



FIRST REPORT
OF THE
STANDING COMMITTEE ON LAW AMENDMENTS

First Session
Sixty-first Legislative Assembly
of the
Province of New Brunswick

May 6, 2025

MEMBERS OF THE COMMITTEE	
Hon. Mr. McKee, K.C., Chair Ms. Sodhi, Vice-Chair Mr. Arseneault Mr. M. LeBlanc Mr. Doucet Mr. Mallet	Mr. Robichaud Ms. M. Wilson Mr. Hogan Ms. Conroy Mr. Coon

May 6, 2025

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Madam Speaker:

I have the pleasure to present herewith the First Report of the Standing Committee on Law Amendments for the session.

The report is the result of your Committee's deliberations on Bill 4, *An Act Respecting Petroleum Products Pricing*, the subject matter of which was referred to your Committee for consideration.

On behalf of the Committee, I wish to thank those who appeared before the Committee. In addition, I would like to express my appreciation to the members of the Committee for their contribution in carrying out our mandate.

Your Committee begs leave to make a further report.

Respectfully submitted,

Hon. Robert McKee, K.C., M.L.A.
Chair

May 6, 2025

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Madam Speaker:

Your Standing Committee on Law Amendments begs leave to submit their First Report of the session.

On November 20, 2024, Bill 4, *An Act Respecting Petroleum Products Pricing*, was introduced in the Legislative Assembly.

The purpose of Bill 4 is to repeal the cost of carbon adjustor, a component of the maximum price of petroleum products under the *Petroleum Products Pricing Act* and regulation.

On December 10, 2024, by resolution of the House, consideration of the subject matter of Bill 4 was referred to the Standing Committee on Law Amendments.

On February 5, 2025, your Committee met and decided to select and invite interested stakeholders to provide input and advice to the Committee with respect to the issues raised by Bill 4.

Your Committee held a public hearing on February 25, 2025, and heard from six invited presenters.

On March 27, 2025, your Committee met to consider the input received and to formulate a report with recommendations to the House.

The Committee wishes to express its appreciation to the presenters who appeared at the public hearing.

The following is a summary of the input received on the issues raised by Bill 4, with recommendations to the House.

OVERVIEW

The cost of carbon adjustor (“CCA”), which Bill 4 proposes to repeal, is a component of the regulated maximum wholesale and retail price of liquid petroleum products. Specifically, the CCA is added to the price of motor fuel (gasoline and diesel) sold by wholesalers and retailers in New Brunswick. The Legislature adopted the CCA in December 2022 by amending the *Petroleum Products Pricing Act* and regulation.

The CCA is defined in the *Petroleum Products Pricing Act* as a monetary adjustment intended to mitigate for wholesalers and retailers the effect of costs incurred by a primary supplier of liquid petroleum products to comply with the federal *Clean Fuel Regulations* or other similar federal regulations. The federal regulations require primary suppliers (producers and importers) to reduce the carbon intensity of the fuels they supply beginning in July 2023.

The New Brunswick Energy and Utilities Board (“EUB”) is tasked under the *Petroleum Products Pricing Act* with setting the amount of the CCA, together with the other components that make up the maximum price of fuel. The EUB decided on a formula to calculate the CCA and first added it to the maximum price of gasoline and diesel as of July 2023. While the *Petroleum Products Pricing Act* contemplates that the CCA could also be added to the maximum price of heating fuel, the EUB decided not to do so because the federal regulations do not currently apply to heating fuel. The CCA is calculated each week by the EUB, and, for example, for the week beginning February 28, 2025, the CCA added 7.4 cents per litre to the maximum price of gasoline and 8.25 cents per litre to the maximum price of diesel.

The Committee notes that, following its public hearing, the federal government eliminated the federal fuel charge (commonly referred to as the carbon tax) effective after March 31, 2025. The fuel charge is another component of the maximum price of fuel under the *Petroleum Products Pricing Act* separate from, and in addition to, the CCA. Before its elimination, the fuel charge added 17.61 cents per litre to the maximum price of gasoline and 21.39 cents per litre to the maximum price of diesel.

PUBLIC HEARING

New Brunswick Energy and Utilities Board

The Acting Chairperson of the EUB advised that its role is not to express a preference for or against Bill 4 but to implement the policy chosen by the Legislature. He explained the EUB’s role in setting maximum prices for petroleum products. It is required by legislation to set the maximum price that wholesalers and retailers may charge for petroleum products. However, it does not regulate the price at which primary suppliers sell to wholesalers and retailers.

Following the 2022 amendments to the *Petroleum Products Pricing Act* and regulation that created the CCA, the EUB engaged a consulting firm, Grant Thornton, to conduct a review and recommend a mechanism to calculate the CCA. The federal *Clean Fuel Regulations* mandate that primary suppliers reduce the carbon intensity of their fuels, and the CCA was intended to allow the compliance costs incurred by primary suppliers to flow through to the end user of the fuels as a component of the maximum price. Following a public hearing, the EUB adopted a formula proposed by Grant Thornton. Since July 2023, the CCA has been a component of the maximum price of gasoline and diesel, calculated weekly. Other components include the benchmark price, the federal fuel charge, wholesale and retail margins and HST.

The EUB adopted Grant Thornton’s CCA formula on an interim basis to be used over an 18- to 24-month period until a Canadian carbon credit trading market was expected to be more fully developed. Once this market matures, it will serve as the best indicator of the cost of compliance with the *Clean Fuel Regulations*. The interim formula uses the import value of renewable diesel as a proxy for the cost of compliance. When questioned by the Committee about using a proxy that is – according to some presenters – one of the most expensive compliance options, the EUB indicated that Grant Thornton’s recommended formula was subject to an initial public hearing and a review hearing nine months later at which industry stakeholders and the Public Intervener had an opportunity to challenge it, and that other options could be adopted based on the evidence presented during a future review of the formula.

The EUB also addressed concerns about its review of wholesale and retail margins. The Committee heard from retailers and fuel distributors that they must apply to the EUB for a review of, and increase to, their margins to account for their increasing costs. The Committee heard from these presenters that the review process is lengthy and complicated and that the EUB is not as responsive as they would prefer. The Acting Chairperson apologized for the delay and lack of responsiveness, clarifying that this was partly due to staffing issues. The EUB is currently proceeding with a review of wholesale and retail margins.

In reference to Bill 4's elimination of the CCA, the Acting Chairperson confirmed that if the Bill passes, wholesalers and retailers would likely be forced to absorb the primary suppliers' costs of compliance with the *Clean Fuel Regulations*.

A planned review of the CCA formula was postponed following the introduction of Bill 4. The EUB and stakeholders would therefore find it helpful to know as soon as possible whether Bill 4 will be adopted.

Two categories of presenters – independent fuel retailers and fuel distributors – spoke against Bill 4.

Independent Fuel Retailers

The Committee heard from two independent fuel retailers, one of which is the corporate owner of nine convenience store locations, and the other, the owner of a single location, who both voiced their opposition to repealing the CCA. If Bill 4 were enacted, retailers would have to absorb the cost of primary suppliers' compliance with the *Clean Fuel Regulations* because the retailers' cost to purchase the fuel includes this compliance cost, but without the CCA the maximum price that retailers would be permitted to charge consumers would not. They said that independent fuel retailers, particularly in rural areas, would be disproportionately affected, as these businesses operate on lower volumes and higher product costs. They emphasized that retail margins on fuel sales are already thin and out of date due to delays in the EUB margin review process. Any further increase in costs would directly and negatively impact their financial viability. In fact, they asserted that removing the CCA would have an immediate crippling impact, resulting in the closure of many small retailers, as it would force them to sell fuel at a loss.

Presenters went on to outline the chain of effects that would occur if independent retailers were required to absorb the cost of *Clean Fuel Regulations* compliance. First, even if retailers were able to continue operating, fuel supply could be jeopardized, as fuel distributors would also be impacted by this change and the cost of supply would be higher. Second, if independent retailers were forced to close, rural residents would have to travel greater distances to obtain fuel to go to work and obtain essential services, resulting in increased out-of-pocket expenses. Competition may be reduced, resulting in increased prices for consumers.

Moreover, with the closure of independent fuel retailers, many rural residents would lose employment as well as a vital hub for community activity. Many independent gas stations are a place for socialization within communities with some offering food services, community activities

and charitable support to groups in need. Presenters stressed that entire communities would be negatively affected if Bill 4 becomes law.

Fuel Distributors

The Committee heard from representatives of New Brunswick fuel distributors, who addressed some of the same concerns as independent retailers. The presenters emphasized that fuel distributors are not “Big Oil”. They are independent businesses who deliver fuel directly to gasoline and diesel retailers and to industries that require on-site delivery, including hospitals, schools, agriculture, construction and the military. For some aspects of their operations, they are considered retailers and for others they are wholesalers. The presenters stated that if Bill 4 were enacted, they would have to stop delivering fuel as it would no longer be economical to continue. The supply of fuel to essential services could therefore be jeopardized.

The presenters outlined challenges with the regulation of petroleum products pricing, asserting that New Brunswick’s formula is flawed and outdated. The EUB calculates maximum wholesale and retail prices for gasoline and diesel using the New York Harbour Price as the benchmark. However, fuel distributors purchase fuel in Canada at rack prices that are higher than the benchmark and they therefore earn less than the regulated margin. By contrast, Prince Edward Island uses the Canadian rack price as the benchmark, and this already includes any *Clean Fuel Regulations* compliance costs.

If the CCA were removed as a component of the maximum price, fuel distributors would be forced to absorb the cost of suppliers’ compliance with the *Clean Fuel Regulations*. One fuel distributor explained using the example of a recent weekly EUB price schedule and the distributor’s actual cost to purchase gasoline – which was more than the benchmark price – that its true wholesale margin was less than the amount allowed in the EUB pricing formula. The distributor showed that if the CCA were not added to the maximum wholesale price, it would be selling gasoline at a loss.

Like the independent retailers, the fuel distributors also addressed concerns about the EUB’s process to adjust their allowable margins to account for their increasing costs. The presenters recommended that the *Petroleum Products Pricing Act* be reviewed to ensure that pricing is fair and equitable to all market participants. They also recommended that an annual margin review be completed or that a mechanism be established to adjust margins in a timely manner to reflect current market conditions.

Two presenters – the Conservation Council of New Brunswick and the Human Development Council – spoke in favour of Bill 4.

Conservation Council of New Brunswick

Representatives from the Conservation Council of New Brunswick (“CCNB”) expressed their concern that the CCA formula developed by Grant Thornton is not a reliable method to calculate the actual cost of compliance with the *Clean Fuel Regulations*. They challenged the use of renewable diesel as a proxy for the cost of compliance, arguing that assuming the industry is using

the most expensive compliance option inflates consumer prices. They supported this position by noting that other jurisdictions rejected the Grant Thornton formula due to insufficient evidence that renewable diesel was the best proxy to use among a variety of other options.

The CCNB criticized the CCA formula for overstating compliance costs by using marginal instead of average cost pricing. It also raised concerns about the lack of public data on the fossil fuel industry's compliance credit trading prices, which were estimated by the federal government to be far lower than the amount charged to consumers under New Brunswick's CCA formula.

According to the CCNB, industry should pay for the cost of compliance with the federal regulations. Amendments to provincial legislation are needed to ensure that the polluters themselves are absorbing these costs and not New Brunswickers. The CCNB therefore supports the repeal of the CCA.

In addition, the EUB lacks a clear statutory directive to facilitate decarbonization. The CCNB recommends including a net-zero mandate in legislation, as this would require the EUB to exercise its regulatory authority in a manner that aligns with the Province's climate commitments and supports the transition to a clean energy future. These changes would empower the EUB to make decisions that promote renewable energy development, modernize the grid, and reduce greenhouse gas emissions while maintaining affordability and reliability.

Human Development Council

The Human Development Council (“HDC”), a social planning council with a mission to coordinate and promote social development, supports the elimination of the CCA, arguing that its removal would provide much-needed relief to New Brunswickers struggling with the affordability crisis.

The HDC provided context on the affordability crisis in New Brunswick. Statistics on current levels of poverty in each city in New Brunswick indicate high income poverty rates and uneven distribution of poverty across the Province. Indicators of financial distress include low median household incomes in New Brunswick, a growing gap between the minimum wage and a true living wage, growing food insecurity, high rates of energy poverty, and a rising number of individuals receiving social assistance at rates far below the poverty line.

It was noted that gasoline prices increase costs across the entire economy. Eliminating the CCA would remove an inflationary pressure point that is making life more expensive for all New Brunswickers. The HDC argued that oil refineries and suppliers have financial capacity to bear the cost of compliance rather than passing it on to consumers who can least afford it.

The HDC emphasized that if Bill 4 reduces the price of gasoline by several cents per litre, this would provide immediate and direct relief to individuals struggling to make ends meet. The money New Brunswickers save on fuel could then be directed to other necessary expenses. Rural residents, who do not have access to public transit, and lower-income individuals would benefit the most as they spend a greater proportion of their incomes on gasoline.

RECOMMENDATIONS

The Committee wishes to report the concerns raised by independent retailers and fuel distributors that the elimination of the cost of carbon adjustor could harm their businesses, that their regulated margins have not kept pace with their increasing costs, and that the petroleum products pricing legislation should be reviewed. The Committee also acknowledges the concerns expressed by other presenters that New Brunswickers are facing an affordability crisis and that the current method of calculating the cost of carbon adjustor may impose a higher than necessary cost on consumers. Accordingly, the Committee makes the following recommendations:

1. THAT the Minister responsible for Energy consider directing the New Brunswick Energy and Utilities Board under subsection 24(1) of the *Energy and Utilities Board Act* to investigate:
 - (a) means of establishing the true cost of compliance with the *Clean Fuel Regulations* rather than using a proxy; and
 - (b) establishing and undergoing an annual review, or a different mechanism, to adjust margins in a timely manner to reflect and respond to changing market conditions.
2. THAT the government consider undertaking a review of the *Petroleum Products Pricing Act* to ensure that pricing is fair and equitable to all market participants.