

ACT 291

S.B. NO. 1329

A Bill for an Act Relating to Liquid Fuel.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Legislative finding and declaration. The legislature finds and declares that the petroleum industry is an essential element of Hawaii's economy and is therefore of vital importance to the health and welfare of all people in the State of Hawaii.

The legislature further finds and declares that a complete and thorough understanding of the operations of the petroleum industry is required by the state government at all times to enable it to respond to possible shortages, oversupplies, and other market disruptions or impairment of competition.

The legislature further finds and declares that information and data concerning all aspects of the petroleum industry, including, but not limited to, crude oil production, supplies, refining, product output, prices, distribution, and demand are essential for the State to develop and administer energy policies which are in the interest of the State's economy and the public's well-being.

The legislature further finds that because Hawaii is a physically small and geographically remote economy, certain of its markets tend to be concentrated. Market concentration is a function of the number of firms in the market and their respective market shares. In a highly concentrated market, market prices tend to rise above competitive levels. Market prices persistently above competitive levels are harmful to consumers and the public. Barriers to competition tend to cause supracompetitive prices to persist.

The legislature further finds that the markets for oil and oil products in Hawaii are highly concentrated markets.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PETROLEUM INDUSTRY INFORMATION REPORTING**

§ -1 **Short title.** This chapter shall be known and may be cited as the Petroleum Industry Information Reporting Act of 1991.

§ -2 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Commission” means the public utilities commission.

“Energy” means work or heat that is, or may be, produced from any fuel or source whatsoever.

“Major marketer” means any person who sells natural gas, propane, synthetic natural gas or oil in amounts determined by the commission as having a major effect on energy supplies.

“Major oil producer” means any person who produces oil in amounts determined by the commission as having a major effect on energy supplies.

“Major oil storer” means any person who stores oil or other petroleum products in amounts determined by the commission as having a major effect on energy supplies.

“Major oil transporter” means any person who transports oil or other petroleum products in amounts determined by the commission as having a major effect on energy supplies.

“Person” means any person, firm, association, organization, partnership, business trust, corporation, or company. “Person” also includes any city, county, public district or agency, the State or any department or agency thereof, and the United States to the extent authorized by federal law.

“Refiner” means any person who owns, operates, or controls the operations of one or more refineries.

“Refinery” means any industrial plant, regardless of capacity, processing crude oil feedstock and manufacturing oil products.

§ -3 **Informational reports; duty; time; scope; powers of commission; alternate reports.** (a) Each refiner and major marketer shall submit to the commission, within thirty days after the end of each month and in such form as the commission shall prescribe, information which includes the following:

- (1) Refiners shall report, for each of their refineries, feedstock inputs, origin and volume of petroleum receipts, refinery outputs, refinery stocks, and finished product supply and distribution.
- (2) Major marketers shall report on petroleum and petroleum product receipts, exchanges, inventories, and distributions.

The commission shall prescribe by rule when the first report shall be submitted.

(b) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the commission, within thirty days after the end of each year and in such form as the commission shall prescribe, information which includes the following:

- (1) Major oil transporters shall report on petroleum by reporting the capacities of each major transportation system, the amount transported by each system, and inventories thereof. The provision of the information shall not be construed to increase and decrease any authority the public utilities commission may otherwise have.
- (2) Major oil storers shall report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions.
- (3) Refiners shall report on facility capacity, and utilization and method of transportation of refinery receipts and distributions.

- (4) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

The commission shall prescribe by rule when the first report shall be submitted.

(c) Each person required to report pursuant to subsection (a) shall submit a projection each month of the information to be submitted pursuant to subsection (a) for the quarter following the month in which the information is submitted to the commission.

(d) In addition to the data required under subsection (a), each oil refiner who supplies retail outlets in Hawaii shall submit to the commission an annual industry forecast for Petroleum Administration for Defense, District V (covering Arizona, Nevada, Washington, Oregon, California, Alaska and Hawaii). The forecast shall include the information to be submitted under subsection (a), and shall be submitted by October 15 of each year. The commission may require Hawaii-specific forecasts. However, those forecasts shall be required only if the commission finds them necessary to carry out its responsibilities.

(e) The commission may by order or rule modify the reporting period as to any individual item of information setting forth in the order or rule its reason for so doing.

(f) The commission may request additional information as necessary to perform its responsibilities under this chapter.

(g) Any person required to submit information or data under this chapter may, in lieu thereof, submit a report made to any other governmental agency, provided, that:

- (1) The alternate report or reports contain all of the information or data required by specific request under this chapter; and
- (2) The person clearly identifies the specific request to which the alternate report is responsive.

(h) Each refiner shall submit to the commission, within thirty days after the end of each month and in such form as the commission shall prescribe, all of the following information:

- (1) Monthly Hawaii weighted average prices and sales volumes of finished leaded regular, unleaded regular, and premium motor gasoline, and of each other grade of gasoline sold through company-operated retail outlets, to other end-users, and to wholesale customers;
- (2) Monthly Hawaii weighted average prices and sales volumes for residential sales, commercial and institutional sales, industrial sales, sales through company-operated retail outlets, sales to other end-users, and wholesale sales of No. 2 diesel fuel and No. 2 fuel oil; and
- (3) Monthly Hawaii weighted average prices and sales volumes for retail sales and wholesale sales of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil with one per cent or less sulfur, residual fuel oil with greater than one per cent sulfur and consumer grade propane.

The commission shall prescribe by rule when the first report shall be submitted.

(i) Refiners that submit form EIA-800 reports to the United States Department of Energy shall provide to the commission copies of their weekly reports.

§ -4 Analysis of information; audits and inspections. (a) The commission shall, with its own staff and other support staff with expertise and experience in, or with, the petroleum industry, gather, analyze, and interpret the information submitted to it pursuant to section -3 and other information relating to the supply and price of petroleum products, with particular emphasis on motor

vehicle fuels, including, but not limited to, all of the following:

- (1) The nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply;
- (2) The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply;
- (3) Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in Hawaii;
- (4) The prices, with particular emphasis on retail motor fuel prices, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in Hawaii and the reasons for such changes;
- (5) The income, expenses, and profits, both before and after taxes, of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price-earnings ratio;
- (6) The emerging trends relating to supply, demand, and conservation of petroleum and petroleum products;
- (7) The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products; and
- (8) The development of a petroleum and petroleum products information system in a manner which will enable the State to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.

(b) The commission may conduct random or periodic audits and inspections of any supplier or suppliers of oil or petroleum products to determine whether they are unnecessarily withholding supplies from the market or are violating applicable policies, laws, or rules. The commission may solicit assistance of the department of taxation in any such audit. The commission shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the commission is not duplicative of the data received by any of their audits or inspections which is available to the commission.

(c) The commission shall analyze the impacts of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.

§ -5 Summary, analysis and interpretation of information; reports.

(a) The commission shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current legislature session a summary, an analysis, and an interpretation of the information submitted to it pursuant to section -3. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted.

(b) The commission may use reasonable means necessary and available to it to seek and obtain any facts, figures, and other information from any source for the purpose of preparing and providing reports to the governor and the legislature. The commission shall specifically include in the reports its analysis of any unsuccessful attempts in obtaining information from potential sources, including the lack of cooperation or refusal to provide information.

§ -6 Failure to timely provide information; notice; false statements; civil penalties; person. (a) The commission shall notify those persons who have failed to timely provide the information specified in section -3 or requested by the commission under section -3 or section -4(b). If, within five days after

ACT 291

being notified of the failure to provide the specified or requested information, the person fails to supply the specified or requested information, the person shall be subject to a civil penalty of not less than \$500 per day nor more than \$2000 per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the commission regarding the information and the commission has held a hearing and following a ruling by the commission the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who willfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the commission shall be subject to a civil penalty not to exceed \$20,000.

(c) For the purposes of this section, the term "person" shall mean, in addition to the definition contained in section -2, any responsible corporate officer.

§ -7 Confidential information. (a) Confidential commercial information presented to the commission pursuant to this chapter shall be held in confidence by the commission or aggregated to the extent necessary to assure confidentiality as governed by chapter 92F, Hawaii Revised Statutes, including its penalty provisions.

(b) No data or information submitted to the commission shall be deemed confidential if the person submitting the information or data has made it public.

(c) Unless otherwise provided by law, with respect to data provided pursuant to subsection (h) of section -3, neither the commission, nor any employee of the commission, may do any of the following:

- (1) Use the information furnished under subsection (h) for any purpose other than the statistical purposes for which it is supplied;
- (2) Make any publication whereby the data furnished by any particular establishment or individual under subsection (h) can be identified; or
- (3) Permit anyone to examine the individual reports provided under subsection (h) other than the attorney general, the director of business, economic development, and tourism, the consumer advocate, and the authorized representatives, and employees of each.

§ -8 Confidential information obtained by another state agency. Any confidential information pertinent to the responsibilities of the commission specified in this chapter which is obtained by another state agency, including the department of taxation, shall be available to the attorney general, the attorney general's authorized representatives, and the commission and shall be treated in a confidential manner.

§ -9 Sharing of information obtained by the commission. The commission shall make all information obtained by the commission under this chapter, including confidential information, available to the director of business, economic development, and tourism, the attorney general, and the consumer advocate, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received.

§ -10 Rules. The commission shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter."

SECTION 3. This Act shall take effect on July 1, 1991.

(Approved June 19, 1991.)