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# A BILL FOR AN ACT

RELATING TO THE PETROLEUM INDUSTRY.

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

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

10           While true transparency should provide benefits for Hawaii  
11 consumers, the combination of the State's geographical isolation  
12 and the market control exercised by the oil companies  
13 necessitate additional measures to safeguard the public.  
14 Enforcement of the current maximum wholesale price of gasoline  
15 should be suspended while leaving the public utilities  
16 commission with the ability to temporarily reinstate the maximum  
17 wholesale price in the event transparency does not provide the  
18 relief needed and the oil industry restores and maintains prices



1 higher than would have been allowed had the maximum wholesale  
2 price provision not been suspended.

3 As was more than evident during the aftermath of hurricanes  
4 Katrina and Rita and the refinery fires in Texas, natural and  
5 man-caused disasters halfway around the world can cause  
6 volatility and instability in the wholesale gasoline prices in  
7 Hawaii. To ensure the effectiveness of Hawaii's wholesale  
8 gasoline price control program, the State must prevent disasters  
9 in other far-away locations from unreasonably influencing our  
10 wholesale gasoline prices. To reduce instability, an additional  
11 geographic market needed to be added to provide more flexibility  
12 in establishing the baseline gasoline price.

13 In setting a maximum pre-tax wholesale price of gasoline,  
14 the legislature inserted a location adjustment factor to take  
15 into account the added costs of doing business in Hawaii.  
16 However, in the implementation of the gasoline price control  
17 program, the public utilities commission established zone price  
18 adjustments for the eight geographic zones established in the  
19 State, including a zone price adjustment for zone one, the  
20 Honolulu base zone. These zone price adjustments, adopted by  
21 the public utilities commission, were determined by using the  
22 highest actual costs of doing business by wholesaler



1 distributors in the various zones. Accordingly, the location  
2 adjustment factor became redundant.

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

8 Further, with regard to the zone price adjustments, some  
9 distributors were taking more than an equitable share of the  
10 zone price adjustment to the detriment of other distributors in  
11 the chain of distribution. To ensure that there is an equitable  
12 sharing of the zone price adjustment, the zone price adjustments  
13 must be divided by wholesale distributors based upon the  
14 functions that each provides in the chain of distribution.

15 It cannot be overemphasized that the entire reason for this  
16 Act, amending Act 242, Session Laws of Hawaii 2004, as codified,  
17 which amended Act 77, Session Laws of Hawaii 2002, is the need  
18 to protect the gasoline consumers in this State from the  
19 predatory practices of an oligopolistic petroleum industry. The  
20 various courts have found, and the parties themselves  
21 acknowledge, that the wholesale gasoline industry in this State  
22 is an uncompetitive oligopoly with the industry parties enjoying



1 exorbitant profit margins in their wholesale transactions, all  
2 to the detriment of the Hawaii consumer. Therefore, the  
3 legislature reiterates that the objective of Act 242 is to  
4 enhance the consumer welfare by fostering the opportunity for  
5 prices to reflect and correlate with competitive market  
6 conditions.

7 To ensure that oil companies do not further raise prices  
8 artificially high, the suspension of the maximum wholesale price  
9 will not suspend or affect the mechanisms that enforce the  
10 prohibition on unfair trade practices and to require the timely  
11 reporting of information by the gasoline industry, nor the duty  
12 of the public utilities commission to timely analyze and  
13 publicly disclose information provided by the gasoline industry  
14 and to calculate and post what would have been the weekly price  
15 cap. The public utilities commission is directed to proactively  
16 enforce the provisions of the law to enable the consumers of  
17 Hawaii to enjoy the lowest possible prices for gasoline, while  
18 allowing the refiners, jobbers, and wholesalers to make a  
19 reasonable return on their investments.

20 The legislature further finds that the establishment and  
21 allocation of adequate resources for a vigorous state watchdog  
22 system to monitor and oversee the petroleum industry and



1 gasoline market is a prerequisite to ensure the efficient and  
2 equitable regulation of gasoline pricing. The public  
3 disclosure, collection, aggregation, and analyses of current  
4 data relating to Hawaii petroleum fuel prices, volumes, costs,  
5 and profits, and the subsequent reporting of this information to  
6 planning and enforcement agencies, such as the departments of  
7 the attorney general, business, economic development, and  
8 tourism, and taxation, for review and assessment, is critical in  
9 ensuring compliance with the letter and spirit of the laws and  
10 regulations aimed at promoting fair and competitive gasoline  
11 prices for Hawaii's consumers.

12 The purposes of this Act are to:

- 13 (1) Require true transparency by the industry to increase  
14 competition and provide the public and elected  
15 officials with the necessary monitoring capability to  
16 discourage the oil industry from utilizing price  
17 maintenance schemes or other anti-competitive  
18 practices that artificially raise prices to consumers;
- 19 (2) Suspend the maximum wholesale price provision while  
20 leaving the public utilities commission the ability to  
21 temporarily reinstate the provision if oil companies



1 raise and maintain prices higher than would have been  
2 allowed if the provision was not suspended;

3 (3) Require the public utilities commission, during any  
4 time that enforcement of the maximum pre-tax wholesale  
5 price of gasoline is suspended, to calculate and  
6 publish what that maximum price would have been, to  
7 allow consumers to compare that price with current  
8 actual prices;

9 (4) Refine the method for calculating the maximum pre-tax  
10 wholesale gasoline price that will be applicable if  
11 the enforceable ceiling is reinstated, by:

12 (A) Adding the Singapore spot price weekly average  
13 price of conventional regular unleaded gasoline  
14 to the baseline price determination, with the  
15 three lowest weekly averages being averaged, to  
16 determine the baseline price for regular unleaded  
17 gasoline;

18 (B) In the event of a holiday or holidays in the  
19 prior week, requiring the public utilities  
20 commission to average the prices of the days that  
21 were not holidays;

22 (C) Eliminating the location adjustment factor;



- 1 (D) Reducing the marketing margin factor to 14 cents;
- 2 (E) Allocating percentages of zone price adjustment
- 3 in zones 2 through 8 to distributors based upon
- 4 different functions; and
- 5 (F) Providing for adjustments of zone price
- 6 adjustments and allocations of zone price
- 7 adjustments on a zone by zone basis;
- 8 (5) Establish the petroleum industry monitoring, analysis,
- 9 and reporting special fund;
- 10 (6) Require the public utilities commission to develop and
- 11 maintain the petroleum industry monitoring, analysis,
- 12 and reporting program, including an automated
- 13 petroleum industry information reporting system;
- 14 (7) Redelineate the types of information that the
- 15 petroleum industry must submit to the public utilities
- 16 commission;
- 17 (8) Make an appropriation into and an appropriation from
- 18 the petroleum industry monitoring, analysis, and
- 19 reporting special fund to be expended by the public
- 20 utilities commission to establish and maintain the
- 21 petroleum industry monitoring, analysis, and reporting
- 22 program; and

1 (9) Prohibit unfair trade practices by the petroleum  
2 industry.

3 PART I

4 SECTION 2. 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 reporting dates as the commission may  
9 establish, shall file with the commission, on forms prescribed,  
10 prepared, and furnished by the commission, a certified statement  
11 of operating and overhead costs for the refiner's Hawaii  
12 operations that shall include but not be limited to the  
13 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 the maximum pre-tax  
2 wholesale price under section 486H-13.

3 (b) In addition to the reporting required under subsection  
4 (a), each distributor shall file with the commission all  
5 Securities and Exchange Commission Forms 10-K, 10-Q, annual  
6 reports, quarterly reports, and earnings supplements published  
7 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 commission, on a semi-annual  
12 basis at reporting dates as the commission may establish, on  
13 forms prescribed, prepared, and furnished by the commission, a  
14 certified statement of operating and overhead costs that shall  
15 include the following:

- 16 (1) Gasoline purchases and exchanges and sources;  
17 (2) Diesel purchases and exchanges and sources;  
18 (3) Marketing expenses; and  
19 (4) Distribution expenses.

20 **§486J-B Petroleum industry monitoring, analysis, and**  
21 **reporting program.** The commission shall establish the petroleum  
22 industry monitoring, analysis, and reporting program that



1 includes development and maintenance of an automated petroleum  
2 industry information reporting system that meets the  
3 requirements of government, industry, and the public while  
4 promoting sound policy making and consumer information and  
5 protection. The purpose of the petroleum industry monitoring,  
6 analysis, and reporting program is to conduct and facilitate the  
7 efficient analysis and reporting of all information and data  
8 provided by the petroleum industry pursuant to this chapter.  
9 The commission shall develop the petroleum industry monitoring,  
10 analysis, and reporting program in a manner that will result in  
11 greater market transparency and provide useful information to  
12 the general public and those agencies that are authorized to  
13 conduct oversight of the petroleum industry and ensure  
14 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 petroleum industry information
- 9        reporting system established by section 486J-B."

10        SECTION 3. Section 486H-13, Hawaii Revised Statutes, is  
 11 amended to read as follows:

12        "**§486H-13 Maximum pre-tax wholesale price for the sale of**  
 13 **gasoline; civil actions.** (a) The prohibition under subsection  
 14 (b) against selling gasoline above the maximum pre-tax wholesale  
 15 price shall be suspended on the effective date of this Act. The  
 16 suspension shall remain in effect unless the commission  
 17 determines that the average pre-tax wholesale gasoline price  
 18 charged in a zone for two consecutive weeks has exceeded the  
 19 maximum price that would have been allowed had the suspension  
 20 not been in effect. Upon every such determination, the  
 21 commission immediately shall temporarily waive the suspension  
 22 and resume enforcement of the maximum pre-tax wholesale gasoline



1 price under subsection (c) in the zone for a period of two  
2 weeks, following which the suspension of the maximum pre-tax  
3 wholesale gasoline price provision shall be automatically  
4 reinstated.

5 (b) Notwithstanding any law to the contrary, during any  
6 period for which the commission waives the suspension as  
7 provided in subsection (a), no manufacturer, wholesaler, or  
8 jobber may sell regular unleaded, mid-grade, or premium gasoline  
9 to a dealer retail station, an independent retail station, or to  
10 another jobber or wholesaler at a price above the maximum pre-  
11 tax wholesale prices established pursuant to subsection ~~[(b)].~~  
12 ~~The commission shall publish the maximum pre-tax wholesale~~  
13 ~~prices by means that shall include the Internet website for the~~  
14 ~~State of Hawaii.] (c).~~

15 ~~[(b)]~~ (c) On a weekly basis, the commission shall  
16 determine the maximum pre-tax wholesale price of regular  
17 unleaded, mid-grade, and premium gasoline as follows: the  
18 maximum pre-tax wholesale price of regular unleaded gasoline  
19 shall consist of the baseline price for regular unleaded  
20 gasoline, plus ~~[the location adjustment factor,~~ the marketing  
21 margin factor~~]~~ and the zone price adjustment, and for mid-  
22 grade and premium gasoline, the applicable mid-grade and premium



1 adjustment factor, such that the maximum pre-tax wholesale  
2 gasoline prices reflect and correlate with competitive market  
3 conditions.

4 ~~[(e)]~~ (d) The baseline price for regular unleaded gasoline  
5 referred to in subsection ~~[(b)]~~ (c) shall be determined on a  
6 weekly basis and shall be equal to the average of ~~[+]~~ the three  
7 lowest of the four weekly averages of the spot daily price for  
8 conventional regular unleaded gasoline or its equivalent  
9 standard:

- 10 (1) The weekly average of the spot daily price for  
11 conventional regular unleaded gasoline for Los  
12 Angeles;
- 13 (2) The weekly average of the spot daily price for  
14 conventional regular unleaded gasoline for New York  
15 Harbor; ~~[and]~~
- 16 (3) The weekly average of the spot daily price for  
17 conventional regular unleaded gasoline for the United  
18 States Gulf Coast; and
- 19 (4) The weekly average of the spot daily price for  
20 conventional regular unleaded gasoline for Singapore,  
21 as reported and published by the Oil Price Information Service  
22 for the five business days of the preceding week; provided that



1 if the preceding week contains a holiday or holidays, then the  
2 average of the remaining business days of the preceding week  
3 shall be used; and provided further that the commission, in its  
4 discretion, may determine a more appropriate baseline or a more  
5 appropriate price information reporting service[-

6 ~~(d) The location adjustment factor referred to in~~  
7 ~~subsection (b) shall be \$.04 per gallon or as otherwise~~  
8 ~~determined by the commission and shall thereafter be subject to~~  
9 ~~adjustment pursuant to section 486H-16(a).]~~ or use multiple  
10 price information reporting services.

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

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

19 (g) The premium adjustment factor shall be ~~[\$.09]~~ 9 cents  
20 per gallon or as otherwise determined by the commission and  
21 shall thereafter be subject to adjustment pursuant to section  
22 486H-16(a).



- 1 (h) For purposes of this chapter, the State shall be  
2 divided into the following zones:
- 3 (1) Zone 1 shall include the island of Oahu;
  - 4 (2) Zone 2 shall include the island of Kauai;
  - 5 (3) Zone 3 shall include the island of Maui, except the  
6 district of Hana;
  - 7 (4) Zone 4 shall include the district of Hana on the  
8 island of Maui;
  - 9 (5) Zone 5 shall include the island of Molokai;
  - 10 (6) Zone 6 shall include the island of Lanai;
  - 11 (7) Zone 7 shall include the districts of Puna, south  
12 Hilo, north Hilo, and Hamakua on the island of Hawaii;  
13 and
  - 14 (8) Zone 8 shall include the districts of north Kohala,  
15 south Kohala, north Kona, south Kona, and Kau on the  
16 island of Hawaii.
- 17 (i) The commission shall establish zone price adjustments  
18 to the maximum pre-tax wholesale regular unleaded, mid-grade,  
19 and premium gasoline prices on a zone by zone basis.
- 20 (j) The zone price adjustments for zones 2 through 8, set  
21 forth in subsection (h), shall be divided as follows:

1        (1) Thirty per cent of the zone price adjustment shall be  
2                    allocated to the shipper of the gasoline from zone to  
3                    zone;

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

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

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

18        [~~(k)~~] (l) The maximum pre-tax wholesale gasoline price  
19 imposed by this section shall take effect on September 1, 2005,  
20 notwithstanding the lack of the adoption of rules pursuant to  
21 this section.





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



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

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

15           (p) Any suspension of enforcement of the maximum pre-tax  
16 wholesale gasoline price shall not suspend or affect:

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

19           (2) Any duty of the commission to:

20           (A) Publish, by means that shall include the internet  
21 website for the State of Hawaii, the maximum pre-



1 tax wholesale gasoline prices for each zone that  
2 would be in effect but for the suspension;

3 (B) Timely obtain, analyze, or publicly disclose or  
4 report information under chapter 486J; and

5 (C) Enforce chapter and other provisions of this  
6 chapter and chapter 486J.

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

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

12 "**§486H-15 Governor's emergency powers.** (a)

13 ~~[Notwithstanding]~~ Subject to subsections (b) and (c), and  
14 notwithstanding any law to the contrary, the governor may  
15 ~~[suspend, in whole or in part,]~~ suspend enforcement of the  
16 maximum pre-tax wholesale gasoline price under section 486H-13  
17 or any rule adopted pursuant to that section, on a zone by zone  
18 basis, whenever the governor issues a written determination  
19 containing findings of fact that demonstrate that strict  
20 compliance with the section or a rule will cause a ~~[major~~  
21 ~~adverse]~~ negative impact on the economy, public order, or the  
22 health, welfare, or safety of the people of ~~[Hawaii.]~~ the State.



1 In the written determination, the governor shall state the  
2 specific provision of the section or rule that strict compliance  
3 with will cause a [~~major adverse~~] negative impact on the  
4 economy, public order, or the health, welfare, or safety of the  
5 people of the State, along with specific reasons and findings of  
6 fact for that determination. The governor shall publish this  
7 determination in accordance with section 1-28.5. The suspension  
8 shall take effect upon issuance of the written determination by  
9 the governor.

10 ~~[(b) Except as provided in subsection (c), the suspension~~  
11 ~~under subsection (a) shall remain in effect until the earlier~~  
12 ~~of:~~

13 ~~(1) The adjournment of the next regular or special session~~  
14 ~~of the legislature; or~~

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

17 ~~provided that if the legislature has passed legislation to~~  
18 ~~address the major adverse impact, and the governor vetoes the~~  
19 ~~presented legislation, the suspension shall terminate on the~~  
20 ~~date of that veto, and the maximum pre-tax wholesale gasoline~~  
21 ~~prices in effect immediately prior to the issuance of the~~  
22 ~~written determination by the governor shall take effect on the~~



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

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

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

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

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

1 ~~pre-tax wholesale gasoline prices in effect immediately prior to~~  
2 ~~the issuance of the written determination by the governor shall~~  
3 ~~take effect on the day after adjournment sine die of the regular~~  
4 ~~or special session.]~~

5       (b) The suspension shall remain in effect for thirty days  
6 and may be renewed for additional thirty-day periods whenever  
7 the governor issues a written determination containing findings  
8 of fact that demonstrate that strict compliance with section  
9 486H-13, or a rule adopted pursuant to that section, during the  
10 thirty-day period will cause a negative impact on the economy,  
11 public order, or the health, welfare, or safety of the people of  
12 the State. In the written determination, the governor shall  
13 state the specific provision of the section or rule that strict  
14 compliance with will cause a negative impact on the economy,  
15 public order, or the health, welfare, or safety of the people of  
16 the State, along with specific reasons and findings of fact for  
17 that determination. The governor shall publish this  
18 determination in accordance with section 1-28.5. The renewal of  
19 the suspension shall take effect upon issuance of the written  
20 determination by the governor.

21       (c) Any suspension shall not suspend or affect:



- 1        (1) Any duty to register, timely provide information, make
- 2        a report, or file a statement under chapter 486J; or
- 3        (2) Any duty of the commission to:
- 4        (A) Publish, by means that shall include the internet
- 5        website for the State of Hawaii, the maximum pre-
- 6        tax wholesale gasoline prices for each zone that
- 7        would be in effect but for the suspension;
- 8        (B) Timely obtain, analyze, or publicly disclose or
- 9        report information under chapter 486J; and
- 10       (C) Enforce chapter        and other provisions of this
- 11       chapter and chapter 486J."

12       SECTION 5. Section 486H-16, Hawaii Revised Statutes, is  
 13 amended by amending subsection (a) to read as follows:

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



1 establish by clear and convincing evidence the need for and the  
2 amount of any adjustment. The adjustments shall be determined  
3 as follows:

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

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

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

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

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

20 as reported and published by the Oil Price Information  
21 Service for the five business days of the preceding  
22 week; provided that if the preceding week contains a





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

8 [~~2~~] ~~The value of the location adjustment factor in effect~~  
 9 ~~at the time the petition is filed shall be adjusted to~~  
 10 ~~reflect the average of the actual acquisition cost to~~  
 11 ~~non-refiner marketers to obtain gasoline from refiners~~  
 12 ~~or importers for sale on the island of Oahu over the~~  
 13 ~~prior twelve-month period, which cost shall be taken~~  
 14 ~~from arm's length transactions between non-refiner~~  
 15 ~~marketers, and refiners or importers, such as exchange~~  
 16 ~~agreements, sales agreements, or other similar~~  
 17 ~~agreements; provided that the location adjustment~~  
 18 ~~factor shall not exceed the reasonable cost of~~  
 19 ~~importing gasoline to the island of Oahu. As used in~~  
 20 ~~this paragraph, "actual acquisition cost" means the~~  
 21 ~~amount over the base price of regular unleaded~~  
 22 ~~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]~~ the 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(j), 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 SECTION 6. Section 486J-1, Hawaii Revised Statutes, is  
4 amended as follows:

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

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

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

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

20 (3) Owner-operated station that is a retail service  
21 station not owned by a refiner or wholesale



1           distributor and operated by a qualified gasoline  
2           dealer.

3           "Commission" means the public utilities commission.

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

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

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

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

20           "Refiner wholesale price" means the wholesale price at  
21 which liquid fuel is sold by a refiner to any distributor, not a



1 refiner, for resale at any subsequent wholesale or retail  
2 transaction.

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

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

10 "'Distributor" means [~~and includes~~]:

11 (1) Every person who refines, manufactures, produces, or  
12 compounds fuel in the State[7] and sells it at  
13 wholesale or at retail[7] or who [~~utilizes~~] uses it  
14 directly in the manufacture of products or for the  
15 generation of power;

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

19 (3) Every person who acquires fuel through exchanges with  
20 another distributor[7]; 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        "Fuel" means [~~and includes~~] fuels, whether liquid, solid,  
5        or gaseous, commercially usable for energy needs, power  
6        generation, and fuels manufacture, that may be manufactured,  
7        grown, produced, or imported into the State or that may be  
8        exported therefrom[+], including petroleum and petroleum  
9        products and gases, coal, coal tar, vegetable ferments, and all  
10       fuel alcohols.

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

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

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

20       [~~"Petroleum commissioner" or "commissioner" means the~~  
21       ~~administrator of the energy, resources, and technology division~~



1 of the department of business, economic development, and  
2 tourism." ]

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

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

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

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

- 19 (1) The total number of gallons or units of fuel, by type  
20 or grade, refined, manufactured, or compounded by the  
21 distributor within the State [~~and sold or used by the~~  
22 ~~distributor,~~] and, if for ultimate [~~use~~] sale or





- 1           consumption in another county or on another island,  
2           ~~[the name of that county or island;]~~ the number of  
3           gallons or units of fuel, by type or grade, sold,  
4           exchanged, or otherwise transferred or used by the  
5           distributor in each county or island;
- 6           (2) The total number of gallons or units of fuel, by type  
7           or grade, imported or exported by the distributor [~~or~~  
8           ~~sold~~]; the total volumes of fuel, by type or grade,  
9           sold, exchanged, or otherwise transferred or used by  
10           the distributor~~[r]~~; and if for ultimate [~~use~~] sale or  
11           consumption in another county or on another island,  
12           ~~[the name of that]~~ the number of gallons or units of  
13           fuel, by type or grade, sold, exchanged, or otherwise  
14           transferred or used by the distributor in each county  
15           or island;
- 16           (3) The total number of gallons or units of fuel sold as  
17           liquid fuel, aviation fuel, diesel fuel, and other  
18           types of fuel as required by the [~~commissioner~~]  
19           commission;
- 20           (4) The total number of gallons or units of fuel [~~and the~~  
21           ~~types thereof~~], by type or grade, and their respective  
22           sales prices for all fuel sold to[+] federal, state,



1 and county agencies, ships stores, or base exchanges,  
2 commercial agricultural accounts, commercial  
3 nonagricultural accounts, retail dealers, and other  
4 customers as required by the [~~commissioner~~]  
5 commission;

6 (5) Weekly weighted average acquisition cost per barrel  
7 and volumes of foreign or domestic crude oil or other  
8 liquid fuels, finished or unfinished, imported to  
9 Hawaii, including information identifying the source  
10 of the crude oil or other liquid fuels;

11 [~~(5) Monthly Hawaii~~] (6) The effective date and time, and  
12 the amount of change in cents per gallon, of any  
13 increase or decrease in wholesale price occurring  
14 during the week and the weekly weighted average  
15 wholesale prices and sales volumes of finished [~~leaded~~  
16 regular~~7~~] unleaded regular~~[7]~~ and premium motor  
17 gasoline, and of each other grade of gasoline sold  
18 [~~through company-operated~~], by island, to retail  
19 outlets, [~~to other end-users~~] by classes of retail  
20 trade, and to wholesale [~~customers~~] distributors;

21 (7) Weekly weighted average retail prices, and sales  
22 volumes of finished unleaded regular and premium motor



1 gasoline, and of each other grade of gasoline sold, by  
2 island, by retail distributor outlets of all classes  
3 of retail trade and by any distributor to other end-  
4 users; provided that the commission may purchase  
5 retail price data from data service companies that the  
6 commission may use to substitute some or all data to  
7 meet the reporting requirement for retail price data  
8 under this paragraph;

9 ~~[-(6) Monthly Hawaii]~~ (8) The effective date and time, and  
10 the amount of change in cents per gallon, of any  
11 increase or decrease in wholesale price occurring  
12 during the week and the weekly weighted average  
13 wholesale prices, and sales volumes [~~for residential~~  
14 sales, ~~commercial and institutional sales, industrial~~  
15 sales, sales through company-operated retail outlets,  
16 sales to other end-users, and wholesale sales of No. 2  
17 diesel fuel and No. 2 fuel oil; and] of No. 2 diesel  
18 fuel and No. 2 fuel oil, by island, to retail  
19 distributor outlets, by classes of retail trade, and  
20 to all other wholesale distributors. Weighted average  
21 wholesale prices and sales volumes shall be reported  
22 by type of wholesale liquid fuel price;



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

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

16        (11) For each distributor that is a refiner, the gross  
 17        margins or spreads between a refiner's average  
 18        weighted acquisition price for each gallon of crude  
 19        oil and blendstock refined within the State and the  
 20        average weighted prices for each gallon or unit of  
 21        fuel sold, by county or island, to another



1 distributor, a retail dealer, end-user, and consumer;

2 and

3 (12) 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, a retail dealer,  
9 end-user, or consumer.

10 The [~~commissioner~~] commission shall prescribe [~~by rule when the~~  
11 ~~first report shall be submitted.~~] applicable standards and  
12 practices for reporting to facilitate uniformity, consistency,  
13 and 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 (d) Information in the statements filed pursuant to this  
14 section shall be collected and maintained for the purpose of  
15 facilitating the analysis required by section 486J-5; provided  
16 that the commission shall make available to the public the  
17 information contained in the statements, but not the statements  
18 themselves, as provided in sections 486J-6 and 486J-8."

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

21 "**§486J-4 Informational reports.** (a) Each major oil  
22 producer, refiner, marketer, oil transporter, and oil storer



1 shall submit to the [~~commissioner,~~] commission, in [~~such~~] a form  
2 as the [~~commissioner~~] commission shall prescribe, information  
3 [~~which~~] that includes the following:

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

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

14 (3) Refiners shall report on facility capacity and  
15 utilization and method of transportation of refinery  
16 receipts and distributions; and

17 (4) Major oil marketers shall report on facility capacity  
18 and methods of transportation of receipts and  
19 distributions.

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



1 (b) The [~~commissioner~~] commission may request additional  
2 information as and when [~~the commissioner~~] the commission  
3 deems it necessary to perform [~~the commissioner's~~] the  
4 commission's responsibilities under this chapter."

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

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

18 (1) The nature, cause, and extent of any petroleum or  
19 petroleum [~~products shortage~~] product situation or  
20 condition affecting supply[~~]~~, price, margins, or  
21 profits;





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



1       ~~[(+6)]~~ (4) The emerging trends relating to supply, demand,  
2           ~~[and conservation of petroleum and petroleum products,~~  
3       ~~(7)~~ The nature and extent of efforts of the petroleum  
4           ~~industry to expand refinery capacity and to make~~  
5           ~~acquisitions of additional supplies of petroleum and~~  
6           ~~petroleum products; and~~  
7       ~~(8)~~ The development of a petroleum and petroleum products  
8           ~~information system in a manner which will enable the~~  
9           ~~State to take action to meet and mitigate any~~  
10          ~~petroleum or petroleum products shortage or condition~~  
11          ~~affecting supply.~~  
12       ~~(b)~~ The commissioner shall conduct random or periodic  
13       ~~audits and inspections of any supplier or suppliers of oil or~~  
14       ~~petroleum products to determine whether they are unnecessarily~~  
15       ~~withholding supplies from the market or are violating applicable~~  
16       ~~policies, laws, or rules. The commissioner may solicit~~  
17       ~~assistance of the department of taxation in any such audit. The~~  
18       ~~commissioner shall cooperate with other state and federal~~  
19       ~~agencies to ensure that any audit or inspection conducted by the~~  
20       ~~commissioner is not duplicative of the data received by any of~~  
21       ~~their audits or inspections which is available to the~~  
22       ~~commissioner.]~~ price, margins, and profits.



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

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

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

19           "**§486J-6 Confidential information.** (a) ~~[Confidential~~  
20 ~~commercial]~~ Commercial information ~~[presented]~~ provided to the  
21 ~~[commissioner]~~ commission pursuant to this chapter that is  
22 exempt from public disclosure under section 92F-13(4) shall be



1 held in confidence by the [~~commissioner~~] commission or  
2 aggregated to the extent necessary to [~~assure~~] ensure  
3 confidentiality as [~~governed~~] required by chapter 92F[~~r~~  
4 ~~including its penalty provisions~~].

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

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

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



1 reports or statements provided [~~under sections 486J-3~~  
2 and ~~486J-4~~ other than the public utilities commission,  
3 the attorney general, and the consumer advocate, and  
4 the authorized representatives and employees of  
5 each]."

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

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

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

19 **"§486J-8 Sharing of information obtained by the**  
20 [~~commissioner~~] commission. [~~The commissioner~~] (a) Except as  
21 provided in subsections (b) and (c), the commission shall make  
22 [~~all~~] any information obtained by the [~~commissioner~~] commission



1 under this chapter, including confidential information,  
2 available only to the attorney general, the department of  
3 taxation, [~~the public utilities commission,~~] the consumer  
4 advocate, an appropriate legislative committee, and the  
5 authorized representative of each, who shall safeguard the  
6 confidentiality of all confidential information received.

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

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

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

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



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

15 (b) Any person, or any employee of any person, who  
16 wilfully makes any false statement, representation, or  
17 certification in any record, report, plan, or other document  
18 filed with the [~~commissioner~~] commission shall be subject to a  
19 civil penalty not to exceed \$500,000[~~or~~] and shall be deemed to  
20 have committed an unfair or deceptive act or practice in the  
21 conduct of a trade or commerce and subject to the penalties  
22 specified in chapter 480.



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

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

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

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

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

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

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





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

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

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

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

13 (2) The amount of ethanol-blended fuel sold by the  
14 distributor;

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

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

20 (f) Provisions with respect to confidentiality of  
21 information shall be the same as provided in section [~~486J-7.~~]  
22 486J-6."



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

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

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

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

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

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

17 SECTION 18. There is appropriated out of the petroleum  
18 industry monitoring, analysis, and reporting special fund the  
19 sum of \$1, or so much thereof as may be necessary for fiscal  
20 year 2006-2007, to establish the petroleum industry monitoring,  
21 analysis, and reporting program established under chapter 486J,  
22 Hawaii Revised Statutes.



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

3 PART II

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

7 "CHAPTER  
8 UNFAIR TRADE PRACTICES BY PETROLEUM INDUSTRY

9 § -1 Definitions. As used in this chapter, unless the  
10 context otherwise requires:

11 "Advertising" includes the use of any banner, sign,  
12 placard, poster, streamer, card, or any publication in the  
13 media.

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

17 "Person" means an individual, corporation, government, or  
18 governmental subdivision or agency, business trust, estate,  
19 trust, partnership, unincorporated association, two or more of  
20 any of the foregoing having a joint or common interest, or any  
21 other legal or commercial entity.



1 "Petroleum product" means gasoline, diesel fuel, liquefied  
2 petroleum gas only when used as a motor fuel, kerosene, thinner,  
3 solvent, liquefied natural gas, pressure appliance fuel, white  
4 gasoline, or any motor fuel, or any oil represented as engine  
5 lubricant, engine oil, lubricating or motor oil, or any oil used  
6 to lubricate transmissions, gears, or axles.

7 "Sell" or any of its variants means attempt to sell, offer  
8 for sale or assist in the sale of, permit to be sold or offered  
9 for sale or delivery, offer for delivery, trade, barter, or  
10 expose for sale.

11 § -2 **Misrepresentations.** (a) It is unlawful for any  
12 person to make any deceptive, false, or misleading statement by  
13 any means whatsoever regarding quality, quantity, performance,  
14 price, discount, profit, or savings used in the sale or selling  
15 of any petroleum product regulated pursuant to this chapter or  
16 chapters 486H and 486J.

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

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



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



1           §   **-3 Unlawful profiteering.** Any person who sells  
2 petroleum products and who, with intent to enhance the price or  
3 restrict the supply of petroleum products:

4           (1) Wilfully causes or permits preventable waste in the  
5 production, manufacture, storage, or distribution of  
6 petroleum products;

7           (2) Prevents, limits, lessens, or restricts the  
8 manufacture, production, supply, or distribution of  
9 petroleum products;

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

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

14           or

15          (5) In any way aids or abets the doing of any act  
16 prohibited in paragraphs (1) to (4),

17 commits an unlawful trade practice.

18           §   **-4 Penalty.** Any person who violates this chapter  
19 shall be fined not more than \$10,000 for each violation or  
20 imprisoned for not more than five years, or both.

21           §   **-5 Injunctions.** Any person who violates this chapter  
22 may be enjoined by the circuit court by a mandatory injunction



1 or temporary restraining order necessary or proper to effectuate  
2 the purposes of this chapter in a suit brought by the attorney  
3 general in the name of the State or by any private person in the  
4 person's own name.

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

8       SECTION 20. In codifying the new sections added by section  
9 2 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

12       SECTION 21. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14       SECTION 22. This Act shall take effect on July 1, 2050.



**Report Title:**

Petroleum Industry Monitoring, Analysis, and Reporting Program  
and Special Fund; Maximum Pre-tax Wholesale Gasoline Price;  
Unfair Practices by Petroleum Industry

**Description:**

- (1) Provides increased industry transparency;
- (2) Suspends the current maximum wholesale price cap while leaving mechanisms in place as an assurance oil companies do not further raise prices artificially high;
- (3) Increases the savings potential for consumers if oil companies attempt to maintain prices higher than what would have been allowed if the maximum price provision had not been suspended, by deleting the location adjustment factor and reducing the marketing margin factor.
- (4) Establishes petroleum industry monitoring, analysis, and reporting program;
- (5) Establishes petroleum industry monitoring, analysis, and reporting special fund;
- (6) Prohibits unfair practices by petroleum industry; and
- (7) Makes appropriations. (SD2)

