

- SUBJECT:** Transferring regulation of motor fuel programs from TDA to TDLR
- COMMITTEE:** International Relations and Economic Development — committee substitute recommended
- VOTE:** 8 ayes — Anchia, Frullo, Blanco, Larson, Metcalf, Perez, Raney, Romero
1 nay — Cain
- SENATE VOTE:** On final passage, April 11 — 27-4 (Fallon, Hughes, Paxton, Perry)
- WITNESSES:** *On House companion bill, HB 1695:*
For — Lance Davis, Kwik Chek; Paul Hardin, Texas Food and Fuel Association; (*Registered, but did not testify:* Jim Sheer, Texas Retailers Association)

Against — Sid Miller, Texas Department of Agriculture; Michael Skrobarcek, Guadalupe County Precinct 3 Constable; Sidney Miller; (*Registered, but did not testify:* Robert Turner, Earth Moving Contractors Association of Texas, Independent Cattlemen's Association of Texas, Texas Forestry Association, Texas Poultry Federation, Texas Sheep and Goat Raisers Association; Joe Morris, Texas Poultry Federation, Texas Sheep and Goat Raisers Association, Texas Forestry Association; Todd Smith, Texas Conservative Tea Party Coalition; Fred Funderburgh; Stan Kitzman; Donald A. Loucks; Chris Parachini)

On — Jessica Escobar, Texas Department of Agriculture; Brian Francis, Texas Department of Licensing and Regulation; (*Registered, but did not testify:* Carla James, Texas Department of Licensing and Regulation)
- BACKGROUND:** Agriculture Code ch. 13 and ch. 17 regulate motor fuel metering devices and motor fuel quality, respectively, and give the Texas Department of Agriculture the authority to administer and enforce these regulations.
- DIGEST:** SB 2119 would transfer the regulatory responsibility for motor fuel metering and motor fuel quality from the Texas Department of

Agriculture (TDA) to the Texas Department of Licensing and Regulation (TDLR), and would eliminate certain regulatory provisions pertaining to distributors, jobbers, suppliers, and wholesalers of gasoline.

Transfer. The bill would require TDA and TDLR to adopt a transition plan that provided for the orderly transfer of the powers, duties, functions, programs, and activities specified under the bill. The transfer would have to be completed no later than September 1, 2020. TDA would be required to provide TDLR with access to systems, facilities, and information necessary to accept a program or activity transferred under the bill.

All TDA rules, fees, policies, procedures, decisions, and forms related to the transferred programs or activities that were in effect on the transfer's effective date would remain in effect until changed by TDLR or the Texas Commission of Licensing and Regulation, as appropriate.

All full-time equivalent positions at TDA that directly or indirectly concerned the administration or enforcement of the transferred regulatory programs would become positions at TDLR on the date the applicable program was transferred. TDLR would be required to post the positions for hiring. When filling these positions, TDLR would have to give consideration to, but would not be required to hire, applicants who had been TDA employees involved in the transferred programs immediately before the date of the transfer.

TDLR could establish and lead a stakeholder workgroup to provide input, advice, and recommendations to TDA and TDLR on the orderly transfer of powers, duties, functions, programs, and activities under the bill. TDLR would establish the size, composition, and scope of the workgroup.

Memorandum of understanding. The bill would require TDLR and the state metrology laboratory to enter a memorandum of understanding to implement provisions of the bill. The memorandum would have to provide TDLR personnel and certain other licensed individuals with the same access to the laboratory provided to TDA personnel. The state metrology laboratory also would be required to purchase additional sets of

standards as necessary for use by TDLR inspectors or other personnel.

Repealers. SB 2119 would remove certain provisions on documentation requirements relating to the sale or delivery of motor fuel and notice of motor fuel tax rates.

Rules. The bill would allow the Texas Commission of Licensing and Regulation to adopt rules consistent with the bill for the regulation of the sale of motor fuels, and allow the commission by rule to impose fees for the testing, inspection, or performance of other services provided as necessary for the administration of the bill's provisions.

Licenses and penalties. SB 2119 would create a license under the Occupations Code for motor fuel metering device service technicians and motor fuel metering device service companies. These licenses would be distinct from licenses for weights and measure technicians governed under the Agriculture Code. The licenses would be subject to application and background information check requirements, terms and renewal requirements, and applicable enforcement measures as specified in the bill.

The bill also would reduce from \$10,000 to \$2,500 the maximum civil penalty for a fuel seller who violated regulations related to motor fuel quality.

Applicability. To the extent that the bill conflicted with Agriculture Code ch. 13 with regard to motor fuel metering devices, SB 2119 would control.

The bill would take effect September 1, 2020, except as otherwise provided in the bill. Certain transitional provisions of the bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

SB 2119 would transfer regulatory programs for motor fuel metering and quality from the Texas Department of Agriculture (TDA) to the Texas Department of Licensing and Regulation (TDLR), a state agency better placed to provide appropriate oversight.

The regulatory programs related to motor fuel metering and quality were originally put under TDA in the 1930s because the broad geography of the state required an implementing agency that already worked in rural areas. At that time, consumers had limited fueling options and difficulty reporting negative experiences. This has changed, as today there is an abundance of fueling options and consumers can submit complaints about gas stations instantaneously. Additionally, modern dispensing and monitoring systems have made it less likely that consumers will be deprived of the full amount of fuel they have purchased at the pump.

In spite of these advancements and widespread industry compliance, TDA has raised penalties on gas stations and collected more fees than were necessary to run its enforcement programs. These circumstances make it inappropriate for TDA to continue to regulate motor fuel metering and motor fuel quality.

SB 2119 would provide for a cost-effective transition of the regulatory programs to TDLR, with no significant fiscal implication to the state, according to the fiscal note. Because TDA no longer performs any field testing at gas stations but instead uses third-party inspectors, TDLR should be able to take over the programs without difficulty. TDLR has experience running third-party inspector programs, such as for elevator and boiler inspectors, as well as procedures in place for inspections, consumer complaints, enforcement, and prosecutions.

OPPONENTS
SAY:

SB 2119 would result in weaker consumer protections that could leave consumers more vulnerable to being cheated at the gas pump. The Texas Department of Agriculture (TDA) already has in place a robust and cost-effective inspections program that effectively regulates the motor fuel industry. The agency also inspects barcode scanners, produce, and other goods sold at gas stations, which means it would be more efficient to leave the fuel regulatory programs with TDA.

Transferring the regulatory programs to TDLR also would be costly because TDLR would need to procure new equipment and hire its own

staff. TDA inspectors are cross-trained to carry out different kinds of inspections and could not easily be transferred to TDLR.