A BILL FOR AN ACT

RELATING TO ENERGY ASSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 125C, Hawaii Revised Statutes, is amended by adding four new sections to part I to be appropriately designated and to read as follows:

"§125C-A Information and analysis required for state energy planning, energy assurance planning, and energy supply risk assessment and resilience planning. (a) The department, with its own staff and agents whom the director designates as authorized representatives, shall use the information, including confidential information, received from all sources solely to effectuate the purposes of this chapter, chapter 127A, and chapter 196.

(b) The director shall conduct systematic quantitative and qualitative analyses of the State's energy resources that the director determines are necessary to:

(1) Assess and report on any actual or potential energy supply disruption or shortage that threatens to impair
the public health, safety, and welfare and to preserve
the lives and property of the people of the State;

(2) Produce energy ecosystem assessments to determine
risks, vulnerabilities, criticalities,
interdependencies, impacts, consequences, and
mitigation strategies related to any actual or
potential emergency or disaster impacting the State;

(3) Develop an understanding of causes and effects of
transitional issues and trends related to changes in
the State's energy resources, systems, and markets;

(4) Establish and maintain baseline data and information
on Hawaii's statewide energy resources, systems, and
markets, and their relationships to energy investment
decisions and the economy in support of measures to
increase energy resiliency, reduce vulnerabilities,
and preserve Hawaii's energy security;

(5) Develop energy assurance and emergency response plans
and measures, which in the event of an actual energy
shortage or supply disruption, are used to determine
and recommend if emergency government intervention may
be necessary and appropriate, and to implement and
evaluate the effectiveness of such emergency intervention while promoting informed, transparent, and defensible decision making; and

(6) Produce other relevant energy analyses that the director deems necessary to administer the energy planning, energy emergency planning, energy assurance planning, and energy security policies pursuant to this chapter, and other activities in support of the director's role and responsibilities pursuant to chapters 127A and 196 and other relevant laws.

§125C-B Confidential information. (a) Information provided to the department for the purposes of this chapter shall be kept confidential to the extent it falls under an exception to disclosure in section 92F-13.

(b) Unless otherwise provided by law, with respect to data that the public utilities commission or department obtained or was provided pursuant to this chapter, neither the public utilities 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 public utilities 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.

§125C-C Confidential information obtained by another state agency. Any confidential information pertinent to the responsibilities of 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 public utilities commission and shall be treated in a confidential manner.
§125C-D Definitions. As used in this chapter, unless the context otherwise requires:

"Agent" means a person who is designated by the director as an authorized representative.

"Dealer" means any person engaged in the retail sale of fuel in the State.

"Department" means the department of business, economic development, and tourism.

"Director" means the director of business, economic development, and tourism, who is the state energy resources coordinator pursuant to section 196-3, and the governor's authorized representative for energy.

"Distributor" means any person who:

1. Refines, manufactures, produces, or compounds fuel in the State and sells it at wholesale or at retail;
2. Imports or causes to be imported into the State, or exports or causes to be exported from the State, any fuel;
3. Acquires fuel through exchanges with another distributor; or
(4) 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.

"Electricity" means all electrical energy produced by combustion of any fuel, or generated or produced using wind, the sun, geothermal heat, ocean water, falling water, currents, and waves, or any other source.

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

"Energy resources" means fuel, and also includes all electrical or thermal energy produced by combustion of any fuel, or generated or produced using wind, the sun, geothermal heat, ocean water, falling water, currents, and waves, or any other source.

"Fuel" means fuels, whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture, that may be manufactured, grown, produced, or imported into the State or that may be exported therefrom, including petroleum, petroleum products and gases to include all
fossil fuel-based gases, coal tar, vegetable ferments, biomass, municipal solid waste, biofuels, hydrogen, agricultural products used as fuels and as feedstock to produce fuels, and all fuel alcohols.

"Major energy marketer" means any person who sells energy resources in amounts determined by the director as having a major effect on the supplies of, or demand for, energy resources.

"Major energy producer" means any person who produces energy resources in amounts determined by the director as having a major effect on the supplies of, or demand for, energy resources.

"Major energy transporter" means any person who transports energy resources in amounts determined by the director as having a major effect on the supplies of, or demand for, energy resources.

"Major energy user" means any person who uses energy resources in the manufacture of products or for the generation of electricity in amounts determined by the director as having a major effect on the supplies of, or demand for, energy resources.
"Major fuel storer" means any person who stores fuels in amounts determined by the director as having a major effect on the supplies of, or demand for, energy resources."

SECTION 2. Chapter 125C, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"CHAPTER 125C
[PROCUREMENT, CONTROL, DISTRIBUTION AND SALE OF PETROLEUM PRODUCTS] ENERGY ASSURANCE AND FUEL SECURITY"

SECTION 3. Section 125C-1, Hawaii Revised Statutes, is amended to read as follows:

"§125C-1 Findings and purpose. The legislature finds that adequate supplies of [petroleum products] energy resources are essential to the health, welfare, and safety of the people of Hawaii, and that any [severe disruption in petroleum product supplies for use] actual or potential disruption or shortage of energy resources within the State would cause grave hardship, pose a threat to the economic well-being of the people of the State, and have significant adverse effects upon public confidence and order and effective conservation of [petroleum products-] energy resources. The purpose of this chapter is to grant to the governor or [the governor's authorized...}
representative] director the clear authority, when the governor
by proclamation declares the existence of a state of emergency
in the State or when shortages of [petroleum] fuel products
occur or are anticipated, to acquire and analyze information,
including confidential information, to conduct systematic
quantitative and qualitative analyses required for state energy
planning, energy assurance planning, energy emergency planning,
and energy supply risk assessment and resilience. This
authority allows the governor or director to adequately plan and
prepare for, respond to, recover from, and mitigate against any
actual or potential energy supply disruption or shortage, and to
preserve the State's energy security. Another purpose of this
chapter is to control the distribution and sale of [petroleum]
fuel products in this State, to procure such products, and to
impose rules that will provide extraordinary measures for the
conservation of [petroleum] energy resources and the allocation
of fuel products and for [their] the distribution and sale of
fuel in an orderly, efficient, and safe manner."

SECTION 4. Section 125C-2, Hawaii Revised Statutes, is
amended to read as follows:
"§125C-2 "Shortage" and "state of emergency" defined. As used in this chapter, unless otherwise indicated by the context, a "shortage" exists whenever the governor determines that there is an increase in the demand for any petroleum fuel product or there is a decrease in the available supply for the petroleum fuel product in question, or both; and such the decrease in the available supply of or increase in the demand for the petroleum fuel product in question, or both, may cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii and may not be responsibly managed within the free prevailing market distribution system. As used in this chapter, unless otherwise indicated by the context, a "state of emergency" means an occurrence in any part of the State that requires efforts by state government to protect property, public health, welfare, or safety in the event of an emergency or disaster, or to reduce the threat of an emergency or disaster, or to supplement the local efforts of the county. Further, the governor may, by proclamation of a state of emergency in the State under section 127A-14, require importers major energy producers, distributors, major energy marketers, major fuel storers, major
energy transporters, and major energy users of any [petroleum] fuel or fuel product [or other fuel] to monitor and report to the department [of business, economic development, and tourism] relevant supply and demand data[\text{…}] and information, including confidential information, on aspects of the State's energy resources, systems, and markets. The governor shall review the status of a shortage within one hundred twenty days after the governor's initial determination of a shortage as defined under this chapter; thenceforth, the governor shall conduct a review of the shortage to make a new determination every thirty days until a shortage no longer exists. Further, the monitoring and reporting authorities pursuant to a declared state of emergency in the State shall terminate under the provisions contained in section 127A-14(d)."

SECTION 5. Section 125C-3, Hawaii Revised Statutes, is amended to read as follows:

"§125C-3 Powers in a shortage[\text{…}] or state of emergency.

When a shortage or a state of emergency in the State as defined in section 125C-2 [exists\text{…}] has been declared by the governor, the governor or [the governor's authorized representative\text{…}] director, to plan and prepare for, respond to, recover from, and
mitigate against any actual or potential energy supply
disruption or shortage, to preserve the State's energy security,
and to ensure that [petroleum] fuel products and energy
resources are made available to the public in an orderly,
efficient, and safe manner, may:

(1) Control the retail distribution and sale of
[petroleum] fuel products by adopting rules that may
include, but are not limited to, the following
measures:

(A) Restricting the sale of [petroleum] fuel products
to specific days of the week, hours of the day or
night, odd- and even-numbered calendar days, and
vehicles having less than a specified amount of
gasoline in their tanks, with exceptions for
certain designated geographical areas;

(B) Restricting sales of [petroleum] fuel products by
dealers to daily allocations, which shall be
determined by dividing the monthly allocation by
the number of selling days per month;
(C) Requiring dealers to post signs designating their hours of operation and the sell-out of daily allocation;

(D) Instituting a statewide [rationing] shortage management plan; and

(E) Allowing for special handling for essential commercial and emergency-user vehicles;

(2) Require that a percentage of [petroleum] fuel products, not to exceed five per cent, be set aside to alleviate hardship; provided that aviation gasoline set aside shall not exceed ten per cent;

(3) Purchase and resell or otherwise distribute [petroleum] fuel products[, and purchase and resell or otherwise distribute ethanol that is produced within the State and can be used as a substitute for petroleum products];

(4) Temporarily suspend for the duration of a shortage or a state of emergency, standards that may affect or restrict the use of a substitute fuel to meet energy demand;
Implement fuel shortage emergency response measures, including state government supply enhancement, supply management, regulatory waivers, and demand restraint measures, to assure fuel supplies for essential public service during a shortage or state of emergency;

Acquire and analyze information, including confidential information, to conduct systematic quantitative and qualitative analyses required for state energy planning, energy assurance planning, energy emergency planning, and energy supply risk assessment and resilience;

Receive, expend, or use contributions or grants in money or property, or special contributions thereof for special purposes not inconsistent with this chapter;

Borrow and expend moneys needed to exercise the powers granted under this section;

Contract in the name of the State for the purpose of implementing this chapter or any part thereof; and
(10) Exercise the powers granted under this section to the degree and extent deemed by the governor to be necessary, including the temporary or indefinite suspension of all or part of the measures taken, as the governor deems appropriate."

SECTION 6. Section 125C-4, Hawaii Revised Statutes, is amended to read as follows:

"§125C-4 Adopting, filing, and taking effect of rules. The governor or [the governor's authorized representative] director shall adopt rules pursuant to chapter 91, to [insure] ensure that [petroleum] fuel products and energy resources are made available to the public in an orderly, efficient, and safe manner, to become effective when a shortage, as defined in section 125C-2, exists. If additional and unforeseen measures are required to [insure] ensure that [petroleum] fuel products are distributed in an orderly, efficient, and safe manner, the governor or [the governor's authorized representative] director may proceed without prior notice or hearing or upon such abbreviated notice and hearing as the governor finds practicable to adopt additional rules authorized under this chapter with the additional rules to be effective for a period of not longer than
one hundred twenty days without renewal. Any rule so adopted may be amended or repealed by the [governor] director without prior notice or hearing or upon abbreviated notice and hearing prior to the expiration of the one hundred twenty-day period; provided that no amendment shall extend the rule beyond the original period of one hundred twenty days. To be effective after the one hundred twenty-day period, the rules shall be adopted pursuant to chapter 91. Each rule adopted, amended, or repealed shall become effective as adopted, amended, or repealed upon approval by the governor and filing with the lieutenant governor. Each rule in effect shall have the force and effect of law, but the effect of each rule may be temporarily or indefinitely suspended by the governor by written declaration filed with the lieutenant governor. Each rule temporarily suspended shall take effect again immediately upon expiration of the suspension period. Each rule indefinitely suspended shall take effect immediately upon the filing with the lieutenant governor of the written declaration by the governor terminating the suspension."

SECTION 7. Section 125C-6, Hawaii Revised Statutes, is amended to read as follows:
Petition for adoption, amendment, repeal, or suspension of rules. Any interested person may petition the governor or [the governor's authorized representative] director requesting the adoption, amendment, repeal, or suspension of any rule and stating reasons therefor. The governor or [the governor's authorized representative] director shall prescribe the form for the petitions and the procedures for their submission, consideration, and disposition within thirty days after submission of the petition. shall either deny the petition in writing, stating the governor's or [the governor's authorized representative's] director's reasons for the denial, or grant the petition and adopt, amend, repeal, or suspend the rule accordingly."

SECTION 8. Section 125C-8, Hawaii Revised Statutes, is amended to read as follows:

"§125C-8 Personnel; delegation of powers. (a) The director shall fulfill and effectuate the purposes of this chapter.

(b) The governor or director may appoint or employ temporary boards, agencies, officers, employees, and other persons, or any of them, for the purpose of carrying out the
provisions of this chapter. All such temporarily appointed or
employed officers and employees, whether or not employed by
contract, shall be exempt from and not subject to nor entitled
to the benefits of the provisions of chapters 76 and 88, or any
other law, collective bargaining agreement, executive order,
executive directive, or rule that is inapplicable to temporary
employees of the State."

SECTION 9. Section 125C-9, Hawaii Revised Statutes, is
amended to read as follows:

"[§125C-9] Investigations, information collection, and
surveys. The governor or [the governor's authorized
representative] director may make investigations, collect
information, including confidential information, and conduct
surveys for the purpose of ascertaining facts to be used in
administering this chapter, and in making the investigations,
collecting the information, and conducting the surveys, may
require the making, filing, or keeping of applications,
schedules, records, reports, or statements, under oath or
otherwise, administer oaths, take evidence under oath, subpoena
witnesses, and require the production of books, papers, and
records. Witnesses shall be allowed their fees and mileage as
in cases in the circuit courts. The circuit court of any circuit or judge thereof may enforce by proper proceedings the attendance and testimony of any witness subpoenaed to appear within the circuit, or the production of books, papers, and records."

SECTION 10. Section 125C-10, Hawaii Revised Statutes, is amended to read as follows:

"[§125C-10] Fraud; [misdemeanor.] penalties. Any person required by the governor or [the governor's authorized representative,] director, pursuant to [section 125C-9,] this chapter, to make, keep, or file any application, schedule, record, report, or statement, whether or not under oath, who intentionally makes, files, or keeps a false or fraudulent application, schedule, report, or statement or intentionally conceals therein any material fact, and any person who in any other manner intentionally deceives or attempts to deceive the governor or [the governor's authorized representative] director with respect to any fact to be used in administering this chapter, and any person who intentionally fails to observe and comply with any rule [promulgated] adopted under this chapter,
shall be [guilty of a misdemeanor] assessed a civil penalty of
not more than $10,000 per violation."

SECTION 11. Chapter 125C, Hawaii Revised Statutes, is
amended by amending the title of part II to read as follows:
"PART II. HARDSHIP SET-ASIDE AND ALLOCATION OF [PETROLEUM] FUEL
PRODUCTS DURING A SHORTAGE"

SECTION 12. Section 125C-21, Hawaii Revised Statutes, is
amended to read as follows:
"$125C-21 Definitions. As used in this part:
"Fuel product" means any fuel subject to the set-aside
system described in this chapter, including heating oils, [light
and heavy diesel oil] all classifications of diesel fuels,
motor gasoline] and all blends of motor gasoline with other
fuel products, propane, butane, residual fuel oils, kerosene,
naphtha, biodiesel, ethanol, suboctane motor fuel, and aviation
fuels used for emergency and essential intrastate air transport
services, but excluding all other aviation fuels.
"Prime supplier" means any individual, trustee, agency,
partnership, association, corporation, company, municipality,
political subdivision, or other legal entity [which] that makes
the first sale of any [liquid fossil] fuel product into the state distribution system for consumption within the State."

SECTION 13. Section 125C-22, Hawaii Revised Statutes, is amended to read as follows:

"§125C-22 When set-aside required. When a shortage or a state of emergency as defined in section 125C-2 exists, all prime suppliers shall set aside supplies of each [petroleum] fuel product for which there is a shortage. The amount set aside shall be in accordance with [the] any rules adopted by the [state energy resources coordinator] director."

SECTION 14. Section 125C-23, Hawaii Revised Statutes, is amended to read as follows:

"§125C-23 Set-aside system. The [state energy resources coordinator] director shall adopt rules establishing a [petroleum] fuel products set-aside system. The purpose of this system shall be:

(1) The protection of public health, safety, and welfare;
(2) The maintenance of public services, utilities, and transportation, including emergency and essential intrastate air and maritime transport services;
(3) The maintenance of critical agricultural and aquaculture operations[, including farming, horticulture, dairy, fishing,] and related services;
(4) The preservation of economically sound and competitive industry, through the equitable acquisition and distribution of [petroleum] fuel products; and
(5) The promotion of efficiency[,] and conservation, with minimum economic disruptions, during a shortage of [petroleum] fuel products.

The rules establishing the set-aside system shall be adopted in accordance with chapter 91."

SECTION 15. Section 125C-31, Hawaii Revised Statutes, is amended to read as follows:

"[*§125C-31[*—Biennial state] State energy [emergency preparedness] assurance plan. (a) The department [of business, economic development, and tourism] shall prepare a comprehensive and integrated [biennial] state energy [emergency preparedness] assurance plan to be implemented in the event of[,] a state of emergency, or in anticipation of[,] a change in the State's [petroleum] energy supply or demand situation that is judged by the governor or director to be unmanageable by the [free
market-] prevailing markets. The department [of business, economic development, and tourism] shall prepare a [biennial] state energy [emergency-preparedness] assurance plan [in every even-numbered year] in accordance with the following:

[(1) The biennial state energy emergency preparedness plan shall replace the energy emergency plan developed by the energy resources coordinator, who shall act as the governor's authorized representative under this chapter;]

[(2)] (1) In preparing the [biennial] state energy [emergency-preparedness] assurance plan, the department shall:

(A) Solicit input, comment, and review from [the governor's energy emergency preparedness advisory committee composed of representatives of federal, state, and county governments; private energy suppliers; consumer and other public interest groups; and the public at large] key stakeholders, including public, private, and non-profit sector organizations at the county, state, and federal levels; and
(B) Establish [other] task forces and advisory
groups, as may be deemed necessary, to assist in
the preparation and review of the [biennial]
state energy [emergency-preparedness] assurance
plan;

(2) The [biennial] state energy [emergency
preparedness] assurance plan shall be comprehensive
and encompassing, and shall integrate into its
analytic and planning framework the plans of electric
and gas utilities and other energy suppliers, relevant
state agencies, [including the department of
transportation,] counties, and such other entities as
deemed appropriate; and

(3) The [biennial] state energy [emergency
preparedness] assurance plan shall include a review
and update of the previous [biennial] state energy
[emergency-preparedness] assurance plan and [a review
of the energy emergency plans prepared by the
counties.] shall be prepared or updated as determined
by the director to be necessary to comport with
changes in federal or state overall emergency
management policies and plans that significantly affect the State's energy assurance plan or as warranted by changes in Hawaii's energy security.

(b) The department shall prepare an energy emergency communication plan, which shall be [updated biennially] part of the state energy assurance plan and shall be consistent with any other energy emergency management plans prepared by the counties[.] and the State. The energy emergency communication plan shall be used by the [State and counties] department to communicate and otherwise coordinate [state and county] actions taken in response to implementing the [biennial] state energy [emergency preparedness] assurance plan."

SECTION 16. Section 125C-32, Hawaii Revised Statutes, is amended to read as follows:

"[§] 125C-32[—Biennial—county] County energy emergency preparedness plans. The mayor of each county, or the mayor's authorized representative, shall [prepare a comprehensive] be responsible for preparing a county energy emergency preparedness plan. The plan shall be prepared in coordination with and be consistent with the [biennial] state energy [emergency}
preparedness] assurance plan[,] and shall be implemented in coordination with the state energy [emergency preparedness] assurance plan upon declaration of [an energy emergency by the governor. Not later than September 30 of every even numbered year, each county shall prepare and transmit to the director of business, economic development, and tourism the county's biennial county energy emergency preparedness plan. A shortage or a state of emergency."

SECTION 17. In codifying the new sections added by section 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.

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

SECTION 19. This Act shall take effect on July 1, 2100.
Report Title:
Energy Resources; Energy Emergency Preparedness; Shortage

Description:
Requires the DBEDT to conduct analyses in relation to the State's energy production and distribution. Clarifies the confidentiality in information received by DBEDT and PUC. Clarifies the Governor's and Director of Business, Economic Development and Tourism's powers and procedures during a shortage. (HB953 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.