Jeff Grim *Legislative Service Commission*

S.B. 383

126th General Assembly
(As Introduced)

Sen. Cates

BILL SUMMARY

- Requires the Director of Agriculture to establish a motor fuel quality testing program.
- Requires the Director to adopt rules governing the program, including rules that: (1) incorporate standards that are modeled on the standards established by certain national organizations for motor fuel quality testing, (2) authorize a county auditor to conduct the program in the auditor's county in accordance with procedures established in the rules, and (3) allow a retailer that sells or offers for sale motor fuel to challenge the results of testing.
- Authorizes a county auditor, or the auditor's designated inspector, to inspect and test motor fuel that is sold in the auditor's county, sediment from motor fuel pumps, and water in motor fuel storage tanks that are located in the auditor's county.
- Prohibits a retailer from selling or offering for sale motor fuel that fails to comply with the standards for motor fuel that are established in rules adopted under the bill, and establishes progressive penalties for violating the prohibition.

CONTENT AND OPERATION

The bill requires the Director of Agriculture to establish a motor fuel quality testing program (motor fuel program). In establishing the program, the Director must adopt rules in accordance with the Administrative Procedure Act governing the program.

The rules must establish requirements that are modeled on the uniform laws and regulations of the National Institute of Standards and Technology published in Handbook 130 and that incorporate standards for motor fuel based on standards developed by the American Society for Testing and Materials (ASTM) Committee D02 on Petroleum Products and Lubricants. The rules also must specify the types of testing equipment that may be used in the motor fuel program. (Sec. 1327.70(B)(1).)

Under the bill, "motor fuel" means gasoline, E85 blend fuel, or diesel fuel that is sold by a retailer (sec. 1327.70(A)(4)). "E85 blend fuel" means fuel containing 85% or more ethanol as defined in the Corporation Franchise Tax Law and that meets the ASTM specification for E85 blend fuel (sec. 1327.70(A)(3)).[1] "Diesel fuel" means any liquid fuel capable of use in discrete form or as a blend component in the operation of engines of the diesel type, including transmix when mixed with diesel fuel (sec. 1327.70(A)(2), by reference to sec. 5735.01(D), not in the bill).

The rules must authorize a county auditor, or a person who is designated by the county auditor to act as a motor fuel inspector, to do any or all of the following:

(1) Inspect and test motor fuel that is sold in the auditor's county;

(2) Inspect each location at which a retailer sells or offers for sale motor fuel in the auditor's county to determine whether the retailer is in compliance with the motor fuel program;

(3) Upon the county auditor's own initiative or upon a complaint made by a person, inspect any location where a retailer sells or offers for sale motor fuel;

(4) Determine the frequency of inspections of retailers that sell or offer for sale motor fuel in the auditor's county; and

(5) Terminate motor fuel testing in the auditor's county by sending written notice of the termination to the Director (sec. 1327.70(B)(2)).

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[1] *Under current law, "ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable products, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources that meet all of the specifications in the ASTM specification D 4806-88 and is denatured as specified in Parts 20 and 21 of Title 27 of the Code of Federal Regulations (sec. 5733.46(A)(1), not in the bill).*

Under the bill, the rules also must require a person who is designated by a county auditor to act as a motor fuel inspector to successfully complete training that is provided by the Director, another state, an institution of higher education that has received a certificate of authorization from the Ohio Board of Regents, a state institution of higher education, or a private firm that is approved and monitored by the Director (sec. 1327.70(B)(3)).[2]

The bill authorizes a county auditor, or a person who is designated by the county auditor to act as a motor fuel inspector, to inspect and test motor fuel that is sold in the auditor's county, sediment from motor fuel pumps, and water in motor fuel storage tanks that are located in the auditor's county in accordance with the motor fuel program. If a county auditor or the auditor's designated inspector inspects and tests such motor fuel, sediment, or water, the auditor or inspector must determine the frequency of inspections of retailers that sell or offer for sale motor fuel in the auditor's county. A county auditor may terminate motor fuel testing in the auditor's county by sending written notice of the termination to the Director of Agriculture in accordance with rules (see below). (Sec. 319.56(B).)

With regard to the motor fuel program, the rules adopted by the Director must require a retailer, upon the request of a county auditor or a county auditor's designated inspector, immediately to provide to the auditor or inspector, free of charge and in containers provided by the auditor or inspector, an amount of motor fuel as required by the auditor or inspector for testing. The rules must require that each motor fuel sample that is provided be pumped by the county auditor or the county auditor's designated inspector. (Sec. 1327.70(B)(4).)

Under the bill, the rules must require a county auditor or a county auditor's designated inspector to test a sample using authorized testing equipment to determine whether the motor fuel complies with the standards established for motor fuel by the ASTM Committee D02 on Petroleum Products and Lubricants. "Authorized testing equipment" means any type of testing equipment that is authorized for use in the motor fuel program in rules adopted under the bill (sec. 1327.70(A)(1)). In addition, the rules must require the auditor or inspector to provide the results of the testing to the retailer. The rules also must specify that motor fuel is in compliance with the standards if it is within one octane point of the applicable octane certification using authorized testing equipment or within six-tenths of one octane point of the applicable octane certification when tested by a certified laboratory. (Sec. 1327.70(B)(5).)

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[2] *Generally, current law defines an "institution of higher education" as any two- or four-year public college or university in the state (sec. 3345.011, not in the bill).*

The rules adopted by the Director must allow a retailer, if the results of the testing indicate that the motor fuel is not in compliance with the standards established for octane certification, to challenge the results by immediately submitting a written statement, on a form prescribed by the Director, to the county auditor or inspector before the auditor or inspector leaves the retailer's location indicating that the retailer disagrees with the results of the testing. The rules must require the county auditor or the designated inspector, if the retailer challenges the results of the testing, to submit a sample of the motor fuel to a laboratory that is certified by the ASTM to determine whether the motor fuel is in compliance with the standards. Under the rules, a retailer who challenges the results of the testing immediately must provide the auditor or inspector, free of charge and in containers provided by the auditor or inspector, an additional amount of motor fuel that is from the same fuel from which the original sample was provided and that is necessary to submit a sample of the motor fuel to a certified laboratory. (Sec. 1327.70(B)(6).)

The rules also must require a retailer to take actions to ensure that motor fuel is brought into compliance with the standards established for octane certification if the results of the motor fuel quality testing indicate that the motor fuel is not in compliance with the standards and the retailer has not challenged the results that were obtained using authorized testing equipment or if the results of any testing conducted by a certified laboratory indicate that the motor fuel is not in compliance with those standards (sec. 1327.70(B)(7)).

Under the bill, the rules must require a county auditor or a designated inspector to issue a warning to a retailer if the results of the motor fuel quality testing indicate that the motor fuel is not in compliance with the standards established for octane certification. In addition, the rules must require a county auditor or a designated inspector to retest the motor fuel that is not in compliance not later than five days after a test indicates that the motor fuel is not in compliance. (Sec. 1327.70(B)(8).)

The rules adopted by the Director must require county auditors to maintain records that are determined necessary to ascertain compliance with the bill and the rules adopted under it. At a minimum, the rules must require a county auditor to retain, for not less than two years after the date on which the results from motor fuel quality testing were obtained, all records of testing that indicate that the motor fuel was not in compliance with the standards established for octane certification. (Sec. 1327.70(B)(9).) The rules must establish requirements and procedures under which the Director may examine records of county auditors to ascertain compliance with the bill and the rules adopted under it (sec. 1327.70(B)(10)).

In the rules, the Director must establish guidelines and standards in accordance with which a county auditor may test sediment from the motor fuel

pumps and water in the motor fuel storage tanks of a retailer located in the auditor's county. The guidelines and standards must be modeled on the uniform laws and regulations of the National Institute of Standards and Technology published in Handbook 130. The rules must allow a county auditor to establish additional guidelines and standards for the testing of water and sediment, provided that the guidelines and standards do not conflict with state or federal laws and regulations. Further, the rules must allow a county auditor to establish penalties for a violation of the guidelines and standards established by the Director or the county auditor, if applicable. (Sec. 1327.70(B)(12)(a).)

The rules also must authorize a county auditor or an auditor's designated inspector to test the sediment from the motor fuel pumps and water in the motor fuel storage tanks of a retailer located in the auditor's county. Additionally, the rules must require a retailer to allow an auditor or an auditor's designated inspector to test the sediment from the retailer's motor fuel pumps and water in the retailer's motor fuel storage tanks upon the request of the auditor or designated inspector. (Sec. 1327.70(B)(12)(b) and (c).)

The rules adopted by the Director must require a county auditor or a designated inspector to issue a warning to a retailer if the results of the testing of sediment from the motor fuel pumps or the testing of water in the motor fuel storage tanks indicate that the amount of sediment from a motor fuel pump or the amount of water in a storage tank is not in compliance with the guidelines and standards established in rules. In addition, the rules must require a county auditor or a designated inspector to retest the motor fuel pumps or the motor fuel storage tanks not later than five days after a test indicates that the amount of sediment from a motor fuel pump or the amount of water in a storage tank is not in compliance with those guidelines and standards. (Sec. 1327.70(B)(12)(d).)

Under the bill, the rules must require a retailer to take actions to ensure that the motor fuel pump is brought into compliance with the guidelines or standards if the results of the sediment testing from the motor fuel pumps indicate that the amount of sediment from the motor fuel pump is not in compliance with the guidelines and standards. The rules also must require a retailer to take actions to ensure that the storage tank is brought into compliance with the guidelines or standards if the results of the water testing of the motor fuel storage tanks indicate that the storage tank is not in compliance with the guidelines and standards. (Sec. 1327.70(B)(12)(e) and (f).)

In the rules, the Director must prescribe all forms that are necessary for the motor fuel program (sec. 1327.70(B)(11)). Finally, the rules must establish other procedures, criteria, and requirements that are necessary to implement or administer the motor fuel program (sec. 1327.70(B)(13)).

The bill prohibits a retailer from selling or offering for sale motor fuel that fails to comply with the standards for motor fuel that are established in rules adopted under the bill. Notwithstanding any other Ohio law governing the crediting of money from fines, money that is collected from fines pursuant to the bill (see below) as a result of a violation of that prohibition must be credited to a special fund that must be created in the county in which the violation occurred. The county auditor of that county must use the money in the fund to administer the motor fuel program in the county. (Sec. 1327.70(C).)

Under the bill, a record of or document concerning test results is a public record under the Public Records Law only if the record or document substantiates a fine that is levied under the bill (see below) (sec. 1327.70(D)).

The bill establishes progressive penalties for retailers that violate the prohibition against selling or offering for sale motor fuel that fails to comply with the standards established in rules adopted under the bill. The penalty for each offense is as follows:

Number of offense	Penalty
First	Warning issued
Second within two years of first offense	$250
Third within two years of first offense	$500
Fourth within two years of first offense	$1,000
Fifth within two years of first offense	$2,000
Sixth or subsequent within two years of first offense	Amount equal to twice the amount of most recent fine

If the violator challenges the results of authorized testing equipment under rules adopted under the bill and subsequent testing of the motor fuel in a certified laboratory in accordance with those rules indicates that the fuel violates the motor fuel standards established in those rules, the violator also must pay an amount that is equal to laboratory costs. (Sec. 1327.99(B).) The bill defines "laboratory costs" to mean all costs associated with testing the octane of a sample of motor fuel at a certified laboratory for purposes of the motor fuel program established under the bill and rules adopted under it. "Laboratory costs" includes, but is not limited to, shipping costs of a sample of motor fuel, fees charged by a certified laboratory for the testing of a sample of motor fuel, taxes, and other similar costs. (Sec. 1327.99(C)(2).)

HISTORY

ACTION	DATE
Introduced	10-24-06

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