

109TH CONGRESS
1ST SESSION

H. R. 2944

To provide for the assessment of a penalty to gasoline retailers who charge prices grossly in excess of the prescribed index price for gasoline.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2005

Mr. HASTINGS of Florida (for himself, Mr. HINCHEY, Mr. MOORE of Kansas, and Mr. OWENS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide for the assessment of a penalty to gasoline retailers who charge prices grossly in excess of the prescribed index price for gasoline.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gross Overcharging
5 Undermines Gasoline Economics Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) From May 2004 to May 2005, average
2 United States gasoline prices rose by 24 percent, ac-
3 cording to the Energy Information Administration.

4 (2) Most United States oil companies showed
5 huge profits last year, some as much as 200 percent.
6 The American people have paid over and above their
7 fair share of this increased cost. Consumers have
8 been at the whim of oil companies who use record-
9 breaking oil prices to make record-breaking profits.

10 (3) Although 24 States have consumer protec-
11 tion statutes to restrict prices that are “unconscion-
12 able”, “excessive”, or “grossly in excess” of a speci-
13 fied amount, in all but one of those States the prohi-
14 bition applies only during a state of emergency or
15 natural disaster.

16 (4) While consumers express concerns about
17 being “gouged” when prices spike at the gas pump,
18 there is no legal definition of gouging. The Federal
19 Trade Commission has never found a violation of
20 Federal antitrust laws related to gasoline price
21 spikes. An in-depth investigation of the entire oil in-
22 dustry is necessary to determine whether extra
23 charges are driven by collusion among oil companies
24 or simply by legitimate market influences.

1 (5) With only a few nominal exceptions, gas
2 prices are expected to increase indefinitely. Higher
3 fuel costs impact all methods of transportation. As
4 a result, the increased cost of goods and services
5 puts an even greater financial burden on consumers.

6 **SEC. 3. DEFINITIONS.**

7 In this Act—

8 (1) the term “base price index” means the aver-
9 age of the closing unit price on the New York Mer-
10 cantile Exchange, for contracts to purchase regular
11 unleaded gasoline during the subsequent calendar
12 month, for the 10 days in each of the most recent
13 2 preceding years which correspond to the 10 most
14 recent trading days; and

15 (2) the term “rate of inflation” means the aver-
16 age consumer price index for all urban consumers,
17 not seasonally adjusted, which corresponds to the
18 time period between the days used for calculating
19 the base price index under paragraph (1).

20 **SEC. 4. GASOLINE PRICE GOUGING.**

21 (a) PROHIBITION.—No person shall sell gasoline at
22 retail for a price that exceeds the base price index multi-
23 plied by twice the rate of inflation, as adjusted according
24 to the regional price structure index developed under sub-
25 section (b).

1 (b) REGIONAL PRICE STRUCTURE INDEX.—Not later
2 than 30 days after the date of enactment of this Act, the
3 Secretary of Energy shall develop a regional price struc-
4 ture index to reflect regional variances in gasoline refor-
5 mulation requirements and transportation costs.

6 (c) PENALTY.—The Secretary of Energy shall assess
7 a civil penalty for a violation of subsection (a) in the
8 amount of—

9 (1) not less than \$5,000 for a first offense;

10 (2) not less than \$10,000 for a second offense;

11 and

12 (3) not more than \$25,000 for any subsequent
13 offense.

14 (d) OFFENSES.—Each day on which a person violates
15 subsection (a) shall constitute a separate offense for pur-
16 poses of subsection (c).

17 (e) EFFECTIVE DATE.—This section, except for sub-
18 section (b), shall take effect 90 days after the date of en-
19 actment of this Act.

20 **SEC. 5. FEDERAL TRADE COMMISSION REPORT.**

21 Not later than 1 year after the date of enactment
22 of this Act, and annually thereafter, the Federal Trade
23 Commission shall transmit to Congress a report that—

24 (1) examines passive and active collusion to set
25 gasoline prices;

1 (2) examines antitrust practices throughout all
2 supply chains in the oil industry; and

3 (3) recommends policies to protect consumers
4 against gasoline price gouging.

5 **SEC. 6. STRATEGIC PETROLEUM RESERVE.**

6 (a) FINDINGS.—Congress finds that—

7 (1) the Strategic Petroleum Reserve was cre-
8 ated to enhance the physical and economic security
9 of the United States;

10 (2) the Energy Policy and Conservation Act al-
11 lows the Strategic Petroleum Reserve to be used to
12 provide relief when oil and gasoline supply shortages
13 cause economic hardship;

14 (3) the proper management of the resources of
15 the Strategic Petroleum Reserve could provide gaso-
16 line price relief to families of the United States and
17 provide the United States with a tool to counter-
18 balance the Organization of Petroleum Exporting
19 Countries' supply management policies; and

20 (4) the United States current policy of filling
21 the Strategic Petroleum Reserve despite the fact
22 that the Strategic Petroleum Reserve is more than
23 98 percent full could further exacerbate the rising
24 price of crude oil and record high retail price of gas-
25 oline.

1 (b) PRICE PROTECTION MEASURES.—

2 (1) INITIAL MEASURES.—For the period begin-
3 ning on the date of enactment of this Act and end-
4 ing on the date that is 30 days after such date of
5 enactment—

6 (A) the Secretary of Energy shall not ac-
7 quire any new petroleum products for, or place
8 any petroleum products in, the Strategic Petro-
9 leum Reserve; and

10 (B) the Secretary of Energy shall release
11 from the Strategic Petroleum Reserve
12 1,000,000 barrels of oil per day.

13 (2) SUBSEQUENT MEASURES.—If the President
14 finds it necessary, to lower the burden of gasoline
15 prices on the economy of the United States and to
16 circumvent the efforts of the Organization of Petro-
17 leum Exporting Countries to reap windfall crude oil
18 profits, the Secretary may continue the measures de-
19 scribed in paragraph (1)(A) and (B) for an addi-
20 tional 30 days.

21 **SEC. 7. PRICING AND ECONOMIC IMPACT COMMISSION.**

22 (a) ESTABLISHMENT.—The Secretary of Energy
23 shall establish a commission to be known as the “Pricing
24 and Economic Impact Commission” (in this section re-
25 ferred to as the “Commission”).

1 (b) DUTIES OF COMMISSION.—Not later than 1 year
2 after the date of enactment of this Act, the Commission
3 shall transmit to Congress a report containing rec-
4 ommendations on the effect of this Act on—

- 5 (1) domestic oil production;
- 6 (2) foreign oil imports;
- 7 (3) profits of the oil industry;
- 8 (4) inflation;
- 9 (5) employment;
- 10 (6) economic growth;
- 11 (7) Federal revenues; and
- 12 (8) national security.

13 (c) MEMBERSHIP.—

14 (1) NUMBER AND APPOINTMENT.—The Com-
15 mission shall be composed of 23 members as follows:

16 (A) 11 members appointed by the Presi-
17 dent. These shall include no less than 1 mem-
18 ber from each of the Environmental Protection
19 Agency, the Department of Transportation, the
20 Department of Energy, the Department of
21 Commerce, the Council of Economic Advisors,
22 and the Office of Science and Technology.

23 (B) 6 members appointed by the House of
24 Representatives, of whom 3 shall be appointed

1 by the Speaker of the House of Representatives
2 and 3 shall be appointed by the minority leader.

3 (C) 6 members appointed by the Senate, of
4 whom 3 shall be appointed by the majority
5 leader and 3 shall be appointed by the minority
6 leader.

7 (2) QUALIFICATIONS.—In making appointments
8 under this subsection, the appointing authorities
9 shall make a special effort to appoint individuals
10 who are particularly qualified to perform the func-
11 tions of the Commission, by reason of either prac-
12 tical experience or academic expertise.

13 (3) TERMS AND VACANCIES.—Each member
14 shall be appointed for the life of the Commission. A
15 vacancy in the Commission shall be filled in the
16 manner in which the original appointment was
17 made.

18 (4) PAY AND TRAVEL.—Each member of the
19 Commission, other than a full-time officer or em-
20 ployee of the United States—

21 (A) shall be paid the daily equivalent of
22 the annual rate of basic pay payable for level V
23 of the Executive Schedule for each day (includ-
24 ing travel time) during which the member is en-

1 gaged in the actual performance of duties vest-
2 ed in the Commission; and

3 (B) shall receive travel expenses, including
4 per diem in lieu of subsistence, in accordance
5 with applicable provisions under subchapter I of
6 chapter 57 of title 5, United States Code.

7 (5) QUORUM.—12 members of the Commission
8 shall constitute a quorum, but a lesser number may
9 hold hearings.

10 (6) CHAIRMAN.—The Chairman of the Commis-
11 sion shall be elected by the members.

12 (7) MEETINGS.—The Commission shall meet at
13 the call of the Chairman or a majority of its mem-
14 bers.

15 (d) STAFF.—

16 (1) IN GENERAL.—With the approval of the
17 Commission, the Chairman may appoint and fix the
18 pay of not more than six individuals for the staff of
19 the Commission. Such individuals may be appointed
20 without regard to the provisions of title 5, United
21 States Code, governing appointments in the competi-
22 tive service, and may be paid without regard to the
23 provisions of chapter 51 and subchapter III of chap-
24 ter 53 of that title relating to classification and Gen-
25 eral Schedule pay rates, except that an individual so

1 appointed may not receive pay in excess of the max-
2 imum annual rate of basic pay payable for grade
3 GS-15 of the General Schedule under section 5332
4 of title 5, United States Code.

5 (2) EXPERTS AND CONSULTANTS.—With the
6 approval of the Commission, the Chairman may pro-
7 cure temporary and intermittent services in the
8 manner prescribed in section 3109(b) of title 5,
9 United States Code, but at rates for individuals not
10 to exceed the daily equivalent of the maximum an-
11 nual rate of basic pay payable for grade GS-15 of
12 the General Schedule under section 5332 of title 5,
13 United States Code.

14 (3) STAFF OF FEDERAL AGENCIES.—Upon re-
15 quest of the Commission, the head of any Federal
16 department or agency may detail, on a reimbursable
17 basis, any of the personnel of that department or
18 agency to the Commission to assist it in carrying out
19 its duties under this section.

20 (e) POWERS OF COMMISSION.—

21 (1) HEARINGS.—The Commission may, for the
22 purpose of carrying out this section, hold hearings,
23 sit and act at times and places, take testimony, and
24 receive evidence as the Commission considers appro-
25 priate.

1 (2) MEMBERS AND AGENTS.—Any member or
2 agent of the Commission may, if authorized by the
3 Commission, take any action which the Commission
4 is authorized to take by this subsection.

5 (3) MAILS.—The Commission may use the
6 United States mails in the same manner and under
7 the same conditions as departments and agencies of
8 the United States.

9 (4) ADMINISTRATIVE SUPPORT SERVICES.—
10 Upon the request of the Commission, the Adminis-
11 trator of General Services shall provide to the Com-
12 mission, on a reimbursable basis, the administrative
13 support services necessary for the Commission to
14 carry out its responsibilities under this section.

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There
16 will be authorized to be appropriated to carry out this sec-
17 tion \$2,000,000, to remain available until expended.

18 (g) TERMINATION.—The Commission shall cease to
19 exist on the last day of the month in which its report is
20 submitted under subsection (b).

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