

ACT 77

S.B. NO. 2179

A Bill for an Act Relating to Energy Resources.

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

PART I.

SECTION 1. The legislature finds that gasoline is an energy resource, and that there is a need to ensure lower gasoline prices for Hawaii's consumers. Although gasoline prices have fallen to their lowest levels in years, and mainland consumers have been enjoying less expensive prices, there is evidence that Hawaii's consumers still continue to pay a large premium at the pump.

The legislature finds that the price of gasoline is a pivotal component in determining the future of the State's total energy situation. The cost of gasoline permeates every aspect of Hawaii's energy economy from the petroleum manufacturer to the gas station and finally to the ultimate payer, the people of Hawaii. As a result, no one in this State, resident or visitor, can escape the impact of the cost of gasoline.

The legislature has had long-standing and serious concerns over the high price of gasoline in the State of Hawaii, especially since prices in Hawaii have often been far in excess of the prices observed in other markets in the United States. In past hearings held by the legislature, the oil companies have represented that the market for gasoline in Hawaii was competitive, and that the high gasoline prices in Hawaii were attributable to the high cost of doing business in the State of Hawaii.

The legislature finds that the evidence obtained and developed in the State's anti-trust lawsuit shows that the high cost of doing business in Hawaii has not been and is not the cause of the high gasoline prices. Rather, the evidence indicates among other matters, the following:

- (1) Retail gasoline prices in the State of Hawaii have been much higher than the prices observed in other oligopolistic and equally concentrated markets;
- (2) Retail gasoline prices in the State of Hawaii have exhibited far less volatility, as well as abnormal stability, in comparison to prices observed in other oligopolistic and equally concentrated markets; and
- (3) The major oil companies have been realizing profit margins far in excess of the margins realized in other oligopolistic and equally concentrated markets.

More recently, the oil companies have argued that high gasoline prices, high profit margins, and the lack of vigorous competition are the inevitable results of the oligopolistic structure of the Hawaii market.

In essence, the oil companies have now recognized that the structure of the Hawaii market is not one that will encourage competition. Rather, the structure of the market will perpetuate high and rising prices, supra-competitive margins, and a lack of competition.

The legislature finds that affirmative action is necessary to address the uncompetitive market, and that this action requires a multi-pronged response,

especially in light of the recent ruling issued by the United States District for the District of Hawaii in *Chevron U.S.A., Inc. v. Benjamin J. Cayetano, et al.*, Civil No. 97-00933 SCM, in which the court held that the lease rent cap statute in Act 257 passed by the legislature in 1997 was unconstitutional.

Accordingly, the purposes of this part are to:

- (1) Establish wholesale and retail gasoline price caps by:
 - (A) Requiring the public utilities commission to determine the maximum pre-tax wholesale price of regular unleaded gasoline, on a weekly basis;
 - (B) Prohibiting petroleum manufacturers or jobbers from selling regular unleaded gasoline to a dealer operated retail service station for more than the maximum pre-tax wholesale price;
 - (C) Requiring the public utilities commission to determine the maximum pre-tax retail price of regular unleaded gasoline, on a weekly basis;
 - (D) Prohibiting retailers from selling gasoline to the public for more than the maximum pre-tax retail price for regular unleaded gasoline sold on a self-serve basis;
 - (E) Giving the governor the power to suspend the operation of the wholesale and retail price caps whenever the governor determines that the operation of this law causes a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. The suspension will be in effect until the June 30 of the year of the next succeeding regular session. If the legislature makes no change, the rate reverts to the previously established rate;
 - (F) Providing for a procedure to adjust the maximum prices; and
 - (G) Maintaining the lease rent cap for dealer operated retail stations;
- (2) Amend the Petroleum Industry Reporting Act to:
 - (A) Require, rather than allow, the department of business, economic development, and tourism to monitor the oil industry's profit margins in Hawaii and conduct random or periodic audits and inspections of oil suppliers;
 - (B) Substantially increase civil penalties for noncompliance;
 - (C) Require the department to refer intentional violations to the attorney general, who may exercise appropriate legal or equitable remedies available to the State; and
 - (D) Change references to the department and the director of business, economic development, and tourism in the Petroleum Industry Reporting Act to the "petroleum commissioner", who is to be the head of the department's energy, resources, and technology division;
- (3) Require the department of business, economic development, and tourism to:
 - (A) Review and analyze the unsealed documents in *Anzai v. Chevron et al.* (the recently settled gasoline antitrust litigation) and other appropriate materials;
 - (B) Gather and analyze empirical data to determine whether the Oil Price Information Service index or other appropriate benchmarks are applicable to Hawaii's markets;
 - (C) Review options available to the legislature, including wholesale and retail gasoline price caps and the potential effects of imposing price caps; and

- (D) Report findings and recommendations to the legislature before the convening of the 2003 regular session, including proposed implementing legislation, as appropriate;
- (4) Require the attorney general and the legislative reference bureau to assist the department by conducting legal and policy analyses, as appropriate, and in drafting legislation; and
- (5) Appropriate \$250,000 out of the public utilities commission special fund to the general fund, and appropriate the same amount to the department of business, economic development, and tourism to allow the department to contract with one or more petroleum experts to assist the department.

SECTION 2. Chapter 486H, Hawaii Revised Statutes, is amended as follows:

1. By adding three¹ new sections to be appropriately designated and to read as follows:

“§486H-A Maximum pre-tax wholesale price for the sale of gasoline; civil actions. (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax wholesale prices by means that shall include the internet website for the State of Hawaii.

(b) On a weekly basis, the commission shall determine the maximum pre-tax wholesale price of regular unleaded gasoline for each island as follows:

- (1) For the island of Oahu, the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the baseline price for regular unleaded gasoline, plus the location adjustment factor, and the marketing margin factor; and
- (2) For the islands of Kauai, Molokai, Lanai, Maui, and Hawaii, the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the maximum pre-tax wholesale price of regular unleaded gasoline for Oahu, plus the neighbor island wholesale adjustment factor.

(c) The baseline price for regular unleaded gasoline for Oahu referred to in subsection (b) shall be determined on a weekly basis, and shall be equal to the average of:

- (1) The spot pipeline daily price for regular unleaded gasoline for Los Angeles;
- (2) The spot pipeline daily price for regular unleaded gasoline for San Francisco; and
- (3) The spot daily price for the Pacific Northwest,

as reported and published by the Oil Price Information Service for the five business days of the preceding week.

(d) The location adjustment factor referred to in subsection (b) shall be \$.04 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(e) The marketing margin factor referred to in subsection (b) shall be \$.18 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(f) The neighbor island wholesale adjustment factor shall be the sum of the neighbor island location adjustment factor, plus the neighbor island marketing factor.

(g) The neighbor island location adjustment factor shall be \$.04 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(h) The neighbor island marketing factor shall be \$.04 per gallon for the first year after the effective date of this section, and shall thereafter be subject to annual adjustment pursuant to section 486H-D(a).

(i) Any manufacturer, wholesaler, or jobber who knowingly violates any requirement imposed or rule adopted under this section shall be subject to a civil penalty for each such violation, which penalty shall be three times the overcharge, or \$250,000, whichever is greater, and shall be liable for the costs of the action, and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and attorney's fees. In the case of ongoing violation, the two year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the wholesale price at which the manufacturer or jobber sold regular unleaded gasoline to a dealer retail station, less taxes assessed, less the maximum pre-tax wholesale price established pursuant to subsection (b).

(j) The commission shall have the power to determine the extent to which a manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under this section, including the power to compel a manufacturer, wholesale, or jobber to submit documents, data and information necessary and appropriate for the commission to determine such compliance. The commission may use data collected by the department of business, economic development, and tourism pursuant to chapter 486J, as well as obtain the assistance of that department in determining such compliance.

(k) The commission shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.

§486H-B Maximum pre-tax retail price for gasoline sold on a self-serve basis; civil actions. (a) Notwithstanding any law to the contrary, no retail station may sell regular unleaded gasoline at retail, on a self-serve basis, at a price above the maximum pre-tax retail prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax retail prices by means that shall include the internet website for the State of Hawaii. The commission may also publish the retail prices inclusive of all taxes.

(b) On a weekly basis, the commission shall determine the maximum pre-tax retail price of gasoline. The maximum pre-tax retail price for regular unleaded gasoline shall consist of the maximum pre-tax wholesale price for regular unleaded gasoline established pursuant to section 486H-A(b), plus a retail marketing margin factor.

(c) The retail marketing margin factor shall be \$.16 per gallon for the first year, and shall thereafter be subject to adjustment pursuant to section 486H-D(b).

(d) Any retail station that knowingly violates any requirement imposed or rule adopted under this section shall be subject to a civil penalty equal to three times the amount of the overcharge or \$25,000, whichever is greater, and shall be liable for the costs of the action, and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and the attorney's fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it

deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the retail price at which the retail station sold regular unleaded gasoline, less taxes assessed, less the maximum pre-tax retail price established pursuant to subsection (b).

(e) The commission shall have the power to determine the extent to which a retail station is complying with any requirement imposed or rule adopted under this section, including the power to compel a retail station to submit documents, data, and information necessary and appropriate for the commission to determine such compliance. The commission may use data collected by the department of business, economic development, and tourism pursuant to chapter 486J, as well as obtain the assistance of such department in determining such compliance.

(f) The commission shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.

§486H-C Governor's emergency powers. (a) Notwithstanding any law to the contrary, the governor may suspend in whole or in part, section 486H-A, section 486H-B, or any rule adopted pursuant to those sections whenever the governor issues a written determination that strict compliance with any section or a rule will cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. The governor shall publish this determination in accordance with section 1-28.5. The suspension shall take effect upon issuance of the written determination by the governor.

(b) Except as provided in subsection (c), the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of the next regular or special session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has enacted legislation to address the major adverse impact, and the governor vetoes the legislation, the suspension shall terminate on the date of that veto, and the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session.

(c) If the written determination is issued while the legislature is in session, the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of that session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has enacted legislation to address the major adverse impact, and the governor vetoes the legislation, the suspension shall terminate on the date of that veto, and the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the pre-tax maximum wholesale price or the pre-tax maximum retail price in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session.

§486H-D Adjustments. (a) A manufacturer, wholesaler, or jobber may petition the commission to adjust the maximum pre-tax wholesale price of regular unleaded gasoline in the event of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, or the neighbor island wholesale adjustment factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustments shall be determined as follows:

- (1) The value of the baseline price shall be equal to the average of:
 - (A) The spot pipeline daily price for regular unleaded gasoline for Los Angeles;
 - (B) The spot pipeline daily price for regular unleaded gasoline for San Francisco; and
 - (C) The spot daily price for the Pacific Northwest, as reported and published by the Oil Price Information Service for the five business days of the preceding week;
- (2) The value of the location adjustment factor in effect at the time the petition is filed shall be adjusted to equal the average of the actual acquisition cost to non-refiner marketers to obtain gasoline from refiners or importers for sale on the island of Oahu over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Oahu. As used in this paragraph, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pays to a third party for delivery of such gasoline into a terminal located on the island of Oahu;
- (3) The value of the marketing margin factor in effect at the time the petition is filed shall be adjusted by adding to such value the difference between:
 - (A) The average of the difference over the prior twelve-month period between:
 - (i) The dealer tank wagon price for sales for resale; and
 - (ii) The bulk price for sales for resale, for PAD District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information; less
 - (B) The average of the difference over the period from 1994 until the most current year between:
 - (i) The dealer tank wagon price for sales for resale; and
 - (ii) The bulk price for sales for resale, for PAD District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information;
- (4) The value of the neighbor island location adjustment factor in effect at the time the petition is filed shall be adjusted to equal the actual acquisition cost to non-refiner marketers to obtain gasoline from a refiner or importer for sale on the island of Kauai, Molokai, Lanai, Maui, or Hawaii, over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agree-

ments, or other similar agreements; provided that the neighbor island location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Kauai, Molokai, Lanai, Maui, or Hawaii, from any port on the island of Oahu. As used in this subsection, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pay to a third party for delivery of such gasoline into a terminal located on Kauai, Molokai, Lanai, Maui, or Hawaii; and

- (5) The value of the neighbor island marketing factor in effect at the time the petition is filed shall be adjusted if there are material changes in the cost factors associated with marketing gasoline on the island of Kauai, Molokai, Lanai, Maui, or Hawaii, such as terminaling, storage, or distribution costs.

(b) A retail station may petition the commission to adjust the maximum pre-tax retail price of gasoline in the event of a change in the maximum pre-tax wholesale price for regular unleaded gasoline, or the value of the retail marketing margin factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustment shall be determined as follows:

- (1) The value of the retail marketing margin factor for regular unleaded gasoline established in section 486H-B(c) shall be adjusted upward only if such value is less than the average of the difference over the prior twelve-month period between:

- (A) The "through retail outlets" price for sales to end users for regular unleaded gasoline; and

- (B) The dealer tank wagon price, for sales for resale for regular unleaded gasoline, for PAD District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information.

(c) If the commission adjusts the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline, the commission shall publish its findings and the adjusted prices by means that shall include the internet website for the State of Hawaii.

(d) In its discretion and without a petition having been filed, the commission may adjust the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline if an adjustment is necessary as a result of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, the neighbor island wholesale adjustment factor, or the retail marketing margin factor.

(e) Nothing in section 486H-A or 486H-B shall be construed to prohibit the filing of a petition during the first year after the effective date of this section."

2. By adding twelve new definitions to section 486H-1, Hawaii Revised Statutes, to be appropriately inserted and to read as follows:

"Commission" means the public utilities commission.

"Company retail station" means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.

"Dealer retail station" means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer other than a manufacturer or a jobber under a franchise.

"Independent retail station" means a retail service station not owned by a manufacturer or jobber and operated by a qualified gasoline dealer.

“Non-refiner marketer” means any person who acquires gasoline for sale in the State of Hawaii, and who is not a refiner located and operating in the State of Hawaii, nor an importer owned by or affiliated with, directly or indirectly, by a refiner located and operating in the State of Hawaii.

“Operate” means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

“Other areas” means the second congressional district of the State.

“Pre-tax” when used in reference to a price means such price net of the fuel-related or other taxes assessed when the gasoline is sold.

“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.

“Retail station” means and includes a company retail station, a dealer retail station, and an independent retail station.

“Self-serve basis” means that the retail station allows customers to dispense gasoline into vehicles.

“Urban” means the first congressional district of the State.”

3. By amending section 486H-10.4, Hawaii Revised Statutes, to read as follows:

“[§486H-10.4] Restrictions on manufacturers or jobbers in operating service stations; lease rent controls; definitions. (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer [operated] retail [service] station to a company [operated] retail [service] station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company operated retail service stations legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service stations as company [operated] retail [service] stations constructed after August 1, 1997, subject to subsection (b); or
- (3) Operating a former dealer [operated] retail [service] station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the service station, cancels the franchise, or is properly terminated or not renewed.

(b) No new company [operated] retail [service] station shall be located within one-eighth mile of a dealer [operated] retail [service] station in an urban area, and within one-quarter mile in other areas. [~~For purposes of this subsection, “urban” means the first congressional district of the State, and “other areas” means the second congressional district of the State.~~]

(c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:

- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer operated retail service station as defined in section 486H-1 and 486H-10.4 plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase which the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. For the purposes of this subsection, “gross

amount” means all monetary earnings of the dealer from a dealer operated retail service station after all applicable taxes, excluding income taxes, are paid.

The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.

(d) Nothing in this section shall prohibit a dealer from selling a retail service station in any manner.

~~[(e) For the purposes of this section:~~

~~“Company operated retail service station” means a retail service station owned and operated by a manufacturer or jobber and where retail prices are set by that manufacturer or jobber.~~

~~“Dealer operated retail service station” means a retail service station owned by a manufacturer or jobber and operated by a qualified gasoline dealer under a franchise.~~

~~“Operate” means to engage in the business of selling motor vehicle fuel at a retail service station through any employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.~~

~~“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.]”~~

SECTION 3. Chapter 486J, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to section 486J-1, Hawaii Revised Statutes, to be appropriately inserted and to read as follows:

““Petroleum commissioner” or “commissioner” means the administrator of the energy, resources, and technology division of the department of business, economic development, and tourism.”

2. By amending section 486J-5, Hawaii Revised Statutes, to read as follows:

“[~~§~~486J-5] Analysis of information; audits and inspections; summary reports. (a) The ~~[department may,] petroleum commissioner, with [its] the commissioner’s own staff and other support staff with expertise and experience in, or with, the petroleum industry, shall gather, analyze, and interpret the information submitted to it pursuant to sections 486J-3 and 486J-4 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 wholesale and 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 ~~[department may]~~ commissioner shall 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 ~~[department]~~ commissioner may solicit assistance of the department of taxation in any such audit. The ~~[department]~~ commissioner shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the ~~[department]~~ commissioner is not duplicative of the data received by any of their audits or inspections which is available to the ~~[department.]~~ commissioner.

(c) The ~~[department may]~~ commissioner shall analyze the impacts of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.

(d) The ~~[department]~~ commissioner shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current legislative session a summary, including any analysis and interpretation[;] of the information submitted to it pursuant to this chapter[-], and any other activities taken by the commissioner, including civil penalties imposed and referrals of violations to the attorney general under section 486J-9. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted. At the option of the director, this report may be combined with reporting required by section 196-4(11), in the director's role as state energy resources coordinator."

3. By amending section 486J-9, Hawaii Revised Statutes, to read as follows:

“[§486J-9] Failure to timely provide information; failure to make and file statements; false statements; penalties[-]; referral to the attorney general. (a) The ~~[department]~~ petroleum commissioner shall notify those persons who have failed to timely provide the information specified in section 486J-3 or 486J-4 or requested by the ~~[department]~~ commissioner under section 486J-3 or 486J-4. If, within five days after 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]~~ \$50,000 per day nor more than ~~[\$2,000]~~ \$100,000 per day for each day the submission of information is refused or delayed, unless the person has timely filed objections with the ~~[department]~~ commissioner regarding the information and the ~~[department]~~ commissioner has held a hearing and, following a ruling by the ~~[department,]~~ commissioner, the person has properly submitted the issue to a court of competent jurisdiction for review.

(b) Any person who wilfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the ~~[department]~~ commissioner shall be subject to a civil penalty not to exceed ~~[\$20,000.]~~ \$500,000, and shall be deemed to have committed an unfair or deceptive act or practice in the conduct of a trade or commerce and subject to the penalties specified in chapter 480. The commissioner shall refer any matter under this subsection to the attorney general, who may exercise any appropriate legal or equitable remedies that may be available to the State.

(c) For the purposes of this section, ~~[the term]~~ “person” means, in addition to the definition contained in section 486J-1, any responsible corporate officer."

SECTION 4. Sections 486J-2, 486J-3, 486J-4, 486J-6, 486J-7, 486J-8, 486J-10, and 486J-12, Hawaii Revised Statutes, are amended by substituting the word "commissioner" wherever the word "department" or "director" appears, as the context requires.

SECTION 5. **Review; report.** (a) The department of business, economic development, and tourism shall:

- (1) Gather, review, analyze, and evaluate publicly available information, studies, and reports, including unsealed documents in *Anzai v. Chevron et al.* (U.S. District Court for the District of Hawaii, Civil No. 98-00792-SPK) and the attorney general's investigation of the petroleum industry, as may be necessary;
- (2) Gather, review, analyze, and evaluate empirical data to determine whether the Oil Price Information Service index, or other appropriate benchmarks, are applicable to Hawaii's wholesale and retail gasoline markets;
- (3) Review options available to the legislature and make findings and recommendations concerning appropriate remedies and solutions available to reduce wholesale and retail gasoline prices in Hawaii, including proposals to impose maximum prices on wholesale and retail gasoline and the potential effects of imposing such price caps; and
- (4) Report findings and recommendations, including proposed implementing legislation, to the legislature no later than twenty days before the convening of the regular session of 2003.

(b) The attorney general and the legislative reference bureau shall assist the department by conducting legal and policy analyses, as appropriate, and in drafting legislation.

SECTION 6. There is appropriated out of the public utilities commission special fund the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2002-2003, which shall be deposited into the state general fund for the purposes of this part.

The sum appropriated shall be expended by the public utilities commission for the purposes of this part.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2002-2003, for the department of business, economic development, and tourism to pay the costs of contracting for the services of one or more persons with expertise and experience in, or with, the petroleum industry, to assist the department of business, economic development, and tourism in its review and report under section 5 of this Act; provided that any expenditure of funds by the department pursuant to this section shall be without regard to chapter 103D, Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this part.

PART II.

SECTION 8. The purpose of this part is to require the government of the State of Hawaii to significantly improve its energy management in state facilities in order to save taxpayer dollars and reduce emissions that contribute to air pollution and global climate change.

SECTION 9. Chapter 196, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ENERGY EFFICIENCY IN STATE FACILITIES

§196-A Definitions. As used in this part:

“Acquisition” means acquiring by contract supplies or services, including construction, by and for the use of the State through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, or evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

“Agency” means any executive department, independent commission, board, bureau, office, or other establishment of the State, or any quasi-public institution that is supported in whole or in part by state funds.

“Energy-savings performance contract” means an agreement for the provision of energy services and equipment, including building energy conservation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the cost savings, lease payments, or specified revenues including utility rebates and any other available incentives, and the level of payments is made contingent upon the verified energy savings, energy production, avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases.

“ENERGY STAR” means a labeling program introduced by the United States Environmental Protection Agency in 1992 as a voluntary labeling program designed to identify and promote energy-efficient products, in order to reduce carbon dioxide emissions.

“Exempt facility” or “exempt mobile equipment” means a facility or mobile equipment for which an agency utilizes criteria established by the energy resources coordinator to determine that compliance with this part is not practical.

“Facility” means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, an agency.

“Life-cycle cost-effective” means the life-cycle costs of a product, project, or measure that are estimated to be equal to or less than the base case, i.e., current or standard practice or product.

“Life-cycle costs” means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs, over the lifetime of the project, product, or measure.

“Mobile equipment” means any state-owned vessel, aircraft, or off-road vehicle.

“Renewable energy” means energy produced by solar, energy conserved by passive solar design/daylighting, ocean thermal, wind, wave, geothermal, waste-to-energy, or biomass power.

“Renewable energy technology” means technology that uses renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities. The term includes the use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design/daylighting.

“Source energy” means the energy that is used at a site and consumed in producing and delivering energy to a site, including power generation, transmission,

and distribution losses, and that is used to perform a specific function, such as space conditioning, lighting, or water heating.

“Utility” means a public utility as defined in section 269-1. Utility includes federally owned nonprofit producers, county organizations, and investor or privately owned producers regulated by the state or federal government, cooperatives owned by members and providing services mostly to their members, and other nonprofit state and county agencies serving in this capacity.

“Utility energy-efficiency service” means demand-side management services provided by a utility to improve the efficiency of use of the commodity, such as electricity and gas being distributed. Services may include energy efficiency and renewable energy project auditing, financing, design, installation, operation, maintenance, and monitoring.

§196-B Greenhouse gases reduction goal. Through life-cycle cost-effective energy measures, each agency shall reduce its greenhouse gas emissions attributed to facility energy use by thirty per cent by January 1, 2012, compared to emission levels in calendar year 1990. In order to encourage optimal investment in energy improvements, agencies may count greenhouse gas reductions from improvements in non-facility energy use toward this goal to the extent that these reductions are approved by the coordinator.

§196-C Energy efficiency improvement goals. (a) Through life-cycle cost-effective measures, each agency shall reduce energy consumption per gross square foot of its facilities, excluding laboratory facilities, by twenty per cent by January 1, 2007, and thirty per cent by January 1, 2012, relative to calendar year 1990. No facility shall be exempt from these goals unless it meets criteria for exemptions established by the coordinator.

(b) Through life-cycle cost-effective measures, each agency shall reduce energy consumption per square foot, per unit of production, or per other unit as applicable, of its laboratory facilities by fifteen per cent by January 1, 2007, and twenty-five per cent by January 1, 2012, relative to calendar year 1995. No facility shall be exempt from these goals unless it meets criteria for exemptions established by the coordinator.

(c) Each agency shall strive to expand the use of renewable energy within its facilities and in its activities by implementing renewable energy projects and by purchasing electricity from renewable energy sources. Through life-cycle cost-effective measures, each agency shall provide twenty per cent of its remaining energy requirements, after energy efficiency improvement goals have been achieved, with renewable energy resources.

(d) Through life-cycle cost-effective measures, each agency shall reduce the use of petroleum generated energy within its facilities. Agencies may accomplish this reduction by switching to less greenhouse gas-intensive or renewable energy sources, by eliminating unnecessary fuel use, or by other appropriate methods. Where alternative fuels are not practical or life-cycle cost-effective, agencies shall strive to improve the efficiency of their facilities.

(e) The State shall strive to reduce total energy use and associated greenhouse gas and other air emissions, as measured at the source. To that end, agencies shall undertake life-cycle cost-effective projects in which source energy decreases, even if site energy use increases. In those cases, agencies shall receive credit toward energy reduction goals through guidelines established by the coordinator.

(f) Through life-cycle cost-effective measures, agencies shall reduce water consumption and associated energy use in their facilities to reach the goals set under this part. Where possible, water cost savings and associated energy cost savings shall

be included in energy-savings performance contracts and other financing mechanisms.

(g) Each agency's biennial budget submission shall include funding necessary to achieve the goals of this part. Budget submissions shall include the costs associated with encouraging the use of, administering, and fulfilling agency responsibilities under energy-savings performance contracts, utility energy-efficiency service contracts, and other contractual provisions for achieving conservation goals implementing life-cycle cost-effective measures, procuring life-cycle cost-effective products, and constructing sustainably designed new buildings, among other energy costs.

The director of finance shall issue guidelines to assist agencies in developing appropriate requests that support sound investments in energy improvements and energy-using products, and shall consider establishing a fund that agencies may draw on to finance exemplary energy management activities and investments with higher initial costs but lower life-cycle costs.

(h) Each agency shall develop an annual implementation plan for fulfilling the requirements of this part. The plans shall be included in the annual reports to the coordinator.

§196-D Annual report. Beginning January 1, 2004, each agency shall measure and report annually to the coordinator on its progress in meeting the requirements of this part.

The report shall include:

- (1) How the agency is using each of the strategies described in this part to help meet energy and greenhouse gas reduction goals;
- (2) A listing and explanation as to why certain strategies, if any, have not been used; and
- (3) A listing and explanation of exempt facilities.

§196-E Senior agency official. Each agency shall designate a senior official to be responsible for meeting the goals and requirements of this part, including preparation of the annual report. Designated officials shall participate in the interagency energy policy committee established under section 196-G(c).

§196-F Agency energy teams. Each agency shall form a technical support team consisting of appropriate procurement, legal, budget, management, and technical representatives to expedite and encourage the agency's use of appropriations, energy-savings performance contracts, and other alternative financing mechanisms necessary to meet the goals and requirements of this part. Agency energy team activities shall be undertaken in collaboration with each agency's representative to the interagency energy policy committee.

§196-G Interagency coordination; policy committee. (a) The coordinator shall be responsible for evaluating each agency's progress in improving energy management and for submitting agency energy scorecards to the governor and the legislature to report progress.

The coordinator, in consultation other agencies, shall develop the agency energy scorecards and scoring system to evaluate each agency's progress in meeting the goals of this part. The scoring criteria shall include:

- (1) The extent to which agencies are taking advantage of key tools to save energy and reduce greenhouse gas emissions, such as energy-savings performance contracts, utility energy-efficiency service contracts, ENERGY STAR and other energy efficient products, renewable energy

technologies, electricity from renewable energy sources, and other strategies and requirement;

- (2) Overall efficiency;
- (3) Greenhouse gas reduction; and
- (4) Use of other innovative energy efficiency practices.

The scorecards shall be based on the annual energy reports submitted to the coordinator.

(b) The coordinator shall be responsible for working with agencies to ensure that they meet the goals of this part and report their progress. The coordinator shall develop and issue guidelines for agencies' preparation of their annual reports to the coordinator on energy management. The coordinator shall also have primary responsibility for collecting and analyzing the data and shall ensure that agency reports are received in a timely manner.

(c) There is established within the department of business, economic development, and tourism, an interagency energy policy committee consisting of senior agency officials, to be chaired by the coordinator. The committee shall be responsible for encouraging implementation of energy efficiency policies and practices. The major energy-consuming agencies, as designated by the coordinator, shall participate on the committee. The committee shall communicate its activities to all designated senior agency officials to promote coordination and achievement of the goals of this part.

§196-H Public-private advisory committee. (a) The coordinator shall appoint an advisory committee consisting of representatives from:

- (1) State agencies;
- (2) County governments;
- (3) Energy service companies;
- (4) Utility companies;
- (5) Equipment manufacturers;
- (6) Construction and architectural companies;
- (7) Environmental, energy, and consumer groups; and
- (8) Other energy-related organizations.

(b) The committee shall provide input on state energy management, including how to:

- (1) Improve the use of energy-savings performance contracts and utility energy-efficiency service contracts;
- (2) Improve procurement of ENERGY STAR and other energy efficient products;
- (3) Improve building design;
- (4) Reduce process energy use; and
- (5) Enhance applications of efficient and renewable energy technologies at state facilities.

(c) The committee shall be placed in the department of business, economic development, and tourism for administration purposes.

§196-I Life-cycle cost analysis. Agencies shall use life-cycle cost analysis in making decisions about their investments in products, services, construction, and other projects to lower the State's costs and to reduce energy and water consumption. Where appropriate, agencies shall consider the life-cycle costs of combinations of projects, particularly to encourage bundling of energy efficiency projects with renewable energy projects.

Agencies shall retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs. Agencies that minimize life-cycle costs

with efficiency measures shall be recognized in their scorecard evaluations established under section 196-G(a).

§196-J Facility energy audits. Agencies shall conduct energy and water audits for approximately ten per cent of their facilities each year, either independently or through energy-savings performance contracts or utility energy-efficiency service contracts.

§196-K Financing mechanisms. (a) Agencies shall maximize their use of available alternative financing contracting mechanisms, including energy-savings performance contracts and utility energy-efficiency service contracts, when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-savings performance contracts and utility energy-efficiency service contracts shall provide significant opportunities for making state facilities more energy efficient at no net cost to taxpayers.

(b) Agencies that perform energy efficiency and renewable energy system retrofitting may continue to receive budget appropriations for energy expenditures at an amount that will not fall below the pre-retrofitting energy budget but will rise in proportion to any increase in the agency's overall budget for the duration of the performance contract or project payment term. A portion of the moneys saved through efficiency and renewable energy system retrofitting shall be set aside to pay for any costs directly associated with administering energy efficiency and renewable energy system retrofitting programs incurred by the agency.

(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment, or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation, and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;
- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any energy performance contract entered into pursuant to this section shall not exceed fifteen years;
- (5) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract; and
- (6) Any energy performance contract shall provide that total payments shall not exceed total savings.

§196-L State energy projects. State energy projects may be implemented under this chapter with the approval of the comptroller and the director of finance. Notwithstanding section 196-K or section 36-41, the comptroller or the senior agency official of the department of accounting and general services, along with the

director of finance, may exempt a state energy project from the advertising and competitive bidding requirements of section 196-K or section 36-41 and chapters 103 and 103D, if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature. In addition, this section shall be construed to provide the greatest possible flexibility to agencies in structuring agreements entered into so that economic benefits and existing energy incentives may be used and maximized and financing and other costs to agencies may be minimized. The specific terms of energy performance contracting under section 36-41 may be altered if deemed advantageous to the agency and approved by the director of finance and the senior agency official.

§196-M Energy efficient products. (a) Agencies shall select, where life-cycle cost-effective, ENERGY STAR and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR labels are not yet available, agencies may select products that are in the upper twenty-five per cent of energy efficiency as designated by the United States Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program.

Agencies shall incorporate energy efficient criteria consistent with designated energy efficiency levels into all guide specifications and project specifications developed for new construction and renovation, as well as into product specification language developed for all purchasing procedures.

The State shall also consider the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products.

(b) Agencies shall strive to meet the ENERGY STAR building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by December 31, 2005. Agencies may use energy-savings performance contracts, utility energy-efficiency service contracts, or other means to conduct evaluations and make improvements to facilities. Facilities that rank in the top twenty-five per cent in energy efficiency relative to comparable commercial and state buildings shall receive the ENERGY STAR building label or its equivalent as determined by the coordinator. Agencies shall integrate this rating tool into their general facility audits.

(c) The State shall employ sustainable design principles and agencies shall apply the principles to the siting, design, and construction of new facilities. Agencies shall optimize life-cycle costs, pollution, and other environmental and energy costs associated with the construction, life-cycle operation, and decommissioning of the facility. Agencies shall consider using energy-savings performance contracts or utility energy-efficiency service contracts to aid them in constructing sustainably designed buildings.

(d) Agencies entering into leases, including the renegotiation or extension of existing leases, shall incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of facility performance. Agencies shall include a preference for facilities having an ENERGY STAR building label in their selection criteria for acquiring leased facilities. In addition, all agencies shall encourage lessors to apply for an ENERGY STAR building label and to explore and implement projects that will reduce costs to the State, including projects carried out through the lessors' energy-savings performance contracts or utility energy-efficiency service contracts.

(e) Agencies shall implement energy reduction systems, and other highly efficient systems, in new construction or retrofit projects when life-cycle cost-effective. Agencies shall consider combined cooling, heat, and power systems when

determined to be the most cost-effective when measured against other alternatives on a life-cycle cost basis. Agencies shall survey local natural resources to optimize use of available solar, ocean thermal, biomass, bioenergy, geothermal, or other naturally occurring energy sources.

(f) Agencies shall use off-grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life-cycle cost-effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.

§196-N Electricity use. To advance the greenhouse gas and renewable energy goals of this part, and reduce source energy use, each agency shall strive to use electricity from clean, efficient, and renewable energy sources. An agency's efforts in purchasing electricity from efficient and renewable energy sources shall be taken into account in assessing the agency's progress and formulating its score card under section 196-G(a).

§196-O Competition. Agencies shall take advantage of competitive opportunities in the electricity and natural gas markets to reduce costs and enhance services. Agencies are encouraged to aggregate demand across facilities or agencies to maximize their economic advantage.

§196-P Reduced greenhouse gas intensity of electric power. When selecting electricity providers, agencies shall purchase electricity from sources that use high efficiency electric generating technologies when life-cycle cost-effective. Agencies shall consider the greenhouse gas intensity of the source of the electricity and strive to minimize the greenhouse gas intensity of purchased electricity.

§196-Q Purchasing electricity from renewable energy sources. Each agency shall evaluate its current use of electricity from renewable energy sources and report this level in its annual report to the coordinator. Based on this review, each agency shall adopt policies and pursue projects that increase the use of such electricity. Agencies shall include provisions for the purchase of electricity from renewable energy sources as a component of their requests for bids whenever procuring electricity. Agencies may use savings from energy efficiency projects to pay additional incremental costs of electricity from renewable energy sources.

In evaluating opportunities to comply with this section, agencies shall consider any renewable portfolio standard specified in the restructuring guidelines for the State and the United States Environmental Protection Agency guidelines on crediting renewable energy power.

§196-R Mobile equipment. Each agency shall seek to improve the design, construction, and operation of its mobile equipment, and shall implement all life-cycle cost-effective energy efficiency measures that result in cost savings while improving mission performance. To the extent that such measures are life-cycle cost-effective, agencies shall consider enhanced use of alternative or renewable-based fuels.

§196-S Management strategies. Agencies shall use the following management strategies in meeting the goals of this part:

- (1) Employee incentive programs to reward exceptional performance in implementing this part;
- (2) Performance evaluations of successful implementation of this part in areas such as energy-savings performance contracts, sustainable de-

sign, energy efficient procurement, energy efficiency, water conservation, and renewable energy projects and performance evaluations of agency heads, members of the agency energy team, principal program managers, heads of field offices, facility managers, energy managers, and other appropriate employees;

- (3) Agencies shall be allowed to retain a portion of savings generated from efficient energy and water management and shall use the savings at the facility or site where the savings occur to provide greater incentives for that facility and its site managers to undertake more energy management initiatives, invest in renewable energy systems, and purchase electricity from renewable energy sources;
- (4) Training and education shall be provided for all appropriate personnel relating to the energy management strategies contained in this part, including the incorporation into existing procurement courses information on energy management tools, energy-savings performance contracts, utility energy-efficiency service contracts, energy efficient products, and life-cycle cost analysis; and
- (5) Agencies shall designate showcase facilities to highlight energy or water efficiency and renewable energy improvements.’’

SECTION 10. Chapter 196, Hawaii Revised Statutes, is amended by designating sections 196-1 to 196-7 as:

“PART I. GENERAL PROVISIONS”

SECTION 11. Within one hundred twenty days after the effective date of this Act, the director of finance shall:

- (1) Develop and issue guidelines to agency budget officers on the preparation of annual funding requests associated with the implementation of this Act for the budget for fiscal year 2003-2004;
- (2) In collaboration with the coordinator, inform agencies how to retain savings and reinvest in other energy and water management projects; and
- (3) In collaboration with the coordinator, periodically brief agency procurement executives on the use of energy management tools, including energy-savings performance contracts, utility energy-efficiency service contracts, and procurement of energy efficient products and electricity from renewable energy sources.

SECTION 12. Within one hundred eighty days after the effective date of this Act, the coordinator, in collaboration with other agency heads, shall:

- (1) Develop and issue guidelines to assist agencies in measuring energy per square foot, per unit of production, or other applicable unit in industrial, laboratory, research, and other energy-intensive facilities;
- (2) Establish criteria for determining which facilities are exempt from the Act and provide guidance for agencies to request proposed exemptions;
- (3) Develop and issue guidelines to assist agencies in calculating appropriate energy baselines for previously exempt facilities and facilities occupied after December 31, 2002, in order to measure progress toward goals;
- (4) Develop and issue guidelines to clarify how agencies determine the life-cycle cost for investments required by this Act, including how to compare different energy and fuel options and assess the current tools;

- (5) Develop and issue guidelines for providing credit toward energy efficiency goals for cost-effective projects where source energy use declines but site energy use increases;
- (6) Develop and issue guidelines to assist each agency to determine a baseline of water consumption;
- (7) Develop and issue guidelines to assist agencies in ensuring that all project cost estimates, bids, and agency budget requests for design, construction, and renovation of facilities are based on life-cycle costs, and that incentives for contractors involved in facility design and construction are structured to encourage the contractors to design and build at the lowest life-cycle cost;
- (8) Make information available on opportunities to purchase electricity from renewable energy sources, including relevant state and county regulations, and update the information as necessary based on technological advances and market changes, but at least every two years;
- (9) Develop Internet-based tools to assist individual and agency purchasers in identifying and purchasing energy efficient products for acquisition;
- (10) Develop and issue sustainable design and development principles for the siting, design, and construction of new facilities; and
- (11) Develop model lease provisions that incorporate energy efficiency and sustainable design.

SECTION 13. Within three hundred sixty-five days after the effective date of this Act, the coordinator, in collaboration with other agency heads, shall:

- (1) Provide guidance for counting renewable and highly efficient energy projects and purchases of electricity from renewable and highly efficient energy sources toward agencies' progress in reaching greenhouse gas and energy reduction goals;
- (2) Develop goals for the amount of energy generated at state facilities from renewable energy technologies;
- (3) Support efforts to develop standards for the certification of low environmental impact renewable energy facilities to facilitate the State's purchase of such power;
- (4) Work with the director of finance to develop a plan for purchasing advanced energy products in bulk quantities for use by multiple agencies;
- (5) Develop and issue guidelines for agency use estimating the greenhouse gas emissions attributable to facility energy use, including emissions associated with the production, transportation, and use of energy consumed in state facilities; and
- (6) Establish water conservation goals for state agencies.

SECTION 14. If an agency determines that a provision in this Act is inconsistent with its mission, the agency may ask the coordinator for a waiver of the provision. The coordinator shall include a list of any waivers it grants in the annual report to the governor and the legislature.

PART III.

SECTION 15. In codifying the new sections added by section 2(1) of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

ACT 77

SECTION 16. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 19. This Act shall take effect upon its approval; provided that:

- (1) Section 2 shall take effect on July 1, 2004; and
- (2) Sections 6 and 7 shall take effect on July 1, 2002.

(Approved May 31, 2002.)

Notes

1. Four new sections added.
2. Edited pursuant to HRS §23G-16.5.