



Ohio Legislative Service Commission

Bill Analysis

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H.B. 297

129th General Assembly
(As Introduced)

Reps. Weddington and Fende, R. Hagan, Foley, Antonio, Murray, Driehaus, Ashford, Patmon

BILL SUMMARY

- Requires the Director of Agriculture to establish a program for the testing of motor fuel sold at retail for quality, sediment from retailers' motor fuel pumps, and water in retailers' motor fuel storage tanks.
- Permits a county auditor to conduct testing of motor fuels under the Director's program.

CONTENT AND OPERATION

Overview

Ohio does not have a motor fuel quality testing program. County auditors test motor fuel pumps for accuracy of amount of fuel dispensed, but they do not test motor fuels to determine whether fuel dispensed from a particular pump meets the octane rating that is advertised for that fuel.

The bill requires the Director of Agriculture to establish a motor fuel quality testing program for gasoline and diesel fuel that is sold by a retailer.¹ If a county auditor chooses to test motor fuel sold within that county, the auditor or a person the auditor designates to act as a motor fuel inspector (hereinafter collectively "county auditor" unless the context indicates that only the county auditor is intended) must do so in accordance with the Director's program. The bill also establishes penalties for violations of its provisions.

¹ R.C. 1327.70(B).

Motor fuel quality testing program

The bill permits a county auditor to inspect and test motor fuel that is sold in the county, sediment from motor fuel pumps, and water in motor fuel storage tanks. If a county auditor performs such inspections and tests, the auditor must determine the frequency of inspections. A county auditor may terminate the auditor's motor fuel testing by sending written notice of the termination to the Director of Agriculture.² The Director must adopt rules in accordance with the Administrative Procedure Act to implement the testing program. All of the following must be provided for in the rules:

(1) The program must include requirements that are modeled on the uniform laws and regulations of the National Institute of Standards and Technology and that incorporate motor fuel standards developed by the American Society for Testing and Materials.³ The types of testing equipment that may be used in the testing program must be specified and must include portable scanning devices.⁴

(2) A county auditor may inspect and test motor fuel and inspect each location where motor fuel is sold at retail to determine whether the retailer is in compliance. An auditor may conduct an inspection on the auditor's own initiative or upon receipt of a complaint. The auditor must determine the frequency of inspections and must send written notice to the Director if the auditor terminates the auditor's inspection program.⁵

(3) A person designated by a county auditor to act as a motor fuel inspector must successfully complete approved training.⁶

(4) Upon request of a county auditor, a retailer immediately must provide the auditor with the requested amount of motor fuel. The fuel for testing must be supplied free of charge and be pumped by the auditor into containers furnished by the auditor.⁷

(5) The county auditor must test the sample with authorized testing equipment to determine whether it complies with the standards established for that type of fuel. Motor fuel is in compliance if it is within one octane point of the applicable octane certification using authorized testing equipment or within six-tenths of one octane point

² R.C. 319.56(B).

³ R.C. 1327.70(B)(1)(a).

⁴ R.C. 1327.70(B)(1)(b).

⁵ R.C. 1327.70(B)(2).

⁶ R.C. 1327.70(B)(3).

⁷ R.C. 1327.70(B)(4).

when tested by a certified laboratory. Test results must be provided to the retailer.⁸ Authorized testing equipment is any type of testing equipment that is authorized for use in the testing program in the rules.⁹

(6) If test results from authorized testing equipment indicate that the motor fuel is not in compliance, the retailer may challenge the results immediately by submitting a written statement to the county auditor, before the auditor leaves the retailer's location, indicating that the retailer disagrees with the results. The county auditor then must submit a sample of the motor fuel to a certified laboratory for testing. The retailer immediately must provide an additional sample of the motor fuel, which must come from the same fuel source from which the original sample was pumped, for submission by the auditor to the laboratory. The additional sample must be provided to the auditor free of charge and be pumped into containers furnished by the auditor.¹⁰

(7) If the auditor's test results indicate that a retailer's motor fuel is not in compliance and the retailer does not challenge the results, or if testing by a certified laboratory indicates that the motor fuel is not in compliance, the retailer must take action to bring the fuel into compliance.¹¹

(8) If test results indicate that the motor fuel is not in compliance, the county auditor must issue a warning to the retailer. In addition, not later than five days after a test indicates that motor fuel is not in compliance, the county auditor must retest the motor fuel using a new sample pumped from the same source from which the original sample of noncomplying motor fuel was obtained.¹²

(9) County auditors must maintain all records necessary to determine retailers' compliance with the bill. At a minimum, an auditor must retain the records in any case in which the testing indicated that the motor fuel was not in compliance for at least two years after the date of the test results.¹³

⁸ R.C. 1327.70(B)(5).

⁹ R.C. 1327.70(A)(1).

¹⁰ R.C. 1327.70(B)(6).

¹¹ R.C. 1327.70(B)(7).

¹² R.C. 1327.70(B)(8).

¹³ R.C. 1327.70(B)(9).

(10) The Director must establish requirements and procedures under which county auditor records are examined to determine compliance with the bill and must prescribe all forms necessary for the testing program.¹⁴

(11) The Director also must establish guidelines and standards under which a county auditor may test sediment from motor fuel pumps and water in a retailer's motor fuel storage tanks. The guidelines and standards must be modeled on the uniform laws and regulations of the National Institute of Standards and Technology. An auditor may establish additional guidelines and standards for the testing of water and sediment, provided that the additional guidelines and standards do not conflict with state or federal laws and regulations. The bill permits an auditor to establish penalties for a violation of the guidelines and standards established by the Director or the auditor, if applicable.

A retailer must allow the auditor to test sediment from the retailer's motor fuel pumps and water in the retailer's motor fuel storage tanks. If the testing indicates that the amount of sediment or water is not in compliance, the auditor must issue a warning to the retailer. In addition, the county auditor, not later than five days after such a test, must retest the sediment from the same motor fuel pump or the water in the same fuel storage tank. The retailer must take action to ensure that the motor fuel pump or storage tank at issue is brought into compliance with the applicable guidelines or standards.¹⁵

(12) The Director is required to establish any other procedures, criteria, and requirements that are necessary to implement or administer the bill.¹⁶

Prohibition and penalties

The bill prohibits a retailer from selling or offering for sale motor fuel that fails to comply with the applicable motor fuel standards.¹⁷ The bill also prescribes the following penalties for violations of the prohibition:

¹⁴ R.C. 1327.70(B)(10) and (11).

¹⁵ R.C. 1327.70(B)(12).

¹⁶ R.C. 1327.70(B)(13).

¹⁷ R.C. 1327.70(C)(1).

Offender status	Fine amount
First time	None, but receives a warning
Second within two years of the first	\$250
Third within two years of the first	\$500
Fourth within two years of the first	\$1,000
Fifth within two years of the first	\$2,000
Sixth or subsequent within two years of the first	Twice the amount of the most recent fine that was imposed on the offender

In addition, in all cases if the person challenges motor fuel test results that were obtained through use of authorized testing equipment and if subsequent testing of the fuel by a certified laboratory indicates that the fuel is not in compliance with the applicable standards, the person also must pay an amount equal to the laboratory and related costs.¹⁸

Disposition of fine money

All money that is collected from fines imposed for violations of the bill must be credited to a special fund that must be created in the treasury of the county in which the violation occurred. The county auditor of that county is required to use the money in the fund to administer the motor fuel quality testing program in that county.¹⁹

Public record provision

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.²⁰

HISTORY

ACTION	DATE
Introduced	07-12-11

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¹⁸ R.C. 1327.99(B) and (C).

¹⁹ R.C. 1327.70(C)(2).

²⁰ R.C. 1327.70(D).