

A Bill for an Act Relating to Petroleum Industry Monitoring.

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

SECTION 1. Chapter 486B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§486B-A Monitoring of petroleum industry information. The public utilities commission shall refer to the attorney general any matter that is a violation of this chapter that is discovered in the performance of its duties pursuant to chapter 486H or 486J.”

SECTION 2. Chapter 486J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§486J-A Use and analysis of information by the department of business, economic development, and tourism. The department, with its own staff and other support staff with relevant expertise and experience, shall use the information obtained under this chapter to effectuate the purposes of chapters 125C, 196, and other relevant laws.”

SECTION 3. Section 486J-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“‘Major fuel user’ means any person who uses fuel in the manufacture of products or for the generation of power in amounts determined by the commission as having a major effect on energy supplies.”

2. By amending the definitions of “distributor”, “major marketer”, “major oil producer”, “major oil storer”, and “major oil transporter” to read:

“‘Distributor’ means:

- (1) Every person who refines, manufactures, produces, or compounds fuel in the State and sells it at wholesale or at retail [~~or who uses it directly in the manufacture of products or for the generation of power~~];
- (2) Every person who imports or causes to be imported into the State, or exports or causes to be exported from the State, any fuel;
- (3) Every person who acquires fuel through exchanges with another distributor; or
- (4) Every person who purchases fuel for resale at wholesale or retail from any person described in paragraph (1), (2), or (3); provided that “distributor” shall not include a marina, lessee dealer-operated station, owner-operated station, or other retailer that retails fuel only to end users or the public.

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

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

SECTION 4. Section 486J-3, Hawaii Revised Statutes, is amended to read as follows:

“§486J-3 Statements. (a) Each week every distributor~~[, on the reporting dates as the commission may establish,]~~ and major fuel user shall file with the commission, on forms prescribed, prepared, and furnished by the commission, a certified statement showing on a statewide consolidated basis, and separately for each county and for the islands of Lanai and Molokai within which and whereon fuel is sold or used during the last preceding reporting week, the following:

- (1) The total number of gallons or units of fuel, by type or grade, refined, manufactured, or compounded by the distributor within the State and, if for ultimate sale or consumption in another county or on another island, the number of gallons or units of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor in each county or island;
- (2) The total number of gallons or units of fuel, by type or grade, imported or exported by the distributor; the total volumes of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor; and if for ultimate sale or consumption in another county or on another island, the number of gallons or units of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor in each county or island;
- (3) The total number of gallons or units of fuel sold as liquid fuel, aviation fuel, diesel fuel, and other types of fuel as required by the commission;
- (4) The total number of gallons or units of fuel, by type or grade, and their respective sales prices for all fuel sold to federal, state, and county agencies, ships stores, or base exchanges, commercial agricultural accounts, commercial nonagricultural accounts, retail dealers, and other customers as required by the commission;
- (5) Weekly weighted average acquisition cost per barrel and volumes of foreign or domestic crude oil or other liquid fuels, finished or unfinished, imported to Hawaii, including information identifying the source of the crude oil or other liquid fuels;
- (6) The effective date and time, and the amount of change in cents per gallon, of any increase or decrease in wholesale price occurring during the week and the weekly weighted average wholesale prices and sales volumes of finished unleaded regular and premium motor gasoline, and of each other grade of gasoline sold, by island, to retail outlets, by classes of retail trade, and to wholesale distributors;
- (7) Weekly weighted average retail prices, and sales volumes of finished unleaded regular and premium motor gasoline, and of each other grade of gasoline sold, by island, by retail distributor outlets of all classes of retail trade and by any distributor to other end-users; provided that the commission may purchase retail price data from data service companies that the commission may use to substitute some or all data to meet the reporting requirement for retail price data under this paragraph;

- (8) The effective date and time, and the amount of change in cents per gallon, of any increase or decrease in wholesale price occurring during the week and the weekly weighted average wholesale prices, and sales volumes of No. 2 diesel fuel and No. 2 fuel oil, by island, to retail distributor outlets, by classes of retail trade, and to all other wholesale distributors. Weighted average wholesale prices and sales volumes shall be reported by type of wholesale liquid fuel price;
- (9) Weekly weighted average retail prices, and sales volumes of No. 2 diesel fuel and No. 2 fuel oil sold, by island, by retail distributor outlets of all classes of retail trade and by any distributor to other end-users. The commission may purchase retail price data from data service companies that the commission may use to substitute some or all data to meet the reporting requirement for retail price data under this paragraph;
- (10) Weekly weighted average prices, and sales volumes for retail sales and wholesale sales, by island, of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil, and consumer grade propane;
- (11) For each distributor that is a refiner, the gross margins or spreads between a refiner's average weighted acquisition price for each gallon of crude oil and blendstock refined within the State and the average weighted prices for each gallon or unit of fuel sold, by county or island, to another distributor, a retail dealer, end-user, and consumer; ~~and~~
- (12) For each distributor that is not a refiner, the gross margins or spreads between the distributor's average weighted price for each gallon or unit of fuel acquired by the distributor and the average weighted prices for each gallon or unit of fuel sold, by county or island, to another distributor, a retail dealer, end-user, or consumer~~[-]; and~~
- (13) Revenues, expenses, profits and losses, and any other financial or operating information as may be required by the commission.

The commission shall prescribe applicable standards and practices for reporting to facilitate uniformity, consistency, and comparability of the data to be submitted.

(b) Each major marketer shall submit to the commission, at a time and in a form as the commission shall prescribe, information, including petroleum and petroleum product receipts, exchanges, inventories, and distributions.

(c) The commission may ~~[request]~~ require additional information as and when the commission deems necessary to perform the commission's responsibilities under this chapter.

(d) Information in the statements filed pursuant to this section shall be collected and maintained for the purpose of facilitating the analysis required by ~~[section 486J-5]; this chapter;~~ provided that the commission shall make the information available to the public ~~[the information contained in the statements but not the statements themselves, as provided in], to the extent permitted under sections 486J-6 and 486J-8."~~

SECTION 5. Section 486J-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commission may ~~[request]~~ require additional information as and when the commission deems ~~[it]~~ necessary to perform the commission's responsibilities under this chapter.”

SECTION 6. Section 486J-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each refiner, on a semi-annual basis, at reporting dates as the commission may establish, shall file with the commission, on forms prescribed, prepared, and furnished by the commission, a certified statement of operating and overhead costs for the refiner’s Hawaii operations that shall include but not be limited to the following:

- (1) Crude oil costs and sources;
- (2) Other feedstock costs and sources;
- (3) Refinery operating expenses;
- (4) Marketing operating expenses by petroleum product;
- (5) Distribution expenses by petroleum product; and
- (6) Corporate overhead expenses[; ~~and~~
- (7) ~~The percentage of the total number of wholesale gallons of unleaded regular and premium unleaded gasoline sold during the reporting period at wholesale prices per gallon that exceed the maximum pre-tax whole-sale price calculated by the commission under section 486H-13].”~~

SECTION 7. Section 486J-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Confidential commercial information provided to the commission pursuant to this chapter that is exempt from public disclosure under section [92F-13(4)] 92F-13 shall be held in confidence by the commission or aggregated to the extent necessary in the commission’s discretion to ensure confidentiality as required by chapter 92F.

(b) No data or information submitted to the [{}commission{}] shall be deemed confidential if it is shown that the person submitting the information or data has made it public.”

SECTION 8. Section 486J-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person, or any employee of any person, who wilfully 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 \$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] chapters 480[-] and 486B.”

SECTION 9. Section 486J-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [~~Notwithstanding any law to the contrary, including any other section of this chapter, no later than fourteen days after the reporting date established by the commission under section 486J-3, the~~] The commission shall disclose to the public, using the best readily available technology, the information contained in the statements[, ~~but not the statements themselves,~~] that are filed pursuant to section 486J-3[-], except to the extent that disclosure is prohibited under section 486J-6. The commission shall publicly report this information within fourteen days pursuant to the reporting dates established by the commission under section 486J-3.”

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

“[{}§486J-11{}] **Powers of the public utilities commission.** (a) The public utilities commission [shall have the authority and power to] may take any action or

make any determination under this chapter, including but not limited to actions or determinations that affect persons not regulated under chapters 269, 271, and 271G, as the commission deems necessary to carry out its responsibilities or otherwise effectuate chapter 269, 271, or 271G.

(b) The public utilities commission may examine or investigate each distributor, the manner in which it is operated, its prices and rates, its operating costs and expenses, the value of its property and assets, the amount and disposition of its income, any of its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws, and all matters of any nature affecting the relations and transactions between the distributor and the public, persons, or businesses.

(c) In the performance of its duties under this chapter, the commission shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documents, examining witnesses, and punishing for contempt, as are possessed by the circuit courts. In case of disobedience by any person to any order of or subpoena issued by the commission, or of the refusal of any witness to testify to any matter regarding which the witness may be lawfully questioned, any circuit court, upon application by the commission, shall compel obedience as in case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein.”

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2007-2008 to be deposited into the petroleum industry monitoring, analysis, and reporting special fund.

SECTION 12. There is appropriated out of the petroleum industry monitoring, analysis, and reporting special fund the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2007-2008 to administer, implement, and maintain the petroleum industry monitoring, analysis, and reporting program established under chapter 486J, Hawaii Revised Statutes.

The sum appropriated shall be expended by the public utilities commission for the purposes of chapter 486J, Hawaii Revised Statutes.

SECTION 13. In codifying the new sections added to the Hawaii Revised Statutes by this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect on July 1, 2007.

(Approved June 15, 2007.)

Note

1. Edited pursuant to HRS §23G-16.5.