

Assembly Bill No. 2451

Passed the Assembly August 19, 2014

Chief Clerk of the Assembly

Passed the Senate August 18, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 12531 of, and to add Sections 12210.3, 12210.7, 12518, and 12519 to, the Business and Professions Code, relating to weights and measures.

LEGISLATIVE COUNSEL’S DIGEST

AB 2451, Daly. Weights and measures: water submeters.

(1) Existing law requires the sealer of a county to inspect and test weighing and measuring devices, as specified, that are used or sold for commercial purposes in the county. Existing law, until January 1, 2016, authorizes the county board of supervisors to charge fees to recover the costs of the county sealer to perform these duties. For marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner is responsible for the utility meters, existing law prohibits the device fee for water submeters from exceeding \$2 per device per space or apartment.

This bill would require a county sealer who possesses the appropriate equipment for performing tests on water submeters to inspect, test, and certify to the accuracy of a water submeter, upon request of the owner, user, or operator of the water submeter, if any of specified conditions exist. By placing additional duties on local officials, this bill would impose a state-mandated local program. The bill would permit the board of supervisors of the county to authorize the sealer to establish a schedule of fees to cover the costs of performing those services.

This bill would authorize, upon written request of the owner, user, or operator, a water submeter that has been inspected, tested, and sealed by a sealer in one county to be installed in another county if certain conditions are met, including that the sealer of the county in which the water submeter is to be installed does not have reason to believe that the water submeter has been tampered with, damaged, or otherwise rendered inoperable since its inspection, testing, and sealing.

(2) Existing law requires a sealer to seize and condemn, and authorizes the sealer to destroy, incorrect weights and measures and weighing and measuring instruments used for commercial purposes that are not susceptible of repair. Existing law requires

a sealer to mark incorrect devices, that are susceptible of repair, with a tag or other device with the words “Out of order.” For these purposes, existing law defines “incorrect” as any instrument that fails to meet prescribed tolerances and specifications and other technical requirements for commercial weighing and measuring.

This bill would require a water submeter, that has been tested and found to be incorrect before its initial installation, to be marked with the words “Out of order” and to be returned to a service agent only if certain conditions are met. Because the bill would impose additional duties on county sealers and because a violation of this provision would be a crime, this bill would impose a state-mandated local program.

The bill would further specify that an owner, user, or operator of a water submeter that has previously been sealed, installed, and used commercially who submits the water submeter to a sealer for inspection and testing shall not be subject to criminal prosecution or liable for fines or other penalties for a violation of specified provisions regulating weights and measures if the device is found to be incorrect, if prescribed conditions apply.

(3) Existing law regulates the utilization and repair of weighing or measuring devices. Under existing law, for purposes of weighing and measuring devices, the term “placed in service” means to permit the use of a device that has been tested and found to be correct, as specified, and type approved, as provided, or to submit a device to a sealer for verification prior to installation. Under existing law, a device may only be placed in service by a sealer or a service agency.

This bill would limit the term “placed in service” to mean to permit the use of a device that has been tested and found to be correct, as specified, and type approved, as provided.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for specified reasons.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those

costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 12210.3 is added to the Business and Professions Code, to read:

12210.3. (a) A county sealer who possesses the appropriate equipment to perform tests on water submeters shall inspect, test, and certify to the accuracy of a water submeter, within his or her county and upon written request of the owner, user, or operator of the water submeter, if any of the following circumstances exist:

(1) The service is requested to be performed in addition to, or according to a schedule different from, any inspection frequency established by regulations adopted pursuant to Section 12212.

(2) The requested service pertains to a water submeter not intended to be placed into service in the county within six months.

(3) The requested service pertains to a water submeter intended to be placed into service in a different county.

(b) Notwithstanding Section 12210.5, the board of supervisors may authorize the sealer to establish, from time to time, a schedule of fees to cover the cost of services provided under subdivision (a) and to charge and collect the fees. The fee schedule shall be limited to the actual cost of performing those services.

SEC. 2. Section 12210.7 is added to the Business and Professions Code, to read:

12210.7. A county sealer shall, within his or her county and upon written request of the owner, user, or operator of the water submeter, authorize the installation of a water submeter that has been inspected, tested, and sealed by the county sealer of another county if all of the following conditions are met:

(a) The meter bears a seal that represents the most recent seal of the county in which the water submeter was inspected, in accordance with the provisions of Section 12505.

(b) The water submeter is installed no later than 12 months after the water submeter was inspected, tested, and sealed.

(c) The county sealer does not have reason to believe the water submeter has been tampered with, damaged, or otherwise rendered inoperable since the inspection, testing, and sealing by the other county sealer.

SEC. 3. Section 12518 is added to the Business and Professions Code, to read:

12518. A water submeter submitted to a sealer by an owner, user, or operator for inspection and testing before its initial installation that is found to be incorrect, as defined in Section 12500, shall be marked with the words, "Out of Order," in accordance with Section 12506, and shall be returned to a service agent only if both of the following conditions are met:

(a) The water submeter has no signs of intentional tampering by which to facilitate fraud.

(b) The water submeter shall not be placed into service in California.

SEC. 4. Section 12519 is added to the Business and Professions Code, to read:

12519. (a) Notwithstanding any other law, an owner, user, or operator of a water submeter that has previously been sealed, installed, and used commercially who submits the water submeter to a sealer for inspection and testing shall not be subject to criminal prosecution or liable for other fines or other penalties for a violation of any provision of this division, if the device is found to be incorrect, if all of the following conditions apply:

(1) The water submeter had, prior to installation and use, been submitted to a county sealer as one of a submeter lot where the lot was sampled and tested for compliance with all applicable laws and all applicable regulations adopted by the secretary in accordance with Section 12107.

(2) The specific water submeter had, at no prior time, been directly subjected to a physical test of its performance characteristics or accuracy by a county sealer.

(3) The specific water submeter has been deemed by the county sealer to show no signs of intentional tampering, damage, or alteration in its design or calibration while under the use or control of the owner, user, or operator.

(4) The owner, user, or operator has maintained the water submeter in accordance with applicable provisions of this division, and any regulations adopted under Section 12107.

(b) Notwithstanding subdivision (a), a water submeter that meets all of the conditions set forth in subdivision (a) shall not be permitted to be reinstalled and placed into commercial use unless

it is repaired and recalibrated by a service agent, and inspected and sealed by the county sealer.

SEC. 5. Section 12531 of the Business and Professions Code is amended to read:

12531. As used in this chapter, the following definitions are applicable:

(a) “Service agency” means a person, as defined in Section 12011, that for hire, award, commission, or any other payment of any kind, repairs a commercial device.

(b) “Service agent” means a person employed by a service agency to repair a commercial device.

(c) “Device” means a weighing or measuring equipment, contrivance, or instrument used, or designed to be used, for determining weight or measure, and includes any tool, appliance, or accessory used in connection therewith, that is used for commercial purposes, as defined in subdivision (e) of Section 12500.

(d) “Placed in service” means to permit the use of a device that has been tested and found to be correct, as defined in subdivision (c) of Section 12500, and type approved, as provided for in Section 12500.5.

(e) “Correct” means a device that meets all of the tolerance and specification requirements of Section 12107.

(f) “Repair,” in any of its variant forms, means to provide maintenance, or to install, adjust, recondition, or service a device.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement

to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2014

Governor