

ACT 152

H.B. NO. 2631

A Bill for an Act Relating to Energy Industry Reporting.

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

SECTION 1. Section 486H-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (l) to read:

“(l) The suspension of the maximum pre-tax wholesale gasoline price shall suspend the commission’s duty to calculate and publish the maximum pre-tax wholesale gasoline price that would have been in effect but for the suspension, but shall not suspend or affect:

- (1) Any duty to register, timely provide information, make a report, or file a statement under chapter 486J; or
- (2) Any duty of the commission to:
 - (A) ~~Timely obtain, analyze, or publicly disclose or report information under chapter 486J; and~~
 - (B) ~~Enforce] enforce~~ chapter 486B.”

2. By amending subsection (n) to read:

“(n) The ~~commission] department of business, economic development, and tourism~~ shall have the power to determine the extent to which a manu-

facturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under this section, including the power to compel a manufacturer, wholesaler, or jobber to submit documents, data, and information necessary and appropriate for the ~~[commission]~~ department of business, economic development, and tourism to determine ~~[such]~~ compliance. ~~[The commission may use data collected pursuant to chapter 486J in determining such compliance.]~~”

SECTION 2. Chapter 486J, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“CHAPTER 486J

[~~PETROLEUM~~] ENERGY INDUSTRY INFORMATION REPORTING ACT”

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

1. By adding three new definitions to read:

““Biofuels” means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues, and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes.

“Inventory” means the volume, in barrels, of reserve that is normally maintained by the reporting entity on a monthly basis.

“Storage capacity” means the maximum volume, in barrels, of used and useful facility capacity for storage.”

2. By repealing the definitions of “competitively priced”, “corporate overhead expenses”, “dealer tank wagon price”, “major fuel user”, “major marketer”, “major oil producer”, “major oil storer”, “major oil transporter”, “non-refiner wholesale price”, “refiner wholesale price”, and “wholesale liquid fuel prices”.

~~[““Competitively priced” means fuel grade ethanol for which the wholesale price, minus the value of all applicable federal, state, and county tax credits and exemptions, is not more than the average posted rack price of unleaded gasoline of comparable grade published in the State.~~

~~“Corporate overhead expenses” means the expenses or costs allocated by the refiners that reflect their Hawaii business units’ share of corporate staff costs, such as legal, finance, accounting, information technology, and similar costs.~~

~~“Dealer tank wagon price” means the wholesale price at which liquid fuel is sold to any retail outlet by any distributor priced on a delivered basis to a retail outlet.~~

~~“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.~~

~~“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.~~

“Nonrefiner wholesale price” means the wholesale price at which liquid fuel is sold by any distributor, not a refiner, to any other distributor, not a refiner, for resale at any subsequent wholesale or retail transaction.

“Refiner wholesale price” means the wholesale price at which liquid fuel is sold by a refiner to any distributor, not a refiner, for resale at any subsequent wholesale or retail transaction.

“Wholesale liquid fuel prices” means the prices at which liquid fuel is sold at wholesale for resale at wholesale or retail, typically but not limited to gasoline and diesel for motor vehicles, and include “dealer tank wagon price”, “nonrefiner wholesale price”, and “refiner wholesale price.”]

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

§486J-3 Statements. [(a) Each [week] month, every refiner and distributor [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], on a reporting date established by the director, shall file with the research and economic analysis division of the department, on forms furnished by the department showing 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,] month, 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;
- (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.}]

- (1) The total volume of fuel imported into and exported from Hawaii, and if for ultimate sale or consumption in another county or on another island, the total volume of fuel, in barrels, by import location (foreign and domestic), by specific crude oil imported, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, that is sold, exchanged, or otherwise transferred or used by the distributor;
- (2) The total volume of fuel refined, manufactured, or compounded by refineries, in barrels, by company, and by specific crude oil and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, including No. 2 diesel fuel, No. 1 distillate, No. 2 fuel oil, No. 4 fuel oil, kerosene, finished aviation

- gasoline, kerosene-type jet fuel, residual fuel oil, consumer grade propane, and gasoline (regular, midgrade, and premium);
- (3) The total volume of fuel distributed, in barrels, by company, by island, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, and by:
- (A) Classes of retail trade;
- (B) Federal, state, county agencies, ships stores, or base exchanges, commercial agriculture accounts, commercial non-agriculture accounts, retail dealers, and other customers as required by the department; and
- (C) Wholesale distributor; and
- (4) The total volume of inventory and storage capacity, in barrels, by reporting entity, by method of transportation of receipts and distribution, by specific crude oil, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department.

(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 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 this chapter; provided that the commission shall make the information available to the public, to the extent permitted under sections 486J-6 and 486J-8."

SECTION 5. Section 486J-5.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[§486J-5.5]—Petroleum industry monitoring, analysis, and reporting] Energy data collection program. The [commission] department shall establish the [petroleum industry monitoring, analysis, and reporting] energy data collection program that includes development and maintenance of an [automated petroleum industry information reporting] energy database system that meets the requirements of government[;] and industry, [and the public] while promoting sound policy making [and consumer information and protection. The purpose of the petroleum industry monitoring, analysis, and reporting program is to conduct and facilitate the efficient analysis and reporting of all information and data provided by the petroleum industry pursuant to this chapter. The commission shall develop the petroleum industry monitoring, analysis, and reporting program in a manner that will result in greater market transparency and provide useful information to the general public and those agencies that are authorized to conduct oversight of the petroleum industry and ensure compliance with all relevant laws.], energy planning, energy assurance planning, and energy security."~~

SECTION 6. Section 486J-6, Hawaii Revised Statutes, is amended to read as follows:

~~"§486J-6 Confidential information. (a) [Confidential commercial information] Statements provided to the [commission] department pursuant to [this chapter that is] section 486J-3 and the data contained therein shall be deemed confidential and exempt from public disclosure under [section 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] department shall be deemed confidential if it is shown that the person submitting the information or data has made it public.

(c) Unless otherwise provided by law, with respect to data that the commission [obtains] or department obtained or [is] was provided pursuant to [section 486J-3, 486J-4, 486J-4.5, or 486J-5,] this chapter, neither the commission or department nor any employee of the commission or department may do any of the following:

- (1) Use the information furnished or obtained for any purpose other than the purposes for which it is supplied;
- (2) Make any publication whereby the data furnished by any person can be identified; or
- (3) Permit any person other than the commission, the department of taxation, the attorney general, the consumer advocate, the department of business, economic development, and tourism, and the authorized representatives and employees of each to examine the individual reports or statements provided."

SECTION 7. Section 486J-7, Hawaii Revised Statutes, is amended to read as follows:

"§486J-7 Confidential information obtained by another state agency. Any confidential information pertinent to the responsibilities of the commission or the department specified in this chapter that is obtained by another state agency, including the department of taxation, the attorney general, and the consumer advocate, shall be available only to the attorney general, the attorney general's authorized representatives, the department of business, economic development, and tourism, and the commission and shall be treated in a confidential manner."

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

"(a) The [commission] department shall notify those persons who have failed to timely provide the information specified in section 486J-3~~], 486J-4, or 486J-4.5~~ or requested by the [commission] department under section 486J-3~~], 486J-4, or 486J-4.5~~. If, within five business 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 \$50,000 per day nor more than \$100,000 per day for each day the submission of information is refused or delayed.

(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] department 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 chapters 480 and 486B.

(c) The [commission] department shall refer any matter under subsection (a) or (b) to the attorney general, who may exercise any appropriate legal or equitable remedies that may be available to the State."

SECTION 9. Section 486J-4, Hawaii Revised Statutes, is repealed.

ACT 152

SECTION 10. Section 486J-4.5, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 486J-5, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 486J-5.3, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 486J-5.6, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 486J-8, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 16. This Act shall take effect on July 1, 2010.

(Approved May 28, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.