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# 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 uncompetitive  
3 market conditions in the sale of gasoline that were leading to  
4 uncompetitive consumer prices for this essential energy  
5 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 in an attempt  
9 to address the issue of gasoline market competitiveness. The  
10 price 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 by imposing price controls at the wholesale level  
17 on 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 unusual  
4 market character. Accordingly, the markets' capacities to  
5 support a diversity of retail and wholesale competitors are  
6 severely constrained because of low overall demand relative to  
7 larger markets and an extremely limited opportunity for higher  
8 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 are serious inadequacies in the petroleum fuels  
12 handling infrastructure facilities, such as terminals, storage,  
13 distribution, and dispensing facilities, that contribute to  
14 uncompetitive conditions in these wholesale petroleum markets.  
15 On Maui, potential wholesale gasoline competitors cannot obtain  
16 access to harbor-side petroleum terminal facilities that are  
17 controlled by incumbent competing terminal operators.

18           In the west Hawaii market, an inadequate petroleum  
19 infrastructure constrains wholesale gasoline market competition  
20 and adds to the price of fuels, including for electricity  
21 production. The vast majority of these fuels must be  
22 transported by tanker trucks from harbor-side terminal



1 facilities in Hilo. This adds significantly to transport costs  
2 of products that must first be barged from Oahu.

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

14 The legislature finds that, in a market economy, when too  
15 few suppliers control the access to a market and other  
16 structural problems present clear, identifiable barriers to  
17 entry into a market by potential competitors, the preferred  
18 method to facilitate increased competition is to stimulate  
19 market forces to lower the barriers. Supply bottlenecks can be  
20 alleviated and competition can be increased if other companies  
21 are convinced to enter the market. This can be achieved by  
22 investing in additional competitive infrastructure.



1           The legislature finds that consumers of petroleum-based  
2 energy and retail gasoline dealers on the neighbor islands need  
3 assistance due to the added transportation costs and the lack of  
4 adequate petroleum fuels handling infrastructure facilities.  
5 The legislature finds that immediate, affirmative actions are  
6 imperative to ensure that the problems confronting consumers of  
7 petroleum-based energy on the neighbor islands are properly  
8 addressed.

9           Timely and effective implementation of these affirmative  
10 actions requires the coordination, cooperation, and support of  
11 multiple agencies at multiple levels of government, as well as  
12 the private sector. The director of business, economic  
13 development, and tourism shall facilitate the overall effort  
14 with implementation of specific, relevant incentives programs  
15 within the appropriate purview of the director of taxation and  
16 director of transportation, respectively.

17           The legislature would have preferred a structural solution  
18 to promote a competitive wholesale market instead of imposing  
19 limits on gasoline prices, but no one offered such a structural  
20 solution. The purpose of this Act is to bring about a  
21 structural solution and to promote a competitive environment to  
22 benefit consumers by:



- 1 (1) Providing tax credits to encourage the development of
- 2 additional competitive petroleum fuel handling
- 3 infrastructure facilities on the neighbor islands; and
- 4 (2) Providing incentives to support competitiveness of the
- 5 operations of the fuel handling infrastructure
- 6 facilities developed on the neighbor islands.

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

10 **"§235- Fuel handling infrastructure facilities**  
 11 **construction tax credit.** (a) There shall be allowed to each  
 12 taxpayer who makes a qualified expenditure and is subject to the  
 13 taxes imposed by this chapter, chapter 237, and chapter 243 a  
 14 tax credit that shall be deductible from the taxpayer's net tax  
 15 liability, if any, imposed by this chapter, chapter 237, and  
 16 chapter 243, respectively, for the taxable year in which the  
 17 credit is properly claimed.

18 (b) The amount of the credit shall be one hundred per cent  
 19 of the qualified expenditure incurred in the construction of a  
 20 qualified fuel handling infrastructure facility, but shall not  
 21 include the construction costs for which another credit was

1 claimed under this chapter, chapter 237, or chapter 243 for the  
2 taxable year.

3 (c) In the case of a partnership, S corporation, estate,  
4 trust, or any developer of a qualified fuel handling  
5 infrastructure facility, the tax credit allowable shall be for  
6 construction costs incurred by the entity for the taxable year.  
7 The cost upon which the tax credit is computed shall be  
8 determined at the entity level. Distribution and share of  
9 credit shall be determined pursuant to section 235-110.7(a) and  
10 any rules adopted pursuant to that section.

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

16 (e) The basis of eligible property for depreciation or  
17 accelerated cost recovery system purposes for state income taxes  
18 shall be reduced by the amount of credit allowable and claimed.  
19 In the alternative, the taxpayer shall treat the amount of the  
20 credit allowable and claimed as a taxable income item for the  
21 taxable year in which it is properly recognized under the method  
22 of accounting used to compute taxable income.



1       (f) If the tax credit under this section exceeds the  
2 taxpayer's tax liability, the excess of credit over liability  
3 shall be carried over until exhausted. Any claim for a tax  
4 credit under this section shall be filed on or before the end of  
5 the twelfth month following the close of the taxable year for  
6 which the credit may be claimed. Failure to comply with the  
7 foregoing provision shall constitute a waiver of the right to  
8 claim the credit.

9       (g) The director of taxation shall prepare any forms that  
10 may be necessary to claim a credit under this section. The  
11 director may also require the taxpayer to furnish information to  
12 ascertain the validity of the claim for credit made under this  
13 section and may adopt rules necessary to effectuate the purposes  
14 of this section pursuant to chapter 91.

15       (h) To qualify for the tax credit, the taxpayer shall be  
16 in compliance with all applicable federal, state, and county  
17 statutes, rules, and regulations.

18       (i) If at the close of any taxable year in the twelve year  
19 period after the year of placing the qualified fuel handling  
20 infrastructure facility into service, the:



1       (1) Fuel handling infrastructure facility no longer  
2       qualifies as a qualified fuel handling infrastructure  
3       facility; or

4       (2) Ownership in the fuel handling infrastructure facility  
5       has been sold or exchanged in a taxable transaction by  
6       the taxpayer;

7       the credit claimed under this section shall be recaptured. The  
8       recapture shall be equal to one hundred per cent of the amount  
9       of the total tax credit claimed under this section for the fuel  
10       handling infrastructure facility causing the recapture described  
11       in this subsection, multiplied by the recapture per cent.

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

15       (j) The department of business, economic development, and  
16       tourism shall determine the certification criteria, including a  
17       requirement that the fuel handling infrastructure facility serve  
18       to further open markets to competition. Any material changes to  
19       the development plans or projected qualified expenditures shall  
20       be recertified by the department of business, economic  
21       development, and tourism prior to a taxpayer claiming any  
22       credits under this section for qualified expenditures with





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

11 (k) As used in this section:

12 "Development plan" means a detailed factual presentation of  
13 the plans to construct the fuel handling infrastructure  
14 facility, including a detailed budget of qualified expenditures,  
15 architectural plans, and engineering plans. The development  
16 plan shall demonstrate how the fuel handling infrastructure  
17 facility will further open markets to competition.

18 "Fuel handling infrastructure facility" means a new fuel  
19 handling infrastructure facility that is located in any county  
20 with a population of three hundred thousand or less, and in the  
21 case of Hawaii county, located only in the "west Hawaii market  
22 zone", as defined in this section, and that is used exclusively



1 for the storage, loading and unloading, transportation by  
 2 pipelines or other means of distributing and dispensing of  
 3 petroleum fuel products in bulk quantities, other than by  
 4 vehicles or waterborne vessels; provided that the taxpayer  
 5 claiming the credit under this section shall not own, directly  
 6 or indirectly, another fuel handling infrastructure facility on  
 7 the same island, except on the island of Hawaii, where this  
 8 restriction applies only to ownership of another fuel handling  
 9 infrastructure facility in the west Hawaii market zone. If the  
 10 facility is a storage facility, it shall have a minimum capacity  
 11 of twenty-five thousand barrels. Minimum capacities for other  
 12 fuel handling infrastructure facilities shall be established by  
 13 the department of business, economic development, and tourism,  
 14 at its discretion, by its review and certification of the  
 15 development plan, based on standard units of measure to be  
 16 determined by the department.

17 "Indirect ownership" means ownership by a related entity  
 18 that is greater than fifty per cent owned by the taxpayer.

19 "Qualified expenditures" means any costs for plans, design,  
 20 construction, or equipment permanently affixed to a building or  
 21 structure, and acquisition of land used exclusively for the  
 22 qualified fuel handling infrastructure facility.



1 "Qualified fuel handling infrastructure facility" means a  
2 fuel handling infrastructure facility whose development plans  
3 and projected qualified expenditures have been certified by the  
4 department of business, economic development, and tourism prior  
5 to the incurrence of any qualified expenditures in connection  
6 with the fuel handling infrastructure facility.

7 "Recapture per cent" means a fraction, the numerator of  
8 which equals the number of years remaining in the twelve year  
9 period after the fuel handling infrastructure facility was  
10 placed in service and the denominator of which equals ten.

11 "West Hawaii market zone" means the districts of north  
12 Kohala, south Kohala, north Kona, south Kona, and Kau on the  
13 island of Hawaii."

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

17 "§266- **Qualified fuel handling infrastructure**  
18 **facilities competitiveness waiver of wharfage rates and charges.**

19 (a) There shall be allowed to each qualified fuel handling  
20 infrastructure facility, as defined in section 235- , a  
21 temporary waiver of all state wharfage rates and charges for  
22 which it would otherwise be obligated to pay for petroleum fuels



1 passing through pipelines, tanks, loading, unloading or  
2 dispensing facilities, or other fuel handling infrastructure  
3 facilities.

4 (b) This temporary waiver of state wharfage rates and  
5 charges shall apply only to petroleum fuels passing through  
6 pipelines, tanks, loading, unloading or dispensing facilities,  
7 or other fuel handling infrastructure facilities that are  
8 qualified fuel handling infrastructure facilities pursuant to  
9 section 235- , or fuels passing directly into a qualified fuel  
10 handling infrastructure facility from a waterborne vessel or  
11 harbor-side facility as the fuel is delivered from another  
12 island within the State. The waiver shall not apply to fuel  
13 passing out of a qualified fuel handling infrastructure facility  
14 if the fuel is destined for a county that is not authorized to  
15 develop qualified fuel handling infrastructure facilities.

16 (c) The waiver of wharfage rates and charges for a  
17 qualified fuel handling infrastructure facility shall amount to  
18 one hundred per cent of the amount owed for any amount of fuel  
19 passing through the qualified fuel handling infrastructure  
20 facility and delivered pursuant to subsection (a).

21 (d) The time period of this temporary waiver shall be  
22 specific to the qualified fuel handling infrastructure facility



1 and shall not exceed thirty-six months from the initial date of  
2 actual fuel handling operation of the facility as a qualified  
3 fuel handling infrastructure facility pursuant to section  
4 235- , irrespective of the date of certification or other time  
5 limits set forth for the purposes of section 235- .

6 (e) The department of transportation shall be responsible  
7 for developing procedures to implement this section."

8 SECTION 4. The director of department of business,  
9 economic development, and tourism shall facilitate and  
10 coordinate the State's implementation of this Act, including the  
11 development of formal and informal procedures for efficient and  
12 effective coordination and collaboration with the department of  
13 taxation, the department of transportation, private industry,  
14 other relevant federal, state, and county agencies, and  
15 stakeholders. State agencies shall cooperate and provide  
16 support to effectuate the purposes of this Act.

17 SECTION 5. The director of business, economic development,  
18 and tourism shall submit a report not later than twenty days  
19 prior to the convening of the regular session of 2007 and each  
20 regular session thereafter that the tax credit established by  
21 this Act remains in effect. The report shall include:



- 1       (1) The name of each taxpayer claiming and allowed the
- 2             credit;
- 3       (2) The location and type of each qualified fuel handling
- 4             infrastructure facility that was allowed the credit;
- 5       (3) The amount of each allowed claim; and
- 6       (4) The total amount of allowed credits for the current
- 7             year and the total amount of all credits allowed up to
- 8             the date of each report.

9       SECTION 6. New statutory material is underscored.

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

11 provided that the tax credit provided by the Act shall be

12 available for tax years beginning after December 31, 2006, and

13 before January 1, 2019; and provided further that any tax credit

14 allowed shall be available until the total entitlement of the

15 tax credit has been exhausted.



**Report Title:**

Petroleum Facilities; Tax Credit

**Description:**

Provides tax credit to encourage development of fuel handling infrastructure facilities on neighbor islands; provides temporary waiver of wharfage fees for qualified fuel handling infrastructure facility. (SD1)

