
A BILL FOR AN ACT

RELATING TO GASOLINE.

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

1 SECTION 1. As was more than evident during the aftermath
2 of hurricanes Katrina and Rita and the refinery fires in Texas,
3 natural and man-caused disasters halfway around the world can
4 cause volatility and instability in our wholesale gasoline
5 prices in Hawaii. To ensure stability in our wholesale gasoline
6 price control program, we must not allow disasters in other far
7 away locations to unreasonably influence our wholesale gasoline
8 prices. To reduce this instability, we need to add an
9 additional geographic market to provide more flexibility in
10 establishing the baseline gasoline price.

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



1 the public utilities commission, were determined by using the
2 highest actual costs of doing business by wholesaler
3 distributors in the various zones. Accordingly, the location
4 adjustment factor became redundant.

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

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

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



1 that the wholesale gasoline industry in this State is an
2 uncompetitive oligopoly with the industry parties enjoying
3 supra-competitive margins in their wholesale transactions, all
4 to the detriment of the Hawaii consumer. Therefore, the
5 legislature reiterates that the objective of this Act is to
6 enhance the consumer welfare by fostering the opportunity for
7 prices to reflect and correlate with competitive market
8 conditions. This means that the public utilities commission is
9 directed to proactively enforce the provisions of the law in
10 order to enable the consumers of Hawaii to enjoy the lowest
11 possible prices for gasoline, while allowing the refiners,
12 jobbers, and wholesalers to make a reasonable return on their
13 investments.

14 Accordingly, the purposes of this Act are to:

- 15 (1) Add the Singapore spot price weekly average price of
16 conventional regular unleaded gasoline to the baseline
17 price determination, with the three lowest weekly
18 averages being averaged, to determine the baseline
19 price for regular unleaded gasoline;
- 20 (2) In the event of a holiday or holidays in the prior
21 week, require the public utilities commission to
22 average the prices of the days that were not holidays;



- 1 (3) Eliminate the location adjustment factor;
- 2 (4) Reduce the marketing margin factor to 14 cents;
- 3 (5) Allocate percentages of zone price adjustment in zones
4 2 through 8 to distributors based upon different
5 functions; and
- 6 (6) Provide for adjustments of zone price adjustments and
7 allocations of zone price adjustments on a zone by
8 zone basis.

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

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

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



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

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

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

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



1 (3) The weekly average of the spot daily price for
2 conventional regular unleaded gasoline for the United
3 States Gulf Coast; and
4 (4) The weekly average of the spot daily price for
5 conventional regular unleaded gasoline for Singapore,
6 as reported and published by the Oil Price Information Service
7 for the five business days of the preceding week; provided that
8 if the preceding week contains a holiday or holidays, then the
9 average of the remaining business days of the preceding week
10 shall be used; and provided further that the commission, in its
11 discretion, may determine a more appropriate baseline or a more
12 appropriate price information reporting service[+] or use
13 multiple price information reporting services.

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

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



1 [~~(f)~~] (e) The mid-grade adjustment factor shall be [~~\$.05~~]
2 5 cents per gallon or as otherwise determined by the commission
3 and shall thereafter be subject to adjustment pursuant to
4 section 486H-16(a).

5 [~~(g)~~] (f) The premium adjustment factor shall be [~~\$.09~~]
6 9 cents per gallon or as otherwise determined by the commission
7 and shall thereafter be subject to adjustment pursuant to
8 section 486H-16(a).

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

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



1 (8) Zone 8 shall include the districts of north Kohala,
2 south Kohala, north Kona, south Kona, and Kau on the
3 island of Hawaii.

4 [~~(i)~~] (h) The commission shall establish zone price
5 adjustments to the maximum pre-tax wholesale regular unleaded,
6 mid-grade, and premium gasoline prices on a zone by zone basis.

7 (i) The zone price adjustments for zones 2 through 8, set
8 forth in subsection (g) shall be divided as follows:

9 (1) Thirty per cent of the zone price adjustment shall be
10 allocated to the shipper of the gasoline from zone to
11 zone;

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

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

18 (j) Every manufacturer, wholesaler, or jobber, upon the
19 request of the commission, shall furnish to the commission, in
20 the form requested, all documents, data, and information the
21 commission may require to make its determination on zone price
22 adjustments. Any person who refuses or fails to comply with a



1 request for information by the commission shall be subject to a
2 fine of up to \$50,000 per day. Each day a violation continues
3 shall constitute a separate offense.

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

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

1 wholesale price at which the manufacturer or jobber sold regular
2 unleaded, mid-grade, or premium gasoline to a dealer retail
3 station, an independent retail station, or another jobber or
4 wholesaler, less taxes assessed, less the maximum pre-tax
5 wholesale price established pursuant to subsection (b).

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

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

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

1 SECTION 3. Section 486H-16, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

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

19 (A) The weekly average of the spot daily price for
20 conventional regular unleaded gasoline for Los
21 Angeles;



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

4 (C) The weekly average of the spot daily price for
5 conventional regular unleaded gasoline for the
6 United States Gulf Coast~~[7]~~; and

7 (D) The weekly average of the spot daily price for
8 conventional regular unleaded gasoline for
9 Singapore,

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

20 ~~[(2) The value of the location adjustment factor in effect~~
21 ~~at the time the petition is filed shall be adjusted to~~
22 ~~reflect the average of the actual acquisition cost to~~

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

- 15 (3)] (2) The value of the marketing margin factor in
16 effect at the time the petition is filed shall be
17 adjusted by adding to such value the difference
18 between:
- 19 (A) The average of the difference over the prior
20 twelve-month period between:
- 21 (i) The dealer tank wagon price for sales for
22 resale for "regular" gasoline; and



1 (ii) The bulk price for sales for resale for
2 "regular" gasoline,
3 for Petroleum Administration for Defense (PAD)
4 District V, as reported and published by the
5 Energy Information Administration or its
6 successor in Table 31 - "Motor Gasoline Prices by
7 Grade, Sales Type, PAD District, and State" or
8 other source containing the same information;
9 less

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

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

14 (ii) The bulk price for sales for resale for
15 "regular" gasoline,
16 for Petroleum Administration for Defense (PAD)
17 District V, as reported and published by the
18 Energy Information Administration or its
19 successor in Table 31 - "Motor Gasoline Prices by
20 Grade, Sales Type, PAD District, and State" or
21 other source containing the same information;



1 ~~[(4)]~~ (3) The value of the mid-grade and premium adjustment
2 factors in effect at the time the petition is filed
3 shall be adjusted by any material change in the mid-
4 grade and premium adjustment factor as published by an
5 appropriate price information reporting service; and
6 ~~[(5)]~~ (4) The value of any zone price adjustment on a zone
7 by zone basis or zone price adjustment allocation,
8 pursuant to section 486H-13(j), on a zone by zone
9 basis, in effect at the time the petition is filed,
10 shall be adjusted based upon material changes in the
11 operating costs for a zone, such as terminaling,
12 storage, or distribution costs, and other empirical
13 data the commission deems appropriate."

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.



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 weekly geographic prices averaged for State baseline; (2) in event of a holiday or holidays, requires PUC to use average of remaining business days of the prior week; (3) removes the location adjustment factor; (4) reduces the marketing margin factor to 14 cents; (5) allocates different percentages of zone price adjustments to different distributors performing different functions; and (6) provides for adjustment of zone price adjustments and allocation of zone price adjustments on a zone by zone basis. (SD1)

