

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

March 7, 1991
P.M.

Hearing Room F 1:30
Tapes 46 - 49

MEMBERS PRESENT: Rep. John Schoon, Chair Rep. Hedy L. Rijken,
Vice-Chair Rep. Jerry Barnes Rep. Lisa Naito Rep. Carolyn Oakley Rep.
Beverly Stein Rep. Greg Walden

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta
Mullins, Committee Assistant

MEASURES CONSIDERED: HB 2302 PH HB 2303 PH HB 2680 PH HB
2783 PH

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TAPE 46, SIDE A

004 CHAIR SCHOON calls the meeting to order at 1:34 p.m. and opens the public hearing on HB 230 2, HB 2303, HB 2680 and HB 2783.

HB 2302 - DECLARES THAT PROHIBITION ON SELF-SERVICE GASOLINE DISPENSING AT RETAIL IS IN PUBLIC INTEREST. Witness: Dell Isham, Automobile Club of Oregon

HB 2303 - REPEALS PROHIBITION ON SELF-SERVICE GASOLINE Witnesses: Al Elkins, Executive Director, Oregon Gasoline Dealers Association Mike Sherlock, President, Oregon Gasoline Dealers Association Barry DaSB ien, Oregon Gasoline Dealers Association Patrick Rogers, Commissioner, Oregon Disabilities Commission Roger Harris, Attorney for retail gasoline dealers John Alto, gasoline dealer Bill Tuninga, gasoline dealer

HB 2680 - REPEALS PROHIBITION ON SELF-SERVICE GASOLINE DISPENSING. Witnesses: Rep. Randy Miller Loren Simonds, Senior and Disabled Services

HB 2783 - AUTHORIZES SELF-SERVICE GASOLINE DISPENSING EAST OF SUMMIT OF CASCADE MOUNTAINS. Witnesses: Rep. Ray Baum Rep. Mike Nelson

WITNESSES (testimony on more than one bill or no bill number indicated) Rep. Dell Parks Rep. Bill Dwyer Scott Bartlett, Administrative Assistant to Rep. Bill Dwyer Bob Van Houte, United Seniors Jim Davis, Oregon State Council of Senior Services, United Seniors and the Grey Panthers Mike Bullis, Oregon Disabilities Commission Art Laurbach, Oregon State Grange Colonel Smith Laurie Wimmer, Executive Director, Commission for Women Hank Bersani, Jr. United Cerebral Palsy Association and Association for

Retarded Citizens of Oregon Calvin Sherman, Cal's Service Center Victor Klinger, Lexington Chevron James D. Trenary, James D. Trenary, Inc. Dick Scott, Chevron dealer Alan Baudish, Chevron dealer Bob Barman, UnoCal dealer

024 REP. RANDY MILLER: This has not been an easy matter for the Legislature and your willingness to entertain these bills is a great credit to the Chair and the members of the committee; it is appreciated.

I don't intend to tell you I equate HB 2680 with the Persian Gulf conflict. It has long been my view, and shared by many, that government which governs least, governs best. Those of us who are charged with the responsibility of governing others should not lightly tread into areas where government has no business, where intrusion is unwarranted. The dispensing of gasoline, a relatively safe event in 48 other states, cannot be defended on the basis that it is an unsafe activity, yet that is how our statutes read and that is the only inhibition to allowing self-service gasoline. I think it is critical that unless government has a compelling state interest to intrude on the private affairs of our citizens, it ought to steer clear of that. I don't think convenience, although desired by a lot of Oregonians, is reason enough to justify this continuing prohibition that 48 states have recognized. I urge the committee to allow the self- service option.

I was here in a similar setting a couple of years ago when these concepts came forward. I will tell you what is either in the bill currently or what I support as amendments either to my bill or other bills. >Service: adopt a requirement of attended service for a particular number of hours during the day and I recommend an 8-5 obligation on the dealers. >Handicapped/disabled: those who come into the station displaying the appropriate handicapped card on the vehicle, be entitled to gasoline at the self-service price and get full service. >Pricing: evidence in other states show that consumers will save a great deal of money. The Federal Trade Commission issued a report for New Jersey suggesting savings into the millions. Service requirement means expense for the dealers. I suggest we be cognizant of the fact that the free market system will allow the free market to operate.

143 REP. RAY BAUM: I am here because I have a constituency who are using cardlocks for personal and commercial use at the rate of about 70 percent and I would like to bring them into compliance with the law. My feeling is we have a three-fold problem in the gasoline industry which impacts adversely on rural Oregon because of the low volumes: underground storage tanks, the \$1 million in liability insurance and they need self-service.

>About 70 percent in Wallowa have used cardlocks for personal and commercial use for a decade. >A Wallowa County district attorney attempted to enforce the law and became unpopular with the local constituents who find themselves paying 20 cents more at the full-service station than at the cardlock. At the cardlock in LaGrande you pay 30 cents more than at the full-service station in Portland. Twenty-four hour service, competitive pricing doesn't exist in Wallowa County and the eastern part of the state. After 7:00 p.m. in Wallowa County if you want to get gas, you can go to LaGrande 56 miles away. We also have the problem that if you went to a self-serve or cardlock system of serving the tourists. This issue typifies the geographical diversity of the state.

I have no problem doing it throughout the state, but I see a need by virtue of the existing conditions in northeast Oregon. Those people are doing it anyway; I would like to have them do it legally.

I suggest a three-part process. We are going to eventually get to the point where, based on the credit system, we will use cards whether we

like it or not. The question is how do we help those who can't help themselves or those from out of town. There are cardlocks out in the middle of the high desert. The only thing you see are big trucks and those are almost purely commercial uses. You will not be able to require everyone to have an attendant full time in those areas. If we go to a county-wide option, there is a patchwork throughout the state and the east side people say you can't treat them differently than the west side.

We could continue the cardlocks and not enforce the law. I introduced HB 278 3 to raise the issue and I am willing to take self-serve and cardlocks any way I can get them.

226 REP. MIKE NELSON: We are a rural area and have a tremendous amount of tourists 12 months of the year. Last session I found when I had dialogue with my western Oregon colleagues there was unclarity on how these cardlocks occurred. The reason they showed up was in the mid 1970's when we had an energy crunch and the major oil companies pulled out of the little communities a vacuum occurred. Ten stations closed in Baker City. The only service station that the major oil companies massaged were the large stations along the I-84 interstate. Oil companies were not interested in having stations in those small communities. Even when we had those small service stations, they were not open 24 hours a day. There isn't enough demand, hence cardlock service. My first experience with cardlocks was log truckers using them. They couldn't get fuel any place in the communities except cardlocks and then the private sector started using cardlocks. It is very frustrating in working with our constituents. Many line up to use cardlocks who definitely are not commercial users. I think they are in jeopardy. It could be interpreted they are violating the law. It is an issue of availability to them.

We have a truck stop along the interstate and one full-service station along the interstate that is open 24 hours a day. That station's fuel is considerably more money than the cardlock stations. There is one full-service station downtown. We pay more for the gasoline and we like the service we get, but it closes at about 7:00 p.m. If we are leaving early in the morning, we have no option.

The issue is complex and it gets foggy. I would like to share that my four counties, the last time we voted on the issue, voted for self-service gasoline and they want to pump gas themselves. I, however, have seniors who have called saying they would like the availability of someone to want help them pump their gasoline. But last session I had a resolution from the Baker Senior Center saying that even though they are elderly and retired they still have enough brains to pump their own gas and asked if would we allow them to do so.

I tend to agree the market place should allow the solution to rise and if that isn't going to be allowed, maybe we should refer it to the voters again or allow local options and let the individual counties decide on how they want to pump their fuel.

333 REP. DELL PARKS: I agree with the other Representatives, but I want to talk about the safety issue. Before we had cardlocks, those people in agriculture were compelled to store fuel on the farm and that is a dangerous situation. The tanks can fall off and are something dealers don't want to use. There are thousands in my county. I had pictures to show how bad they were, but I realized my neighbors would not appreciate my showing pictures of their facilities. I pay more to use a cardlock than I did to have gas delivered to my farm because it is much safer, and storage is an environmental disaster. Although I live in a small town, we have a station that is generally open at all times, but not when farmers need it. We have to protect against frost which is done with either diesel or gasoline engines in large measure. That

happens at 2:00 a.m. and if we take away what we now have as cardlocks we will be going back to storing gasoline on farms and it is an environmental disaster and a significant safety hazard.

403 REP. NAITO: What is the existing status on the liability insurance for cardlocks?

404 REP. BAUM: These are mainly co-op operations because big oil has gotten out except for Pacific Pride. Everyone has to comply with the tanks; the co-ops, because they buy in larger volumes and have the commercial users anyway, have the ability without having to pay people to man the pumps, employment taxes, workers compensation premium. A lot of the co-ops have just recently gotten into the gasoline business and their tanks are in pretty good shape. That leaves the classic stations or those with grocery stores facing the challenge of having to take the tanks out. I have co-sponsored a resolution to refer to the people a vote to allow some few cents of the gas tax to go into a fund to help pay for the tanks. We would also like to create an insurance fund.

TAPE 47, SIDE A

016 REP. NAITO: If cardlocks are further expanded, the service station might be run out of business. Would it be more difficult for people to buy fuel in eastern Oregon?

023 REP. NELSON: Prairie City has a full-service station and a bank of cardlocks. When he closes at 7:00 p.m. you can get your vehicle fueled. On the overall picture of what happens to a tourist coming through central Oregon at 3:00 a.m., it is the same issue whether you are in remote parts of New Mexico or Wyoming. We have posted signs because there has never been a station open 24 hours and you have to use common sense and keep the tank topped off.

050 REP. MILLER: With respect to service, whether it be in the far reaches of Oregon or wherever, I hope those in the business will respond to the demands of the consumer.

With respect to cardlocks and other distributors, there is a ruling in a recent court case that cardlocks are in the retail business. The judge saw through all the charades in the statutes. The committee has to wrestle with that knowing that if you continue prohibitions, it is very likely the prohibitions will be placed on cardlocks and the situation in eastern Oregon will be exacerbated.

079 REP. BARNES: What effect has the lack of gas station had or will have on tourism in your respective areas?

083 REP. BAUM: Right now it is okay because some full-service stations stay open in the summer time.

104 REP. NELSON: It is the supply and demand issue. Jordan Valley has maybe three stations open 24 hours a day because of the tourism industry and you have full service. When you move west to Drusy or Crane, they may see 20 tourists a year. A station will not stay open for those tourists. As long as tourism keeps increasing more stations will stay open.

127 REP. STEIN: I am interested in a solution to the problem in Eastern Oregon. Could each county vote to decide the local option and is there a constitutional problem with that? We recently passed federal legislation to protect people with disabilities. Has there been any thinking about how the gas stations will adjust to this new law?

136 REP. NELSON: With the new federal guidelines, we could look at the other 48 states and see how they are dealing with the issue. A

constituent who is a quadriplegic and operates a vehicle called me and adequately explained that if there are no full-service stations, he would have to have someone meet him at the pump. One of my OGDAs members from Baker tells me that self-service doesn't mean full-service stations disappear. He informed me that the business of the full-service stations that stayed in business increased. I don't believe there will be an eradication of full-service gas stations. Too many people will demand service, but I think they will have to pay for it.

I have people in my district who have full-service stations and they are not happy with this legislation, but we introduced these bills to have these dialogues. We did polling on this issue and it is about 70 to 80 percent of people in my district would like to have the ability to pump their own gas. I would support a local option and let them debate this issue.

187 REP. BAUM: They are going to have to comply with the handicapped concerns. I hope we can see our way past it.

195 REP. OAKLEY: You mentioned in Prairie City there was a station with full-service and cardlocks. What was the difference in price, or was there any?

196 REP. NELSON: I don't know. My best guess would be there would be a difference.

202 REP. OAKLEY: What year did we have the last vote?

202 REP. BAUM: It was in 1982.

206 REP. WATT: We have a dealer-owned cardlock in the back of the station and there is a 10 cent difference. The local option would not necessarily be a statewide vote, if you choose to allow the counties to vote on a county-by-county basis.

220 REP. MILLER: I would ask the committee to consider the current statute and answer the question of whether or not they truly believe that this prohibition based exclusively on safety can be justified.

240 REP. BILL DWYER submits and reads a prepared statement in opposition to HB 2303, 2783 and 2680 (EXHIBIT A). I have a constitutional amendment that will allow a penny or two of gas tax to create a trust fund for the underground storage tanks that will enable us to rectify the non-competitive disadvantage to the rural people.

387 SCOTT BARTLETT, Administrative Assistant to Rep. Bill Dwyer: I think the committee should consider several things in having a system of separate, but so-called equal availability to cardlocks or self-service in this state. By the advice of conversations with the Attorney General's office last session, we were informed that such a law could invalidate our entire statute.

There are reasons beyond safety. Olin Green has never disavowed to our knowledge (we have letters to indicate that) his belief that self-service is somehow more safe than full-service. There are statistics in California that many more fires and dangers are attributed to self-service than full-service. New Jersey has clear language in their statute that deals with pregnancy and the inhalation of noxious fumes. There are a wide array of reasons not to casually go into this area of legalizing, in essence, self-serve. We made a sincere effort last session to see if there could be a legislative accommodation for claims of hardship in non-availability. There are certain rural areas where they don't have reasonable access to gas. Twenty-four hours a day ought not to be the standard. The committee should determine for itself

what is reasonable access.

TAPE 46, SIDE A

020 AL ELKINS, Executive Director of the Oregon Gasoline Dealers Association, submits and reads a prepared statement in support of HB 2303 (EXHIBIT B).

071 REP. WALDEN: Can you discuss the problems of self-serve with crime, safety and health?

MR. ELKINS: In the discussion I have had with the State Fire Marshal's office, they have told me safety is not an issue. I am not technically able to address the content of gasoline in relation to pregnant women and we will get the information back to the committee.

097 REP. NAITO: You would require attendants to be on duty from 8 to 5. How would your industry react to a requirement that they have to be open a certain number of hours?

MR. ELKINS: That is something we would have to evaluate in relation to the components of this bill.

099 REP. NAITO: Would this bill make cardlocks no longer allowable because they would need an attendant on duty?

103 MR. ELKINS: Cardlocks would be allowed to operate; they would have to meet the same standards that we are proposing with the 8 to 5 attendant. It would level the playing field that way.

108 REP. NAITO: In Section 5, the bill speaks to availability to disabled persons at a full-service island. Are all stations required to have a full-service island? What if there is no full-service island?

MR. ELKINS: We would not be required to have full-service islands. For those states that offer self-service, the statistics show that 73 to 80 percent of the stations still offer full service. I don't think there would be a problem with availability of full service.

119 REP. OAKLEY: You have talked about self-service being offered at a discount price. When we go to Washington or California we usually pay more for gas than in Oregon and we pump it ourselves. What is your comment on that?

119 MIKE SHERLOCK, President, Oregon Gasoline Dealers Association: California just voted themselves a 19 cent a gallon state tax. Traditionally, Oregon has had higher street prices. It is a variety of factors. Our suppliers charge us considerably more here. Part of it is we have to charge more to pay an attendant to pump the gas and part of it is dealing with the taxes.

142 REP. NAITO: As a mother of young children, I have been forced to get out of the car and go inside to pay. I try to avoid those stations, but it is difficult. I assume people with disabilities have the same problems.

146 REP. BARNES: Have you done a survey among your patrons to see how they feel about this?

MR. SHERLOCK: We have. It is interesting that AAA has been citing a survey they did, but I think their survey was done at least two years ago. The trend on the more recent surveys shows the state is about evenly split. A study was done recently that showed a 50/50 split.

152 REP. OAKLEY: A person said that somewhere in Washington they did

have a full-service price and a self-service price, but the price for full-service was 48 cents more per gallon. That is saying we don't want to service your car.

163 MR. SHERLOCK: In states other than Oregon there is a much higher proportion of full service sold than self-service. Nationwide it is about 30 percent full-service and 70 percent self-service. We don't have close to a 48 cent spread at my station, but we only have about seven percent full-service and the remainder being mini-service. The difference is 30 cents at my station; that is based on the market in Eugene.

165 BARRY DASB IEN, member of board of Oregon Gasoline Dealers Association: In this bill we have required an attendant be available at the service island, which will eliminate the price problem. Not all stations have full-service now. When you have a self-serve situation, you have a full-service station within every five miles. But when you have an attended-service on every corner and sometimes two and three on every corner, the market will dictate the price.

If safety is a problem, in the environment we have now where health consciousness is just starting to go the other extreme, why would 48 states allow pregnant mothers to pump their own gasoline. We are talking about availability of gasoline, not paying 30 or 40 cents a gallon more for it.

209 BOB VAN HOUTE, United Seniors: We continue to have opposition to the self-service concept. We believe it is a handicap for our people. We feel it will be a disservice to a lot of our senior women and we feel it will be a disservice to a lot of our people who are disadvantaged or handicapped. I think the committee is faced with the situation of trying to solve a host of economic problems which are beyond the matter of service. We are caught in the web of a struggle between people who want to operate independently and those who want to operate under a chain system.

This is an issue of economics, of service and a variety of economic interest. We feel our people are well served by the program we have now. They will, if necessary, seek a complete service station. The mini-serve approach is a compromise already between those who want self-service and those who want full-service. We feel this program functions quite effectively in dealing with the people who are willing to not have their windshields washed, etc. and are willing to pay a lower price. Those who want to have full-service recognize they will pay more and should pay more. If you say we are going to have self-service, you will tend to reduce the number of people who will have full-service available because full-service people will be caught in the economic trap of having to charge 40 or 50 cents a gallon more. The consumer will be driven by prices except those few who have no alternative but to take advantage of full-service.

Our seniors continue to resist the idea of self-service and we think the program we have is satisfactory. We urge the committee to not try to solve the problems of British Petroleum versus ARCO versus Standard Oil.

295 JIM DAVIS, Oregon State Council of Senior Services, United Seniors and the Grey Panthers: The major senior groups in the state are opposed to self-service gasoline for several reasons. It is difficult, if not impossible, for some people to get out of their car and pump their own gas. A senior suffering from arthritis trying to get the gas cap off and holding the pump is a task. Also getting inside to pay for the gasoline is a task. Right now it is unfortunate where you have to get out of your car to pay. I am hesitant to leave my young children in the car, also. It is not a matter of whether seniors have the brains to handle this; it is a physical situation.

Safety factors are raised by our seniors. Also seniors have been concerned about crime ridden neighborhoods where they would prefer to not get out of their car. To go to a self-service alternative, you are paying more and penalizing people who can't pump the gas themselves. We ask you to vote against any kind of self-service because it affects the pocket books and the independence of seniors and disabled people.

337 DELL ISHAM, Automobile Club of Oregon, submits and reads a prepared statement in support of HB 2302 and opposing HB 2303, 2680 and 2783 (EXHIBIT C).

TAPE 47, SIDE B

MR. ISHAM continues with statement.

104 REP. WALDEN: What is the cost when you average in the cost of mini-serve and the overall cost versus self-serve?

MR. ISHAM: It is difficult to answer because we have no figures to compare self-service in Oregon with self-service in other states. Mini-serve is almost unique to Oregon; that is Oregon's compromise between those who want the real full-service and those who want to just fill their gas tanks. We could compare Oregon's full-service with the national self-service price. You are comparing apples and oranges.

157 REP. BARNES: There have been a lot of changes in the last 15-20 years. What is included in your definition of full service when you pull into a gas station? I think we have to define what we mean by full-service. That is relevant if you get into pricing or anything else. That is labor intensive.

166 MR. ISHAM: I don't think we have a definition of full-service. This bill adds some additional services that would be mandated by law, such as window washing and checking tire pressures. In my own mind, I think full-service also includes being able to look under the hood, add oil or water, and to be able to inspect the belts and hoses. This bill doesn't try to address all of those but does add two of them.

195 LOREN SIMONDS, Senior and Disabled Services Division, submits and summarizes a prepared statement about concerns of accessibility to services at gas stations (EXHIBIT D).

291 MIKE BULLIS, Oregon Disabilities Commission, submits a prepared statement (EXHIBIT E). I will respond to the federal Americans with Disabilities Act and its implications with regards to self-service. A lot will depend on how court cases go with regard to the act. If people with disabilities report difficulty in getting gas at a station on an occasion, they can write it off. But if it is a persistent difficulty, if it is one in which full-service were priced so much higher than other services, then it would have to be established that there was an intent to stop people from using full-service. The question of availability at particular hours and not at others will come into question and most of these will have to be tried in the courts. The accessibility provisions in the Americans with Disabilities Act are very broad and could apply to this kind of issue.

Our experience from canvassing the other 48 states are people with disabilities don't travel freely. In Oregon, for the most part, they can.

331 PATRICK ROGERS, Commissioner, Oregon Disabilities Commission, submits a prepared statement (EXHIBIT F). In effect, self-service is a restriction on my freedom. I am against HB 230 3.

334 REP. BARNES: What would be your definition of full service?

355 MR. BULLIS: The issue of full-service for people with disabilities who contact our agency is that someone will come to the vehicle, pump the gas and take the money. We haven't defined it further than that. There are some problems with the mini-serve system because of some inconsistencies in the Oregon law.

375 ART LAURBACH, Oregon State Grange, submits and reads a prepared statement (EXHIBIT G). We represent between 26,000 and 27,000 members. We review and vote on our policy each year at convention. We are opposed to bills that change service at the gas pump to self-service.

TAPE 48, SIDE A

025 COLONEL SMITH: It suits my schedule to travel when bad weather is common. I find I don't just step out to pump gas in California or elsewhere, I must go to the cashier and they sometimes specify an amount of money which is more than it takes to fill my tank. I run into a lot more arrogance with self-service stations than where someone runs out to pump my gas. It might not be to our financial advantage to go to self-service. In addition to keeping someone on the job, the owners must buy, and install the equipment necessary for the cashier to control the pumps. That is a cost passed on to the consumer. The employment aspect is another of our concerns.

051 LAURIE WIMMER, Executive Director, Commission for Women: Much of the testimony today is the same as mine. Our message, on behalf of the Commission on Women, is to leave well enough alone and to not take the service out of service stations. Many of the points I would express would be in regard to the safety of women who may be the most vulnerable. We are also concerned about the projected elimination of 3,000 plus jobs in Oregon that might result from this kind of bill. We believe the arguments laid out before you to be persuasive and we urge you to vote no on self-service which is really no service.

071 HANK BERSANI, JR., United Cerebral Palsy Association and the Association for Retarded Citizens of Oregon: Most of what needs to be said has been said. The organizations I represent are concerned about drivers with disabilities like themselves, drivers who have children with them, and we are concerned about pregnant women. The two issues for us are affordability and accessibility to gasoline. A lot of people with disabilities are working people who work from 8 to 5 and to be limited to being able to get gas during those hours would be tantamount to being a curfew. We have signed in opposing self-service. I would like to be clear that we are not here to oppose the option of self-service, but to speak to a fear that self-service will drive out full-service. We need to preserve the option for full service and to not artificially limit that to consumers. Stations can't be open 24 hours, but to say that people with disabilities or with children in the car who need to be attended can only buy gas until 5:00 and not get assistance seems to be an unnecessary infringement upon their rights to travel around. We hope what whatever the committee does, they will at least preserve the right of people who need assistance and want full-service to be able to get the service at an affordable price throughout the time any station is open.

115 HOWARD REHER submitted but did not present a prepared statement in opposition to self-service (EXHIBIT H).

135 ROGER HARRIS, Attorney for 10 conventional retail gasoline dealers: In September 1990 we brought a lawsuit against the State Fire Marshal asking the Multnomah County Circuit Court to issue an injunction with respect to the enforcement of the self-service statute against the

cardlock facilities. As a result of a series of five hearings, in December 1990 Judge LaFrance, Multnomah County Circuit Court, issued a nine-page opinion with findings of fact and conclusions of law with respect to the cardlock dealer/conventional retail dealer issue. I would like to share nine of the 50 points of his conclusions.

The allegations of our complaint were of unfair trade practices, tortious interference with business relations, restraint of trade and interstate commerce and equal protection issues with regard to the cardlock and the State Fire Marshal allowing de-facto self-service by tens of thousands of citizens. As a result, the court ruled that the conventional retail dealers have been disadvantaged by having to pay approximately five cents a gallon for attendants in labor costs over and above what cardlocks would have to pay and that the cardlocks enjoyed substantial competitive advantages when they were treated by the State Fire Marshal as non-retail. The court specifically found that cardlocks are retail and they did come within the purview of the statute ORS 480.330 which provides that there can be no self-service at retail. The court found from the testimony that was given that conventional service stations in Oregon have declined from over 4,000 in 1969 to slightly over 2,000 in 1989. In the same time period cardlocks have gone from a handful in 1979 to over 330 today. There has been no instance of a cardlock going out of business or losing volume or market share.

The court went on to say that it was not possible to find that as a class cardlock dealers are not retail dealers and exempt them from the statute as the State Fire Marshal had been doing. They went on to find that the State Fire Marshal's enforcement efforts against the present retail dealers were sporadic, unpredictable and unsystematic. The court did conclude there was irreparable harm being reaped upon the plaintiffs in this lawsuit because of the continued uneven enforcement by the State Fire Marshal and that there were expenditures and lost sales that would be difficult to trace or prove.

The court concluded "The public interest would be best served by an injunction enforcing the attendant requirement against everyone, plaintiffs and defendants and cardlock dealers in general since there is no legitimate reason to exempt the class of cardlock dealers as not being retail. The previous and continuing pattern of exempting cardlock dealers as a class or group and requirements imposed upon retail dealers does not represent the exercise of agency discretion but instead its abandonment since it creates a categorical exemption from enforcement of a group without specific privileged." It went on to order that an injunction be issued.

That injunction was stayed pending this matter being on appeal. The matter is now before the Oregon Court of Appeals and I assume sometime later this year they will rule. But for that stay, there would be an attendant present if the station or cardlock would be open. That is the ruling. That is the law of Oregon. That is the injunction that is being forced upon the State Fire Marshal. As a result of that OGD, of which my 10 clients are members, have said to ourselves how can we address legislatively the problems that were specifically articulated by the Circuit Court judge. As an attempt to do so, HB 2303 with the conceptual amendments is an attempt to address those issues.

HB 2303 is good because it is uniform and nondiscriminatory; it treats all dealers, gasoline dispensers, at retail, whether they are cardlocks or conventional stations, the same. It deals with the concerns of the elderly, the disabled or handicapped, the concerns of parents with children, and it deals with the issue of convenience. But it takes into effect the free market system and allows the system to determine who will succeed and will fail without the onerous burden of state regulation. It is fair because it requires all service stations to

dispense in the same manner in the same circumstances. It is also fair because it allows the elderly and disabled and mothers with babies the convenience of using cardlocks. Right now cardlocks discriminate against those people. By bringing self-service in across the board, we are allowing the market system to be as diverse and available as the citizens of Oregon are. This provision also addresses the issue of discrimination based on the ability to pay. Currently, the only people who can use cardlocks are people who are credit worthy. If you are a cash-only customer, you could never get self-service.

I think we need to bring Oregon into the 21st century with the other 48 states. Only one other state, New Jersey, disallows self-service. As Rep. Miller pointed out, New Jersey also bans cardlocks.

This bill does not shut down any existing facilities. The bill now would allow all operators, cardlocks, retail dealers or otherwise, to use their facilities as they are presently meant to be used. Under the judge's order right now, the cardlocks would have to start having an attendant present. The bill is important because it gives relief to rural and isolated areas.

No one is forcing self-service down anyone's throat, no one is forcing cardlock service down anyone's throat and no one is forcing full-service or attended-service down anyone's throat. We are saying let's have those options available and the market will dictate. Plus we are saying during certain hours of the day we will guarantee, under HB 2303, that there will be an attendant to assist anyone.

337 I think it is important to realize that in the 40 years since the original law was enacted there has been tremendous advances in technology and in safety equipment. To hold the law today to the standards of the technology and safety of 40 years ago, I think, is improper and inappropriate.

The bottom line is the bill addresses the problems that were inherent in the present law and the present administration of the State Fire Marshal. That is the issue of unfairness, discrimination and a blatant failure by the state to enforce the existing law. We do have self-service in Oregon. It is time to level the playing field and give the consumers the opportunities they need.

367 JOHN ALTO, gasoline dealer, submits cartoon illustrations (EXHIBIT I) and presents scenario of gasoline distribution costs and activities to illustrate the impact on gasoline dealers and consumers.

434 MR. BILL TUNINGA: As part of our preparation for our trial, we took the liberty of videotaping about 18 hours in 18 different locations. We will have the tape of the cardlock facilities available next week.

420 MR. HARRIS: In those tapes you will see people with RVs, gas cans, kids on a date, mom with kids in the back, elderly people--it doesn't make any difference. Cardlocks have made a wide invasion on the general gasoline market in Oregon. They have undercut us by offering self-service. West of the mountains, people pay more per gallon for self-service in many instances than they do for mini-serve. They are willing to do that for convenience of pumping it themselves and availability 24 hours a day. With self-service you always have the right number of attendants; without self-service, you always have a bottleneck.

TAPE 49, SIDE A

018 CHAIR SCHOON: Roger alluded, and the picture shows, self-service as an option. Did you really mean that?

022 MR. ALTO: In the picture I am saying we see the future in Oregon as some stations having all three: full-serve island, self-serve island, and a cardlock island. The cardlock island may be open when other parts of the facility are closed. I think that may be the case in Eastern Oregon where a person would not be justified in the evening, but the gasoline would be available because the cardlock facility would be open.

We know by count and by testimony in the trial, as well as in other testimony, that there are 52 dual facilities, i.e. cardlock/service stations in Oregon currently.

044 REP. WALDEN: You made the comment that in Eastern Oregon, the high minimum wage makes it hard for people to have an attendant. Doesn't that argue for cardlocks?

047 MR. TUNINGA: I think that is one of the persuasive aspects of it. It also argues for attended self-service. If all they have to have is a cashier, rather than the cashier and attendant, I save myself five cents a gallon overhead. I think the individual gasoline dealer would have to decide what the demographics and market share required.

060 REP. WALDEN: You could get to the point where you could do cash transactions. Would you be supportive of that?

061 MR. ALTO: The Fire Marshal could probably better answer the questions. We find that in areas where they take cash and can't make change, rather than give the gas back to the dealer it is pumped it on the ground. I don't believe the Fire Marshal approved coin-ops. We have never been against cardlocks. Our intention was to level the playing field and offer what they are offering.

085 CALVIN SHERMAN, Cal's Service Center, Heppner, submits a packet of letters (EXHIBIT J). We travel to California and have the same problems of having to go in and pay some money, go out and pump your gas, and go back in and get your change. Every time you go in there you have to stand in line. Four or five years ago I pulled into a station in Seattle that had self-serve or full-serve; full-serve was 50 cents a gallon more. My bookkeeper in Walla Walla says they pay on the average 30 cents a gallon more.

My problem is cardlocks. We had four stations in town. We are down to two now and my volume has been cut in half from what it was in 1981. My profit margin today is the same as in 1981. We have had to lay off the kids we used to hire. The cardlock people in our area are the same people who sell me gas.

I like the business and I like to give full-service and have always been a full-service station. We wash every window and rear view mirror on every vehicle, check the oil if the customer wants and we look at the tires.

128 CHAIR SCHOON: Is there another station in town, or just a cardlock?

MR. SHERMAN: There is another station like mine and two cardlocks. One cardlock pumps only diesel fuel. The other pumps both gas and diesel.

The people who have the cardlocks supply us with fuel. They are making a profit on the gas they sell to us and have put out two pumps with only gravel. They have hardly any overhead and there is no way to compete with that. We provide rest rooms. Anybody in town with good credit can go to the cardlock, fill up with fuel, then pull into our island and use our window washers, air, water and rest rooms.

According to DEQ, in trying to get a loan to put in new tanks, with the

way they have cut our volume down, there is no way we can prove pay back to get a loan. We still want to operate and serve our people in our area. We are not on a main thoroughfare and don't generally have people coming through at all times of the night, but there has never been a time that anybody has been denied fuel. The police have gotten us out and we still furnish gas for the ambulance in the area and anytime there is a call for the ambulance, we are generally there before the ambulance gets there.

160 VICTOR KLINGER, Lexington Chevron: We are back to where we were last session and I can't get the law enforced. Do the administrative rules overstep our state statutes and the vote of the people? Because the law hasn't been enforced, you are getting information concerning that situation. If the law had been enforced and allowed to run correctly, and these 300 cardlocks would have had to meet our specifications, you would see full-service. Before the cardlocks interfered with our businesses there was no problem. Morrow County Grain Growers in Lexington in 1976 had put in pumps, underground storage tanks, a full facility. I like competition but when you look back and see 95 of the 100 users in town at the cardlock, you have a problem. They will come down and get \$5 of gas, you wash their windows, check their oil, and air their tires, then they go fill their car with gas at the cardlock for 10 cents a gallon cheaper. Four and one-half years ago they determined their pricing off our price and stayed 10 cents under. Four and one-half years later we still have the same problem. No matter where I drop it, they still go 10 cents under my price. In the meantime, five dispensing facilities in my area have gone down and I am hanging by a string. I almost shut it down last week because I arrested one of the cardlock owners. Yet, the district attorney would not sign my complaint because he said we are not going to do this. The district attorney answers to this Legislature. He enforces the laws. I am asking this committee to confront the Legislative body. It was a desperation move to arrest the cardlock owner. He didn't show up in the courtroom and it was dismissed it.

Maybe the state can't enforce this because the Fire Marshal made rules that goes against what the statute says. We all know it. The rules are before the Oregon Court of Appeals. I petitioned these rules in 1989 and I went through the 1989 Session saying we needed help.

The cardlock is running on above-ground tanks and is selling 100 degree expanded fuel in the summer time. I believe that will be a six percent fraud to the public. If he pumps 40,000 gallons out of that cardlock at 100 degrees, he is frauding them six cents on the dollar if the price is \$1.00 a gallon. We can't and haven't been allowed to have above-ground tanks. There is not a service station in Eastern Oregon that has above-ground tanks. We can meet the underground storage tanks by vaulting them. The tanks cost less and you don't have to buy the \$1 million insurance policy. But how do we know we can meet the DEQ and EPA regulations? We don't know because the cardlocks are pumping 2,000 gallons a day and we are pumping 150.

246 MR. SHERMAN: I drive by the cardlock every day and in the winter time they sit there with their motors running and the nozzle in their tanks. If you want to see spills, go to the cardlocks. There are diesel spills all over. You don't see gasoline spills because it will dissipate. We have even told DEQ and nothing is done about it. We have to have paved lots and ways to shut off spills if anything happens.

266 MR. KLINGER: Of the 113 million gallons of gas that goes through Oregon, John Alto said they considered that 40 percent of the fuel is going through cardlocks and 60 percent through the service stations. At a 15 cent mark up which was given as testimony by one cardlock that is what it takes to run his outfit, if you spread it out among the 300 cardlocks in the state, that is a \$22,000 a month profit for each of the

300. With the 2,000 service stations pumping 60 percent of the fuel, they are making a little over \$5,090 each. There are no rest room facilities in any of the cardlocks in our area. They don't have the distance required from the buildings to the pumps. If the building every burns up, which I complained to the State Fire Marshal about, with over 1,000 tires in it and the tanks on the hill above it, it will probably blow the whole town down.

300 JAMES D. TRENARY, JAMES D. TRENARY, INC. submits and summarizes a prepared statement opposing HB 2303, 2680 and 2783 (EXHIBIT K).

415 DICK SCOTT, Chevron Dealer, Portland: I am a long time past board member of the Oregon Gasoline Dealers Association and a past president of the association and I am against self-serve in Oregon. I do not see any advantage to the consumer. The association does not represent all of the dealers in Oregon. You have heard testimony previously about what happens when you get self-serve gasoline in the state. There is a program by big oil to take over the stations. The policy of Chevron, USA is that every new station being built from the ground will be run by the company; it won't be run by a dealer. They are building a C-Store. If you are interested in your constituents not only getting gasoline, but getting service with the gasoline, you had better think twice about self-serve because self-serve gasoline makes it available for a company-operated C- Store.

TAPE 48, SIDE B

022 The problem with cardlocks has been coming for a long time. We have had a fire marshall and an attorney general who haven't done their jobs.

I don't think this Legislature is in a position to fix that long-term problem with a law about self-serve gasoline. If you want to fix the problem of cardlocks you have to go back to underground storage tanks. Somewhere along the line we have to accept the responsibility as a state for some type of legislation to get a superfund to help the small dealers and the small jobbers get financing to put in underground storage tanks so they can compete in the market place. If you don't address that issue, you still haven't solved the problems.

031 The problem with cardlocks relates to underground storage tanks. Self-service gasoline won't fix that. Safety is an issue. I can tell you people bring in all kinds of containers to put gasoline in. If you have someone with control of their own gas pump, you will have gasoline in every type of container you can think of.

Phase II vapor recovery is coming and we will have the most awful nozzle that is about three feet long and weighing 12 pounds. Rep. Walden asked about the pumps that take money. If you think you have problems now, go to Florida and look at some of the unattended gasoline locations that are open to retail. The gas pumps will take money, credit cards and debit cards. Service is not available. Self-service equals C-Stores which equals less automotive services which equals less availability of service to your constituents.

046 ALAN BAUDISH, owner of Chevron station in Lake Oswego: I am a member of the Oregon Gasoline Dealers Association and I do not support the self-service issues in front of you. We have many problems in our industry, but the legislation before you doesn't answer the problems. I urge you vote no for self-service.

066 BOB BARMAN, UnoCal dealer: I have six service stations. Our stations are open 24 hours a day, seven days a week, 365 days a year. I have been in the service station business for 11 years. I have worked for UnoCal Company for six years and have been a dealer for five years. I would like to clear up some misconceptions. We have self-serve in this state, but they can't get it at my stations. If the customer can

go across the street and buy self-serve gasoline at the cardlock, why can't that person come to my station and pump their own gas? No everyone wants self-serve. Probably the majority of my customers don't want self-serve. But I am tired of the ones who do want self-service coming over asking why they can't pump their own gas. Yet, the state, visa the regulators, are allowing cardlocks across the street from me and at every single community in this state.

090 The reason I got involved in self-serve was that I had an employee stabbed in the face at the Salem Market Street exit. Last year I had to call Senator Roberts because one of my employees was beaten at 10:00 p.m. at 122nd and Glisan. The police refused to come out to take a crime report. I want self-serve because in some communities the crime rate is so disgusting that we need to better protect my employees. At my Canby station which is the only station open on Highway 99 between Salem and Portland, the attendant was held up and beat with a gun to his head at 2:00 a.m. on the island after being drawn out by a customer. We finally had to have a beeper put on him by the local Canby police. Why do we need self serve? I want to give the people of Canby service 24 hours a day. We need to protect our dealers.

Mutual of Enumclaw, my insurer, charges the same rates for self-serve, full-serve or mini-serve. There is no difference in rates for fire and safety for service stations. The difference is at full- service stations where you have back rooms. When you are fixing alternators and brakes you have a different insurance rate. If you are talking about pumping gas at a full-service station versus pumping gas at a self-service station in Washington, the component for the insurance premium is the same.

143 REP. WALDEN: Could we have that checked because we have heard testimony to the contrary.

145 CHAIR SCHOON: Would you give the agent information to Mr. Connolly?

145 MR. BARMAN: I will. We don't ever terminate employees. Our problem is finding people who want the job. A lot of people don't want to pump gas. We pay them much more than the minimum wage, insurance and profit sharing. The gal with the Commission on Women--I find this law very sexist. There are no women interested in pumping gas. I have two female employees at six stations. If I had self-serve, I could hire gals to service those who want service and collect cash from the cars.

I was here as President of Oregonians for Self-Serve two years ago. I learned that people want service. We have said we will offer service at every station in this state for a eight-hour period of time. If everyone in the community has to offer service, it will keep the price at a competitive position. Our intention is to always take care of the disabled. It is easy; if you have a self-serve price, they pay the self-serve price and get full service. If the operator won't do that, I think there should be a major stiff penalty of \$1,000 or \$2,000 or shut them down. I don't believe there are two dealers in the state who don't want to help the disabled. If the disabled want to come to us, I will be happy to put in whatever wording they want to make sure they are taken care of.

214 IRV FLETCHER, Oregon AFL-CIO, submitted but did not present a prepared statement in opposition to HB 2303, 2680 and 2783 (EXHIBIT L).

The following Preliminary Staff Measure Summaries are hereby made a part of these minutes: HB 2302 (EXHIBIT M), HB 2303 (EXHIBIT N), HB 2680 (EXHIBIT O), HB 2783 (EXHIBIT P).

213 CHAIR SCHOON declares the meeting adjourned at 4:40 p.m.

Respectfully submitted,

Reviewed by,

Annetta Mullins
Assistant

Terry Connolly
Administrator

EXHIBIT SUMMARY

A -HB 2303, prepared statement, Rep. Bill Dwyer B -HB 2303, prepared statement, Al Elkins C -HB 2302, prepared statement, Dell Isham D -HB 2680, prepared statement, Loren Simonds E -HB 2303, prepared statement, Mike Bullis F -HB 2303, prepared statement, Patrick Rogers G -HB 2303, prepared statement, Art Laurbach H -HB 2303, prepared statement, Howard Reher I -HB 2303, cartoon illustrations, John Alto J -HB 2303, packet of letters, Calvin Sherman K - HB 2303, prepared statement, James D. Trenary L -HB 2303, prepared statement, Irv Fletcher M -HB 2302, Preliminary Staff Measure Summary, staff N - HB 2303, Preliminary Staff Measure Summary, staff O -HB 2680, Preliminary Staff Measure Summary, staff P -HB 2783, Preliminary Staff Measure Summary, staff