May 28, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 28, 2010, the following bill was signed into law:

HB2631 HD2 SD2 CD1 A BILL FOR AN ACT RELATING TO ENERGY INDUSTRY REPORTING. ACT 152 (10)

Sincerely,

LINDA LINGLE
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 (1) to read:

"(1) 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 chapter 486B."

2. By amending subsection (n) to read:

"(n) The department of business, economic development, and tourism 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,
wholesaler, or jobber to submit documents, data, and information
necessary and appropriate for the department of
business, economic development, and tourism to determine
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", "nonrefiner 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
devision 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 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
weekly 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.]
(e) 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 or department obtained or 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.

["§486J-4 Informational reports. (a) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the commission, in a form as the commission shall prescribe, information that includes the following:

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

(3) Refiners shall report on facility capacity and utilization and method of transportation of refinery receipts and distributions; and 

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

(b) The commission may require additional information as and when the commission deems necessary to perform the commission's responsibilities under this chapter.

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

"§486J-4.5 Informational cost reports. (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.

(b) In addition to the reporting required under subsection

(a), each distributor shall file with the commission all

Securities and Exchange Commission Forms 10-K, 10-Q, annual

reports, quarterly reports, and earnings supplements published

by the distributor.

(c) Each distributor, except a distributor who is so

defined solely by criteria in paragraph (4) of that definition

in section 486J-1, who sells liquid fuel only at retail and is

not a refiner, shall file with the commission, on a semi-annual

basis at reporting dates as the commission may establish, on

forms prescribed, prepared, and furnished by the commission, a

certified statement of operating and overhead costs that shall

include the following:

(1) Gasoline purchases and exchanges and sources;

(2) Diesel purchases and exchanges and sources;

(3) Marketing expenses; and

(4) Distribution expenses."

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

["§486J-5—Analysis of information; summary reports. (a)

The commission, with the commission'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, 486J-4, and 486J-4.5 and other information relating to the supply, prices, margins, and profits 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 product situation or condition affecting supply, price, margins, or profits;

(2) The prices, with particular emphasis on wholesale and retail motor vehicle 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 the changes;

(3) The income, expenses, margins, and profits in Hawaii, both before and after taxes, of each distributor and the income, expenses, margins, and profits, both..."]
before and after taxes, of major oil companies in
other regions of the United States and other
countries; and

(4) The emerging trends relating to supply, demand, price,
margins, and profits.

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

(c) The commission shall publish annually and submit to
the governor and the legislature twenty days prior to the first
day of each regular 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
commission, 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."

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

"[§486J-5.3—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

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

["§486J-5.6—Petroleum industry monitoring, analysis, and
reporting special fund. (a) There is established a petroleum
industry monitoring, analysis, and reporting special fund to be
administered by the commission.

(b) The legislature may make appropriations from the
general revenues of the State of Hawaii, not to exceed
$2,000,000 in any fiscal year, for the petroleum industry
monitoring, analysis, and reporting special fund.

(c) Moneys in the special fund shall be used to:

(1) Administer the petroleum industry monitoring,
analysis, and reporting program pursuant to this
chapter, and

(2) Establish full-time staff positions in the
commission to implement and maintain the petroleum
industry monitoring, analysis, and reporting program,
including the automated petroleum industry information
reporting system established by section 486J-5.5.
]
SECTION 14. Section 486J-8, Hawaii Revised Statutes, is repealed.

"486J-8 Sharing of information obtained by the commission. (a) Except as provided in subsections (b) and (c), the commission shall make any information obtained by the commission under this chapter, including confidential information, available only to the attorney general, the department of taxation, the consumer advocate, the department of business, economic development, and tourism, an appropriate legislative committee, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received.

(b) The commission shall disclose to the public, using the best readily available technology, the information contained in the statements 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.

(c) Nothing in this section shall be construed to prohibit the implementation of the petroleum industry monitoring, analysis, and reporting program under section 486J-5.5 or the
SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

APPROVED this 28 day of MAY, 2010

GOVERNOR OF THE STATE OF HAWAII