

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 1304 (Papan) – As Amended April 17, 2023

SUBJECT: Weights and measures: inspection: fees

SYNOPSIS

Existing law authorizes counties to charge fees to recover the costs incurred by County Sealers of Weights and Measures when they perform required inspection and verification of the accuracy of designated measuring devices. This bill would increase the permissible fees that County Sealers can charge in order to fund their inspection and verification programs. This increase is sought because of significant increases in County Sealers' costs of operations, not least because of significant inflation over the past two years.

County Sealers are responsible for ensuring that all of the commercial scaling and volumetric measuring devices used in a county provide accurate readings, and are not installed and used to facilitate fraud. Their inspections cover devices such as retail fuel dispensing meters; water, electric, and natural gas vapor submeters in mobile home parks, apartment complexes, and boat docks; truck scales; cattle scales; grocery counter scales; taxi meters; and a host of other devices that weigh or measure commodities offered for sale.

County Sealers protect both consumers and retailers. Consumers are obviously protected against fraud, and save money, if they can trust the measurements they are provided when purchasing goods and paying for utilities. County Sealers also protect honest businesses from dishonest ones: a business that is able to reap extra revenue by cheating its customers ever-so-slightly on many transactions is one that gains an unfair advantage over law-abiding competitors that provide their customers with accurate measurements.

By appropriately and adequately funding County Sealers, the Legislature can both ensure that Sealers perform inspections with the frequency required under law and prevent counties from operating at a deficit in order to fund Sealers' operations.

The bill is sponsored by the California Agricultural Commissioners and Sealers Association, and supported by the County of Santa Clara. The measure has no opposition on file.

SUMMARY: Increases the permissible fees that a County Board of Supervisors may charge to fund the operations of the County Sealer of Weights and Measures. Specifically, **this bill:**

- 1) Increases certain permissible registration fees that a county board of supervisors may charge to fund the operation of the county sealer of weights and measures, as follows:
 - a) The maximum business location fee increases from \$100 to \$120 per business location.
 - b) The maximum fee for residential water submeters increases from \$2 to \$6 per device
 - c) The maximum fee for residential natural gas vapor submeters increases from \$4 to \$10 per device.

- d) The fee for computing scales increases from \$23 to \$25 per device, while the maximum fee for each business location increases from \$1,000 to \$1,200 per location.
- e) The catch-all fee for commercial weighing and measuring devices not otherwise identified in statute increases from \$20 per device to \$26 per device, while the maximum fee for each business location increases from \$1,000 to \$1,200 per location.

EXISTING LAW:

- 1) Establishes in each county the office of county sealer of weights and measures, and grants the sealer the power to appoint deputies or inspectors and to hire clerks. (Bus. & Prof. Code § 12200.)
- 2) Requires a county to pay the salary and other compensation for the county sealer, and any of the sealer's deputies, inspectors, and clerks, in the same time and manner as other county officers. (Bus. & Prof. Code § 12201.1.)
- 3) Permits a county board of supervisors to charge an annual registration fee to recover the county sealer's costs to inspect or test weighing and measuring devices. (Bus. & Prof. Code § 12240(a).)
- 4) Limits the fee that may be collected under 3) to the total cost of actual inspection and testing. (*Ibid.*)
- 5) Decrees that the annual registration fee for a business that uses a commercial weighing or measuring device consists of a business location fee, a department administrative fee, and a device fee. (Bus. & Prof. Code § 12240(f).)
- 6) Defines "business location" as a location that uses one or more categories or types of commercial devices required to be inspected or tested by the county sealer, that requires the use of specialized testing equipment, and that necessitates not more than one inspection trip. (Bus. & Prof. Code § 12240(u).)
- 7) Limits the business location fee to no more than \$100 per business location. (Bus. & Prof. Code § 12240(f).)
- 8) Provides that the department administrative fee is to be established by the Secretary of Agriculture by regulation. (Bus. & Prof. Code § 12241.)
- 9) Establishes the following maximum device fees:
 - a) If the owner of a marina, mobilehome park, recreational vehicle park, or apartment complex also owns and is responsible for the utility submeters at these locations, then the maximum fee for each water submeter is \$2 per device and for each natural gas vapor submeter is \$4 per device, per space or apartment. (Bus. & Prof. Code § 12240(g)(1).)
 - b) The maximum fee for a computing scale is \$23, with an overall maximum fee for each business location of \$1,000. (A computing scale is defined as a weighing device, with a capacity of less than 100 pounds, that indicates the monetary value of a commodity it weighs.) (Bus. & Prof. Code § 12240(n).)

- c) The catch-all fee for commercial weighing and measuring devices not otherwise identified in statute is \$20 per device, with an overall maximum fee for each business location of \$1,000. (Bus. & Prof. Code § 12240(t).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS:

1) **Background.** This bill would increase the permissible fees that County Sealers of Weights and Measures can charge to fund their inspection and verification of the accuracy of certain measuring devices. This increase is sought because of significant increases in County Sealers' costs of operations, not least because of significant inflation over the past two years.

County Sealers are responsible for ensuring that all of the commercial scaling and volumetric measuring devices used in a county provide accurate readings, and are not installed and used to facilitate fraud. Statutory authorization for the office of the County Sealer is more than a century old; the oldest authorizing statute uncovered by Committee staff was enacted in 1913.

The County Sealer's seal is affixed to many measuring devices one encounters in the course of daily life in California. County Sealers ultimately make sure that if the readout at the gas station says that you have pumped seven gallons of gasoline, that the pump in question actually dispensed seven gallons; that if the scale at the supermarket says that you are buying two pounds of steak, that the scale accurately measured two pounds; and that if the natural gas submeter in your apartment says that you used 2,000 cubic feet of natural gas last month, that you were actually provided 2,000 cubic feet of gas.

It is crucial to note that County Sealers protect **both** consumers and retailers. Consumers are obviously protected against fraud, and save money, if they can trust the measurements they are provided when purchasing goods and paying for utilities. As the sponsor writes, "[T]he impact of a commercial transaction that results in an 'undersold' item disproportionately impacts indigent consumers since they are not receiving the full amount of commodities they are due based on faulty measure. [...] When every dollar counts, it is critical that you get every ounce you paid for."

County Sealers also protect honest businesses from dishonest ones: a business that is able to reap extra revenue by cheating its customers ever-so-slightly on many transactions is one that gains an unfair advantage over law-abiding competitors that provide their customers with accurate measurements.

Existing law authorizes counties to charge fees to recover the costs incurred by County Sealers when they perform required inspections. These inspections cover devices such as retail fuel dispensing meters; water, electric, and natural gas vapor submeters in mobile home parks, apartment complexes, and boat docks; truck scales; cattle scales; grocery counter scales; taxi meters; and a host of other devices that weigh or measure commodities that are offered for sale.

2) **Author's statement.** According to the author:

California Weights and Measures professionals ensure a fair marketplace by verifying products are sold by accurate weights, measures, and prices. This is the most basic and fundamental principle of the marketplace that dates back to the earliest civilizations. If an

item for sale is represented by the pound, gallon or meter, the consumer must be able to trust that the device used to establish that measurement and price [is] accurate and trustworthy.

This important program protects consumers so they can be confident that they “get what they pay for,” and allows for true value comparison protecting businesses by ensuring fair competition in the marketplace.

3) **What this bill would do.** This bill would increase the statutory caps on certain fees that counties may charge businesses in order to sufficiently fund County Sealers’ inspection and testing programs.

These fee increases are as follows:

1. The business location fee, assessed for each business location that (a) contains a device to be inspected or tested, (b) requires the use of specialized testing equipment, and (c) requires a single visit, would increase from \$100 to \$120 per business location.
2. If the owner of a business such as a marina, mobilehome park, recreational vehicle park, or apartment complex also owns and is responsible for the utility submeters at these locations, then the maximum fee for each water submeter would increase from \$2 to \$6 per device, and for each natural gas vapor submeter would increase from \$4 to \$10 per device. Each of these fees is assessed per unit, space, or apartment that is submetered.
3. The maximum fee for a computing scale would increase from \$23 to \$25, while the overall maximum fee for each business location would increase from \$1,000 to \$1,200.
4. The catch-all fee for commercial weighing and measuring devices not otherwise identified in statute would increase from \$20 to \$26 per device, while the overall maximum fee for each business location would increase from \$1,000 to \$1,200.

4) **Analysis.** Justification for these fee increases lies with increases in operational costs for County Sealers. Increased costs result in an inability to perform inspections with the frequency required under law and/or operating deficits for counties forced to backfill the County Sealer’s costs of operation.

The business location fee in #1 above was established by AB 889 (Ruskin, Chap. 529, Stats. 2005). The fee took effect on January 1, 2008, and has remained unchanged ever since. According to the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) Inflation Calculator, \$100 in January 2008 has the same buying power as \$143 in March 2023. (*See https://www.bls.gov/data/inflation_calculator.htm.*) By this standard, an increase in the statutory fee to \$120 appears reasonable.

The remaining fees in #2-4 above were established by AB 1623 (Yamada, Chap. 234, Stats. 2012) and took effect on January 1, 2013. According to the CPI Inflation Calculator, \$2 in January 2013 (the permissible fee for water submeters) has the same buying power as \$2.62 in March 2023, \$4 (the permissible fee for natural gas vapor submeters) has the same buying power as \$5.24 in March 2023, \$20 (the permissible catch-all fee for other devices) has the same buying power as \$26.21 in March 2023, and \$23 (the permissible fee for a computing scale) has the same buying power as \$30.15 in March 2023. Finally, \$1,000 in January 2013 has the same buying power as \$1,310.73 in March 2023.

Using the inflation standard, the fee increases in #3 and #4 also appear reasonable. Which leaves the fee increases in #2 for submeters, which significantly exceed the increase in inflation over this time. The bill's sponsor, the California Agricultural Commissioners and Sealers Association, justifies this increase as follows. Inspection and testing of water and natural gas vapor submeters was first authorized in statute by AB 1623. The figures used in that bill have proven to be insufficient to cover the time and expense required, particularly to re-test devices that are out of compliance. The Association has surveyed its membership as to the actual cost of inspecting and testing these submeters: the statewide average is \$6 per water submeter and \$10 per vapor submeters.

In light of the data, these fee increases appear reasonable—particularly in light of the fact that these increases may remain fixed in statute until January 1, 2027, when authorization for counties to charge fees to cover County Sealers' costs of operation next sunsets.

5) **Related legislation.** AB 694 (Privacy and Consumer Protection, Chap. 525, Stats. 2021), among other things, extended the authority of county boards of supervisors to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2027.

AB 347 (Chau, Chap. 521, Stats. 2018), among other things, extended the authority of county boards of supervisors to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2022.

AB 296 (Dodd, Chap. 133, Stats. 2015) extended the authority of county boards of supervisors to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2019.

AB 1623 (Yamada, Chap. 234, Stats. 2012) extended the authority of county boards of supervisors to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2016, and established and/or revised various device fee caps.

AB 2361 (Ruskin, Chap. 260, Stats. 2010) extended the authority of county boards of supervisors to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2013.

AB 889 (Ruskin, Chap. 529, Stats. 2005) extended the authority of county boards of supervisors to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2011. The bill also established a two-tiered fee schedule that provided both a location fee and a device fee, in order to more effectively capture the cost of the initial device inspection.

ARGUMENTS IN SUPPORT: Bill sponsor California Agricultural Commissioners and Sealers Association explains the negative impact that inadequate fees impose on county budgets:

Current law mandates that each and every device that measures weight, volume, length or any other unit of measurement that is used to determine the price of a commercial transaction must be registered, tested and sealed by a county sealer of weights and measures. Current law places a maximum "cap" that can be charged, annually, per device by a county sealer to provide revenue to fund the county inspection program. [...] Since the caps are set in statute, counties cannot charge more than the amounts listed in the Code, even if a cost study demonstrates that the service provided exceeds the maximum that can be charged under current law. The current device fees and business location fee have not been adjusted to

reflect increased costs to provide this mandatory annual service, and counties are operating at an ongoing significant deficit.

REGISTERED SUPPORT / OPPOSITION:

Support

California Agricultural Commissioners and Sealers Association (sponsor)
County of Santa Clara

Opposition

None on file

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