



House of Representatives

General Assembly

File No. 908

January Session, 2009

Substitute House Bill No. 6511

House of Representatives, May 5, 2009

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING TRANSPARENCY AND OVERSIGHT OF GASOLINE MARKETS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) Sections 2 to 9, inclusive, of
2 this act shall be known and may be cited as the "Gasoline
3 Transparency and Oversight Act".

4 Sec. 2. (NEW) (*Effective from passage*) As used in sections 2 to 9,
5 inclusive, of this act:

6 (1) "Distributor" has the same meaning as provided in subdivision
7 (3) of section 14-327a of the general statutes;

8 (2) "Fuel" means regular unleaded gasoline;

9 (3) "Major retailer" means any person who annually sells at retail to
10 consumers in this state more than one million gallons of fuel;

11 (4) "Major fuel supplier" means any person who owns fuel as it

12 enters the state for purposes of selling such fuel in the state;

13 (5) "Person" has the same meaning as provided in section 14-1 of the
14 general statutes;

15 (6) "Relevant time period" means July 1, 2008, to June 30, 2009,
16 inclusive; and

17 (7) "Wholesale rack prices" means wholesale prices at which major
18 fuel suppliers sell branded or unbranded fuel to any other person,
19 including, but not limited to, a supplier, distributor or retailer, but
20 does not include any state or federal taxes, rebates, discounts, tax
21 incentives or transportation costs. Wholesale rack prices include, but
22 are not limited to, posted rack prices for fuel at bulk terminals.

23 Sec. 3. (NEW) (*Effective from passage*) On or before October 1, 2009,
24 each major fuel supplier and person who sells fuel at wholesale rack
25 prices shall file with the Department of Consumer Protection, on forms
26 prescribed, prepared and furnished by said department, a certified
27 statement showing the following information: (1) The amount of fuel
28 owned by such supplier that entered the state; (2) the amount of fuel
29 owned by the supplier or seller that was brought to a wholesale rack
30 location; and (3) the amount of such fuel from each wholesale rack
31 location sold to another person, including a distributor or retailer and
32 the price per unit of fuel, which may be the wholesale rack price and
33 dealer tank wagon price, that was charged to each person. For
34 purposes of this section, the amount of fuel data shall be filed for the
35 months of January, 2009, and June, 2009. The daily price data shall be
36 filed weekly during the relevant time period.

37 Sec. 4. (NEW) (*Effective from passage*) On or before October 1, 2009,
38 each distributor shall file with the Department of Consumer
39 Protection, on forms prescribed, prepared and furnished by said
40 department, a statement showing the amount of gasoline sold to
41 gasoline retailers in each municipality of this state during the months
42 of January, 2009, and June, 2009, aggregated by monthly total number
43 of gallons sold in each municipality to which such gasoline was

44 delivered. Such form shall not indicate the name of the distributor.
45 Each distributor shall submit on a separate form a certified affidavit
46 under penalty of law that it has filed the anonymous required filing
47 and complied with the information requirement of this section.

48 Sec. 5. (NEW) (*Effective from passage*) On or before October 1, 2009,
49 each major retailer shall file with the Department of Consumer
50 Protection, on forms prescribed, prepared and furnished by said
51 department, a certified statement showing the following information
52 for the relevant time period: For each day during the relevant time
53 period, the retail price for fuel charged by such retailer.

54 Sec. 6. (NEW) (*Effective from passage*) The Department of Consumer
55 Protection may, within available appropriations, purchase price data
56 from data service companies that said department may use to assist in
57 analyzing retail and wholesale fuel price and supply data. The
58 Department of Consumer Protection shall prescribe applicable
59 standards and practices for reporting to facilitate uniformity,
60 consistency and comparability of the data to be submitted pursuant to
61 this section.

62 Sec. 7. (NEW) (*Effective from passage*) The Department of Consumer
63 Protection shall analyze such information received pursuant to
64 sections 2 to 9, inclusive, of this act and issue a report to the joint
65 standing committees of the General Assembly having cognizance of
66 matters relating to energy and consumer protection issues. Such report
67 may contain recommendations for administrative or legislative action
68 and findings concerning the gasoline market in Connecticut. The
69 department may refer such information to the appropriate state or
70 federal agency for law enforcement purposes or may initiate such legal
71 action as deemed appropriate.

72 Sec. 8. (NEW) (*Effective from passage*) Information reported pursuant
73 to sections 2 to 9, inclusive, of this act shall be considered trade secrets
74 and proprietary and confidential in nature and shall be exempt from
75 disclosure pursuant to chapter 14 of the general statutes. Such
76 information shall be maintained by the Department of Consumer

77 Protection and shall not be disclosed to any person or entity, public or
78 private, except that such information may be disclosed to a person or
79 entity, public or private, if such information is aggregate in form and
80 does not disclose or attribute any data to a particular company.

81 Sec. 9. (NEW) (*Effective from passage*) (a) The Department of
82 Consumer Protection shall notify those persons who have failed to
83 timely provide the information required by sections 3 to 5, inclusive, of
84 this act. The Attorney General may issue a civil investigative demand
85 for information required pursuant to sections 3 to 5, inclusive, of this
86 act.

87 (b) If a person wilfully fails to supply information not later than
88 twenty-one business days after being notified of the failure to provide
89 the required information pursuant to subsection (a) of this section or if
90 such person fails to comply with a civil investigative demand issued
91 pursuant to subsection (a) of this section, such person shall forfeit and
92 pay to the state a civil penalty of not less than one thousand dollars per
93 day or more than five thousand dollars per day for each day the
94 submission of information is refused or delayed. The Attorney
95 General, acting in the name of the state, may petition for recovery of
96 such penalties.

97 (c) If any person or any employee of any person wilfully, and with
98 the intent to defraud, makes any false statement, representation or
99 certification in any record, report, plan or other document filed with
100 the Department of Consumer Protection pursuant to sections 3 to 5,
101 inclusive, of this act, the Attorney General, upon petition to the court,
102 may recover, on behalf of the state, a civil penalty not to exceed five
103 thousand dollars. For purposes of this subsection, a wilful violation
104 occurs when the party committed the violation knew or should have
105 known that such conduct was a violation of sections 3 to 5, inclusive,
106 of this act.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>from passage</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - Cost	57,000	57,000
State Comptroller - Fringe Benefits ¹	GF - Cost	14,495	33,000
Consumer Protection, Dept.	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in an eventual state cost in excess of \$90,000 per year as the Department of Consumer Protection (DCP) does not have the analytical experience to analyze gasoline market data for relevant facts and trends that impact Connecticut consumers. The DCP would need an additional staff member to compile and correlate the materials received from wholesalers, fuel jobbers and marketers throughout the state in order to determine whether or not adequate submission of data has occurred on this issue. The inspection/investigation-oriented and the technical market analysis required in the bill is not currently within the DCP and a fulltime Economist position (\$57,000 in salary and \$33,000 in fringe benefits) would be necessary to ensure compliance.

Additionally, the bill requires the DCP to purchase price data from

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

data service companies to assist in analyzing gasoline markets. The cost of purchasing such data is dependent upon the level of data needed to complete the analysis.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6511*****AN ACT CONCERNING TRANSPARENCY AND OVERSIGHT OF GASOLINE MARKETS.*****SUMMARY:**

This bill requires various companies that sell regular unleaded gasoline in the state to file gasoline supply and price data with the Department of Consumer Protection (DCP). There are separate reporting requirements for wholesalers, distributors, and major retailers. The bill exempts the reported information from the Freedom of Information Act.

DCP must notify companies that have failed to timely provide the information required by the bill. The attorney general may issue a civil investigative demand for this information. The bill provides for civil penalties for companies that do not supply the required information.

The bill allows DCP to purchase, within available appropriations, price data from data service companies to use in analyzing retail and wholesale gasoline price and supply information data. DCP must prescribe applicable reporting standards and practices to facilitate data uniformity, consistency, and comparability.

The bill requires DCP to analyze the information it receives and report to the Energy and Technology and General Law committees. The report may contain recommendations for administrative or legislative action and findings concerning Connecticut's gasoline market. DCP may refer the information to appropriate state or federal agencies for law enforcement purposes or initiate necessary legal action.

EFFECTIVE DATE: Upon passage

REPORTING REQUIREMENTS**Wholesalers**

The bill requires major fuel suppliers and other wholesalers to file sales data with DCP. Under the bill, major fuel suppliers are individuals and entities that own regular unleaded gasoline as it enters Connecticut and intend to sell it here. The bill applies to those wholesalers who sell this gasoline at wholesale rack prices. This is the price at which major fuel suppliers sell branded or unbranded gasoline to any other person, such as suppliers, distributors, or retailers. It excludes any state or federal taxes, rebates, discounts, tax incentives, or transportation costs. The wholesale rack price includes, among other things, posted rack gasoline prices at bulk terminals.

These entities must file a certified statement with DCP showing the: (1) amount of gasoline the suppliers owned that entered the state; (2) the amount of fuel owned by the supplier or seller that was brought to a wholesale rack location; (3) the amount of gasoline from each wholesale rack location sold to another person, including a distributor or retailer; and (4) the price per unit of fuel that was charged to each person. This price may be the wholesale rack price and dealer tank wagon price. The bill does not define the latter term although it is used in state tax law. Generally, the dealer tank wagon price is the one charged by refiners or resellers to retailers at the gasoline stations. The data on amounts must be provided for the months of January and June 2009. The entities must report the price data for each day in the July 1, 2008 to June 30, 2009 period, filing weekly reports with DCP.

Distributors

The bill requires each distributor to file with DCP, by October 1, 2009, a statement showing the amount of gasoline sold to gasoline retailers in each municipality during the months of January and June 2009, aggregated by monthly total number of gallons sold in each municipality to which the gasoline was delivered. Under the bill, a distributor is anyone who (1) imports or causes to be imported into the state motor fuel for sale or use in this state or (2) produces, refines, blends, manufactures, or compounds motor fuels in the state for sale or

use here. This definition includes any affiliate of such persons that (1) purchases motor fuel for sale, consignment or distribution to another or (2) receives motor fuel on consignment for consignment, or distribution to his or her own motor fuel accounts or to accounts of his supplier. The definition does not include anyone who is an employee of, or merely transports motor fuel for, the supplier.

The reports must be made on forms prescribed, prepared, and furnished by DCP. The reporting forms may not indicate the distributor's name. Each distributor must submit, on a separate form, a certified affidavit under penalty of law that it has filed the anonymous required filing and complied with the bill's information requirements.

Major Retailers

By October 1, 2009, each major retailer must file with DCP a certified statement showing the retail price it charged for gasoline for each day from July 1, 2008 to June 30, 2009. A major retailer is any person who annually sells at retail more than one million gallons of regular unleaded gasoline to consumers in this state. The report must be made on forms DCP prescribes, prepares, and furnishes.

FREEDOM OF INFORMATION ACT EXEMPTION

Information reported under the bill must be considered trade secret and proprietary and confidential in nature and is exempt from disclosure under the Freedom of Information Act. DCP must maintain the information and may not disclose it to any person or entity, public or private. But the information may be disclosed to a public or private person or entity if it is in aggregate form and does not disclose any data attributable to a particular company.

PENALTIES

The bill subjects a person who (1) willfully fails to supply information within 21 business days after being notified of the failure to provide the required information or (2) fails to comply with a civil investigative demand to a civil penalty of between \$1,000 to \$5,000 per day for each day the information submission is refused or delayed. The

bill allows the attorney general, acting for the state, to petition to recover the penalties.

Under the bill, if any person or his or her employee willfully, and with the intent to defraud, makes any false statement, representation, or certification in any record, report, plan, or other document filed with DCP, the attorney general may petition the court to recover a civil penalty up to \$5,000 on the state’s behalf. A violation is considered willful if the party who committed it knew or should have known that such conduct violated the bill.

BACKGROUND

Legislative History

On April 21, the House referred this bill (File 434) to the Judiciary Committee, which reported a substitute that reduced, from \$500,000 to \$5,000, the maximum civil penalty for willfully, and with the intent to defraud, making a false statement, representation, or certification in any record, report, plan or other document filed with DCP,

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 16 Nay 6 (03/17/2009)

General Law Committee

Joint Favorable

Yea 7 Nay 5 (04/14/2009)

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 4 (04/27/2009)