

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 4, 2019

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **SB2119** by Alvarado (relating to the transfer of the regulation of motor fuel metering and motor fuel quality from the Department of Agriculture to the Texas Department of Licensing and Regulation; providing civil and administrative penalties; creating criminal offenses; requiring occupational licenses; authorizing fees.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend Subtitle A, Title 14, Occupation Code, regarding the transfer of the regulation of motor fuel metering and motor fuel quality from the Texas Department of Agriculture (TDA) to the Texas Department of Licensing and Regulation (TDLR).

The bill would add new Chapter 2310 to the Occupation Code regarding motor fuel metering and quality. This chapter would be divided into subchapters pertaining to enforcement, civil penalties, stipulations regarding standard weights and measures associated with the use and sale of motor fuel metering devices, inspection and registration of motor fuel metering devices, and rules and requirements governing the licensing of motor fuel metering device service technicians and service companies.

The bill would transfer sections of the Agriculture Code, to Chapter 2310, Occupations Code, regarding the inspection, required registration, complaints regarding motor fuel metering devices, and the sale, delivery, quality, and testing of motor fuel. The bill would make conforming changes, including repeal of some sections, to the Agriculture and Tax Codes.

The bill includes provisions for the transfer of all rules, fees, policies, procedures, decisions, and forms regarding motor fuel metering devices and motor fuel quality from TDA to TDLR.

Section 11 of the bill stipulates that TDA and TDLR should adopt a transition plan that provides for the orderly transfer of power, duties, functions, programs, and activities covered by this bill. The transition plan must provide for the transfer to be completed no later than September 1, 2020. The bill would require TDA to provide TDLR with access to systems, facilities, and information necessary to accept the program transfer. The bill would authorize TDLR to establish a stakeholder workgroup to provide input on the program transfer. The bill would transfer all full-time equivalent employee (FTE) positions at TDA that directly and indirectly concern the administration or enforcement of the program or activity being transferred to TDLR. This section of the bill would take effect on September 1, 2019.

Other than Section 11, the bill would take effect September 1, 2020.

Methodology

This analysis assumes that any increased cost to TDLR, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee-generated revenue. The bill's provisions limit how much TDLR would be able to increase fees in this program, therefore it is possible that fees in unrelated programs would need to be increased to cover the costs for the motor fuel metering and quality program.

TDA did not provide cost or revenue information specific to the motor fuel metering and quality program. The agency reported that 6.7 FTEs allocated across 62 staff members provide the administration, support, legal, licensing, management and field inspection activities for the program.

Pursuant to Senate Bill 2065, Eighty-fifth Legislative Session, 2017, the Comptroller's Office published "A Report on Occupational Licenses Required by the State of Texas" in December 2018. This report identifies more than \$11.0 million in revenue generated by TDA for licenses related to Weights and Measures Licensed Service Company, Weights and Measures Licensed Service Technician, and Weights and Measures Device. Based on this information and information provided by TDLR, this analysis assumes that the motor fuel metering and quality program generates approximately \$8.0 million in All Funds revenue each fiscal year.

Based on information provided by TDLR, the following is an estimate of costs that would be incurred by TDLR to implement the provisions of the bill. Overall, it is estimated that TDLR would incur costs of approximately \$7,552,681 in fiscal year 2020 and \$6,713,493 each fiscal year thereafter, offset by approximately \$8.0 million in fee revenue from the program.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Licensing and Registration

There are currently approximately 400,000 fuel devices registered in Texas, which re-register every year. There are also approximately 130 new and renewing companies, for which liability service must be verified, and approximately 680 new and renewing service technicians, for whom education and examination requirements must be checked. TDLR estimates six Licensing and Permit Specialists II (6.0 FTE) would be needed to accomplish these tasks.

Service technicians are required to complete pre-license education and pass an examination in order to hold a license. Two Program Specialists IV (2.0 FTE) would be needed to monitor and approve the curricula of the education providers, audit classes, and oversee the administration of the examinations and any updates or improvements to examination content.

These 8.0 FTEs would result in an estimated cost of \$576,239 in fiscal year 2020 including one-time expenses for computers, equipment and furniture, then cost \$506,974 each fiscal year afterward for salary, benefits, and supplies.

Required stickers for the fuel pumps would be issued with each biennial registration. The stickers cost approximately \$2 each and 400,000 are issued each year resulting in an annual cost of \$800,000.

Inspections

Based on information provided by TDLR, this analysis assumes more than 60,000 inspections are performed each year for device compliance with fuel device standards, and for registration and labeling compliance. Additionally, more than 2,000 annual fuel quality inspections are completed. TDLR reports it would need fifteen Inspectors IV (15.0 FTE) to complete service observations at facilities operating motor fuel metering devices and enforce registration requirements for all commercial weighing and measuring devices, service companies and service technicians, and the new laws and regulations applicable to facilities, service companies and service technicians. These inspectors would also ensure that required consumer information stickers are displayed on the face of each pump, the service company seals are affixed as required to the face of motor fuel metering devices, and a Certificate of Registration is prominently posted at the registered location. Two Managers III (2.0 FTE) would be needed to conduct field audits for quality control of the inspectors' efforts and the work done by service companies and their technicians and to supervise the 15 inogram Specialists III (2.0 FTE) would be needed to serve as coordinators and oversee the analysis and management of inspection reports.

These 19.0 FTEs would result in an estimated cost of \$1,659,202 in fiscal year 2020 including one-time expenses for computers, equipment and furniture, then cost \$1,498,679 each fiscal year afterward for salary, benefits, and supplies.

Customer Service

Based on analysis by TLDR, it is estimated there are approximately 15,000 businesses that sell fuel to the public and about 800 service company and technician licensees. This analysis assumes TDLR will see increased customer service contacts due to the transfer of the program from businesses, licensees and the public. Four Customer Representatives III (4.0 FTE) would be needed to respond to phone calls, emails, and social media interactions. These 4.0 FTEs would result in an estimated cost of \$247,372 in fiscal year 2020 including one-time expenses for computers, equipment and furniture, then cost \$213,932 each fiscal year afterward for salary, benefits, and supplies.

Enforcement and Complaint Resolution

It is estimated that approximately 60 complaints are filed by consumers each year regarding fuel quality, fuel measurement issues, and octane rating misgivings. Additional complaints are submitted by service technicians via calibration reports regarding problems identified during testing and maintenance, and any unregistered locations or devices found. TDLR estimates one Attorney IV (1.0 FTE) would be needed to handle and prosecute these complaints with one Legal Assistant III (1.0 FTE) to manage the attorney's caseload and one Legal Assistant III (1.0 FTE) to respond to increased activity. One Investigator IV (1.0 FTE) would be needed to collect documentation and statements from involved parties, conduct or assist with complaint inspections, and prepare a report for the attorney's review and decision on the disposition of the case. A Legal Assistant II (1.0 FTE) would be needed to answer complaint and concern phone calls and review incoming complaints to determine if TDLR has jurisdiction over a complaint, then take the appropriate action. Three Administrative Assistants III (3.0 FTE) would be needed to organize all complaint documentation, enter the complaints in the case management system, prepare the

casefiles, and assign the cases for investigation and attorney review.

TDLR anticipates the program would need a skimmer response unit to respond to this recurring threat. The unit would respond to reports and discoveries of skimmers throughout Texas, interact with facilities to prevent the installation of skimmers, and educate the public on how to be aware of the possibility of a skimmer in a fuel dispenser. When a skimmer is discovered or reported, TDLR would ensure the device has been disabled and take appropriate measures to protect from the fuel dispenser from tampering until a local law enforcement agency arrives, as well as preserve the skimmer for investigation. TDLR would coordinate with local law enforcement agencies in conducting an investigation and interact with financial institutions, as needed, to help mitigate losses. The unit would be comprised of an Attorney IV, two Investigators V, one Legal Assistant II, two Program Specialists VI, a Cybersecurity Analyst II, and an Information Specialist III (8.0 FTE).

These 15.0 enforcement FTEs would result in an estimated cost of \$1,475,749 in fiscal year 2020 including one-time expenses for computers, equipment and furniture, then cost \$1,344,891 each fiscal year afterward for salary, benefits, and supplies.

Program Administration

TDLR estimates the agency would need four Program Specialists V (4.0 FTE) to serve as subject matter experts on fuel devices to assist in enforcement investigations and complaint inspections, to oversee the calibration of devices by service technicians and the testing of fuel quality, and to perform compliance checks and assist with field audits throughout the state, as needed. Two Auditors IV (2.0 FTE) would be needed to audit the approximately 200,000 yearly service technician reports of inspections, tests, and calibrations, along with the supporting documentation.

Two General Counsel III and a Legal Assistant III (3.0 FTE) would be needed to rewrite and conform the administrative rules with the amended statute. The assistant general counsels would serve as TDLR's attorneys for the fuel device program, providing legal advice to the commission, department, other entities of government, and the public. The legal assistant would assist the assistant general counsel in the counsel's work and aid in the processing of increased open records requests the program would bring.

Two Accountants III (2.0 FTE) would be needed for processing the payments for 200,000 fuel device registrations and the hundreds of service company and technician application and renewal fees, as well as penalty payments from disciplinary actions. Two Purchasers III (2.0 FTE) would be needed to handle any necessary requisitions associated with the transfer of a large program and associated FTEs, as well as develop, implement, and oversee any contracts entered into for the program's regulation. Two Administrative Assistants III (2.0 FTE) would be needed for the mailroom to assist with the processing and distribution of the new influx of mail and fee payments. One Fleet Managers II (1.0 FTE) would be responsible for the administration and maintenance of the vehicle fleet which would transfer to TDLR, as well as coordinating the daily operations of the vehicles.

With the addition of all the motor fuel program FTEs, the agency would need a Human Resources Specialist III (1.0 FTE) to assist with the human resource needs of the new employees and to assist with hiring, as needed, for the fuel device program. The agency would also need one Network Specialists V (1.0 FTE) for computer and peripheral equipment, network, and phone support.

TDLR would need a Web Administrator III (1.0 FTE) to incorporate into its website the necessary features to allow service technicians to file their reports online, complaints to be filed online,

allow the online registration of facilities and devices, applications for service companies and technicians to be filed online, and the online payment of penalties. The web administrator would also be needed to keep the website current with the latest information about the fuel device program for the public, registrants, and licensees.

These 19.0 administration and IT FTEs would result in an estimated cost of \$1,831,347 in fiscal year 2020 including one-time expenses for computers, equipment and furniture, then cost \$1,663,307 each fiscal year afterward for salary, benefits, and supplies.

Metrology Laboratory

The bill includeat would transfer all TDA property relating to the motor fuel metering and quality program to TDLR. This analysis assumes that, if necessary, the state's metrology laboratory would transfer to TDLR with all other property associated with the fuel device program and any costs incurred for this transfer by TDLR would be offset by savings at TDA. The bill would also allow TDLR to contract with a metrology lab certified by the National Institute of Standards and Technology.

According to an analysis by TDLR of available information from TDA's website, strategic plan, and other reports from that agency, the metrology laboratory currently has 14 FTEs, however only three FTEs inspect and correct the standards used by a department inspector, other department employee, or service company to perform fuel device inspections and tests. Based on this information, TDLR estimates it would need two Inspectors V and one Program Specialist III (3.0 FTE) to continue this work. These 3.0 FTEs would result in an estimated cost of \$240,679 in fiscal year 2020 including one-time expenses for computers, equipment and furniture, then cost \$214,726 each fiscal year afterward for salary, benefits, and supplies.

Based on information provided by TDA, the bill would result in a loss of 30.2 FTEs in the metrology and weights and measures programs, allocated across 175 staff members. TDA did not provide specific information about the metrology lab costs associated specifically with the motor fuel metering and quality program.

Database

TDA uses a self-built system to register devices and license service companies and technicians, and a system to monitor inspections of the devices each year. TDLR would need to transfer the data from the TDA systems into inspection and licensing systems built at TDLR. Additionally, three license types and various endorsements would need to be created and issued, TDLR and third-party inspections would need to be tracked, and an external web portal would need to be created to accept inspection reports, license and registration applications, and penalty and fee payments. A web portal which could accept individual inspection reports or bulk uploads from service companies, and then report that inspection data, would need to be maintained. The portal, which could also accept applications and payments, would also need updates and troubleshooting. TDLR would need to develop the process to get fuel pump stickers printed and issued, and then track the corresponding serial numbers. TDLR estimates the agency would need three Systems Analysts V (3.0 FTE) to accomplish these tasks resulting in an estimated cost of \$375,093 in fiscal year 2020 including one-time expenses for computers, equipment and furniture, then cost \$348,984 each fiscal year afterward for salary, benefits, and supplies.

Additionally, the licensing and inspections systems at the TDA are Oracle-based systems. TDLR estimates it would cost approximately \$100,000 to transfer the data in fiscal year 2020 and approximately \$50,000 per year in license fees. It would also cost approximately \$72,000 per year

to house the information at the Data Consolidation Center as required. TDLR has determined it would also require one year of a part-time, Oracle-trained staff augmentation at a cost of \$125,000 to assist with the transfer of the database from TDA to TDLR.

Civil Penalty

According to the Comptroller's Office, the bill would create, or possibly recreate, a not-to-exceed \$500 civil penalty for violations regarding the newly-created Chapter 2310, Occupations Code. Civil penalties collected would be deposited in the state treasury to the credit of the General Revenue Fund. However, the bill stipulates that in some circumstances the state would not receive all the revenue from the violation, but divide it with a unit of local government. Therefore, some net fiscal impact from this civil penalty is possible, but is not considered to be significant.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 452 Department of Licensing and Regulation, 551 Department of Agriculture, 582 Commission on Environmental Quality

LBB Staff: WP, DFR, CMA, AF, PBO, CLo, SGr