

**"CHAPTER 125C
PROCUREMENT, CONTROL, DISTRIBUTION AND SALE OF
PETROLEUM PRODUCTS**

Part I. General Powers and Procedures
During a Shortage

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Cross References

Energy industry information reporting, see chapter 486J.
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"PART I. GENERAL POWERS AND PROCEDURES DURING A SHORTAGE

Note

Part heading added by L 1984, c 238, §1.

§125C-1 Findings and purpose. The legislature finds that adequate supplies of petroleum products are essential to the health, welfare, and safety of the people of Hawaii, and that any severe disruption in petroleum product supplies for use within the State would cause grave hardship, pose a threat to the economic well-being of the people of the State, and have significant adverse effects upon public confidence and order and effective conservation of petroleum products. The purpose of this chapter is to grant to the governor or the governor's authorized representative the clear authority, when shortages of petroleum products occur or are anticipated, to control the distribution and sale of petroleum products in this State, to procure such products, and to impose rules that will provide extraordinary measures for the conservation of petroleum products and for their distribution and sale in an orderly, efficient, and safe manner. [L 1975, c 38, pt of §1; am L 1984, c 238, §2; gen ch 1985]

" **§125C-2 "Shortage" defined.** As used in this chapter, unless otherwise indicated by the context, a "shortage" exists whenever the governor determines that there is an increase in the demand for any petroleum product or there is a decrease in the available supply for the petroleum product in question, or both; and such decrease in the available supply of or increase in the demand for the petroleum product in question, or both, may cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii and may not be responsibly managed within the free market distribution system. Further, the governor may require importers of any petroleum product or other fuel to monitor and report to the department of business, economic development, and tourism relevant supply and demand data. The governor shall review the status of a shortage within one hundred twenty days after the governor's initial determination of a shortage as defined under this chapter; thenceforth, the governor shall

conduct a review of the shortage to make a new determination every thirty days until a shortage no longer exists. [L 1975, c 38, pt of §1; am L 1979, c 142, §1; am L 1984, c 238, §3; gen ch 1985; am L 1991, c 102, §2]

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

- (1) Control the retail distribution and sale of petroleum products by adopting rules that may include, but are not limited to, the following measures:
 - (A) Restricting the sale of petroleum products to specific days of the week, hours of the day or night, odd- and even-numbered calendar days, and vehicles having less than a specified amount of gasoline in their tanks, with exceptions for certain designated geographical areas;
 - (B) Restricting sales of petroleum products by dealers to daily allocations, which shall be determined by dividing the monthly allocation by the number of selling days per month;
 - (C) Requiring dealers to post signs designating their hours of operation and the sell-out of daily allocation;
 - (D) Instituting a statewide rationing plan; and
 - (E) Allowing for special handling for commercial and emergency-user vehicles;
- (2) Require that a percentage of petroleum products, not to exceed five per cent, be set aside to alleviate hardship; provided that aviation gasoline set aside shall not exceed ten per cent;
- (3) Purchase and resell or otherwise distribute petroleum products, and purchase and resell or otherwise distribute ethanol that is produced within the State and can be used as a substitute for petroleum products;
- (4) Receive, expend, or use contributions or grants in money or property, or special contributions thereof for special purposes not inconsistent with this chapter;
- (5) Borrow and expend moneys needed to exercise the powers granted under this section;
- (6) Contract in the name of the State for the purpose of implementing this chapter or any part thereof; and

- (7) Exercise the powers granted under this section to the degree and extent deemed by the governor to be necessary, including the temporary or indefinite suspension of all or part of the measures taken, as the governor deems appropriate. [L 1975, c 38, pt of §1; am L 1984, c 238, §4; gen ch 1985; am L 1992, c 182, §3; am L 1994, c 59, §1]

" **§125C-4 Adopting, filing, and taking effect of rules.** The governor or the governor's authorized representative shall adopt rules pursuant to chapter 91, to insure that petroleum products are made available to the public in an orderly, efficient, and safe manner, to become effective when a shortage, as defined in section 125C-2, exists. If additional and unforeseen measures are required to insure that petroleum products are distributed in an orderly, efficient, and safe manner, the governor or the governor's authorized representative may proceed without prior notice or hearing or upon such abbreviated notice and hearing as the governor finds practicable to adopt additional rules authorized under this chapter with the additional rules to be effective for a period of not longer than one hundred twenty days without renewal. Any rule so adopted may be amended or repealed by the governor without prior notice or hearing or upon abbreviated notice and hearing prior to the expiration of the one hundred twenty-day period; provided that no amendment shall extend the rule beyond the original period of one hundred and twenty days. To be effective after the one hundred twenty-day period, the rules shall be adopted pursuant to chapter 91. Each rule adopted, amended, or repealed shall become effective as adopted, amended, or repealed upon approval by the governor and filing with the lieutenant governor. Each rule in effect shall have force and effect of law, but the effect of each rule may be temporarily or indefinitely suspended by the governor by written declaration filed with the lieutenant governor. Each rule temporarily suspended shall take effect again immediately upon expiration of the suspension period. Each rule indefinitely suspended shall take effect immediately upon the filing with the lieutenant governor of the written declaration by the governor terminating the suspension. [L 1975, c 38, pt of §1; am L 1979, c 105, §10; am L 1981, c 18, §1; am L 1984, c 238, §5; gen ch 1985; am L 1986, c 216, §1]

" **[§125C-5] Publication of rules and declarations.** Within five days after the date of filing with the lieutenant governor of each rule or declaration, the governor shall make the rule or determination known to the persons affected by it by publication at least once in a newspaper of general circulation in the State

and in a newspaper that is printed and issued at least twice weekly in the county within which those affected persons reside. [L 1975, c 38, pt of §1]

" **[§125C-6] Petition for adoption, amendment, repeal, or suspension of rules.** Any interested person may petition the governor or the governor's authorized representative requesting the adoption, amendment, repeal, or suspension of any rule and stating reasons therefor. The governor or the governor's authorized representative shall prescribe the form for the petitions and the procedures for their submission, consideration, and disposition, and within thirty days after submission of the petition shall either deny the petition in writing, stating the governor's or the governor's authorized representative's reasons for the denial, or grant the petition and adopt, amend, repeal, or suspend the rule accordingly. [L 1975, c 38, pt of §1; gen ch 1985]

" **§125C-7 REPEALED.** L 2003, c 178, §1.

" **§125C-8 Personnel; delegation of powers.** The governor may appoint or employ temporary boards, agencies, officers, employees, and other persons, or any of them, for the purpose of carrying out the provisions of this chapter. All such temporarily appointed or employed officers and employees, whether or not employed by contract, shall be exempt from and not subject to nor entitled to the benefits of the provisions of chapters 76 and 88, or any other law, collective bargaining agreement, executive order, executive directive, or rule that is inapplicable to temporary employees of the State. [L 1975, c 38, pt of §1; am L 2002, c 148, §14]

" **[§125C-9] Investigations and surveys.** The governor or the governor's authorized representative may make investigations and surveys for the purpose of ascertaining facts to be used in administering this chapter, and in making the investigations and surveys, may require the making, filing, or keeping of applications, schedules, records, reports, or statements, under oath or otherwise, administer oaths, take evidence under oath, subpoena witnesses, and require the production of books, papers, and records. Witnesses shall be allowed their fees and mileage as in cases in the circuit courts. The circuit court of any circuit or judge thereof may enforce by proper proceedings the attendance and testimony of any witness subpoenaed to appear within the circuit, or the production of books, papers, and records. [L 1975, c 38, pt of §1; gen ch 1985]

" **[§125C-10] Fraud; misdemeanor.** Any person required by the governor or the governor's authorized representative, pursuant to section 125C-9, to make, keep or file any application, schedule, record, report, or statement, whether or not under oath, who intentionally makes, files, or keeps a false or fraudulent application, schedule, report, or statement or intentionally conceals therein any material fact, and any person who in any other manner intentionally deceives or attempts to deceive the governor or the governor's authorized representative with respect to any fact to be used in administering this chapter, and any person who intentionally fails to observe and comply with any rule promulgated under this chapter, shall be guilty of a misdemeanor. [L 1975, c 38, pt of §1; gen ch 1985]

" **§125C-11 REPEALED.** L 1992, c 182, §5.

"PART II. HARDSHIP SET-ASIDE AND ALLOCATION OF PETROLEUM PRODUCTS DURING A SHORTAGE

§125C-21 Definitions. "Petroleum product" means heating oils, light and heavy diesel oil, motor gasoline, propane, butane, residual fuel oils, kerosene, and aviation fuels used for emergency and essential intrastate air transport services, but excluding all other aviation fuels.

"Prime supplier" means any individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision or other legal entity which makes the first sale of any liquid fossil fuel into the state distribution system for consumption within the State. [L 1984, c 238, pt of §7; am L 1994, c 59, §2]

" **§125C-22 When set-aside required.** When a shortage as defined in section 125C-2 exists, all prime suppliers shall set aside supplies of each petroleum product for which there is a shortage. The amount set aside shall be in accordance with the rules adopted by the state energy resources coordinator. [L 1984, c 238, pt of §7]

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

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

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

The rules establishing the set-aside system shall be adopted in accordance with chapter 91. [L 1984, c 238, pt of §7; am L 1994, c 59, §3]

"[PART III.] ENERGY EMERGENCY PLANNING

[\$125C-31] Biennial state energy emergency preparedness plan. (a) The department of business, economic development, and tourism shall prepare a comprehensive and integrated biennial state energy emergency preparedness plan to be implemented in the event of, or in anticipation of, a change in the State's petroleum supply or demand situation that is judged by the governor to be unmanageable by the free market. The department of business, economic development, and tourism shall prepare a biennial state energy emergency preparedness plan in every even-numbered year in accordance with the following:

- (1) The biennial state energy emergency preparedness plan shall replace the energy emergency plan developed by the energy resources coordinator, who shall act as the governor's authorized representative under this chapter;
- (2) In preparing the biennial state energy emergency preparedness plan, the department shall:
 - (A) Solicit input, comment, and review from the governor's energy emergency preparedness advisory committee composed of representatives of federal, state, and county governments; private energy suppliers; consumer and other public interest groups; and the public at-large; and
 - (B) Establish other task forces and advisory groups, as may be deemed necessary, to assist in the preparation and review of the biennial state energy emergency preparedness plan;
- (3) The biennial state energy emergency preparedness plan shall be comprehensive and encompassing, and shall integrate into its analytic and planning framework the plans of electric and gas utilities and other energy suppliers, relevant state agencies, including the

department of transportation, counties, and such other entities as deemed appropriate; and

- (4) The biennial state energy emergency preparedness plan shall include a review and update of the previous biennial state energy emergency preparedness plan and a review of the energy emergency plans prepared by the counties.

(b) The department shall prepare an energy emergency communication plan, which shall be updated biennially and shall be consistent with the energy emergency preparedness plans prepared by the counties. The energy emergency communication plan shall be used by the State and counties to communicate and otherwise coordinate state and county actions taken in response to implementing the biennial state energy emergency preparedness plan. [L 1992, c 182, pt of §2]

" **[\$125C-32] Biennial county energy emergency preparedness plans.** The mayor of each county, or the mayor's authorized representative, shall prepare a comprehensive county energy emergency preparedness plan. The plan shall be prepared in coordination with and be consistent with the biennial state energy emergency preparedness plan, and shall be implemented in coordination with the state energy emergency preparedness plan upon declaration of an energy emergency by the governor. Not later than September 30 of every even-numbered year, each county shall prepare and transmit to the director of business, economic development, and tourism the county's biennial county energy emergency preparedness plan. [L 1992, c 182, pt of §2]