Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER PROTECTION
Mary Hayashi, Chair
AB 1623 (Yamada) – As Amended: March 29, 2012

SUBJECT: Weights and measures: inspection fees.

SUMMARY: Extends the authority of a county board of supervisors to charge fees to recover the costs of the county sealer until January 1, 2018, and establishes or revises device fee caps. Specifically, this bill:

1) Extends the authority of a county board of supervisors to charge fees to recover the costs of the county sealer, as provided, from January 1, 2013, until January 1, 2018.

2) Establishes the following fee caps for marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, as specified:
   a) $2 per device per space or apartment for water submeters;
   b) $3 per device per space or apartment for electric submeters; and,
   c) $4 per device per space or apartment for vapor submeters.

3) Increases the fee cap from $175 to $200 per device for truck mounted or stationary liquefied petroleum gas meters.

4) Increases the fee cap from $25 to $75 per device for wholesale and vehicle meters.

5) Establishes a fee cap of $30 per device for computing scales, as specified, and provides that the portion of the annual registration fee consisting for the business location device fees authorized by this bill shall not exceed $1,000 for each business location.

6) Establishes a fee cap of $80 per device for jewelry and prescription scales, as specified.

7) Establishes a fee cap of $50 per device for weighing devices, other than computing, jewelry, and prescription scales with capacities between 100 and 2,000 pounds.

8) Establishes a $60 fee cap per device for vehicle odometers utilized to charge mileage usage fees in vehicle rental transactions.

9) Specifies that the portion of the annual registration fee consisting of the business location fee and the device fees authorized by this bill shall not exceed $400 per business location.

10) Clarifies that the total portion of the annual registration fee consisting of the business location fee and device fees authorized by this bill not exceed $1,000 for each business location.
11) Exempts vehicles employed in vehicle rental transactions from the definition of a single business location.

12) Defines the "computing scale" as a weighing device with a capacity of less than 100 pounds that indicates the money value of any commodity weighed, at predetermined unit prices, throughout all or part of the weighing range of the scale.

13) Makes technical changes.

EXISTING LAW:

1) Requires the sealer of a county to inspect and test weighing and measuring devices, as specified, that are used or sold in the county and to weigh or measure packages to determine whether they contain the amount represented, as provided.

2) Permits a county board of supervisors to charge fees, not exceeding the cost of inspecting or testing weighing and measuring devices, to recover the costs to perform these duties until January 1, 2013.

3) Specifies that the annual registration fee for a business that uses a commercial weighing or measuring device or devices shall consist of a location fee, a Department of Food and Agriculture administrative fee, and a device fee.

4) Provides that for all other commercial weighing or measuring devices not listed, the device fee shall not exceed $20 per device, and that for purposes of these provisions, the registration fee shall not exceed the sum of $1,000 for each business location.

5) Specifies that the device fee for marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, as specified, shall not exceed $2 per device.

6) Provides that for liquefied petroleum gas meters the device fee shall not exceed $175 per device.

7) Provides that the device fee for wholesale and vehicle meters shall not exceed $25 per device.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal.

COMMENTS: According to the author, "County Sealers of Weights and Measures annually inspect commercial weighing and measuring devices to ensure that consumers are getting what they pay for and businesses don’t lose money to faulty equipment. Business and Professions code 12240 gives authority to counties to establish registration fees on inspected devices to provide funding for their inspection program. Section 12240 also prescribe limits for these fees in two ways: the law prohibits counties from creating fees that exceed the cost of inspection, and it prohibits counties from creating fees that exceed specific monetary amounts outlined in the law. The law sets these monetary limits at different levels for different categories of devices to reflect the resources necessary to testing that category including a category for devices that don’t necessarily fall into any other existing category. In the event that a county collects more funds from registration fees than covers costs despite these restrictions, Business and Professions
Codes 12242 and 12243 mandate that the program place the excess funds in the county general fund where the county will use them to reduce the registration fees creating the excess. AB 889 (Ruskin) of 2005 set up the current fee caps that were progressively implemented over the three years following AB 889’s passage. Section 12240’s fee restrictions have not received updates since full implementation of AB 889 occurred in 2008.

"AB 1623 seeks to alleviate this problem by raising fee caps on certain devices with significant disparities between current fee caps and the cost of testing the device. ... In addition to the substantive changes being made in the bill, AB 1623 extends the sunset of the fee authority to January 1, 2018. This will prevent the authority from lapsing and ensure that discussions on the provisions of the authority will be entered into again in 2018.

"AB 1623 also seeks to address an issue raised the last time the authority’s sunset was extended. During the discussions of AB 2361 (Ruskin) of 2010, the last bill to extend the sunset, The Truck Renting and Leasing Association (TRALA) raised objections to the way the registration fees were being applied to their vehicles in certain counties under the current version of the law. An agreement was reached between the sponsor and TRALA at that time to only extend the sunset date two years (to 2013) and that Agricultural Commissioners and Sealers would temporarily cease applying the registration fee to rental trucks while they studied the truck renting industry to learn more about it.

AB 1623 attempts to address this issue by separately categorizing rental vehicles used in mileage based transactions in Section 12240 of the Business and Professions Code, setting a $50 per truck fee to cover costs associated with testing the odometer, changing the definition of “business location” to exclude individual rental vehicles from the definition of “business location” for the purposes of the business location fee, and setting a $400 total fee cap for a vehicle rental business.

Background. Current law allows county boards of supervisors to establish fees for business locations to partially fund local weights and measures enforcement programs. The fees are the single largest source of revenue for the county program outside the County General Fund. The statute will sunset in January 1, 2013.

The authority for weights and measures registration fees was passed by the Legislature in 1982 to provide funding for weights and measures inspection activities. The law was amended multiple times to add additional devices to the registration program and to adjust the schedule of maximum fees. The section now applies to virtually all weighing and measuring devices used commercially. The only exceptions are farm milk tanks, which are specifically exempted, and check out scanners, which are not considered weighing or measuring devices.

The range of weighing and measuring devices included in the registration program currently includes retail fuel dispensing meters; water meters; electric meters that measure electricity that is sub-metered by a mobile home park; apartment complex, or boat dock; liquefied petroleum gas meters or gas vapor meters that are-sub-metered; truck scales, cattle scales and grocery counter scales; taxi meters; and a variety of other devices that weigh or meter a commodity offered for sale. The sunset date on the device registration fees has been extended in 1985, 1987, 1988, 1992, 1995, 1997, 2000, 2005, and again in 2010.
Support. The sponsor of this bill, the California Agricultural Commissioners and Sealers Association (CACASA), writes in support, "The current structure for the annual 'Device Registration Program' for commercial weighing and measuring devices was established in 2005 (AB 889, Ruskin). Through the provisions of this bill, local county governments were provided with a framework to recover costs for ensuring the accuracy of commercial transactions that were calculated using a scale, meter, pump, or other weighing/measuring device used in the marketplace. County Sealers of Weights and Measures annually inspect these commercial weighing and measuring devices to ensure that consumers are getting what they pay for; and to ensure a 'level playing field' between industry.

"Since the 'fee caps' were established in 2005, counties have been operating annual inspection programs as directed by state law. After several years of operating at the maximum fee allowable under current law, the majority of counties in the State have found that some adjustments to the caps are necessary to ensure cost recovery and the viability of the device registration program.

"The only option available for local governments to recover costs for administering this service is to request that the Legislature make an appropriate adjustment to the fee caps. Under the Government Code, virtually all other local government programs have the flexibility to adjust local fees to recover expenses without State Legislative action. This program requires Legislative authority.

"Local governments will need to take the next step to justify and adopt new fees locally if they individually choose to adjust the fees established by the state. CACASA agrees to continue operating under a 'cap' system to ensure predictability from year to year, but proposes to allow local governments to simply recover costs under an updated, reasonable fee cap structure. Any attempt to change fees by a Board of Supervisors would be administered under a strict fee study and proposed and adopted in a public meeting."

Opposition. Avis/Budget Group, Enterprise Holdings and The Hertz Corporation write in opposition, "Since having the current statutory authority, county sealers have rarely exercised their regulatory power to require registration and inspect the odometers of California's approximately 300,000 rental vehicles. There are a number of reasons for this lack of action, including the non-existence of any consumer complaints, the fact that it is a rare rental customer who ever incurs a mileage charge, and the lack of manpower and resources in the 58 counties to efficiently administer such a program.

"It is only since the advent of the perpetual county fiscal crisis that Sealers have begun to express interest in exercising their current statutory authority. The impetus for their interest in rental car odometers is clearly not from a consumer protection perspective. California's 300,000 plus rental vehicles are subject to over 10 million rental transactions annually in California, involving over 25 million rental days. Yet, the Sealers cannot produce one consumer complaint involving mileage charges. The two primary reasons for this fact are: (1) it is a rare rental customer (less than 1%) that incurs a mileage charge, and (2) rental vehicles are almost exclusively current and prior year models which have the latest advancements in odometer technology. Today's odometers are virtually tamper proof.

"The industry and the sponsors have been in discussion involving this issue for nearly two years. The subject provision of law was written with owner operated vehicles, such as taxis, in mind. It
was never the intent of the Legislature to ensnarl rental vehicles in this requirement. Despite this fact, language that would exempt rental cars from the onerous provisions of odometer registration and fees has been offered to and rejected by the sponsors."

Previous legislation. AB 2361 (Ruskin), Chapter 260, Statutes of 2010, extends the sunset date on the authority of the board of supervisors of a county to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2013.

AB 889 (Ruskin), Chapter 529, Statutes of 2005, extends authority for county sealers of weights and measures to levy civil penalties for violations in lieu of criminal prosecution; extends the sunset on the authority for counties to charge annual registration and device fees until January 1, 2011; updates and revises the fee schedule levels; establishes, until January 1, 2009, the authority for counties to inspect the pricing accuracy of retail point of sale systems.

AB 1810 (Wiggins), Chapter 512, Statutes of 2000, extends the sunset dates granting authority for civil penalties and device registration fees relating to weights and measures.

SB 189 (Kelley), Chapter 476, Statutes of 1997, extends the sunset date on the authority of the board of supervisors of a county to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 2001.

AB 1728 (Murray), Chapter 47, Statutes of 1995, extends the sunset date on the authority of the board of supervisors of a county to charge fees to recover the costs of the county sealer to perform specified duties until January 1, 1998.

AB 2987 (Cramer) Chapter 1380, Statutes of 1982, established fee collection authority for Weights and Measures program on a county by county basis.

REGISTERED SUPPORT / OPPOSITION:

Support

California Agricultural Commissioners and Sealers Association (sponsor)

Opposition

Avis/Budget Group
Enterprise Holdings
The Hertz Corporation

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