
A BILL FOR AN ACT

RELATING TO GASOLINE.

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

1 SECTION 1. Section 486H-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§486H-13 Maximum pre-tax wholesale price for the sale of**
4 **gasoline; civil actions.** (a) Notwithstanding any law to the
5 contrary, no manufacturer, wholesaler, or jobber may sell
6 regular unleaded, mid-grade, or premium gasoline to a dealer
7 retail station, an independent retail station, or to another
8 jobber or wholesaler at a price above the maximum pre-tax
9 wholesale prices established pursuant to subsection (b). The
10 commission shall publish the maximum pre-tax wholesale prices by
11 means that shall include the Internet website for the State of
12 Hawaii.

13 (b) On a weekly basis, the commission shall determine the
14 maximum pre-tax wholesale price of regular unleaded, mid-grade,
15 and premium gasoline as follows: the maximum pre-tax wholesale
16 price of regular unleaded gasoline shall consist of the baseline
17 price for regular unleaded gasoline, plus the location
18 adjustment factor, the marketing margin factor, and the zone



1 price adjustment, and for mid-grade and premium gasoline, the
2 applicable mid-grade and premium adjustment factor, such that
3 the maximum pre-tax wholesale gasoline prices reflect and
4 correlate with competitive market conditions.

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

- 11 (1) The weekly average of the spot daily price for
12 conventional regular unleaded gasoline for Los
13 Angeles;
- 14 (2) The weekly average of the spot daily price for
15 conventional regular unleaded gasoline for New York
16 Harbor; ~~and~~
- 17 (3) The weekly average of the spot daily price for
18 conventional regular unleaded gasoline for the United
19 States Gulf Coast; and
- 20 (4) The weekly average of the spot daily price for
21 conventional regular unleaded gasoline for Singapore;



1 as reported and published by the Oil Price Information Service
2 for the five business days of the preceding week; provided that
3 if the preceding week contains a holiday, then the average of
4 the four business days of the preceding week shall be used; and
5 provided further that the commission, in its discretion, may
6 determine a more appropriate baseline or a more appropriate
7 price information reporting service[+] or use multiple price
8 information reporting services.

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

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

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

21 (g) The premium adjustment factor shall be \$.09 per gallon
22 or as otherwise determined by the commission and shall



1 thereafter be subject to adjustment pursuant to section 486H-
2 16(a).

3 (h) For purposes of this chapter, the State shall be
4 divided into the following zones:

- 5 (1) Zone 1 shall include the island of Oahu;
- 6 (2) Zone 2 shall include the island of Kauai;
- 7 (3) Zone 3 shall include the island of Maui, except the
8 district of Hana;
- 9 (4) Zone 4 shall include the district of Hana on the
10 island of Maui;
- 11 (5) Zone 5 shall include the island of Molokai;
- 12 (6) Zone 6 shall include the island of Lanai;
- 13 (7) Zone 7 shall include the districts of Puna, south
14 Hilo, north Hilo, and Hamakua on the island of Hawaii;
15 and
- 16 (8) Zone 8 shall include the districts of north Kohala,
17 south Kohala, north Kona, south Kona, and Kau on the
18 island of Hawaii.

19 (i) The commission shall establish zone price adjustments
20 to the maximum pre-tax wholesale regular unleaded, mid-grade,
21 and premium gasoline prices on a zone by zone basis[-]; provided

1 that zone 1 shall be considered the base with no further
2 adjustment.

3 (j) The zone adjustments for zones 2 through 8, set forth
4 in subsection (h) shall be divided as follows:

5 (1) Thirty per cent of the zone adjustment shall be
6 allocated to the shipper of the gasoline from zone 1
7 to zones 2 through 8;

8 (2) Twenty per cent of the zone adjustment shall be
9 allocated to the terminal holding the gasoline in
10 zones 2 through 8; and

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

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

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

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



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

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

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

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

21 SECTION 2. Section 486H-16, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) A manufacturer, wholesaler, or jobber may petition
2 the commission to adjust the maximum pre-tax wholesale price of
3 regular unleaded, mid-grade, or premium gasoline in the event of
4 a change in the value of the baseline price for regular unleaded
5 gasoline, the location adjustment factor, the marketing margin
6 factor, the mid-grade adjustment factor, the premium adjustment
7 factor, [~~or~~] a zone price adjustment[+] on a zone by zone basis,
8 or an allocation of a zone adjustment on a zone by zone basis.

9 The petitioner shall bear the burden of proof to establish by
10 clear and convincing evidence the need for and the amount of any
11 adjustment. The adjustments shall be determined as follows:

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

16 (A) The weekly average of the spot daily price for
17 conventional regular unleaded gasoline for Los
18 Angeles;

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



1 (C) The weekly average of the spot daily price for
2 conventional regular unleaded gasoline for the
3 United States Gulf Coast[7]; and

4 (D) The weekly average of the spot daily price for
5 conventional regular unleaded gasoline for
6 Singapore,

7 as reported and published by the Oil Price Information
8 Service for the five business days of the preceding
9 week; provided that if the preceding week contains a
10 holiday, the average of the four business days of the
11 preceding week shall be used; and provided further
12 that the commission, in its discretion, may determine
13 a more appropriate baseline or a more appropriate
14 price information reporting service[+] or use multiple
15 price information reporting services;

16 (2) The value of the location adjustment factor in effect
17 at the time the petition is filed shall be adjusted to
18 reflect the average of the actual acquisition cost to
19 non-refiner marketers to obtain gasoline from refiners
20 or importers for sale on the island of Oahu over the
21 prior twelve-month period, which cost shall be taken
22 from arm's length transactions between non-refiner



1 marketers[7] and refiners or importers, such as
2 exchange agreements, sales agreements, or other
3 similar agreements; provided that the location
4 adjustment factor shall not exceed the reasonable cost
5 of importing gasoline to the island of Oahu. As used
6 in this paragraph, "actual acquisition cost" means the
7 amount over the base price of regular unleaded
8 gasoline that a non-refiner marketer pays to a third
9 party for delivery of such gasoline into a terminal
10 located on the island of Oahu;

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

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

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

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

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

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

5 (B) The average of the difference over the period
6 from 1994 until the most current year between:
7 (i) The dealer tank wagon price for sales for
8 resale for "regular" gasoline; and
9 (ii) The bulk price for sales for resale for
10 "regular" gasoline,
11 for Petroleum Administration for Defense (PAD)
12 District V, as reported and published by the
13 Energy Information Administration or its
14 successor in Table 31 - "Motor Gasoline Prices by
15 Grade, Sales Type, PAD District, and State" or
16 other source containing the same information;

17 (4) The value of the mid-grade and premium adjustment
18 factors in effect at the time the petition is filed
19 shall be adjusted by any material change in the mid-
20 grade and premium adjustment factor as published by an
21 appropriate price information reporting service; and

1 (5) The value of any zone price adjustment on a zone by
 2 zone basis or zone price adjustment allocation,
 3 pursuant to section 486H-13(j), on a zone by zone
 4 basis, in effect at the time the petition is filed,
 5 shall be adjusted based upon material changes in the
 6 operating costs for a zone, such as terminaling,
 7 storage, or distribution costs, and other empirical
 8 data the commission deems appropriate."

9 SECTION 3. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

12

INTRODUCED BY: *Ron Merritt*
Paul Bann



Report Title:

Gasoline Dealers; Maximum Pre-tax Wholesale Gasoline Price

Description:

(1) Adds Singapore spot daily price in determination of baseline price, with lowest three of the four average geographic prices averaged for State baseline; (2) in event of a holiday, requires PUC to use average of prior four day week; (3) removes zone adjustment for zone 1 (Oahu); (4) allocates different percentages of zone adjustments to different functions; and (5) provides for adjustment of zone price adjustments and allocation of zone price adjustments on a zone by zone basis.

