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# OHIO LEGISLATIVE SERVICE COMMISSION

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135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Reps. Thomas and Blackshear

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### SUMMARY

- Authorizes a county auditor to implement a motor fuel quality testing program.
- Requires a county auditor that implements a motor fuel quality testing program to ensure that proper testing equipment is used by a fuel inspector.
- Specifies various duties a fuel inspector must perform when testing the quality of motor fuel.
- Requires a motor fuel retail dealer (for example, a gas station owner) to allow the fuel inspector to perform various tests of the retail dealer's motor fuel pumps and storage tanks.
- Establishes enforcement procedures for violations of a county's program standards.
- Allows any county that lawfully implemented a motor fuel quality testing program prior to the bill's effective date to continue that program, thus exempting that county from the bill's provisions.

### DETAILED ANALYSIS

#### Motor fuel quality testing

##### Overview

Currently, the Director of Agriculture may adopt rules establishing a statewide motor fuel quality testing program.<sup>1</sup> However, the Director has not yet established the statewide

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<sup>1</sup> R.C. 1327.70(B).

program. The bill allows counties to establish their own program; however, a county can only implement a program absent a statewide program that is funded and implemented.

### **County motor fuel quality testing programs**

Under a county program, a fuel inspector may test motor fuel quality for octane level, sediment, and water in the fuel. The bill prohibits a fuel inspector from charging any inspection or registration fees to perform motor fuel quality testing.<sup>2</sup>

Under current law, motor fuel is gasoline or diesel fuel that is sold by a retailer. The bill expands the definition of motor fuel to include any of the following types of fuel that is sold by a retail dealer (any person that sells or distributes motor fuel at a retail service station located in Ohio):

1. Conventional fuel (which is gasoline and diesel fuel);
2. Biodiesel (which is a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents that meets the American Society for Testing and Materials (ASTM) International specification for biodiesel fuel (B100) blend stock distillate fuels and any other standards that the Director of Administrative Services adopts by rule);
3. Blended biodiesel fuel (which is a blend of biodiesel with petroleum based diesel fuel in which the resultant product contains at least 20% biodiesel that meets the ASTM International specification for blended diesel fuel and any other standards that the Director of Administrative Services adopts by rule); and
4. Ethanol extended fuel (which is a mixture of gasoline and ethanol).<sup>3</sup>

### **Equipment**

The bill requires a county auditor who implements a motor fuel quality testing program to acquire testing equipment or ensure that testing equipment is available for the county's program. The county auditor must ensure that the testing equipment meets the most recent standards established by the ASTM International.

A county auditor may contract with another county to use that county's testing equipment so long as the contract provides that the testing is performed by a fuel inspector from the county that owns the testing equipment.<sup>4</sup> The bill prohibits a county auditor from allowing the county's testing equipment to be used in any other county for fuel quality testing purposes unless a fuel inspector for the county that owns the equipment is conducting the

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<sup>2</sup> R.C. 1327.70(C)(1).

<sup>3</sup> R.C. 1327.70(A); R.C. 125.831 and R.C. 5735.01, not in the bill.

<sup>4</sup> R.C. 1327.70(A). A fuel inspector is either the county auditor or a person who is designated by the county auditor to perform motor fuel quality testing.

testing.<sup>5</sup> For example, suppose Delaware County and Franklin County establish their own motor fuel quality testing programs. If Delaware County does not own any equipment to conduct the motor fuel quality testing, but Franklin County does, Delaware County can contract to use Franklin County's equipment. However, Delaware County's testing must be done by a fuel inspector from Franklin County.

### **Fuel inspector duties**

Under the bill, a fuel inspector must do all of the following when performing motor fuel quality testing:

1. Use testing equipment that meets the most recent standards established by the ASTM International;
2. Adhere to any standard or guideline set forth by the Director of Agriculture relating to petroleum product quality and sampling and testing methods that are consistent with the ASTM; and
3. Adhere to the following motor fuel quality testing compliance standards (unless they are inconsistent with the Director's standards and guidelines):
  - a. Fuel storage tanks cannot exceed  $\frac{1}{4}$  inch of water for ethanol extended fuel and cannot exceed two inches of water for conventional fuel.
  - b. Gasoline and ethanol extended fuel octane levels tested at the pump must be within one octane point of the octane level listed on the pump.
  - c. Gasoline and ethanol extended fuel tested at the pump, per ASTM requirements, must be visually free of undissolved water, sediment, and suspended matter and must be clear and bright at either an ambient temperature or 70 degrees Fahrenheit, whichever is higher.
  - d. Diesel fuel tested at the pump must meet the standards defined by the ASTM.<sup>6</sup>

However, whenever the Department of Agriculture is notified of a U.S. Environmental Protection Agency waiver of standards that applies to federal fuel standards, the Department must notify every county auditor's office. Any auditor participating in a fuel quality testing program (regardless of when the program was implemented) must only test for water and sediment during the waiver period.<sup>7</sup>

A fuel inspector must transmit data collected from motor fuel quality testing to the Director of Agriculture. The Director must compile the data, including dates, locations, and

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<sup>5</sup> R.C. 1327.70(C)(2).

<sup>6</sup> R.C. 1327.70(E).

<sup>7</sup> R.C. 1327.70(I).

results received from fuel inspectors, and make the data accessible to the public via the Department of Agriculture's website.<sup>8</sup>

### **Retail dealer duties**

If a county auditor implements a fuel quality testing program, a motor fuel retail dealer (for example, a gas station owner) must do all of the following when requested by a fuel inspector:

1. Allow the fuel inspector to test the octane level and sediment from the retail dealer's motor fuel pumps;
2. Allow the fuel inspector to test the water and sediment in the retail dealer's motor fuel storage tanks; and
3. Allow the fuel inspector to pump a sample of motor fuel, free of charge and in containers provided by the fuel inspector, in an amount required by the fuel inspector for testing.<sup>9</sup>

### **Penalties**

If a retail dealer is in violation of a motor fuel quality standard detected at the dealer's retail service station, a fuel inspector must issue to the dealer an order to stop selling fuel until the fuel is in compliance with the standards. The Director must adopt rules that establish procedures by which a retail dealer may appeal an order issued by a fuel inspector.

A retail dealer who violates the program's standards also may be subject to a civil penalty, but only if the Director adopts the civil penalties via rules. A county auditor may not assess a civil penalty if the Director does not adopt the rules. Any civil penalties collected must be deposited into the applicable county general fund.<sup>10</sup>

### **Grandfather clause for existing county programs**

The bill specifies that any county that lawfully implemented a motor fuel quality testing program prior to the bill's effective date is exempt from the bill's provisions, including the bill's testing requirements and data transmission provisions. Such a county may continue to implement the motor fuel quality testing program as that program existed prior to the bill's effective date.<sup>11</sup>

Currently, only Summit County operates a motor fuel quality testing program in Ohio. Summit County is a charter county, meaning it may exercise certain home rule powers in the same manner as a municipal corporation.<sup>12</sup> There are only two charter counties in Ohio,

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<sup>8</sup> R.C. 1327.70(G).

<sup>9</sup> R.C. 1327.70(D).

<sup>10</sup> R.C. 1327.70(F).

<sup>11</sup> R.C. 1327.70(H).

<sup>12</sup> See Ohio Constitution, Article X, Section 3.

Summit and Cuyahoga. All other counties are not charter counties. Thus, they do not have independent home rule powers and are not authorized under Ohio law to implement a motor fuel testing quality program.

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## HISTORY

Action	Date
Introduced	05-15-24

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