

(Base) Agency: DATCP - Liquid Petroleum Gas Meter License

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Porter - 5

Recommendations:

Paper No. 217: Alternatives 1 & 3

Comments: LPG meters are the least accurate devices that the agency tests (see paragraph 2). The gov's proposal (i.e. Alternative 1) plus a clarification regarding who has to pay the fee (Alternative 3, see paragraph 13) seems appropriate.

prepared by: Barry



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May 4, 1999

Joint Committee on Finance

Paper #217

Liquid Petroleum Gas Meter License (DATCP)

[LFB 1999-01 Budget Summary: Page 101, #16]

CURRENT LAW

DATCP administers a weights and measures program that enforces state laws designed to ensure the accuracy of measuring devices and quantity declarations used in commercial transactions. The program protects consumers and businesses from misrepresentations and fraudulent practices through regular inspections of devices and measured commodities. As part of this general authority, the Department periodically inspects the accuracy of liquid petroleum gas (LPG) meters.

The 1997-99 budget required that: (a) DATCP promulgate administrative rules to address requirements that meter owners pay a one-time registration fee of \$25 for each LPG meter; (b) meter owners have their meters annually tested by a DATCP licensed tester; (c) meter testers report test results to DATCP within 30 days of the meter inspection; (d) DATCP notify a meter owner if a meter has not been tested in the past year; and (e) the owner of any meter untested in the past year must have the meter tested within 30 days of Department notification. The 1997-99 budget also allows DATCP to assess fees for meter owners and servicing companies that fail to meet DATCP testing and registration requirements.

GOVERNOR

Require an annual license for persons who operate a meter to measure LPG for sale or delivery. A license fee of \$25 per meter would be charged, unless DATCP establishes a different fee by administrative rule. The license would expire on July 31 of each year. A surcharge of \$200 for operating a meter without a license would also apply. Program revenues for weights and measures inspection are estimated to be at least \$13,700 annually. The bill would repeal the \$25 one-time registration fee required for each new meter.

The meter operator would be required to have the meter annually tested by a DATCP licensed tester, who must test the meter for accuracy as specified in DATCP rule. The meter tester would also be required to report the results in writing to DATCP within 15 days of the meter inspection, or be subject to a fee of up to \$100 and possible license revocation or suspension. Require the Department to issue a written notice to a meter operator who fails to annually test a meter and require the operator to have the meter tested within 30 days of notification or be subject to a fee of up to \$100 per untested meter and possible license revocation or suspension.

DISCUSSION POINTS

1. DATCP is aware of approximately 300 truck mounted LPG meters and 250 stationary LPG meters used in the state each year to measure the amount of LPG dispensed to consumers. These estimates are based on the meters DATCP has tested and recorded in its database, and therefore, the actual number of meters is likely higher. Truck-mounted meters are responsible for dispensing most of the LPG in the state. These meters are generally used to sell LPG to businesses, homes and mobile homes. Stationary meters are used to fill smaller tanks, such as those on motor homes and those used at campgrounds.

2. While compliance rates have generally improved, DATCP has found that LPG meters are still among the least accurate devices that the agency tests. DATCP annually conducts approximately 275 tests on primarily truck mounted LPG meters and finds that about 75% are in compliance (25% fail). An LPG meter is found to be in compliance if it measures within one percent of actual registered volume. In the past two years, of those meters found in noncompliance (those off by more than 1%), 60% have erred against the purchaser.

TABLE 1
Annual LPG Meter Testing

<u>Fiscal Year</u>	<u>Number Tested</u>	<u>Compliance Rate</u>
1991-92	361	34%
1992-93	239	65%
1993-94	308	71%
1994-95	251	75%
1995-96	Unavailable	Unavailable
1996-97	272	76%
1997-98	269	77%

3. The Department found that of those meters erring against the consumer, the average percentage of error in 1997-98 was 1.6%. Thus, nearly 15% of all LPG consumers were being overcharged by an average of 1.6%. Those meter operators with noncompliant meters may benefit from extra profits while lowering consumer confidence in all LPG meters and inducing more DATCP inspections, which incur state expenses. Currently, when a meter servicing company finds

a noncompliant meter, the servicer repairs and recalibrates the meter to zero and reports the results to DATCP. When DATCP finds noncompliant meters during random tests, the meter operator is given time to repair the meter, or if the meter is in gross error or if there is a safety concern, the meter is taken out of service. However, no other penalties are levied.

4. The Committee may wish to provide a further disincentive for operating a noncompliant meter. One option would be to provide that LPG meter operators tested by DATCP and found in noncompliance, erring in favor of the seller, pay the Department a reinspection fee equal to 2,000 times the percentage each meter tested would err in favor of the seller (against the purchaser). (So if an LPG meter operator's meter is found by DATCP to only dispense 98.4 gallons while the meter would read 100 gallons, the meter operator would be assessed a forfeiture of \$32). If 40 meters were found in noncompliance against the consumer each year, with an average error of 1.6% the Department could expect to collect \$1,300 annually. The revenue collected would be used to partially offset DATCP's cost of testing meters for compliance.

5. Another alternative would be to create a reinspection fee and use those revenues to partially offset DATCP inspection costs rather than using annual license fee revenues. Creating a reinspection fee of 20,000 times the percentage of error in favor of the seller (against the purchaser) would generate approximately \$12,800 annually. (Under this scenario, if an LPG meter operator's meter is found by DATCP to only dispense 98.4 gallons while the meter would read 100 gallons, the meter operator would be assessed \$320.)

6. Due to its volatile physical properties, LPG reacts differently depending on the air temperature, which may account for some of the noncompliance among LPG meters. Therefore, even if LPG meters are tested annually, many of the meters could continue to misread the amount of gas delivered due to environmental factors largely beyond the control of the meter owner or a service company. However, while DATCP agrees that a 100% compliance rate will not be achieved, the Department indicates that testing and improved LPG meter servicing should improve the current compliance rate, and as the compliance rate of LPG meters increases, the level of inspections done by the Department and the corresponding costs will likely decrease.

7. LPG meter owners currently pay private meter testing companies between \$85 and \$100 per meter for required annual testing and calibration. Due to rather low compliance rates, DATCP also tests many of these meters at an estimated per meter cost of \$140. The Department tries to test each meter at least once every three years and otherwise tests based on such things as the compliance history and volume of meter use. As shown in Table 1, DATCP inspected 269 LPG meters in 1997-98. DATCP is currently using .50 FTE and approximately \$30,000 to perform these random LPG inspections. Moreover, the Department estimates spending an additional \$10,000 annually on measuring equipment maintenance and depreciation and program staff support. If no fee were charged for meter inspections, other fee payers would continue to subsidize the DATCP LPG inspections.

8. The 1997-99 budget required DATCP to promulgate administrative rules in order to assess meter owners a one-time registration fee of \$25 for each LPG meter. The administrative rules

regarding LPG meters were approved by the Board of Agriculture, Trade and Consumer Protection and submitted to the Legislature on March 11, 1999. The statutes do not allow DATCP to collect LPG meter fees until after the administrative rule is promulgated.

9. The Department has yet to enforce any LPG-related provisions required in the 1997-99 budget, opting instead to implement all statutory requirements together when the administrative rule is promulgated.

10. Although the bill would repeal the Department's authority to collect registration fees, if the administrative rule is promulgated before the budget is enacted, DATCP could collect registration fees and subsequently collect license fees after the budget. However, the Department has indicated that it will not collect license fees in the same year as registration fees if the Governor's recommendation is adopted.

11. Further, under the bill, DATCP is given authority to determine annual license fees by administrative rule. If the Department does not set a different fee, an annual license would cost \$25. However, DATCP could set a higher or lower fee by rule. Fees would need to be up to three times higher (\$75 per meter) to fully fund current DATCP expenditures on LPG testing (approximately \$40,000 annually).

12. The bill also shifts many responsibilities and fees from the owner of LPG meters to the operator. The Department believes that those who operate an LPG meter should be held accountable rather than those who own a meter, especially since some LPG meters are leased from one company and operated by another. In most cases, the owner and operator are the same business.

13. The bill would require that "no person" may operate a meter to measure LPG unless "the person" holds an annual license issued by DATCP. The statutory definition of *person* includes all partnerships, associations and corporations, as well as individuals. However, industry officials are concerned that under the bill, every employe of a company that operates a meter may have to pay a \$25 fee for an annual license. DATCP officials have stated they intend to require only that a single \$25 license fee be paid by the business operating the meter (that is, one \$25 license fee per meter, per year). The Committee could specify that only the business operating the meter would be required to pay the annual per-meter license fee.

ALTERNATIVES TO BASE

1. Approve the Governor's recommendation to (a) replace a \$25 one-time registration fee with an annual \$25 per meter license fee, unless DATCP establishes another fee by rule, for persons who operate a meter to measure LPG for sale or delivery and authorize a surcharge of \$200 for operating a meter without a license; (b) require a meter operator to have each meter annually tested by a DATCP licensed tester who would be required to report the results in writing to DATCP within 15 days of the meter inspection, or be subject to a fee of up to \$100 and possible license revocation or suspension; and (c) require DATCP to issue a written notice to a meter operator who fails to annually test a meter and require the operator to have the meter tested within 30 days of

notification or be subject to a fee of up to \$100 per untested meter and possible license revocation or suspension.

<u>Alternative 1</u>	<u>PR</u>
1999-01 REVENUE (Change to Base) [Change to Bill]	\$27,400 0]

2. Approve the Governor's recommendation. In addition, require that LPG meter operators tested by DATCP and found in noncompliance, erring in favor of the seller, pay the Department a reinspection fee equal to 2,000 times the percentage each meter tested would err in favor of the seller.

<u>Alternative 2</u>	<u>PR</u>
1999-01 REVENUE (Change to Base) [Change to Bill]	\$30,000 2,600]

3. In addition to alternatives 1 or 2, specify that a person who as an agent or employee does business only in the name of a business licensed to operate an LPG meter is not required to obtain an LPG meter operator license.

4. Require that (a) LPG meter operators tested by DATCP and found in noncompliance, erring in favor of the seller, pay the Department a reinspection fee equal to 20,000 times the percentage each meter tested would err in favor of the seller; (b) a meter operator have each meter annually tested by a DATCP licensed tester who would be required to report the results in writing to DATCP within 15 days of the meter inspection, or be subject to a fee of up to \$100 and possible license revocation or suspension; and (c) DATCP issue a written notice to a meter operator who fails to annually test a meter and require the operator to have the meter tested within 30 days of notification or be subject to a fee of up to \$100 per untested meter and possible license revocation or suspension. (This would maintain a \$25 one-time registration fee.)

<u>Alternative 4</u>	<u>PR</u>
1999-01 REVENUE (Change to Base) [Change to Bill]	\$26,000 -1,400]

5. Maintain current law.

<u>Alternative 5</u>	<u>PR</u>
1999-01 REVENUE (Change to Base) [Change to Bill]	\$0 -27,400]

Prepared by: David Schug

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1 BURKE	<input checked="" type="radio"/> Y	<input type="radio"/> N	<input type="radio"/> A
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