

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 554 of the Regular Session

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H3/7/07

**A Bill**

HOUSE BILL 2290

5 By: Representative Lowery  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO MAKE CLARIFICATIONS TO THE EMERGENCY  
10 PETROLEUM SET-ASIDE ACT; AND FOR OTHER PURPOSES.

**Subtitle**

11 TO MAKE CLARIFICATIONS TO THE EMERGENCY  
12 PETROLEUM SET-ASIDE ACT.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 15-72-802(5) and (6), concerning the  
20 definition of "firm" and "petroleum products" in the Emergency Petroleum  
21 Set-Aside Act, are amended to read as follows:

22 (5) "Firm" means any association, company, corporation, estate,  
23 individual, joint venture, partnership, or sole proprietorship or any entity  
24 however organized, including charitable, or educational, ~~or eleemosynary~~  
25 institutions and the federal government, including federal corporations,  
26 departments, and agencies and state and local governments;

27 (6) "Petroleum products" means propane, motor gasoline, ~~gasohol~~  
28 blended fuels, kerosene, #2 heating oil, diesel fuel, kerosene-base jet fuel,  
29 naphtha-base jet fuel, and aviation gasoline;  
30

31 SECTION 2. Arkansas Code § 15-72-802(11) - (14), concerning  
32 definitions to the Emergency Petroleum Set-Aside Act, are amended to read as  
33 follows:

34 ~~(11) "Wholesale purchaser" means a wholesale purchaser-reseller~~  
35 ~~or wholesale purchaser-consumer, or both;~~



1           ~~(12) "Wholesale purchaser consumer" means any firm that is an~~  
2 ~~ultimate consumer which, as a part of its normal business practices,~~  
3 ~~purchases or obtains a product subject to the state set aside from a supplier~~  
4 ~~and receives delivery of that product into a storage tank substantially under~~  
5 ~~the control of that firm at a fixed location;~~

6           ~~(13) "Wholesale purchaser reseller" means any firm which~~  
7 ~~purchases, receives through transfers, or otherwise obtains, as by~~  
8 ~~consignment, a product subject to the state set aside and resells or~~  
9 ~~otherwise transfers it to other purchasers without substantially changing its~~  
10 ~~form; and~~

11           ~~(14) "Reference month" means the calendar month and year to~~  
12 ~~which the reported information on actual sales volume relates.~~

13  
14           SECTION 3. Arkansas Code § 15-72-804 is amended to read as follows:

15           15-72-804. Establishment of state emergency petroleum set-aside -  
16 General provisions.

17           (a)(1) The ~~director~~ Director of the Arkansas Energy Office shall  
18 promulgate rules in accordance with the Arkansas Administrative Procedure  
19 Act, as amended, § 25-15-201 et seq., establishing a set-aside system for  
20 petroleum products and reporting requirements for prime suppliers and  
21 brokers.

22           (2) ~~These~~ The rules shall direct prime suppliers and brokers to  
23 set aside a percentage, ~~not to exceed five percent (5%), of the amount of~~  
24 ~~petroleum products they expect to deliver~~ that are delivered to ~~consumers~~  
25 suppliers in the state ~~each month~~ for ~~distribution by~~ the Arkansas Energy  
26 Office to distribute to meet emergency and hardship needs.

27           (b) The set-aside system established pursuant to this section shall  
28 not be implemented unless:

29           (1) The federal government terminates, suspends, or fails to  
30 implement a national set-aside program;

31           (2) The Governor finds that a set-aside system is necessary to  
32 manage an energy shortage within the state which threatens the continuation  
33 of services by emergency vehicles, essential industry, and agricultural end-  
34 users; and

35           (3) The Governor directs the Arkansas Energy Office to implement  
36 ~~the~~ all or a portion of the set-aside program necessary to prevent and

1 alleviate any energy hardships or shortages.

2 (c) Upon adoption of the rules authorized under subsection (a) of this  
3 section, the director shall notify each prime supplier and broker of the set-  
4 aside percentage applicable to each product subject to the set-aside program.

5 ~~(d) The set-aside volume available to the Arkansas Energy Office for~~  
6 ~~any given month shall be the sum of the amounts calculated by multiplying the~~  
7 ~~state set-aside percentage level for that particular product by each prime~~  
8 ~~supplier's or broker's estimated portion of its total supply for that month~~  
9 ~~which will be sold into the state's distribution system for consumption~~  
10 ~~within the state. However, any broker licensed and doing business in the~~  
11 ~~State of Arkansas shall not be subject to the state set-aside if his supplier~~  
12 ~~is already subject to it for sales made to the broker. The set-aside for a~~  
13 ~~particular month may not be accumulated or deferred, but shall be made~~  
14 ~~available from stocks of prime suppliers and brokers whether directly or~~  
15 ~~through their wholesale purchaser resellers.~~

16 ~~(e) The director shall calculate the set-aside volume for a particular~~  
17 ~~month from the prime supplier's or broker's monthly report, as required under~~  
18 ~~§ 15-72-805.~~

19 ~~(f)(d)(1)~~ The director shall establish as part of the rules adopted  
20 under subsection (a) of this section procedures governing applications for  
21 assignment and assignments by the Arkansas Energy Office under the state set-  
22 aside system.

23 (2) The procedures shall:

24 (A) ~~include~~ Include criteria for approving and  
25 disapproving applications, and identifying priority users, and an appeals  
26 process; and

27 (B) ~~The procedures shall also require~~ Require the director  
28 to take into account whether or not any assignment under the state set-aside  
29 program is likely to create an undue economic burden or other hardship for  
30 the prime supplier or broker involved.

31 ~~(g)(e)~~ Each prime supplier and broker shall designate a representative  
32 to act for and in behalf of the prime supplier or broker with respect to the  
33 state set-aside program. Each prime supplier and broker shall notify, in  
34 writing, the Arkansas Energy Office of that designation.

35 ~~(h)(f)~~ The release of the set-aside shall be as follows:

36 (1) On or before the fifteenth day of the month, the director

1 may order the release of part or all of the prime supplier's or broker's set-  
2 aside volume through the prime supplier's or broker's normal distribution  
3 system in the state;

4 (2) From time to time, the director may designate certain  
5 geographical areas within the state as suffering from an intrastate supply  
6 imbalance. At any time during the month, the director may order some or all  
7 of the prime suppliers and brokers with purchasers within these geographical  
8 areas to release part or all of their set-aside volume through their normal  
9 distribution systems to increase the allocations of all the supplier's and  
10 broker's purchasers located within these areas; and

11 (3) Orders issued pursuant to this section shall be in writing  
12 and effective immediately upon presentation to the prime supplier's or  
13 broker's designated ~~state representative~~ regional manager or equivalent  
14 person. The orders shall represent a call on the prime supplier's or broker's  
15 set-aside volumes for the month of issuance irrespective of the fact that  
16 delivery cannot be made until the following month.

17 ~~(i)~~(g) The set-aside program shall remain in effect no longer  
18 than a one hundred twenty-day period. The Governor may extend the program an  
19 additional thirty (30) days if necessary to manage an energy shortage. In the  
20 event that the Governor finds that the set-aside system is no longer  
21 necessary to manage an energy shortage, he shall terminate the program.

22  
23 SECTION 4. Arkansas Code § 15-72-805 is amended to read as follows:

24 15-72-805. ~~Reporting of primary suppliers and brokers—~~ Confidential  
25 treatment.

26 ~~(a) Unless a similar report is already being submitted in accordance~~  
27 ~~with federal regulations, each prime supplier and broker of petroleum~~  
28 ~~products shall file with the director, no later than twenty (20) calendar~~  
29 ~~days after the close of each reference month, a report providing the~~  
30 ~~following information:~~

31 ~~(1) Actual sales, which is the total volume sold and delivered~~  
32 ~~into the state for consumption for the reference month;~~

33 ~~(2) Projected sales representing the volume estimated to be sold~~  
34 ~~and delivered into the state for consumption for the second month following~~  
35 ~~the reference month; and~~

36 ~~(3) Allocation fractions for petroleum products as reported for~~

1 ~~the second month following the reference month, meaning the month for which~~  
2 ~~sales are being projected, if such allocation fractions are in use by the~~  
3 ~~prime supplier or broker submitting the report.~~

4 ~~(b)(a)~~ Information furnished pursuant to ~~subsection (a) of this~~  
5 ~~section~~ this subchapter and designated by ~~that person~~ as confidential shall  
6 be maintained as confidential by the ~~director~~ Director of the Arkansas Energy  
7 Office and any person who obtains information ~~which is known~~ that he or she  
8 knows to be confidential under this subchapter.

9 ~~(e)(b)~~ Nothing in this section shall prohibit the use of confidential  
10 information to prepare statistics or other general data for publication, so  
11 presented as to prevent identification of particular persons.

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13 /s/ Lowery

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15 *APPROVED: 3/28/2007*

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