

# S.B. NO. 1379

JAN 22 2007

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## A BILL FOR AN ACT

RELATING TO THE PETROLEUM INDUSTRY.

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

1 SECTION 1. Chapter 486B, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§486B-A Monitoring of petroleum industry information. The  
5 public utilities commission shall refer to the attorney general  
6 any matter that is a violation of this chapter that is discovered  
7 in the performance of its duties pursuant to chapters 486H and  
8 486J."

9 SECTION 2. Chapter 486J, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§486J-A Use and analysis of information by the department  
13 of business, economic development, and tourism. The department,  
14 with its own staff and other support staff with relevant  
15 expertise and experience, shall use the information to effectuate  
16 the purposes of chapter 196, chapter 125C, and other relevant  
17 laws."

18 SECTION 3. Section 486J-1, Hawaii Revised Statutes, is  
19 amended as follows:

1 (1) By adding a new definition to be appropriately inserted  
2 and to read as follows:

3 "Major fuel user" means any person who uses fuel in the  
4 manufacture of products or for the generation of power in amounts  
5 determined by the commission as having a major effect on energy  
6 supplies."

7 (2) By amending the definitions of "distributor", "major  
8 marketer", "major oil producer", "major oil storer", and "major  
9 oil transporter" to read as follows:

10 "Distributor" means:

11 (1) Every person who refines, manufactures, produces, or  
12 compounds fuel in the State and sells it at wholesale  
13 or at retail [~~or who uses it directly in the~~  
14 ~~manufacture of products or for the generation of~~  
15 ~~power~~];

16 (2) Every person who imports or causes to be imported into  
17 the State, or exports or causes to be exported from the  
18 State, any fuel;

19 (3) Every person who acquires fuel through exchanges with  
20 another distributor; or

21 (4) Every person who purchases fuel for resale at wholesale  
22 or retail from any person described in paragraph (1),  
23 (2), or (3); provided that "distributor" shall not  
24 include a marina, lessee dealer-operated station,

1 owner-operated station, or other retailer that retails  
2 fuel only to end users or the public.

3 "Major marketer" means any person who sells natural gas,  
4 propane, synthetic natural gas or oil in amounts determined by  
5 the [department] commission as having a major effect on energy  
6 supplies.

7 "Major oil producer" means any person who produces oil in  
8 amounts determined by the [department] commission as having a  
9 major effect on energy supplies.

10 "Major oil storer" means any person who stores oil or other  
11 petroleum products in amounts determined by the [department]  
12 commission as having a major effect on energy supplies.

13 "Major oil transporter" means any person who transports oil  
14 or other petroleum products in amounts determined by the  
15 [department] commission as having a major effect on energy  
16 supplies."

17 SECTION 4. Section 486J-3, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "**§486J-3 Statements.** (a) Each week, or other appropriate  
20 time period and on reporting dates to be determined by the  
21 commission, every distributor [~~, on the reporting dates as the~~  
22 ~~commission may establish,~~] and major fuel user shall file with  
23 the commission, on forms prescribed, prepared, and furnished by  
24 the commission, a certified statement showing on a statewide  
25 consolidated basis, and separately for each county and for the

1 islands of Lanai and Molokai within which and whereon fuel is  
2 sold or used during the last preceding reporting week, the  
3 following:

- 4 (1) The total number of gallons or units of fuel, by type  
5 or grade, refined, manufactured, or compounded by the  
6 distributor within the State and, if for ultimate sale  
7 or consumption in another county or on another island,  
8 the number of gallons or units of fuel, by type or  
9 grade, sold, exchanged, or otherwise transferred or  
10 used by the distributor in each county or island;
- 11 (2) The total number of gallons or units of fuel, by type  
12 or grade, imported or exported by the distributor; the  
13 total volumes of fuel, by type or grade, sold,  
14 exchanged, or otherwise transferred or used by the  
15 distributor; and if for ultimate sale or consumption in  
16 another county or on another island, the number of  
17 gallons or units of fuel, by type or grade, sold,  
18 exchanged, or otherwise transferred or used by the  
19 distributor in each county or island;
- 20 (3) The total number of gallons or units of fuel sold as  
21 liquid fuel, aviation fuel, diesel fuel, and other  
22 types of fuel as required by the commission;
- 23 (4) The total number of gallons or units of fuel, by type  
24 or grade, and their respective sales prices for all  
25 fuel sold to federal, state, and county agencies, ships

1 stores, or base exchanges, commercial agricultural  
2 accounts, commercial nonagricultural accounts, retail  
3 dealers, and other customers as required by the  
4 commission;

5 (5) Weekly weighted average acquisition cost per barrel and  
6 volumes of foreign or domestic crude oil or other  
7 liquid fuels, finished or unfinished, imported to  
8 Hawaii, including information identifying the source of  
9 the crude oil or other liquid fuels;

10 (6) The effective date and time, and the amount of change  
11 in cents per gallon, of any increase or decrease in  
12 wholesale price occurring during the week and the  
13 weekly weighted average wholesale prices and sales  
14 volumes of finished unleaded regular and premium motor  
15 gasoline, and of each other grade of gasoline sold, by  
16 island, to retail outlets, by classes of retail trade,  
17 and to wholesale distributors;

18 (7) Weekly weighted average retail prices, and sales  
19 volumes of finished unleaded regular and premium motor  
20 gasoline, and of each other grade of gasoline sold, by  
21 island, by retail distributor outlets of all classes of  
22 retail trade and by any distributor to other end-users;  
23 provided that the commission may purchase retail price  
24 data from data service companies that the commission  
25 may use to substitute some or all data to meet the

1 reporting requirement for retail price data under this  
2 paragraph;

3 (8) The effective date and time, and the amount of change  
4 in cents per gallon, of any increase or decrease in  
5 wholesale price occurring during the week and the  
6 weekly weighted average wholesale prices, and sales  
7 volumes of No. 2 diesel fuel and No. 2 fuel oil, by  
8 island, to retail distributor outlets, by classes of  
9 retail trade, and to all other wholesale distributors.  
10 Weighted average wholesale prices and sales volumes  
11 shall be reported by type of wholesale liquid fuel  
12 price;

13 (9) Weekly weighted average retail prices, and sales  
14 volumes of No. 2 diesel fuel and No. 2 fuel oil sold,  
15 by island, by retail distributor outlets of all classes  
16 of retail trade and by any distributor to other  
17 end-users. The commission may purchase retail price  
18 data from data service companies that the commission  
19 may use to substitute some or all data to meet the  
20 reporting requirement for retail price data under this  
21 paragraph;

22 (10) Weekly weighted average prices, and sales volumes for  
23 retail sales and wholesale sales, by island, of No. 1  
24 distillate, kerosene, finished aviation gasoline,

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1 kerosene-type jet fuel, No. 4 fuel oil, residual fuel  
2 oil, and consumer grade propane;

3 (11) For each distributor that is a refiner, the gross  
4 margins or spreads between a refiner's average weighted  
5 acquisition price for each gallon of crude oil and  
6 blendstock refined within the State and the average  
7 weighted prices for each gallon or unit of fuel sold,  
8 by county or island, to another distributor, a retail  
9 dealer, end-user, and consumer; ~~and~~

10 (12) For each distributor that is not a refiner, the gross  
11 margins or spreads between the distributor's average  
12 weighted price for each gallon or unit of fuel acquired  
13 by the distributor and the average weighted prices for  
14 each gallon or unit of fuel sold, by county or island,  
15 to another distributor, a retail dealer, end-user, or  
16 consumer ~~[ ]~~; and

17 (13) Revenues, expenses, profits and losses, and any other  
18 financial or operating information as may be required  
19 by the commission.

20 The commission shall prescribe applicable standards and practices  
21 for reporting to facilitate uniformity, consistency, and  
22 comparability of the data to be submitted.

23 (b) Each major marketer shall submit to the commission, at  
24 a time and in a form as the commission shall prescribe,

1 information, including petroleum and petroleum product receipts,  
2 exchanges, inventories, and distributions.

3 (c) The commission may [~~request~~] require additional  
4 information as and when the commission deems necessary to perform  
5 the commission's responsibilities under this chapter.

6 (d) Information in the statements filed pursuant to this  
7 section shall be collected and maintained for the purpose of  
8 facilitating the analysis required by [~~section 486J-5,~~] this  
9 chapter; provided that the commission shall make such information  
10 available to the public [~~the information contained in the~~  
11 ~~statements but not the statements themselves, as provided in~~], to  
12 the extent permitted under sections 486J-6 and 486J-8."

13 SECTION 5. Section 486J-4, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15 "(b) The commission may [~~request~~] require additional  
16 information as and when the commission deems it necessary to  
17 perform the commission's responsibilities under this chapter."

18 SECTION 6. Section 486J-4.5, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) Each refiner, on a semi-annual basis, at reporting  
21 dates as the commission may establish, shall file with the  
22 commission, on forms prescribed, prepared, and furnished by the  
23 commission, a certified statement of operating and overhead costs  
24 for the refiner's Hawaii operations that shall include but not be  
25 limited to the following:



- 1 (1) Crude oil costs and sources;
- 2 (2) Other feedstock costs and sources;
- 3 (3) Refinery operating expenses;
- 4 (4) Marketing operating expenses by petroleum product;
- 5 (5) Distribution expenses by petroleum product; and
- 6 (6) Corporate overhead expenses [~~;~~ and
- 7 ~~(7) The percentage of the total number of wholesale gallons~~
- 8 ~~of unleaded regular and premium unleaded gasoline sold~~
- 9 ~~during the reporting period at wholesale prices per~~
- 10 ~~gallon that exceed the maximum pre tax wholesale price~~
- 11 ~~calculated by the commission under section 486H-13]."~~

12 SECTION 7. Section 486J-6, Hawaii Revised Statutes, is  
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) Confidential commercial information provided to the  
15 commission pursuant to this chapter that is exempt from public  
16 disclosure under section [~~92F-13(4)~~] 92F-13 shall be held in  
17 confidence by the commission, or aggregated to the extent  
18 necessary in the commission's discretion to ensure  
19 confidentiality as required by chapter 92F."

20 (b) No data or information submitted to the [~~commissioner~~]  
21 commission shall be deemed confidential if it is shown that the  
22 person submitting the information or data has made it public."

23 SECTION 8. Section 486J-8, Hawaii Revised Statutes, is  
24 amended by amending subsection (b) to read as follows:

1           " (b) ~~[Notwithstanding any law to the contrary, including~~  
2 ~~any other section of this chapter, no later than fourteen days~~  
3 ~~after the reporting date established by the commission under~~  
4 ~~section 486J-3, the]~~ The commission shall disclose to the public,  
5 using the best readily available technology, the information  
6 contained in the statements[, but not the statements themselves,]  
7 that are filed pursuant to section 486J-3[-], to the extent  
8 permitted under sections 486J-6 and 486J-8(a). The commission  
9 shall publicly disclose this information within thirty days or as  
10 soon as practically and technically feasible after the receipt of  
11 this information pursuant to the reporting dates established by  
12 the commission under section 486J-3."

13           SECTION 9. Section 486J-9, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15           " (b) Any person, or any employee of any person, who  
16 wilfully makes any false statement, representation, or  
17 certification in any record, report, plan, or other document  
18 filed with the commission shall be subject to a civil penalty not  
19 to exceed \$500,000 and shall be deemed to have committed an  
20 unfair or deceptive act or practice in the conduct of a trade or  
21 commerce and subject to the penalties specified in  
22 chapter 480[-], and chapter 486B."

23           SECTION 10. Section 486J-11, Hawaii Revised Statutes, is  
24 amended to read as follows:

1 " [4] §486J-11 [4] Powers of the public utilities commission.

2 (a) The public utilities commission [~~shall have the authority~~  
3 ~~and power to~~] may take any action or make any determination under  
4 this chapter, including but not limited to action or  
5 determinations that affect persons not regulated under  
6 chapters 269, 271, and 271G, as the commission deems necessary to  
7 carry out its responsibilities or otherwise effectuate  
8 chapter 269, 271, or 271G.

9 (b) The public utilities commission may examine or  
10 investigate each distributor, the manner in which it is operated,  
11 the prices and rates charged by it, its operating costs and  
12 expenses, the value of its property and assets, the amount and  
13 disposition of its income, and all its financial transactions,  
14 its business relations with other persons, companies, or  
15 corporations, its compliance with all applicable state and  
16 federal laws, and all matters of every nature affecting the  
17 relations and transactions between it and the public or persons  
18 or businesses.

19 (c) In the performance of its duties under this chapter,  
20 the commission shall have the same powers respecting  
21 administering oaths, compelling the attendance of witnesses and  
22 the production of documents, examining witnesses, and punishing  
23 for contempt, as are possessed by circuit courts. In case of  
24 disobedience by any person to any order of the commission, or any  
25 subpoena issued by the commission, or of the refusal of any

1 witness to testify to any matter regarding which the witness may  
2 be questioned lawfully, any circuit court, on application by the  
3 commission, shall compel obedience as in case of disobedience of  
4 the requirements of a subpoena issued from a circuit court or a  
5 refusal to testify therein.

6 (d) Notwithstanding any provision of this chapter to the  
7 contrary, in order to most effectively facilitate the efficient  
8 reporting and analysis of information collected pursuant to this  
9 chapter and to allow flexibility in applicable reporting  
10 requirements for the broad range of persons and businesses  
11 affected, the commission may, in its discretion, determine which  
12 specific information must be reported by any person required to  
13 submit information under this chapter."

14 SECTION 11. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$1,200,000, or so much  
16 thereof as may be necessary for fiscal year 2007-2008, to be  
17 deposited into the petroleum industry monitoring, analysis, and  
18 reporting special fund.

19 The sum appropriated shall be expended by the public  
20 utilities commission for the purposes of administering  
21 chapter 486J, Hawaii Revised Statutes.

22 SECTION 12. There is appropriated out of the petroleum  
23 industry monitoring, analysis, and reporting special fund the sum  
24 of \$1,200,000, or so much thereof as may be necessary for fiscal  
25 year 2007-2008, to administer the petroleum industry monitoring,

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1 analysis, and reporting program established under chapter 486J,  
2 Hawaii Revised Statutes.

3 The sum appropriated shall be expended by the public  
4 utilities commission for the purposes of administering  
5 chapter 486J, Hawaii Revised Statutes.

6 SECTION 13. In codifying the new sections added to the  
7 Hawaii Revised Statutes by this Act, the revisor of statutes  
8 shall substitute appropriate section numbers for the letters used  
9 in designating the new sections in this Act.

10 SECTION 14. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 15. This Act shall take effect upon its approval.

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INTRODUCED BY:

~~\_\_\_\_\_~~  
BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance (PUC)

TITLE A BILL FOR AN ACT RELATING TO THE PETROLEUM INDUSTRY.

PURPOSE: To clarify and strengthen the Public Utilities Commission's ("Commission") authority and powers under the Petroleum Industry Information and Reporting Act, as amended by Act 78, Session Laws of Hawaii 2006 ("the Act"), to appropriate \$1.2 million from the general fund to the Petroleum Industry Monitoring, Analysis, and Reporting Special Fund, and to clarify the Department of Business, Economic Development, and Tourism's (DBEDT) authority to use information collected under the Act.

MEANS: Adding one new section to chapter 486B, and one new section to chapter 486J, and amend sections 486J-1, 486J-3, 486J-4(b), 486J-4.5(a), 486J-6(a) and (b), 486J-8(b), 486J-9(b), and 486J-11, Hawaii Revised Statutes.

JUSTIFICATION: The amendments to chapter 486J will clarify and strengthen the Commission's authority and powers to collect information from the petroleum industry, which will facilitate the reporting of that information. Specifically, the amendments will do the following:

- (1) Add a new section to chapter 486B that specifies that the Commission must refer to the attorney general any matter that is a violation of that chapter discovered by the Commission in the performance of its duties under chapters 486H and 486J.
- (2) Add a new section to chapter 486J to clarify that DBEDT may use the information collected under the chapter to perform its duties and obligations under chapters 125C and 196, Hawaii Revised Statutes.
- (3) Amend several definitions under section 486J-1 to clarify that the Commission, instead of DBEDT, will determine the amounts of petroleum

- products necessary to bring an entity under the definitions of "major marketer", "major oil producer", "major oil storer", and "major oil transporter"; amend the definition of "distributor" to exclude persons that use fuel directly in the manufacture of goods or the generation of power, and include those persons instead under a new definition - "major fuel user".
- (4) Amend section 486J-3 to include revenues, profits, and losses in the categories of information that will be filed with the Commission, and to provide the Commission with latitude to determine the specific data required and the specific time periods for reporting.
  - (5) Amend section 486J-4.5 to remove the requirement for refiners to file data relating to sales of gasoline at prices exceeding the maximum pre-tax wholesale price calculated by the Commission, because the calculation and publication of the maximum pre-tax wholesale gasoline price has been suspended by section 486H-13(1).
  - (6) Amend sections 486J-6 and 486J-8 to clarify that the Commission will make information collected pursuant to the chapter available to the public to the extent possible, while ensuring confidentiality as required by chapter 92F.
  - (7) Amend section 486J-8 to change the time period within which the Commission must disclose information to the public after receiving it from 14 days to 30 days, or as practically and technically feasible after receipt.
  - (8) Amend section 486J-9 to state that willfully making false statements or representations in filings to the Commission under the chapter is a violation of chapter 486B.
  - (9) Amend section 486J-11 by adding provisions to strengthen the Commission's authority under the chapter to investigate, subpoena, compel testimony, and generally determine the specific information to be reported in order to most effectively facilitate the efficient reporting and analysis of information collected pursuant to the chapter.

- (10) Appropriate \$1.2 million from the general fund to the Petroleum Industry Monitoring, Analysis, and Reporting Special Fund.
- (11) Appropriate \$1.2 million from the Petroleum Industry Monitoring, Analysis, and Reporting Special Fund to be expended by the Commission to administer the Petroleum Industry Monitoring, Analysis, and Reporting Program.

Impact on the public: This bill will allow the Commission to more effectively and efficiently administer the petroleum industry monitoring, analysis, and reporting program to provide greater market transparency and provide useful information to the public and those governmental agencies that conduct oversight of the petroleum industry to ensure its compliance with all relevant laws. This will benefit the public by providing transparency, helping to ensure that prices are fair, and by providing policymakers with accurate data to inform their decisions.

Impact on the department and other agencies: Passage of this bill will clarify and strengthen the Commission's authority, and powers under the Act, and by funding the Petroleum Industry Monitoring, Analysis, and Reporting Special Fund, allow the Commission to effectively administer the program. Passage of this bill will also clarify DBEDT's authority to use information collected under the Act.

GENERAL FUND: \$1.2 million appropriated into the Petroleum Industry Monitoring, Analysis, and Reporting Special Fund.

OTHER FUNDS: \$1.2 million appropriated from the Petroleum Industry Monitoring, Analysis, and Reporting Special Fund to be expended by the Commission to administer the Petroleum Industry Monitoring, Analysis, and Reporting program.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Business, Economic Development, and Tourism.



EFFECTIVE DATE: Upon approval.