

BILL ANALYSIS

C.S.H.B. 3408
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 86th Legislature transferred from the Department of Agriculture to the Texas Department of Licensing and Regulation (TDLR) the oversight and regulation of motor fuel metering and motor fuel quality. It has been noted that even though TDLR is now responsible for the regulation of fuel quality and quantity, motor fuel metering devices, service companies, and service technicians, TDLR is not responsible for the measuring and regulation of propane. C.S.H.B. 3408, in addition to creating the Motor Fuel Metering and Quality Advisory Board, seeks to make certain needed revisions and updates following the transfer of the motor fuel program, including clarifying that provisions relating to the regulation of motor fuel metering and motor fuel quality do not apply to a weighing or measuring device that measures liquefied petroleum gas.

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. 3408 amends the Occupations Code to revise provisions relating to the regulation of motor fuel metering and motor fuel quality and to make those provisions inapplicable to a weighing or measuring device that measures liquefied petroleum gas. The bill repeals the requirement that compressed natural gas and liquefied natural gas be sold by weight and a provision establishing a reference to the weight of a motor fuel in those provisions is a reference to the net weight of the motor fuel. The bill also repeals provisions relating to definitions applicable to the sale, delivery, and quality of motor fuel and revises provisions relating to definitions generally applicable to the regulation of motor fuel metering and motor fuel quality to reflect the repeal and to do the following:

- transfer the terms "automotive fuel rating," "supplier," and "wholesaler" to those definitions that are generally applicable to such regulation;
- revise the definition of "dealer" to remove the criteria that the operator of a retail motor fuel facility delivers motor fuel into the fuel tanks of motor vehicles or motor boats;
- include among the persons considered an operator or user an owner, custodian, and seller in possession or control of a measuring device; and
- define "measuring device" as a mechanical or electronic device used to dispense or deliver a motor fuel by volume, flow rate, or other measure or compute the charge for a service related to motor fuel.

C.S.H.B. 3408 authorizes the Texas Department of Licensing and Regulation (TDLR), if it has reason to believe that a motor fuel metering device is being used for a commercial transaction and to facilitate the perpetration of fraud, to inspect the device and the records that relate to use of the device to determine whether the device is in compliance with provisions relating to the regulation of motor fuel metering and motor fuel quality.

C.S.H.B. 3408 removes TDLR's authority to contract with one or more holders of a motor fuel metering device service company license to contract to perform TDLR's duties under those inspection provisions related to such devices and clarifies that a person who holds a motor fuel metering device service technician license is considered an authorized TDLR representative for purposes of provisions relating to testing of motor fuel quality.

C.S.H.B. 3408 gives TDLR the option of using a metrology laboratory certified by the National Institute of Standards and Technology and approved by the Department of Agriculture (TDA) as an alternative to using the state metrology laboratory maintained by the TDA regarding the inspection and correction of standards for motor fuel used to perform device maintenance activities.

C.S.H.B. 3408 creates the nine-member Motor Fuel Metering and Quality Advisory Board appointed by the presiding officer of the Texas Commission of Licensing and Regulation (TCLR), with TCLR approval and without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. The bill requires the presiding officer of TCLR to appoint the board members not later than February 1, 2022, and provides for the initial appointments and for the staggered terms of members. The bill sets out the composition of the board, including the designation of its presiding officer. The presiding officer must appoint two specified ex officio nonvoting board members and such a member is not counted as a member for purposes of establishing a quorum.

C.S.H.B. 3408 authorizes the board to advise TCLR and TDLR on issues affecting motor fuel quality, including the following:

- the adoption of standards regarding motor fuel dispensing devices, motor fuel metering devices, and motor fuel;
- education and curricula for license applicants and holders;
- the content of examinations; and
- proposed rules and standards on technical issues related to motor fuel metering and quality and payment card skimmers.

C.S.H.B. 3408 repeals the following provisions of the Occupations Code:

- Sections 2310.001(a)(10), (a)(11), and (b);
- Section 2310.054(b);
- Section 2310.101(b);
- Section 2310.106(e);
- Section 2310.2001; and
- Section 2310.203(b).

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3408 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions not in the original defining "measuring device" and repealing the definitions of "weighing or measuring device" and "weight or measure of a motor fuel" for purposes of provisions relating to the regulation of motor fuel metering and motor fuel quality.

While the original exempts a weighing or measuring device that measures liquefied petroleum gas from those provisions, the substitute makes those provisions inapplicable to such a device. Additionally, while the original removes the requirement that compressed natural gas and liquefied natural gas be sold by weight, the substitute repeals that requirement and also a provision establishing that a reference to the weight of a motor fuel in those provisions is a reference to the net weight of the motor fuel.

Rather than removing the following provisions by striking them from statute, as the original does, the substitute repeals them instead:

- the conditions under which TDLR has reason to believe a motor fuel metering device is being used for a commercial transaction;
- the requirement for the state metrology laboratory to purchase additional sets of standards as necessary for use by a TDA inspector or other TDA personnel; and
- the requirement that the collection of samples and conducting of testing at a dealer's location be performed by a holder of a service technician license or service company license under contract with the dealer.

The substitute, as follows, revises the composition of the membership of the advisory board, as it was set out by the original, but retains the same number of voting members as the original:

- the substitute converts two members in the original's membership scheme to ex officio membership:
 - the membership of the member who, in the original, represents law enforcement; and
 - the membership of the member who, in the original, represents either a financial institution or a credit card issuer;
- the substitute includes a provision establishing that an ex officio member is appointed with the approval of TCLR, is not counted as a member for purposes of establishing a quorum, and is a nonvoting member;
- the substitute adds the specification, not in the original, that the credit card issuer is an issuer other than a financial institution;
- the substitute adds one member of the public to the membership, while the original did not include a public member;
- the substitute adds two members who represent service companies, rather than only one member who represent service companies as in the original; and
- for the four members who are dealers or representatives designated by the dealers, the substitute provides for three of the members to be appointed according to the dealer's number of motor fuel metering devices registered with TDLR and one dealer to be appointed without regard to the dealer's number of such devices so registered.

The substitute changes to a one-year term the original's two-year term for the board's presiding officer.

The substitute changes the deadline by which the presiding officer must appoint board members from not later than December 31, 2021, as set out in the original, to not later than February 1, 2022. The substitute sets out a provision absent from the original establishing the staggered dates by which the presiding officer must make the initial appointments to the board.

The substitute changes the bill's effective date from on passage or September 1, 2021, if the bill does not receive the necessary vote for immediate effect, to September 1, 2021.