

JAN 25 2006

S.B. NO. 2271

A BILL FOR AN ACT

RELATING TO ENERGY.

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

PART I

1
2 SECTION 1. This Act is intended to comprehensively address
3 Hawaii's decades-long overdependence on imported oil for its
4 energy by establishing a bold, strategic energy policy framework
5 of integrated measures to encourage and support market-based
6 development of reliable, cost-effective, more self-reliant
7 energy systems. The Act's integrated, coordinated, and
8 complementary measures constitute a network of policy pathways
9 to achieve results over the near-, mid-, and long-term to enable
10 Hawaii to attain a niche leadership role in the global hydrogen
11 energy economy, by accelerating the development of the State's
12 own indigenous, renewable energy resources to achieve this
13 energy vision.

14 For years, Hawaii's addiction to oil has translated into
15 high energy prices, and exposes its economy to grave
16 vulnerability from sudden, severe oil price spikes, and now,
17 heightening oil supply insecurity as Hawaii's oil refiners must

1 increasingly import crude oil from the Middle East and
2 politically unstable oil-producing countries.

3 The legislature enacted gasoline price controls under the
4 presumption that such caps would protect the consumer. It is
5 now apparent that cap-induced gasoline price volatility will
6 continue to hit Hawaii's market, because of the volatility of
7 the cap's benchmark markets. Refinery accidents and fires
8 frequently occur in California, causing Los Angeles' gasoline
9 prices to spike upwards. Hurricanes like Katrina and Rita in
10 2005 cause gasoline price spikes in the United States Gulf
11 Coast.

12 There is serious concern that price volatility will
13 directly impact consumers and continue to hit those in Hawaii's
14 market who can least afford it.

15 In addition to numerous unintended consequences, regulating
16 fuel prices neither encourages production or use of alternate
17 fuels like ethanol and biodiesel, nor does it foster broad
18 practices of greater fuel efficiency.

19 This Act provides such policy mechanisms as a state
20 procurement preference for energy efficient building materials,
21 equipment, and alternate fueled vehicles; an increase in the
22 renewable energy tax credits and elimination of their "sunset"

1 date; and establishment of a unique renewable fuel standard for
2 20 per cent of Hawaii's highway fuel demand to be provided by
3 renewable fuels by 2020.

4 In addition, demand-side management programs, which
5 encourage people to modify their energy use to maximize energy
6 efficiency, in the context in which they are implemented and
7 paid for by Hawaii ratepayers, have changed significantly since
8 they were initiated nearly a decade ago. Ratepayers should no
9 longer be required to pay Hawaii utilities for sales of
10 electricity lost as a result of the success of the demand-side
11 management programs. This Act would redirect those fees to
12 provide more funds for other demand-side management programs.

13 This Act provides a leadership mechanism across all state
14 agencies to ensure the achievement of ambitious energy
15 efficiency standards for building construction and major
16 renovations, as well as targets for energy conservation and
17 efficiency in government-owned or leased facilities. This Act
18 provides the necessary resources to offer the technical training
19 and support for state agencies to attain these tough
20 certification requirements.

21 The State's combination of abundant renewable resources,
22 high fossil fuel prices, limited geographic area, and recognized

1 expertise in hydrogen research and development, makes it an
2 ideal location to lead the transition to a hydrogen economy over
3 the long term.

4 To accomplish this vision, this Act establishes the Hawaii
5 renewable hydrogen program within the department of business,
6 economic development, and tourism, and creates the Hawaii
7 hydrogen investment capital special fund.

8 SECTION 2. The legislature finds that gasoline price
9 controls are neither an effective nor an efficient approach to
10 lower Hawaii gasoline prices. In fact, gasoline price caps have
11 brought unwanted and unwarranted volatility to the Hawaii
12 market. Hawaii's price caps, benchmarked to gasoline spot
13 prices in three volatile spot markets -- New York, United States
14 Gulf Coast, and Los Angeles -- will also exhibit the seasonal
15 pricing changes that have no factual nexus to Hawaii. In
16 effect, the caps link Hawaii to external and unrelated markets
17 with significantly more volatile gasoline prices. Such policies
18 discourage potential competition, investment, and ability to be
19 flexible and innovative in the inclusion of renewable fuels in
20 Hawaii's transportation fuel mix.

21 Instead of gasoline price controls, the legislature has
22 determined that the establishment and allocation of adequate

1 resources to implement a vigorous state watchdog system to
2 monitor and oversee the petroleum industry and gasoline market
3 is less costly and less disruptive than price controls and
4 provides an effective alternative to protect the consumer.

5 The legislature also finds no evidence that restrictions on
6 the vertical integration of gasoline refiners with wholesalers
7 and retailers, first instituted in Hawaii in 1991, have led to
8 lowering Hawaii's gasoline prices. In 2000, a Federal Trade
9 Commission staff analysis instead found evidence that these
10 divorcement policies actually sacrifice market efficiencies and
11 harm consumers, because they have raised gasoline prices. This
12 econometric analysis examined the effects of divorcement
13 policies in Hawaii, Connecticut, Delaware, Maryland, Nevada,
14 Virginia, and the District of Columbia. The analysis concluded
15 that divorcement added about 2.7 cents per gallon at retail
16 (self-serve) on regular unleaded gasoline, costing consumers an
17 estimated \$100,000,000 annually.

18 The legislature finds that one possible means to slow the
19 rapid increase in demand for petroleum products to fuel Hawaii's
20 transportation sector is to transition to fuel-efficient and
21 alternative fuel technologies, including enabling state vehicle
22 fleets to use a variety of renewable fuels which comply with

1 federal requirements, and establishing a renewable fuel standard
2 that 20 per cent of the highway fuels be renewable by 2020.

3 The legislature finds that Hawaii has abundant renewable
4 fuel potential and that a statewide multi-fuel biofuels
5 production assessment would provide a comprehensive evaluation
6 of potential feedstocks, technologies, and economics of the
7 various renewable fuels pathways, thus facilitating the
8 development of local fuels production capabilities.

9 The legislature finds that the energy objectives and
10 policies for the State's facility systems is the responsibility
11 of all state agencies and programs. To this end, energy and
12 environmental awareness contribute to better resource management
13 practices, which include reduced energy and water use.

14 The legislature finds that demand-side management and
15 renewable energy programs will achieve greater energy and
16 capacity savings if a greater percentage of the funds collected
17 were applied directly to delivering programs to customers to
18 increase energy efficient methods.

19 The public utility commission approved the first demand-
20 side management programs in 1995. In 2004, the public utility
21 commission approved Hawaiian Electric Company's request to
22 impose a \$.0027 per kilowatt-hour surcharge for residential

1 customers and a \$.0024 per kilowatt-hour surcharge for
2 commercial and industrial customers, which raised approximately
3 \$19,213,000. Only \$7,573,000 of this surcharge (about 40 per
4 cent) was used for demand-side management programs, with the
5 majority of the funds (about 60 per cent - \$11,639,000) going to
6 the electric company for lost sales recovery payments and
7 shareholder incentives. Under the public benefits fund created
8 by this Act, however, the majority of the surcharge would be
9 dedicated to fund programs and initiatives to promote renewable
10 energy products and services to reduce Hawaii's dependence on
11 oil.

12 The legislature further finds that in order for the State
13 to achieve its renewable energy goals, a concerted effort by all
14 agencies is necessary, especially the departments of land and
15 natural resources (to identify state assets that can be used to
16 facilitate renewable energy development and investment), and of
17 agriculture (to increase assistance to the agricultural
18 community interested in developing energy projects, especially
19 by the production of renewable energy from energy crops and
20 agricultural waste streams).

21 The legislature finds that while Hawaii has abundant
22 renewable energy resources, the use of these resources has been

1 limited by separate island utility systems, intermittency of
2 wind and solar, and site specific availability.

3 The legislature finds that emerging energy technologies can
4 increase the use of renewable resources through conversion to
5 hydrogen-rich liquid or gaseous fuels as energy carriers. With
6 advanced hydrogen technologies, renewable resources can be
7 stored, distributed, and used in a variety of clean, efficient
8 power and transportation applications.

9 The legislature finds that the historic confluence of our
10 State's desire for energy self-sufficiency with the global
11 opportunity of the emerging hydrogen economy, calls for a major,
12 far-sighted initiative, to transition Hawaii to an indigenous
13 resource-based energy economy.

14 The legislature finds that Hawaii is well positioned to
15 become a national leader in this initiative. The department of
16 business, economic development, and tourism and the University
17 of Hawaii's Hawaii natural energy institute have completed the
18 State's hydrogen roadmap, convened public-private partnerships,
19 and conducted nationally recognized hydrogen research,
20 demonstration, and testing projects. Additionally, the high
21 technology development corporation's Hawaii center for advanced
22 transportation technologies is recognized for its excellence in

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1 hydrogen vehicle technologies at the Hickam Air Force Base
2 National Demonstration Center.

3 Therefore, the purposes of this Act are as follows:

4 Part II is to:

5 Increase competition by increasing transparency of all fuel
6 industry information with improved data collection and reporting
7 requirements to establish an effective statewide system of
8 "watchdog" monitoring. A statewide "watchdog" monitoring system
9 is a more potent alternative to gasoline price controls and
10 restrictions on refiners or wholesalers operating service
11 stations.

12 Part III is to:

13 Reduce fuel costs and lessen Hawaii's future dependence on
14 imported oil by directing state fleets to procure energy
15 efficient vehicles and vehicles capable of operating on
16 alternative fuels; establish, as a state objective, that by
17 December 31, 2020, 20 per cent of highway fuel demand be
18 provided by renewable fuels; provide purchasers of alternative
19 fuel and energy efficient vehicles with special license plates
20 and registration incentives; establish a preference in public
21 contracts for the use of biofuels; extend the general excise tax

1 exemption for alcohol fuels; and appropriate funds for a
2 statewide biofuels assessment.

3 Part IV is to:

4 Promote energy efficiency and renewable energy use in state
5 agencies while recognizing funding and staffing constraints and
6 the need for flexibility in implementation; support and
7 facilitate the use of renewable energy resources and
8 technologies for public and private facilities, including
9 residential dwellings, by amending various statutes pertaining
10 to renewable energy tax credits, renewable portfolio standards,
11 and other provisions related to the public utilities commission;
12 streamline permitting of renewable energy projects; and fund
13 efforts to support and promote the agriculture community and its
14 economic development by supporting agricultural-based renewable
15 energy.

16 Part V is to:

17 Establish a world-class, Hawaii renewable hydrogen program,
18 sustainable over the longer-term, to attract significant public
19 and private sector investment in research and development,
20 testing, and commercialization projects; appropriate funds for
21 program support; and establish three permanent full-time
22 equivalent professional positions to organize, develop, and

1 conduct program activities, including formation of
2 private/public strategic partnerships.

3 PART II Petroleum Fuels

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

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

- 13 (1) Crude oil costs;
- 14 (2) Other feedstock costs;
- 15 (3) Refinery operating expenses;
- 16 (4) Marketing expenses;
- 17 (5) Distribution expenses; and
- 18 (6) Corporate overhead expenses.

19 (b) In addition to the reporting required under subsection
20 (a), each distributor shall file with the director all
21 Securities and Exchange Commission Forms 10-K, Form 10-Q, Annual

1 Reports, Quarterly Reports, and Earnings Supplements published
2 by the distributor.

3 (c) Each distributor, except a distributor who is so
4 defined solely by criteria in paragraph (4) of the definition of
5 distributor in section 486J-1, who sells liquid fuel only at
6 retail, and who is not a refiner, shall file with the director,
7 at such reporting dates as the director may establish, on forms
8 prescribed, prepared, and furnished by the director, a certified
9 statement of operating and overhead costs, which shall include
10 but shall not be limited to the following:

- 11 (1) Gasoline purchases;
- 12 (2) Diesel purchases;
- 13 (3) Marketing expenses; and
- 14 (4) Distribution expenses.

15 (d) The director may require reports of additional
16 information when the director deems it necessary."

17 SECTION 4. Chapter 486J, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§486J-B Petroleum and energy industry information
21 reporting system. The department shall develop and maintain an
22 automated petroleum and energy information reporting system that

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1 meets the requirements of government, industry, and the public
2 while promoting sound policy making and providing for consumer
3 information and protection. The purpose of the petroleum and
4 energy industry information reporting system is to conduct and
5 facilitate the efficient reporting and analysis of information
6 described in section 486J-5. The department shall develop the
7 petroleum and energy industry information reporting system in a
8 manner that will result in greater market transparency and
9 provide useful information to those agencies that are authorized
10 to conduct oversight of the petroleum industry and ensure
11 compliance with all relevant laws."

12 SECTION 5. Chapter 486J, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§486J-C Independent power producer informational reports.

16 (a) Each independent power producer, which means a power
17 production facility that sells electricity to a utility,
18 excluding eligible customer generators as defined by section
19 269-11, shall submit to the director, in such form as the
20 director shall prescribe, the following information where
21 appropriate to its facility:

22 (1) The name and location of site;

- 1 (2) Generating capacity;
- 2 (3) Gross electricity generated;
- 3 (4) Type of fuel and energy resource used;
- 4 (5) Quantity of fuel and energy resource consumed;
- 5 (6) Heat rate of fuel and energy resource used; and
- 6 (7) Amount of electricity sold to utilities.
- 7 (b) The director may require reports of additional
- 8 information when the director deems it necessary."

9 SECTION 6. Chapter 486J, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 **"§486J-D Sharing and protection of confidential**
13 **information by director and public utilities commission. (a)**
14 **The director may acquire from and share with the public**
15 **utilities commission all such petroleum and energy industry data**
16 **and information that the department and commission may collect,**
17 **obtain, purchase, or otherwise possess, pursuant to all relevant**
18 **and applicable laws and rules, as well as work cooperatively**
19 **with the commission, and the commission's staff and consultants**
20 **to support and fulfill the purposes of this chapter.**

21 (b) In addition to petroleum industry data and information
22 pursuant to sections 486J-A, and 486J-B, other such energy

1 industry data and information shall include, but not be limited
2 to, data and information from and related to energy utility
3 companies, independent power producers, renewable energy power
4 producers, and other such private sector and government energy
5 producers and consumers, which the department and commission may
6 collect, obtain, purchase, or otherwise possess, which the
7 department determines to be relevant and necessary pursuant to
8 this chapter.

9 (c) The sharing of confidential and protected petroleum
10 and energy industry data and information pursuant to this
11 chapter by both the department and commission is expected and
12 authorized. The department and commission are hereby authorized
13 to preserve the confidentiality and protection of all such data
14 and information by application and extension of each agency's
15 respective safeguards and authority to protect and prevent the
16 unauthorized release of such data and information. In the event
17 of any difference in the level of each agency's respective
18 authorized protection afforded to such confidential and
19 protected data and information, the more stringent (i.e., that
20 which provides the higher level of confidentiality and
21 protection to data and information against unauthorized release)
22 shall be authorized and applied by both agencies. The sharing

1 and protection of all cooperative analytic and related work, and
2 related papers, correspondence, electronic files, documents, and
3 other products of such work conducted by the department and
4 commission which contain such confidential and protected
5 petroleum and energy industry data and information covered by
6 this section are subject to all the requirements and afforded
7 all the same protections as provided for herein."

8 SECTION 7. Section 486H-10.4, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§486H-10.4 ~~[Restrictions on manufacturers or jobbers in~~
11 ~~operating service stations; lease]~~ Lease rent controls;
12 definitions. ~~[(a) Beginning August 1, 1997, no manufacturer or~~
13 ~~jobber shall convert an existing dealer retail station to a~~
14 ~~company retail station; provided that nothing in this section~~
15 ~~shall limit a manufacturer or jobber from:~~

16 ~~(1) Continuing to operate any company operated retail~~
17 ~~service stations legally in existence on July 31,~~
18 ~~1997;~~

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

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1 ~~(3) Operating a former dealer retail station for up to~~
2 ~~twenty four months until a replacement dealer can be~~
3 ~~found if the former dealer vacates the service~~
4 ~~station, cancels the franchise, or is properly~~
5 ~~terminated or not renewed.~~

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

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

- 12 (1) ~~[Such]~~ The renewal shall not be scheduled more
13 frequently than once every three years; and
- 14 (2) Upon renewal, the lease rent payable shall not exceed
15 fifteen per cent of the gross sales, except for
16 gasoline, which shall not exceed fifteen per cent of
17 the gross profit of product, excluding all related
18 taxes by the dealer ~~[operated]~~ retail ~~[service]~~
19 station as defined in section 486H-1 ~~[and 486H-10.4~~
20 ~~plus]~~, and in the case of a retail ~~[service]~~ station
21 at a location where the manufacturer or jobber is the
22 lessee and not the owner of the ground lease, a

1 percentage increase equal to any increase which the
2 manufacturer or jobber is required to pay the lessor
3 under the ground lease for the service station. For
4 the purposes of this subsection, "gross amount" means
5 all monetary earnings of the dealer from a dealer
6 [operated] retail [service] station after all
7 applicable taxes, excluding income taxes, are paid.

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

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

12 SECTION 8. Section 486H-10.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§486H-10.5 Violation; penalties.** Any person who violates
15 section [~~486H-10~~] 486H-10.4 shall be assessed a civil penalty of
16 not more than \$1,000 per day for each violation."

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

19 "**§486H-11 Enforcement of prohibition.** [~~(a)~~ ~~The attorney~~
20 ~~general shall commence a civil action to enforce section 486H-~~
21 ~~10, by seeking injunctive or any other appropriate relief. The~~
22 ~~civil action shall be brought in the circuit court of the~~

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1 ~~circuit where the alleged violation occurred, or where the~~
2 ~~defendant resides or is doing business.~~

3 ~~(b)]~~ Any person who is injured in another person's
4 business or property by the violation of section [~~486H-10,~~
5 486H-10.4, may bring a civil action for damages or injunctive
6 relief, or both, against the person violating section [~~486H-10.]~~
7 486H-10.4. If the plaintiff prevails, the plaintiff shall be
8 awarded reasonable attorneys and expert witness fees[~~7,~~ if
9 applicable; provided that if a court awards only nominal damages
10 to the plaintiff, those fees, in the court's discretion, need
11 not be awarded to the plaintiff. Any action brought under this
12 subsection shall be brought in the circuit court of the circuit
13 where the alleged violation occurred[~~7~~] or where the defendant
14 resides or is doing business."

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

17 "**§486J-1 Definitions.** As used in this chapter:

18 "Aviation fuel" means and includes all liquid substances of
19 whatever chemical composition usable for the propulsion of
20 airplanes.

21 "Class of retail trade" means each separate subdivision, or
22 "class", of outlets or methods of retail sales of liquid fuels,

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1 including, but not limited to, gasoline and diesel for motor
2 vehicles, and includes any:

3 (1) Company-operated station that is a retail service
4 station owned and operated by a refiner or wholesale
5 distributor, where retail prices are set by that
6 refiner or wholesale distributor;

7 (2) Lessee dealer operated station that is a retail
8 service station owned by a refiner or wholesale
9 distributor and operated by a qualified gasoline
10 dealer, other than a refiner or wholesale distributor
11 under a franchise; or

12 (3) Owner operated station that is a retail service
13 station not owned by a refiner or wholesale
14 distributor, operated by a qualified gasoline dealer.

15 "Competitively priced" means fuel-grade ethanol for which
16 the wholesale price, minus the value of all applicable federal,
17 state, and county tax credits and exemptions, is not more than
18 the average posted rack price of unleaded gasoline of comparable
19 grade published in the State.

20 "Corporate overhead expenses" means the expenses or costs
21 allocated by the refiners that reflect their Hawaii business

1 units' share of corporate staff costs such as legal, financial,
2 accounting, and information technology.

3 "Department" means the department of business, economic
4 development, and tourism.

5 "Director" means the director of business, economic
6 development, and tourism.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 "Person" ~~[7]~~ means any ~~[person,]~~ individual, firm,
7 association, organization, partnership, business trust,
8 corporation, or company. "Person" also includes any city,
9 county, public district or agency, the State or any department
10 or agency thereof, and the United States to the extent
11 authorized by federal law.

12 ~~["Petroleum commissioner" or "commissioner" means the~~
13 ~~administrator of the energy, resources, and technology division~~
14 ~~of the department of business, economic development, and~~
15 ~~tourism.]~~

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

18 "Refinery" means any industrial plant, regardless of
19 capacity, processing crude oil feedstock and manufacturing oil
20 products.

21 "Wholesale liquid fuel prices" means the prices at which
22 liquid fuels are sold at wholesale for resale at wholesale or

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

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

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

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

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

18 "§486J-2 **Distributors to register.** Every distributor, and
19 any person before becoming a distributor, shall register as such
20 with the [~~commissioner~~] director on forms to be prescribed,
21 prepared, and furnished by the [~~commissioner.~~] director."

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

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

11 (1) The total number of gallons or units of fuel refined,
12 manufactured, or compounded by the distributor within
13 the State and sold or used by the distributor, and if
14 for ultimate use [~~in another county or~~] on another
15 island, the name of that [~~county or~~] island;

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

21 (3) The total number of gallons or units of fuel sold as
22 liquid fuel, aviation fuel, diesel fuel, and other

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- 1 types of fuel as required by the [~~commissioner,~~
2 director;
- 3 (4) The total number of gallons or units of fuel and the
4 types thereof sold to: federal, state, and county
5 agencies, ships stores or base exchanges, commercial
6 agricultural accounts, commercial nonagricultural
7 accounts, retail dealers, and other customers as
8 required by the [~~commissioner,~~ director;
- 9 (5) Statements providing data on prices and volumes shall
10 be filed monthly; however, distributors shall compile
11 the data according to the required time frames
12 described below in subparagraphs (A) to (F);
- 13 (A) Monthly weighted average acquisition cost per
14 barrel, and volumes of foreign or domestic crude
15 oil or other liquid fuels, finished or
16 unfinished, imported to this State;
- 17 [~~(5)~~] (B) [Monthly Hawaii] Weekly weighted average
18 wholesale prices [and], sales volumes of finished
19 [leaded regular,] unleaded regular[, and] premium
20 motor gasoline, and of each other grade of
21 gasoline sold, [through company operated] by
22 island, to retail distributor outlets, [to other

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1 ~~end users,~~ by class of retail trade, and to all
2 other wholesale [customers,] distributors.

3 Weighted average wholesale prices and sales
4 volumes shall be reported by type of wholesale
5 liquid fuel;

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

17 [~~+~~6] (D) [~~Monthly Hawaii~~] Weekly weighted average
18 wholesale prices, and sales volumes [for
19 residential sales, commercial and institutional
20 sales, industrial sales, sales through company-
21 operated retail outlets, sales to other end-
22 users, and wholesale sales] of No. 2 diesel fuel

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1 and No. 2 fuel oil [~~and~~], by island, to retail
2 distributor outlets, by class of retail trade,
3 and to all other wholesale distributors.

4 Weighted average wholesale prices and sales
5 volumes shall be reported by type of wholesale
6 liquid fuel price;

7 (E) Weekly weighted average retail prices and sales
8 volumes of No. 2 diesel fuel and No. 2 fuel oil
9 sold, by island, by retail distributor outlets of
10 all classes of retail trade, and by any
11 distributor to other end-users. The department
12 may purchase retail price data from data service
13 companies, which data if available from these
14 data service companies, the department may use to
15 meet the reporting requirement for retail price
16 data under this section; and

17 [~~(7)~~] (F) Monthly [Hawaii] weighted average prices and
18 sales volumes for retail sales and wholesale
19 sales, by island, of No. 1 distillate, kerosene,
20 finished aviation gasoline, kerosene-type jet
21 fuel, No. 4 fuel oil, residual fuel oil, and
22 consumer grade propane.

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

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

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

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

1 SECTION 13. 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, marketer, oil transporter, and oil storer
5 shall submit to the [~~commissioner~~] director, in such form as
6 the [~~commissioner~~] director shall prescribe, information [~~which~~]
7 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 shall prescribe by rule when the first report~~
5 ~~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 14. 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 with]~~ persons with expertise
16 and experience in, or with, the petroleum industry, shall
17 gather, analyze, and interpret the information submitted to it
18 pursuant 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:

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- 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 [~~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 (d) The director may conduct energy analyses as requested
20 by the chair of the public utilities commission or consumer
21 advocate."

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1 SECTION 15. Section 486J-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§486J-6 Confidential information. (a) Confidential
4 commercial information [~~presented~~] provided to the
5 [~~commissioner~~] director pursuant to this chapter shall not be
6 [~~held in confidence~~] publicly disclosed by the [~~commissioner or~~]
7 director unless such disclosure is required by chapter 92F or is
8 permitted by this chapter, or where the information is
9 aggregated to the extent necessary to assure its confidentiality
10 [~~as governed by chapter 92F, including its penalty provisions.~~

11 [~~(b) No data or information submitted to the commissioner~~
12 ~~shall be deemed confidential if the person submitting the~~
13 ~~information or data has made it public].~~

14 [~~(e)~~] (b) Unless otherwise provided by law, with respect
15 to data provided pursuant to sections 486J-3 [~~and~~], 486J-4, and
16 486J-A, neither the [~~commissioner,~~] director, nor any employee
17 of the department, may do any of the following:

18 (1) Use the information furnished under sections 486J-3
19 [~~and~~], 486J-4, and 486J-A for any purpose other than
20 the statistical purposes for which it is supplied;

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- 1 (2) Make any publication whereby the data furnished by any
2 particular establishment or individual under sections
3 486J-3 [~~and~~], 486J-4, and 486J-A can be identified; or
4 (3) Permit anyone to examine the individual reports
5 provided under sections 486J-3 [~~and~~], 486J-4, and
6 486J-A other than the department of taxation, the
7 public utilities commission, the attorney general, and
8 the consumer advocate, and the authorized
9 representatives and employees of each."

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

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

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

1 "§486J-8 Sharing of information obtained by the
2 ~~[commissioner.]~~ director. The ~~[commissioner]~~ director shall
3 make all information obtained by the ~~[commissioner]~~ director
4 under this chapter, including confidential information,
5 available to the attorney general, the department of taxation,
6 the public utilities commission, the consumer advocate, and the
7 authorized representative of each, who shall safeguard the
8 confidentiality of all confidential information received."

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

11 "§486J-9 Failure to timely provide information; failure to
12 make and file statements; false statements; penalties; referral
13 to the attorney general. (a) The ~~[petroleum commissioner]~~
14 director shall notify those persons who have failed to timely
15 provide the information specified in section 486J-3 ~~[or]~~, 486J-
16 4, 486J-A, or 486J-C or requested by the ~~[commissioner]~~ director
17 under section 486J-3 ~~[or]~~, 486J-4 ~~[or]~~ 486J-A, or 486J-C. If,
18 within five business days after being notified of the failure to
19 provide the specified or requested information, the person fails
20 to supply the specified or requested information, the person
21 shall be subject to a civil penalty of not less than \$50,000 per
22 day nor more than \$100,000 per day for each day the submission

1 of information is refused or delayed[, unless the person has
2 timely filed objections with the commissioner regarding the
3 information and the commissioner has held a hearing and,
4 following a ruling by the commissioner, the person has properly
5 submitted the issue to a court of competent jurisdiction for
6 review].

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

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

18 [~~(e)~~] (d) For the purposes of this section, "person"
19 means, in addition to the definition contained in section 486J-
20 1, any responsible corporate officer."

21 SECTION 19. Section 486J-10, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "§486J-10 Ethanol content requirement. (a) The
2 ~~[commissioner]~~ director shall adopt rules in accordance with
3 chapter 91 to require that gasoline sold in the State for use in
4 motor vehicles contain ten per cent ethanol by volume. The
5 amounts of gasoline sold in the State containing ten per cent
6 ethanol shall be in accordance with rules as the ~~[commissioner]~~
7 director may deem appropriate. The ~~[commissioner]~~ director may
8 authorize the sale of gasoline that does not meet these
9 requirements as provided in subsection (d).

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

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

21 (d) The ~~[commissioner]~~ director may authorize the sale of
22 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.

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

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

8 (i) All rights, powers, functions, and duties of the
9 petroleum commissioner as set forth in title 15, chapter 35,
10 Hawaii Administrative Rules (ethanol content in gasoline), are
11 hereby transferred to the director."

12 SECTION 20. Section 486H-13, Hawaii Revised Statutes, is
13 repealed.

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

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1 ~~means that shall include the Internet website for the State of~~
2 ~~Hawaii.~~

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

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

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

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

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

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

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

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

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

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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) Every manufacturer, wholesaler, or jobber, upon the~~
21 ~~request of the commission, shall furnish to the commission, in~~
22 ~~the form requested, all documents, data, and information the~~

1 ~~commission may require to make its determination on zone price~~
2 ~~adjustments. Any person who refuses or fails to comply with a~~
3 ~~request for information by the commission shall be subject to a~~
4 ~~fine of up to \$50,000 per day. Each day a violation continues~~
5 ~~shall constitute a separate offense.~~

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

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

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

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

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

1 ~~(e) The commission shall adopt rules pursuant to chapter~~
2 ~~91 as may be necessary to implement this section and section~~
3 ~~486H-16-"]~~

4 SECTION 21. Section 486H-15, Hawaii Revised Statutes, is
5 repealed.

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

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

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

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

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

4 ~~(1) The adjournment of that session of the legislature; or~~
5 ~~(2) The effective date of any legislative enactment~~
6 ~~intended to address the major adverse impact;~~

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

20 SECTION 22. Section 486H-16, Hawaii Revised Statutes, is
21 repealed.

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

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

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

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

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

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

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

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

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

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

8 ~~(ii) The bulk price for sales for resale for~~
9 ~~"regular" gasoline,~~

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

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

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

19 ~~(ii) The bulk price for sales for resale for~~
20 ~~"regular" gasoline,~~

21 ~~for Petroleum Administration for Defense (PAD) District V, as~~
22 ~~reported and published by the Energy Information Administration~~

1 ~~or its successor in Table 31 "Motor Gasoline Prices by Grade,~~
2 ~~Sales Type, PAD District, and State" or other source containing~~
3 ~~the same information;~~

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

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

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

19 ~~(c) Regardless of whether a petition has been filed and~~
20 ~~notwithstanding a determination of the adjustments made pursuant~~
21 ~~to subsection (a), the commission, in its discretion, may make~~
22 ~~such other and further adjustments deemed necessary and~~

1 ~~appropriate to establish maximum pre-tax wholesale gasoline~~
2 ~~prices that reflect and correlate with competitive market~~
3 ~~conditions."]~~

4 SECTION 23. Section 486J-12, Hawaii Revised Statutes, is
5 repealed.

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

9 PART III. Alternate Transportation Fuels and Vehicles

10 SECTION 24. Chapter 103D, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§103D-A Biofuel preference. (a) Notwithstanding any
14 other law to the contrary, contracts for the purchase of diesel
15 fuel or boiler fuel shall be awarded to the lowest responsible
16 and responsive bidders, with preference given to bids for
17 biofuels or blends of biofuel and petroleum fuel.

18 (b) When purchasing fuel for use in diesel engines, the
19 preference shall be _____ cents per gallon of 100 per cent
20 biodiesel. For blends containing both biodiesel and petroleum
21 based diesel, the preference shall be applied only to the
22 biodiesel portion of the blend.

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1 (c) When purchasing fuel for use in boilers, the
2 preference shall be cents per gallon of 100 per cent
3 biofuel. For blends containing both biofuel and petroleum based
4 boiler fuel, the preference shall be applied only to the biofuel
5 portion of the blend.

6 (d) As used in this section, "biodiesel" means a vegetable
7 oil based fuel, produced in Hawaii, which meets ASTM
8 International Standard D6751, "Specification for Biodiesel Fuel
9 Blend Stock (B100) for Distillate Fuels", as amended.

10 (e) As used in this section, "biofuel" means fuel produced
11 in Hawaii from non-petroleum sources, such as natural vegetable
12 oil, waste cooking oils, fats, greases, or grease trap waste,
13 that can be used for the generation of heat or power."

14 SECTION 25. Chapter 286, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 **"§286-A Energy efficient and alternative fuel vehicles.**
18 For the purposes of this section, an "energy-efficient" light
19 duty vehicle is a new or used vehicle, of less than 8500 pounds
20 gross vehicle weight rating, which is on the list of "Most
21 Energy Efficient Vehicles" in its class, as shown by vehicle
22 fuel efficiency lists, rankings, or reports maintained by the

1 United States Environmental Protection Agency. An "alternative
2 fuel vehicle" is a vehicle capable of operating on an
3 alternative fuel, as such is described in 10 Code of Federal
4 Regulations part 490.

5 The counties of Hawaii shall establish and issue a special
6 license plate, in accordance with section 249-9, to designate
7 that the vehicle to which the license plate is affixed is an
8 energy-efficient or alternative fuel vehicle.

9 The department of transportation shall establish that a
10 vehicle on which an energy-efficient or alternative fuel license
11 plate is affixed shall, for a period of five years from the
12 effective date of this Act, be exempt from the motor vehicle
13 registration fee."

14 SECTION 26. Section 103D-412, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "~~§103D-412 [Highly energy efficient]~~ Energy-efficient
17 vehicles. (a) The procurement policy for all agencies
18 purchasing or leasing motor [~~fleets~~] vehicles shall be to obtain
19 [~~alternative fuel~~] energy-efficient vehicles. [~~Beginning~~
20 ~~January 1, 2006, all state agencies~~] All covered fleets are
21 directed to procure increasing percentages of [~~alternative fuel~~]

1 energy-efficient vehicles as part of their annual vehicle
2 acquisition plans, which shall be as follows:

- 3 (1) [By January 1, 2007,] In the fiscal year beginning
4 July 1, 2006, at least twenty per cent of newly
5 purchased light-duty vehicles acquired by each
6 [agency] covered fleet shall be [~~alternative fuel~~]
7 energy-efficient vehicles;
- 8 (2) In the fiscal year beginning July 1, 2007, at least
9 thirty per cent of newly purchased light-duty vehicles
10 acquired by each covered fleet shall be energy-
11 efficient vehicles;
- 12 (3) [~~(2) By January 1, 2009,~~] In the fiscal year beginning
13 July 1, 2008, at least forty per cent of newly
14 purchased light-duty vehicles acquired by each
15 [agency] covered fleet shall be [~~alternative fuel~~]
16 energy-efficient vehicles; and
- 17 (4) For each subsequent fiscal year [~~subsequent to January~~
18 1, 2009,], the percentage of [~~alternative fuel~~] energy-
19 efficient vehicles newly purchased shall be five
20 percentage points higher than the previous year, until
21 at least [~~sixty~~] seventy-five per cent of each
22 [~~agency's~~] covered fleet's newly purchased, light-duty

1 vehicles are [~~alternative fuel~~] energy-efficient
2 vehicles.

3 (b) For purposes of this section:

4 "Agency" means a state agency, office, or department.

5 "Alternative fuel" has the same meaning as contained in 10
6 Code of Federal Regulations part 490.

7 "Covered fleet" has the same meaning as contained in 10
8 Code of Federal Regulations part 490 subpart C.

9 [~~"Alternative fuel"~~] "Energy-efficient vehicle" means a
10 vehicle that:

11 (1) Is capable of using an alternative fuel;

12 (2) [~~(1)~~] Is powered primarily through the use of an
13 electric battery or battery pack that stores energy
14 produced by an electric motor through regenerative
15 braking to assist in vehicle operation;

16 (3) [~~(2)~~] Is propelled by power derived from one or more
17 cells converting chemical energy directly into
18 electricity by combining oxygen with hydrogen fuel
19 that is stored on board the vehicle in any form; [~~(3)~~]

20 (4) [~~(3)~~] Draws propulsion energy from onboard sources of
21 stored energy generated from an internal combustion or

1 heat engine using combustible fuel and a rechargeable
2 energy storage system[-]; or

3 (5) Is on the list of "Most Energy Efficient Vehicles" in
4 its class, or is in the top one-fifth of the most
5 energy-efficient vehicles in its class available in
6 Hawaii, as shown by vehicle fuel efficiency lists,
7 rankings, or reports maintained by the United States
8 Environmental Protection Agency.

9 "Excluded vehicles" has the same meaning as contained
10 in 10 Code of Federal Regulations part 490.

11 "Light duty vehicle" has the same meaning as contained in
12 10 Code of Federal Regulations part 490.

13 (c) Agencies may offset the purchase requirements for
14 [~~alternative fuel~~] energy-efficient vehicles by successfully
15 demonstrating percentage improvements in overall light-duty
16 vehicle fleet mileage economy. The offsets shall be measured
17 against the fleet average [~~mileage economy~~] miles per gallon of
18 petroleum-based gasoline and diesel fuel, using [~~calendar year~~
19 ~~2004~~] the fiscal year beginning July 1, 2006, as a baseline, on a
20 percentage-by-percentage basis.

21 (d) Agencies which use biodiesel fuel may offset the
22 vehicle purchase requirements of this section at the rate of one
23 vehicle for each four hundred fifty gallons of neat biodiesel

1 fuel used. Neat biodiesel fuel is 100 per cent biodiesel (B100)
2 by volume.

3 (e) Agencies may apply to the procurement officer for
4 exemptions from the requirements of this section to the extent
5 that the vehicles required by this section are not available or
6 do not meet the specific needs of the agency.

7 (f) Vehicles acquired from another state agency, and
8 excluded vehicles, are exempt from the requirements of this
9 section.

10 (g) Nothing in this section is intended to interfere with
11 an agency's ability to comply with federally-imposed vehicle
12 purchase mandates such as those required by 10 Code of Federal
13 Regulations part 490 subpart C."

14 SECTION 27. Section 226-18, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§226-18 Objectives and policies for facility systems--
17 energy. (a) Planning for the State's facility systems with
18 regard to energy shall be directed toward the achievement of the
19 following objectives, giving due consideration to all:

- 20 (1) Dependable, efficient, and economical statewide energy
21 systems capable of supporting the needs of the people;
22 (2) Increased energy self-sufficiency where the ratio of
23 indigenous to imported energy use is increased;

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- 1 (3) Greater energy security in the face of threats to
2 Hawaii's energy supplies and systems; and
- 3 (4) Reduction, avoidance, or sequestration of greenhouse
4 gas emissions from energy supply and use.
- 5 (b) To achieve the energy objectives, it shall be the
6 policy of this State to ensure the provision of adequate,
7 reasonably priced, and dependable energy services to accommodate
8 demand.
- 9 (c) To further achieve the energy objectives, it shall be
10 the policy of this State to:
- 11 (1) Support research and development as well as promote
12 the use of renewable energy sources;
- 13 (2) Ensure that the combination of energy supplies and
14 energy-saving systems is sufficient to support the
15 demands of growth;
- 16 (3) Base decisions of least-cost supply-side and demand-
17 side energy resource options on a comparison of their
18 total costs and benefits when a least-cost is
19 determined by a reasonably comprehensive,
20 quantitative, and qualitative accounting of their
21 long-term, direct and indirect economic,

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- 1 environmental, social, cultural, and public health
2 costs and benefits;
- 3 (4) Promote all cost-effective conservation of power and
4 fuel supplies through measures including:
- 5 (A) Development of cost-effective demand-side
6 management programs;
- 7 (B) Education; and
- 8 (C) Adoption of energy-efficient practices and
9 technologies;
- 10 (5) Ensure to the extent that new supply-side resources
11 are needed, the development or expansion of energy
12 systems utilizes ~~the~~ a diverse assortment of least-
13 cost energy supply options and resources and maximizes
14 efficient technologies;
- 15 (6) Support research, development, and demonstration of
16 energy efficiency, load management, and other demand-
17 side management programs, practices, and technologies;
- 18 (7) Promote alternate fuels and energy efficiency by
19 encouraging diversification of transportation fuels,
20 modes, and infrastructure;

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- 1 (8) Support actions that reduce, avoid, or sequester
2 greenhouse gases in utility, transportation, and
3 industrial sector applications; [~~and~~]
- 4 (9) Support actions that reduce, avoid, or sequester
5 Hawaii's greenhouse gas emissions through agriculture
6 and forestry initiatives[-];
- 7 (10) Provide priority handling and processing, and expedite
8 action on all state agency permits required for
9 renewable energy projects; and
- 10 (11) Support a renewable fuels standard of ten per cent of
11 highway fuel demand to be provided by renewable fuels
12 by 2010, fifteen per cent by 2015, and twenty per cent
13 by 2020. "Renewable fuels" include:
- 14 (A) Ethanol, with each gallon of ethanol produced
15 from cellulosic materials considered the
16 equivalent of 2.5 gallons of noncellulosic
17 ethanol;
- 18 (B) Biodiesel; and
- 19 (C) Hydrogen or other liquid or gaseous fuels
20 produced either from renewable feedstocks,
21 including organic wastes, or from water, using
22 electricity from renewable energy sources."

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1 SECTION 28. Section 237-27.1, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) This section shall be repealed on December 31,
4 [~~2006-~~] 2009."

5 SECTION 29. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$200,000, or so much
7 thereof as may be necessary for fiscal year 2006-2007, for a
8 statewide multi-fuel biofuels production assessment of potential
9 feedstocks, technologies, and economics of the various renewable
10 fuels pathways and the potential for ethanol, biodiesel, and
11 renewable hydrogen production to contribute to Hawaii's near-,
12 mid-, and long-term energy needs. The sum appropriated shall be
13 expended by the department of business, economic development,
14 and tourism for the purposes of this part.

15 PART IV. Energy Efficiency and Renewable Energy

16 SECTION 30. Chapter 226- , Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "**§226- Energy efficiency for state facilities and**
20 **vehicles.** (a) Each agency is directed to implement, to the
21 extent possible, the following goals during planning and budget
22 preparation and during program implementation.

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1 (b) With regard to buildings and facilities, each agency
2 shall comply with the following:

3 (1) Design and construct buildings meeting U.S. green
4 building council's leadership in energy and
5 environmental design standards. As appropriate for
6 the type of construction, the buildings should meet
7 leadership in energy and environmental design silver
8 certification for new commercial construction and
9 major renovation, leadership in energy and
10 environmental design for existing building operations,
11 and leadership in energy and environmental design for
12 commercial interiors; if leadership in energy and
13 environmental design silver certification is not
14 possible, at minimum, commissioning and retro-
15 commissioning, as well as completion of the
16 appropriate leadership in energy and environmental
17 design checklist, shall be implemented following
18 leadership in energy and environmental design silver
19 for new construction and major renovation or LEED for
20 existing building operations;
21 (2) Incorporate energy efficiency measures to prevent heat
22 gain in residential facilities of three stories and

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1 below to provide R-19 or equivalent on roofs, R-11 or
2 equivalent in walls, and high-performance windows to
3 minimize heat gain and, if air conditioned, minimize
4 cool air loss. R-value is the constant time rate
5 resistance to heat flow through a unit area of a body
6 indiced by a unit temperature difference between the
7 surfaces. R-values measure the thermal resistance of
8 building envelope components such as roof and walls.
9 The higher the R-value, the greater the resistance to
10 heat flow. Where possible, orient buildings to
11 maximize natural ventilation and day-lighting without
12 heat gain, and to optimize solar for water heating.
13 This provision shall apply to new residential
14 facilities built using any portion of state funds
15 and/or located on state lands;
16 (3) Install solar water heating systems where it is cost-
17 effective, based on a comparative analysis to
18 determine the cost-benefit of using a conventional
19 water heating system or a solar water heating system.
20 The analysis shall be based on the projected life
21 cycle costs to purchase and operate the water heating
22 system. If the life cycle analysis is positive, the

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1 facility shall incorporate solar water heating. If
2 water heating entirely by solar is not cost-effective,
3 the analysis shall evaluate the life cycle, cost-
4 benefit of solar water heating for preheating water.
5 If a multi-story building is centrally air
6 conditioned, heat recovery shall be employed as the
7 primary water heating system. Single family
8 residential clients of the department of Hawaiian home
9 lands and any agency or program which can take
10 advantage of utility rebates are exempted from this
11 requirement so that they may continue to qualify for
12 utility rebates for solar water heating;
13 (4) Implement water and energy efficiency practices in
14 operations to reduce waste and increase conservation;
15 (5) Incorporate principles of waste minimization and
16 pollution prevention: reduce, reuse, and recycle as a
17 standard operating practice, including programs for
18 construction and demolition waste management and
19 office paper and packaging recycling programs;
20 (6) Use life cycle cost-benefit analysis to purchase
21 energy efficient equipment such as Energy Star

- 1 products and use utility rebates where available to
2 reduce the purchase and installation costs; and
- 3 (7) Procure environmentally preferable products, including
4 but not limited to, recycled and recycled-content,
5 bio-based, and other resource-efficient products and
6 materials.
- 7 (c) With regard to transportation fuel, each agency shall
8 comply with the following:
- 9 (1) Comply with title 10, Code of Federal Regulations,
10 part 490, subpart C, "Mandatory State Fleet Program",
11 if applicable;
- 12 (2) Comply with all applicable state laws regarding
13 vehicle purchases;
- 14 (3) Once federal and state vehicle purchase mandates have
15 been satisfied, purchase the most fuel-efficient
16 vehicles that meet the needs of their programs; life
17 cycle cost-benefit analysis of vehicle purchases
18 should include projected fuel costs;
- 19 (4) Purchase alternative fuels and ethanol blended
20 gasoline when available;
- 21 (5) Evaluate a purchase preference for biodiesel blends,
22 as applicable to agencies with diesel fuel purchases;

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- 1 (6) Promote efficient operation of vehicles;
- 2 (7) Use the most appropriate minimum octane fuel; vehicles
3 should use 87-octane fuel unless the owner's manual
4 for the vehicle states otherwise, or the engine
5 experiences knocking or pinging;
- 6 (8) Beginning with fiscal year 2005-2006 as the baseline,
7 collect and maintain, for the life of each vehicle
8 acquired, the following data:
- 9 (A) Vehicle acquisition cost;
- 10 (B) U.S. Environmental Protection Agency rated fuel
11 economy;
- 12 (C) Vehicle fuel configuration such as gasoline,
13 diesel, flex-fuel gasoline/E85, and dedicated
14 propane;
- 15 (D) Actual in-use vehicle mileage;
- 16 (E) Actual in-use vehicle fuel consumption; and
- 17 (F) Actual in-use annual average vehicle fuel
18 economy; and
- 19 (9) Beginning with fiscal year 2005-2006 as the baseline,
20 each agency which operates a fleet of thirty or more
21 vehicles shall collect and maintain, in addition to
22 the data in paragraph (8), the following:

- 1 (A) Information on the vehicles in the fleet,
2 including vehicle year, make, model, gross
3 vehicle weight rating, and vehicle fuel
4 configuration;
- 5 (B) Fleet fuel usage, by fuel;
- 6 (C) Fleet mileage; and
- 7 (D) Overall annual average fleet fuel economy and
8 average miles per gallon of gasoline and diesel."

9 SECTION 31. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$630,000, or so much
11 thereof as may be necessary for fiscal year 2006-2007, to
12 provide two full-time permanent positions and to provide
13 technical and other assistance to state agencies and programs
14 under section 30 of this Act. The sum appropriated shall be
15 expended by the department of business, economic development,
16 and tourism.

17 SECTION 32. Section 196-8, Hawaii Revised Statutes, is
18 repealed.

19 ~~["§196-8] Energy efficiency policy review and evaluation.~~
20 ~~(a) the energy resources coordinator shall ensure that review~~
21 ~~and evaluation comparable to those accomplished by the energy~~
22 ~~efficiency policy task force established pursuant to Act 163~~

1 ~~Session Laws of Hawaii 1998, are undertaken, and that the~~
2 ~~findings and recommendations of the review and evaluation are~~
3 ~~reported to the legislature no later than twenty days prior to~~
4 ~~the convening of the regular session of 2007. (b) The review~~
5 ~~and evaluation shall include:~~

6 ~~(1) The efficacy of section 235-12.5 to determine~~
7 ~~whether the tax credits should be continued or~~
8 ~~enhanced based on impact and cost-benefit analyses or~~
9 ~~other public policy considerations;~~

10 ~~(2) Whether the energy technology systems eligible~~
11 ~~for tax credits under section 235-12.5 should be~~
12 ~~expanded, reduced, or remain the same; and~~

13 ~~(3) Any other issue regarding energy technology~~
14 ~~systems identified during the seven-year review.~~

15 ~~(c) The energy resources coordinator, in undertaking~~
16 ~~the review and evaluation, shall consult with representatives~~
17 ~~from:~~

18 ~~(1) The department of business, economic development, and~~
19 ~~tourism;~~

20 ~~(2) The solar, wind, and photovoltaic industries;~~

21 ~~(3) The utilities industry;~~

22 ~~(4) The building industry; and~~

1 (5) ~~Any other professional or public sector group the~~
2 ~~energy resources coordinator deems appropriate"]~~

3 SECTION 33. Sections 196-12 through 196-29, Hawaii Revised
4 Statutes, are repealed.

5 "~~[\$196-12] Greenhouse gases reduction goal. Through~~
6 ~~life cycle cost effective energy measures, each agency shall~~
7 ~~reduce its greenhouse gas emissions attributed to facility~~
8 ~~energy use by thirty per cent by January 1, 2012, compared to~~
9 ~~emission levels in calendar year 1990. In order to encourage~~
10 ~~optimal investment in energy improvements, agencies may count~~
11 ~~greenhouse gas reductions from improvements in non facility~~
12 ~~energy use toward this goal to the extent that these reductions~~
13 ~~are approved by the coordinator.~~

14 ~~[\$196-13] Energy efficiency improvement goals. (a)~~
15 ~~Through life cycle cost effective measures, each agency shall~~
16 ~~reduce energy consumption per gross square foot of its~~
17 ~~facilities, excluding laboratory facilities, by twenty per cent~~
18 ~~by January 1, 2007, and thirty per cent by January 1, 2012,~~
19 ~~relative to calendar year 1990. No facility shall be exempt~~
20 ~~from these goals unless it meets criteria for exemptions~~
21 ~~established by the coordinator.~~

1 ~~(b) Through life cycle cost effective measures, each~~
2 ~~agency shall reduce energy consumption per square foot, per unit~~
3 ~~of production, or per other unit as applicable, of its~~
4 ~~laboratory facilities by fifteen per cent by January 1, 2007,~~
5 ~~and twenty five per cent by January 1, 2012, relative to~~
6 ~~calendar year 1995. No facility shall be exempt from these~~
7 ~~goals unless it meets criteria for exemptions established by the~~
8 ~~coordinator.~~

9 ~~(c) Each agency shall strive to expand the use of~~
10 ~~renewable energy within its facilities and in its activities by~~
11 ~~implementing renewable energy projects and by purchasing~~
12 ~~electricity from renewable energy sources. Through life cycle~~
13 ~~cost effective measures, each agency shall provide twenty per~~
14 ~~cent of its remaining energy requirements, after energy~~
15 ~~efficiency improvement goals have been achieved, with renewable~~
16 ~~energy resources.~~

17 ~~(d) Through life cycle cost effective measures, each~~
18 ~~agency shall reduce the use of petroleum generated energy within~~
19 ~~its facilities. Agencies may accomplish this reduction by~~
20 ~~switching to less greenhouse gas intensive or renewable energy~~
21 ~~sources, by eliminating unnecessary fuel use, or by other~~
22 ~~appropriate methods. Where alternative fuels are not practical~~

1 ~~or life cycle cost effective, agencies shall strive to improve~~
2 ~~the efficiency of their facilities.~~

3 ~~(e) The State shall strive to reduce total energy use and~~
4 ~~associated greenhouse gas and other air emissions, as measured~~
5 ~~at the source. To that end, agencies shall undertake life cycle~~
6 ~~cost effective projects in which source energy decreases, even~~
7 ~~if site energy use increases. In those cases, agencies shall~~
8 ~~receive credit toward energy reduction goals through guidelines~~
9 ~~established by the coordinator.~~

10 ~~(f) Through life cycle cost effective measures, agencies~~
11 ~~shall reduce water consumption and associated energy use in~~
12 ~~their facilities to reach the goals set under this part. Where~~
13 ~~possible, water cost savings and associated energy cost savings~~
14 ~~shall be included in energy savings performance contracts and~~
15 ~~other financing mechanisms.~~

16 ~~(g) Each agency's biennial budget submission shall include~~
17 ~~funding necessary to achieve the goals of this part. Budget~~
18 ~~submissions shall include the costs associated with encouraging~~
19 ~~the use of, administering, and fulfilling agency~~
20 ~~responsibilities under energy savings performance contracts,~~
21 ~~utility energy efficiency service contracts, and other~~
22 ~~contractual provisions for achieving conservation goals~~

1 ~~implementing life cycle cost effective measures, procuring life-~~
2 ~~cycle cost effective products, and constructing sustainably~~
3 ~~designed new buildings, among other energy costs.~~

4 ~~The director of finance shall issue guidelines to assist~~
5 ~~agencies in developing appropriate requests that support sound~~
6 ~~investments in energy improvements and energy using products,~~
7 ~~and shall consider establishing a fund that agencies may draw on~~
8 ~~to finance exemplary energy management activities and~~
9 ~~investments with higher initial costs but lower life cycle~~
10 ~~costs.~~

11 ~~(h) Each agency shall develop an annual implementation~~
12 ~~plan for fulfilling the requirements of this part. The plans~~
13 ~~shall be included in the annual reports to the coordinator~~

14 ~~[\$196-14] Annual report. Beginning January 1, 2004, each~~
15 ~~agency shall measure and report annually to the coordinator on~~
16 ~~its progress in meeting the requirements of this part. The~~
17 ~~report shall include:~~

18 ~~(1) How the agency is using each of the strategies~~
19 ~~described in this part to help meet energy and~~
20 ~~greenhouse gas reduction goals;~~

21 ~~(2) A listing and explanation as to why certain~~
22 ~~strategies, if any, have not been used; and~~

1 ~~(3) A listing and explanation of exempt.~~

2 ~~[\$196-15] Senior agency official. Each agency shall~~
3 ~~designate a senior official to be responsible for meeting the~~
4 ~~goals and requirements of this part, including preparation of~~
5 ~~the annual report. Designated officials shall participate in~~
6 ~~the interagency energy policy committee established under~~
7 ~~section 196-17(e)~~

8 ~~[\$196-16] Agency energy teams. Each agency shall form a~~
9 ~~technical support team consisting of appropriate procurement,~~
10 ~~legal, budget, management, and technical representatives to~~
11 ~~expedite and encourage the agency's use of appropriations,~~
12 ~~energy savings performance contracts, and other alternative~~
13 ~~financing mechanisms necessary to meet the goals and~~
14 ~~requirements of this part. Agency energy team activities shall~~
15 ~~be undertaken in collaboration with each agency's representative~~
16 ~~to the interagency energy policy committee.~~

17 ~~[\$196-17] Interagency coordination, policy committee. (a)~~
18 ~~The coordinator shall be responsible for evaluating each~~
19 ~~agency's progress in improving energy management and for~~
20 ~~submitting agency energy scorecards to the governor and the~~
21 ~~legislature to report progress.~~

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1 ~~The coordinator, in consultation [with] other agencies,~~
2 ~~shall develop the agency energy scorecards and scoring system to~~
3 ~~evaluate each agency's progress in meeting the goals of this~~
4 ~~part. The scoring criteria shall include:~~

- 5 ~~(1) The extent to which agencies are taking advantage of~~
6 ~~key tools to save energy and reduce greenhouse gas~~
7 ~~emissions, such as energy savings performance contracts,~~
8 ~~utility energy efficiency service contracts, ENERGY STAR~~
9 ~~and other energy efficient products, renewable energy~~
10 ~~technologies, electricity from renewable energy sources,~~
11 ~~and other strategies and requirement;~~
12 ~~(2) Overall efficiency;~~
13 ~~(3) Greenhouse gas reduction; and~~
14 ~~(4) Use of other innovative energy efficiency practices.~~

15 ~~The scorecards shall be based on the annual energy reports~~
16 ~~submitted to the coordinator.~~

17 ~~(b) The coordinator shall be responsible for working with~~
18 ~~agencies to ensure that they meet the goals of this part and~~
19 ~~report their progress. The coordinator shall develop and issue~~
20 ~~guidelines for agencies' preparation of their annual reports to~~
21 ~~the coordinator on energy management. The coordinator shall~~
22 ~~also have primary responsibility for collecting and analyzing~~

1 ~~the data and shall ensure that agency reports are received in a~~
2 ~~timely manner.~~

3 ~~(c) There is established within the department of~~
4 ~~business, economic development, and tourism, an interagency~~
5 ~~energy policy committee consisting of senior agency officials,~~
6 ~~to be chaired by the coordinator. The committee shall be~~
7 ~~responsible for encouraging implementation of energy efficiency~~
8 ~~policies and practices. The major energy consuming agencies, as~~
9 ~~designated by the coordinator, shall participate on the~~
10 ~~committee. The committee shall communicate its activities to~~
11 ~~all designated senior agency officials to promote coordination~~
12 ~~and achievement of the goals of this part.~~

13 ~~[\$196 18] Public private advisory committee. (a) The~~
14 ~~coordinator shall appoint an advisory committee consisting of~~
15 ~~representatives from:~~

16 ~~(1) State agencies;~~

17 ~~(2) County governments;~~

18 ~~(3) Energy service companies;~~

19 ~~(4) Utility companies;~~

20 ~~(5) Equipment manufacturers;~~

21 ~~(6) Construction and architectural companies;~~

22 ~~(7) Environmental, energy, and consumer groups; and~~

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- 1 ~~(8) Other energy related organizations.~~
- 2 ~~(b) The committee shall provide input on state energy~~
3 ~~management, including how to:~~
- 4 ~~(1) Improve the use of energy savings performance~~
5 ~~contracts and utility energy efficiency service~~
6 ~~contracts;~~
- 7 ~~(2) Improve procurement of ENERGY STAR and other energy~~
8 ~~efficient products;~~
- 9 ~~(3) Improve building design;~~
- 10 ~~(4) Reduce process energy use; and~~
- 11 ~~(5) Enhance applications of efficient and renewable energy~~
12 ~~technologies at state facilities.~~
- 13 ~~(c) The committee shall be placed in the department of~~
14 ~~business, economic development, and tourism for administration~~
15 ~~purposes.~~
- 16 ~~[\$196-19] Life cycle cost analysis. Agencies shall use~~
17 ~~life cycle cost analysis in making decisions about their~~
18 ~~investments in products, services, construction, and other~~
19 ~~projects to lower the State's costs and to reduce energy and~~
20 ~~water consumption. Where appropriate, agencies shall consider~~
21 ~~the life cycle costs of combinations of projects, particularly~~

1 ~~to encourage bundling of energy efficiency projects with~~
2 ~~renewable energy projects.~~

3 ~~Agencies shall retire inefficient equipment on an~~
4 ~~accelerated basis where replacement results in lower life cycle~~
5 ~~costs. Agencies that minimize life cycle costs with efficiency~~
6 ~~measures shall be recognized in their scorecard evaluations~~
7 ~~established under section 196-17(a).~~

8 ~~[\$196-20] Facility energy audits. Agencies shall conduct~~
9 ~~energy and water audits for approximately ten per cent of their~~
10 ~~facilities each year, either independently or through energy-~~
11 ~~savings performance contracts or utility energy efficiency~~
12 ~~service contracts.~~

13 ~~[\$196-21] Financing mechanisms. (a) Agencies shall~~
14 ~~maximize their use of available alternative financing~~
15 ~~contracting mechanisms, including energy savings performance~~
16 ~~contracts and utility energy efficiency service contracts, when~~
17 ~~life cycle cost effective, to reduce energy use and cost in~~
18 ~~their facilities and operations. Energy savings performance~~
19 ~~contracts and utility energy efficiency service contracts shall~~
20 ~~provide significant opportunities for making state facilities~~
21 ~~more energy efficient at no net cost to taxpayers.~~

1 ~~(b) Agencies that perform energy efficiency and renewable~~
2 ~~energy system retrofitting may continue to receive budget~~
3 ~~appropriations for energy expenditures at an amount that will~~
4 ~~not fall below the pre-retrofitting energy budget but will rise~~
5 ~~in proportion to any increase in the agency's overall budget for~~
6 ~~the duration of the performance contract or project payment~~
7 ~~term. A portion of the moneys saved through efficiency and~~
8 ~~renewable energy system retrofitting shall be set aside to pay~~
9 ~~for any costs directly associated with administering energy~~
10 ~~efficiency and renewable energy system retrofitting programs~~
11 ~~incurred by the agency.~~

12 ~~(c) Notwithstanding any law to the contrary relating to~~
13 ~~the award of public contracts, any agency desiring to enter into~~
14 ~~an energy performance contract shall do so in accordance with~~
15 ~~the following provisions:~~

16 ~~(1) The agency shall issue a public request for proposals,~~
17 ~~advertised in the same manner as provided in chapter~~
18 ~~103D, concerning the provision of energy efficiency~~
19 ~~services or the design, installation, operation, and~~
20 ~~maintenance of energy equipment, or both. The request~~
21 ~~for proposals shall contain terms and conditions~~
22 ~~relating to submission of proposals, evaluation, and~~

1 ~~selection of proposals, financial terms, legal~~
2 ~~responsibilities, and other matters as may be required~~
3 ~~by law and as the agency determines appropriate;~~
4 ~~(2) Upon receiving responses to the request for proposals,~~
5 ~~the agency may select the most qualified proposal or~~
6 ~~proposals on the basis of the experience and~~
7 ~~qualifications of the proposers, the technical~~
8 ~~approach, the financial arrangements, the overall~~
9 ~~benefits to the agency, and other factors determined~~
10 ~~by the agency to be relevant and appropriate;~~
11 ~~(3) The agency thereafter may negotiate and enter into an~~
12 ~~energy performance contract with the person or company~~
13 ~~whose proposal is selected as the most qualified based~~
14 ~~on the criteria established by the agency;~~
15 ~~(4) The term of any energy performance contract entered~~
16 ~~into pursuant to this section shall not exceed fifteen~~
17 ~~years;~~
18 ~~(5) Any energy performance contract may provide that the~~
19 ~~agency ultimately shall receive title to the energy~~
20 ~~system being financed under the contract; and~~
21 ~~(6) Any energy performance contract shall provide that~~
22 ~~total payments shall not exceed total savings~~

1 ~~[\$196-22] State energy projects.~~ State energy projects
2 may be implemented under this chapter with the approval of the
3 comptroller and the director of finance. Notwithstanding
4 section 36-41 or 196-21, the comptroller or the senior agency
5 official of the department of accounting and general services,
6 along with the director of finance, may exempt a state energy
7 project from the advertising and competitive bidding
8 requirements of section 36-41 or 196-21 and chapter 103, if the
9 comptroller deems exemption appropriate for energy projects with
10 proprietary technology or necessary to meet the goals of the
11 legislature. In addition, this section shall be construed to
12 provide the greatest possible flexibility to agencies in
13 structuring agreements entered into so that economic benefits
14 and existing energy incentives may be used and maximized and
15 financing and other costs to agencies may be minimized. The
16 specific terms of energy performance contracting under section
17 36-41 may be altered if deemed advantageous to the agency and
18 approved by the director of finance and the senior agency
19 official.

20 ~~[\$196-23] Energy efficient products.~~ (a) Agencies shall
21 select, where life cycle cost effective, ENERGY STAR and other
22 energy efficient products when acquiring energy using products.

1 ~~For product groups where ENERGY STAR labels are not yet~~
2 ~~available, agencies may select products that are in the upper~~
3 ~~twenty five per cent of energy efficiency as designated by the~~
4 ~~United States Department of Energy, Office of Energy Efficiency~~
5 ~~and Renewable Energy, Federal Energy Management Program.~~

6 ~~Agencies shall incorporate energy efficient criteria~~
7 ~~consistent with designated energy efficiency levels into all~~
8 ~~guide specifications and project specifications developed for~~
9 ~~new construction and renovation, as well as into product~~
10 ~~specification language developed for all purchasing procedures.~~

11 ~~The State shall also consider the creation of financing~~
12 ~~agreements with private sector suppliers to provide private~~
13 ~~funding to offset higher up front costs of efficient products.~~

14 ~~(b) Agencies shall strive to meet the ENERGY STAR building~~
15 ~~criteria for energy performance and indoor environmental quality~~
16 ~~in their eligible facilities to the maximum extent practicable~~
17 ~~by December 31, 2005. Agencies may use energy savings~~
18 ~~performance contracts, utility energy efficiency service~~
19 ~~contracts, or other means to conduct evaluations and make~~
20 ~~improvements to facilities. Facilities that rank in the top~~
21 ~~twenty five per cent in energy efficiency relative to comparable~~
22 ~~commercial and state buildings shall receive the ENERGY STAR~~

1 ~~building label or its equivalent as determined by the~~
2 ~~coordinator. Agencies shall integrate this rating tool into~~
3 ~~their general facility audits.~~

4 ~~(c) The State shall employ sustainable design principles~~
5 ~~and agencies shall apply the principles to the siting, design,~~
6 ~~and construction of new facilities. Agencies shall optimize~~
7 ~~life cycle costs, pollution, and other environmental and energy~~
8 ~~costs associated with the construction, life cycle operation,~~
9 ~~and decommissioning of the facility. Agencies shall consider~~
10 ~~using energy savings performance contracts or utility energy~~
11 ~~efficiency service contracts to aid them in constructing~~
12 ~~sustainably designed buildings.~~

13 ~~(d) Agencies entering into leases, including the~~
14 ~~renegotiation or extension of existing leases, shall incorporate~~
15 ~~lease provisions that encourage energy and water efficiency~~
16 ~~wherever life cycle cost effective. Build to suit lease~~
17 ~~solicitations shall contain criteria encouraging sustainable~~
18 ~~design and development, energy efficiency, and verification of~~
19 ~~facility performance. Agencies shall include a preference for~~
20 ~~facilities having an ENERGY STAR building label in their~~
21 ~~selection criteria for acquiring leased facilities. .In~~
22 ~~addition, all agencies shall encourage lessors to apply for an~~

1 ~~ENERGY STAR building label and to explore and implement projects~~
2 ~~that will reduce costs to the State, including projects carried~~
3 ~~out through the lessors' energy savings performance contracts or~~
4 ~~utility energy efficiency service contracts.~~

5 ~~(e) Agencies shall implement energy reduction systems, and~~
6 ~~other highly efficient systems, in new construction or retrofit~~
7 ~~projects when life cycle cost effective. Agencies shall~~
8 ~~consider combined cooling, heat, and power systems when~~
9 ~~determined to be the most cost effective when measured against~~
10 ~~other alternatives on a life cycle cost basis. Agencies shall~~
11 ~~survey local natural resources to optimize use of available~~
12 ~~solar, ocean thermal, biomass, bio energy, geothermal, or other~~
13 ~~naturally occurring energy sources.~~

14 ~~(f) Agencies shall use off grid generation systems,~~
15 ~~including solar hot water, solar electric, solar outdoor~~
16 ~~lighting, small wind turbines, fuel cells, and other off grid~~
17 ~~alternatives, where such systems are life cycle cost effective~~
18 ~~and offer benefits including energy efficiency, pollution~~
19 ~~prevention, source energy reductions, avoided infrastructure~~
20 ~~costs, or expedited service.~~

21 ~~[\$196-24] Electricity use. To advance the greenhouse gas~~
22 ~~and renewable energy goals of this part, and reduce source~~

1 ~~energy use, each agency shall strive to use electricity from~~
2 ~~clean, efficient, and renewable energy sources. An agency's~~
3 ~~efforts in purchasing electricity from efficient and renewable~~
4 ~~energy sources shall be taken into account in assessing the~~
5 ~~agency's progress and formulating its scorecard under section~~
6 ~~196-17(a).~~

7 ~~[§196-25] Competition. Agencies shall take advantage of~~
8 ~~competitive opportunities in the electricity and natural gas~~
9 ~~markets to reduce costs and enhance services. Agencies are~~
10 ~~encouraged to aggregate demand across facilities or agencies to~~
11 ~~maximize their economic advantage.~~

12 ~~[§196-26] Reduced greenhouse gas intensity of electric~~
13 ~~power. When selecting electricity providers, agencies shall~~
14 ~~purchase electricity from sources that use high efficiency~~
15 ~~electric generating technologies when life cycle cost effective.~~
16 ~~Agencies shall consider the greenhouse gas intensity of the~~
17 ~~source of the electricity and strive to minimize the greenhouse~~
18 ~~gas intensity of purchased electricity.~~

19 ~~[§196-27] Purchasing electricity from renewable energy~~
20 ~~sources. Each agency shall evaluate its current use of~~
21 ~~electricity from renewable energy sources and report this level~~
22 ~~in its annual report to the coordinator. Based on this review,~~

1 ~~each agency shall adopt policies and pursue projects that~~
2 ~~increase the use of such electricity. Agencies shall include~~
3 ~~provisions for the purchase of electricity from renewable energy~~
4 ~~sources as a component of their requests for bids whenever~~
5 ~~procuring electricity. Agencies may use savings from energy~~
6 ~~efficiency projects to pay additional incremental costs of~~
7 ~~electricity from renewable energy sources.~~

8 ~~In evaluating opportunities to comply with this section,~~
9 ~~agencies shall consider any renewable portfolio standard~~
10 ~~specified in the restructuring guidelines for the State and the~~
11 ~~United States Environmental Protection Agency guidelines on~~
12 ~~crediting renewable energy power.~~

13 ~~[\$196-28] Mobile equipment.~~ Each agency shall seek to
14 ~~improve the design, construction, and operation of its mobile~~
15 ~~equipment, and shall implement all life cycle cost effective~~
16 ~~energy efficiency measures that result in cost savings while~~
17 ~~improving mission performance. To the extent that such measures~~
18 ~~are life cycle cost effective, agencies shall consider enhanced~~
19 ~~use of alternative or renewable based fuels.~~

20 ~~[\$196-29] Management strategies.~~ Agencies shall use the
21 ~~following management strategies in meeting the goals of this~~
22 ~~part.~~

- 1 ~~(1) Employee incentive programs to reward exceptional~~
2 ~~performance in implementing this part,~~
- 3 ~~(2) Performance evaluations of successful implementation~~
4 ~~of this part in areas such as energy savings~~
5 ~~performance contracts, sustainable design, energy~~
6 ~~efficient procurement, energy efficiency, water~~
7 ~~conservation, and renewable energy projects and~~
8 ~~performance evaluations of agency heads, members of~~
9 ~~the agency energy team, principal program managers,~~
10 ~~heads of field offices, facility managers, energy~~
11 ~~managers, and other appropriate employees,~~
- 12 ~~(3) Agencies shall be allowed to retain a portion of~~
13 ~~savings generated from efficient energy and water~~
14 ~~management and shall use the savings at the facility~~
15 ~~or site where the savings occur to provide greater~~
16 ~~incentives for that facility and its site managers to~~
17 ~~undertake more energy management initiatives, invest~~
18 ~~in renewable energy systems, and purchase electricity~~
19 ~~from renewable energy sources,~~
- 20 ~~(4) Training and education shall be provided for all~~
21 ~~appropriate personnel relating to the energy~~
22 ~~management strategies contained in this part,~~

1 ~~including the incorporation into existing procurement~~
2 ~~courses information on energy management tools,~~
3 ~~energy savings performance contracts, utility energy-~~
4 ~~efficiency service contracts, energy efficient~~
5 ~~products, and life cycle cost analysis; and~~
6 ~~(5) Agencies shall designate showcase facilities to~~
7 ~~highlight energy or water efficiency and renewable~~
8 ~~energy improvements."]~~

9 SECTION 34. Act 207, Session Laws of Hawaii 2003, is
10 amended by amending section 4 to read as follows:

11 "SECTION 4. This Act shall take effect on July 1, 2003 [~~7~~
12 ~~and shall be repealed January 1, 2008]~~".

13 SECTION 35. Chapter 235-12.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§235-12.5 Renewable energy technologies; income tax**
16 **credit.** (a) When the requirements of subsection (c) are met,
17 each individual or corporate resident taxpayer that files an
18 individual or corporate net income tax return for a taxable year
19 may claim a tax credit under this section against the Hawaii
20 state individual or corporate net income tax. The tax credit
21 may be claimed for every eligible renewable energy technology
22 system that is installed and placed in service by a taxpayer

1 during the taxable year. This credit shall be available for
2 systems installed and placed in service after June 30, 2003.

3 The tax credit may be claimed as follows:

4 (1) Solar thermal energy systems for:

5 (A) Single-family residential property: thirty-five
6 per cent of the actual cost or \$1,750, whichever
7 is less;

8 (B) Multi-family residential property: thirty-five per
9 cent of the actual cost or [~~\$350~~] \$1,000 per
10 unit, whichever is less; and

11 (C) Commercial property: thirty-five percent of the
12 actual cost or [~~\$250,000,~~] \$500,000, whichever is
13 less;

14 (2) Wind-powered energy systems for:

15 (A) Single-family residential property: twenty per
16 cent of the actual cost or \$1,500, whichever is
17 less;

18 (B) Multi-family residential property: twenty per
19 cent of the actual cost or \$200 per unit,
20 whichever is less; and

21 (C) Commercial property: twenty per cent of the
22 actual cost or \$250,000, whichever is less; and

- 1 (3) Photovoltaic energy systems for:
- 2 (A) Single family residential property: thirty-five
- 3 per cent of the actual cost or [~~\$1,750,~~] \$10,000,
- 4 whichever is less;
- 5 (B) Multi-family residential property: thirty-five
- 6 per cent of the actual cost or [~~\$350~~] \$1,000 per
- 7 unit, whichever is less; and
- 8 (C) Commercial property: thirty-five per cent of the
- 9 actual cost or [~~\$250,000,~~] \$500,000, whichever is
- 10 less;

11 provided that multiple owners of a single system shall be

12 entitled to a single tax credit; and provided further that the

13 tax credit shall be apportioned between the owners in proportion

14 to their contribution to the cost of the system.

15 In case of a partnership, S corporation, estate, or trust,

16 the tax credit allowable is for every eligible renewable energy

17 technology system that is installed and placed in service by the

18 entity. The cost upon which the tax credit is computed shall be

19 determined at the entity level. Distribution and share of

20 credit shall be determined pursuant to section 235-110.7(a).

21 (b) For the purposes of this section:

1 "Actual cost" means costs related to the renewable energy
2 technology systems under subsection (a), including accessories
3 and installation, but not including the cost of consumer
4 incentive premiums unrelated to the operation of the system or
5 offered with the sale of the system and costs for which another
6 credit is claimed under this chapter.

7 "Renewable energy technology system" means a new system
8 that captures and converts a renewable source of energy, such as
9 wind, heat (solar thermal), or light (photovoltaic) from the sun
10 into:

- 11 (1) A usable source of thermal or mechanical energy;
- 12 (2) Electricity; or
- 13 (3) Fuel.

14 "Solar or wind energy system" means any identifiable
15 facility, equipment, apparatus, or the like that converts
16 insolation or wind energy to useful thermal or electrical energy
17 for heating, cooling, or reducing the use of other types of
18 energy that are dependent upon fossil fuel for their generation.

19 (c) ~~[The]~~ For taxable years beginning after December 31,
20 2005, the dollar amount of ~~[any new federal energy tax credit~~
21 ~~similar to the credit provided in this section that is~~
22 ~~established after June 30, 2003, and]~~ any utility rebate[7]

1 shall be deducted from the cost of the qualifying system and its
2 installation before applying the state tax credit.

3 (d) The director of taxation shall prepare any forms that
4 may be necessary to claim a tax credit under this section,
5 including forms identifying the technology type of each tax
6 credit claimed under this section, whether for solar thermal,
7 photovoltaic from the sun, or wind. The director may also
8 require the taxpayer to furnish reasonable information to
9 ascertain the validity of the claim for credit made under this
10 section and may adopt rules necessary to effectuate the purposes
11 of this section pursuant to chapter 91.

12 (e) If the tax credit under this section exceeds the
13 taxpayer's income tax liability, the excess of the credit over
14 liability may be used as a credit against the taxpayer's income
15 tax liability in subsequent years until exhausted. All claims
16 for the tax credit under this section, including amended claims,
17 shall be filed on or before the end of the twelfth month
18 following the close of the taxable year for which the credit may
19 be claimed. Failure to comply with this subsection shall
20 constitute a waiver of the right to claim the credit.

21 (f) By or before December, 2005, to the extent feasible,
22 using existing resources to assist the energy-efficiency policy

1 review and evaluation, the department shall assist with data
2 collection on the following:

3 (1) The number of renewable energy technology systems
4 that have qualified for a tax credit during the past
5 year by:

6 (A) Technology type (solar thermal, photovoltaic
7 from the sun, and wind); and

8 (B) Taxpayer type (corporate and individual);
9 and

10 (2) The total cost of the tax credit to the State
11 during the past year by:

12 (A) Technology type; and

13 (B) Taxpayer type."

14 SECTION 36. Chapter 269 , Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 "§269-A Establishing a public benefits fund. The public
18 utilities commission shall by order or rule redirect the current
19 demand-side management surcharge collected by Hawaii's electric
20 utilities to establish a public benefits fund. A volumetric
21 charge to customers shall be used for the support of demand-side
22 management and renewable energy programs and services that meet

1 the requirements of section 269-92. The charge shall be known
2 as the public benefits fee and shall be shown separately on each
3 customer's bill, and shall be paid to a fund administrator
4 appointed by the public utilities commission. The public
5 benefits fee shall be deposited into the fund. Balances in the
6 fund shall be ratepayer funds, shall be used to support the
7 activities authorized in this Act, and shall be carried forward
8 and remain in the fund at the end of each fiscal year. These
9 moneys shall not be available to meet any current or past
10 general obligations of the State. Interest earned shall accrue
11 to the fund. The public utilities commission shall annually
12 provide the legislature a report twenty days prior to the start
13 of the legislative session, which details the revenues collected
14 and the expenditures made for demand side management and
15 renewable energy programs and services under this Act."

16 SECTION 37. Chapter 269 , Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 **"§269-B Establishing funding for a public benefits fund.**
20 The public utilities commission shall by order or rule redirect
21 the current demand-side management surcharge to establish a non-
22 bypassable customer charge on electricity purchases, which shall

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1 not exceed \$0.0025 per kilowatt hour. The fund shall be used to
2 support all demand-side management and renewable energy programs
3 for residents of Hawaii authorized by the public utilities
4 commission by order or rule pursuant to section 269-C in any
5 fiscal year. Once established, the amount of this charge in any
6 fiscal year shall not increase by more than the consumer price
7 index, but in no event shall be reduced below the amount
8 authorized in the immediately prior fiscal year. The amount
9 authorized in this section shall supplement and not supplant
10 funding already in place as of the end of fiscal year 2007-2008
11 for demand-side management and renewable energy programs
12 implemented by utilities or any other state agency."

13 SECTION 38. Chapter 269, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§269-C Establishing a fund administrator for the public
17 benefits fund. The public utilities commission shall select a
18 fund administrator to operate and manage the programs
19 established in section 269-A. The fund administrator shall not
20 expend more than 10 per cent of the fund in any fiscal year for
21 administration of the programs established by section 269-A.
22 The fund administrator shall report to the public utilities

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1 commission on a regular basis. The fund administration shall be
2 delegated to a third party based upon the requirements imposed
3 upon the public utilities commission in section 269-D.

4 Notwithstanding any other provision of law, the fund
5 administrator shall not be a utility or a utility affiliate."

6 SECTION 39. Chapter 269 , Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§269-D Requirements for the public benefits fund

10 administrator. The fund administrator shall:

11 i. Have experience and expertise in energy efficient and
12 renewable energy technologies and methods;

13 ii. Have experience and expertise in implementing demand-
14 side management or energy efficiency and renewable
15 energy programs;

16 iii. Promote and implement programs, methods, and
17 technologies which support energy efficiency and the
18 use of renewable energy;

19 iv. Require that continued or improved efficiencies be
20 made in the production, delivery, and use of demand-
21 side management and renewable energy products and
22 services;

- 1 v. Build on the energy efficiency expertise and
2 capabilities that have developed or may develop in the
3 State, and consult with state agency experts;
- 4 vi. Promote program initiatives, incentives, and market
5 strategies that address the needs of individuals or
6 businesses facing the most significant barriers to
7 participation;
- 8 vii. Promote coordinated program delivery, including
9 coordination with low-income home energy assistance
10 and other demand-side management and renewable energy
11 programs, and utility programs;
- 12 viii. Consider innovative approaches to delivering demand-
13 side management and renewable energy products and
14 services, including strategies to encourage third
15 party financing and customer contributions to the cost
16 of demand-side management and renewable energy
17 products and services; and
- 18 ix. Provide to the public utilities commission for review
19 and approval a multi-year budget and planning cycle
20 that promotes program improvement, program stability,
21 and maturation of programs and delivery resources."

1 SECTION 40. Chapter 269 , Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§269-E Transitioning from utility demand-side management
5 programs to the public benefits fund. The public utilities
6 commission shall:

- 7 (1) Develop a transition plan that insures that utility
8 demand-side management programs are continued until a
9 transition date to be established by the public
10 utilities commission, and that the new fund
11 administrator will be able to provide demand-side
12 management and renewable energy products and services
13 on the transition date;
- 14 (2) Ensure that all retail electricity customers,
15 including state and county agencies, regardless of
16 retail electricity or gas provider, have an
17 opportunity to participate in and benefit from a
18 comprehensive set of cost-effective demand-side
19 management and renewable energy programs and
20 initiatives designed to overcome barriers to
21 participation;

- 1 (3) Approve programs, measures, and delivery mechanisms
2 that reasonably reflect current and projected utility
3 integrated resource planning, market conditions,
4 technological options, and environmental benefits;
- 5 (4) Provide for delivery of these programs as rapidly as
6 possible, taking into consideration the need for these
7 services, and cost-effective delivery mechanisms;
- 8 (5) Consider the unique geographic location of the State
9 and the high costs of energy in developing programs
10 that will promote technologies to advance energy
11 efficiency and use of renewable energy and permit the
12 State to take advantage of activities undertaken in
13 other states, including the opportunity for multi-
14 state programs;
- 15 (6) Provide for independent evaluation of programs
16 delivered under section 269-A;
- 17 (7) Require that any entity approved by the public
18 utilities commission under section 269-C deliver
19 programs in an effective, efficient, timely, and
20 competent manner and meet standards that are
21 consistent with state policy and public utilities
22 commission decisions; and

1 (8) On or before January 1, 2008, and every three years
2 thereafter, require verification by an independent
3 auditor of the reported energy and capacity savings
4 and incremental renewable energy production savings
5 associated with the programs delivered by any entity
6 appointed by the public utilities commission to
7 deliver demand-side management and renewable energy
8 programs under section 269-C."

9 SECTION 41. Section 269-91, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§269-91 Definitions.** For the purposes of this part:

12 "Cost-effective" means the ability to produce or purchase
13 electric energy or firm capacity, or both, from renewable energy
14 resources at or below avoided costs consistent to the extent
15 possible with the methodology set by the public utilities
16 commission in accordance with section 269-27.2.

17 "Electric utility company," means a public utility as
18 defined under section 269-1, for the production, conveyance,
19 transmission, delivery, or furnishing of power.

20 "Incentive" means a financial reward established by the
21 public utilities commission for meeting or exceeding the
22 renewable portfolio standard in a particular year. The

1 incentive may be paid on a per kilowatt-hour basis for renewable
2 energy purchased from a non-utility generator for sale to
3 utility customers, or may be an added return on capital for
4 utility-owned renewable generation systems.

5 "Penalty" means a financial disincentive established by the
6 public utilities commission for failing to meet the renewable
7 portfolio standard in a particular year. Any penalty shall be
8 paid from utility profits and shall not be passed on to the
9 ratepayers.

10 "Renewable energy" means electrical energy produced by
11 wind, solar energy, hydropower, landfill gas, waste to energy,
12 geothermal resources, ocean thermal energy conversion, wave
13 energy, biomass, including municipal solid waste, biofuels, or
14 fuels derived from organic sources, hydrogen fuels derived from
15 renewable energy, or fuel cells where the fuel is derived from
16 renewable sources. Where biofuels, hydrogen, or fuel cell fuels
17 are produced by a combination of renewable and nonrenewable
18 means, the proportion attributable to the renewable means shall
19 be credited as renewable energy. Where fossil and renewable
20 fuels are co-fired in the same generating unit, the unit shall
21 be considered to produce renewable electricity in direct
22 proportion to the percentage of the total heat value represented

1 by the heat value of the renewable fuels. [~~"Renewable energy"~~
2 ~~also means electrical energy savings brought about by the use of~~
3 ~~solar and heat pump water heating, seawater air conditioning~~
4 ~~district cooling systems, solar air conditioning and ice~~
5 ~~storage, quantifiable energy conservation measures, use of~~
6 ~~rejected heat from co-generation and combined heat and power~~
7 ~~systems excluding fossil fueled qualifying facilities that sell~~
8 ~~electricity to electric utility companies, and central station~~
9 ~~power projects.]~~

10 "Renewable portfolio standard" means the percentage of
11 electrical energy sales that is represented by renewable
12 energy."

13 SECTION 42. Section 269-92, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§269-92 Renewable portfolio standards.** Each electric
16 utility company that sells electricity for consumption in the
17 State shall establish a renewable portfolio standard of:

18 [~~(1) Seven per cent of its net electricity sales by~~

19 ~~December 31, 2003;~~

20 ~~(2) Eight per cent of its net electricity sales by~~

21 ~~December 31, 2005;~~

1 ~~(3)~~ (1) Ten per cent of its net electricity sales by
2 December 31, 2010;

3 ~~(4)~~ (2) Fifteen per cent of its net electricity sales by
4 December 31, 2015; and

5 ~~(5)~~ (3) Twenty per cent of its net electricity sales by
6 December 31, 2020.

7 ~~[The public utilities commission shall determine if an
8 electric utility company is unable to meet the renewable
9 portfolio standards in a cost effective manner, or as a result
10 of circumstances beyond its control which could not have been
11 reasonably anticipated or ameliorated. If this determination is
12 made, the electric utility company shall be relieved of
13 responsibility for meeting the renewable portfolio standard for
14 the period of time that it is unable to meet the standard.]~~

15 If it is determined that an electric utility company failed
16 to meet the renewable portfolio standard, the utility shall be
17 subject to penalties to be established by the public utilities
18 commission."

19 SECTION 43. Section 269-94, Hawaii Revised Statutes, is
20 repealed.

21 ~~["§269-94 Waivers, extensions, and incentives.] Any~~
22 ~~electric utility company not meeting the renewable portfolio~~

1 ~~standard shall report to the public utilities commission within~~
2 ~~ninety days following the goal dates established in section~~
3 ~~{269-92}, and provide an explanation for not meeting the~~
4 ~~renewable portfolio standard. The public utilities commission~~
5 ~~shall have the option to either grant a waiver from the~~
6 ~~renewable portfolio standard or an extension for meeting the~~
7 ~~prescribed standard.~~

8 ~~The public utilities commission may provide incentives to~~
9 ~~encourage electric utility companies to exceed their renewable~~
10 ~~portfolio standards or to meet their renewable portfolio~~
11 ~~standards ahead of time, or both."]~~

12 SECTION 44. Section 269-95, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§269-95 Renewable portfolio standards study.** The public
15 utilities commission shall:

16 (1) By December 31, ~~[2006,]~~ 2007, develop and implement a
17 utility ratemaking structure which may include but is
18 not limited to performance-based ratemaking, to
19 provide a system of incentives and penalties that
20 encourage Hawaii's electric utility companies to use
21 cost-effective renewable energy resources found in
22 Hawaii to meet the renewable portfolio standards

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1 established in section 269-92 [~~while allowing for~~
2 ~~deviation from the standards in the event that the~~
3 ~~standards cannot be met in a cost effective manner, or~~
4 ~~as a result of circumstances beyond the control of the~~
5 ~~utility which could not have been reasonably~~
6 ~~anticipated or ameliorated]~~;

- 7 (2) Gather, review, and analyze empirical data to
8 determine the extent to which any proposed utility
9 ratemaking structure would impact electric utility
10 companies' profit margins, and to ensure that [~~these~~
11 ~~profit margins do not decrease]~~ the electric utility
12 companies' opportunity to earn a fair rate of return
13 is not diminished as a result of the implementation of
14 the proposed ratemaking structure;

- 15 (3) Using funds from the public utilities special fund,
16 contract with the Hawaii natural energy institute of
17 the University of Hawaii to conduct independent
18 studies to be reviewed by a panel of experts from
19 entities such as the United States Department of
20 Energy, National Renewable Energy Laboratory, Electric
21 Power Research Institute, Hawaii electric utility
22 companies, and other similar institutions with the

1 required expertise. These studies shall include
2 findings and recommendations regarding:

3 (A) The capability of Hawaii's electric utility
4 companies to achieve renewable portfolio
5 standards in a cost-effective manner, and shall
6 assess factors such as the impact on consumer
7 rates, utility system reliability and stability,
8 costs and availability of appropriate renewable
9 energy resources and technologies, effect of
10 power purchase agreement terms on the financial
11 viability of renewable power producers, permitting
12 approvals, impacts on the economy, culture,
13 community, environment, land and water,
14 demographics, and other factors deemed
15 appropriate by the commission; and

16 (B) Projected renewable portfolio standards to be set
17 five and ten years beyond the then current
18 standards;

19 (4) Revise the standards based on the best information
20 available at the time if the results of the studies
21 conflict with the renewable portfolio standards
22 established by section 269-92; and

1 (5) Report its findings and revisions to the renewable
2 portfolio standards based on its own studies and those
3 contracted under paragraph (3), to the legislature no
4 later than twenty days before the convening of the
5 regular session of 2009, and every five years
6 thereafter."

7 SECTION 45. Section 269-27.2, subsection c, Hawaii Revised
8 Statutes, is amended to read as follows:

9 "**§269-27.2 Utilization of electricity generated from**
10 **nonfossil fuels.** (c) The rate payable by the public utility to
11 the producer for the nonfossil fuel generated electricity
12 supplied to the public utility shall be as agreed between the
13 public utility and the supplier and as approved by the public
14 utilities commission; provided that in the event the public
15 utility and the supplier fail to reach an agreement for a rate,
16 the rate shall be as prescribed by the public utilities
17 commission according to the powers and procedures provided in
18 this chapter.

19 In the exercise of its authority to determine the just and
20 reasonable rate for the nonfossil fuel generated electricity
21 supplied to the public utility by the producer, the commission
22 shall establish that the rate for purchase of electricity by a

1 public utility shall not be more than one hundred per cent of
2 the cost avoided by the utility when the utility purchases the
3 electrical energy rather than producing the electrical energy.

4 The ratemaking structure shall also include a methodology
5 to establish what the fifteen and twenty-year fixed price for
6 renewable energy power or renewable fuel for power production
7 shall be. The methodology shall:

8 (1) Establish a periodic review process for the
9 determination of these prudent renewable fixed prices;

10 (2) Establish a competitive bidding process for renewable
11 power, which may be integrated with other power supply
12 or all source competitive bidding processes at the
13 public utilities commission's discretion; and

14 (3) Define an advanced approval process for the
15 procurement of long-term fixed price renewable energy
16 sources that are competitively bid and whose cost is
17 less than the prudent long-term fixed price for
18 renewables as defined above."

19 SECTION 46. Section 269-1, Hawaii Revised Statutes, is
20 amended by adding additional definitions as follows:

21 **§269-1 Definitions.** As used in this chapter:

1 "Automatic adjustment clause" means a provision of a rate,
2 charge, or practice which provides for increases and decreases
3 (or both) which adjustment clause has been previously approved
4 by the commission.

5 "Carrier of last resort" means a telecommunications carrier
6 designated by the commission to provide universal service in a
7 given local exchange service area determined to be lacking in
8 effective competition.

9 "Designated local exchange service area" means an area as
10 determined by the commission to be best served by designating a
11 carrier of last resort pursuant to section 269-43.

12 "Enforcement officer" means any person employed and
13 authorized by the commission to investigate any matter on behalf
14 of the commission. The term also means a motor vehicle safety
15 officer employed and assigned, pursuant to section 271-38, by
16 the department of transportation to enforce sections 271-8, 271-
17 12, 271-13, 271-19, and 271-29 through assessment of civil
18 penalties as provided in section 271-27(h), (i), and (j).

19 "Fuel adjustment clause" means a provision of a rate
20 schedule which provides for increases or decreases or both,
21 without prior hearing, in rates reflecting increases or
22 decreases or both in costs incurred by an electric or gas

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1 utility for fuel and purchased energy due to changes in the unit
2 cost of fuel and purchased energy.

3 "Fuel oil" shall include all petroleum-based fuels,
4 including, but not limited to, residual fuel oil, diesel fuel
5 oil, naphtha, and other fuels refined from petroleum.

6 "Public highways" has the meaning defined by section 264-1,
7 including both state and county highways, but operation upon
8 rails shall not be deemed transportation on public highways.

9 "Public utility":

10 (1) Includes every person who may own, control, operate,
11 or manage as owner, lessee, trustee, receiver, or
12 otherwise, whether under a franchise, charter,
13 license, articles of association, or otherwise, any
14 plant or equipment, or any part thereof, directly or
15 indirectly for public use, for the transportation of
16 passengers or freight, or the conveyance or
17 transmission of telecommunications messages, or the
18 furnishing of facilities for the transmission of
19 intelligence by electricity by land or water or air
20 within the State, or between points within the State,
21 or for the production, conveyance, transmission,
22 delivery, or furnishing of light, power, heat, cold,

1 water, gas, or oil, or for the storage or warehousing
2 of goods, or the disposal of sewage; provided that the
3 term shall include:

4 (A) Any person insofar as that person owns or
5 operates a private sewer company or sewer
6 facility; and

7 (B) Any telecommunications carrier or
8 telecommunications common carrier;

9 (2) Shall not include:

10 (A) Any person insofar as that person owns or
11 operates an aerial transportation enterprise;

12 (B) Persons owning or operating taxicabs, as defined
13 in this section;

14 (C) Common carriers transporting only freight on the
15 public highways, unless operating within
16 localities or along routes or between points that
17 the public utilities commission finds to be
18 inadequately serviced without regulation under
19 this chapter;

20 (D) Persons engaged in the business of warehousing or
21 storage unless the commission finds that

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- 1 regulation thereof is necessary in the public
2 interest;
- 3 (E) The business of any carrier by water to the
4 extent that the carrier enters into private
5 contracts for towage, salvage, hauling, or
6 carriage between points within the State and the
7 carriage is not pursuant to either an established
8 schedule or an undertaking to perform carriage
9 services on behalf of the public generally;
- 10 (F) The business of any carrier by water,
11 substantially engaged in interstate or foreign
12 commerce, transporting passengers on luxury
13 cruises between points within the State or on
14 luxury round-trip cruises returning to the point
15 of departure;
- 16 (G) Any person who:
- 17 (i) Controls, operates, or manages plants or
18 facilities for the production, transmission,
19 or furnishing of power primarily or entirely
20 from nonfossil fuel sources; and
- 21 (ii) Provides, sells, or transmits all of that
22 power, except such power as is used in its

- 1 own internal operations, directly to a
2 public utility for transmission to the
3 public;
- 4 (H) A telecommunications provider only to the extent
5 determined by the commission pursuant to section
6 269-16.9;
- 7 (I) Any person who controls, operates, or manages
8 plants or facilities developed pursuant to
9 chapter 167 for conveying, distributing, and
10 transmitting water for irrigation and such other
11 purposes that shall be held for public use and
12 purpose;
- 13 (J) Any person who owns, controls, operates, or
14 manages plants or facilities for the reclamation
15 of wastewater; provided that:
- 16 (i) The services of the facility shall be
17 provided pursuant to a service contract
18 between the person and a state or county
19 agency and at least ten per cent of the
20 wastewater processed is used directly by the
21 State or county which has entered into the
22 service contract;

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- 1 (ii) The primary function of the facility shall
2 be the processing of secondary treated
3 wastewater that has been produced by a
4 municipal wastewater treatment facility that
5 is owned by a state or county agency;
- 6 (iii) The facility shall not make sales of water
7 to residential customers;
- 8 (iv) The facility may distribute and sell
9 recycled or reclaimed water to entities not
10 covered by a state or county service
11 contract; provided that, in the absence of
12 regulatory oversight and direct competition,
13 the distribution and sale of recycled or
14 reclaimed water shall be voluntary and its
15 pricing fair and reasonable. For purposes of
16 this subparagraph, "recycled water" and
17 "reclaimed water" mean treated wastewater
18 that by design is intended or used for a
19 beneficial purpose; and
- 20 (v) The facility shall not be engaged, either
21 directly or indirectly, in the processing of
22 food wastes; and

1 (K) Any person who owns, controls, operates, or
2 manages any seawater air conditioning district
3 cooling project; provided that at least fifty per
4 cent of the energy required for the seawater air
5 conditioning district cooling system is provided
6 by a renewable energy resource, such as cold,
7 deep seawater.

8 If the application of this chapter is ordered by the
9 commission in any case provided in paragraphs (2) (C), (2) (D),
10 (2) (H), and (2) (I), the business of any public utility that
11 presents evidence of bona fide operation on the date of the
12 commencement of the proceedings resulting in the order shall be
13 presumed to be necessary to public convenience and necessity,
14 but any certificate issued under this proviso shall nevertheless
15 be subject to such terms and conditions as the commission may
16 prescribe, as provided in sections 269-16.9 and 269-20.

17 "Taxicab" means and includes:

18 (1) Any motor vehicle used in the movement of passengers
19 on the public highways under the following
20 circumstances, namely, the passenger hires the vehicle
21 on call or at a fixed stand, with or without baggage

1 for transportation, and controls the vehicle to the
2 passenger's destination; and
3 (2) Any motor vehicle having seating accommodations for
4 eight or less passengers used in the movement of
5 passengers on the public highways between a terminal,
6 i.e., a fixed stand, in the city of Honolulu, and a
7 terminal in a geographical district outside the limits
8 of the city of Honolulu, and vice versa, without
9 picking up passengers other than at the terminals or
10 fixed stands; provided that passengers may be unloaded
11 at any point between terminals; and provided further
12 that this definition relating to motor vehicles
13 operating between terminals shall pertain only to
14 those motor vehicles whose operators or owners were
15 duly licensed (under section 445-222 and any other
16 applicable provision of law or ordinance) and doing
17 business between such terminals on January 1, 1957.

18 "Telecommunications carrier" or "telecommunications common
19 carrier" means any person that owns, operates, manages, or
20 controls any facility used to furnish telecommunications
21 services for profit to the public, or to classes of users as to
22 be effectively available to the public, engaged in the provision

1 of services, such as voice, data, image, graphics, and video
2 services, that make use of all or part of their transmission
3 facilities, switches, broadcast equipment, signalling, or
4 control devices.

5 "Telecommunications service" or "telecommunications" means
6 the offering of transmission between or among points specified
7 by a user, of information of the user's choosing, including
8 voice, data, image, graphics, and video without change in the
9 form or content of the information, as sent and received, by
10 means of electromagnetic transmission, or other similarly
11 capable means of transmission, with or without benefit of any
12 closed transmission medium, and does not include cable service
13 as defined in section 440G-3."

14 SECTION 47. Section 269-16, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§269-16 Regulation of utility rates; ratemaking**
17 **procedures.** (a) All rates, fares, charges, classifications,
18 schedules, rules, and practices made, charged, or observed by
19 any public utility, or by two or more public utilities jointly,
20 shall be just and reasonable and shall be filed with the public
21 utilities commission. The rates, fares, classifications,
22 charges, and rules of every public utility shall be published by

1 the public utility in such manner as the public utilities
2 commission may require, and copies furnished to any person on
3 request.

4 To the extent the contested case proceedings referred to in
5 chapter 91 are required in any rate proceeding in order to
6 ensure fairness and to provide due process to parties which may
7 be affected by rates approved by the commission, such
8 evidentiary hearings shall be conducted expeditiously and shall
9 be conducted as a part of the ratemaking proceeding.

10 (b) No rate, fare, charge, classification, schedule, rule,
11 or practice, other than one established pursuant to an automatic
12 rate adjustment clause previously approved by the commission,
13 shall be established, abandoned, modified, or departed from by
14 any public utility, except after thirty days' notice as
15 prescribed in section 269-12(b) to the commission and prior
16 approval by the commission for any increases in rates, fares, or
17 charges. The commission may, in its discretion and for good
18 cause shown, allow any rate, fare, charge, classification,
19 schedule, rule, or practice to be established, abandoned,
20 modified, or departed from upon notice less than that provided
21 for in section 269-12(b). A contested case hearing shall be
22 held in connection with any increase in rates and such hearing

1 shall be preceded by a public hearing as prescribed in section
2 269-12(c) at which the consumers or patrons of the public
3 utility may present testimony to the commission concerning the
4 increase. The commission, upon notice to the public utility,
5 may suspend the operation of all or any part of the proposed
6 rate, fare, charge, classification, schedule, rule, or practice
7 or any proposed abandonment or modification thereof or departure
8 therefrom and after a hearing by order regulate, fix, and change
9 all such rates, fares, charges, classifications, schedules,
10 rules, and practices, so that the same shall be just and
11 reasonable and prohibit rebates and unreasonable discrimination
12 between localities, or between users or consumers, under
13 substantially similar conditions, regulate the manner in which
14 the property of every public utility is operated with reference
15 to the safety and accommodation of the public, prescribe its
16 form and method of keeping accounts, books, and records, and its
17 accounting system, regulate the return upon its public utility
18 property, the incurring of indebtedness relating to its public
19 utility business, and its financial transactions and do all
20 things in addition which are necessary and in the exercise of
21 such power and jurisdiction, all of which as so ordered,
22 regulated, fixed, and changed shall be just and reasonable, and

1 such as shall provide a fair return on the property of the
2 utility actually used or useful for public utility purposes.

3 (c) The commission may in its discretion and after public
4 hearing, upon showing by a public utility of probable
5 entitlement and financial need, authorize temporary increases in
6 rates, fares, and charges; provided that the commission shall by
7 order require the public utility to return in the form of an
8 adjustment to rates, fares, or charges to be billed in the
9 future any amounts, with interest at a rate equal to the rate of
10 return on such public utility's rate base found to be reasonable
11 by the commission, received by reason of such continued
12 operation which are in excess of the rates, fares, or charges
13 finally determined to be just and reasonable by the commission.
14 Interest on any such excess shall commence as of the date that
15 any rate, fare, or charge goes into effect which results in any
16 such excess and shall continue to accrue on the balance of any
17 such excess until returned.

18 (d) By December 31, 2007, to share the risks of reliance
19 on oil fired generation, the commission shall determine whether
20 the fuel adjustment clause shall be eliminated, or the
21 commission shall establish ratemaking provisions that amend the

1 fuel adjustment clause to share oil cost increases and decreases
2 between utility shareholders and utility customers.

3 (e) If the commission determines that the fuel adjustment
4 clause shall not be eliminated, it shall be amended. Ratemaking
5 shall set the percentage of changes in fuel prices that may be
6 automatically passed through the fuel adjustment clause.

7 (f) Should the commission conduct ratemaking to amend the
8 fuel adjustment clause, the long-term price for fossil fuels
9 that is used to define base rates shall be consistent with the
10 long-term price of fossil fuels that is used to determine the
11 long-term price for renewables as defined in section 269-27.2.

12 [~~d~~] (g) The commission shall make every effort to
13 complete its deliberations and issue its decision as
14 expeditiously as possible and before nine months from the date
15 the public utility filed its completed application; provided
16 that in carrying out this mandate the commission shall require
17 all parties to a proceeding to comply strictly with procedural
18 time schedules which it establishes. If a decision is rendered
19 after the nine-month period, the commission shall in writing
20 report the reasons therefor to the legislature within thirty
21 days after rendering the decision.

1 Notwithstanding subsection (c), if the commission has not
2 issued its final decision on a public utility's rate application
3 within the nine-month period stated in this section, the
4 commission shall within one month after the expiration of the
5 nine-month period render an interim decision allowing the
6 increase in rates, fares, and charges, if any, to which the
7 commission, based on the evidentiary record before it, believes
8 the public utility is probably entitled. The commission may
9 postpone its interim rate decision thirty days if the commission
10 considers the evidentiary hearings incomplete. In the event
11 interim rates are made effective, the commission shall by order
12 require the public utility to return in the form of an
13 adjustment to rates, fares, or charges to be billed in the
14 future any amounts, with interest at a rate equal to the rate of
15 return on such public utility's rate base found to be reasonable
16 by the commission, received under such interim rates which are
17 in excess of the rates, fares, or charges finally determined to
18 be just and reasonable by the commission. Interest on any such
19 excess shall commence as of the date that any rate, fare, or
20 charge goes into effect which results in any such excess and
21 shall continue to accrue on the balance of any such excess until
22 returned.

1 The nine-month period in this subsection shall begin only
2 after a completed application has been filed with the commission
3 and a copy served on the consumer advocate. The commission
4 shall establish standards concerning the data required to be set
5 forth in the application in order for it to be deemed a
6 completed application. The consumer advocate may within twenty-
7 one days after receipt object to the sufficiency of any
8 application and the commission shall hear and determine any such
9 objection within twenty-one days after the same is filed. If
10 the commission finds that the objections are without merit, the
11 application shall be deemed to have been completed upon original
12 filing. If the commission finds the application to be
13 incomplete, it shall require the applicant to submit an amended
14 application consistent with its findings and the nine-month
15 period shall not commence until the amended application is
16 filed.

17 ~~(e)~~ (h) In any case of two or more organizations,
18 trades, or businesses (whether or not incorporated, whether or
19 not organized in the State of Hawaii, and whether or not
20 affiliated) owned or controlled directly or indirectly by the
21 same interests, the commission may distribute, apportion, or
22 allocate gross income, deductions, credits, or allowances

1 between or among the organizations, trades, or businesses, if it
2 determines that the distribution, apportionment, or allocation
3 is necessary in order to adequately reflect the income of any
4 such organizations, trades, or businesses to carry out the
5 regulatory duties imposed by this section.

6 ~~[(f)]~~ (i) Notwithstanding any law to the contrary, for
7 public utilities having annual gross revenues of less than
8 \$2,000,000, the commission may make and amend its rules and
9 procedures which will provide the commission with sufficient
10 facts necessary to determine the reasonableness of the proposed
11 rates without unduly burdening the utility company and its
12 customers. In the determination of the reasonableness of the
13 proposed rates, the commission shall:

14 (1) Require the filing of a standard form
15 application to be developed by the
16 commission. The standard form application
17 for general rate increases shall describe
18 the specific facts that must be submitted to
19 support a determination of the
20 reasonableness of the proposed rates, and
21 require the submission of financial
22 information in conformance with a standard

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1 chart of accounts to be approved by the
2 commission, and other commission guidelines
3 to allow expeditious review of a requested
4 general rate increase application;

5 (2) Hold a public hearing as prescribed in
6 section 269-12(c) at which the consumers or
7 patrons of the public utility may present
8 testimony to the commission concerning the
9 increase. The public hearing shall be
10 preceded by proper notice, as prescribed in
11 section 269-12; and

12 (3) Make every effort to complete its
13 deliberations and issue a proposed decision
14 and order within six months from the date
15 the public utility files a completed
16 application with the commission, provided
17 that all parties to the proceeding strictly
18 comply with the procedural schedule
19 established by the commission and no person
20 is permitted to intervene. If a proposed
21 decision and order is rendered after the
22 six-month period, the commission shall

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1 report in writing the reasons therefor to
2 the legislature within thirty days after
3 rendering the proposed decision and order.
4 Prior to the issuance of the commission's
5 proposed decision and order, the parties
6 shall not be entitled to a contested case
7 hearing.

8 If all parties to the proceeding accept the
9 proposed decision and order, the parties
10 shall not be entitled to a contested case
11 hearing, and section 269-15.5 shall not
12 apply. If the commission permits a person
13 to intervene, the six-month period shall not
14 apply and the commission shall make every
15 effort to complete its deliberations and
16 issue its decision within the nine-month
17 period from the date the public utility's
18 completed application was filed, pursuant to
19 subsections (b), (c), and ~~[(d)]~~ (g).

20 If a party does not accept the proposed
21 decision and order, either in whole or in
22 part, that party shall give notice of its

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1 objection or nonacceptance within the
2 timeframe prescribed by the commission in
3 the proposed decision and order, setting
4 forth the basis for its objection or
5 nonacceptance; provided that the proposed
6 decision and order shall have no force or
7 effect pending the commission's final
8 decision. If notice is filed, the above
9 six-month period shall not apply and the
10 commission shall make every effort to
11 complete its deliberations and issue its
12 decision within the nine-month period from
13 the date the public utility's completed
14 application was filed as set forth in
15 subsection ~~[(d)-]~~ (g). Any party that does
16 not accept the proposed decision and order
17 under this paragraph shall be entitled to a
18 contested case hearing; provided that the
19 parties to the proceeding may waive the
20 contested case hearing.

21 Public utilities subject to this subsection
22 shall follow the standard chart of accounts

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1 to be approved by the commission for
2 financial reporting purposes. The public
3 utilities shall file a certified copy of the
4 annual financial statements in addition to
5 an updated chart of accounts used to
6 maintain their financial records with the
7 commission and consumer advocate within
8 ninety days from the end of each calendar or
9 fiscal year, as applicable, unless this
10 timeframe is extended by the commission.
11 The owner, officer, general partner, or
12 authorized agent of the utility shall
13 certify that the reports were prepared in
14 accordance with the standard chart of
15 accounts."

16 SECTION 48. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$200,000, or so much
18 thereof as may be necessary for fiscal year 2006-2007, to
19 complete a comprehensive inventory of state lands available for
20 renewable energy, and establish renewable energy resource
21 development sub-zones, consider streamlining the permitting for
22 said sub-zones, to encourage and facilitate renewable energy

1 development and attract private investment. The sum
2 appropriated shall be expended by the department of land and
3 natural resources.

4 SECTION 49. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$150,000, or so much
6 thereof as may be necessary, for fiscal year 2006-2007 to
7 provide assistance to the agricultural community interested in
8 developing energy projects, especially by the production of
9 renewable energy from energy crops and agricultural waste
10 streams, and in seeking funding available from the U.S.
11 Departments of Agriculture and Energy, and other external
12 sources. The sum appropriated shall be expended by the
13 department of agriculture for the purposes of this part.

14 PART V. Hawaii Renewable Hydrogen Program

15 SECTION 50. The Hawaii Revised Statutes is amended by
16 adding a new section to be appropriately designated and to read
17 as follows:

18 "§ -1. Hawaii renewable hydrogen program. (a) There is
19 established within the department of business, economic
20 development, and tourism, a Hawaii renewable hydrogen program,
21 to coordinate the State's transition to a renewable hydrogen

1 economy. Towards this goal, the program shall plan, implement,
2 and conduct activities including but not limited to:

- 3 (1) Establishment of strategic partnerships with the
4 private sector; the federal government; national and
5 international organizations, such as national
6 laboratories and universities; other states; and
7 Hawaii stakeholders for research, development,
8 testing, and deployment of renewable hydrogen
9 technologies;
- 10 (2) Engineering and economic studies to define Hawaii's
11 potential for renewable hydrogen and evaluate near-
12 term project opportunities presented by the State's
13 available renewable resources;
- 14 (3) Electric grid reliability and security projects that
15 will enable integration of extensive renewable
16 electricity on the island of Hawaii;
- 17 (4) Hydrogen demonstration projects, including
18 infrastructure for the production, storage, and
19 refueling of hydrogen vehicles;
- 20 (5) A statewide hydrogen economy public education and
21 outreach plan, focusing on the island of Hawaii, to be

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- 1 developed in coordination with Hawaii's public
2 education institutions;
- 3 (6) Promotion of Hawaii's renewable hydrogen assets and
4 project opportunities to potential partners and
5 investors;
- 6 (7) A plan, for implementation during 2007-2010, to more
7 fully deploy hydrogen technologies and infrastructure
8 capable of supporting the island of Hawaii's fuel
9 needs, including but not limited to:
- 10 (A) Expanded installation of hydrogen production
11 facilities;
- 12 (B) Development of integrated energy systems
13 including hydrogen vehicles;
- 14 (C) Construction of additional hydrogen refueling
15 stations; and
- 16 (D) Encouragement of building design and construction
17 that fully incorporates clean energy assets,
18 including reliance on hydrogen-fueled distributed
19 generation.
- 20 (8) A plan, for implementation during 2010-2020, to
21 transition the island of Hawaii to a hydrogen-fueled

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1 economy by 2020, and to initiate that model throughout
2 the State; and
3 (9) Evaluation of policy instruments and development, in
4 coordination with program partners, of policy
5 recommendations to encourage the adoption of hydrogen-
6 fueled vehicles, to continually replenish the hydrogen
7 investment capital special fund, and to support
8 investment in hydrogen infrastructure, including
9 production, storage, and dispensing facilities."

10 SECTION 51. The Hawaii Revised Statutes is amended by
11 adding a new section to be appropriately designated and to read
12 as follows:

13 "§211-F. Hydrogen investment capital special fund. (a)

14 There shall be established the hydrogen investment capital
15 special fund into which shall be deposited:

- 16 (1) Appropriations made by the legislature to the fund;
17 (2) All contributions from public or private partners;
18 (3) All interest earned on or accrued to moneys deposited
19 in the special fund; and
20 (4) Any other moneys made available to the special fund
21 from other sources.

22 (b) Moneys in the fund shall be used to:

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- 1 (1) Seed private sector and federal projects for research,
2 development, testing, and deployment of renewable
3 hydrogen systems in Hawaii;
- 4 (2) Pay reasonable expenses incurred by fund advisory
5 board members in the execution of their relevant
6 duties; and
- 7 (3) For any other purpose deemed necessary to carry out
8 the purposes of this section.

9 (c) Investment of the hydrogen investment capital special
10 fund in hydrogen projects shall be made with the advice and
11 assistance of an advisory board of experts and knowledgeable
12 individuals, who shall be appointed by the director of the
13 department of business, economic development, and tourism, to
14 help the State develop projects and partnerships with industry
15 and the federal government.

16 SECTION 52. (a) There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$750,000, or so much
18 thereof as may be necessary, for fiscal year 2006-2007 to carry
19 out the purposes of this part, of which \$250,000 shall be
20 allocated to three permanent full-time equivalent (3.0 FTE)
21 professional positions including a hydrogen program manager,
22 hydrogen program specialist, and hydrogen project specialist.

1 The sum appropriated shall be expended by the department of
2 business, economic development, and tourism.

3 (b) There is appropriated out of the general revenues of
4 the State of Hawaii the sum of \$10,000,000 for fiscal year 2006-
5 2007 to be paid into the hydrogen investment capital special
6 fund to carry out the purposes of section 51. The sum
7 appropriated shall be expended by department of business,
8 economic development, and tourism.

9 SECTION 53. (a) There is appropriated out of the hydrogen
10 investment capital special fund the sum of \$10,000,000, or so
11 much thereof as may be necessary, for fiscal year 2006-2007 to
12 be used for the purposes of the hydrogen investment capital
13 special fund.

14 PART VI.

15 SECTION 54. The director of business, economic
16 development, and tourism, in the director's role as both
17 Hawaii's chief business advocate and the state energy resources
18 coordinator, shall be responsible to facilitate and coordinate
19 the State's efforts to implement and effectuate the purposes of
20 this Act. Accordingly, the director of business, economic
21 development, and tourism, supported by relevant department
22 staff, shall develop and establish formal and informal

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1 procedures and mechanisms for efficient and effective
2 coordination and collaboration with, and among the departments
3 of taxation, transportation, land and natural resources,
4 agriculture, budget and finance, and accounting and general
5 services, and other relevant federal, state, and county
6 government agencies and stakeholders for this purpose. State
7 agencies named herein and those involved at the request of the
8 director of business, economic development, and tourism shall
9 cooperate and provide support to the fullest possible extent to
10 effectuate the purposes of this Act.

11 SECTION 55. In codifying the new sections added by this
12 Act, the revisor of statutes shall substitute appropriate
13 section numbers for the letters used in designating the new
14 sections in this Act.

15 SECTION 56. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 57. This Act shall take effect upon its approval.

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INTRODUCED BY:  _____

BY REQUEST

JUSTIFICATION SHEET

SB. NO. 2271

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO ENERGY.

PURPOSE: To comprehensively address Hawaii's decades-long overdependence on imported oil for its energy by establishing a bold, strategic energy policy framework of integrated measures to encourage and support market-based development of reliable, cost-effective, more self-reliant energy systems. The bill's integrated, coordinated, and complementary measures constitute a network of policy pathways to achieve results over the near-, mid-, and long-term to enable Hawaii to attain a niche leadership role in the global hydrogen energy economy, by accelerating the development of the State's own indigenous, renewable energy resources to achieve this energy vision. The bill's parts and overall purposes are:

- Part II. Improve petroleum and energy industry and market transparency and competition, and energy system information reporting and analyses.
- Part III. Develop and increase use of alternative transportation fuels.
- Part IV. Increase energy efficiency and use of renewable energy resources.
- Part V. Establish a Hawaii renewable hydrogen energy program.

PART II: To repeal wholesale gasoline price caps and Hawaii's service station anti-encroachment laws (divorcement), and institute a state watchdog system to monitor and increase oversight of the petroleum industry and gasoline market as a meaningful alternative to gasoline price controls.

To improve energy system-wide data and analytic capabilities, shared among the State's energy-related agencies - Department of Business, Economic Development, and Tourism, Public Utilities Commission, and Consumer Advocate - to

provide accurate, high-quality information for informed policy and regulatory decisions, and programmatic assessments of renewable energy, energy efficiency, and fossil fuels in all sectors, previously unavailable on a systematic basis.

PART III: To reduce dependence on petroleum fuels for Hawaii's ground transportation needs by directing state fleets to procure energy efficient and alternatively fueled vehicles; establishing a renewable fuels standard of 20 per cent by 2020; providing incentives for purchasers of alternative fuel and energy efficient vehicles; establishing a biofuels preference; extending the general excise tax exemption for alcohol fuels; and appropriating funds for a statewide biofuels assessment.

PART IV: To increase energy efficiency in state facilities by supporting sustainable design guidelines; purchasing of energy efficient equipment and environmentally preferable products; and implementing reuse, recycle, and reduce practices. To increase the use of renewable energy resources by identifying state assets that can be used to facilitate renewable energy development and investment; to increase assistance to the agricultural community for developing renewable energy projects from energy crops and agricultural waste streams; to amend various statutes pertaining to renewable energy tax credits, renewable portfolio standards and other provisions related to the public utilities commission; and to streamline the permitting of renewable energy projects.

PART V: To establish a world-class, Hawaii renewable hydrogen program, sustainable over the longer-term, to attract significant public and private sector investment in research and development, testing, and commercialization projects; to appropriate funds for program support; and to establish three permanent full-time equivalent professional positions, to organize, develop, and conduct program

activities, including formation of private/public strategic partnerships.

MEANS:

PART II: Add four new sections to chapter 486J, Hawaii Revised Statutes (HRS); amend sections 486H-10.4, 486H-10.5, 486H-11, 486J-1, 486J-2, 486J-3, 486J-4, 486J-5, 486J-6, 486J-7, 486J-8, 486J-9, and 486J-10, HRS; and repeal sections 486H-13, 486H-15, 486H-16, and 486J-12, HRS.

PART III: Add new sections to chapters 103D and 286, HRS; amend sections 103D-412, 226-18, and 237-27.1, HRS; and appropriate \$200,000 in Fiscal Year 2006-2007 for a statewide biofuels assessment.

PART IV: Add a new section to chapter 226, five new sections to chapter 269, and a new section to 269-16, HRS; amend sections 235-12.5, 269-16, 269-27.2, 269-91, 269-92, and 269-95, HRS; repeal sections 196-8, 196-12, 196-13, 196-14, 196-15, 196-16, 196-17, 196-18, 196-19, 196-20, 196-21, 196-22, 196-23, 196-24, 196-25, 196-26, 196-27, 196-28, 196-29, and 269-94, HRS; amend Act 207, Session Laws of Hawaii 2003; and appropriate \$630,000 in Fiscal Year 2006-2007 for two positions and technical and other assistance; appropriate \$200,000 in Fiscal Year 2006-2007 for a statewide inventory of renewable energy resources; and appropriate \$150,000 in Fiscal Year 2006-2007 to provide assistance to the agricultural community interested in developing energy projects, especially those utilizing energy crops and agricultural waste streams for renewable energy production.

PART V: Add two new sections to be appropriately designated in HRS; and appropriate \$750,000 in Fiscal Year 2006-2007 to carry out the purposes of the Hawaii renewable hydrogen program, and \$10,000,000 in Fiscal Year 2006-2007 to be paid into and appropriated out of the hydrogen investment capital special fund.

JUSTIFICATION: A comprehensive, integrated approach is needed to move Hawaii towards its preferred energy future.

PART II: A petroleum industry "watchdog" monitoring system of data acquisition, analysis, and reporting instituted by the department of business, economic development, and tourism (DBEDT) will result in greater market and industry transparency. This system would be designed to produce price, product, and profit data and information for enforcement agencies' scrutiny and use. It would also provide other important value-added data and information appropriate for use by various end-users, like policymakers and the public.

Further, there is no evidence that restrictions on the vertical integration of gasoline refiners and wholesalers, and retailers, first instituted in Hawaii in 1991, has led to lowering Hawaii's gasoline prices. In 2000, a Federal Trade Commission staff analysis instead found evidence that these divorcement policies actually sacrifice market efficiencies and harm consumers, because they have raised gasoline prices. This econometric analysis examined the effects of divorcement policies in Hawaii, Connecticut, Delaware, Maryland, Nevada, Virginia, and the District of Columbia. The analysis concluded that divorcement added about 2.7¢ cents per gallon at retail (self-serve) on regular unleaded gasoline, costing consumers an estimated \$100,000,000 annually.

PART III: Hawaii has abundant renewable transportation fuel potential. Ethanol, biodiesel, and hydrogen are all renewable fuels that can be made in Hawaii from locally-available agricultural or even waste materials.

The State can lead by example by using biodiesel fuel when available.

Providing incentives for energy-efficient and alternative fuel vehicles can reduce the overall demand for gasoline and contribute to the energy efficiency, diversity, and energy security of Hawaii's transportation sector.

Improving the energy efficiency of state vehicle fleets and enabling the fleets to be able to use a variety of renewable fuels and energy sources can reduce the fuel costs for state government fleets while complying with federal requirements for the purchase of alternative fuel vehicles, supporting and encouraging local renewable fuel production, and ultimately lessening the fiscal and other impacts of potential future fossil fuel shortages or price spikes.

Establishing energy diversity as a goal, streamlining state permitting for renewable energy projects, and supporting a renewable fuels standard of 20 per cent by 2020 can lead Hawaii towards a more diverse and resilient energy resource base. At historical rates of increase in demand, a 20 per cent renewable fuels standard by 2020 would simply capture the projected growth in ground transportation fuel demand by meeting the projected increase with renewable resources.

Delaying the sunset date for the excise tax exemption for the sale of alcohol fuels can provide an incentive for retailers and a benefit to consumers for the use of alcohol fuels.

A statewide multi-fuel biofuels production assessment can provide a longer term and more comprehensive evaluation of potential feedstocks, technologies, and economics of the various renewable fuels pathways, and can facilitate the development of local fuels production capabilities.

PART IV: If agencies are properly funded to conduct retrofits using energy efficient equipment, the State facilities could reduce consumption by 14 per cent and save about \$10 million/yr. If agencies are provided sufficient funding for new buildings to design to Leadership in Energy and Environmental Design (LEED), Silver Standard, the added costs for new facilities would be about 5 per cent to 10 per cent per new facility, but the operating costs would be reduced by 30 per cent. State agencies also will continue and strengthen programs for efficient

vehicles and alternative transportation fuels, recycling, and environmentally preferable purchasing.

For every \$1 in tax credits paid, \$1.82 in tax revenues is generated for solar water heating which presently constitutes about 100 per cent of the tax credits claimed.

Renewable technologies have a higher installation cost, therefore, tax credits are essential to level the playing/paying field for renewable-fueled technologies to compete against fossil-fueled technologies.

Changes to the renewable energy tax credits are estimated to increase tax credits payout by \$1.75 million. The payout would include \$1.5 million for the increased number of commercial photovoltaic installations and \$250,000 per year for increased residential photovoltaic installations. (Between 2001 and 2004, 46 net metered residential photovoltaic systems were installed statewide. If that number were to be installed in a single year, at an estimated net cost after the federal tax credit of \$15,000, the revenue impact would be \$241,500.) The tax impact for multi-unit residential solar water heaters is not expected to be significant.

For the State to achieve its renewable energy goals, a concerted effort by all agencies is needed to facilitate development and investment. The measure funds the identification of appropriate state lands under the management of the Department of Land and Natural Resources, development of subzones, and consideration of a streamlined permit process. The Department of Agriculture does not have the resources to provide assistance to the agricultural community interested in developing energy projects. The measure provides the means for increased support for development of renewable energy in the agricultural community.

PART V: Hawaii must aggressively pursue the development and deployment of advanced hydrogen

technologies to more fully utilize the State's renewable energy assets and transition Hawaii to an indigenous-based energy economy. A hydrogen investment capital special fund will stimulate local and off-shore interest in Hawaii, create a competitive flow of projects and proposals in hydrogen technologies, and generally "put Hawaii on the map" as a serious player in the hydrogen technology industry.

Impact on the public:

PART II: The watchdog system will create greater market transparency of the petroleum industry, using detailed industry and market data and information that have previously been unavailable on a systematic basis. It would give legislators and policymakers a deeper understanding of the market for more informed policy analysis and decision-making. The public can use this information to make informed, competitive fuel purchase decisions.

PART III: Diversifying the fuels available for use in the transportation sector has the potential to provide not only fuel security, but also price stability, waste diversion, support for rural economies, and job creation. A 2003 study commissioned by the Department of Business, Economic Development, and Tourism projected that an ethanol industry of 90,000,000 gallons per year "could add as much as \$300,000,000 to the local economy in direct and indirect value." With recent increases in energy costs, the relative values of local fuel production industries, and the potential for locally-produced fuels to significantly reduce fuel costs to motorists, have improved significantly. The study did not quantify the potential benefits from biodiesel or hydrogen production; such a study is proposed in this legislation.

The extension of the excise tax exemption on the sale of alcohol fuels beyond the current sunset date of December 31, 2006, will provide an additional three years of reduced fuel costs for

consumers of ethanol-blended fuels (E-10 Unleaded).

Advanced technology energy-efficient vehicles and alternative fuel vehicles could help to reduce the impact of fuel price impacts or supply problems on Hawaii's drivers, in direct proportion to the extent that vehicles and fuels are fully incorporated into Hawaii's transportation sector. In addition to direct benefits to users of the alternative fuel or advanced technology energy efficient vehicles, the public benefits from reduced emissions of pollution, including carbon dioxide, and reduced price pressures on limited supplies of petroleum fuels.

PART IV:

Present solar installations save:

- 4 Million Barrels of Oil,
- 2 Million Tons of Carbon Dioxide (CO₂),
- 6,000 Tons of Nitrous Oxide (NO_x),
- 3,600 Tons of Sulfur Dioxide (SO_x),
- 360 Tons of Particulate Matter (PM₁₀),
- \$240 million for Hawaii residents to spend on other goods and services, and have
- Created over 700 jobs.

In an effort to encourage renewable energy projects in Hawaii, priority handling and processing, and expedited action on all state agency permits required for renewable energy projects would result from adding a provision to the State Energy Objectives. Assistance will be provided to the agricultural community interested in developing renewable energy resources and seeking external funding for these projects.

The Sustainable Energy Efficiency and Renewable Energy Public Benefits Fund would result from the redirection of the demand side management surcharge currently collected by the electric utility companies. A large majority of the surcharge would be dedicated to fund programs and initiatives to promote the use of energy efficient and renewable energy products to reduce our State's dependence on oil. The Public

Benefit Fund will achieve significant energy savings as it directly promotes the use of energy efficient and renewable energy products and methods.

Increased use of renewable energy will improve energy security by reducing oil use, reduce the cost of electricity, provide additional jobs, and help protect Hawaii's environment by reducing air pollution, greenhouse gas emissions, and the risk of oil spills. By setting reasonable rates for utility purchases of renewable energy from independent power producers, Hawaii electricity customers will share the economic benefits of the lower cost of many renewable energy technologies relative to oil. In addition, by no longer completely shielding the utilities from escalating oil prices, they will have additional incentive to reduce oil use. Additional provisions of these sections provide focus on renewable energy generation, by removing energy efficiency related aspects of previous renewable energy definition. These sections also provide for incentives and penalties to utilities to encourage compliance.

PART V:

- Reduce state's dependence on imported fuels,
- Stabilize energy prices and supplies,
- Ensure economic and energy security,
- Attract capital investment,
- Develop a skilled workforce in advanced energy technologies, and
- Achieve world leadership in the development of a hydrogen economy.

Impact on the department and other agencies:

PART II: The watchdog system will provide enforcement agencies (e.g., Departments of Taxation (DoTax), and the Attorney General (AG)) detailed industry information, previously unavailable to them on a systematic basis.

Improved energy-system wide data and analytic capabilities, shared among the states energy-related agencies - Department of Business,

Economic Development, and Tourism, Public Utilities Commission, and Consumer Advocate -- will provide accurate, high-quality information for informed policy and regulatory decisions, and programmatic assessments of renewable energy, energy efficiency, and fossil fuels in all sectors, previously unavailable on a systematic basis.

PART III: The most significant impact is to the Department of Taxation, and is caused by the extension of the exemption of excise taxes on alcohol fuels beyond the current sunset date of December 31, 2006. The extent of the impact is dependent on the cost of gasoline. (See above, "Impact on the public.")

This bill provides a benefit to all state agencies which are subject to federal requirements to purchase alternative fueled vehicles, by allowing them to comply with the federal requirement (10 CFR Part 490).

PART IV: Agencies charged with building and maintaining facilities will need increased budgets to build or to renovate new facilities. Improved facilities which are more energy efficient will result in reduced monthly utility costs. There will be an increased number of tax credit claims for Department of Taxation.

Revisions to various sections of the Hawaii Revised Statutes will support and enhance the ability of the DBEDT Director to fulfill his statutory responsibilities as the State Energy Resources Coordinator under chapter 196, HRS and to support the State Energy Objectives and Policies set forth in chapter 226-18, HRS.

The Department of Land and Natural Resources will be required to complete a comprehensive inventory of state lands available for renewable energy, establish renewable energy resource development sub-zones, and consider streamlining the permitting for said sub-zones. The Department of Agriculture will be required to provide assistance to the agricultural community

interested in developing renewable energy resources and seeking external funding for these projects.

PART V: Establishment of the Hawaii renewable hydrogen program within DBEDT, with three permanent full-time equivalent professional positions. Creation of Hydrogen Investment Capital Special Fund and capacity to attract public and private sector investment in Hawaii.

GENERAL FUND:

PART III: \$200,000 for Biomass Assessment.

PART IV: \$630,000 for Energy Efficiency in State Facilities program support. \$200,000 for inventory of state lands available for renewable energy. \$150,000 for assistance to the agricultural community interested in developing energy projects, especially by the production of renewable energy from energy crops and agricultural waste streams.

PART V: \$750,000.00 for Hawaii Renewable Hydrogen program support. There is appropriated out of the Hydrogen Investment Capital Special Fund the sum of \$10,000,000, or so much thereof as may be necessary, for Fiscal Year 2006-2007 to be used for the purposes of the Hydrogen Investment Capital Special Fund.

The general fund recommendation included in this measure has been made in accordance with the statutorily defined appropriation ceiling for the executive branch pursuant to section 37-92, Hawaii Revised Statutes. Including appropriations made up to and including the regular and special sessions of 2005 and the Executive Supplemental Budget for Fiscal Year 2006-2007, the executive branch appropriation ceiling for Fiscal Year 2006-2007 has already been exceeded by \$103.6 million, or 2.1 per cent. Funding requested in this measure for a biomass assessment, technical assistance, Hawaii renewable hydrogen program support, and the Hydrogen Investment Capital Special Fund will result in the appropriation ceiling for the

executive branch to now be exceeded in Fiscal Year 2006-2007 by \$11,930,000, or 0.245 percent. This current declaration takes into account additional general fund appropriations authorized for FY 2006-2007 in this measure only, and does not include other general fund appropriations for Fiscal Year 2006-2007 that may be authorized for the executive branch in other legislation submitted to the Legislature during the regular session of 2006.

OTHER FUNDS:

PPBS PROGRAM

DESIGNATION: BED-120AD

OTHER AFFECTED

AGENCIES: Accounting and General Services, Agriculture, Attorney General, Budget and Finance, Consumer Advocate, Education, Health, Land and Natural Resources, Public Utilities Commission, Taxation, Transportation, County of Hawaii, and University of Hawaii. Other agencies charged with building and renovating facilities.

EFFECTIVE

DATE: General provisions: Upon approval.
Tax measures: As identified in relevant sections.