



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #146

### **Weights and Measures Fee Changes (Agriculture, Trade and Consumer Protection)**

[LFB 2009-11 Budget Summary: Page 95, #17]

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#### **CURRENT LAW**

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) has general regulatory authority over the construction, installation and use of commercial weights and measures. Administrative rule ATCP 92 specifies that all weights and measures be inspected according to specifications of the National Institute of Standards and Technology (NIST). Owners of devices must maintain their devices to NIST standards, and use DATCP-licensed servicing and maintenance firms to conduct tests and calibrations of devices in commercial use. Among its duties, DATCP: (a) maintains a metrology lab to verify the accuracy of equipment used by servicing companies; (b) employs field inspectors to provide regular inspections of devices in commercial use throughout the state; and (c) enforces corrections for devices in violation of state standards.

Vehicle scales, which are non-state-operated scales used to weigh loaded or unloaded highway, farm or industrial vehicles, are among regulated devices. The statutes require a vehicle scale operator to pay a license fee of \$60, except if DATCP sets a different fee by administrative rule. DATCP currently sets the license fee at \$100 by administrative rule. Licenses expire March 31 annually, and are nontransferable between persons, scales or scale locations. The statutes impose a surcharge of \$200 for operating without a license anytime during the year prior to submitting a license application; DATCP is not authorized to change that level in administrative rules. All fees received for vehicle scale licenses are deposited in DATCP's program revenue appropriation for weights and measures inspection. The statutes also require vehicle scale operators to have scales tested annually by an independent, professional scale testing or service company.

DATCP also has authority under the statutes to regulate liquefied petroleum (LP) gas meters. Current law requires LP gas meters to be registered with DATCP. Both the statutes and DATCP rules set a one-time registration fee of \$25 charged to owners, to be paid within 60 days of the owner purchasing or obtaining the meter. If an owner does not register the meter, a surcharge of \$250 may be assessed. If the surcharge is not paid within 30 days of being assessed, DATCP may increase the fee by \$10 for each day the owner has not complied with registration requirements. Owners of LP gas meters are required to have the meters tested at least annually by a professional inspector, and reports of the testing must be submitted to DATCP. Meter owners may be charged \$100 for failing to secure an annual test, and inspectors may be charged \$100 for failing to file with DATCP a report of a meter test. DATCP conducts a number of tests on LP gas meters each year.

No provisions exist in the statutes for the licensing or testing of vehicle tank meters for measuring liquid fuels. However, DATCP conducts tests of vehicle tank meters under its general regulatory authority.

## **GOVERNOR**

Require DATCP to promulgate rules to regulate the construction, operation, testing and maintenance of vehicle scales. Increase the annual license fee from \$60 to \$100, and authorize DATCP to set a different fee amount by administrative rule. Require that persons operating a vehicle scale without a license in the year preceding a license application pay a surcharge of \$200, and authorize DATCP to set a different surcharge amount by rule. Authorize DATCP to withhold a license to an operator if the operator has not paid any assessed license surcharge. Require that a person must obtain a permit from DATCP for installation or relocation of a vehicle scale. Authorize DATCP to allow variances from construction standards for vehicle scales. Require that an owner or operator of a vehicle scale with a weighing capacity of 5,000 pounds or greater used for the commercial weighing of commodities have testing and inspection for accuracy performed at least annually by a licensed inspector.

Repeal requirements for registration and testing of LP gas meters. Require DATCP to promulgate rules for the construction, operation and maintenance of vehicle tank meters and LP gas meters, as well as to promulgate rules for testing, reporting and record-keeping. Require that no person may operate a vehicle tank meter or LP gas meter without an annual license issued by DATCP, unless the person is an employee of a person who is required to be licensed. Require each meter to have a separate license, and specify that licenses are nontransferable between persons or meters. Specify that licenses for vehicle tank meters would expire annually October 31, while licenses for LP gas meters would expire November 30 annually. Require an applicant to submit a license fee, which DATCP would be required to set in administrative rule. Further, require a license surcharge, with the level set by DATCP administrative rule, if the applicant has operated a meter without a license in the year prior to submitting the application. Authorize DATCP to withhold a license for an applicant with an outstanding surcharge. Require operators to have the meter tested annually for accuracy by a licensed inspector.

Require DATCP to establish fees by rule for any weight or measure on which the Department performs a reinspection due to a previous violation. Also, authorize DATCP to promulgate emergency rules to establish fees, with the emergency rule to remain in effect until the earlier of January 1, 2011, or the date a permanent rule takes effect.

## **DISCUSSION POINTS**

1. These provisions are intended to allow for greater testing and inspection of vehicle scales, vehicle tank meters and LP gas meters. The weights and measures program revenue appropriation also has a structural imbalance (authorized expenditures exceed annual revenues). DATCP reports this is due to both increased expenditures and many weights and measures fees remaining unchanged since 1997.

### **Vehicle Scales, Vehicle Tank Meters and LP Gas Meters**

2. DATCP reports that the characteristics of vehicle scales, vehicle tank meters and LP gas meters, as well as the manner in which each is operated, contribute to their measurement accuracy. The use of each device may reduce its accuracy over a year of operation. LP gas meters and vehicle tank meters are mounted on vehicles for measurement of liquids being delivered from tanker trucks. These instruments primarily measure fuels that are delivered to farms, rural homes and businesses. The meters may not maintain their calibration due to vibration and wear over time as the vehicles to which they are mounted travel. Vehicle scales are exposed to considerable strain by virtue of measuring entire vehicles or trailers. Additionally, DATCP reports that construction and construction variance permits and fees are necessary for vehicle scales because a scale's engineering and construction must be done correctly to ensure the scale's longevity and accuracy. Variances to construction standards require verification that the device will measure mass accurately given the different conditions of its assembly and operation.

3. The Department reports that as of testing conducted in 2007, LP gas meters have an accuracy rate of approximately 86% and vehicle tank meters have an accuracy rate under 79% percent. Vehicle scales had an accuracy rate of 71%. By comparison, fuel pumps have an average accuracy of 97%, and small commercial scales have an average accuracy of 96%. DATCP contends greater oversight for these meters would benefit consumers affected by these devices, particularly because vehicle tank meters and LP gas meters often measure fuels that consumers use to heat residences. Each of the three devices covered in the bill also typically measure significant volumes of fuel or freight, and over- or under-delivery makes trade inefficient. Further, DATCP indicates that devices that are tested less frequently not only tend to be inaccurate, but inaccurate in favor of the seller. Conversely, devices that are tested frequently, such as fuel pumps and small commercial scales, tend to be more accurate.

4. Vehicle tank meters and LP gas meters are not currently subject to annual licensing. Annual licensing and fees would support DATCP's cost of inspecting these devices more frequently and support the cost of administering a licensing program. DATCP contends that inspecting these

devices while not requiring a license fee shifts the burden of paying for inspections to operators of other devices for which annual fees are charged, such as vehicle scales.

5. Table 1 lists the number of vehicle scales, LP gas meters and vehicle tank meters DATCP inspected from 2003 through 2007 and the approximate frequency with which DATCP currently inspects these devices. The inspection totals shown in the table reflect instruments inspected by DATCP. Departmental inspection should not be confused with the annual inspection an instrument operator would be required to obtain from an independent, licensed service company under the bill. These annual tests would be at the expense of the instrument’s operator. DATCP reports that costs of independent testing vary widely depending on the device. These tests would also be performed more frequently than those currently performed by DATCP, although DATCP expects its inspection frequency would increase under the bill.

**TABLE 1**

**Device Annual Tests and Average Frequency**

	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>Testing Frequency</u>
Vehicle Scales	445	372	310	609	469	65 months
Vehicle Tank Meters	213	189	131	N/A	123	29 months
Liquefied Petroleum Gas Meters	256	241	153	197	141	29 months

6. With the annual license revenues, DATCP intends to establish an accurate listing of all active vehicle tank meters and LP gas meters. Under current law, owners of registered LP gas meters must have meters tested annually by a DATCP-licensed service company, and the servicer must send its report to DATCP. However, as LP gas meters are only required to register one time, DATCP reports that it is not able to accurately determine the number of active meters in use in the state, nor is it able to accurately determine the number of LP gas meter owners that may be delinquent on annual testing. DATCP reports that revenues from the annual licensing that would be required under the bill could fund a limited-term employee (LTE) to process licenses each year during the October-November renewal period, analyze annual test reports, and help plan follow-up testing by state inspectors for those devices, operators or regions with patterns of noncompliance. DATCP contends this increased oversight will also allow the Department to verify service companies’ accuracy in testing and calibrating devices.

7. The Department estimates there are 2,450 vehicle scales, 710 LP gas meters and 540 vehicle tank meters in operation in Wisconsin that would fall under licensing and testing requirements under the bill. For each device, DATCP has estimated the license fees on the basis of the staff time devoted to testing each device and the cost of maintenance of testing equipment and other needed testing supplies. For example, DATCP has one testing truck for LP gas meters. Over the course of a year, an inspector will use the truck for inspections that equal approximately 0.75 FTE at a cost of \$64,000. Annual maintenance and supplies costs are an additional \$7,000, and the license fee would divide the \$71,000 total cost among the estimated LP gas meters operating in

Wisconsin.

8. The Department reports the license fees shown in Table 2 are possible fee and surcharge amounts that could be put in place by administrative rule, and estimated revenues under these fee levels. Estimated revenues for unlicensed operation surcharges are not shown, as the administration projects these surcharges would be minimal each year. Of the revenue totals shown, approximately \$180,000 annually would be expected in new revenues. However, actual revenues would depend on fee levels established in administrative rule and the number of licenses issued.

**TABLE 2**

**Vehicle Scale, LP Gas Meters and Vehicle Tank Meter Fees and Revenues**

	Current <u>Fee</u>	2007-08 <u>Revenue</u>	Proposed <u>Fee</u>	Estimated <u>Revenues</u>
<b>Vehicle Scales</b>				
License Fees (Annual)	\$100*	\$244,600	\$100	\$245,000
Construction Permit	---	---	100	13,000
Variance Permit	---	---	200	2,000
Non-Testing Surcharge	---	---	100	N/A
License Surcharge	200	12,200	200	12,000
<b>Liquefied Petroleum Gas Meters</b>				
License Fees (Annual)	\$25**	\$1,600	\$100	\$71,000
Non-Testing Surcharge	---	---	100	N/A
License Surcharge	---	---	200	N/A
<b>Vehicle Tank Meters</b>				
License Fees (Annual)	---	---	\$100	\$54,000
Non-Testing Surcharge	---	---	100	N/A
License Surcharge	---	---	200	N/A
Reinspection Fee	---	---	\$100	<u>\$40,000</u>
Revenue Total		\$258,400		\$437,000

\* The statutes specify a \$60 fee, unless a higher fee is set by rule. Administrative rules specify the \$100 fee.

\*\* Fee is one-time under current law.

9. DATCP would perform reinspections of instruments found to be noncompliant. The Department reports reinspections take an estimated two to three hours per inspection, at an estimated staffing cost of \$100 per device. The \$100 reinspection fee is intended to offset this cost. Further, DATCP contends that the lack of a reinspection fee shifts the costs of regulating noncompliance to those operators who are in compliance with requirements for their devices.

**Legislative Authority**

10. By requiring the Department to promulgate rules for weights and measures license fees, the Legislature would be relinquishing a degree of oversight of the Department's

responsibilities for weights and measures inspection and enforcement. The statutes specify that agencies submit proposed rules to the Legislature in final draft form, and that the appropriate standing committee in each house reviews the proposed rules within 30 days of referral. The period extends to 60 days for a committee if its chair or co-chairs request in writing that the agency meet with the committee to review the rule or if the committee publishes or posts a notice that the committee will hold a public hearing on the rule. A committee may, by majority vote, propose modifications in a rule. It may also object to a rule for any of the following reasons: (a) an absence of the agency's statutory authority to adopt a rule; (b) an emergency relating to public health, safety or welfare; (c) the rule's failure to comply with legislative intent; (d) the rule would create a conflict with state law; (e) there has been a change in circumstances since enactment of the earliest law upon which the proposed rule is based; or (f) the rule is arbitrary and capricious, or would impose an undue hardship. If a committee objects to a rule, the rule is heard by the Joint Committee for Review of Administrative Rules (JCRAR), which follows a review process similar to the standing committees. However, JCRAR also has the authority to vote for modifications or object to proposed rules. The JCRAR may vote non-concurrence with a committee objection, in which case the rule is approved. If the JCRAR objects to a rule, it must introduce a bill in each house of the Legislature to support objection to the rule. If either bill becomes law, the rule may not be promulgated unless a subsequent law specifically authorizes the rule. A rule may not be promulgated while a bill containing a formal objection is pending.

11. It may be appropriate for license and reinspection fees to be set by rule. As DATCP's costs change over time, rule-making authority would allow the Department to recoup its costs to ensure sufficient revenues. Further, the rule-making process generally includes public hearing and comment requirements and a legislative review procedure.

12. Alternatively, the Committee could consider setting a maximum fee level in the statutes. The Department would then need to obtain a statutory change to set higher fees as program costs increase over time, but the Legislature would retain a role in approving any future fee increases. Legislative oversight of fee increases may be desirable to ensure fee revenues are being prudently used at the time an increase is requested. The Committee could consider setting the fees in Table 1 as maximum amounts (Alternative 2).

### **Weights and Measures Appropriation Condition**

13. DATCP funds weights and measures inspection and enforcement duties with GPR, petroleum inspection fund SEG, and program revenue derived from license fees. The program revenue appropriation is funded by the following sources: (a) fertilizer fees of 2¢ per ton; (b) commercial feed fees of 2¢ per ton; (c) a \$45 annual fee for retail food establishments not otherwise inspected by municipal weights and measures agencies; (d) payments under contracts with municipalities for weights and measures inspection services; (e) fees on testing and calibrations done in the state metrology laboratory; (f) vehicle scale licenses and surcharges; (g) licenses for weights and measures servicers, installers and testers; and (h) one-time registration fees for LP gas meters.

14. Table 3 shows the estimated condition of the weights and measures appropriation under AB 75. DATCP would have authority under the bill to promulgate emergency rules to specify fee levels required by the bill. The estimates in the table assume DATCP would realize \$90,000, or approximately half of the annualized revenues, in 2009-10. Actual fee levels and resulting revenues may be different than assumed in the table. The emergency rule would expire the sooner of January 1, 2011, or the date that a permanent rule took effect. Even with emergency rule-making authority, additional revenues in 2009-10 will depend on when a rule is promulgated relative to the beginning of license years. A vehicle scale license expires March 31. Under the bill, licenses for LP gas meters would expire November 30, and licenses for vehicle tank meters would expire October 31.

**TABLE 3**

**Weights and Measures Program Revenue Appropriation – AB 75**

	<u>Actual</u> <u>2007-08</u>	<u>Estimated</u> <u>2008-09</u>	<u>Estimated</u> <u>2009-10</u>	<u>Estimated</u> <u>2010-11</u>
Opening Balance	\$621,400	\$546,500	\$420,200	\$290,300
Revenues	1,159,500	1,150,000	1,240,000	1,330,000
Expenditures	<u>1,234,400</u>	<u>1,276,300</u>	<u>1,369,900</u>	<u>1,369,900</u>
Closing Balance	\$546,500	\$420,200	\$290,300	\$250,400

15. If no additional fees are approved, it is expected DATCP would have to reduce expenditures by at least \$20,000 over the biennium to maintain a positive PR account balance.

**ALTERNATIVES**

1. Adopt the Governor’s recommendation to: (a) require annual licenses and testing for liquefied petroleum gas meters and vehicle tank meters; (b) require construction permits for vehicle scales, and require permits for a variance from a construction standard; and (c) authorize or require DATCP to promulgate administrative rules setting license fees, permit fees, surcharge amounts, reinspection fees, requirements for testing, reporting and record keeping, and standards for the construction, operation, and maintenance of vehicle scales, vehicle tank meters and LP gas meters.

2. Specify the following fees as maximum amounts, and authorize DATCP to set lower fees by administrative rule:

<u>Vehicle Scales</u>	<u>Vehicle Tank Meters</u>	<u>LP Gas Meters</u>
License Fee: \$100	License Fees: \$100	License Fees: \$100
Construction Permit: \$100	Non-Testing Surcharge: \$100	Non-Testing Surcharge: \$100
Variance Permit: \$200	License Surcharge: \$200	License Surcharge: \$200
Non-Testing Surcharge: \$100		
License Surcharge: \$200		

3. Delete provision.

<b>ALT 3</b>	<b>Change to Bill</b>
	Revenue
PR	- \$270,000

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