

JAN 25 2006

A BILL FOR AN ACT

RELATING TO ENERGY MARKET COMPETITION AND CONSUMERS.

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

1 SECTION 1. During the regular session of 2002, the
2 legislature took affirmative action to address what it found to
3 be uncompetitive market conditions in the sale of gasoline,
4 leading to uncompetitive consumer prices for this essential
5 energy resource. In Act 77, Session Laws of Hawaii 2002, the
6 legislature imposed maximum pre-tax wholesale and retail price
7 limits on regular unleaded gasoline to be sold in the State on a
8 self-service basis, and took several other actions to attempt to
9 address issues of gasoline market competitiveness. The price
10 limits were to become effective on July 1, 2004.

11 However, in 2004, aiming to enhance consumer welfare by
12 fostering the opportunity for wholesale prices that reflect and
13 correlate with competitive market conditions, the legislature
14 enacted Act 242, Session Laws of Hawaii 2004. Act 242 amended
15 Act 77 by deleting the maximum pre-tax retail gasoline price
16 control, and imposed price controls at the wholesale level on
17 all grades of gasoline.



1 The legislature found that neighbor island markets, like
2 Lanai, Molokai, and Hana, experience relatively high gasoline
3 prices, because of their small size, isolated nature and, thus,
4 unusual market character. Accordingly, these markets'
5 capacities to support a diversity of retail and wholesale
6 competitors are severely constrained because of low overall
7 demand relative to larger markets and extremely limited
8 opportunity for higher sales volumes.

9 In addition, in some neighbor island markets, especially
10 Maui and the west side of the island of Hawaii, the legislature
11 finds there exist serious inadequacies of petroleum fuels
12 handling infrastructure facilities, such as terminals, storage,
13 distribution, and dispensing facilities that directly contribute
14 to uncompetitive conditions in these wholesale petroleum
15 markets. On Maui, potential wholesale gasoline competitors are
16 unable to obtain access to harbor-side petroleum terminal
17 facilities that are controlled by incumbent competing terminal
18 operators.

19 In the west Hawaii market, inadequate petroleum
20 infrastructure not only constrains wholesale gasoline market
21 competition, it adds to the price of fuel for electricity
22 production and other fuels as well. The vast majority of these

1 fuels have to be transported by tanker trucks from harbor-side
2 terminal facilities in Hilo, adding significantly to transport
3 costs of products that must first be barged from Oahu.

4 If these infrastructure "bottlenecks" are opened, it could
5 open market access to wholesale competitors and increase
6 competition in these wholesale gasoline markets. In west
7 Hawaii, expanding harbor-side petroleum fuels handling
8 infrastructure facilities and developing adequate distribution
9 systems that could alleviate the need to truck fuel from east
10 Hawaii would also significantly reduce attendant safety and
11 environmental risks. These solutions can lead to lower gasoline
12 prices for Maui and west Hawaii retail gasoline dealers at
13 wholesale and consumers at retail, as well as decreasing other
14 energy costs.

15 In a market economy, when too few suppliers control access
16 to markets and other structural problems present clear,
17 identifiable barriers to entry into a market by potential
18 competitors, the legislature finds the preferred method for
19 government to facilitate increased competition is to stimulate
20 market forces to lower those barriers. These supply bottlenecks
21 can be alleviated and competition increased if other companies

1 were convinced to enter the market by investing in additional
2 competitive infrastructure.

3 The legislature finds that consumers of petroleum-based
4 energy and retail gasoline dealers on the neighbor islands are
5 especially in need of assistance due to the added transportation
6 costs and lack of adequate petroleum fuels handling
7 infrastructure facilities on the neighbor islands. To further
8 ensure that these special conditions and problems with which
9 consumers of petroleum-based energy on the neighbor islands are
10 confronted are properly addressed, the legislature finds that
11 immediate, affirmative actions are imperative.

12 The legislature finds that timely and effective
13 implementation of these affirmative actions will require the
14 coordination, cooperation, and support of multiple agencies at
15 multiple levels of government, as well as the private sector.
16 The director of the department of business, economic
17 development, and tourism is the State's business advocate and
18 the state energy resources coordinator and, as such, is the
19 appropriate state official to facilitate the overall effort,
20 with implementation of specific, relevant incentives programs
21 within the appropriate purview of the director of taxation and
22 director of transportation, respectively.

1 As stated in Act 242, the legislature would have preferred
2 a structural solution to promote a competitive wholesale market
3 instead of imposing limits on gasoline prices, but no one
4 offered such a structural solution. This Act is intended to
5 bring about such a structural solution and promote a competitive
6 environment.

7 Therefore, the purposes of this Act are to:

- 8 (1) Provide tax credits to encourage the development of
9 additional competitive petroleum fuel handling
10 infrastructure facilities on the neighbor islands; and
11 (2) Provide incentives to support competitiveness of the
12 operations of the fuel handling facilities developed
13 on the neighbor islands as a result of the support
14 provided by this Act.

15 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:

18 "§235- Fuel handling infrastructure facilities
19 construction tax credit. (a) There shall be allowed to each
20 taxpayer subject to the taxes imposed by this chapter, chapter
21 237, and chapter 243 an income tax credit that shall be
22 deductible from the taxpayer's net income tax liability, if any,

1 imposed by this chapter, chapter 237, and chapter 243 for the
2 taxable year in which the credit is properly claimed.

3 The amount of the credit shall be one hundred per cent of
4 the qualified expenditure incurred in the construction of a
5 qualified fuel handling facility, but shall not include the
6 construction costs for which another credit was claimed under
7 this chapter for the taxable year.

8 In the case of a partnership, S corporation, estate, trust,
9 or any developer of a qualified fuel handling facility, the tax
10 credit allowable is for construction costs incurred by the
11 entity for the taxable year. The cost upon which the tax credit
12 is computed shall be determined at the entity level.

13 Distribution and share of credit shall be determined pursuant to
14 section 235-110.7(a).

15 If a deduction is taken under section 179 (with respect to
16 election to expense depreciable business assets) of the Internal
17 Revenue Code, no tax credit shall be allowed for that portion of
18 the construction cost for which the deduction is taken.

19 The basis of eligible property for depreciation or
20 accelerated cost recovery system purposes for state income taxes
21 shall be reduced by the amount of credit allowable and claimed.
22 In the alternative, the taxpayer shall treat the amount of the

1 credit allowable and claimed as a taxable income item for the
2 taxable year in which it is properly recognized under the method
3 of accounting used to compute taxable income.

4 (b) The credit allowed under this section shall be claimed
5 against the net tax liability imposed by this chapter, chapter
6 237, and chapter 243, for the taxable year.

7 (c) If the tax credit under this section exceeds the
8 taxpayer's income tax liability, the excess of credit over
9 liability shall be carried over until exhausted. All claims for
10 a tax credit under this section shall be filed on or before the
11 end of the twelfth month following the close of the taxable year
12 for which the credit may be claimed. Failure to comply with the
13 foregoing provision shall constitute a waiver of the right to
14 claim the credit.

15 (d) The director of taxation shall prepare any forms that
16 may be necessary to claim a credit under this section. The
17 director may also require the taxpayer to furnish information to
18 ascertain the validity of the claim for credit made under this
19 section and may adopt rules necessary to effectuate the purposes
20 of this section pursuant to chapter 91.

21 (e) The tax credit allowed under this section shall be
22 available for taxable years beginning after December 31, 2006,

1 and shall be available until the total entitlement of such
2 credits has been exhausted.

3 (f) To qualify for the income tax credit, the taxpayer
4 shall be in compliance with all applicable federal, state, and
5 county statutes, rules, and regulations.

6 (g) If at the close of any taxable year in the twelve year
7 period after the year of placing the qualified fuel handling
8 facility into service, the:

- 9 (1) Fuel handling facility no longer qualifies as a
10 qualified fuel handling facility; or
11 (2) Ownership in the fuel handling facility have been sold
12 or exchanged in a taxable transaction by the taxpayer;
13 the credit claimed under this section shall be recaptured. The
14 recapture shall be equal to one hundred per cent of the amount
15 of the total tax credit claimed under this section for the fuel
16 handling facility causing the recapture described in this
17 subsection, multiplied by the recapture per cent.

18 The amount of the recaptured tax credit determined under
19 this section shall be added to the taxpayer's tax liability for
20 the taxable year in which the recapture occurs.

21 (h) As used in this section:

1 "Development plan" means a detailed factual presentation of
2 the plans to construct the fuel handling facility, including but
3 not limited to a detailed budget of qualified expenditures,
4 architectural plans, engineering plans, and other relevant
5 documents. The development plan must demonstrate how the fuel
6 handling facility will further open markets to competition.

7 "Fuel handling facility" means a new fuel handling facility
8 located in any county with a population of three hundred
9 thousand or less, and in the case of Hawaii county, located only
10 in the "west Hawaii market zone", as defined in this section,
11 used exclusively for the storage, loading and unloading,
12 transportation by other than vehicle or waterborne vessel; i.e.,
13 pipelines, distribution, and dispensing of petroleum fuel
14 products in bulk quantities; provided that the taxpayer claiming
15 the credit under this section does not own, directly or
16 indirectly, another fuel handling facility on the same island,
17 except on the island of Hawaii, where this restriction applies
18 only to ownership of another fuel handling facility in the west
19 Hawaii market zone. Indirect ownership means ownership by a
20 related entity that is more than fifty per cent owned, directly
21 or indirectly, by the taxpayer. If the facility is a storage
22 facility, it must have a minimum capacity of twenty-five



1 thousand barrels. Minimum capacities for other fuel handling
2 facilities shall be established by the department of business,
3 economic development, and tourism, at its discretion, by its
4 review and certification of the development plan, based on
5 standard units of measure to be determined by the department.

6 "Qualified expenditures" means any costs for plans, design,
7 construction, and equipment permanently affixed to a building or
8 structure, and acquisition of land used exclusively for the
9 qualified fuel handling facility.

10 "Qualified fuel handling facility" means a fuel handling
11 facility to the extent the development plans and projected
12 qualified expenditures of the fuel handling facility have been
13 certified by the department of business, economic development,
14 and tourism prior to incurring any qualified expenditures in
15 connection with the fuel handling facility. Among other
16 certification criteria that shall be determined by the
17 department of business, economic development, and tourism, the
18 department shall require that the fuel handling facility will
19 serve to further open markets to competition to meet this
20 definition. Any material changes to the development plans and
21 projected qualified expenditures shall be recertified by the
22 department of business, economic development, and tourism prior



1 to a taxpayer claiming any credits under this section for
2 qualified expenditures with respect to such material changes.
3 Certification of a qualified fuel handling facility by the
4 department of business, economic development, and tourism shall
5 result in an allocation of credits under this section for all
6 projected qualified expenditures in connection with the fuel
7 handling facility. Total credits that may be allocated by the
8 department of business, economic development, and tourism under
9 this section may not exceed \$ _____ in any calendar year and
10 may not exceed \$ _____ over the twelve year period from
11 January 1, 2007, through December 31, 2018.

12 "Recapture per cent" means a fraction, the numerator of
13 which equals the number of years remaining in the twelve year
14 period after the fuel handling facility was placed in service
15 and the denominator of which equals ten.

16 "West Hawaii market zone" means the districts of north
17 Kohala, south Kohala, north Kona, south Kona, and Kau on the
18 island of Hawaii."

19 SECTION 3. Chapter 266, Hawaii Revised Statutes, is
20 amended by adding a new section to be appropriately designated
21 and to read as follows:

1 "§266- Qualified fuel handling facilities
2 competitiveness waiver of wharfage rates and charges. (a)
3 There shall be allowed to each qualified fuel handling facility,
4 as defined in section 235- , a temporary waiver of all state
5 wharfage rates and charges for which it would otherwise be
6 obligated to pay for petroleum fuels passing through pipelines,
7 tanks, loading, unloading or dispensing facilities, or other
8 fuel handling infrastructure facilities. These state wharfage
9 rates and charges are fixed and regulated by applicable state
10 rules, adopted pursuant to chapter 91, to effectuate the
11 purposes of section 266-2.

12 (b) This temporary waiver of state wharfage rates and
13 charges shall apply only to petroleum fuels passing through such
14 pipelines, tanks, loading, unloading or dispensing facilities,
15 or other fuel handling infrastructure facilities that have been
16 certified as a qualified fuel handling facility pursuant to
17 section 235- , or fuels passing directly into a qualified fuel
18 handling facility from a waterborne vessel or harbor-side
19 facility as the fuel is delivered from its point of origin from
20 another island within the State. The waiver shall not apply to
21 fuel passing out of a qualified fuel handling facility if the
22 fuel is destined for delivery to another island within the State

1 in which development of qualified fuel handling facilities have
2 not been authorized pursuant to section 235- .

3 (c) The waiver of wharfage rates and charges for a
4 qualified fuel handling facility shall amount to one hundred per
5 cent of the amount owed for any amount of fuel passing through
6 the qualified fuel handling facility and delivered, as in
7 subsection (a) above.

8 (d) The time period of this temporary waiver shall be
9 specific to the qualified fuel handling facility itself, and
10 shall be for a maximum period of thirty-six months from the date
11 of initial actual fuel handling operations of the facility as a
12 qualified fuel handling facility pursuant to section 235- ,
13 irrespective of the date of certification as such, or other time
14 limits set forth for the purposes of section 235- .

15 (e) The director of the department of transportation shall
16 be responsible to develop procedures to implement and effectuate
17 the purposes of this section."

18 SECTION 4. The director of department of business,
19 economic development, and tourism, in the director's role as
20 both Hawaii's chief business advocate and the state energy
21 resources coordinator, shall be responsible to facilitate and
22 coordinate the State's efforts to implement and effectuate the

1 purposes of this Act. Accordingly, the director of business,
2 economic development, and tourism, supported by required
3 department staff, shall develop and establish formal and
4 informal procedures and mechanisms for efficient and effective
5 coordination and collaboration with, and among, the department
6 of taxation and the department of transportation, industry,
7 other relevant federal, state, and county government agencies
8 and stakeholders for this purpose. State agencies named herein
9 and those involved at the request of the director of department
10 of business, economic development, and tourism shall cooperate
11 and provide support to the fullest possible extent to effectuate
12 the purposes of this Act.

13 SECTION 5. The director of business, economic development,
14 and tourism shall submit a report to the legislature twenty days
15 prior to the convening of the Regular Session of 2007 and each
16 regular session thereafter that the tax credit established by
17 this Act remains in effect, containing the following
18 information:

- 19 (1) The name of each taxpayer claiming and allowed the
20 credit;
- 21 (2) The type and location of each qualified fuel handling
22 facility that was allowed the credit;

- 1 (3) The amount of each allowed claim;
- 2 (4) The total amount of allowed credits for the current
- 3 year and the total amount of all credits allowed under
- 4 this Act; and
- 5 (5) Any other information requested by the legislature or
- 6 deemed relevant by the director of business, economic
- 7 development, and tourism.

8 SECTION 6. New statutory material is underscored.

9 SECTION 7. This Act shall take effect on July 1, 2006.

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INTRODUCED BY: J. Kelvin Ghosh

Anand K. Mishra
 Lawrence D. Moore
 Fred Han J
 Dan van
 Chad Johnson

A.S.T.L.

Rosely H Baker
 Renees Kohl
 Suzanne Chun Oakland
 Guy L. Hoan
 Norman Sakamp
 Will Eppew
John L C

Report Title:

Petroleum Facilities; Tax Credit

Description:

Provides tax credit to encourage development of fuel handling facilities on neighbor islands; provides temporary waiver of wharfage fees for qualified fuel handling facility.

