

**SUBJECT:** Altering regulations of motor fuel metering devices and fuel quality tests

**COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended

**VOTE:** 6 ayes — Kuempel, Guillen, Goldman, Hernandez, Herrero, S. Thompson

0 nays

3 absent — Frullo, Geren, Paddie

**WITNESSES:** For — Bo Sasnett, D&H United Fueling Solutions, Inc.; Phil Wuest, Pic-n-Pac Convenience Stores; Paul Hardin, Texas Food and Fuel Association; (*Registered, but did not testify*: Steve Fryar, PF&E Oil Company, Texas Food and Fuel Association; Dan Baker, Regal Oil, Inc., Texas Food and Fuel Association; Stephen Minick, Texas Association of Business; Kenneth Besserman, Texas Restaurant Association; Jim Sheer, Texas Retailers Association)

Against — None

On — (*Registered, but did not testify*: Philip Wright, Texas Department of Agriculture)

**BACKGROUND:** Under Agriculture Code, sec. 13.1011, an owner or operator of a commercial weighing or measuring device must register it with the Texas Department of Agriculture (TDA) and renew the registration annually. Sec. 13.101 makes owners and operators responsible for ensuring the devices are inspected by TDA at least once every four years. TDA also may, as necessary, implement risk-based inspections. It also may assess fees to recover costs of registration and inspection of these devices, according to sec. 13.1151. Under sec. 13.455, an individual performing maintenance on these devices must be a licensed service technician.

Motor fuel quality and testing is governed by Agriculture Code, ch. 17, subch. B-1. Sec. 17.072 allows TDA to collect samples and conduct

testing at any location where motor fuel is kept or sold to verify compliance with minimum fuel quality standards. Under sec. 17.073, if TDA has reason to believe the motor fuel does not meet minimum fuel quality standards or is being sold in an incorrect way, it may stop the sale of motor fuel and mark a device as out of order.

DIGEST:

CSHB 2174 would establish requirements for the registration and inspection of motor fuel metering devices that were separate from those applicable to other commercial weighing and measuring devices.

Motor fuel metering devices would be registered similarly to other commercial weighing or measuring devices. The Texas Department of Agriculture (TDA) could assess a late fee not to exceed \$250 per year for premises that failed to register one or more devices before the end of the registration period because of a registration error.

The bill would require motor fuel metering devices to be inspected, tested, and calibrated at least once every two years by licensed service technicians operating under contract with the operator of the motor fuel metering device. These inspections would be required only if the device was:

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

TDA could not increase fees for registration and inspection of motor fuel metering devices by more than 5 percent of the amount of the fee at the end of the preceding state fiscal biennium.

Specifications and tolerances for motor fuel metering devices set by TDA would have to match those of the National Institute of Standards and Technology.

CSHB 2174 also would require sample collection and testing at a dealer's

location to be conducted by a licensed service technician. When collecting, sampling, and handling fuel in preparation for laboratory analysis, a technician would have to follow the most recent applicable ASTM International Standard procedures.

Before stopping the sale of motor fuel or marking a device as out of order, TDA would need to have laboratory results confirming that the motor fuel was in violation of minimum fuel quality standards.

The bill would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

CSHB 2174 would alleviate onerous inspection requirements for fuel dealers. The Texas Department of Agriculture (TDA) currently requires fuel dealers to have each meter recalibrated every two years by a third-party technician, in addition to having their devices inspected by the department every four years. The bill would require these devices to be inspected at least once every two years by TDA-licensed service technicians, who are capable of correcting any problem discovered during an inspection. TDA inspectors cannot correct discovered problems, making their inspections inefficient and leaving the pump inoperable. Inspection costs are high, so requiring both inspection by TDA and recalibration by third-party technicians is a substantial financial burden.

The bill also would place a 5 percent cap per biennium on fee increases for inspection and registration costs of motor fuel metering devices and would limit late fees to \$250 for a facility with errors in their registration. These provisions are necessary to address the recent significant fee increases implemented by TDA, which burden the industry.

While some have raised concerns that allowing licensed service technicians to draw fuel samples for quality testing could give way to sample tampering, TDA currently has a chain of custody procedure in place that still would be followed if the sample came from a technician. TDA still would receive the complaints and monitor complaint responses. Requiring confirmed poor fuel quality through laboratory results before shutting down a fuel pump would eliminate less reliable visual tests,

ensure that a pump with good fuel was not unnecessarily shut down, and limit the amount of time the pump was inoperable.

OPPONENTS  
SAY:

CSHB 2174 would remove TDA from the motor fuel sampling process, which could result in incorrect and untimely fuel samples.

Currently, if a customer complains about fuel quality, TDA draws a fuel sample for testing. Requiring that samples be drawn by licensed technicians could create situations where a technician was inspecting the his or her own company. Self-inspection could provide an opportunity to alter a sample or to be slow to respond to customer complaints.

The bill would require laboratory results of sampling before stopping sales and shutting down a pump, which could allow poor-quality motor fuel to be sold. On occasion, TDA pulls a motor fuel sample of sludge, at which time it may shut down the pump. Without this ability, the fuel could continue being sold until a lab result came back. Most labs will not test a fuel sample that cannot pass a visual test because it could ruin their test engines. Sending such a sample would waste their sample kit and their time.

NOTES:

A companion bill, SB 1744 by Nichols, was referred to the Senate Committee on Transportation on March 23.