

JAN 22 2007

A BILL FOR AN ACT

RELATING TO ENERGY SECURITY AND ENERGY EMERGENCY PREPAREDNESS.

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

1 SECTION 1. The legislature finds that despite the
2 comprehensive integrated energy policy measures enacted in
3 recent years, particularly in 2006, Hawaii's major energy
4 systems remain mainly dependent on oil. Historic supply and
5 demand patterns have resulted in the development of an
6 integrated and interdependent statewide energy system. Nearly 90
7 per cent of the state's primary energy is from petroleum, and
8 approximately 76 per cent of the state's electricity is
9 generated using petroleum fuels.

10 In 2005, the state received 25 per cent of its total annual
11 crude oil imports from the Middle East, and Saudi Arabia became
12 the state's largest import source, supplying over 17 per cent.
13 In previous years, less than 1 per cent of Hawaii's crude oil
14 imports came from the Middle East.

15 One of the primary functions of government includes the
16 need to coordinate development of the state's energy resources
17 to preserve energy security, and maintain an effective energy
18 emergency preparedness program from an informed technical and

1 analytical perspective. Policy changes and other events have
2 revealed to the legislature a critical need to improve the
3 State's technical understanding of Hawaii's energy resources,
4 markets, and systems for effective energy emergency planning and
5 preparedness, mitigation, response, and recovery to include such
6 energy-related functional support of the state civil defense
7 mission. Such improved technical analytic capabilities and
8 understanding are also necessary to plan longer term measures to
9 preserve the state's energy security, which is a prerequisite
10 for economic stability and resilience. These functions are
11 among the statutory roles and responsibilities of the director
12 of the department of business, economic development, and
13 tourism, who serves as the state energy resources coordinator
14 pursuant to chapter 196, Hawaii Revised Statutes, and, as such,
15 is the governor's authorized representative for energy emergency
16 preparedness and management under chapter 125C, Hawaii Revised
17 Statutes.

18 To strengthen and comprehensively address deficiencies in
19 Hawaii's energy emergency preparedness, and energy resources
20 coordination statutes it is necessary to amend chapter 125C,
21 Hawaii Revised Statutes, and chapter 196 to comprehensively
22 update their provisions consistent with, and to support current

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1 federal and statewide overall emergency management, and energy
2 emergency management policies, plans, and practices. Moreover,
3 such amendments would support the efforts of the department of
4 business, economic development, and tourism, which has taken the
5 initiative to update its energy emergency preparedness program
6 to meet requirements of the post-9/11 world in which
7 preparedness and planning must address all possible hazards in
8 relation to all sectors of the energy industry. Both Hawaii's
9 oil over-dependency and transitional issues concerning both
10 petroleum and biofuels are anticipated to increase Hawaii's
11 exposure to the risk of supply disruption over the next several
12 years. The department conducted the update with Hawaii state
13 agencies and energy companies in consultation with relevant
14 federal and county agencies, the U.S. military, and expert
15 consultants.

16 The recent statewide propane shortage and earthquake
17 underscored and validated the need to address the serious
18 inadequacies of the current statutes and the State's concern
19 that the data reporting and collection provisions of these
20 energy emergency preparedness laws do not include all necessary
21 data and all relevant components of the energy industry.

1 Currently, only importers of fuel are subject to reporting
2 requirements, and then only for supply and demand information.
3 However, vital information from other non-importing
4 distributors, wholesalers, retailers, and other major energy
5 companies, and other more extensive and detailed types of data
6 and information on all aspects of the state's energy systems and
7 market are essential for effective energy system situational
8 analyses, policy development, energy security, and an energy
9 emergency preparedness program. Such restrictions on data
10 collection stand to preclude the governor's and energy resources
11 coordinator's ability to adequately understand the severity and
12 impacts of an energy emergency or fuel shortage on a statewide
13 basis, and to determine what response measures may be necessary.

14 Chapter 125C, Hawaii Revised Statutes, does not currently
15 require major energy companies to report critical emergency
16 preparedness information regarding storage, transport,
17 inventory, supply, demand, production and capacities, actual
18 prices, and other aspects of energy systems and markets, which
19 are essential to the State's emergency management role,
20 irrespective of the companies' import status.

21 Data inadequacies constrain the department of business,
22 economic development, and tourism's energy planning and policy

1 analytic capabilities which support preservation of the state's
2 energy security.

3 The amendments of Act 78, Session Laws of Hawaii 2006,
4 added precision to the petroleum industry information reporting
5 requirements, and thus amended the purpose of that law itself by
6 having sharpened the focus of chapter 486J, Hawaii Revised
7 Statutes, primarily on monitoring industry profits and consumer
8 prices. Act 78, Session Laws of Hawaii 2006, redirected
9 functional implementation of chapter 486J, Hawaii Revised
10 Statutes, from the department of business, economic development,
11 and tourism to the public utilities commission, and repealed
12 language related to the previous statutory purposes. One such
13 purpose was use of petroleum industry information, including
14 confidential information to plan for and manage fuel shortages
15 (energy emergencies) by the department of business, economic
16 development, and tourism, a function it retains in support of
17 the governor, and state civil defense. While Act 78, Session
18 Laws of Hawaii 2006, required that the department of business,
19 economic development, and tourism retain access to all
20 information, including confidential information, obtained by the
21 public utilities commission pursuant to chapter 486J, Hawaii
22 Revised Statutes, the department was required to return

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1 implementation resources previously appropriated by the
2 legislature from the public utilities commission special fund
3 pursuant to section 167, Act 178, Session Laws of Hawaii 2005.
4 Moreover, the bill enacted as Act 78, Session Laws of Hawaii
5 2006, that made it inopportune to formulate complementary
6 amendments to bolster information requirements for energy
7 emergency planning and management, and comprehensive energy
8 resources coordination and planning to preserve the state's
9 energy security prior to adjournment of the regular 2006
10 session.

11 Therefore, new legislation, and amendments to current laws,
12 and resources are needed to implement these expanded functions
13 and responsibilities.

14 The purpose of this Act is to remedy the deficiencies in
15 existing statutes governing energy emergency planning in this
16 state.

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

20 "§125C-A Definitions. As used in this chapter, unless the
21 context requires otherwise: "Commission" means the public
22 utilities commission.

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1 "Department" means the department of business, economic
2 development, and tourism.

3 "Director" means the director of business, economic
4 development, and tourism, who is also the state energy resources
5 coordinator pursuant to chapter 196.

6 "Distributor" means:

7 (1) Every person who refines, manufactures, produces, or
8 compounds fuel, in the state, and sells it at
9 wholesale or retail, or who utilizes it directly in
10 the manufacture of products or for the generation of
11 power;

12 (2) Every person who imports or causes to be imported into
13 the state, or exports or causes to be exported from
14 the state, any fuel;

15 (3) Every person who acquires fuel through exchanges with
16 another distributor; or

17 (4) Every person who purchases fuel for resale at
18 wholesale or retail from any person described in
19 paragraph (1), (2), or (3).

20 "Electricity" means all electrical energy produced by
21 combustion of any fuel as defined in this section, or generated

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1 or produced using wind, the sun, geothermal, ocean water,
2 falling water, currents, and waves, or any other source.

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

5 "Energy resources" means fuel and electricity as defined in
6 this section.

7 "Fuel" means fuels, whether liquid, solid, or gaseous,
8 commercially usable for energy needs, power generation, and
9 fuels manufacture, that may be manufactured, grown, produced, or
10 imported into the state or that may be exported therefrom,
11 including petroleum and petroleum products and gases to include
12 all fossil fuel-based gases, coal tar, vegetable ferments,
13 biomass, municipal solid waste, biofuels, hydrogen, agricultural
14 products used as fuels and as feedstock to produce fuels, and
15 all fuel alcohols.

16 "Major energy producer" means any person who produces
17 energy resources in amounts determined by the director as having
18 a major effect on the supplies of, or demand for, energy
19 resources.

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.

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1 "Major energy transporter" means any person who transports
2 energy resources in amounts determined by the director as having
3 a major effect on the supplies of, or demand for, energy
4 resources.

5 "Major energy user" means any person who uses energy
6 resources in the manufacture of products or for the generation
7 of electricity in amounts determined by the director as having a
8 major effect on the supplies of, or demand for, energy
9 resources.

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

14 §125C-B Information and analysis required for state energy
15 emergency planning and preparedness, mitigation, response, and
16 recovery. (a) The department, with its own staff and its
17 agents who are designated by the director as authorized
18 representatives, shall use the information, including
19 confidential information, received from all sources, including
20 the information received from the public utilities commission
21 pursuant to chapter 486J, solely to effectuate the purposes of
22 chapter 125C and chapter 196, and to conduct systematic

1 statistical and quantitative analyses of the state's energy
2 resources, systems, and markets that the director determines are
3 necessary to:

- 4 (1) Produce assessments designed to determine and mitigate
5 the potential for energy supply disruptions, and to
6 develop State energy emergency response plans and
7 measures including systematic situational energy
8 analyses, which in the event of an energy crisis or
9 supply disruption could assist in determining the
10 nature, scope, severity, and expected duration of such
11 an event, and assess potential and actual economic and
12 other impacts of the crisis, particularly to determine
13 and recommend what, if any, well-informed emergency
14 government interventions may be necessary and
15 appropriate, and to implement and evaluate the
16 effectiveness of such emergency interventions;
- 17 (2) Conduct systematic statistical, energy, economic, and
18 other relevant analyses for comprehensive energy
19 emergency planning toward determining, measuring and
20 evaluating, formulating, and recommending specific
21 proposals to improve government and industry energy

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- 1 emergency plans and programs, and to support longer
2 term measures to preserve Hawaii's energy security;
- 3 (3) Establish and maintain a quantitative and qualitative
4 technical understanding of Hawaii's statewide energy
5 resources, systems, and markets and their
6 relationships with the economy;
- 7 (4) Produce trend analyses and forecasts of energy supply
8 and demand, and trend analyses of major aspects of
9 risks to and vulnerabilities of Hawaii's energy
10 resources, systems, and markets; and
- 11 (5) Produce other relevant energy analyses that the
12 director deems necessary to administer the energy
13 emergency preparedness and energy supply security
14 policies pursuant to this chapter, and implement and
15 evaluate other related activities in support of the
16 director's role and responsibilities pursuant to
17 chapter 486J and chapter 196.
- 18 (b) If the information that the department is authorized
19 to receive from the public utilities commission pursuant to
20 chapter 486J, including confidential information, become
21 unavailable, or if such information is determined by the
22 director to be unsuitable in any way whatsoever, the director is

1 authorized to require that this information and any other
2 relevant information, including confidential information, be
3 reported by distributors to the director. To facilitate the
4 efficient and systematic conveyance of this information,
5 including confidential information, the public utilities
6 commission shall, as a matter of routine, provide to the
7 department copies of the statements and information that the
8 commission receives pursuant to sections 486J-3, 486J-4, and
9 486J-4.5.

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

14 §125C-C Reporting requirements. Each major energy
15 producer, major fuel storer, major energy transporter, major
16 energy user, and major energy marketer shall on reporting dates
17 as the director may establish, and on forms prescribed,
18 prepared, and furnished by the director, submit to the director
19 certified statements. Such statements shall report information
20 to include, but not be limited to, information related to such
21 aspects of their respective Hawaii facilities and operations as
22 described in this section. Such statements shall provide for

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1 reporting this information on a statewide consolidated basis,
2 and separately for each county and for the islands of Lanai and
3 Molokai as follows:

4 (1) For fuel: the volumes, movement, processing, blending,
5 and transformation of fuels beginning with crude oil,
6 feedstocks, ethanol, biodiesel, and other refined
7 petroleum or fuel product imports, through and
8 including the state's fuel infrastructure, from and
9 between distributors and to all fuel end-users, as
10 well as any exports of these fuels and fuel products
11 out of the state, wholesale and retail transactions
12 (sales and purchases), and wholesale and retail prices
13 of all fuels; the capacities and actual inventories,
14 throughput, and output of all these entities'
15 infrastructure, including refineries, storage and
16 distribution tanks and terminals, transport modes such
17 as pipelines, barges, and other vessels, and other
18 such critical fuel infrastructure.

19 (2) For electricity: the name and location of all
20 generation systems and components greater than 10
21 megawatts; renewable sources greater than 250
22 kilowatt, generating capacity, actual loads generated,

1 average gross and net electricity generation, energy
2 resources used and fuels consumed, heating values of
3 fuels, total electricity transmitted and sold, the
4 name and location of all transmission and distribution
5 systems and components including lines greater than 10
6 kilovolt capacity and substations, major command and
7 control centers and schemes, storage devices, and
8 average actual electricity flows and utilization.

9 §125C-D Confidential information. In effectuating the
10 purposes of this chapter, chapter 196, and other relevant laws,
11 or in order for the director to perform the duties pursuant to
12 this chapter, chapter 196, and other relevant laws:

13 (1) All confidential information received by the director
14 is exempt from public disclosure under section 92F-13,
15 and shall be held in confidence by the director and
16 the director's staff and agents, or aggregated to the
17 extent necessary in the director's discretion to
18 ensure confidentiality as required by chapter 92F.

19 (2) The director and the director's staff and agents shall
20 preserve the confidentiality and protection of all
21 information received by the director, and, by
22 application and extension of any other agency's

1 respective safeguards, to protect and prevent the
2 unauthorized further release of such information. Each
3 agency shall afford any such shared information the
4 protections from disclosure provided for under chapter
5 92F.

6 (3) Each major energy producer, distributor, major energy
7 marketer, major fuel storer, major energy transporter,
8 and major energy user that is required to provide
9 confidential information shall provide written or
10 electronic notification to the director as to the
11 specific information that is confidential.

12 (4) Unless otherwise provided by law with respect to the
13 confidential information that the director obtains,
14 purchases, receives, or otherwise acquires, neither
15 the governor nor the director, nor the staff and
16 agents thereof, may do any of the following:

17 (A) Use the confidential information for any purposes
18 other than the purposes for which it is acquired;

19 (B) Make any publication whereby the confidential
20 information furnished by any person can be
21 identified; or

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1 (C) Permit any person other than the governor, the
2 director, the director's staff and agents
3 thereof, to examine any confidential information,
4 individual reports, or statements acquired."

5 SECTION 3. Chapter 196, Hawaii Revised Statutes, is
6 amended by adding two new sections to be appropriately
7 designated and to read as follows:

8 "§196-A Information and analysis required for state
9 comprehensive energy planning for energy security. (a) The
10 department, with its own staff and agents which the director
11 designates as authorized representatives, shall use the
12 information, including confidential information, received from
13 all sources, including the information received from the public
14 utilities commission pursuant to chapter 486J and information
15 received pursuant to chapter 125C, solely to effectuate the
16 purposes of this chapter and chapter 125C, and shall conduct
17 systematic statistical and quantitative analyses of the state's
18 energy resources, systems, and markets that the director
19 determines are necessary to:

20 (1) Produce analyses designed to determine the status of
21 energy resources, systems, and markets, both in-state
22 and those to which Hawaii is directly tied,

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1 particularly in relation to the state's economy, and
2 to recommend, develop proposals for, and assess the
3 effectiveness of policy and regulatory decisions, and
4 assessments of renewable energy, energy efficiency,
5 and all fuels in all sectors, and ensure energy
6 security;

7 (2) Produce analyses of private and public sector energy
8 planning efforts, and market-based policies to develop
9 Hawaii's energy resources, systems, and markets, in
10 all sectors, and programs to preserve and protect the
11 state's energy security, effectuate the conservation
12 of energy resources, and formulate plans for the
13 development and use of alternative energy sources;

14 (3) Conduct systematic statistical, energy economic, and
15 other relevant analyses for comprehensive energy
16 planning toward determining, measuring and evaluating,
17 formulating, and recommending specific proposals for
18 achieving optimum development of Hawaii's energy
19 resources;

20 (4) Establish and maintain a quantitative and qualitative
21 technical understanding of Hawaii's statewide energy

1 resources, systems, and markets, and their
2 relationships with the economy;

3 (5) Produce trend analyses and forecasts of energy supply
4 and demand, and trend analyses of major aspects of
5 Hawaii's energy resources, systems, and markets; and

6 (6) Produce assessments of the cost-competitiveness of
7 developing renewable energy and energy efficiency
8 resources and subcategories of those energy resources
9 in relation to each other, and relative to petroleum-
10 based fuels, other fossil fuels, and other energy
11 resources."

12 "§196-B Confidential information. In effectuating the
13 purposes of this chapter, chapter 125C, and other relevant laws,
14 or in order for the director to perform the duties pursuant to
15 this chapter, chapter 125C, and other relevant laws:

16 (1) All confidential information received by the director
17 shall be afforded all the protections available
18 pursuant to chapter 486J, shall be exempt from public
19 disclosure under section 92F-13, and shall be held in
20 confidence by the director and the director's own
21 staff and agents, or aggregated to the extent

1 necessary in the director's discretion to ensure
2 confidentiality as required by chapter 92F.

3 (2) The director and the director's own staff and agents,
4 shall preserve the confidentiality and protection of
5 all information received by the director, and, by
6 application and extension of any other agency's
7 respective safeguards, protect and prevent the
8 unauthorized further release of such information.

9 Each agency shall afford any shared information the
10 protections from disclosure provided for under chapter
11 92F.

12 (3) Each major energy producer, distributor, major energy
13 marketer, major fuel storer, major energy transporter,
14 and major energy user that provides confidential
15 information, shall provide written or electronic
16 notification to the director as to the specific
17 information that is confidential.

18 (4) Unless otherwise provided by law with respect to the
19 confidential information that the director obtains,
20 purchases, receives, or otherwise acquires, neither
21 the governor nor the director, nor the staff and
22 agents thereof, may do any of the following:

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- 1 (A) Use the confidential information for any purposes
- 2 other than the purposes for which it is acquired;
- 3 (B) Make any publication whereby the confidential
- 4 information furnished by any person can be
- 5 identified; or
- 6 (C) Permit any person other than the governor, the
- 7 director, the director's staff and agents
- 8 thereof, to examine any confidential information,
- 9 individual reports, or statements acquired."

10 SECTION 4. Chapter 125C, Hawaii Revised Statutes, is
11 amended by amending its title to read as follows:

12 " ~~[PROCUREMENT, CONTROL, DISTRIBUTION AND SALE OF~~
13 ~~PETROLEUM PRODUCTS]~~ ENERGY EMERGENCY PREPAREDNESS AND
14 MANAGEMENT"

15 SECTION 5. Section 125C-1, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§125C-1 Findings and purpose. The legislature finds that
18 adequate supplies of ~~[petroleum products]~~ energy resources are
19 essential to the health, welfare, and safety of the people of
20 Hawaii, and that any severe ~~[disruption in petroleum product~~
21 ~~supplies]~~ energy emergency or shortage of energy resources for
22 use within the State would cause grave hardship, pose a threat

1 to the economic well-being of the people of the State, and have
2 significant adverse effects upon public confidence and order and
3 effective conservation of [~~petroleum products~~] energy. The
4 purpose of this chapter is to grant to the governor or the
5 governor's authorized representative the clear authority, when
6 energy emergencies or shortages of [petroleum products] energy
7 resources occur or are anticipated, to control the distribution
8 and sale of [~~petroleum~~] fuel products in this State, to procure
9 such products, and to impose rules that will provide
10 extraordinary measures for the conservation of energy and the
11 allocation of [~~petroleum~~] fuel products and for [~~their~~] the
12 distribution and sale of fuel in an orderly, efficient, and safe
13 manner. Another purpose of this chapter is to grant the clear
14 authority to the director to acquire, use, and analyze relevant
15 and essential information on Hawaii's energy resources, systems,
16 and markets to effectively plan and prepare for, mitigate
17 against, respond to, and recover from any energy emergency and
18 preserve the state's energy security."

19 SECTION 6. Section 125C-2, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§125C-2 "Shortage" defined. As used in this chapter,
22 unless otherwise indicated by the context, a "shortage" exists

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

1 SECTION 7. Section 125C-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§125C-3 Powers in a shortage. When a shortage as defined
4 in section 125C-2 exists, the governor or the governor's
5 authorized representative, to ensure that [~~petroleum~~] fuel
6 products are made available to the public in an orderly,
7 efficient, and safe manner, may:

8 (1) Control the retail distribution and sale of
9 [~~petroleum~~] fuel products by adopting rules that may
10 include, but are not limited to, the following
11 measures:

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

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

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- 1 (C) Requiring dealers to post signs designating their
2 hours of operation and the sell-out of daily
3 allocation;
- 4 (D) Instituting a statewide rationing plan; and
- 5 (E) Allowing for special handling for essential
6 commercial and emergency-user vehicles;
- 7 (2) Require that a percentage of [~~petroleum~~] fuel
8 products, not to exceed five per cent, be set aside to
9 alleviate hardship; provided that aviation gasoline
10 set aside shall not exceed ten per cent;
- 11 (3) Purchase and resell or otherwise distribute
12 [~~petroleum~~] fuel products [~~, and purchase and resell or~~
13 ~~otherwise distribute ethanol that is produced within~~
14 ~~the State and can be used as a substitute for~~
15 ~~petroleum products~~];
- 16 (4) Temporarily suspend for the duration of a shortage, or
17 until such time as the governor deems appropriate,
18 standards which may affect or restrict the use of a
19 substitute fuel to meet energy demand;
- 20 [~~4~~] (5) Receive, expend, or use contributions or grants
21 in money or property, or special contributions thereof

1 for special purposes not inconsistent with this
2 chapter;
3 [~~(5)~~] (6) Borrow and expend moneys needed to exercise the
4 powers granted under this section;
5 [~~(6)~~] (7) Contract in the name of the State for the
6 purpose of implementing this chapter or any part
7 thereof; and
8 [~~(7)~~] (8) Exercise the powers granted under this section
9 to the degree and extent deemed by the governor to be
10 necessary, including the temporary or indefinite
11 suspension of all or part of the measures taken, as
12 the governor deems appropriate."

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

15 "**§125C-4 Adopting, filing, and taking effect of rules.**
16 The governor or the [~~governor's authorized representative~~]
17 director shall adopt rules pursuant to chapter 91, to insure
18 that [~~petroleum~~] fuel products are made available to the public
19 in an orderly, efficient, and safe manner, to become effective
20 when a shortage, as defined in section 125C-2, exists. If
21 additional and unforeseen measures are required to insure that
22 [~~petroleum~~] fuel products are distributed in an orderly,

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

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1 filing with the lieutenant governor of the written declaration
2 by the governor terminating the suspension. The rulemaking
3 requirements in this section shall exclusively apply to the
4 implementation of sections 125C-2, 125C-3, and Part II, chapter
5 125C 'Hardship Set-Aside and Allocation of Fuel Products during
6 a Shortage.'"

7 SECTION 9. Section 125C-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§125C-6[+] Petition for adoption, amendment, repeal,
10 or suspension of rules. Any interested person may petition the
11 governor or the [~~governor's authorized representative~~] director
12 requesting the adoption, amendment, repeal, or suspension of any
13 rule and stating reasons therefor. The governor or the
14 [~~governor's authorized representative~~] director shall prescribe
15 the form for the petitions and the procedures for their
16 submission, consideration, and disposition, and within thirty
17 days after submission of the petition shall either deny the
18 petition in writing, stating the governor's or the [~~governor's~~
19 ~~authorized representative's~~] director's reasons for the denial,
20 or grant the petition and adopt, amend, repeal, or suspend the
21 rule accordingly."

1 SECTION 10. Section 125C-8, Hawaii Revised Statutes, is
2 amended to read as follows:

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

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

15 SECTION 11. Section 125C-9, Hawaii Revised Statutes, is
16 amended to read as follows:

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

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

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

13 "PART II. HARDSHIP SET-ASIDE AND ALLOCATION OF [PETROLEUM]
14 FUEL PRODUCTS DURING A SHORTAGE"

15 SECTION 13. Section 125C-21, Hawaii Revised Statutes, is
16 amended by amending the definitions of "petroleum product" and
17 "prime supplier" to read as follows:

18 "[Petroleum] Fuel product" means heating oils, [~~light and~~
19 ~~heavy diesel oil,~~] all classifications of diesel fuels, motor
20 gasoline and all blends of motor gasoline with other fuel
21 products, propane, butane, residual fuel oils, kerosene, [and]
22 naphtha, biodiesel, ethanol, suboctane motor gasoline, aviation

1 fuels used for emergency and essential intrastate air transport
2 services, but excluding all other aviation fuels[.], and any
3 other blends of fuel products used by services supported by the
4 set-aside system described in this chapter.

5 "Prime supplier" means any individual, trustee, agency,
6 partnership, association, corporation, company, municipality,
7 political subdivision or other legal entity which makes the
8 first sale of any [~~liquid fossil~~] fuel product into the state
9 distribution system for consumption within the State."

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

12 "§125C-22 **When set-aside required.** When a shortage as
13 defined in section 125C-2 exists, all prime suppliers shall set
14 aside supplies of each [~~petroleum~~] fuel product for which there
15 is a shortage. The amount set aside shall be in accordance with
16 [~~the~~] any rules adopted by the state energy resources
17 coordinator."

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

20 "§125C-23 **Set-aside system.** The state energy resources
21 coordinator shall adopt rules establishing a [~~petroleum~~] fuel
22 products set-aside system. The purpose of this system shall be:

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- 1 (1) The protection of public health, safety, and welfare;
2 (2) The maintenance of public services, utilities, and
3 transportation, including emergency and essential
4 intrastate air transport services;
5 (3) The maintenance of agricultural operations, including
6 farming, horticulture, dairy, fishing, and related
7 services;
8 (4) The preservation of economically sound and competitive
9 industry, through the equitable acquisition and
10 distribution of [~~petroleum~~] fuel products; and
11 (5) The promotion of efficiency, with minimum economic
12 disruptions, during a shortage of [~~petroleum~~] fuel
13 products.

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

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

18 " [~~+~~] §125C-31 [~~+~~] [~~Biennial-state~~] State energy emergency
19 **preparedness plan.** (a) The department of business, economic
20 development, and tourism shall prepare a comprehensive and
21 integrated [~~biennial~~] state energy emergency preparedness plan
22 to be implemented in the event of, or in anticipation of, a

1 change in the State's [~~petroleum~~] energy supply or demand
2 situation that is judged by the governor to be unmanageable by
3 the [~~free~~] prevailing [~~market-~~] markets. The department of
4 business, economic development, and tourism shall prepare a
5 [~~biennial~~] state energy emergency preparedness plan [~~in every~~
6 ~~even-numbered year~~] in accordance with the following:

7 (1) The [~~biennial~~] state energy emergency preparedness
8 plan shall replace the previous state energy emergency
9 plan developed by the [~~energy resources coordinator,~~
10 director, who shall act as the governor's authorized
11 representative under this chapter;

12 (2) In preparing the [~~biennial~~] state energy emergency
13 preparedness plan, the department shall:

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

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1 (B) Establish other task forces and advisory groups,
2 as may be deemed necessary, to assist in the
3 preparation and review of the ~~[biennial]~~ state
4 energy emergency preparedness plan;

5 (3) The ~~[biennial]~~ state energy emergency preparedness
6 plan shall be comprehensive and encompassing, and
7 shall integrate into its analytic and planning
8 framework the emergency preparedness plans of
9 ~~[electric and gas utilities and other energy~~
10 ~~suppliers,]~~ distributors, major energy producers,
11 major fuel storers, major energy transporters, major
12 energy marketers, and relevant state agencies,
13 including Hawaii state civil defense, the department
14 of transportation, counties, and such other entities
15 as deemed appropriate ~~[+]~~ by the director; and

16 (4) The ~~[biennial]~~ state energy emergency preparedness
17 plan shall include a review and update of the previous
18 ~~[biennial]~~ state energy emergency preparedness plan
19 and ~~[a review of the energy emergency plans prepared~~
20 ~~by the counties,]~~ shall be prepared or updated as
21 determined by the director to be necessary to comport
22 with changes in federal or state overall emergency

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1 management policies and plans which significantly
2 affect the State's energy emergency preparedness plans
3 or as warranted by changes in Hawaii's energy security
4 situation.

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

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

15 "~~§ 125C-32~~ [~~Biennial county~~] County energy emergency
16 preparedness plans. The mayor of each county, or the mayor's
17 authorized representative, shall prepare a comprehensive county
18 energy emergency preparedness plan. The plan shall be prepared
19 in coordination with and be consistent with the [~~biennial~~] state
20 energy emergency preparedness plan, and shall be implemented in
21 coordination with the state energy emergency preparedness plan
22 upon declaration of an energy emergency by the governor. [~~Not~~

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1 ~~later than September 30 of every even numbered year, each county~~
2 ~~shall prepare and transmit to the director of business, economic~~
3 ~~development, and tourism the county's biennial county energy~~
4 ~~emergency preparedness plan.] "~~

5 SECTION 18. Section 196-1, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§196-1 Findings and declaration of necessity. The
8 legislature finds that:

9 (1) The global demand for petroleum and its derivatives
10 has resulted in a sharp jump in energy prices and has
11 caused severe economic hardships throughout the State
12 and threatens to impair the public health, safety and
13 welfare.

14 The State of Hawaii, with its near total
15 dependence on imported fossil fuel, is particularly
16 vulnerable to dislocations in the global energy
17 market. This [~~is an anomalous~~] situation[7] can be
18 changed, as there are few places in the world so
19 generously endowed with natural energy: geothermal,
20 solar radiation, ocean temperature differential, wind,
21 biomass, waves, and currents--all potential non-
22 polluting power sources;

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1 (2) There is a real need for comprehensive strategic
2 [~~comprehensive~~] planning in the effort towards
3 achieving full utilization of Hawaii's energy
4 [~~resource programs~~] resources and the most effective
5 allocation of energy resources throughout the State.
6 Planning is necessary and desirable in order that the
7 State may recognize and declare the major problems and
8 opportunities in the field of energy resources. Both
9 short-range and long-range planning will permit the
10 articulation of:
11 (A) Broad policies, goals, and objectives;
12 (B) Criteria for measuring and evaluating
13 accomplishments of objectives;
14 (C) Identification and implementation of programs
15 that will carry out such objectives; and
16 (D) A determination of requirements necessary for the
17 optimum development of Hawaii's energy resources.
18 Such planning efforts will identify present conditions
19 and major problems relating to energy resources, their
20 exploration, development, production, and
21 distribution. It will show the projected nature of
22 the situation and rate of change and present

1 conditions for the foreseeable future based on a
2 projection of current trends in the development of
3 energy resources in Hawaii[+] and include initiatives
4 designed to fundamentally change how Hawaii consumes
5 energy, by accelerating the production of renewable
6 and alternative energy, increasing energy efficiency,
7 developing and adopting new technologies, and ensuring
8 the state's energy security;

9 (3) The State requires an in-depth understanding of the
10 causes and effects of any transitional issues and
11 trends related to changes in the state's energy
12 resources, systems, and markets;

13 [~~3~~] (4) There are many agencies of the federal, state,
14 and county governments in Hawaii, as well as many
15 private agencies[+] and a broad set of non-
16 governmental entities, engaged in, or expressing an
17 interest in, various aspects of the exploration,
18 research, distribution, transportation, storage,
19 conservation, and production of all forms of energy
20 resources in Hawaii. Some of these agencies include
21 the University of Hawaii, the department of land and
22 natural resources, the department of business,

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1 economic development, and tourism, the division of
2 consumer advocacy, the public utilities commission,
3 state civil defense, the federal energy office, and
4 various county agencies, as well as [~~the oil~~
5 ~~companies, gas stations, and other private~~
6 ~~enterprises,~~] Hawaii's energy and energy-related
7 companies; and

8 [(4)] (5) There is [~~immediate~~] an ongoing need in this
9 State to coordinate the efforts of [all these
10 agencies,] statewide industry and government energy
11 sectors, maintain the technical capability and
12 adequate capacity to quantitatively and qualitatively
13 evaluate, analyze, develop, and coordinate
14 implementation of private and public sector energy
15 planning efforts, and recommend market-based policies
16 to develop Hawaii's energy resources, systems, and
17 markets, establish and coordinate programs to preserve
18 and protect the state's energy security, maintain a
19 robust energy emergency preparedness program,
20 effectuate the conservation of [fuel,] energy
21 resources, to provide for the equitable distribution
22 thereof, [and] to formulate plans for the development

1 and use of alternative energy sources. There is a
2 need for such coordination, capability, and capacity
3 so that there will be maximum conservation and
4 utilization of energy resources in the State."

5 SECTION 19. Section 196-2, Hawaii Revised Statutes, is
6 amended by amending the definitions of "coordinator" and "energy
7 resources" to read as follows:

8 "Coordinator" means the energy resources coordinator[.],
9 who, for the purposes of this chapter, is the director of the
10 department of business, economic development, and tourism."

11 "Energy resources" means [~~and includes fossil fuel,~~
12 ~~nuclear, geothermal, solar, hydropower, wind, and other means of~~
13 ~~generating energy.] fuels, whether liquid, solid, or gaseous,
14 commercially usable for energy needs, power generation, and
15 fuels manufacture, that may be manufactured, grown, produced, or
16 imported into the state or that may be exported therefrom,
17 including petroleum and petroleum products and gases to include
18 all fossil fuel-based gases, coal tar, vegetable ferments,
19 biomass, municipal solid waste, biofuels, hydrogen, agricultural
20 products used as fuels and as feedstock to produce fuels, and
21 all fuel alcohols. "Energy resources" also includes all
22 electrical energy produced by combustion of any fuel, or~~

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1 generated or produced using wind, the sun, geothermal, ocean
2 water, falling water, currents, and waves, or any other source."

3 SECTION 20. Section 196-4, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§196-4 Powers and duties. Subject to the approval of the
6 governor, the coordinator shall:

7 (1) Formulate plans, including objectives, criteria to
8 measure accomplishment of objectives, programs through
9 which the objectives are to be attained, and financial
10 requirements for the optimum development of Hawaii's
11 energy resources;

12 (2) Conduct systematic analysis of existing and proposed
13 energy resource programs, evaluate the analysis
14 conducted by government agencies and other
15 organizations and recommend to the governor and to the
16 legislature programs which represent the most
17 effective allocation of resources for the development
18 of energy [~~sources,~~] resources;

19 (3) Formulate and recommend specific proposals, as
20 necessary, for conserving [~~energy and fuel,~~] energy
21 resources, including the allocation and distribution
22 thereof, to the governor and to the legislature;

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- 1 (4) Assist public and private agencies in implementing
2 energy conservation and related measures;
- 3 (5) Coordinate the State's energy conservation and
4 allocation programs with that of the federal
5 government, other state governments, governments of
6 nations with interest in common energy resources, and
7 the political subdivisions of the State;
- 8 (6) Develop programs to encourage private and public
9 exploration and research of alternative energy
10 resources which will benefit the State;
- 11 (7) Conduct public education programs to inform the public
12 of the energy resources situation as may exist from
13 time to time and of the government actions taken
14 thereto;
- 15 (8) Serve as consultant to the governor, public agencies,
16 and private industry on matters related to the
17 acquisition, utilization, and conservation of energy
18 resources;
- 19 (9) Contract for services when required for implementation
20 of this chapter;
- 21 (10) Review proposed state actions which the coordinator
22 finds to have significant effect on energy

1 ~~[consumption]~~ resources and report to the governor
2 their effect on the energy conservation program, and
3 perform such other services as may be required by the
4 governor and the legislature;

5 (11) Prepare and submit an annual report and such other
6 reports as may be requested to the governor and to the
7 legislature on the implementation of this chapter and
8 all matters related to energy resources; ~~[and]~~

9 (12) Adopt rules for the administration of this chapter
10 pursuant to chapter 91, provided that the rules shall
11 be submitted to the legislature for review~~[-]~~; and

12 (13) Develop and maintain a comprehensive and systematic
13 quantitative and qualitative capacity to analyze the
14 status of energy resources, systems, and markets, both
15 in-state and those to which Hawaii is directly tied,
16 particularly in relation to the state's economy, and
17 to recommend, develop proposals for, and assess the
18 effectiveness of policy and regulatory decisions,
19 conduct energy emergency planning."

20 SECTION 21. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$100,000, or so much
22 thereof as may be necessary for fiscal year 2007-2008, and the

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1 same sum, or so much thereof as may be necessary for fiscal year
2 2008-2009, to support the purposes of this Act, of which as so
3 much as may be deemed necessary by the director shall be
4 allocated to support the creation of one temporary full-time
5 equivalent position within the department of business, economic
6 development, and tourism to support the State's energy emergency
7 preparedness and energy security analytic functions. The sum
8 appropriated shall be expended by the department of business,
9 economic development, and tourism.

10 SECTION 22. In codifying the new sections of this Act, the
11 revisor of statutes shall substitute appropriate section numbers
12 for the letters used in designating the new sections in this
13 Act.

14 SECTION 23. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 24. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

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

PURPOSE: To comprehensively address deficiencies in Hawaii's energy security and its 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) Clarify the designation of the state energy resources coordinator (director of the department of business, economic development, and tourism) as the governor's authorized representative for energy emergencies, and authorize the state energy resources coordinator to acquire and use energy industry information obtained by the public utilities commission under chapter 486J and other relevant laws to effectuate the purposes of chapter 125C;
- (3) Redefine the types of information that all energy companies may be required to submit to the energy resources coordinator under chapter 125C in the case of an energy emergency or shortage;
- (4) Amend chapter 125C 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;
- (5) Amend chapter 125C and chapter 196 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 chapters;
 - (6) Amend chapter 125C to add and, wherever appropriate and practical, clarify definitions for consistency with those in chapter 486J;
 - (7) Amend chapter 196 to establish clarifying statements regarding the integrated nature of policy and functional linkages among the energy-related laws in chapter 196, chapter 125C, and chapter 486J in relation to the roles and responsibilities of the state energy resources coordinator;
 - (8) Amend chapter 196 to add clarity to the nature of the need for the State's systemic data collection and analytic functions to support reciprocal implementation of these interrelated energy statutes, and how these data functions are required for the energy resources coordinator to support these statutory mandates; and
 - (9) Make an annual appropriation of \$100,000 for each year of the fiscal biennium 2007-2009 to be expended by the department of business, economic development, and tourism to support the creation of one temporary full-time professional position to support the State's energy emergency preparedness and energy security analytic functions, and to perform these functions.

MEANS:

Add four new sections to chapter 125C and two new sections to Chapter 196 and amend 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, 125C-32, 196-1, 196-2, and 196-4, Hawaii Revised Statutes.

Appropriate \$100,000 for each year of the fiscal biennium 2007-2009 to be expended by the department of business, economic development, and tourism to support the creation of one temporary full-time professional position to support the State's energy emergency preparedness and energy security analytic functions, and to perform these functions.

JUSTIFICATION:

A comprehensive, integrated approach is needed to address deficiencies in Hawaii's energy security and energy emergency preparedness laws by amending chapter 125C, Hawaii Revised Statutes and chapter 196 to update the provisions and to support current federal and statewide overall emergency management, and energy emergency management policies, plans, and practices, and the department of business, economic development, and tourism's energy emergency preparedness program which have been updated to meet requirements of the post-9/11 world in which preparedness and planning must address all possible hazards in relation to all sectors of the energy industry; and, both Hawaii's oil over-dependency and transitional issues concerning both petroleum and biofuels which are anticipated to increase Hawaii's exposure to the risk of supply disruption over the next several years.

Impact on the public: None

Impact on the department and other agencies: DBEDT considers approval of these changes to be essential to its own 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: \$100,000 in each year of the fiscal biennium 2007-2009 to be expended by the department of business, economic development, and tourism to support the creation of one temporary full-time professional position to support the State's energy emergency preparedness and energy security analytic functions, and to perform these functions.

OTHER FUNDS: N/A

**PPBS PROGRAM
DESIGNATION:** BED-120AD

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

EFFECTIVE DATE: Upon approval.