

BILL ANALYSIS

C.S.H.B. 2174
By: Darby
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised about the inspection process for motor fuel metering devices. C.S.H.B. 2174 seeks to improve the efficiency of that process by exempting such devices from required inspection by the Department of Agriculture and instead requiring certain such devices to be inspected, tested, and calibrated for correctness by a service company license holder or a service technician license holder at least once every two years.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2174 amends the Agriculture Code to exempt a motor fuel metering device defined as a commercial weighing or measuring device used for motor fuel sales with a maximum flow rate of 20 gallons per minute or less from statutory provisions requiring the Department of Agriculture (TDA) to inspect and test for correctness a commercial weighing or measuring device at least once every four years or more often under certain conditions and from provisions requiring registration of the device. The bill prohibits the TDA from increasing a fee for registration and inspection of weighing or measuring devices in a state fiscal biennium by an amount that exceeds five percent of the amount of the fee at the end of the preceding state fiscal biennium.

C.S.H.B. 2174 requires a motor fuel metering device that is not exempt by TDA rule to be inspected, tested, and calibrated for correctness by a service company license holder or a service technician license holder at least once every two years if the device is kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the measure of motor fuel or the device is purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award. The bill requires the inspection, testing, and calibration to be performed by a person who holds a service company license or a service technician license under contract with the operator or user of the motor fuel metering device. The bill requires a person who owns or operates a motor fuel metering device, unless the device is exempt by TDA rule, to register the device with the TDA before using the device for a commercial transaction. The bill requires an application for a device registration to be submitted to the TDA on a form prescribed by the TDA, be accompanied by any other document or form required by the TDA, include an applicable registration fee, and include documentation of compliance with inspection requirements.

C.S.H.B. 2174 makes a registration valid for one year unless a different period is established by

TDA rule. The bill requires the registration to be renewed at or before the end of each registration period and requires the application for renewal to include documentation of compliance with inspection requirements. The bill prohibits the TDA from issuing a certificate to operate a motor fuel metering device if a person fails to register or renew a registration. The bill requires the TDA to issue the certificate when the operator submits to the TDA the items required for the registration application. The bill authorizes the TDA to assess a late fee if the registration of one or more devices located on a premises is renewed after the end of the registration period because of a registration error and caps the amount of the penalty at \$250 per year for the premises. The bill requires TDA specifications and tolerances for motor fuel metering devices to be the same as those recommended by the National Institute of Standards and Technology.

C.S.H.B. 2174 authorizes a TDA representative to collect samples and conduct motor fuel quality testing as an alternative to the TDA collecting those same and conducting that testing. The bill requires the collection of samples and the conducting of testing at a dealer's location to be performed by person who holds a service company license or a service technician license under contract with the dealer and establishes that the license holder is considered a TDA representative for the purposes of testing motor fuel quality. The bill requires a TDA representative, with respect to the testing of motor fuel quality, to follow certain applicable procedures for the collection, sampling, and handling of fuel to prepare for laboratory analysis. The bill changes the criteria by which the TDA may stop the sale of motor fuel or mark a device used to dispense motor fuel as out of order.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2174 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 13.001(a), Agriculture Code, is amended.

SECTION 2. Section 13.002, Agriculture Code, is amended by adding Subsection (c) to read as follows:

(c) The department shall contract with one or more license holders under Subchapter I to perform the department's duties under this chapter related to motor fuel metering devices. A reference in this chapter to the commissioner or department in the context of a contracted service means the contractor.

SECTION 3. Section 13.101, Agriculture Code, is amended.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Substantially the same as introduced version.

No equivalent provision.

SECTION 2. Same as introduced version.

SECTION 4. Section 13.1011, Agriculture Code, is amended.

SECTION 5. Subchapter C, Chapter 13, Agriculture Code, is amended by adding Section 13.1015 to read as follows:

Sec. 13.1015. INSPECTION OF MOTOR FUEL METERING DEVICES. Unless a motor fuel metering device is exempt from the application of this section by department rule, a motor fuel metering device shall be inspected, tested, and calibrated for correctness by a license holder under Subchapter I at least once every two years if the device is:

- (1) kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the measure of motor fuel; or
- (2) purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

SECTION 6. Subchapter C, Chapter 13, Agriculture Code, is amended by adding Section 13.1016 to read as follows:

Sec. 13.1016. REQUIRED REGISTRATION OF MOTOR FUEL METERING DEVICES. (a) Unless a motor fuel metering device is exempt from the application of this section by department rule, a person who owns or operates a motor fuel metering device shall register the device with the department before using the device for a commercial transaction.

(b) An application for a device registration must:

- (1) be submitted to the department on a form prescribed by the department;
- (2) be accompanied by any other document or form required by the department;
- (3) include the registration fee required under Section 13.1151; and
- (4) include documentation of compliance with Section 13.1015.

(c) A registration under this section is valid for one year unless a different period is established by department rule. The

SECTION 3. Same as introduced version.

SECTION 4. Subchapter C, Chapter 13, Agriculture Code, is amended by adding Sections 13.1015 and 13.1016 to read as follows:

Sec. 13.1015. INSPECTION OF MOTOR FUEL METERING DEVICES. (a) Unless a motor fuel metering device is exempt from the application of this section by department rule, a motor fuel metering device shall be inspected, tested, and calibrated for correctness by a license holder under Subchapter I at least once every two years if the device is:

- (1) kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the measure of motor fuel; or
- (2) purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

(b) Inspection, testing, and calibration under this section must be performed by a license holder under Subchapter I under contract with the operator or user of the motor fuel metering device.

Sec. 13.1016. REQUIRED REGISTRATION OF MOTOR FUEL METERING DEVICES. (a) Unless a motor fuel metering device is exempt from the application of this section by department rule, a person who owns or operates a motor fuel metering device shall register the device with the department before using the device for a commercial transaction.

(b) An application for a device registration must:

- (1) be submitted to the department on a form prescribed by the department;
- (2) be accompanied by any other document or form required by the department;
- (3) include the registration fee required under Section 13.1151; and
- (4) include documentation of compliance with Section 13.1015.

(c) A registration under this section is valid for one year unless a different period is established by department rule. The

registration must be renewed at or before the end of each registration period and the application for renewal must include documentation of compliance with Section 13.1015.

(d) If a person fails to register or renew a registration as required by this section, the department may not issue a certificate to operate the motor fuel metering device. The department shall issue the certificate when the operator submits to the department the items required by Subsection (b).

registration must be renewed at or before the end of each registration period and the application for renewal must include documentation of compliance with Section 13.1015.

(d) If a person fails to register or renew a registration as required by this section, the department may not issue a certificate to operate the motor fuel metering device. The department shall issue the certificate when the operator submits to the department the items required by Subsection (b).

(e) The department may assess a late fee if the registration of one or more devices located on a premises is renewed after the end of the registration period because of a registration error, including one or more devices not properly registered, failure to register the correct type of device, or failure to timely register a previously registered device. The amount of the penalty may not exceed \$250 per year for the premises.

SECTION 7. Section 13.114, Agriculture Code, is amended.

SECTION 5. Same as introduced version.

SECTION 8. Subchapter A, Chapter 17, Agriculture Code, is amended by adding Section 17.002 to read as follows:

Sec. 17.002. PERFORMANCE OF DUTIES UNDER CONTRACT. (a) The department shall contract with one or more license holders under Subchapter I, Chapter 13, to perform the department's duties under this chapter, including collecting samples and conducting testing under Section 17.072.

(b) A reference in this chapter to the commissioner or department in the context of a contracted service means the contractor.

No equivalent provision.

No equivalent provision.

SECTION 6. Section 13.1151, Agriculture Code, is amended to read as follows:

Sec. 13.1151. FEES FOR REGISTRATION AND INSPECTION. (a) The department may charge the owner or operator of a weighing or measuring device a fee, as provided by department rule, to recover the costs of registration and inspection of a weighing or measuring device required to be registered or inspected under this chapter.

(b) Notwithstanding any other law, the department may not in a state fiscal biennium increase a fee under Subsection (a) for a motor fuel metering device by an amount that exceeds five percent of the amount of the fee at the end of the preceding state fiscal biennium.

SECTION 9. Sections 17.072(a) and (b), Agriculture Code, are amended to read as follows:

(a) The department or a representative of the department may collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale, to verify that the motor fuel complies with the minimum standards required by Section 17.071.

(b) On arriving at a facility to conduct testing under Subsection (a), a representative of the department shall notify the owner or manager of the facility of the representative's presence and purpose. The department representative shall follow the most recent applicable procedures specified by ASTM International Standard D4057, D4177, D5842, or D5854 for the collection, sampling, and handling of fuel to prepare for laboratory analysis.

SECTION 10. Section 17.073(a), Agriculture Code, is amended.

SECTION 11. Section 17.151, Agriculture Code, is repealed.

SECTION 12. This Act takes effect September 1, 2017.

SECTION 7. Section 17.072, Agriculture Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) The department or a representative of the department may collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale, to verify that the motor fuel complies with the minimum standards required by Section 17.071.

(a-1) The collection of samples and conducting of testing at a dealer's location must be performed by a license holder under Subchapter I, Chapter 13, under contract with the dealer. The license holder is considered a representative of the department for purposes of this section.

(b) On arriving at a facility to conduct testing under Subsection (a), a representative of the department shall notify the owner or manager of the facility of the representative's presence and purpose. The department representative shall follow the most recent applicable procedures specified by ASTM International Standard D4057, D4177, D5842, or D5854 for the collection, sampling, and handling of fuel to prepare for laboratory analysis.

SECTION 8. Same as introduced version.

No equivalent provision.

SECTION 9. Same as introduced version.