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**A BILL FOR AN ACT**

RELATING TO ENERGY EMERGENCY PREPAREDNESS.

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

1           SECTION 1. The legislature finds the State's economic  
2 security and stability continues to remain extremely vulnerable  
3 to the increasing risks and threats to its energy security, due  
4 to Hawaii's overdependence on imported oil to meet approximately  
5 eighty-nine per cent of the State's total energy demand. This  
6 vulnerability is exacerbated because nearly seventy-seven per  
7 cent of the State's electricity is generated using petroleum  
8 fuels. The United State's average for oil-generated electricity  
9 is only about three per cent. There is a general consensus  
10 among experts that global oil market fundamentals have created a  
11 new, much higher "plateau price" for crude oil from which low  
12 price trends of the past are not projected to return. These  
13 factors continue to create unacceptable risks to Hawaii's  
14 economy, and energy security remains a priority.

15           The legislature also finds as the variety of fuels and fuel  
16 production feedstocks - petroleum-based, biofuels, or other  
17 alternatives -- being directly imported into the State  
18 increases, so do unique risks related to availability, and the

1 economic and energy system impacts associated with each  
2 respective commodity, should imports be disrupted. There are  
3 also new fuel and feedstock-specific infrastructure requirements  
4 associated with such transitional issues and trends.

5 The recent statewide propane shortage and earthquake  
6 underscored and validated the need to address the serious  
7 inadequacies of the current statutes and the State's concern  
8 that the data reporting and collection provisions of these  
9 energy emergency preparedness laws do not include all necessary  
10 data and all relevant components of the energy industry.

11 Current provisions of chapter 125C, Hawaii Revised  
12 Statutes, require only importers of fuel to provide emergency  
13 data reports, and then only for supply and demand information.  
14 The statute's outdated limitations of data collection authority  
15 and lack of accommodation to changed energy markets, and changes  
16 of fuel products and specifications preclude the governor and  
17 state energy resources coordinator's (director of business,  
18 economic development, and tourism) ability to adequately  
19 ascertain the severity and impacts of an energy emergency or  
20 fuel shortage, and to determine what response measures may be  
21 necessary. Vital information from other non-importing  
22 distributors, wholesalers, retailers, and other major energy

1 companies, and other more extensive and detailed types of data  
2 and information on all aspects of the state's energy systems and  
3 market are essential for effective energy system situational  
4 analyses and reporting, coordination, and management of near-  
5 and longer-term energy emergency response and vulnerability  
6 mitigation initiatives, preparedness, and exercise functions,  
7 maintaining current energy emergency plans, and energy security  
8 policy planning and analysis -- all necessary components to  
9 ensure the readiness and robustness of the State's energy  
10 emergency preparedness program.

11 The legislature also finds that chapter 125C, Hawaii  
12 Revised Statutes, does not currently require major energy  
13 companies to report critical emergency preparedness information  
14 regarding storage, transport, inventory, supply, demand,  
15 production and capacities, actual prices, and other aspects of  
16 energy systems and markets, which are essential to the State's  
17 emergency management role, irrespective of these companies'  
18 import status. Moreover, use of this type of data and  
19 information to effectuate chapter 125C is already directed by  
20 Act 182, Session Laws of Hawaii 2007. Act 182 added to chapter  
21 486J, Hawaii Revised Statutes, an important section directing  
22 the department of business, economic development, and tourism on

1 how, and for what purposes to use the expansive data collected  
2 by the public utilities commission pursuant to chapter 486J,  
3 Hawaii Revised Statutes. However, the data and information  
4 collected pursuant to chapter 486J, Hawaii Revised Statutes,  
5 alone are inadequate for energy emergency management. In  
6 addition, when controlled by another agency, while close  
7 cooperation is assumed, as a pragmatic matter, such indirect  
8 reporting mechanisms cannot necessarily be depended upon during  
9 emergencies, nor can data reported on weekly or monthly  
10 schedules be expected to be effectively responsive to immediate  
11 emergency situations and needs, which frequently change with  
12 little or no warning.

13 This represents an unacceptable situation when considered  
14 in the context of the State's role and responsibilities for  
15 energy emergency management. The legislature finds that it is  
16 essential to strengthen and comprehensively address deficiencies  
17 in Hawaii's energy emergency preparedness and energy resources  
18 coordination statutes by amending chapter 125C, Hawaii Revised  
19 Statutes. Such amendments are necessary to provide adequately  
20 authoritative policy support and enabling functional guidance to  
21 meet the following critical needs of the State: (1) regain and  
22 retain the law's relevance, consistency, and adequacy as

1 contingency policy guidance to accommodate actual and expected  
2 changes in Hawaii's energy (and economic) security and  
3 vulnerability, stemming from significant changes in energy and  
4 fuel markets; (2) update and align key provisions of chapter  
5 125C, Hawaii Revised Statutes, with relevant changes to federal  
6 and state overall emergency management, and energy emergency  
7 management policies and planning guidance, stemming from the  
8 post-9/11 and post-Katrina evolution of the "all-hazards/all-  
9 threats" emergency management context, and fundamental shifts in  
10 the global energy and markets; and (3) rectify the several  
11 inadequacies of data collection, analysis, and reporting  
12 provisions of chapter 125C, Hawaii Revised Statutes, with  
13 amendments to accommodate and address the unique economic and  
14 energy systems risks associated with transitional issues and  
15 trends relating to both petroleum-based fuels and biofuels, and  
16 actionable provisions to add sufficiently detailed definition to  
17 conduct energy emergency preparedness-related energy analytic  
18 functions.

19 The legislature also finds that amendments to chapter 125C,  
20 Hawaii Revised Statutes, are necessary to provide improvements  
21 and updates of the State's energy emergency policy guidance, an  
22 important authoritative basis for energy emergency preparedness

1 programmatic improvements, and updated drafts of the State  
2 energy emergency preparedness plan, developed in a multi-year  
3 effort in coordination with Hawaii's major energy companies,  
4 Department of Defense personnel, other relevant federal, state,  
5 and county agencies, and expert consultants.

6 In summary, the legislature finds that Hawaii's oil  
7 dependence, emergency events, and transitional fuel issues are  
8 factors that stress the need for industry and government to  
9 coordinate contingency plans to contend with energy disruptions,  
10 irrespective of cause. To be effective, the government's  
11 legitimate leadership role in planning for and managing  
12 emergencies, including energy emergencies, cannot depend solely  
13 on cooperative efforts, nor can data and information reported to  
14 regulatory agencies for separate, non-emergency purposes be  
15 expected to be adequate to support emergency management  
16 information needs. Such factors continue to create unacceptable  
17 risks to Hawaii's economy, and represent a worrisome situation.

18 Therefore, the legislature finds that, while the State's  
19 emergency management and energy emergency preparedness and  
20 energy planning and policy development programs have attempted  
21 to keep pace with changes to Hawaii's energy and fuel markets,  
22 and federal and state energy emergency management policies and

1 planning guidance, changes to the current law and resources are  
2 needed to meet critical needs of the State.

3 The purpose of this Act is to remedy the deficiencies in  
4 the law governing energy emergency planning in this State.

5 SECTION 2. Chapter 125C, Hawaii Revised Statutes, is  
6 amended by adding four new sections to be appropriately  
7 designated and to read as follows:

8 "§125C-A Definitions. As used in this chapter, unless the  
9 context requires otherwise:

10 "Commission" means the public utilities commission.

11 "Department" means the department of business, economic  
12 development, and tourism.

13 "Director" means the director of business, economic  
14 development, and tourism, who is also the state energy resources  
15 coordinator pursuant to section 196-3.

16 "Distributor" means every person who:

17 (1) Refines, manufactures, produces, or compounds fuel in  
18 the State, and sells it at wholesale or retail, or who  
19 utilizes it directly in the manufacture of products or  
20 for the generation of power;

1       (2) Imports or causes to be imported into the state, or  
2       exports or causes to be exported from the state, any  
3       fuel;

4       (3) Acquires fuel through exchanges with another  
5       distributor; or

6       (4) Purchases fuel for resale at wholesale or retail from  
7       any person described in paragraph (1), (2), or (3).

8       "Electricity" means all electrical energy produced by  
9       combustion of any fuel as defined in this section, or generated  
10      or produced using wind, the sun, geothermal, ocean water,  
11      falling water, currents, and waves, or any other source.

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

14      "Energy resources" means fuel and electricity as defined in  
15      this section.

16      "Fuel" means fuels, whether liquid, solid, or gaseous,  
17      commercially usable for energy needs, power generation, and  
18      fuels manufacture, that may be manufactured, grown, produced, or  
19      imported into the State or that may be exported therefrom,  
20      including petroleum and petroleum products and gases to include  
21      all fossil fuel-based gases, coal tar, vegetable ferments,  
22      biomass, municipal solid waste, biofuels, hydrogen, agricultural



1 products used as fuels and as feedstock to produce fuels, and  
2 all fuel alcohols.

3 "Major energy marketer" means any person who sells energy  
4 resources in amounts determined by the director as having a  
5 major effect on the supplies of, or demand for, energy resources  
6 in the State.

7 "Major energy producer" means any person who produces  
8 energy resources in amounts determined by the director as having  
9 a major effect on the supplies of, or demand for, energy  
10 resources in the State.

11 "Major energy transporter" means any person who transports  
12 energy resources in amounts determined by the director as having  
13 a major effect on the supplies of, or demand for, energy  
14 resources in the State.

15 "Major energy user" means any person who uses energy  
16 resources in the manufacture of products or for the generation  
17 of electricity in amounts determined by the director as having a  
18 major effect on the supplies of, or demand for, energy resources  
19 in the State.

20 "Major fuel storer" means any person who stores fuels in  
21 amounts determined by the director as having a major effect on  
22 the supplies of, or demand for, energy resources in the State.

1        §125C-B Information and analysis required for state energy  
2 emergency planning and preparedness, mitigation, response, and  
3 recovery. (a) The department, with its staff and its agents  
4 who are designated by the director as authorized  
5 representatives, shall use the information, including  
6 confidential information, received from all sources, and the  
7 information received from the public utilities commission  
8 pursuant to chapter 486J, solely to effectuate the purposes of  
9 this chapter and chapter 196, and to conduct systematic  
10 statistical and quantitative analyses of the State's energy  
11 resources, systems, and markets that the director determines is  
12 necessary to:

13        (1) Produce assessments designed to determine and mitigate  
14 the potential for energy supply disruptions, and to  
15 develop state energy emergency response plans and  
16 measures including systematic situational energy  
17 analyses, which in the event of energy crisis or  
18 supply disruption could assist in determining the  
19 nature, scope, severity, and expected duration of such  
20 an event, and assess potential and actual economic and  
21 other impacts of the crisis, particularly to determine  
22 and recommend what, if any, emergency government

1 interventions may be necessary and appropriate, and to  
2 implement and evaluate the effectiveness of such  
3 emergency interventions;

4 (2) Conduct systematic statistical, energy, economic, and  
5 other relevant analyses for comprehensive energy  
6 emergency planning toward determining, measuring,  
7 evaluating, formulating, and recommending specific  
8 proposals to improve government and industry energy  
9 emergency plans and programs, and to support longer  
10 term measures to preserve Hawaii's energy security;

11 (3) Establish and maintain a quantitative and qualitative  
12 technical understanding of Hawaii's statewide energy  
13 resources, systems, and markets and their  
14 relationships with the economy;

15 (4) Produce trend analyses and forecasts of energy supply  
16 and demand and trend analyses of major aspects of  
17 risks to and vulnerabilities of Hawaii's energy  
18 resources, systems, and markets; and

19 (5) Produce other relevant energy analyses that the  
20 director deems necessary to administer the energy  
21 emergency preparedness and energy supply security  
22 policies pursuant to this chapter, and implement and

1 evaluate other related activities in support of the  
2 director's role and responsibilities pursuant to  
3 chapters 486J and 196.

4 (b) If the information that the department is authorized  
5 to receive from the public utilities commission pursuant to  
6 chapter 486J, including confidential information, becomes  
7 unavailable, or if such information is determined by the  
8 director to be unsuitable in any way whatsoever, the director is  
9 authorized to require that this information and any other  
10 relevant information, including confidential information, be  
11 reported by distributors to the director. To facilitate the  
12 efficient and systematic conveyance of this information,  
13 including confidential information, the public utilities  
14 commission, regularly shall provide to the department copies of  
15 the statements and information that the commission receives  
16 pursuant to sections 486J-3, 486J-4, and 486J-4.5. Such  
17 statements and information are to be provided to the department  
18 within three working days of receipt by the commission, and the  
19 commission shall provide the department secure electronic access  
20 to all such information, including confidential information, via  
21 the automated petroleum industry monitoring, analysis, and  
22 reporting program established in section 486J-5.5.

1        (c) To conduct the analyses pursuant to this chapter, the  
2 director may require distributors to report any other relevant  
3 information, including confidential information, at a time and  
4 in such form and manner as to be prescribed by the director.

5        **§125C-C Reporting requirements.** Each major energy  
6 producer, major fuel storer, major energy transporter, major  
7 energy user, and major energy marketer, on reporting dates as  
8 the director may establish, and on forms prescribed, prepared,  
9 and furnished by the director, shall submit to the director  
10 certified statements. These statements shall report information  
11 to include, but not be limited to, information related to those  
12 aspects of their respective Hawaii facilities and operations  
13 that are described in this section. These statements shall  
14 provide for reporting this information on a statewide  
15 consolidated basis, and separately for each county and for the  
16 islands of Lanai and Molokai as follows:

17        (1) For fuel:

18            (A) The volumes, movement, processing, blending, and  
19            transformation of fuels beginning with crude oil,  
20            feedstocks, ethanol, biodiesel, and other refined  
21            petroleum or fuel product imports, through and  
22            including the State's fuel infrastructure, from

1 and between distributors and to all fuel end-  
2 users, as well as any exports of these fuels and  
3 fuel products out of the State, wholesale and  
4 retail transactions (sales and purchases), and  
5 wholesale and retail prices of all fuels; and

6 (B) The capacities and actual inventories, throughput  
7 and output of all these entities' infrastructure,  
8 including refineries, storage and distribution  
9 tanks and terminals, transport modes such as  
10 pipelines, barges, and other vessels, and other  
11 such critical fuel infrastructure; and

12 (2) For electricity: the name and location of all  
13 generation systems and components greater than one  
14 megawatt, renewable sources greater than two hundred  
15 fifty kilowatts, generating capacity, actual loads  
16 generated, average gross and net electricity  
17 generation, energy resources used and fuels consumed,  
18 heating values of fuels, total electricity produced,  
19 transmitted and sold, the name and location of all  
20 transmission and distribution systems and components  
21 including lines greater than ten kilovolt capacity and  
22 substations, major command and control centers and

1 schemes, storage devices, and average actual  
2 electricity flows and utilization.

3 **§125C-D Confidential information.** In effectuating the  
4 purposes of this chapter, chapter 196, and other relevant laws,  
5 or in order for the director to perform the duties pursuant to  
6 this chapter, chapter 196, and other relevant laws:

7 (1) All confidential information received by the director  
8 shall be exempt from public disclosure under section  
9 92F-13, and shall be held in confidence by the  
10 director and the director's staff and agents, or  
11 aggregated to the extent necessary in the director's  
12 discretion to ensure confidentiality as required by  
13 chapter 92F;

14 (2) The director and the director's staff and agents shall  
15 preserve the confidentiality and protection of all  
16 information received by the director and, by  
17 application and extension of any other agency's  
18 respective safeguards, to protect and prevent the  
19 unauthorized further release of such information.  
20 Each agency shall afford any such shared information  
21 the protections from disclosure provided for under  
22 chapter 92F;

- 1        (3) Each major energy producer, distributor, major energy  
2        marketer, major fuel storer, major energy transporter,  
3        and major energy user that is required to provide  
4        confidential information shall provide written or  
5        electronic notification to the director as to the  
6        specific information that is confidential; and
- 7        (4) Unless otherwise provided by law with respect to the  
8        confidential information that the director obtains,  
9        purchases, receives, or otherwise acquires, neither  
10       the governor nor the director, nor the staff and  
11       agents thereof, may do any of the following:
- 12            (A) Use the confidential information for any  
13            purposes other than the purposes for which it  
14            is acquired;
- 15            (B) Make any publication whereby the confidential  
16            information furnished by any person can be  
17            identified; or
- 18            (C) Permit any person other than the governor, the  
19            director, or the director's staff and agents to  
20            examine any confidential information,  
21            individual reports, or statements acquired  
22            unless provided for under the authority of the





1 resources occur or are anticipated, to control the distribution  
2 and sale of [~~petroleum~~] fuel products in this State, to procure  
3 such products, and to impose rules that will provide  
4 extraordinary measures for the conservation of energy and the  
5 allocation of [~~petroleum~~] fuel products and for [~~their~~] the  
6 distribution and sale of fuel in an orderly, efficient, and safe  
7 manner. Another purpose of this chapter is to grant the clear  
8 authority to the director to acquire, use, and analyze relevant  
9 and essential information on Hawaii's energy resources, systems,  
10 and markets to effectively plan and prepare for, mitigate  
11 against, respond to, and recover from any energy emergency and  
12 preserve the State's energy security."

13 SECTION 5. Section 125C-2, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§125C-2 "Shortage" defined.** As used in this chapter,  
16 unless otherwise indicated by the context, a "shortage" exists  
17 whenever the governor determines that there is an increase in  
18 the demand for any [~~petroleum~~] fuel product or there is a  
19 decrease in the available supply for the [~~petroleum~~] fuel  
20 product in question, or both; and [~~such~~] the decrease in the  
21 available supply of or increase in the demand for the  
22 [~~petroleum~~] fuel product in question, or both, may cause a major

1 adverse impact on the economy, public order, or the health,  
2 welfare, or safety of the people of Hawaii and may not be  
3 responsibly managed within the [~~free~~] prevailing market  
4 distribution system. Further, to plan and prepare for, mitigate  
5 against, respond to, or recover from any declared or anticipated  
6 shortage of fuel products, the governor may require [~~importers~~]  
7 major energy producers, distributors, major energy marketers,  
8 major fuel storers, major energy transporters, and major energy  
9 users of any [~~petroleum~~] fuel product or other fuel to monitor  
10 and report to the department of business, economic development,  
11 and tourism relevant [~~supply and demand~~] data[-] and information  
12 on all aspects of the state's energy resources, systems, and  
13 markets. The governor shall review the status of a shortage  
14 within one hundred twenty days after the governor's initial  
15 determination of a shortage as defined under this chapter;  
16 thenceforth, the governor shall conduct a review of the shortage  
17 to make a new determination every thirty days until a shortage  
18 no longer exists."

19 SECTION 6. Section 125C-3, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§125C-3 Powers in a shortage.** When a shortage as defined  
22 in section 125C-2 exists, the governor or the governor's

1 authorized representative, to ensure that [~~petroleum~~] fuel  
2 products are made available to the public in an orderly,  
3 efficient, and safe manner, may:

4 (1) Control the retail distribution and sale of  
5 [~~petroleum~~] fuel products by adopting rules that may  
6 include, but are not limited to, the following  
7 measures:

8 (A) Restricting the sale of [~~petroleum~~] fuel products  
9 to specific days of the week, hours of the day or  
10 night, odd- and even-numbered calendar days, and  
11 vehicles having less than a specified amount of  
12 gasoline in their tanks, with exceptions for  
13 certain designated geographical areas;

14 (B) Restricting sales of [~~petroleum~~] fuel products by  
15 dealers to daily allocations, which shall be  
16 determined by dividing the monthly allocation by  
17 the number of selling days per month;

18 (C) Requiring dealers to post signs designating their  
19 hours of operation and the sell-out of daily  
20 allocation;

21 (D) Instituting a statewide rationing plan; and

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- 1 (E) Allowing for special handling for essential
- 2 commercial and emergency-user vehicles;
- 3 (2) Require that a percentage of [~~petroleum~~] fuel
- 4 products, not to exceed five per cent, be set aside to
- 5 alleviate hardship; provided that aviation gasoline
- 6 set aside shall not exceed ten per cent;
- 7 (3) Purchase and resell or otherwise distribute
- 8 [~~petroleum~~] fuel products [~~, and purchase and resell or~~
- 9 ~~otherwise distribute ethanol that is produced within~~
- 10 ~~the State and can be used as a substitute for~~
- 11 ~~petroleum products~~];
- 12 (4) Temporarily suspend for the duration of a shortage, or
- 13 until such time as the governor deems appropriate,
- 14 standards which may affect or restrict the use of a
- 15 substitute fuel to meet energy demand;
- 16 [~~+4~~] (5) Receive, expend, or use contributions or grants
- 17 in money or property, or special contributions thereof
- 18 for special purposes not inconsistent with this
- 19 chapter;
- 20 [~~+5~~] (6) Borrow and expend moneys needed to exercise the
- 21 powers granted under this section;

1           [~~(6)~~] (7) Contract in the name of the State for the  
2                           purpose of implementing this chapter or any part  
3                           thereof; and

4           [~~(7)~~] (8) Exercise the powers granted under this section  
5                           to the degree and extent deemed by the governor to be  
6                           necessary, including the temporary or indefinite  
7                           suspension of all or part of the measures taken, as  
8                           the governor deems appropriate."

9           SECTION 7. Section 125C-4, Hawaii Revised Statutes, is  
10           amended to read as follows:

11           "**§125C-4 Adopting, filing, and taking effect of rules.**

12           The governor or the [~~governor's authorized representative~~]  
13           director shall adopt rules pursuant to chapter 91, to [~~insure~~]  
14           ensure that [~~petroleum~~] fuel products are made available to the  
15           public in an orderly, efficient, and safe manner, to become  
16           effective when a shortage, as defined in section 125C-2, exists.  
17           If additional and unforeseen measures are required to [~~insure~~]  
18           ensure that [~~petroleum~~] fuel products are distributed in an  
19           orderly, efficient, and safe manner, the governor or the  
20           [~~governor's authorized representative~~] director may proceed  
21           without prior notice or hearing or upon such abbreviated notice  
22           and hearing as the governor finds practicable to adopt

1 additional rules authorized under this chapter with the  
2 additional rules to be effective for a period of not longer than  
3 one hundred twenty days without renewal. Any rule so adopted  
4 may be amended or repealed by the governor without prior notice  
5 or hearing or upon abbreviated notice and hearing prior to the  
6 expiration of the one hundred twenty-day period; provided that  
7 no amendment shall extend the rule beyond the original period of  
8 one hundred and twenty days. To be effective after the one  
9 hundred twenty-day period, the rules shall be adopted pursuant  
10 to chapter 91. Each rule adopted, amended, or repealed shall  
11 become effective as adopted, amended, or repealed upon approval  
12 by the governor and filing with the lieutenant governor. Each  
13 rule in effect shall have the force and effect of law, but the  
14 effect of each rule may be temporarily or indefinitely suspended  
15 by the governor by written declaration filed with the lieutenant  
16 governor. Each rule temporarily suspended shall take effect  
17 again immediately upon expiration of the suspension period.  
18 Each rule indefinitely suspended shall take effect immediately  
19 upon the filing with the lieutenant governor of the written  
20 declaration by the governor terminating the suspension. The  
21 rulemaking requirements in this section shall exclusively apply

1 to the implementation of sections 125C-2 and 125C-3 and part II  
2 of this chapter."

3 SECTION 8. Section 125C-6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~f~~]**\$125C-6**[~~f~~] **Petition for adoption, amendment, repeal,**  
6 **or suspension of rules.** Any interested person may petition the  
7 governor or the [~~governor's authorized representative~~] director  
8 requesting the adoption, amendment, repeal, or suspension of any  
9 rule and stating reasons therefor. The governor or the  
10 [~~governor's authorized representative~~] director shall prescribe  
11 the form for the petitions and the procedures for their  
12 submission, consideration, and disposition, and within thirty  
13 days after submission of the petition, shall either deny the  
14 petition in writing, stating the governor's or the [~~governor's~~  
15 ~~authorized representative's~~] director's reasons for the denial,  
16 or grant the petition and adopt, amend, repeal, or suspend the  
17 rule accordingly. The requirements of this section shall  
18 exclusively apply to the implementation of sections 125C-2,  
19 125C-3, and part II of this chapter."

20 SECTION 9. Section 125C-8, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§125C-8 Personnel; delegation of powers.** (a) The  
2 director is the governor's authorized representative to fulfill  
3 and effectuate the purposes of this chapter.

4           (b) The governor may appoint or employ temporary boards,  
5 agencies, officers, employees, and other persons, or any of  
6 them, for the purpose of carrying out the provisions of this  
7 chapter. All such temporarily appointed or employed officers  
8 and employees, whether or not employed by contract, shall be  
9 exempt from and not subject to nor entitled to the benefits of  
10 the provisions of chapters 76 and 88, or any other law,  
11 collective bargaining agreement, executive order, executive  
12 directive, or rule that is inapplicable to temporary employees  
13 of the State."

14           SECTION 10. Section 125C-9, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "~~[f]~~**§125C-9**~~[+]~~ **Investigations, information collection, and**  
17 **surveys.** The governor or the ~~[governor's authorized~~  
18 ~~representative]~~ director may make investigations, collect  
19 information, including confidential information, and conduct  
20 surveys for the purpose of ascertaining facts to be used in  
21 administering this chapter, and in making the investigations,  
22 collecting the information, and conducting the surveys, may

1 require the making, filing, or keeping of applications,  
2 schedules, records, reports, or statements, under oath or  
3 otherwise, administer oaths, take evidence under oath, subpoena  
4 witnesses, and require the production of books, papers, and  
5 records. Witnesses shall be allowed their fees and mileage as in  
6 cases in the circuit courts. The circuit court of any circuit or  
7 judge thereof may enforce by proper proceedings the attendance  
8 and testimony of any witness subpoenaed to appear within the  
9 circuit, or the production of books, papers, and records."

10 SECTION 11. Section 125C-10, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~f~~]**\$125C-10**[~~f~~] **Fraud; [~~misdemeanor~~] penalties.** Any  
13 person required by the governor or the [~~governor's authorized~~  
14 ~~representative,~~] director, pursuant to [~~section 125C-9,~~] this  
15 chapter, to make, keep, or file any application, schedule,  
16 record, report, or statement, whether or not under oath, who  
17 intentionally makes, files, or keeps a false or fraudulent  
18 application, schedule, report, or statement or intentionally  
19 conceals therein any material fact, and any person who in any  
20 other manner intentionally deceives or attempts to deceive the  
21 governor or the [~~governor's authorized representative~~] director  
22 with respect to any fact to be used in administering this

1 chapter, and any person who intentionally fails to observe and  
2 comply with any rule promulgated under this chapter, shall be  
3 ~~[guilty of a misdemeanor.]~~ assessed a civil penalty of not more  
4 than \$10,000 per violation."

5 SECTION 12. Chapter 125C, Hawaii Revised Statutes, is  
6 amended by amending the title of part II to read as follows:

7 **"PART II. HARDSHIP SET-ASIDE AND ALLOCATION OF [PETROLEUM]**  
8 **FUEL PRODUCTS DURING A SHORTAGE"**

9 SECTION 13. Section 125C-21, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§125C-21 Definitions."** "[~~Petroleum~~] Fuel product" means  
12 any fuel subject to the set-aside system described in this  
13 chapter, including heating oils, [~~light and heavy diesel oil,~~]  
14 all classifications of diesel fuels, motor gasoline[~~]~~ and all  
15 blends of motor gasoline with other fuel products, propane,  
16 butane, residual fuel oils, kerosene, [~~and~~] naphtha, biodiesel,  
17 ethanol, suboctane motor gasoline, aviation fuels used for  
18 emergency and essential intrastate air transport services, but  
19 excluding all other aviation fuels.

20 "Prime supplier" means any individual, trustee, agency,  
21 partnership, association, corporation, company, municipality,  
22 political subdivision, or other legal entity [~~which~~] that makes

1 the first sale of any [~~liquid fossil~~] fuel product into the  
2 state distribution system for consumption within the State."

3 SECTION 14. Section 125C-22, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§125C-22 When set-aside required.** When a shortage as  
6 defined in section 125C-2 exists, all prime suppliers shall set  
7 aside supplies of each [~~petroleum~~] fuel product for which there  
8 is a shortage. The amount set aside shall be in accordance with  
9 [~~the~~] any rules adopted by the [~~state energy resources~~  
10 ~~coordinator~~] director."

11 SECTION 15. Section 125C-23, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§125C-23 Set-aside system.** The [~~state energy resources~~  
14 ~~coordinator~~] director shall adopt rules establishing a  
15 [~~petroleum~~] fuel products set-aside system. The purpose of this  
16 system shall be:

- 17 (1) The protection of public health, safety, and welfare;  
18 (2) The maintenance of public services, utilities, and  
19 transportation, including emergency and essential  
20 intrastate air transport services;

- 1 (3) The maintenance of agricultural operations, including  
2 farming, horticulture, dairy, fishing, and related  
3 services;
- 4 (4) The preservation of economically sound and competitive  
5 industry, through the equitable acquisition and  
6 distribution of [~~petroleum~~] fuel products; and
- 7 (5) The promotion of efficiency, with minimum economic  
8 disruptions, during a shortage of [~~petroleum~~] fuel  
9 products.

10 The rules establishing the set-aside system shall be adopted in  
11 accordance with chapter 91."

12 SECTION 16. Section 125C-31, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[~~†~~]**\$125C-31**[~~†~~] [~~Biennial state~~] State energy emergency  
15 **preparedness plan.** (a) The department of business, economic  
16 development, and tourism shall prepare a comprehensive and  
17 integrated [~~biennial~~] state energy emergency preparedness plan  
18 to be implemented in the event of, or in anticipation of, a  
19 change in the State's [~~petroleum~~] energy supply or demand  
20 situation that is judged by the governor to be unmanageable by  
21 the [~~free market.~~] prevailing markets. The department of  
22 business, economic development, and tourism shall prepare a

1 [biennial] state energy emergency preparedness plan [~~in every~~  
2 ~~even-numbered year~~] in accordance with the following:

3 (1) The [biennial] state energy emergency preparedness  
4 plan shall replace the previous state energy emergency  
5 plan developed by the [energy resources coordinator,]  
6 director, who shall act as the governor's authorized  
7 representative under this chapter;

8 (2) In preparing the [biennial] state energy emergency  
9 preparedness plan, the department shall:

10 (A) Solicit input, comment, and review from the  
11 governor's energy emergency preparedness advisory  
12 committee composed of representatives of federal,  
13 state, and county governments; [~~private energy~~  
14 ~~suppliers;~~] distributors, major energy producers,  
15 major fuel storers, major energy transporters,  
16 and major energy marketers; consumer and other  
17 public interest groups; and the public at-large;  
18 and

19 (B) Establish other task forces and advisory groups,  
20 as may be deemed necessary, to assist in the  
21 preparation and review of the [biennial] state  
22 energy emergency preparedness plan;

- 1           (3) The [~~biennial~~] state energy emergency preparedness  
2           plan shall be comprehensive and encompassing, and  
3           shall integrate into its analytic and planning  
4           framework the emergency preparedness plans of  
5           ~~[electric and gas utilities and other energy~~  
6           ~~suppliers,]~~ distributors, major energy producers,  
7           major fuel storers, major energy transporters, major  
8           energy marketers, and relevant state agencies,  
9           including the Hawaii department of defense, the  
10          department of transportation, counties, and such other  
11          entities as deemed appropriate~~[+]~~ by the director; and
- 12          (4) The [~~biennial~~] state energy emergency preparedness  
13          plan shall include a review and update of the previous  
14          [~~biennial~~] state energy emergency preparedness plan  
15          and ~~[a review of the energy emergency plans prepared~~  
16          ~~by the counties.]~~ shall be prepared or updated as  
17          determined by the director to be necessary to comport  
18          with changes in federal or state overall emergency  
19          management policies and plans which significantly  
20          affect the State's energy emergency preparedness plans  
21          or as warranted by changes in Hawaii's energy security  
22          situation.

1 (b) The department shall prepare an energy emergency  
2 communication plan, which shall be [~~updated biennially and shall~~  
3 ~~be~~] consistent with the energy emergency preparedness plans  
4 prepared by the counties. The energy emergency communication  
5 plan shall be used by the State and counties to communicate and  
6 otherwise coordinate state and county actions taken in response  
7 to implementing the [~~biennial~~] state energy emergency  
8 preparedness plan."

9 SECTION 17. Section 125C-32, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§~~[f]~~§125C-32~~[f]~~ ~~Biennial county~~ **County energy emergency**  
12 **preparedness plans.** The mayor of each county, or the mayor's  
13 authorized representative, shall prepare a comprehensive county  
14 energy emergency preparedness plan. The plan shall be prepared  
15 in coordination with and be consistent with the [~~biennial~~] state  
16 energy emergency preparedness plan~~[7]~~ and shall be implemented  
17 in coordination with the state energy emergency preparedness  
18 plan upon declaration of an energy emergency by the governor.  
19 [~~Not later than September 30 of every even-numbered year, each~~  
20 ~~county shall prepare and transmit to the director of business,~~  
21 ~~economic development, and tourism the county's biennial county~~  
22 ~~energy emergency preparedness plan.]"~~



H.B. NO. 3070

1 SECTION 18. In codifying the new sections of this Act, the  
2 revisor of statutes shall substitute appropriate section numbers  
3 for the letters used in designating the new sections in this  
4 Act.

5 SECTION 19. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 20. This Act shall take effect upon its approval.

8

9

INTRODUCED BY

Calvin K. Boy

BY REQUEST

JAN 22 2008

10

**Report Title:**

Energy; Emergency Preparedness.

**Description:**

To comprehensively address deficiencies in Hawaii's energy emergency preparedness statutes. Provide up to date policy guidance needed for consistency with current federal and state energy emergency and overall emergency management policies and plans, and to provide definitive guidance on critical energy data analyses functions.

## JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO ENERGY  
EMERGENCY PREPAREDNESS.

PURPOSE: To comprehensively address deficiencies in Hawaii's energy emergency preparedness program. The bill will:

- (1) Amend chapter 125C, Hawaii Revised Statutes, to establish this chapter as the enabling statute for the State's energy emergency preparedness program's coverage of all forms of energy emergencies, irrespective of cause, consistent with the threats to energy security and the state energy emergency preparedness program;
- (2) Redefine the types of information that all energy companies may be required to submit to the energy resources coordinator under chapter 125C, Hawaii Revised Statutes, in the case of an energy emergency or shortage;
- (3) Amend chapter 125C, Hawaii Revised Statutes, to authorize the department of business, economic development, and tourism to compile and analyze information, including confidential information, to effectuate the State's role and responsibilities in energy emergency planning and preparedness, mitigation, response, and recovery;
- (4) Amend chapter 125C, Hawaii Revised Statutes, to require the department of business, economic development, and tourism to comply with confidentiality, information security, and nondisclosure requirements for all data and information obtained for purposes of the chapter; and
- (5) Amend chapter 125C, Hawaii Revised Statutes, to add and, wherever appropriate and practical, clarify

definitions for consistency with those in chapter 486J, Hawaii Revised Statutes.

MEANS: Add four new sections to chapter 125C and amend the titles of chapter 125C and part II of chapter 125C and sections 125C-1, 125C-2, 125C-3, 125C-4, 125C-6, 125C-8, 125C-9, 125C-10, 125C-21, 125C-22, 125C-23, 125C-31, and 125C-32, Hawaii Revised Statutes.

JUSTIFICATION: A comprehensive, integrated approach is needed to address deficiencies in Hawaii's energy emergency preparedness law. Amendments to the law are necessary to provide authoritative policy support and functional guidance to meet the following critical needs of the State: (1) regain and retain the law's relevance, consistency, and adequacy as contingency policy guidance to accommodate actual and expected changes in Hawaii's energy (and economic) security and vulnerability, stemming from significant changes in energy and fuel markets, (2) update and align its key provisions with relevant changes to federal and state overall emergency management, and energy emergency management policies and planning guidance, stemming from the post-9/11 and post-Katrina evolution of the "all-hazards/all-threats" emergency management context, and fundamental shifts in the global energy and markets; and (3) rectify the several inadequacies of data collection, analysis and reporting provisions with amendments to accommodate and address unique economic and energy systems risks associated with transitional issues and trends relating to both petroleum-based fuels and biofuels, and actionable provisions to add sufficiently detailed definition to conduct Energy Emergency Preparedness-related energy analytic functions. Such provisions are considered critical to the State's role in energy emergency preparedness, planning, mitigation, and response, and provide adequate differentiation between the

department of business, economic development, and tourism's and the public utilities commission's respective functional needs.

Impact on the department and other agencies:  
DBEDT considers approval of these changes to be essential to its mission, because the energy and fuels data analytic and information functions are essential for the state energy program to support the governor and the state energy resources coordinator, which contributes significantly to other agencies' missions. If these statutory changes are not made, these missions will be severely degraded, and development of an effective energy security and energy emergency preparedness program will be delayed. This would further delay improvement of the State's capabilities and capacity to plan and respond to any energy emergency or shortage. These amendments will support efforts to achieve more reliable, secure, cost-effective, more self-reliant energy systems.

GENERAL FUND: None

OTHER FUNDS: None

PPBS PROGRAM  
DESIGNATION: BED-120AD

OTHER AFFECTED  
AGENCIES: Attorney General, Budget and Finance, Consumer Advocate, Public Utilities Commission, Taxation, Transportation, and State Department of Defense.

EFFECTIVE DATE: Upon approval.