

H.B. NO. 1051

A BILL FOR AN ACT

RELATING TO ENERGY EMERGENCY PREPAREDNESS.

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

1 SECTION 1. The legislature finds that an informed and
2 coordinated response in the restoration of energy services in a
3 disaster is necessary in order to save lives and protect health,
4 safety, and property, and carry out other energy emergency
5 functions. The legislature also finds that energy data, and
6 statistical and energy economic analysis are integral to the
7 State's role in energy emergency preparedness and in a
8 coordinated response to a disaster.

9 The legislature finds that one of the principle missions of
10 the department of business, economic development, and tourism
11 includes the administration and sustained operation of Emergency
12 Support Function #12 (Energy) in the State Plan for Emergency
13 Preparedness. This function requires the department of
14 business, economic development, and tourism during any energy
15 emergency to gather and provide information to the governor, the
16 counties, the legislature, and other State agencies, including
17 the department of defense, as rapidly as possible to support
18 statewide emergency management.

1 The legislature finds that the governing statutes that
2 support this energy emergency function, primarily in chapter
3 125C, Hawaii Revised Statutes, do not allow the department of
4 business, economic development, and tourism to develop a timely
5 and complete picture of the State's energy situation in an
6 emergency. The legislature finds that current provisions of
7 chapter 125C, Hawaii Revised Statutes, require only importers of
8 fuel to provide emergency data reports, and then only for supply
9 and demand information. Current provisions of chapter 125C do
10 not require energy companies to report critical emergency
11 preparedness information regarding current storage, transport,
12 inventory, supply, demand, production, and capacities, and other
13 up-to-date aspects of Hawaii's energy systems and markets that
14 are essential to the State's federally mandated emergency
15 management role, irrespective of these companies' import status.

16 The legislature finds that the department of business,
17 economic development, and tourism cannot adequately meet its
18 statutorily defined roles and responsibilities to prepare for,
19 respond to, and support the recovery from all possible energy
20 emergencies with the current deficient laws governing energy
21 emergency planning and preparedness. The legislature also finds
22 that chapter 125C's limitations of data collection authority and

1 lack of accommodation of changed energy markets, and changes of
2 fuel products and specifications preclude the governor's and the
3 energy resource coordinator's (director of the department of
4 business, economic development, and tourism) ability to
5 adequately ascertain the severity and impacts of an energy
6 emergency or fuel shortage in a timely fashion, and, therefore,
7 to determine what response measures may be necessary.

8 The legislature finds that vital information from non-
9 importing distributors, wholesalers, retailers, and other major
10 energy companies, and more extensive and detailed types of data
11 and information on all aspects of the state's energy systems and
12 market are essential for effective energy system situational
13 analyses and reporting, coordination, and management of energy
14 emergency response and vulnerability mitigation initiatives,
15 preparedness, and exercise functions -- all necessary components
16 to ensure the readiness and robustness of the State's energy
17 emergency preparedness program.

18 The legislature finds that while chapter 486J, Hawaii
19 Revised Statutes, directs the department of business, economic
20 development, and tourism on how, and for what purposes to use
21 the data collected by the public utilities commission pursuant
22 to chapter 486J, Hawaii Revised Statutes, the data and

1 information collected are inadequate for energy emergency
2 management purposes. The legislature also finds that such
3 indirect reporting mechanisms cannot necessarily be depended
4 upon during an emergency or disaster, nor can time-lagged data
5 reported on weekly or monthly schedules be expected to be
6 effectively responsive to more immediate emergency situations
7 and needs, which frequently change with little or no warning.

8 The legislature finds this represents an unacceptable
9 situation when considered in the context of the State's role and
10 responsibilities for energy emergency management. The
11 legislature finds that adequate authoritative policy support and
12 enabling functional guidance is needed to meet the following
13 critical energy emergency preparedness needs of the State:

14 (1) Provide relevant, consistent, and adequate contingency
15 policy guidance to accommodate actual and expected
16 changes in Hawaii's energy (and economic) security and
17 vulnerability, stemming from significant changes in
18 energy and fuel markets;

19 (2) Update and align key provisions in chapter 125C,
20 Hawaii Revised Statutes, with relevant federal and
21 State overall emergency management laws, and energy
22 emergency management policies and planning guidance

1 stemming from the post-9/11 and post-Katrina evolution
2 of the "all-hazards/all-threats" emergency management
3 context;

4 (3) Rectify inadequacies in data collection, analysis, and
5 reporting provisions with amendments to accommodate
6 and address the economic and energy systems risks
7 associated with transitional issues and trends
8 relating to both petroleum-based fuels and biofuels,
9 and

10 (4) Provide improvements and updates to the State's energy
11 emergency policy guidance, an important authoritative
12 basis for energy emergency preparedness programmatic
13 improvements.

14 In summary, the legislature finds that government's
15 legitimate leadership role in planning for and managing energy
16 emergencies cannot depend solely on cooperative efforts, nor can
17 data and information reported to regulatory agencies for
18 separate, non-emergency purposes be expected to be adequate to
19 support emergency management information needs. Such factors
20 continue to create unacceptable risks to Hawaii's economy, and
21 represent a worrisome situation.

1 Therefore, the legislature finds that changes to the
2 current laws governing energy emergency preparedness and
3 management are needed to meet critical needs of the State.

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

7 "§125C- Information and analysis required for state
8 energy emergency planning and preparedness, mitigation,
9 response, and recovery. (a) The department, with its own staff
10 and agents whom the director designates as authorized
11 representatives, shall use the information, including
12 confidential information, received from all sources, including
13 the information received from the public utilities commission
14 pursuant to chapter 486J, solely to effectuate the purposes of
15 this chapter and chapter 196.

16 (b) The director shall conduct systematic statistical and
17 quantitative analyses of the State's energy resources, systems,
18 and markets that the director determines are necessary to:

19 (1) Produce assessments designed to determine and mitigate
20 the potential for energy supply disruptions, and to
21 develop State energy emergency response plans and
22 measures including systematic situational energy

1 analyses, which in the event of energy crisis or
2 supply disruption could assist in determining the
3 nature, scope, severity, and expected duration of such
4 an event, and assess potential and actual economic and
5 other impacts of the crisis, particularly to determine
6 and recommend what, if any, emergency government
7 interventions may be necessary and appropriate, and to
8 implement and evaluate the effectiveness of such
9 emergency interventions;

10 (2) Conduct systematic statistical, energy, economic, and
11 other relevant analyses for comprehensive energy
12 emergency planning toward determining, measuring,
13 evaluating, formulating, and recommending specific
14 proposals to improve government and industry energy
15 emergency plans and programs, and to support longer
16 term measures to preserve Hawaii's energy security;

17 (3) Establish and maintain a central repository in the
18 department for collection of existing baseline
19 quantitative and qualitative data and information on
20 Hawaii's statewide energy resources, systems, and
21 markets and their relationships to the economy;

1 (4) Produce trend analyses and forecasts of energy supply
2 and demand and trend analyses of major aspects of
3 risks to and vulnerabilities of Hawaii's energy
4 resources, systems, and markets; and

5 (5) Produce other relevant energy analyses that the
6 director deems necessary to administer the energy
7 emergency preparedness and energy supply security
8 policies pursuant to this chapter, and implement and
9 evaluate other related activities in support of the
10 director's role and responsibilities pursuant to
11 chapter 486J, chapter 196, and other relevant laws.

12 (c) If the information that the department is authorized
13 to receive from the public utilities commission pursuant to
14 chapter 486J, including confidential information, becomes
15 unavailable, or if such information is determined by the
16 director to be unsuitable in any way for purposes of this
17 chapter, the director is authorized to require that this
18 information and any other relevant information, including
19 confidential information, be reported by distributors to the
20 director.

21 (d) To conduct the analyses pursuant to this chapter, the
22 director may require distributors to report any other relevant

1 information, including confidential information, at a time and
2 in such form and manner as to be prescribed by the director.

3 §125C- Reporting requirements. Each major energy
4 producer, major fuel storer, major energy transporter, major
5 energy user, and major energy marketer, on reporting dates as
6 the director may establish, and on forms prescribed, prepared,
7 and furnished by the director, shall submit to the director
8 certified statements. These statements shall include, but not
9 be limited to, information related to those aspects of their
10 respective Hawaii facilities and operations that are described
11 in this section. These statements shall provide for reporting
12 this information on a statewide consolidated basis, and
13 separately for each county, provided the data for the county of
14 Maui includes each island as follows:

15 (1) For fuel:

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

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1 end-users, as well as any exports of these fuels
2 and fuel products out of the State; and
3 (B) The current capacities and actual inventories,
4 throughput and output of all these entities'
5 infrastructure, including refineries, storage and
6 distribution tanks and terminals, transport modes
7 such as pipelines, barges, and other vessels, and
8 other such critical fuel infrastructure; and

9 (2) For electricity: the total current loads being
10 generated, energy resources used and fuels consumed,
11 total current electricity being produced, transmitted
12 and sold, and the current electricity flows and
13 utilization.

14 §125C- Confidential information. In effectuating the
15 purposes of this chapter, chapter 196, and other relevant laws,
16 for the director to perform the duties pursuant to this chapter,
17 chapter 196, and other relevant laws:

18 (1) All confidential information received by the director
19 shall be afforded all the protections available under
20 applicable law and shall be held in confidence by the
21 director and the director's staff and agents, or
22 aggregated to the extent necessary in the director's

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- 1 discretion to ensure confidentiality as authorized by
2 chapter 92F;
- 3 (2) The director and the director's staff and agents shall
4 preserve the confidentiality and protection of all
5 information received by the director to the extent
6 authorized by law and, by application and extension of
7 any other agency's respective safeguards, protect and
8 prevent the unauthorized further release of the
9 information. Each agency shall afford any shared
10 information the protections from disclosure provided
11 for under chapter 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 to the director shall provide written or
16 electronic notification to the director as to the
17 specific information that it considers confidential;
18 and
- 19 (4) Unless otherwise provided by law with respect to the
20 information determined confidential or exempt from
21 disclosure under section 92F-13 that the director
22 obtains, purchases, receives, or otherwise acquires,

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1 neither the governor nor the director, nor the staff
2 and agents thereof, shall do any of the following:

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

5 (B) Make any publication whereby the confidential
6 information furnished by any person can be
7 identified; or

8 (C) Permit any person other than the governor, the
9 director, the director's staff and agents
10 thereof, to examine any confidential information,
11 individual reports, or statements acquired."

12 "§125C- Definitions. "Agent" means a person who is
13 designated by the coordinator as an authorized representative.

14 "Commission" means the public utilities commission.

15 "Department" means the department of business, economic
16 development, and tourism.

17 "Director" means the director of business, economic
18 development, and tourism, who is also the State energy resources
19 coordinator pursuant to chapter 196-3.

20 "Distributor" means:

21 (1) Every person who refines, manufactures, produces, or
22 compounds fuel in the State and sells it at wholesale

1 or retail, or who uses it directly in the manufacture
2 of products or for the generation of power;

3 (2) Every person who imports or causes to be imported into
4 the State, or exports or causes to be exported from
5 the State, any fuel;

6 (3) Every person who acquires fuel through exchanges with
7 another distributor; and

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

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

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

17 "Energy resources" means fuel and electricity as defined in
18 this chapter.

19 "Fuel" means fuels, whether liquid, solid, or gaseous,
20 commercially usable for energy needs, power generation, and
21 fuels manufacture, that may be manufactured, grown, produced, or
22 imported into the State or that may be exported therefrom,

1 including petroleum and petroleum products and gases to include
2 all fossil fuel-based gases, coal tar, vegetable ferments,
3 biomass, municipal solid waste, biofuels, hydrogen, agricultural
4 products used as fuels and as feedstock to produce fuels, and
5 all fuel alcohols.

6 "Major energy marketer" means any person who sells energy
7 resources in amounts determined by the coordinator as having a
8 major effect on the supplies of, or demand for, energy
9 resources.

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

14 "Major energy transporter" means any person who transports
15 energy resources in amounts determined by the coordinator as
16 having a major effect on the supplies of, or demand for, energy
17 resources.

18 "Major energy user" means any person who uses energy
19 resources in the manufacture of products or for the generation
20 of electricity in amounts determined by the coordinator as
21 having a major effect on the supplies of, or demand for, energy
22 resources.

1 "Major fuel storer" means any person who stores fuels in
2 amounts determined by the coordinator as having a major effect
3 on the supplies of, or demand for, energy resources."

4 SECTION 3. Chapter 125C, Hawaii Revised Statutes, is
5 amended by amending its title to read as follows:

6 **"CHAPTER 125C**

7 [~~PROCUREMENT, CONTROL, DISTRIBUTION AND SALE OF PETROLEUM~~
8 ~~PRODUCTS]~~ **ENERGY EMERGENCY PREPAREDNESS AND MANAGEMENT"**

9 SECTION 4. Section 125C-1, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§125C-1 Findings and purpose.** The legislature finds that
12 adequate supplies of [~~petroleum products~~] energy resources are
13 essential to the health, welfare, and safety of the people of
14 Hawaii, and that any severe [~~disruption in petroleum product~~
15 ~~supplies~~] energy emergency or shortage of energy resources for
16 use within the State would cause grave hardship, pose a threat
17 to the economic well-being of the people of the State, and have
18 significant adverse effects upon public confidence and order and
19 effective conservation of [~~petroleum products.~~] energy. The
20 purpose of this chapter is to grant to the governor or the
21 governor's authorized representative the clear authority, when
22 energy emergencies or shortages of [~~petroleum products~~] energy

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

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

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

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

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

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

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

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

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

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

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

21 (D) Instituting a statewide rationing plan; and

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

1 [~~(6)~~] (7) Contract in the name of the State for the
2 purpose of implementing this chapter or any part
3 thereof; and
4 [~~(7)~~] (8) Exercise the powers granted under this section
5 to the degree and extent deemed by the governor to be
6 necessary, including the temporary or indefinite
7 suspension of all or part of the measures taken, as
8 the governor deems appropriate."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 "**§125C-21 Definitions.** "[Petroleum] Fuel product" means
13 any fuel subject to the set-aside system described in this
14 chapter, including heating oils, [~~light and heavy diesel oil,~~]
15 all classifications of diesel fuels, motor gasoline[~~7~~] and all
16 blends of motor gasoline with other fuel products, propane,
17 butane, residual fuel oils, kerosene, naphtha, biodiesel,
18 ethanol, suboctane motor gasoline, and aviation fuels used for
19 emergency and essential intrastate air transport services, but
20 excluding all other aviation fuels.

21 "Prime supplier" means any individual, trustee, agency,
22 partnership, association, corporation, company, municipality,

1 political subdivision, or other legal entity [~~which~~] that makes
2 the first sale of any [~~liquid fossil~~] fuel product into the
3 State distribution system for consumption within the State."

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

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

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

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

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

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1 (3) The maintenance of agricultural operations, including
2 farming, horticulture, dairy, fishing, and related
3 services;

4 (4) The preservation of economically sound and competitive
5 industry, through the equitable acquisition and
6 distribution of [~~petroleum~~] fuel products; and

7 (5) The promotion of efficiency, with minimum economic
8 disruptions, during a shortage of [~~petroleum~~] fuel
9 products.

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

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

14 "[~~f~~]\$125C-31[~~}]~~ ~~Biennial state~~ State energy emergency

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

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

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

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

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

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

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

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

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

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

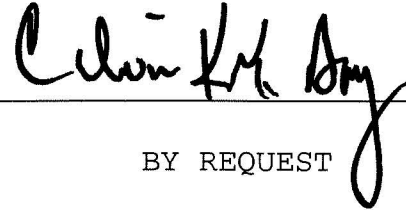
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1 SECTION 18. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 19. This Act shall take effect upon its approval.

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5
6

INTRODUCED BY



BY REQUEST

JAN 26 2009

Report Title:

Energy; Emergency Preparedness

Description:

Comprehensively addresses deficiencies in Hawaii's energy emergency preparedness statutes; Provides up-to-date policy guidance needed for consistency with current federal and state energy emergency and overall emergency management policies and plans, and to provide definitive guidance on critical energy data analyses functions.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

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

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

- (1) Amend chapter 125C, Hawaii Revised Statutes, to establish this chapter as the enabling statute for the State's energy emergency preparedness program's coverage of all forms of energy emergencies, irrespective of cause, consistent with the threats to energy security and the state energy emergency preparedness program;
- (2) Redefine the types of information that all energy companies may be required to submit to the Energy Resources Coordinator under chapter 125C, Hawaii Revised Statutes, in the case of an energy emergency or fuel shortage;
- (3) Amend chapter 125C, Hawaii Revised Statutes, to authorize the Department of Business, Economic Development, and Tourism to compile and analyze information, including confidential information, to effectuate the State's role and responsibilities in energy emergency planning and preparedness, mitigation, response, and recovery;
- (4) Amend chapter 125C, Hawaii Revised Statutes, to require the Department of Business, Economic Development, and Tourism to comply with confidentiality, information security, and nondisclosure requirements for

all data and information obtained for purposes of the chapter; and

(5) Amend chapter 125C, Hawaii Revised Statutes, to add and, wherever appropriate and practical, clarify definitions for consistency with those in chapter 486J, Hawaii Revised Statutes.

MEANS:

Add four new sections to chapter 125C, amend the titles of chapter 125C and part II of chapter 125C, 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, and 125C-32, Hawaii Revised Statutes.

JUSTIFICATION:

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

functions; and (4) provide improvements and updates of the State's energy emergency policy guidance, an important authoritative basis for energy emergency preparedness programmatic improvements.

Impact on the public: If these statutory changes are not made, DBEDT's mission will continue to be severely degraded, and development of an effective 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, thereby causing a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. The provisions do not directly impact upon any public activity.

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

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-120AD

OTHER AFFECTED
AGENCIES:

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

EFFECTIVE DATE: Upon approval.