

HOUSE BILL REPORT

HB 1773

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to device registration, civil penalties, and service agent registration for the weights and measures program.

Brief Description: Concerning device registration, civil penalties, and service agent registration for the weights and measures program.

Sponsors: Representatives Pettigrew, Robinson and Blake; by request of Department of Agriculture.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/9/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Makes modifications to the schedule of fees charged under the weights and measures statute.
- Modifies the schedule of penalties assessed under the weights and measures statute, and directs the Department of Agriculture (Department) to adopt by rule a matrix to be used to guide the assessment of penalties.
- Directs the weights and measures advisory group within the Department to review costs and fees associated with the Weights and Measures Program, and to report to stakeholders every five years on the financial status of the Weights and Measures Program.
- Directs the Department to adopt by rule certain weights and measures standards.
- Expands the scope of cities authorized to operate a Weights and Measures Program from first-class cities with a population greater than 50,000 to include code cities with a population greater than 50,000.
- Makes additional modifications to the Department's Weights and Measures Program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Fitzgibbon, Kretz, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer, Stanford and J. Walsh.

Minority Report: Do not pass. Signed by 1 member: Representative Chandler.

Staff: Robert Hatfield (786-7117).

Background:

Weights and Measures—Introduction.

Every weighing and measuring instrument used for commercial purposes in this state must be registered annually. Examples of such instruments include grocery scales, gas pumps, vehicle scales, and taxi meters. The devices may be registered with the Department of Agriculture (Department) Weights and Measures Program or they may be registered with a city, if they are used within a city that has a sealer and a Weights and Measures Program. First-class cities with populations greater than 50,000 are authorized to operate a Weights and Measures Program.

In addition, weighing or measuring instruments or devices used for commercial purposes in this state must be inspected and tested for accuracy at least once every two years by the Department or by a city sealer.

Annual weights and measures registration fees are set in statute. Cities with weights and measures programs may establish their own annual fees as long as they do not exceed the statutory fee schedule. Weights and measures penalties are also set in statute.

City Sealer.

A city sealer is the person duly authorized by a city to enforce and administer the weights and measures program within a city.

Service Agents.

Service agents are persons who, for payment, perform specified services related to weighing or measuring instruments or devices, including: testing, installing, inspecting, and repairing. Service agents are required to obtain a registration certificate from the Department each year before performing such a service.

Cities.

Cities in Washington are municipal corporations classified according to their population at the time of organization. There are four classification types: first-class city, second-class city, town, or code city. First-class cities are those cities with a population of 10,000 or more that have adopted a city charter, while second class cities are those cities with a population of 1,500 or more that have not adopted a city charter. Towns are smaller municipalities that have a population of less than 1,500. Code cities are those cities with a population of 1,500

or more that operate under the Optional Municipal Code, which grants broad home rule powers.

National Institute of Standards and Technology.

The National Institute of Standards and Technology (NIST) is a measurement standards laboratory within the United States Department of Commerce. As part of its mission, the NIST supplies various standard reference manuals. These include the NIST Handbook 44-Specifications, Tolerances, and Other Technical Requirement for Weighing and Measuring Devices, and Handbook 130-Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality.

Summary of Substitute Bill:

Weights and Measures—Fees.

The annual registration fees, for a variety of specified weighing and measuring instruments used for commercial purposes, are changed, from a current range of \$10 to \$800, to a range of \$14.20 to \$1,080.

The Weights and Measures Advisory Group within the Department of Agriculture (Department) must review the program costs, fees, and changes to industry, and report to stakeholders on the financial status of the program supported by the fees by September 1, 2024, and every five years thereafter.

The Department is authorized to establish by rule the fees to be charged for the Department's inspection of the secondary weights and measures standards of certain cities.

Weights and Measures—Standards.

The Department is required to adopt by rule, rather than simply adopt, the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices as set forth in the National Institute of Standards and Technology Handbook 44. The Director of the Department (Director) may include modifications in its rules in order to achieve the objectives of the state.

The Department is directed to adopt by rule the uniform regulations for the packaging, labeling, and sale of certain materials as set forth in the National Institute of Standards and Technology Handbook 130. The Director is authorized to include modifications to the standards set forth in Handbook 130.

Weighing or measuring instruments used in the state for commercial purposes must be correct. Instruments are deemed to be correct when they comply with all applicable requirements of the Weights and Measures statute and with the requirements of any rules adopted by the Department pursuant to the Weights and Measures statute.

Weights and Measures—Rulemaking Authority.

The Department is authorized to require persons registering as service agents to pass a competency examination, and the Department is authorized to adopt rules for administering

the examination. The annual fee for a service agent's registration certificate is increased from \$160 to \$180. If a service agent fails to file his or her application for renewal before the expiration date, the Department must assess a late fee equal to 20 percent of the renewal fee. Service agents must possess adequate equipment to accurately test devices, and the Department is authorized to adopt rules accordingly.

The Department is directed to adopt rules concerning methods for checking the net contents of packaged goods.

The Department is directed to adopt by rule a penalty matrix that establishes procedures to be followed for assessing civil penalties.

Weights and Measures—Penalties.

A service agent who, in the course of his or her work related to measuring devices, uses a weight or measure standard that has not been approved by the Director of the Department, is subject to a civil penalty ranging between \$100 and \$1,000, depending on the seriousness of the violation.

The penalty for obstructing the Director or a city sealer in the performance of his or her official duties is changed from a maximum of \$500 per occurrence, to a range between \$300 and \$5,000 per occurrence.

The penalty for using an official seal of approval without authorization, or for using a counterfeit seal, is changed from a maximum of \$1,000 per occurrence to a range between \$300 and \$5,000 per occurrence.

The penalty for various specified acts of deception with regard to weights and measures is changed from a maximum of \$1,000 to a range between \$300 and \$5,000 per violation per occurrence.

The penalty for misrepresenting the price of a commodity or service advertised for sale by weight, measure, or count, is changed from a maximum of \$1,000 to a range between \$100 and \$2,000 per violation per occurrence.

The penalty for modifying a weighing or measuring instrument to allow the sale of a quantity less than the quantity represented is changed from a maximum of \$5,000 to a range between \$100 and \$10,000 per violation per occurrence.

The penalty for a person who owns or uses a weighing or measuring instrument for commercial purposes that has not been properly registered is changed from \$50 to \$100.

The penalties, for a person who uses a weighing or measuring instrument that is incorrect to the detriment of the customer, are changed, from a current range of \$50 to \$500, to a range of \$200 to \$2,000.

Weights and Measures—Miscellaneous.

Specified types of flour, as well as corn meal and grits, are authorized to be sold in any weight denomination, rather than by certain specified prescribed weights.

The Department is no longer directed to inspect the weighing or measuring instruments of state agencies.

The scope of cities authorized to operate a Weights and Measures Program is expanded from first-class cities with a population greater than 50,000 to also include code cities.

Substitute Bill Compared to Original Bill:

The Department of Agriculture (Department) is directed to adopt by rule a matrix to be used to guide the assessment of penalties. The weights and measures advisory group within the Department is directed to review costs and fees associated with the Weights and Measures Program, and to report to stakeholders every five years on the financial status of the Weights and Measures Program.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to the expanded definition of cities that are authorized to implement their own weights and measures program, which contains an emergency clause and takes effect July 1, 2017, and section 4, relating to the second round of fee increases, which takes effect July 1, 2019.

Staff Summary of Public Testimony:

(In support) The Weights and Measures Program is a consumer protection program. It ensures that a customer buying a gallon of gas is receiving a gallon of gas. The bill aligns fees with the cost of doing business. The last fee increase was 2006. All state funding for the program was removed in 2010. Without a fee increase, the Weights and Measures Program will be operating in the negative by 2018. The bill provides the funding needed to support this important work.

(Opposed) None.

(Other) The Department of Agriculture worked with members of the food industry on the phased fee increase. One member of the food industry has more than 100 devices that are subject to annual registration fees. The work of the Weights and Measures Program is important. The five-year fee review will be helpful to stakeholders.

Persons Testifying: (In support) Laura Butler, Department of Agriculture; and John Megow, City of Seattle.

(Other) Holli Johnson, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.