

PETROLEUM MARKETING JOINT SUBCOMMITTEE
OF THE
STANDING COMMITTEES ON ENERGY

Report to the Members of the
Second Session of the Sixty-sixth General Assembly
State of Iowa
1976

F I N A L R E P O R T

PETROLEUM MARKETING JOINT SUBCOMMITTEE
of the
HOUSE AND SENATE STANDING COMMITTEES ON ENERGY

December, 1975

Senate Concurrent Resolution 39, sponsored by the Senate Standing Committee on Energy, requested that an interim study be conducted relating to "the marketing, pricing and distribution of petroleum", and that a report be submitted to the General Assembly in 1976.

At its meeting on July 16, 1975, the Iowa Legislative Council approved the study for the 1975 interim and determined that it would be undertaken by a joint subcommittee of the House and Senate Standing Committees on Energy.

The members of the Joint Subcommittee appointed by the respective Chairpersons of the Standing Committees were as follows:

Senator James V. Gallagher, Chairperson
Senator James E. Briles
Senator Norman G. Rodgers
Representative Arlo Hullinger, Chairperson
Representative Carroll Perkins
Representative David M. Readinger

The Subcommittee held its first meeting on August 26, 1975, and Senator James Gallagher and Representative Arlo Hullinger were elected Co-chairpersons of the Joint Subcommittee.

The Subcommittee held meetings on August 26, September 9, October 1, November 5, and December 4, 1975. Testimony and commentary were received from individual gasoline retailers and individual wholesale distributors of motor fuel products, and from representatives of various organizations comprised of persons involved at the various levels of distribution of petroleum products. The Subcommittee also was assisted by individuals representing the Iowa Departments of Transportation, Agriculture and Revenue, the Iowa Commerce Commission, the Iowa Energy Policy Council, and the Federal Energy Administration.

The Subcommittee uncovered problems and considered proposed solutions in three general areas, those being the ownership and operation of retail gasoline outlets, including the allocation and pricing of motor vehicle fuel, the taxation of motor vehicle fuel and the process of collecting that tax, and the losses associated with the storage and handling of gasoline. The Subcommittee proposed legislation to solve certain problems, and these proposals are discussed below as they relate to the general areas of concern.

OWNERSHIP AND OPERATION OF RETAIL GASOLINE OUTLETS.

Included in one of the major areas of concern of the Subcommittee are the alleged problems caused by the competition between independent gasoline retailers and those retail gasoline outlets owned and operated by the major oil companies and distributors and other chain-type operations. The Subcommittee considered the provisions of House File 550 (filed April 1, 1975) which would severely restrict the ownership of retail gasoline outlets by persons who own the various other production and distribution processes involved in the sale of gasoline.

Representatives of the independent operators indicated that they are unable to compete with the company-owned and jobber-owned retail outlets because of the lower per gallon prices charged by those outlets. These representatives indicated that whereas most of the independent retailers offer full-service, including vehicle lubrication and maintenance, the company-owned and jobber-owned facilities primarily feature self-service gasoline sales at cut-rate prices. The fear was expressed that the necessary vehicle services performed by full-service stations soon will disappear because of the intense price competition on gasoline.

Representatives of jobbers and oil companies, however, stated that the prohibition against company-owned and jobber-owned retail outlets would do a disservice to the consumer. They suggested that cut-rate stations are profitable because large numbers of consumers are willing to service their own vehicles in order to save several cents on the price of a gallon of gasoline. They also maintain that company and jobber-owned retail outlets improve the convenience and flexibility of the system, and increase competition as well, and that there always will be a need for both full-service and mini- or self-service outlets.

The Subcommittee was informed that both the ownership limitation concept contained in House File 550, and general proposals to control the pricing and allocation of gasoline in Iowa, would likely be in violation of federal law or the Iowa and United States Constitutions. In order to obtain a formal consideration of these questions the Subcommittee sought the opinions of the Iowa Commerce Commission and the Iowa Attorney General. Opinions were received, from those and other sources, which indicated that both the provisions of House File 550 and attempts at regulating fuel distribution and pricing in Iowa, would be contrary to constitutional provisions or to existing federal laws preempting those subject areas.

As a result of its investigations the Subcommittee concluded that provisions attempting to regulate the ownership of retail gasoline outlets, or attempting to regulate gasoline prices and allocations should not be recommended by the Subcommittee.

The Subcommittee considered alternative methods of equalizing the competitive positions of retail gasoline dealers, and the Subcommittee RECOMMENDS that the Standing Committees on Ways and Means consider increasing the chain-store tax contained in chapter 424 of the Code. The Subcommittee concluded that by increasing that tax, and by assuring that it would apply to chain-operated retail gasoline outlets, the competitive advantage of these types of operations over independently-owned outlets could be diminished or eliminated. Staff of the Legislative Service Bureau was directed to contact the Chairpersons of the Standing Committees on Ways and Means, and to communicate the Subcommittee's considerations and recommendation with respect to the chain-store tax.

The Subcommittee also considered problems arising from the operation of strictly self-service type retail outlets. Various members of the Subcommittee related personal experiences to demonstrate that in many instances the nonavailability of personnel at self-service outlets, or the company policy of self-service only at those outlets, tended to work a hardship on elderly and handicapped persons and others, and that self-service stations could constitute hazards to the health and safety of customers. A bill was proposed which would require owners of self-service facilities to assure that at all times of operation personnel would be on duty and would actually dispense motor fuel into customers vehicles at their request. Consideration was given to the fact that at outlets offering both self-service and full-service a price differential exists depending upon whether or not a customer serves himself or herself. The Subcommittee determined that the bill was not intended to prohibit the price differential, but only to assure the availability of service when needed.

The members of the Subcommittee were divided as to the need of legislation requiring that demand service at all retail outlets, several members expressing a concern about whether or not the General Assembly should dictate decisions about the nature of operation of a person's business. The Subcommittee did express unanimous approval that the problem be considered by members of the full Standing Committees.

The Subcommittee RECOMMENDS that the Standing Committees on Energy of the House and Senate give consideration to the question of whether or not self-service stations should be required to provide refueling service to persons upon request. The Subcommittee submits bill draft LSB 3158 for consideration by the Standing Committees. A copy of that bill is attached to this report.

IMPOSITION AND COLLECTION OF MOTOR FUEL TAX.

The Subcommittee was informed of an additional problem faced by some gasoline retailers which also tended to give wholesaler-owned retail outlets a competitive advantage. The

problem arises from the so-called "shrinkage allowance" granted to licensed gasoline "distributors" against the motor fuel tax liability of those distributors.

The Subcommittee was informed that the "shrinkage allowance" concept in Iowa dates from 1925. At present this allowance provides for a deduction from the motor fuel tax otherwise payable by the distributor on monthly gasoline purchases of three percent of the tax on the first 300,000 gallons, and 1 and 1/4% of the tax on the excess above 300,000 as

"a flat allowance to cover evaporation, shrinkage ... and the distributor's expenses and losses in collection, accounting for, and paying over the motor fuel tax." (Sec. 324.8, subsection 4)

The tax is collectible in full, however, from each person to whom the distributor resells the fuel. This allowance resulted in decreased net fuel tax revenues to the state during FY 1974-75 in the amount of approximately 2,411,000 dollars.

Distributor representatives testified that the provision allows distributors a credit to cover losses to them which would result if they paid to the state the seven cents per gallon tax on all gasoline purchased by them. Because of evaporation and contraction of the fuel which result when gasoline is transferred, stored and transported, the distributor actually might deliver less total gallons to the retailer than is purchased by the distributor. The net effect would be that the distributor collects from retailers less tax than is paid by the distributor on its purchases. The distributors emphasized that the allowance also is intended to compensate distributors for their efforts in collecting the motor fuel tax from the retailers, and to compensate them for losses representing uncollected taxes which occur where retailers fail to pay for purchases.

The Subcommittee investigated the allowance methods and amounts used by other states, the sources and incidence of shrinkage and other losses covered by the Iowa allowance, the absence or existence of similar allowances for other businesses who are required to collect and pay taxes on commodities sold, and the absence of any provisions enabling gasoline retailers to obtain credit for evaporation and shrinkage, and for uncollected tax resulting from nonpaying credit customers. The Subcommittee received testimony from retailers, and distributors, and from the motor fuel tax division of the department of revenue.

The testimony offered to the Subcommittee tended to establish that actual shrinkage, evaporation and collection losses vary widely among distributors, depending upon the methods of operation, the type and location of gasoline transportation and storage facilities, and the credit practices of each distributor. The only statistical evidence of shrinkage and evaporation the Subcommittee was given was obtained from the motor fuel tax

division, and it tended to establish that the present allowance formula gives a credit against tax liability in excess of actual shrinkage and evaporation losses.

The Subcommittee was informed that gasoline retailers who pay the motor fuel tax to distributors based upon the amount of gasoline delivered to those retailers also can incur losses from unrecovered tax resulting from shrinkage and evaporation losses. It was noted that retailers do not have a shrinkage, evaporation or collection loss allowance.

An additional problem, which is caused by the allowance provisions, was described by the motor fuel tax division. It was stated by that agency that if a distributor purchases gasoline from the pipeline and then delivers that gasoline immediately to agricultural users of that gasoline, the state actually can lose money on the tax transaction. It was stated that the reason for this is that the distributor effectively pays a tax upon 97% of what he purchases, but that the agricultural user is allowed a 100% refund of tax paid on that gasoline. Thus, where the motor fuel is handled carefully and is not transported great distances in hot weather, the state will refund to the agricultural user a greater amount than it collected as tax from the distributor, on the same quantity of gasoline.

Several Subcommittee members expressed opposition to the facts that the shrinkage-evaporation-collection allowance is automatic without proof of any loss or expense, and that the gasoline distributors are awarded recompense for their collection efforts when persons required to collect and pay sales taxes are not given similar treatment. Another Subcommittee member concluded that the failure of the industry to submit statistical evidence on shrinkage led him to the conclusion that the allowance must be profitable to the industry. He expressed disbelief that members of the industry are not able to document what their actual shrinkage and evaporation losses are. Based upon its inquiries, and upon evidence received, the Subcommittee RECOMMENDS that the present shrinkage-evaporation-collection allowance provisions contained in subsection 4 of section 324.8 of the Code be repealed and that the following provisions be substituted:

1. An allowance for licensed distributors for any amount representing actual unrecovered tax which results from documented shrinkage or evaporation.
2. An allowance for licensed distributors for any amount representing actual unrecovered tax which results from inability of the distributor to collect from a retail dealer.
3. An allowance for retail dealers for any amount representing actual unrecovered tax which results from documented shrinkage or evaporation.

The Subcommittee will submit upon the convening of the 1975 General Assembly an appropriate bill draft to carry into effect these recommendations.

GASOLINE STORAGE LOSSES.

The Subcommittee discovered an additional problem resulting from evaporation, and one that is caused by Iowa law. The Subcommittee was advised that section 208.6, Code 1975, as amended by Chapter 135, Acts of the 66th General Assembly, 1975 Session, section 1, which requires that gasoline storage containers be painted bright red, results in excessive losses of gasoline to evaporation, and that the safety aspects of that requirement are not as significant as the cost of fuel lost. The Subcommittee was advised that a test conducted by the United States Bureau of Mines established that the evaporation rate of gasoline stored in above-ground tanks for a period of months is two to three times greater if those tanks are painted red than if those tanks are painted white or aluminum in color.

The Subcommittee examined that Code section and determined that since the storage of gasoline for manufacturing or agricultural purposes is exempt from the red tank requirement, the continuation of that requirement for other uses, such as storage for resale, creates a hardship and unnecessary burden on those owners of gasoline. The Subcommittee RECOMMENDS that the provision requiring that gasoline storage containers be painted red be repealed except for containers of five gallon capacity or less, but that larger containers be clearly identified. The Subcommittee submits bill draft LSB 3156 to carry into effect this recommendation. A copy of that bill draft is attached to this report.

Respectively submitted,

James V. Gallagher
Senator--Co-chairperson

Arlo Hullinger
Representative--Co-chairperson

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the identification of gasoline storage
2 containers and prohibiting certain conduct under penalty
3 of law.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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PETROLEUM MARKETING

Amendment #1

Amend Study Bill number 2, by striking subsection two (2) and inserting in lieu thereof the following:

"2. The owner of a self-service gasoline station must provide during business hours at least one attendant to dispense gasoline into the fuel tank of the motor vehicle of those retail customers who request that the attendant do so and who by reason of apparent age or physical disability are unable to operate the facility by themselves."

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to self-service gasoline station operators and
2 providing a penalty for violations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION.

2 1. As used in this section, "self-service gasoline station"
3 means any facility which is used for the retail sale of fuel
4 for motor vehicles, and at which retail customers are per-
5 mitted to dispense gasoline into the fuel tanks of their own
6 motor vehicles.

7 2. The owner of a self-service gasoline station must
8 provide during business hours at least one attendant who shall
9 dispense gasoline into the fuel tank of the motor vehicle
10 of a retail customer who requests that the attendant do so.

11 3. An owner of a self-service gasoline station who fails
12 to secure compliance with subsection two (2) of this section
13 shall be punished upon conviction by a fine not exceeding
14 one hundred dollars.

15 EXPLANATION

16 This bill requires that owners of self-service gasoline
17 stations have attendants available to assist retail customers
18 in the operation of pumps, and to dispense the gasoline on
19 behalf of a retail customer when requested to do so by the
20 customer. A one hundred dollar fine is provided upon
21 conviction of failing to comply with the section.

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1 Section 1. Chapter one hundred thirty-five (135), Acts of
2 the Sixty-sixth General Assembly, 1975 Session, section
3 one (1), is amended to read as follows:

4 NEW SECTION. IDENTIFICATION OF GASOLINE RECEPTACLES.

5 1. A person shall not place gasoline or any other petroleum
6 product for-public-use having a flash point below 100°
7 Fahrenheit into any can, cask, barrel or other similar
8 receptacle having a capacity in-excess-of-one-pint of five
9 gallons or less unless the same receptacle is painted bright
10 red and is plainly marked with the word "gasoline" or with
11 the warning "flammable--keep fire away" in contrasting letters
12 of a height equal to at least one-tenth of the smallest
13 dimension of such container. Gasoline or other petroleum
14 products having a flash point below 100° Fahrenheit shall
15 not be placed in bottles and plastic containers except those
16 bottles and plastic containers which are approved by the state
17 fire marshal and which are conspicuously posted with such
18 approval. This-section-shall-not-apply-to-vehicle-cargo-or
19 supply-tanks-nor-to-underground-storage-nor-to-storage-tanks
20 from-which-such-liquids-are-withdrawn-for-manufacturing-or
21 agricultural-purposes, or-are-loaded-into-vehicle-cargo-tanks,
22 but-all-outlet-faucets-or-valves-from-such-excepted-containers
23 shall-be-suitably-tagged-to-indicate-the-nature-of-the-product
24 to-be-withdrawn-from-such-containers.

25 2. A person shall not place gasoline or any other petroleum
26 product having a flash point below 100° Fahrenheit into any
27 receptacle having a capacity in excess of five gallons unless
28 the receptacle is plainly marked with the word "gasoline"
29 or with the warning "flammable--keep fire away" in contrasting
30 letters of a height equal to at least one-tenth of the smallest
31 dimension of the receptacle. This subsection shall not apply
32 to underground storage receptacles.

33 3. A person shall not place gasoline or any other petroleum
34 product having a flash point below 100° Fahrenheit into any
35 underground storage receptacle unless all outlet faucets or

1 valves are conspicuously labeled or tagged to indicate the
2 nature of the product contained in that receptacle.

3 4. The requirements of this section shall not apply to
4 the engine supply tank of a motor vehicle.

5 EXPLANATION

6 This bill repeals the requirement that all aboveground
7 fixed gasoline storage containers be painted red. Studies
8 by the United States Bureau of Mines indicates that evaporation
9 loss is far greater for the darker colored red containers
10 than for those which are white or aluminum in color. This
11 bill establishes three categories for identifying gasoline
12 receptacles:

13 1. Containers holding five gallons or less still must
14 be painted red and must be properly labeled.

15 2. Storage tanks, vehicle cargo tanks, and other
16 receptacles having a capacity exceeding five gallons are
17 required only to be properly labeled. No particular color
18 is required.

19 3. All underground storage facilities are required to
20 be identified only by proper labeling or tagging of the outlet
21 faucet or valve.

22 The only receptacles to which some requirement of this section
23 does not apply are the engine fuel supply tanks of motor
24 vehicles.

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