

HOUSE BILL REPORT

HB 1524

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to weights and measures.

Brief Description: Changing weights and measures regulations.

Sponsors: Representatives Chandler, Mastin and McMorris.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/8/95, 2/15/95 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Robertson and Schoesler.

Minority Report: Without recommendation. Signed by 5 members: Representatives R. Fisher; Kremen; Poulsen; Regala and Rust.

Staff: Kenneth Hirst (786-7105).

Background: In general, all weighing or measuring instruments or devices used for commercial purposes in this state must be inspected and tested for accuracy by the Department of Agriculture or by a city sealer. They must be inspected and tested at least once every two years. Instruments and devices that conform to the applicable standards and requirements are considered to be "correct." Those that do not are considered to be "incorrect."

An instrument or device found to be incorrect may not be used again commercially until it has been officially re-examined and found to be correct. It may be repaired or adjusted by a private service agent. However, such a service agent does not have the authority to provide the official inspection necessary to return a previously rejected instrument or device to commercial use.

An inspection fee may be charged only for an instrument or device approved as correct. Before an inspection fee or amended fee is set, the director must consult a Weights and Measures Fee Task Force.

The weights and measures statutes are nonexclusive and do not affect any other remedy available at law.

Summary of Substitute Bill: Annual Registration Fee Rather Than Inspection Fee.

No weighing or measuring instrument or device may be used for commercial purposes in this state unless its commercial use is registered annually. If the use is in a city with a city sealer and weights and measures program, the use of the instrument or device is registered with the city. If it is elsewhere, it is registered with the department. The fee for registering with the department is: for a small instrument or device, four dollars; for a medium-sized instrument or device, \$13; for a large instrument or device, \$18; and for an extra-large instrument or device, \$29. A city with a city sealer may charge a registration fee that is no greater than the comparable fee for registering the use of the instrument or device with the department. Registration is accomplished and registration fees are paid through the Department of Licensing's master license system.

In general, the authority of the department or a city sealer to charge inspection fees is repealed. However, the department is to inspect railroad track scales annually for an inspection fee of \$800. The department retains the authority to charge inspection fees for its biennial inspection of certain instruments and devices owned by a governmental entity. In addition, the department and city sealers are granted the authority to charge fees for conducting inspections that are specifically requested by the owner of an instrument or device, on a fee-for-service basis.

Statistical Samples Rather Than Biennial Inspections. State law no longer requires instruments and devices in the private sector to be inspected and tested biennially. Instead, the department and city sealers are instructed to test and inspect each biennium a sufficient number of instruments and devices: (1) to ensure that the weights and measures laws are enforced; and (2) to provide a statistically significant assessment of whether the instruments and devices in commercial use are correct. In general, the department is not to conduct inspections within a city that has a city sealer.

Correct Instruments. All weighing and measuring instruments and devices used for commercial purposes must be correct. However, an instrument or device is not to be rejected (i.e., officially required to be removed from commercial service) if it is incorrect to the economic benefit of the customer. A rejected instrument or device may be returned to commercial service following an inspection by a registered service agent (not just the department or a city sealer, as under current law) if the agent finds that the instrument or device is correct.

Registration of Service Agents. To have the authority to return a rejected instrument or device to commercial use, a private service agent must be registered annually with the department. Information required to be submitted for a registration certificate is specified; the director may require additional information. The registration fee is \$80. The circumstances under which the department may refuse to issue a certificate or suspend or revoke a certificate are specified.

An examination procedure for price verification is established for devices such as scanners. Certain recommendations made at the national level for examining these devices are adopted by reference. If these are modified when examining procedures are adopted by the National Institute of Standards and Technology or if they are subsequently modified by the institute, the department may adopt the revisions.

Penalties. An owner's failure to register an instrument or device used for commercial purposes subjects the owner to a civil penalty of \$50 for each such unregistered device. If an instrument or device is found to be incorrect to the detriment of the customer, the owner may be subject to a fine of up to \$500. Fines collected for this violation are deposited in the general fund. This is in lieu of penalties of up to \$1000 for the knowing commercial use of an incorrect instrument or device.

If the requirements for devices such as scanners are violated, the owner of the device is, as under current law, subject to a civil penalty of up to \$1000 whether the violation was or was not done knowingly. However, this penalty is exclusive of other penalties or recoveries except those allowed under the Consumer Protection Act or for private rights of action. The record of such a violation is not a public record until 10 days after the penalty is levied. Most other violations of the weights and measures laws must now be knowing violations. It is a violation knowingly to place back into commercial service a rejected weighing or measuring instrument or device that is incorrect.

Other. The department is expressly granted authority to establish reasonable fees to recover the full costs of services performed by its metrology lab. Monies collected under the weighmaster laws are deposited in the Weights and Measures Account. The account may be used for enforcing and implementing the weights and measures law, not just for inspections and testing. This bill is prospective in nature only.

Substitute Bill Compared to Original Bill: Supplied by the substitute bill are the provisions: (1) setting a four-tiered (rather than a three-tiered) registration fee schedule and altering the range of the fee schedule; (2) requiring annual inspections of railroad track scales, setting this inspection fee at \$800, and exempting grain elevators from such an inspection fee; (3) changing the registration fee for service agents from \$250 for two years to \$80 per year; (4) rather than specifying the fines, in a range from \$25 to \$500, that may be levied for instruments that are out of tolerance in favor of the seller, permitting the department to set the fine (up to \$500), setting

standards for levying such fines, and requiring these fines to be deposited in the general fund rather than in the Weights and Measures Account; (5) requiring registration fees for devices to be paid through the Department of Licensing's master license system rather than through the Department of Revenue; (6) setting an examination procedure for price verification for devices such as scanners, prescribing penalties for violations found using these procedures, limiting other penalties and recoveries for such violations, and making the record of such a violation a public record only after 10 days following the levying of a penalty for the violation; (7) directing that moneys collected under the weighmaster laws be deposited in the Weights and Measures Account; (8) appropriating \$75,000 from the State Toxics Control Account; and (9) declaring an emergency and providing an effective date.

Appropriation: The sum of \$75,000 is appropriated to the Department of Agriculture from the State Toxics Control Account for purchasing equipment to test metering devices used for bulk sales of liquid petroleum.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on July 1, 1995.

Testimony For: (1) The state's weights and measures program should be more enforcement oriented, not more inspection oriented. (2) There is no relationship between the size of a state's program and the accuracy of the weighing and measuring devices used in the state; Oregon has twice as many inspectors, but the same accuracy rate as the devices used in this state. (3) The procedures being recommended nationally by the retail industry and by inspection agencies should be used in this state for testing the pricing accuracy of scanner systems. (4) General fund monies were used in the past for consumer protection activities within the state's program. These monies are now being used in general support of the inspection program; they should be re-dedicated to consumer protection. (5) The state's program currently focuses on the quickest, most easily performed inspections as a source of fee-driven revenue. An efficient program would focus on the larger volume sales. (6) Small operations cannot afford the current fees for changed for checking propane dispensing equipment. The bill reduces the fees to a reasonable level. (7) The terminal meters used by the oil companies to supply dealers are not now inspected. As a result of this lack of inspection and errors at retail pumps, there can be a large volume of environmentally sensitive material unaccounted for. The bill will provide inspections for all parts of the industry and focuses the program on problem areas. (8) The use of service agents to do the inspections that bring devices back into service will reduce the demand on state personnel.

Testimony Against: (1) If a device is found to be incorrect for the benefit of the consumer and is to be left in commercial service, the operator (not just the owner) of the device should be notified. (2) If the metrology lab is to recover the full cost of all of its services, some fees will have to be raised up to 300 percent. (3) The Master

License System, not the Department of Revenue (as in the original bill), should collect the registration fees. (4) A \$250 registration fee (in the original bill) for service agents is too high. (5) A gas pump violation that would result in the owner's receiving a \$25 fine (as in the original bill) could also provide the owner a huge profit. The fine is much too small. (6) The fee levels set in the bill will not raise enough revenues to operate the program. The department will have to reduce its field staff from the current level of nine people to six. This state already has the smallest program in the nation.

Testified: Tom Dooley, Association of Washington Business (pro); Jan Gee, Washington Retail Association (pro); Lisa Thatcher, Washington State Food Dealers (pro); Ray Shindler, Washington Association of Wheat Growers and Northwest Propane Gas Association (pro); Dave Gerds, Northwest Propane Gas Association (pro); Tim Hamilton, Automotive United Trade Organization (pro); T.K. Bentler, Washington State Association of Neighborhood Stores (commented); Mary Beth Lang, Department of Agriculture (commented); and Phil Chapple, Northwest Scale Systems (commented).