solicit~~
18 ~~assistance of the department of taxation in any such audit. The~~
19 ~~commissioner shall cooperate with other state and federal~~
20 ~~agencies to ensure that any audit or inspection conducted by the~~
21 ~~commissioner is not duplicative of the data received by any of~~



1 ~~their audits or inspections which is available to the~~
2 ~~commissioner].~~

3 ~~[-(e)]~~ (b) The ~~[commissioner]~~ director shall analyze the
4 impacts of state and federal policies, rules, and regulations
5 upon the supply and pricing of petroleum products.

6 ~~[-(d)]~~ (c) The ~~[commissioner]~~ director shall publish
7 annually and submit to the governor and the legislature twenty
8 days prior to the first day of ~~[the current]~~ each legislative
9 session a summary, including any analysis and interpretation of
10 the information submitted to it pursuant to this chapter, and
11 any other activities taken by the ~~[commissioner,]~~ director,
12 including civil penalties imposed and referrals of violations to
13 the attorney general under section 486J-9. Any person may
14 submit comments in writing regarding the accuracy or sufficiency
15 of the information submitted. At the option of the director,
16 this report may be combined with reporting required by section
17 196-4(11), in the director's role as state energy resources
18 coordinator."

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

21 "**§486J-6 Confidential information.** (a) Confidential
22 commercial information ~~[presented]~~ provided to the



1 ~~[commissioner]~~ director pursuant to this chapter shall not be
 2 ~~[held in confidence]~~ publicly disclosed by the ~~[commissioner or]~~
 3 director unless such disclosure is required by chapter 92F, is
 4 permitted by this chapter, or where the information is
 5 aggregated to the extent necessary to assure its confidentiality
 6 ~~[as governed by chapter 92F, including its penalty provisions].~~

7 ~~[(b) No data or information submitted to the commissioner~~
 8 ~~shall be deemed confidential if the person submitting the~~
 9 ~~information or data has made it public.~~

10 ~~(e)]~~ (b) Unless otherwise provided by law, with respect to
 11 data provided pursuant to sections 486J-3 ~~[and]~~, 486J-4, and
 12 486J-A, neither the ~~[commissioner,]~~ director, nor any employee
 13 of the department, may do any of the following:

- 14 (1) Use the information furnished under sections 486J-3
 15 ~~[and]~~, 486J-4, and 486J-A for any purpose other than
 16 the statistical purposes for which it is supplied;
- 17 (2) Make any publication whereby the data furnished by any
 18 particular establishment or individual under sections
 19 486J-3 ~~[and]~~, 486J-4, and 486J-A can be identified; or
- 20 (3) Permit anyone to examine the individual reports
 21 provided under sections 486J-3 ~~[and]~~, 486J-4, and
 22 486J-A other than the department of taxation, the



1 public utilities commission, the attorney general, and
2 the consumer advocate, and the authorized
3 representatives and employees of each."

4 SECTION 13. Section 486J-7, Hawaii Revised Statutes, is
5 amended to read as follows:

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

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

17 "§486J-8 Sharing of information obtained by the
18 [~~commissioner~~] director. The [~~commissioner~~] director shall
19 make all information obtained by the [~~commissioner~~] director
20 under this chapter, including confidential information,
21 available to the attorney general, the department of taxation,
22 the public utilities commission, the consumer advocate, and the



1 authorized representative of each, who shall safeguard the
2 confidentiality of all confidential information received."

3 SECTION 15. Section 486J-9, Hawaii Revised Statutes, is
4 amended to read as follows:

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



1 (b) Any person who wilfully makes any false statement,
2 representation, or certification in any record, report, plan, or
3 other document filed with the [~~commissioner~~] director shall be
4 subject to a civil penalty not to exceed \$500,000, and shall be
5 deemed to have committed an unfair or deceptive act or practice
6 in the conduct of a trade or commerce and subject to the
7 penalties specified in chapter 480.

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

12 [~~(e)~~] (d) For the purposes of this section, "person"
13 means, in addition to the definition contained in section 486J-
14 1, any responsible corporate officer."

15 SECTION 16. Section 486J-10, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§486J-10 Ethanol content requirement.** (a) The
18 [~~commissioner~~] director shall adopt rules in accordance with
19 chapter 91 to require that gasoline sold in the State for use in
20 motor vehicles contain ten per cent ethanol by volume. The
21 amounts of gasoline sold in the State containing ten per cent
22 ethanol shall be in accordance with rules as the [~~commissioner~~]



1 director may deem appropriate. The [~~commissioner~~] director may
2 authorize the sale of gasoline that does not meet these
3 requirements as provided in subsection (d).

4 (b) Gasoline blended with an ethanol-based product, such
5 as ethyl tertiary butyl ether, shall be considered to be in
6 conformance with this section if the quantity of ethanol used in
7 the manufacture of the ethanol-based product represents ten per
8 cent, by volume, of the finished motor fuel.

9 (c) Ethanol used in the manufacture of ethanol-based
10 gasoline additives, such as ethyl tertiary butyl ether, may be
11 considered to contribute to the distributor's conformance with
12 this section; provided that the total quantity of ethanol used
13 by the distributor is an amount equal to or greater than the
14 amount of ethanol required under this section.

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

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

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



1 (e) Each distributor, at such reporting dates as the
2 [~~commissioner~~] director may establish, shall file with the
3 [~~commissioner,~~] director, on forms prescribed, prepared, and
4 furnished by the [~~commissioner,~~] director, a certified statement
5 showing:

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

7 (2) The amount of ethanol-blended fuel sold by the
8 distributor;

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

11 (4) Any other information the [~~commissioner~~] director
12 shall require for the purposes of compliance with this
13 section.

14 (f) Provisions with respect to confidentiality of
15 information shall be the same as provided in section [~~486J-7.~~]
16 486J-6.

17 (g) Any distributor or any other person violating the
18 requirements of this section shall be subject to a fine of not
19 less than \$2 per gallon of nonconforming fuel, up to a maximum
20 of \$10,000 per infraction.



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

4 SECTION 17. Section 486J-12, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~§486J-12~~ **Rules.** The [~~commissioner~~] director shall adopt,
7 amend, or repeal such rules as [~~the~~] [~~commissioner~~] director
8 may deem proper to fully effectuate this chapter."

9 SECTION 18. Section 486H-13, Hawaii Revised Statutes, is
10 repealed.

11 [~~§486H-13~~ ~~Maximum pre-tax wholesale price for the sale of~~
12 ~~gasoline; civil actions.~~ (a) ~~Notwithstanding any law to the~~
13 ~~contrary, no manufacturer, wholesaler, or jobber may sell~~
14 ~~regular unleaded, midgrade, or premium gasoline to a dealer~~
15 ~~retail station, an independent retail station, or to another~~
16 ~~jobber or wholesaler at a price above the maximum pre-tax~~
17 ~~wholesale prices established pursuant to subsection (b).~~ The
18 ~~commission shall publish the maximum pre-tax wholesale prices by~~
19 ~~means that shall include the Internet website for the State of~~
20 ~~Hawaii.~~

21 (b) ~~On a weekly basis, the commission shall determine the~~
22 ~~maximum pre-tax wholesale price of regular unleaded, mid grade,~~



1 ~~and premium gasoline as follows: the maximum pre tax wholesale~~
2 ~~price of regular unleaded gasoline shall consist of the baseline~~
3 ~~price for regular unleaded gasoline, plus the location~~
4 ~~adjustment factor, the marketing margin factor, and the zone~~
5 ~~price adjustment, and for mid grade and premium gasoline, the~~
6 ~~applicable mid grade and premium adjustment factor, such that~~
7 ~~the maximum pre tax wholesale gasoline prices reflect and~~
8 ~~correlate with competitive market conditions.~~

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

12 ~~(1) The weekly average of the spot daily price for regular~~
13 ~~unleaded gasoline for Los Angeles,~~

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

16 ~~(3) The weekly average of the spot daily price for regular~~
17 ~~unleaded gasoline for the United States Gulf Coast,~~

18 ~~as reported and published by the Oil Price Information Service~~
19 ~~for the five business days of the preceding week; provided that~~
20 ~~the commission, in its discretion, may determine a more~~
21 ~~appropriate baseline or a more appropriate price information~~
22 ~~reporting service.~~



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 486-16(a).~~

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

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

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

17 ~~(h) For purposes of this chapter, the State shall be~~
18 ~~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) The commission shall establish zone price adjustments~~
12 ~~to the maximum pre tax wholesale regular unleaded, mid grade,~~
13 ~~and premium gasoline prices on a zone by zone basis.~~

14 ~~(j) Every manufacturer, wholesaler, or jobber, upon the~~
15 ~~request of the commission, shall furnish to the commission, in~~
16 ~~the form requested, all documents, data, and information the~~
17 ~~commission may require to make its determination on zone price~~
18 ~~adjustments. Any person who refuses or fails to comply with a~~
19 ~~request for information by the commission shall be subject to a~~
20 ~~fine of up to \$50,000 per day. Each day a violation continues~~
21 ~~shall constitute a separate offense.~~



1 ~~(k) The maximum pre tax wholesale gasoline price imposed~~
2 ~~by this section shall take effect on September 1, 2005,~~
3 ~~notwithstanding the lack of the adoption of rules pursuant to~~
4 ~~this section.~~

5 ~~(l) Any manufacturer, wholesaler, or jobber who knowingly~~
6 ~~violates any requirement imposed or rule adopted under this~~
7 ~~section, except for subsection (j), shall be subject to a civil~~
8 ~~penalty, for each violation, equal to three times the amount of~~
9 ~~the overcharge or \$250,000, whichever is greater, and shall be~~
10 ~~liable for the costs of the action and reasonable attorney's~~
11 ~~fees as determined by the court. Within two years from the date~~
12 ~~the commission obtains actual knowledge of the violation, the~~
13 ~~commission may institute a civil action in a court of competent~~
14 ~~jurisdiction to collect the civil penalty, the costs, and~~
15 ~~attorney's fees. In the case of ongoing violation, the two year~~
16 ~~period shall start from the date of the last violation. The~~
17 ~~commission may refer any such action to the attorney general as~~
18 ~~it deems appropriate. As used in this subsection, "overcharge"~~
19 ~~means the number of gallons of gasoline sold, times the~~
20 ~~wholesale price at which the manufacturer or jobber sold regular~~
21 ~~unleaded, mid grade, or premium gasoline to a dealer retail~~
22 ~~station, an independent retail station, or another jobber or~~



1 wholesaler, less taxes assessed, less the maximum pre tax
2 wholesale price established pursuant to subsection (b).

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

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

17 ~~(o) The commission shall adopt rules pursuant to chapter~~
18 ~~91 as may be necessary to implement this section and section~~
19 ~~486H-16."]~~

20 SECTION 19. Section 486H-15, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§486H-15 Governor's emergency powers. (a)~~

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

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

19 ~~(1) The adjournment of the next regular or special session~~
20 ~~of the legislature; or~~

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



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

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

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

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

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

20 ~~provided that if the legislature has passed legislation to~~
21 ~~address the major adverse impact, and the governor vetoes the~~
22 ~~presented legislation, the suspension shall terminate on the~~



1 ~~date of that veto, and the maximum pre tax wholesale gasoline~~
2 ~~prices in effect immediately prior to the issuance of the~~
3 ~~written determination by the governor shall take effect on the~~
4 ~~day after the date of the veto; and provided further that if no~~
5 ~~action is taken by the legislature during the regular or special~~
6 ~~session to address the major adverse impact, then the maximum~~
7 ~~pre tax wholesale gasoline prices in effect immediately prior to~~
8 ~~the issuance of the written determination by the governor shall~~
9 ~~take effect on the day after adjournment sine die of the regular~~
10 ~~or special session."]~~

11 SECTION 20. Section 486H-16, Hawaii Revised Statutes, is
12 repealed.

13 [~~"§486H-16 Adjustments. (a) A manufacturer, wholesaler,~~
14 ~~or jobber may petition the commission to adjust the maximum pre-~~
15 ~~tax wholesale price of regular unleaded, mid grade, or premium~~
16 ~~gasoline in the event of a change in the value of the baseline~~
17 ~~price for regular unleaded gasoline, the location adjustment~~
18 ~~factor, the marketing margin factor, the mid grade adjustment~~
19 ~~factor, the premium adjustment factor, or a zone price~~
20 ~~adjustment. 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:~~

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

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

10 ~~(C) The weekly average of the spot daily price for~~
11 ~~regular unleaded gasoline for the United States~~
12 ~~Gulf Coast,~~

13 ~~as reported and published by the Oil Price Information~~
14 ~~Service for the five business days of the preceding~~
15 ~~week; provided that the commission, in its discretion,~~
16 ~~may determine a more appropriate baseline or a more~~
17 ~~appropriate price information reporting service;~~

18 ~~(2) The value of the location adjustment factor in effect~~
19 ~~at the time the petition is filed shall be adjusted to~~
20 ~~reflect the average of the actual acquisition cost to~~
21 ~~non-refiner marketers to obtain gasoline from refiners~~
22 ~~or importers for sale on the island of Oahu over the~~



1 ~~prior twelve month period, which cost shall be taken~~
 2 ~~from arm's length transactions between non refiner~~
 3 ~~marketers, and refiners or importers, such as exchange~~
 4 ~~agreements, sales agreements, or other similar~~
 5 ~~agreements; provided that the location adjustment~~
 6 ~~factor shall not exceed the reasonable cost of~~
 7 ~~importing gasoline to the island of Oahu. As used in~~
 8 ~~this paragraph, "actual acquisition cost" means the~~
 9 ~~amount over the base price of regular unleaded~~
 10 ~~gasoline that a non refiner marketer pays to a third~~
 11 ~~party for delivery of such gasoline into a terminal~~
 12 ~~located on the island of Oahu,~~

13 ~~(3) The value of the marketing margin factor in effect at~~
 14 ~~the time the petition is filed shall be adjusted by~~
 15 ~~adding to such value the difference between:~~

16 ~~(A) The average of the difference over the prior~~
 17 ~~twelve month period between:~~

18 ~~(i) The dealer tank wagon price for sales for~~
 19 ~~resale for "regular" gasoline; and~~

20 ~~(ii) The bulk price for sales fro resale for~~
 21 ~~"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 ~~less~~

8 ~~(B) The average of the difference over the period~~
9 ~~from 1994 until the most current year between:~~

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

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

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

20 ~~(4) The value of the mid grade and premium adjustment~~
21 ~~factors in effect at the time the petition is filed~~
22 ~~shall be adjusted by any material change in the mid-~~



1 ~~grade and premium adjustment factor as published by an~~
2 ~~appropriate price information reporting service; and~~
3 ~~(5) The value of any zone price adjustment in effect at~~
4 ~~the time the petition is filed shall be adjusted based~~
5 ~~upon material changes in the operating costs for a~~
6 ~~zone, such as terminaling, storage, or distribution~~
7 ~~costs, and other empirical data the commission deems~~
8 ~~appropriate.~~

9 ~~(b) If the commission adjusts the maximum pre tax~~
10 ~~wholesale gasoline prices, the commission shall publish its~~
11 ~~findings and the adjusted prices by means that shall include the~~
12 ~~internet website for the State of Hawaii.~~

13 ~~(c) Regardless of whether a petition has been filed and~~
14 ~~notwithstanding a determination of the adjustments made pursuant~~
15 ~~to subsection (a), the commission, in its discretion, may make~~
16 ~~such other and further adjustments deemed necessary and~~
17 ~~appropriate to establish maximum pre tax wholesale gasoline~~
18 ~~prices that reflect and correlate with competitive market~~
19 ~~conditions."]~~

20 SECTION 21. In codifying the new sections added by
21 sections 2 and 3 of this Act, the revisor of statutes shall



1 substitute appropriate section numbers for the letters used in
2 designating the new sections in this Act.

3 SECTION 22. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 23. This Act shall take effect upon its approval.
6
7

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HB 7038

Report Title:

Oversight of the Petroleum Market

Description:

Repeals wholesale gasoline price caps and the service station anti-encroachment laws (divorcement), and institutes a system to monitor and increase oversight of the petroleum industry and gasoline market.

