

CONCURRENCE IN SENATE AMENDMENTS

AB 2451 (Daly)

As Amended August 13, 2014

Majority vote

ASSEMBLY: 78-0 (May 15, 2014) SENATE: 36-0 (August 18, 2014)

Original Committee Reference: L. GOV.

SUMMARY: Makes a number of changes to law governing the inspection, testing, and certification of water submeters.

The Senate amendments:

- 1) Provide that an owner, user, or operator of a water submeter shall not be subject to criminal prosecution or liable for other fines or penalties if a water submeter that has been sealed, installed and used commercially is found to be incorrect, if all of the following conditions apply:
 - a) The water submeter was one of a submeter lot that had been previously sampled and tested by a sealer, as specified;
 - b) The specific water submeter had not been previously tested by a sealer, as specified;
 - c) The water submeter has been deemed by the sealer to show no signs of intentional tampering, damage or alteration, as specified; and,
 - d) The owner, user, or operator has maintained the water submeter, as specified.
- 2) Provide that a water submeter that meets the conditions in 1) above, shall not be reinstalled and placed into commercial use unless it is repaired and recalibrated, as specified, and inspected and sealed by the sealer.

AS PASSED BY THE ASSEMBLY, this bill:

- 1) Required a county sealer who possesses the appropriate equipment to perform tests on water submeters to inspect, calibrate, 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:
 - a) The service is requested to be performed in addition to, or according to a schedule different from, any inspection frequency established by regulations adopted by the Secretary of the Department of Food and Agriculture (DFA) pursuant to current law governing the inspection frequency of all commercially used weights, measures, and weighing and measuring apparatus in the state;
 - b) The requested service pertains to a water submeter not intended to be placed into service in the county within six months; or,

- c) The requested service pertains to a water submeter intended to be placed into service in a different county.
- 2) Allowed the board of supervisors to authorize the sealer to establish, from time to time, a schedule of fees to cover the cost of services provided under 1) above, and to charge and collect the fees. The fee schedule shall be limited to the actual cost of performing those services and shall not exceed the amount specified for water submeters in current law, which is \$2 per device per space or apartment.
- 3) Required a county sealer, within his or her county and upon written request of the owner, user, or operator of the water submeter, to 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 current law, as specified;
 - b) The water submeter is installed no later than 12 months after the water submeter was inspected, tested, and sealed; and,
 - 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.
- 4) Required 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 current law, to be marked with the words, "Out of Order," in accordance with current law, and to 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; and,
 - b) The water submeter shall not be placed into service in California.
- 5) Deleted from the definition of "placed in service" the submission of a device to a sealer for verification prior to installation.
- 6) Provided that no reimbursement is required by this bill pursuant to 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 bill or because costs that may be incurred by a local agency or school district will be incurred because this bill creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of state law, or changes the definition of a crime within the meaning 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 current law governing state mandated local costs.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) *Purpose of this bill.* This bill makes a number of changes to laws governing testing and certification of water submeters in order to increase their ready availability for new development of multi-family housing. This bill is sponsored by the Utility Management and Conservation Association and the California Apartment Association.
- 2) *Background.* Water submeters are commercially utilized by landlords in rental units, including apartment complexes, mobile home parks, and marinas to allow each tenant to receive a separate utility reading and be billed separately for water consumption. While residential and commercial water, electric, and gas meters are regulated by the Public Utilities Commission, water submeters are regulated by Division of Measurement Standards (DMS) under DFA in collaboration with the local sealer of weights and measures.

Generally, a landlord of a rental property has a master water meter, pays for the entire water bill for the property, and bills the tenant by including water charges as part of the rent. Water submeters and direct billing of water consumption encourages tenants to conserve water. There is no state law requiring the installation of water submeters, although some counties, such as San Diego, have adopted ordinances to that effect.

In order for a manufacturer to sell and install a water submeter in California, current law requires DMS to test a type or design of a water submeter for approval, then subsequently requires a local sealer to test a sample of DMS-approved water submeters prior to installation in counties. Once DMS approves a prototype, the water submeter manufacturer is allowed to produce water meters for installation for counties.

The county sealer is the local weights and measures official who checks all weighing, measuring, and timing devices used in sales made to the public, and tests for accuracy to protect both the buyer and seller. The county sealer seals, or locks, the adjusting mechanism of a device after the item has been inspected and found accurate. Sealing prevents an individual from changing the instrument's calibration and notates when the accuracy check was performed. Before the meters are installed in counties, a county sealer will test a 20% sample of the water submeters (unless there are less than a hundred, in which case all submeters are tested). If the water submeter manufacturer fails the county sealer's test of the sample, the manufacturer can repair and retest the water submeters for approval within DFA tolerance levels.

Once water submeters are installed, property owners and tenants can contact the county sealer if they suspect that a water submeter's reading is inaccurate. If the water submeter needs to be replaced, the property owner is responsible for any costs. Water submeters are retested every 10 years and, at that time, are most likely replaced. The current requirement that county sealers test a sample of water submeters may reduce the number of substandard or faulty submeters that are installed.

Service agents provide utility billing and submetering services to owners and managers of multifamily housing.

- 3) *Author's statement.* According to the author, "As water grows increasingly scarce and expensive, water submeters – devices that measure water use inside an individual tenancy – are becoming increasingly popular in California. The City of San Diego passed an ordinance in 2010 mandating that submeters be installed in all new rental housing construction. The City of Long Beach is developing a similar ordinance and, over the past several years, the state legislature has tried (and failed) to enact a submeter mandate (like San Diego's).

"Over the years there have been complaints from housing developers that it is often difficult to find submeters in California when and where they're needed. Manufacturers say that the bottlenecks causing the availability problems are to be found in the state's extensive regulatory program and they have identified several specific concerns including quality and reliability of state testing, the prospect of civil and criminal liability associated with simply submitting submeters to be tested, disposal requirements when a submeter fails testing, (and) rigid requirements to prevent approved devices – despite their need – to be used in counties outside the one where the testing occurred. Knowing that the testing fix is a longer-term effort, submeter manufacturers (and billing companies which also serve as service agents, responsible for the installation, monitoring and maintenance of submeters) believe that the lesser reforms (embodied in this bill) will go a long way to reducing the level of uncertainty which was making them reluctant to ship to California and frustrating housing developers."

- 4) *State Mandate.* This bill is keyed a state mandate, which means the state could be required to reimburse local agencies and school districts for implementing the bill's provisions if the Commission on State Mandates determines that the bill contains costs mandated by the state.
- 5) *Arguments in support.* The Utility Management and Conservation Association and the California Apartment Association, sponsors of this bill, state, "UMCA [Utility Management and Conservation Association] believes AB 2451 will help begin to mainstream water submeters by reducing the uncertainty in California associated with submeter availability and insuring there is a ready supply when needed – at the time new multifamily housing is about to begin construction. In that way, California can more systematically improve water conservation while supporting the resurgence of housing construction."
- 6) *Arguments in opposition.* None on file.

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