



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
RAYMOND M. JEFFERSON
DEPUTY DIRECTOR

Telephone: (808) 586-2355
Fax: (808) 586-2377

Director's Overview

The impetus for Act 77, Session Laws of Hawaii (SLH) 2002 came from the Legislature's findings that there is a need to ensure lower gasoline prices for Hawaii's consumers and that Hawaii's consumers continue to pay a large premium at the pump. The 2002 Legislature also found that affirmative action is necessary to address the uncompetitive market, and that this action requires a multi-pronged response.

As mandated by Act 77, the State of Hawaii, Department of Business, Economic Development, and Tourism (DBEDT) was required to conduct an expert comprehensive, empirical examination of Hawaii's petroleum market and policy analysis of the efficacy and appropriateness of the Act 77 price cap mechanisms and other relevant provisions.

Among the Act's several major provisions, the gasoline price caps are scheduled for implementation on July 1, 2004. In the interim preceding imposing the caps, the Legislature requested this report, including proposed implementing legislation to achieve competitive pricing of gasoline in Hawaii.

The primary goals of the study were to:

- Review and analyze unsealed documents in *Anzai v. Chevron, et al.*, and other relevant publicly available reports and references (State's gasoline antitrust litigation settled 4/30/02);
- Gather and analyze empirical data to determine whether the Oil Price Information Service (OPIS) index or other appropriate benchmarks are applicable to Hawaii's markets;
- Review options available to the Legislature, including wholesale and retail gasoline price caps and the potential effects of imposing price caps;
- Analyze the Petroleum Commissioner's responsibilities and functions under Act 77, and provide an assessment of the staffing and resources required to implement the law; and
- Submit a final report of findings and recommendations to the Legislature, including proposed implementing legislation, as appropriate.

Act 77, SLH 2002 also allocated \$250,000 to the DBEDT to assess alternative policies and other options available to the State of Hawaii aimed at achieving fair and reasonable gasoline pricing for Hawaii's consumers.



*Mr. Theodore E. Liu
DBEDT Director*

The development of this report proceeded from the signing of Act 77 into law on May 31, 2002. Through a rigorous, nationwide, procurement process, which included advertisements in the Wall Street Journal, Stillwater Associates, LLC was selected. Stillwater Associates, whose credentials include extensive industry expertise and experience with the California Energy Commission, began work on November 1, 2002.

Additionally, the bipartisan National Conference of State Legislatures, which is considered an objective, and uniquely qualified resource to help state legislatures identify and analyze relevant policy options, joined the study. DBEDT also contacted the U.S. Federal Trade Commission (FTC) early in the process to determine relevancy of its work and possible interest in data sharing and other cooperation with Hawaii on the Act 77 project. The FTC is the federal “watchdog” agency to ensure fair competition in our country’s marketplace. At their own initiative, the FTC examined Hawaii’s price cap law and other laws relevant to Hawaii’s gasoline markets from their expert nation-wide perspective.

A comprehensive reading of the three principle documents in DBEDT’s report provides the reader with an integrated perspective of findings and policy options. Among the results of the study, the consultant team has determined that:

- Hawaii’s gasoline market is not perfect, but it is not “broken”.
- Hawaii’s policies on the gasoline industry have yet to fulfill their stated intent.
- Under current petroleum industry data policies (Chapter 486J), intended market transparency and oversight objectives are unachievable without policy refinements and adequate resources.
- The Petroleum Commissioner’s role and function are inconsistent with DBEDT’s mission.
- Import parity prices can be achieved by government intervention, but is not without risks to industry and the consumer.
- An integrated strategy that examines the evolution and advancement of Hawaii’s petroleum and other energy industries could produce energy and economic efficiencies, diversification, and sustainability.
- Divorcement and lease rent caps – Hawaii’s “anti-encroachment” law is ineffective in protecting dealers.
- Industry could benefit from doing a better job of reconciling study results with public perceptions. Educating consumers on details of the business from production to retail sales will help. Consumers need to make better-informed decisions about octane levels, learn efficient use of motor fuels, and shop competitively.

From these findings several suggestions emerge. The consultant team recommends:

- Repeal gasoline price caps.
- Elimination of the State Petroleum Commissioner’s role by reassigning duties to the Director of DBEDT.
- Repeal of divorcement requirements that are actually only “anti-encroachment”.

- Repeal of lease rent caps on lessee-operated gasoline dealers.
- Repeal Petroleum Commissioner's statutory requirement to conduct audits of the petroleum industry.
- Development of a single integrated state energy plan.
- Launch of a consumer education campaign focusing on octane requirements and gasoline efficiency.
- Exploration of innovative ideas to ensure third-party access to terminals and distribution infrastructure in Maui and West Hawaii.

To complete the requirements of Act 77, DBEDT and its consultants working with the Legislative Reference Bureau and the Attorney General's office will provide legislative language consistent with the findings and encompassing the broad range of policy options detailed in the report.

This report to the Legislature represents a uniquely comprehensive perspective into Hawaii's petroleum industry and gasoline market. The extensive analysis of Hawaii's petroleum infrastructure and workings of the industry reported on herein provides a valuable framework for a thorough understanding of Hawaii's unique market, efforts undertaken both in Hawaii and in other jurisdictions to keep prices for gasoline at reasonable levels, and provides an analysis of the means to monitor the market and alert policymakers to situations that might call for action by the state.

A close and studied review of the report reveals the strong relationship between the findings and the range of policy suggestions presented that could be considered by lawmakers. We are privileged to contribute to a greater understanding of the complexities of the Hawaii petroleum industry and gasoline prices in Hawaii.



Theodore E. Liu
DBEDT Director