

JAN 24 2007

A BILL FOR AN ACT

RELATING TO GASOLINE.

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

1 SECTION 1. The legislature finds that stability and
2 fairness needs to be established in Hawaii's wholesale gasoline
3 market. Act 78, Session Laws of Hawaii 2006, suspended the gas
4 cap laws that were enacted in 2005, fearing that capping
5 wholesale gasoline prices would cause more harm to Hawaii
6 consumers by increasing prices and discouraging petroleum
7 industry investors. However, eight months after the suspension,
8 Hawaii's gas prices are still the highest in the nation and not
9 one oil company has left the State where an estimated 1.3
10 million gallons of gasoline is sold every day.

11 In 2005, hurricanes Katrina and Rita and the refinery fires
12 in Texas caused gas prices across the nation to sky-rocket.
13 Disasters such as these, even those that are halfway around the
14 world, would normally have the same effect on Hawaii and
15 unreasonably influence our wholesale gas prices. However, in
16 2005 when these unfortunate events occurred, Hawaii had in place



1 caps on wholesale gas prices which allowed for stability in
2 Hawaii's wholesale gasoline market.

3 As of January 22, 2007, the retail gas prices were \$2.809
4 per gallon on Oahu and \$2.908 per gallon statewide, according to
5 AAA. Had the gas cap been in place, under the formula in this
6 Act, estimated retail prices on Oahu would have been \$2.436 per
7 gallon, 37.3 cents lower than the average retail prices on Oahu.

8 Act 78, Session Laws of Hawaii 2006, requires oil refiners
9 in Hawaii to periodically disclose the number of gallons sold,
10 the wholesale fuel prices they charge, their operating expenses,
11 and their profit margins. The two oil refiners in Hawaii have
12 not disclosed this information because it is too sensitive to
13 reveal, fearing that these disclosures could endanger the
14 industry.

15 The purpose of this Act is to protect the gasoline
16 consumers in this State from the predatory practices of an
17 oligopolistic petroleum industry by reinstating the gas cap
18 laws. The various courts have found and the parties themselves
19 acknowledge that the wholesale gasoline industry in this State
20 is an uncompetitive oligopoly with the industry parties enjoying
21 supra-competitive margins in their wholesale transactions, all
22 to the detriment of the Hawaii consumer. Therefore, the



1 legislature reiterates that the objective of this Act is to
2 enhance the consumer welfare by fostering the opportunity for
3 prices to reflect and correlate with competitive market
4 conditions. This means that the public utilities commission is
5 directed to proactively enforce the provisions of the law in
6 order to enable the consumers of Hawaii to enjoy the lowest
7 possible prices for gasoline, while allowing the refiners,
8 jobbers, and wholesalers to make a reasonable return on their
9 investments.

10 SECTION 2. Section 486H-13, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§486H-13 Maximum pre-tax wholesale price for the sale of**
13 **gasoline; civil actions.** (a) Notwithstanding any law to the
14 contrary, no manufacturer, wholesaler, or jobber may sell
15 regular unleaded, mid-grade, or premium gasoline to a dealer
16 retail station, an independent retail station, or to another
17 jobber or wholesaler at a price above the maximum pre-tax
18 wholesale prices established pursuant to subsection (b). The
19 commission shall publish the maximum pre-tax wholesale prices by
20 means that shall include the internet website for the State of
21 Hawaii.



1 (b) On a weekly basis, the commission shall determine the
2 maximum pre-tax wholesale price of regular unleaded, mid-grade,
3 and premium gasoline as follows: the maximum pre-tax wholesale
4 price of regular unleaded gasoline shall consist of the baseline
5 price for regular unleaded gasoline, plus the marketing margin
6 factor and the zone price adjustment, and for mid-grade and
7 premium gasoline, the applicable mid-grade and premium
8 adjustment factor, such that the maximum pre-tax wholesale
9 gasoline prices reflect and correlate with competitive market
10 conditions.

11 (c) The baseline price for regular unleaded gasoline
12 referred to in subsection (b) shall be determined on a weekly
13 basis and shall be equal to the average of the three lowest of
14 the four weekly averages of the spot daily price for
15 conventional regular unleaded gasoline or its equivalent
16 standard:

17 (1) The weekly average of the spot daily price for
18 conventional regular unleaded gasoline for Los
19 Angeles;

20 (2) The weekly average of the spot daily price for
21 conventional regular unleaded gasoline for New York
22 Harbor;



- 1 (3) The weekly average of the spot daily price for
2 conventional regular unleaded gasoline for the United
3 States Gulf Coast; and
- 4 (4) The weekly average of the spot daily price for
5 conventional regular unleaded gasoline for Singapore,
6 as reported and published by the Oil Price Information
7 Service for the five business days of the preceding
8 week; provided that if the preceding week contains a
9 holiday or holidays, then the average of the remaining
10 business days of the preceding week shall be used; and
11 provided further that the commission, in its
12 discretion, may determine a more appropriate baseline
13 or a more appropriate price information reporting
14 service or use multiple price information reporting
15 services.
- 16 (d) The marketing margin factor referred to in subsection
17 (b) shall be 14 cents per gallon or as otherwise determined by
18 the commission and shall thereafter be subject to adjustment
19 pursuant to section 486H-16(a).
- 20 (e) The mid-grade adjustment factor shall be 5 cents per
21 gallon or as otherwise determined by the commission and shall



1 thereafter be subject to adjustment pursuant to section
2 486H-16(a).

3 (f) The premium adjustment factor shall be 9 cents per
4 gallon or as otherwise determined by the commission and shall
5 thereafter be subject to adjustment pursuant to section
6 486H-16(a).

7 (g) For purposes of this chapter, the State shall be
8 divided into the following zones:

- 9 (1) Zone 1 shall include the island of Oahu;
- 10 (2) Zone 2 shall include the island of Kauai;
- 11 (3) Zone 3 shall include the island of Maui, except the
12 district of Hana;
- 13 (4) Zone 4 shall include the district of Hana on the
14 island of Maui;
- 15 (5) Zone 5 shall include the island of Molokai;
- 16 (6) Zone 6 shall include the island of Lanai;
- 17 (7) Zone 7 shall include the districts of Puna, south
18 Hilo, north Hilo, and Hamakua on the island of Hawaii;
19 and
- 20 (8) Zone 8 shall include the districts of north Kohala,
21 south Kohala, north Kona, south Kona, and Kau on the
22 island of Hawaii.



1 (h) The commission shall establish zone price adjustments
2 to the maximum pre-tax wholesale regular unleaded, mid-grade,
3 and premium gasoline prices on a zone by zone basis.

4 (i) The zone price adjustments for zones 2 through 8, set
5 forth in subsection (g), shall be divided as follows:

6 (1) Thirty per cent of the zone price adjustment shall be
7 allocated to the shipper of the gasoline from zone to
8 zone;

9 (2) Twenty per cent of the zone price adjustment shall be
10 allocated to the terminal holding the gasoline in
11 zones 2 through 8; and

12 (3) Fifty per cent of the zone price adjustments shall be
13 allocated to the person or entity that delivers the
14 gasoline to the retail station in zones 2 through 8.

15 (j) Every manufacturer, wholesaler, or jobber, upon the
16 request of the commission, shall furnish to the commission, in
17 the form requested, all documents, data, and information the
18 commission may require to make its determination on zone price
19 adjustments. Any person who refuses or fails to comply with a
20 request for information by the commission shall be subject to a
21 fine of up to \$50,000 per day. Each day a violation continues
22 shall constitute a separate offense.



1 (k) The maximum pre-tax wholesale gasoline price imposed
2 by this section shall take effect on September 1, ~~[2005,]~~ 2007,
3 notwithstanding the lack of the adoption of rules pursuant to
4 this section~~[, provided that notwithstanding any law to the~~
5 ~~contrary, the maximum pre-tax wholesale price under this section~~
6 ~~shall be suspended indefinitely upon the effective date of Act~~
7 ~~78, Session Laws of Hawaii 2006, and shall not thereafter become~~
8 ~~effective until and unless the governor publishes a notice~~
9 ~~statewide in accordance with section 1-28.5 that the~~
10 ~~reinstatement of the maximum pre-tax wholesale price under this~~
11 ~~section is beneficial to the economic well-being, health, and~~
12 ~~safety of the people of the State. The maximum pre-tax~~
13 ~~wholesale price shall become effective five days after the~~
14 ~~publication of the notice by the governor unless otherwise~~
15 ~~specified by the governor, and shall remain in effect for thirty~~
16 ~~days, after which time it shall be automatically suspended.~~
17 ~~Thereafter, the governor may reinstate the maximum pre-tax~~
18 ~~wholesale price for thirty-day periods on the same conditions as~~
19 ~~set forth above. Upon a finding that the maximum pre-tax~~
20 ~~wholesale price would impose a financial hardship upon a~~
21 ~~distributor within a zone, the governor, in the governor's~~
22 ~~discretion, may increase the maximum pre-tax wholesale price for~~



1 ~~the zone in an amount determined necessary to eliminate the~~
2 ~~financial hardship on any affected distributor who does not~~
3 ~~operate a refinery within the State. Any increase in the~~
4 ~~maximum pre tax wholesale price shall be included in the notice~~
5 ~~published by the governor.~~

6 ~~(1) The suspension of the maximum pre tax wholesale~~
7 ~~gasoline price shall suspend the commission's duty to calculate~~
8 ~~and publish the maximum pre tax wholesale gasoline price that~~
9 ~~would have been in effect but for the suspension, but shall not~~
10 ~~suspend or affect.~~

11 ~~(1) Any duty to register, timely provide information, make~~
12 ~~a report, or file a statement under chapter 486J, or~~

13 ~~(2) Any duty of the commission to:~~

14 ~~(A) Timely obtain, analyze, or publicly disclose or~~
15 ~~report information under chapter 486J, and~~

16 ~~(B) Enforce chapter 486J].~~

17 ~~[(m)]~~ (1) Any manufacturer, wholesaler, or jobber who
18 knowingly violates any requirement imposed or rule adopted under
19 this section, except for subsection (j), shall be subject to a
20 civil penalty, for each violation, equal to three times the
21 amount of the overcharge or \$250,000, whichever is greater, and
22 shall be liable for the costs of the action and reasonable



1 attorney's fees as determined by the court. Within two years
2 from the date the commission obtains actual knowledge of the
3 violation, the commission may institute a civil action in a
4 court of competent jurisdiction to collect the civil penalty,
5 the costs, and attorney's fees. In the case of ongoing
6 violation, the two-year period shall start from the date of the
7 last violation. The commission may refer any such action to the
8 attorney general as it deems appropriate. As used in this
9 subsection, "overcharge" means the number of gallons of gasoline
10 sold, times the wholesale price at which the manufacturer or
11 jobber sold regular unleaded, mid-grade, or premium gasoline to
12 a dealer retail station, an independent retail station, or
13 another jobber or wholesaler, less taxes assessed, less the
14 maximum pre-tax wholesale gasoline price established pursuant to
15 subsection (b).

16 [~~(n)~~] (m) The commission shall have the power to determine
17 the extent to which a manufacturer, wholesaler, or jobber is
18 complying with any requirement imposed or rule adopted under
19 this section, including the power to compel a manufacturer,
20 wholesaler, or jobber to submit documents, data, and information
21 necessary and appropriate for the commission to determine such



1 compliance. The commission may use data pursuant to chapter
2 486J collected in determining such compliance.

3 ~~[(e)]~~ (n) The commission shall report to the governor and
4 the legislature, in a timely manner, on any significant
5 aberrations, trends, or conditions that may adversely impact the
6 gasoline consumers in the State.

7 ~~[(p)]~~ (o) The commission may adopt rules pursuant to
8 chapter 91 as may be necessary to implement this section and
9 section 486H-16."

10 SECTION 3. Section 486H-16, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) A manufacturer, wholesaler, or jobber may petition
13 the commission to adjust the maximum pre-tax wholesale price of
14 regular unleaded, mid-grade, or premium gasoline in the event of
15 a change in the value of the baseline price for regular unleaded
16 gasoline, the marketing margin factor, the mid-grade adjustment
17 factor, the premium adjustment factor, a zone price adjustment
18 on a zone by zone basis, or an allocation of a zone price
19 adjustment on a zone by zone basis. The petitioner shall bear
20 the burden of proof to establish by clear and convincing
21 evidence the need for and the amount of any adjustment. The
22 adjustments shall be determined as follows:



1 (1) The value of the baseline price shall be equal to the
2 average of the three lowest of the four weekly
3 averages of the spot daily price for conventional
4 regular unleaded gasoline or its equivalent standard:

5 (A) The weekly average of the spot daily price for
6 conventional regular unleaded gasoline for Los
7 Angeles;

8 (B) The weekly average of the spot daily price for
9 conventional regular unleaded gasoline for New
10 York Harbor;

11 (C) The weekly average of the spot daily price for
12 conventional regular unleaded gasoline for the
13 United States Gulf Coast; and

14 (D) The weekly average of the spot daily price for
15 conventional regular unleaded gasoline for
16 Singapore,

17 as reported and published by the Oil Price Information
18 Service for the five business days of the preceding
19 week; provided that if the preceding week contains a
20 holiday or holidays, the average of the remaining
21 business days of the preceding week shall be used; and
22 provided further that the commission, in its



1 discretion, may determine a more appropriate baseline
2 or a more appropriate price information reporting
3 service or use multiple price information reporting
4 services;

5 (2) The value of the marketing margin factor in effect at
6 the time the petition is filed shall be adjusted by
7 adding to the value the difference between:

8 (A) The average of the difference over the prior
9 twelve-month period between:

10 (i) The dealer tank wagon price for sales for
11 resale for "regular" gasoline; and

12 (ii) The bulk price for sales for resale for
13 "regular" gasoline,

14 for Petroleum Administration for Defense (PAD)
15 District V, as reported and published by the
16 Energy Information Administration or its
17 successor in Table 31 - "Motor Gasoline Prices by
18 Grade, Sales Type, PAD District, and State" or
19 other source containing the same information;
20 less

21 (B) The average of the difference over the period
22 from 1994 until the most current year between:



- 1 (i) The dealer tank wagon price for sales for
2 resale for "regular" gasoline; and
- 3 (ii) The bulk price for sales for resale for
4 "regular" gasoline,
5 for Petroleum Administration for Defense (PAD)
6 District V, as reported and published by the
7 Energy Information Administration or its
8 successor in Table 31 - "Motor Gasoline Prices by
9 Grade, Sales Type, PAD District, and State" or
10 other source containing the same information;
- 11 (3) The value of the mid-grade and premium adjustment
12 factors in effect at the time the petition is filed
13 shall be adjusted by any material change in the
14 mid-grade and premium adjustment factor as published
15 by an appropriate price information reporting service;
16 and
- 17 (4) The value of any zone price adjustment on a zone by
18 zone basis or zone price adjustment allocation,
19 pursuant to section [~~486H-13(i)~~], 486H-13(j), on a
20 zone by zone basis, in effect at the time the petition
21 is filed, shall be adjusted based upon material
22 changes in the operating costs for a zone, such as



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1 terminaling, storage, or distribution costs, and other
 2 empirical data the commission deems appropriate.

3 (b) If the commission adjusts the maximum pre-tax
 4 wholesale gasoline prices, the commission shall publish its
 5 findings and the adjusted prices by means that shall include the
 6 Internet website for the State of Hawaii.

7 (c) Regardless of whether a petition has been filed and
 8 notwithstanding a determination of the adjustments made pursuant
 9 to subsection (a), the commission, in its discretion, may make
 10 such other and further adjustments deemed necessary and
 11 appropriate to establish maximum pre-tax wholesale gasoline
 12 prices that reflect and correlate with competitive market
 13 conditions."

14 SECTION 4. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

17

INTRODUCED BY: *Ron Munn*



Report Title:

Gasoline; Pre-Tax Wholesale Price

Description:

Reinstates price caps on wholesale gasoline.

