

Bill as Introduced

SB 514 – AS INTRODUCED

2010 SESSION

10-2953
08/05

SENATE BILL **514**

AN ACT relative to commercial weighing or measuring devices.

SPONSORS: Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. Downing, Dist 22;
Sen. Letourneau, Dist 19; Rep. Kidder, Merr 1; Rep. Patten, Carr 4

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill:

I. Defines registered serviceman.

II. Permits registered servicemen to perform testing, certification, and sealing of licensed commercial weighing or measuring devices.

.....

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to commercial weighing or measuring devices.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 New Paragraph; Registered Serviceman; Definition. Amend RSA 438:1 by inserting after
2 paragraph XII the following new paragraph:
3 XIII. "Registered serviceman" means an individual who holds a valid certificate of
4 registration from the department of agriculture, market, and food who, for hire, installs, services,
5 repairs, reconditions, tests, or calibrates a commercial weighing or measuring device.
6 2 New Section; Standards for Weights and Measures; Registered Serviceman. Amend RSA 438
7 by inserting after section 14 the following new section:
8 438:14-a Registered Serviceman. A registered serviceman shall be permitted to perform testing,
9 certification, and sealing of licensed devices in conformance with this chapter and all applicable
10 rules.
11 3 Effective Date. This act shall take effect 60 days after its passage.

SB 514 - AS AMENDED BY THE SENATE

03/24/10 1118s

2010 SESSION

10-2953
08/05

SENATE BILL **514**

AN ACT relative to commercial weighing or measuring devices.

SPONSORS: Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. Downing, Dist 22;
Sen. Letourneau, Dist 19; Rep. Kidder, Merr 1; Rep. Patten, Carr 4

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill:

I. Defines registered serviceman.

II. Permits registered servicemen to mark commercial weighing or measuring devices in a manner approved by the commissioner of the department of agriculture, markets and food.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 514 - AS AMENDED BY THE SENATE

03/24/10 1118s

10-2953
08/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to commercial weighing or measuring devices.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Registered Serviceman; Definition. Amend RSA 438:1 by inserting after
2 paragraph XII the following new paragraph:

3 XIII. "Registered serviceman" means an individual who holds a valid certificate of
4 registration from the department of agriculture, market, and food who, for hire, installs, services,
5 repairs, reconditions, tests, or calibrates a commercial weighing or measuring device.

6 2 New Section; Standards for Weights and Measures; Registered Serviceman. Amend RSA 438
7 by inserting after section 14 the following new section:

8 438:14-a Registered Serviceman. A registered serviceman who installs, services, repairs,
9 reconditions, tests, or calibrates a commercial weighing or measuring device shall mark said device
10 in a manner approved by the commissioner. This mark shall authorize the device owner to use a
11 licensed device unless rejected pursuant to RSA 438:14.

12 3 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 358
SB 514 – FINAL VERSION

03/24/10 1118s
05May2010... 1645h
06/02/10 2150eba

2010 SESSION

10-2953
08/05

SENATE BILL **514**

AN ACT relative to commercial weighing or measuring devices and rulemaking authority for the commissioner of the department of agriculture, markets, and food.

SPONSORS: Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. Downing, Dist 22; Sen. Letourneau, Dist 19; Rep. Kidder, Merr 1; Rep. Patten, Carr 4

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill:

I. Defines registered service technician.

II. Permits registered service technician to mark commercial weighing or measuring devices in a manner approved by the commissioner of the department of agriculture, markets and food.

III. Repeals the general rulemaking authority of the commissioner of the department of agriculture, markets and food.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 358
SB 514 - FINAL VERSION

03/24/10 1118s
05May2010... 1645h
06/02/10 2150eba

10-2953
08/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to commercial weighing or measuring devices and rulemaking authority
for the commissioner of the department of agriculture, markets, and food.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 358:1 New Paragraph; Registered Service Technician; Definition. Amend RSA 438:1 by
2 inserting after paragraph XII the following new paragraph:

3 XIII. "Registered service technician" means an individual who holds a valid certificate of
4 registration from the department of agriculture, markets, and food who, for hire, installs, services,
5 repairs, reconditions, tests, or calibrates a commercial weighing or measuring device.

6 358:2 New Section; Standards for Weights and Measures; Registered Service Technician.
7 Amend RSA 438 by inserting after section 14 the following new section:

8 438:14-a Registered Service Technician. A registered service technician who installs, services,
9 repairs, reconditions, tests, or calibrates a commercial weighing or measuring device shall mark said
10 device in a manner approved by the commissioner. This mark shall authorize the device owner to
11 use a licensed device unless rejected pursuant to RSA 438:14.

12 358:3 Repeal. RSA 438:8, I(j), relative to the general rulemaking authority of the commissioner
13 of the department of agriculture, markets, and food, is repealed.

14 358:4 Effective Date. This act shall take effect 60 days after its passage.

15 Approved: July 20, 2010

16 Effective Date: September 18, 2010

Amendments



Sen. Cilley, Dist. 7
March 17, 2010
2010-1087s
08/10

Amendment to SB 514

1 Amend RSA 438:14-a as inserted by section 2 of the bill by replacing it with the following:

2

3 438:14-a Registered Serviceman. A registered serviceman who installs, services, repairs,
4 reconditions, tests or calibrates a commercial weighing or measuring device shall mark said device in
5 a manner approved by the commissioner. This mark shall authorize the device owner to use a
6 licensed device unless rejected pursuant to RSA 438:14.

2010-1087s

AMENDED ANALYSIS

This bill:

- I. Defines registered serviceman.
- II. Permits registered servicemen to mark commercial weighing or measuring devices in a manner approved by the commissioner of the department of agriculture, markets and food.

Senate Executive Departments and Administration
March 18, 2010
2010-1118s
08/09



Amendment to SB 514

1 Amend RSA 438:14-a as inserted by section 2 of the bill by replacing it with the following:

2

3 438:14-a Registered Serviceman. A registered serviceman who installs, services, repairs,
4 reconditions, tests, or calibrates a commercial weighing or measuring device shall mark said device
5 in a manner approved by the commissioner. This mark shall authorize the device owner to use a
6 licensed device unless rejected pursuant to RSA 438:14.



2010-1118s

AMENDED ANALYSIS

This bill:

- I. Defines registered serviceman.
- II. Permits registered servicemen to mark commercial weighing or measuring devices in a manner approved by the commissioner of the department of agriculture, markets and food.

Committee Minutes

SENATE CALENDAR NOTICE

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Senator Jacalyn Cilley Chairman ✓
Senator Martha Fuller Clark V Chairman ✓
Senator Betsi DeVries ✓
Senator Michael Downing ✓
Senator Sharon Carson ✓

Start 3:27 pm
end 5:04 pm

For Use by Senate Clerk's Office ONLY		
<input type="checkbox"/>	Bill Status	
<input type="checkbox"/>	Docket	
<input type="checkbox"/>	Calendar	
Proof:	<input type="checkbox"/> Calendar	<input type="checkbox"/> Bill Status

Date: March 11, 2010

HEARINGS

Tuesday

3/16/2010

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

LOB 101

2:15 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: *** SB 414 WAS PREVIOUSLY SCHEDULED AT 2:00 PM; SB 443 WAS PREVIOUSLY SCHEDULED AT 2:15 PM; SB 507 WAS PREVIOUSLY SCHEDULED AT 2:30 PM; SB 514 WAS PREVIOUSLY SCHEDULED AT 2:45 PM. ***

- 2:15 PM SB414 relative to the Mount Washington commission.
- 2:30 PM SB443 relative to rulemaking authority of the electricians' board.
- 2:45 PM SB507 relative to the Masonic Home.
- 3:00 PM SB514 relative to commercial weighing or measuring devices.

Sponsors:

SB414

Sen. John Gallus
Rep. Robert Theberge

Sen. Matthew Houde
Rep. Candace Bouchard

Rep. William Remick

Rep. Paul Ingersoll

SB443

Sen. Sharon Carson

Sen. John Gallus

Rep. Susan Almy

Sen. Robert Letourneau

SB507

Sen. Lou D'Allesandro
Rep. Kenneth Weyler

Sen. Bob Odell
Rep. David Nixon

Sen. Sheila Roberge

Sen. Betsi DeVries

SB514

Sen. Peter Bragdon
Rep. David Kidder

Sen. Sharon Carson
Rep. Betsey Patten

Sen. Michael Downing

Sen. Robert Letourneau

Executive Departments & Administration Committee Hearing Report

TO: Members of the Senate

FROM: Patrick Murphy, *Legislative Aide*

RE: Hearing report on SB514 relative to commercial weighing or measuring devices.

HEARING DATE: March 16, 2010

MEMBERS OF THE COMMITTEE PRESENT:

Senator Cilley (Dist 6), Senator Fuller Clark (Dist 24), Senator DeVries (Dist 18), Senator Downing (Dist 22), Senator Carson (Dist 14)

MEMBERS OF THE COMMITTEE ABSENT:

None

Sponsor(s):

Sen. Bragdon, Dist 11; Sen. Carson, Dist 14; Sen. Downing, Dist 22; Sen. Letourneau, Dist 19; Rep. Kidder, Merr 1; Rep. Patten, Carr 4

What the bill does:

This bill:

- I. Defines registered serviceman.
- II. Permits registered servicemen to perform testing, certification, and sealing of licensed commercial weighing or measuring devices.

Supporters of the bill:

Senator Bragdon, Dist 11; Senator Downing, Dist 22; Peter Emanuel, Bow Recycling Center; Norman Brown, Advanced Scale; Chris Nicolopoulos, for Rick Belanger; John Dumais, NH Grocers; Joseph Rose, Propane Gas Association of New England; Floyd Hayes, Independent Oil Marketers Association; Burne Gaff, Gaftek; Thomas Rymes, Rymes Propane & Oil

Those in opposition to the bill:

Commissioner Merrill, Department of Agriculture; Richard Cote, Department of Agriculture; Kristopher Heath, Department of Agriculture; Kevin Young, Department of Agriculture

Speaking to the bill/Neutral:

None

Summary of testimony received:

Senator Downing, Dist 22

- Introduced the bill for the Prime Sponsor. This bill defines registered serviceman, and permits registered servicemen to perform testing, certification, and sealing of licensed commercial weighing or measuring devices.

Commissioner Merrill, Department of Agriculture

- This bill would give private industry regulatory authority in the enforcement of the Weights and Measures Act as codified in RSA 438. This would be a major and unwise change to longstanding public policy.
- The inspection, approval and rejection of commercial weighing and measuring devices is a government function in 49 states, including NH and 530 out of 530 local and county jurisdictions.
- The mission of the department is to ensure equity in the marketplace. Part of this equity function is to ensure that weighing and measuring devices used commercially meet certain specifications, tolerances and technical requirements. State inspectors make decisions devoid of any personal financial interest. They base their decisions on established standards in order to protect the public interest. Servicemen are understandably motivated or influenced by their bottom line. Many business owners have expressed to us that inspection should be separate from the service, maintenance, repair or sales of devices. Nor should service providers be subject to pressure to approve a device or lose the business to a competitor.
- It is a violation of the public trust for a commercial device owner to certify and seal its own equipment or the equipment of another device owner.
- The Department's inspection program has just been reinstated, and operating since January. We have reached out to device owners and service companies, and are working to make the transition as smooth as possible. When violations of weights and measures laws are found, our inspectors are educating device owners and their staff on proper use and consumer protection statutes. They will then return to assure that the prescribed changes have been made. Fines will not be levied unless repeated violations are found.
- The Department has hired 4 state inspectors.

Richard Cote, Department of Agriculture

- Generally speaking most businesses that the Department inspects have multiple devices and are given a time frame of 15 days to repair a device before re-inspection. This program brings in about \$500,000 a year. To calibrate a scale you need to physically break a seal, after the inspection a new seal is put on the device. Without a seal anyone could tamper with a device.
- The Department has always had this authority but last year HB 2 reinstated 4 positions to carry out this program.
- The interesting part about this situation is that this program was privatized around 1993 due to poor budget conditions, now in another bad budget year we think we can help by bringing in revenue.
- The Department is aware of only one person who has lost a job because of this program, while at the same time the Department hired 4 people.
- In response to questions from the Committee, Mr. Cote responded that no, there is no way 4 inspectors can inspect 5,000 devices each to account for the 20,000 devices in NH. This would be an unreasonable job expectation.

John Dumais, NH Grocers

- Represents 1,400 grocery stores in NH. No problems were ever reported with the way this program was being run since 1992. The system was working. Expressed concern over the inconvenience to customers and the added cost of \$20 per sticker for each scale. Each grocery store has multiple devices so this can be costly. Would not have a problem if the state simply came in to test devices randomly, as long as they respected store policy about how they treat customers.
- If the state inspector failed a device so denied that device a sticker there would be no telling how long it could be before the inspector got back to that device to re-inspect and grant the sticker. The device would be out of service until that was accomplished. This is an even bigger problem for smaller operations that may only have one or two devices.

Kristopher Heath, Department of Agriculture

- One of the recently hired inspectors for the state. Has been on the job about 6 weeks. Has made 73 stops so far and 52% of those stops hadn't been inspected in over two years. The average time it takes to inspect a supermarket is 2 hours. Can do about 20-30 scales in 2 or 3 hours.

Joseph Rose, Propane Gas Association of New England

- Expressed concern that in the winter, there are no extra trucks to fill in if a meter on one of their trucks fails inspection. This brings up the concern over the amount of time between inspection and re-inspection. Company serves New England and the rest of New England allows private inspectors to inspect, repair, certify, and seal devices.

Floyd Hayes, Independent Oil Marketers Association

- Reviewed the way the inspection system worked and pointed out that there is no one to check the work of the Department. Stated that if the private industry can continue with state authority to come in and issue fines for bad behavior we can agree with the Department.

Burne Gaff, Gaftek Petroleum Specialists

- In the past, Gaftek calibrated and adjusted meters all in one visit to a station. The new method will be a higher cost to the customer since the Department will charge more for their audit and will not make any adjustments. A follow up visit by a Service Repairman will need to be made to adjust meters that have been found to be out of tolerance. Gaftek will have to increase our rates to cover the costs for responding to a location to make adjustments to a few meters rather than checking the entire site. Previously Gaftek charged by the meter but now will charge an hourly rate and a trip charge to respond to adjust individual meters rather than the complete site calibration.
- The previous method employed about 200 licensed Repair Servicemen. They have now been replaced by 4 Weights and Measures employees. It's not realistic to believe that four people can maintain the annual schedule of 200 people.
- Some customers are concerned that their pumps will be placed out of order if they are found to be out of tolerance and will cost more to have them repaired. Some customers are concerned that their customers will view their dispensers as out of calibration when they see old calibration stickers.

Thomas Rymes, Rymes Propane & Oil

- Has no problem with the state double checking the work of inspectors and issuing fines, that was what the old system allowed for but the state wasn't funding the positions necessary to carry that out. Hiring the new state inspectors is good for consumer protection but changing the rules presents the problem.

Chris Nicolopoulos

- The state clearly doesn't have the personnel needed to check every device in NH. The state inspectors should just check those who are out of compliance.

Norman Brown, Advanced Scale

- Runs a business comprised of himself and 4 technicians. Believes he will lose 25% of his staff to layoffs under the current system. The state doesn't have the ability to inspect all of his devices.

Peter Emanuel, Bow Recycling Center

- Expressed concern over the amount of time it may take the state to come and inspect the devices. The private industry is very business friendly and isn't sure the state would be.

Kevin Young, Department of Agriculture

- We need to do what is best for the public. Gave examples of some of the violations he has seen over his 31 years of service, and how companies and inspectors have gotten around the rules. Believes there should be a group involved that has no financial stake in the outcome.
- Agrees that 4 inspectors won't be able to inspect every device in NH, but the ones they do inspect will be accurate. Mentioned that some devices go years between inspections. It's not appropriate for companies to license their own staff to inspect devices.
- Believes the Department needs just a couple more people on staff to properly enforce the regulations.

Funding:

None

Action:

Executive action is pending.

cm

Date: March 16, 2010
Time: 3:27 p.m.
Room: LOB 101

The Senate Committee on Executive Departments and Administration held a hearing on the following:

SB 514 relative to commercial weighing or measuring devices.

Members of Committee present: Senator Cilley
Senator Fuller Clark
Senator DeVries
Senator Downing
Senator Carson

The Chair, Senator Jacalyn L. Cilley, opened the hearing on SB 514 and invited Senator Michael Downing to introduce the legislation.

Senator Jacalyn L. Cilley, D. 6: I'd like to open up the hearing on Senate Bill 514 and would you like to introduce it on behalf of Senator Bragdon? One of you, okay.

Senator Michael W. Downing, D. 22: Good afternoon, Madam Chairman, members of the Committee. My name for the record is Michael Downing, I represent Senate District 22. And I'm here to introduce Senate Bill 514, which defines what a registered serviceman is relative to commercial weighing or measuring devices, and permits registered servicemen to perform testing, certification and sealing of licensed commercial weighing or measuring devices. And with that, Madam Chair, I will answer any questions you might have. But I think there's a list of people that want to testify to this bill that are experts.

Senator Jacalyn L. Cilley, D. 6: Okay, are there any questions for Senator Downing? Okay. Thank you, Senator Downing.

Senator Michael W. Downing, D. 22: Thank you.

Senator Jacalyn L. Cilley, D. 6: Is Representative Chandler here? Oh he's signed in. I think at the risk of offending any other Representatives, and I'll

look for them momentarily, but Commissioner I know you're under a time schedule and you've been waiting patiently. So why don't you come forward and we'll see if there are any legislators after you.

Commissioner Lorraine Merrill: Thank you, Senator. I apologize for our need to ... We have copies here, here's the original amendment, copies for each member. And I will be quick, because I know there are a lot of people who want to speak today.

Good afternoon to the Chair and all of the members of the Committee. In addition to myself, I have here with me this afternoon the Director of Weights and Measures, Richard Cote, Investigator Kevin Young and Inspector Chris Heath, who will be available to answer further questions and perhaps share some of their observations in this work.

The Department of Agriculture, Markets and Foods strongly opposes SB 514. This bill would give private industry regulatory authority and the enforcement of the Weights and Measures Act as codified in RSA 438. This would be a major and unwise change to longstanding public policy. The inspection and approval or sealing and rejection of commercial weighing and measuring devices is a government function and 49 states have just state inspection of these devices. And there are sound reasons why this has been the longstanding policy.

The mission of the Division of Weights and Measures and the Department of Agriculture is to insure equity and transparency in the marketplace. Part of this equity function is to ensure that weighing and measuring devices used commercially meet certain specifications, tolerances and technical requirements. State inspectors are independent, unbiased third party inspectors, they don't have material gain or interest out of the outcome, one way or the other, on an inspection. Public perception is that the consumer can trust the devices used in commerce in the state, and the assumption is that it's done by Department of Agriculture employees as certified seals on gas pumps and certificates posted in supermarkets and so forth.

We found during the House Finance Committee hearings last winter, when state inspection was reinstated through the budget process, that members of that committee were shocked and dismayed to learn that the State had not been carrying out this function over the last number of years. There are issues of conflict of interest, effectively you're putting foxes in charge of the chicken coops when we have private business providing this inspection service. We also have issues with consistency of inspection fees. We've heard many complaints over the years that private inspectors were operating in the state, that some were charged exorbitant fees and particularly based

on their locations and so forth. Under the State program, all pay the same fees. And accountability. It's simply impossible for the Department to supervise the activities of 150 or more private servicemen.

Now, there's another important issue, is the regulatory and enforcement powers of the laws governing weights and measures devices in the state. The Department is empowered by the Legislature with the powers necessary to deal with numerous violations that may occur. The Department has the power to levy warnings, as well as fines, administrative and criminal charges. Many of these violations are encountered in the annual inspection process, but servicemen are neither legally nor practically equipped to deal with those violations of the law, nor should they be. What we have found since we've instituted, re-instituted the State inspection programs since January, is that there are numerous violations, whether of the scales themselves or the ways in which they are used, contrary to the laws of the State of New Hampshire. And I have attached to the testimony a list of those, and these are all dealing with small scales to this point. But it shows that over 12 percent of the inspections that have been conducted have found these kinds of violations of laws which can facilitate fraud, whether intended or not, that can hurt consumers or competing business people in the marketplace.

So, the Department has just reinstated this program, has just been training the inspectors. We have reached out to private industry, been working with companies to insure that we can have the inspections take place as smoothly as possible with as little inconvenience to the business owners as possible. And when these violations have been found, because there haven't been state inspectors in this number of years, we have not been slapping fines on people. We've been going through the education process with the owners and their employees. And then the inspectors go back and make sure that the changes have been made. If there were repeat violations, then we would be looking at fines and so forth.

So, in conclusion, government inspection of weights and measures devices and their usage represents a basic tenet of policy for consumer protection and fair competition for business. **See written testimony of Commissioner Lorraine Merrill attached hereto and hereafter referred to as Attachment 1.**

Senator Jacalyn L. Cilley, D. 6: Thank you, Commissioner. Are there questions for Commissioner Merrill? Senator Downing.

Senator Michael W. Downing, D. 22: Thank you, Madam Chairman. Commissioner, how many inspectors does the State have now?

Commissioner Merrill: Four inspectors.

Senator Michael W. Downing, D. 22: And if I might, Madam Chair?

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Michael W. Downing, D. 22: What I understand your testimony to say is 150 private, or there were 150 private inspectors?

Commissioner Merrill: Well, there could be as many as that. But, of course, they're not necessarily all just inspecting in New Hampshire. They are people who are engaged in servicing and maintaining devices. They may be working different states in the region, so it's not, it's really not a comparable situation. It's not that four people are doing the work of 150.

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Michael W. Downing, D. 22: And how many total devices are we talking about in the state?

Commissioner Merrill: I'm going to defer to Director Cote on that. He knows that on the top of his head.

Director Richard Cote: Approximately 20,000.

Senator Jacalyn L. Cilley, D. 6: Why don't you come up? Did you want to follow-up, Senator Downing?

Senator Michael W. Downing, D. 22: Yes. Could you, either one of you, Commissioner or Mr. Cote, explain what the process is with, say a state inspector goes in, finds a problem with a device. I would imagine they put it out of service and what is the turn around time to get that device back up?

Director Cote: Want me to answer?

Commissioner Merrill: Yes.

Director Cote: Of course, there are many different circumstances, sir, but in general, most places have multiple devices. And it's just a matter of saying, this has to be repaired within so many days. Licensed service company comes in, repairs it. Unless it is significantly out of tolerance or very flagrant, it is not locked up, as it were, or shut down.

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Michael W. Downing, D. 22: Thank you. So if I understand you correctly, the state inspector would come in, find a problem and put it down until somebody could come in and fix it. And then would they come back and re-inspect it was working properly before they put a seal on it?

Director Cote: Yes, sir.

Senator Michael W. Downing, D. 22: What's the time frame?

Director Cote: Generally, we give most businesses about 15 days to make the repairs.

Senator Michael W. Downing, D. 22: Alright, thank you.

Senator Jacalyn L. Cilley, D. 6: Senator Carson.

Senator Sharon M. Carson, D. 14: Thank you, Madam Chair. Good afternoon, Commissioner. You said that you've recently reinstated this program. Could you tell me how long we have gone with having our weights and measures done by private industry?

Commissioner Merrill: Was that 1994?

Director Cote: Right around '92, '93, ma'am, Senator Carson.

Senator Jacalyn L. Cilley, D. 6: Follow-up, Senator Carson.

Senator Sharon M. Carson, D. 14: Could you tell me how much revenue the State is going to get from taking this over again? What is the estimated amount of money?

Director Cote: I would – do you want to?

Commissioner Merrill: Go ahead.

Director Cote: I would estimate approximately \$500,000.

Senator Sharon M. Carson, D. 14: Okay, thank you.

Senator Jacalyn L. Cilley, D. 6: Senator DeVries.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair. And my knowledge is probably a little bit less complete, so let me ask a few more

fundamental questions. We're talking about any kind of scale, whether it's measuring the weight of fruit in a grocery store or oil delivery at my home.

Commissioner Merrill: That's right.

Director Cote: Correct.

Senator Betsi DeVries, D. 18: Correct? And so the list that you have given us is soup to nuts types of scales in different groceries?

Commissioner Merrill: No, those are just small scales. We've begun with the small scales first in terms of training the new staff and so forth. So these are supermarket kinds of scales.

Senator Betsi DeVries, D. 18: And, okay, and I'm just trying to understand this list that you have given me. I see that no security seals seems to be the most frequent offense. Is that something that you would consider grave? Or is that frequently found because they've had it serviced and the person didn't put the seal back on?

Director Cote: There is a mechanism on most scales to secure it, so that in order to calibrate it, you have to physically break a seal and then you're able to access the calibration mechanism. Following the calibration, you then put a wire seal or some kind of security seal back on. So the only way it can be accessed is by physically breaking the seal. So if you do not put a security seal on, anyone who wants to gain knowledge of how to adjust that scale, one way or another, can do so.

Senator Betsi DeVries, D. 18: It's somewhat akin to locking out an electrical panel.

Director Cote: There you go.

Senator Betsi DeVries, D. 18: So, I guess, let me ask you a couple of questions so I understand the bigger picture. And let me take you back to my background with the fire service. And I know for fire alarm panels in Manchester, they shifted and they have actually gone and certified the private entities that are coming in and they are inspecting the fire alarm panels. And you have to yearly resubmit an application that you are in compliance with the knowledge to properly be working on the panels. Was that ever a mechanism that was looked at, that could have been a compromise between shifting it back to the State after 18 years, so private ...

Commissioner Merrill: That would be comparable to what was happening in the interim.

Senator Betsi DeVries, D. 18: You did certify them?

Commissioner Merrill: What's different, I think, is I think other people have spoken to automobile, vehicle inspections are done by private parties. What's different here is there are devices that are used in the, in commerce between buying and selling of goods. It's not just a safety question, but honesty in commerce. So if you're asking private people who are also repairing, maintaining and selling devices to do the inspecting, then some of the people who own devices have said to us, they were concerned because they felt that the service person who was doing the inspection might have been less than honest in that inspection because they might have business to gain.

We've also had people on the other side, the service people, who have expressed concerns that they felt pressured by the owners of the scales to approve, to inspect a scale or a measuring device as accurate when it was not. And then being told that, well, they would give their business to another company if they did not put a seal on it. So it's a different matter. And I think we've also heard from some business owners and I know that the Farm Bureau had been vocal in this, for example. Where business owners are purchasing commodities, often with considerable impact on their bottom lines, that have been weighed or measured on devices and they need to have faith that they're getting an honest measure.

Senator Betsi DeVries, D. 18: Follow-up question, if I might?

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Betsi DeVries, D. 18: And I apologize, I just don't have some of the base line that others on the Committee may already have. So, Commissioner, when you were looking at going back, because I assume prior to 18 years ago, this was a system in place. You shifted to the private sector and now you're recommending the shift back.

Commissioner Merrill: The ironic thing I think about, because I was not Commissioner back then, of course, was that that was a cost saving measure. It was a time of budget crisis and it was a program that was cut. The policy of the Department was still, had full authority, that was never changed. Whereas this bill, I would maintain, does change that. And so it was effectively privatized as a cost saving measure.

In the meantime, when we began to look at this again, under again budget duress. We, and having heard from people who felt that they were being overcharged in some cases, we felt that we could provide this service again in the proper role that the State should have. As had been brought to our attention during the high gasoline prices and so forth, back '07 summer. So many complaints, we've had so many complaints to the Department, consumers concerned about whether they were really getting what they were paying for, that it seemed like we could restore this State service, this consumer protection, and actually just modestly improve the State's bottom line, the general fund bottom line. So as to accomplish both the policy goals and enhance the State's budget slightly.

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Betsi DeVries, D. 18: And Madam Chair, I know you're indulging me, but not knowing exactly what. I can see the bill that is undoing something that was done in the budget last year, but do you have something that you handed out that tells us what you put in place for House Bill 2 last year?

Commissioner Merrill: I have not, but we certainly can get that to you.

Senator Betsi DeVries, D. 18: Okay, it might be helpful electronically. We're execing on this today?

Senator Jacalyn L. Cilley, D. 6: Well, the hope is we're going to exec some. We do have an executive session on Thursday. I believe and the Commissioner, or Director Cote can correct me if I'm wrong, that basically the only thing HB 2 did was reinstate the positions in order to put it through.

Commissioner Merrill: That's correct.

Senator Jacalyn L. Cilley, D. 6: Because if I am correct in this, the Department of Agriculture has even throughout this period of time, where the actual exercise of this has been privatized, the Department of Agriculture has retained the authority and direction over this program. Am I correct?

Commissioner Merrill: That is absolutely correct. It really is just reinstating the four positions and the training.

Senator Betsi DeVries, D. 18: For clarification, it would be ...

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Betsi DeVries, D. 18: ...the rules that were adopted?

Commissioner Merrill: Yes.

Senator Betsi DeVries, D. 18: That would be helpful for me, and maybe you could just send an email with those, with the attachments, the rules, that would make for an easier find and read.

Senator Jacalyn L. Cilley, D. 6: And it was in those rules, I think Senator Downing and Senator Carson and I sat in on that. I think the confusion was whether the Department had clear authority to do that, that's in the statute. So, Senator Downing.

Senator Michael W. Downing, D. 22: Thank you, Madam Chairman. Commissioner, going back over some of the testimony you gave, you said that the owner has 15 from when the device is found to be non-compliant, to get it corrected. Is there a time frame where the State inspector has to be back, once that's fixed, to certify it?

Commissioner Merrill: Why don't you go ahead.

Director Cote: Senator Downing, licensed or registered service technicians have the authority to repair, service and once they do so, they have the authority to place it back in service. So the owner can legally use that device until an inspector gets back. They send in paperwork, notify us that they've repaired this device. It's good to go.

Senator Michael W. Downing, D. 22: Follow-up.

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Michael W. Downing, D. 22: Would that then fall into the no security seal, because it hasn't been sealed?

Director Cote: We have two different, we have two different seals, sir. The security seal is to avoid tampering, and then there is the legal, this is the legal seal (holds up red seal) that you put on or an inspector puts on that tells everyone that this device is legal for trade.

Senator Michael W. Downing, D. 22: And final question.

Senator Jacalyn L. Cilley, D. 6: Final.

Senator Michael W. Downing, D. 22: If you could just explain to me how this bill changes the Department's authority? It seems to me that the Department still has the overall authority to register a serviceman, make sure they have the proper training and to go out and randomly inspect any of the devices and fine them if they're not doing the job properly.

Commissioner Merrill: My understanding, Senator, would be that at this present time, you're right, the Department has the authority to do that if it wishes. But this would, this is saying this will happen, whether or not the Department directs it so.

Senator Michael W. Downing, D. 22: Thank you.

Senator Jacalyn L. Cilley, D. 6: Indicate shall be permitted. Senator Carson.

Senator Sharon M. Carson, D. 14: Thank you, Madam Chair. Can you tell me how many people are going to lose a job because of this? Because of this switch from a private industry to now the State taking over this job?

Commissioner Merrill: Well, as a matter of what you may, we have heard of a few people that may be losing their jobs. But for the most part, the service people who have been doing these inspections are also doing maintenance, repairs and so forth. So the inspection is just a small, you know, portion of the work of most of these companies. Now we are aware of one firm that was strictly doing inspections, a one person, I should make that clear. Had chosen that, by himself, to just specialize in inspecting. And in the meantime, four people have gained employment as State inspectors, so the net is... There's no question that some of these companies have reduced their business because of this. That's, we acknowledge that.

Senator Jacalyn L. Cilley, D. 6: Senator Carson.

Senator Sharon M. Carson, D. 14: Thank you, Madam Chair. One of the things that you spoke about when you talked about this survey that you've done. You said you're training inspectors. Now are these the four inspectors that have come on line?

Commissioner Merrill: Correct.

Senator Sharon M. Carson, D. 14: Follow-up, Madam Chair?

Senator Jacalyn L. Cilley, D. 6: Follow-up.

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Senator Sharon M. Carson, D. 14: So what I find really incredulous, is you have people that have been doing business in the state for 18 years, inspectors, and you came in here today and you're telling us that there are problems, people can't trust them, people are being ripped off, if you want to call it that. And yet you're replacing these people who have been doing this as a business, where this is where they get their money. This is how they support their businesses, pay their mortgages. And now you're training four people who are just starting out and those people, because they work for the State, they're not going to be making any mistakes whatsoever. I'm using, I'm kind of paraphrasing what you had said earlier. And you know, I'm really surprised that you've made statements about people not being able to trust them and that they're ripping people off. These people are working, this is their job. And if they're not being good at it, then no one's going to hire them. And even the people on the other end, who depend upon accurate scales. I'm just, I'm flabbergasted, quite frankly, that you believe that training four new people and they're going to be much better.

Senator Jacalyn L. Cilley, D. 6: Senator Carson, excuse me, it's not a debate. Is there a question here?

Senator Sharon M. Carson, D. 14: No, there's no question. My mind's perfectly clear on that issue.

Director Cote: Senator Carson, it's not a matter of competence. Our colleagues in the private industry are just as competent as State inspectors. We just have a different role. Their role is to service, is to repair, that is their role, that's why they're service technicians. They're not law enforcement people. They go in, they find a scale, they calibrate it and make it good. They don't necessarily check to see, is it located properly the way it's supposed to be? Are the security seals attached? Now they know they're supposed to do that, but they have a different role. We are regulatory, we enforce the law. They're service technicians. Two separate roles.

Senator Jacalyn L. Cilley, D. 6: As question, Senator Carson?

Senator Sharon M. Carson, D. 14: As a reaction comment to his testimony.

Senator Jacalyn L. Cilley, D. 6: A "would you believe," Senator Carson?

Senator Sharon M. Carson, D. 14: Yes, I will definitely make it a "would you believe," Madam Chair.

Senator Jacalyn L. Cilley, D. 6: Okay.

Senator Sharon M. Carson, D. 14: Mr. Cote, thank you very much. I appreciate your comments, but would you believe, that's not the testimony that I've heard here today. That, would you believe, I've heard testimony that there's questions and doubts about the people that have been doing this job here in the state of New Hampshire. And I'm just going to leave it at that.

Senator Jacalyn L. Cilley, D. 6: I think the Commissioner would like to respond.

Commissioner Merrill: I am sorry if the Senator heard only that message. I think it is important to understand that there are many honest and capable and competent business people in this industry. And I certainly did not intend to blanket any kind of criticism. The importance is, again, that separation of the roles and the complaints and concerns have been raised, and it's because of the confusion in these roles. It's because of putting people into the position, expecting them to carry out a role that is in conflict with the one that is rightfully theirs.

Senator Jacalyn L. Cilley, D. 6: Senator Downing.

Senator Michael W. Downing, D. 22: Thank you, Madam Chair, just a brief question. With 20,000, approximately 20,000 devices in the state and 4 inspectors, that's 5,000 devices apiece per year, because everything has to be inspected every year, is that correct?

Director Cote: Yes, sir, that's the goal.

Senator Michael W. Downing, D. 22: I just, is that reasonable to expect them to do 5,000?

Director Cote: No, sir, it is not, it is not reasonable to expect, but we go out and we'll do the best that we can. The device owner is still responsible, whether they're inspected or not, to maintain that device in proper operating condition. And that's what service technicians are for.

Senator Jacalyn L. Cilley, D. 6: Follow-up.

Senator Michael W. Downing, D. 22: I'm just, my concern is that devices are going to be put out of service and in a lot of the smaller industry has just one device in their facility. And if it's down for a day, they have a problem. And I just, everything's got to be done yearly. So are we going to overlook those entities that we don't get to for 18 months?

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Director Cote: Well, even under the current, under the past situation, I have some testimony from one of my inspectors. He'll tell you, if he's given the opportunity, what he's found. But listen, we're not out to put anyone out of business. If this is just a Mom and Pop operation and they have one scale, I mean unless that scale is just wacky, you know, we're reasonable people.

Senator Michael W. Downing, D. 22: Thank you.

Senator Jacalyn L. Cilley, D. 6: Are there further questions? Thank you. And Commissioner, I know that you need to leave, you're well past the time. Director Cote, and then I think we've got Christopher Heath, where? Right there. You are an inspector with the Department of Ag? Okay.

Commissioner Merrill: And you also have Kevin Young, who's an investigator. He has many years of experience.

Senator Jacalyn L. Cilley, D. 6: Kevin didn't sign up to speak, though. Wait a minute, no, didn't sign up to speak.

Commissioner Merrill: He's still available anyway. Where's Kevin?

Senator Betsi DeVries, D. 18: Is there another hand up?

Senator Jacalyn L. Cilley, D. 6: No you signed it, you just didn't say whether you were speaking or not.

Senator Betsi DeVries, D. 18: There's a whole other sheet over here.

Commissioner Merrill: Well.

Senator Jacalyn L. Cilley, D. 6: I have Mr. Young on this sheet. I'm just saying that next to where it says speaking, there are two empty boxes. That's all I'm saying. So why don't we, with that, Commissioner Merrill, we'll let you go. Director Cote, are you going to be hanging around for a bit?

Director Cote: I'd be happy to answer any questions.

Senator Jacalyn L. Cilley, D. 6: We are, so, and I'm going to save, I think, Mr. Young and Mr. Heath for a few minutes. I'd like to hear from some of the folks in the audience. I will tell you we are well past the time when we should have gotten this one through and been on executive session. But we definitely want to hear from you. What I would ask is please keep your, you know, testimony succinct. If you've heard it before, don't repeat it, but make sure we have the information you want us to have. And I'm actually going to

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turn it over for a moment. But I think Mr. Dumais from New Hampshire Grocers is the next on the list.

Senator Martha Fuller Clark, D. 24: Thank you very much.

Senator Jacalyn L. Cilley, D. 6: And actually, just let me make sure. Mr. Heath and Mr. Young. You've got time to stay for a bit? Okay. Because I think we going to

Senator Martha Fuller Clark, D. 24: I'd like to now call upon John Dumais from the New Hampshire Grocers. Welcome.

Mr. John Dumais: Good afternoon, Madam Chair, members of the Committee. For the record, my name is John Dumais, I'm President and CEO of the New Hampshire Grocers Association. We represent all food stores in this, all types of food stores in the state, from the small Mom and Pops, the convenience stores, the supermarkets, the big box stores. So we have a large range of those stores that are involved.

And about, there's about 1,400 grocery stores that are affected by weights and measures issues.

Senator Martha Fuller Clark, D. 24: How many, again?

Mr. Dumais: About 1,400 stores.

Senator Martha Fuller Clark, D. 24: 1,400.

Mr. Dumais: In the state that are affected by weights and measures.

Senator Martha Fuller Clark, D. 24: And are you speaking in favor or opposition to the bill?

Mr. Dumais: We're in favor of this.

Senator Martha Fuller Clark, D. 24: Thank you.

Mr. Dumais: I just wanted to touch on a couple of highlights. First of all, during JLCAR we suggested there was no reason for the Department to take back sealing of scales. As it was mentioned, since 1992, it was done in a fair manner. In fact, Director Cote at the time even mentioned that there were no major problems that were reported on that. And we've never heard of a consumer complaint, so either the Department's not corresponding to us and letting us know, or looking for retraining or something. But we never heard

of any major problems from either retailers saying they're coerced into something, or from scale companies saying they're coerced by retailers, or consumers saying they don't think they're getting a fair weighing on the device.

We believe that the system was working very well. And I think the bigger issue that we have is the cost factor for the retailer. A good example, well, first of all I can give you several examples. One is that when they did hire the four inspectors, the Department went out and trained, began training the first new person and it took five hours in one store. Which, to me, is way overdone, taking too long. And they admitted that that was probably something that needed to be cut back and be changed. But it's five hours that they're in the store, consumers are looking at what's going on. They want to know if some major drug bust is happening or what's happening in the Department. But there is people around the scales talking about it, looking at all the packaging and labeling and stuff. And five hours is way too long to be in the store doing that. In fact, our association is working on trying to develop some protocol for state employees coming into the store for any kind of inspection, whether it's WIC or Department of Health or Lottery or Liquor, on what they do when they come into a store. How long they're there, how they identify themselves. Same thing we ask for all direct store delivery personnel. A potato chip company has to do the same thing. We think every state employee coming in for inspection should do the same courtesy to be well dressed, don't interfere with the customers and identify themselves and the reason they're there.

We're more concerned with the cost factor. We had a scenario where a new inspector went into the store and went to seal the scales in January. Yet that company, that grocery store chain had inspections done in June of last year. So they paid a fee to the scale company to come in and do maintenance and seal the scales for a whole year, and yet six months later the State's coming and saying we're going to seal you all over again. So they've lost six months worth of what they've already paid for in sealing it. And there's not, at this point there doesn't appear to be anything by the Department to correct that situation, to coordinate the two situations. So that's the first issue that's of concern.

We testified during JLCAR that you're going to have a situation where you're going to have extra costs. Seal companies are not going to reduce their costs because they're not sealing scales, any less than they were. Sealing a scale is that little sticker that they put on at the end, is a very minimal cost factor. The cost is traveling to the store, calibrating the scale, putting the major seal on it and then putting the sticker on it as a last minute thing. So not saying, saying that you're not putting on that little sticker is not going to save

anything. Therefore, the scale company is not going to reduce the cost to the store. However, the State is now coming in behind that and putting the sticker on for a \$20 fee per scale. And the per scale we're talking about, at every cash register in a store. Imagine the larger supermarkets, WalMart, whatever, they've got 20, 30 scales, 20, 30 checkouts in there. That's 20, 30 scales that we're talking about at \$20 each. Then you go to the deli department, then you go to the seafood department, you go to the produce department. It just keeps multiplying all the way through. So that's an additional cost to the retailer they never had before, or they haven't had since 1992. For the most part, we've trusted the scale companies to do a good job. We would be a strong advocate, if we found a retailer, if it was ever found that a retailer was forcing a scale company, we would strongly have some strong fines against that retailer. We don't think that's appropriate and we never want to see it happen.

Likewise, if we find a scale company coercing the retailer into something, we think that the scale company should be fined or the person should lose their job over that situation. But we don't find that happening very often, so we don't see those as major problems.

As far as the cost factor, the Department had just talked about that they expect us to bring in \$500,000 per year in revenue to the State. That's all well and good, but it's four people who have to be outfitted with measuring devices, training, motor vehicles and gasoline to do their work and then the reporting time afterwards. We think that that's going to be counteractive to the \$500,000 that's been put in there. Unless they're talking about a net \$500,000 revenue, but I don't believe that's the case. I think they're talking about what the gross income would be coming for that program.

So, all in all, it should be up to the retailer at some point. Do they want to be sealed by the State? If they're a small one and they don't have a maintenance contract with the scale company and they think they have an accurate scale, then sure, call in the State and have them seal the scale. That's what this dual, that's what this legislation gives, it gives a dual situation. But in a larger operation, like a supermarket operation, you've got probably hundreds of scales in the supermarket and all the different departments and everything. And they need, they rely on the scale company to be there, to change out scales, to change them as needed and be there promptly. So to have that come in and sealing it, that's proper, that's perfect for them to do that. The cost, though, for the additional sealing come afterwards is problematic.

The other thing, as Senator Downing brought up, is that you have a situation where you're calibrating the scale and you're putting the lock on it today.

But you're not sealing it. Well, if there's supposed to be trust by the consumer, the consumer doesn't see the sticker the next day. Doesn't see it for 15 days or another five days if it takes that long for the Department to get back there. It could be almost a month before that scale has a red sticker on it. What kind of confidence factor is that to the retailer, to the consumer? There was more confidence for the last few years where the scale company came in, did the calibration and locked the scale, put the seal on at the same time. All done.

Someone had recommended... And then you also have the factor that you have the scale company coming in and sealing the scale today. That's going to take time, it's going to take that scale out of operation for a short period of time. And if you look at all the registers or all the departments, those all are going to be out at some point. But they coordinate with the store. They tell the store ahead of time when they're coming in and it's all coordinated so it doesn't interfere with it. Now, what you're going to have is you're going to have that situation happening. And then you're going to have some time later without announcement at any time during the year, the Department of Revenue coming, the Department of Agriculture coming in, Weights and Measures, and saying I want to seal the scale. You're going to disrupt that department all over again.

Those are concerns. Grocery stores are very efficient today because they're after, trying to give the consumer the best experience they can, the fastest in and out they can, of the store. And now you're going to have a dual situation where you're going to have inspection. You're going to have calibration and then you're going to have inspection coming in. That's going to be disruptive. We don't think the Department of Agriculture should be doing anything different than they've been doing since 1992. They have the right to come in. They should be looking for ingredients labeling, signage, pricing, all of the things they do, and scales and proper placement of scales. That's a proper role they play. But we need to make sure that the scale companies can also seal them so that we have more consumer confidence and the customer, and the retailer is not disrupted any more than they have to be.

With that, I'd like to answer any questions you may have.

Senator Betsi DeVries, D. 18: Thank you. Madam Chair?

Senator Martha Fuller Clark, D. 24: Yes.

Senator Betsi DeVries, D. 18: And I know Senator Carson had.

Senator Sharon M. Carson, D. 14: Oh, no, please go ahead.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair, for allowing the question. I guess I'm trying to understand the last 18 years when the commercial entities was inspecting and sealing, physically with the wire tie.

Mr. Dumais: Right.

Senator Betsi DeVries, D. 18: The scales. How did you as a grocer know that that scale had been properly calibrated?

Mr. Dumais: It would be up to the scale company that we had. They come in on a quarterly basis or a semi-annual basis or an annual basis, depending on what size it was. Also, if I was a convenience store, I have gasoline pumps outside. So that would be included with it, because that's a measuring device. And so they would come in and they would do the maintenance. They'd look at it, they'd grease it, oil it. You know, get all set and recalibrate it, because a lot of times when you put a lot of weight on it, it bounces around. Sooner or later it will get out of calibration. So that's why the annual calibration is kind of important to have.

Senator Betsi DeVries, D. 18: Follow-up if I might. So the way that you knew was just trust in the service that you had paid for ...

Mr. Dumais: Correct.

Senator Betsi DeVries, D. 18: ...being done appropriately.

Mr. Dumais: Right.

Senator Betsi DeVries, D. 18: The State was not engaged in any way, shape or form...

Mr. Dumais: No, no.

Senator Betsi DeVries, D. 18: ...with random tests.

Mr. Dumais: No, no, that's not true. They, like the State Police, when you have your car inspected, it was brought up earlier. You have it done at a garage, they inspect it, they put your seal on saying this car is inspected. The brakes are good, the lights work, etc. Any law enforcement officer at any time can stop that vehicle and say, let's see your brake lights, let's see your brakes. Something's wrong with the car. And if it just was sealed and there's a problem, then it's not the owner's fault, it's that seal company's fault who sealed the scale. That's the role that the Department of Agriculture has

been doing since 1992, is that the scale companies have been doing the calibration and the sealing, and the Department has gone in behind that and just randomly checked that. But they're not doing just scales. When they come in the store there's a lot of things that they're responsible for. Weights and measures is responsible for the ingredients labeling, the ounces, making sure there's proper weight in there. That you're taking tare for certain things.

Senator Betsi DeVries, D. 18: Final question if I might?

Senator Martha Fuller Clark, D. 24: Certainly.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair. Thanks you, Mr. Dumais, for taking the question. If I understood your testimony correctly, your concern is not really the cost of the added program, the additional, I think they called it a stamp or whatever.

Mr. Dumais: The seal.

Senator Betsi DeVries, D. 18: The certificate, seal, thank you. It's not the cost as much as it is the inconvenience to the grocer?

Mr. Dumais: It's both. First of all there's the additional cost. Because the scale company for the last 20 years has done it and out of my operation here, I'll give you the seal in there. So whether they give me a free or they're charging a dollar for the seal, putting a sticker on. You know, that's pretty minimal or whatever it is. Now you've got the State coming and saying, I'm going to put the sticker on and I'm going to charge you \$20 in addition to whatever you're doing for, from the service company. That is a concern, there is additional cost. And in an average grocery, convenience store if you have a cash register and you have six pumps, that's seven different devices that are being charged at \$20 per device.

Senator Betsi DeVries, D. 18: When the State was randomly testing those, they did that for free?

Mr. Dumais: They didn't do any sealing, so yes.

Senator Betsi DeVries, D. 18: Whatever they did, they did it for free.

Mr. Dumais: Right. They would just go around and they would randomly check it, that's correct, and then correct the situation.

Senator Betsi DeVries, D. 18: Thank you.

Senator Martha Fuller Clark, D. 24: Yes, Senator Carson.

Senator Sharon M. Carson, D. 14: Thank you, Madam Chair. Thank you for your testimony this afternoon. It's my understanding that a measuring device cannot be operated unless it's been properly sealed by the State. So if you have a device that's, has a problem, got corrected but now it has to wait for that seal ...

Mr. Dumais: Exactly.

Senator Sharon M. Carson, D. 14: ...it cannot legally be used.

Mr. Dumais: Right. The Department is sort of giving a waiver to that, well, as long as you notify us that you've fixed it, go ahead and use it. But there's no consumer confidence in that.

Senator Sharon M. Carson, D. 14: May I follow-up, Madam Chair?

Senator Martha Fuller Clark, D. 24: Yes, you may.

Senator Sharon M. Carson, D. 14: There's no provision, either through rules or in House Bill 2, that would allow them to give the waiver, am I correct?

Mr. Dumais: That's my understanding.

Senator Sharon M. Carson, D. 14: Thank you.

Senator Martha Fuller Clark, D. 24: My question is, this is handled, as I understand it, in nearly every other state at the state level. How did the change occur here and why isn't it being done by the private sector in other states?

Mr. Dumais: I'm not sure why it's not done in the other states. It's a revenue source for the State, frankly. And what happened back in 1992 was that the Department said, we can't, we don't have enough personnel to get around to do all the scales. So let's farm that out. When the scale companies are coming in and calibrating the scales anyways, why don't they just put the seal at the same time. Saves us the labor of trying to do that.

Well, what you have now today is the reverse situation, where they're saying, hey, we can make money by doing this. We can make money on every scale that's out there by, whenever we want to arbitrarily go to a store and we

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know we can't do all, what was it, 50,000 scales? Or no, 20,000 scales. That's 20,000 devices that are out there. We can't all do that in one year with four personnel that they have. But, you know, we'll make some additional money for it. We'll make \$500,000. So that's the genesis for trying to bring it back.

Senator Martha Fuller Clark, D. 24: I understand that. Senator Downing.

Senator Michael W. Downing, D. 22: Thank you, Madam Chair. Just to get straight in my mind. These inspectors, these private industry inspectors, they were certified by the State to do these inspections ...

Mr. Dumais: Correct.

Senator Michael W. Downing, D. 22: ...and repairs and apply those seals, is that correct?

Mr. Dumais: That's correct.

Senator Michael W. Downing, D. 22: And the State itself, it came in and did the random checks. If they found something that was wrong, they had the ability to assess a fine.

Mr. Dumais: They had the ability but they probably would go back and say, take that out of service and have your company come back in and recalibrate it.

Senator Michael W. Downing, D. 22: But it seems to me that the ability was there to ...

Mr. Dumais: Yes.

Senator Michael W. Downing, D. 22: ...to fine the individual or the company or whatever.

Mr. Dumais: That's correct. Especially if they found it was purposely fraudulent, that was done.

Senator Michael W. Downing, D. 22: Thank you.

Senator Martha Fuller Clark, D. 24: Are there any other questions?

Mr. Dumais: Thank you very much. Thank you for your questions.

Senator Martha Fuller Clark, D. 24: I'd now like to call upon Christopher Heath.

Mr. Christopher Heath: Thank you, Madam Chair.

Senator Martha Fuller Clark, D. 24: Welcome. Thank you for being here and thank you for waiting.

Mr. Heath: My name is Christopher Heath and I am an inspector with the Division of Weights and Measures. I've only been with the Division for six weeks, but in that period of time I've come across some points of interest that I feel pertinent to this hearing.

The first point I'd like to make is that the accounts that we, as inspectors, go into like the idea of seeing someone every year to test and certify the scales that they have. Most accounts have said that they won't see anyone for years unless they call a private company to come and do the inspection. In the area that I am in, out of the 73 stops that I've done in the six weeks, 38 have a seal of 2008 or older, which is 52 percent.

Accounts have also expressed the fact that the fee that we charge for the inspection certification of the devices is substantially less than they would pay should a private company come and do the inspection.

Accounts also expressed that they are not only, that they not only want to be accurate but they want to be correct. They want to know and understand the laws and regulations that govern the use of their scales. We not only provide scale certifications, we also are teaching scale owners what is correct and what is incorrect when it comes to the use of the scales. We are finding scales that are accurate, meaning the weight is accurate but not correct. Meaning the machine is not correct, meaning that we are finding security seals missing or installed incorrectly, scales missing pieces. For example, legs; customer indicators; buttons and keypads; printers not printing correctly; serial numbers, model numbers missing; not level; scale placement is not in view of the customer. And we are finding many scales that have been certified that are not point of sale, meaning that they are pre-packaged or food prep scales that by law do not need to be certified.

I've only been with the Division for six weeks, but those are some of the things that I've found.

Senator Martha Fuller Clark, D. 24: Thank you very much. Are there questions at this point? Yes.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair. Very quickly, if I could ask the 52 percent statistic that you gave again? Could you just run through that one more time for me?

Mr. Heath: Of the 73 stops that I personally have done in the six weeks that I have been an inspector, 38 of those stops have a seal of 2008 or older. Which means that no one has been there to inspect the scale ...

Senator Betsi DeVries, D. 18: For two years.

Mr. Heath: ...for over two years.

Senator Martha Fuller Clark, D. 24: Follow-up.

Senator Betsi DeVries, D. 18: Follow-up. And to the point that we heard earlier about a five hour visit at a store, do you have any comments to make? Is that the average amount of time you are spending, or ...

Mr. Heath: No, it's not the average amount of time. I can understand sometimes you go into a store and serial numbers don't match, the information that we've had from the past is not what we have in front of us, and it takes longer to put it all together. And I can understand where it would take, in some rare instances, five hours. But typically it takes two hours, I would say. Two to three hours to do a supermarket.

Senator Betsi DeVries, D. 18: A supermarket?

Mr. Heath: Like a grocery store, supermarket, would take a couple of hours. I mean, there are, like I said before, there are a lot of scales in the store.

Senator Betsi DeVries, D. 18: But could you speak to the number of devices when you talk about a large grocery store. How many scales. Is that 10 scales or 30 or

Mr. Heath: I would say 20 to 30 is a large.

Senator Betsi DeVries, D. 18: 20 to 30 scales would be two to three hours?

Mr. Heath: Would be two to three hours.

Senator Martha Fuller Clark, D. 24: Additional questions? Thank you very much. Joseph Rose.

Mr. Joseph Rose: Good afternoon, Madam Chair.

Senator Martha Fuller Clark, D. 24: Good afternoon.

Mr. Rose: Members of the Committee. My name is Joseph Rose, I'm the President and CEO of Propane Gas Association of New England. And I'll try to keep this brief.

Our concern, quite frankly, is not the annual visit by the State to prove, in our case, generally meters on the back of delivery trucks. Our concern is, in the middle of the winter not too many of the members of my organization who sell home heating oil and propane to consumers in New Hampshire, have extra \$150,000 trucks sitting around in case a meter breaks. And so what we need to have is the ability to go to a repair service, get the meter fixed, get it tested, get it calibrated and get that security seal back on the meter so that we can get out and deliver fuel to customers who need it. And that's really our concern.

I don't see any intent, personally, in this bill to remove any authority from the Department. Obviously, there's a cost involved in duplicitous (sic) inspections, it always comes down to money, and ultimately the consumer always pays. So whatever you decide on that is okay.

You know, someone asked the question a bit ago about other states. And I cover the six New England states and I can tell you that in the other five New England states, private contractors are allowed to test, certify and seal liquid fuel meters in between state inspections. And again, some states inspect them annually. Some states might be every two or three years, because they don't have the manpower. But in the meantime, you know, they do allow the private trained certified contractor to go out and do those testing, certification and sealing. And that would be the security seal type seal that we were discussing.

Senator Martha Fuller Clark, D. 24: Thank you very much. Are there questions for Mr. Rose? Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. Mr. Rose, just so that I'm clear, there are inspectors in other states, because we heard testimony and I verified this, I think, after our JLCAR meeting. That 49 states have a program where they have state inspectors. And it concerns me that I do believe this bill would change fundamental policy here. But what you're saying is that in the other states they have state inspectors, but private contractors can, in between annual inspections?

Mr. Rose: Correct.

Senator Jacalyn L. Cilley, D. 6: Also do testing, sealing and

Mr. Rose: Testing, certification and sealing.

Senator Jacalyn L. Cilley, D. 6: And certification.

Mr. Rose: Right. And the purpose for that, you know, in Massachusetts as an example, there's an inspector who has a propane delivery truck prover. So if he's in Pittsfield and the driver's on Cape Cod, I mean, they're not getting together for awhile. And in the season, we need to get those trucks delivering every day. And I could imagine, I don't know how many propane delivery truck provers the State of New Hampshire owns, but I could imagine that, you know, one's up north and one's down south. I mean, it could obviously be a lag time getting back.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Martha Fuller Clark, D. 24: Yes, Senator DeVries.

Senator Betsi DeVries, D. 18: Thank you, Madam Chair, or, we have two chairs right now. So, just to make sure I'm perfectly clear on this. With private industry, one of your vehicles goes down. And since you have no ability, and I can picture it, in the middle of the heating oil or propane season, that you need all your trucks on the road, as you said. But do you send them out, even today, with a broken ...?

Mr. Rose: Well, if the meter breaks.

Senator Betsi DeVries, D. 18: Meter?

Mr. Rose: When liquid fuel delivery truck meters break, they always break in favor of the customer, generally. I mean, we'll be making a delivery and filling and filling the tank and come back to the truck and it says 3 gallons. So we know right away.

Senator Jacalyn L. Cilley, D. 6: Never happen to me.

Mr. Rose: Never happen to you.

Senator Betsi DeVries, D. 18: We're all waiting for this.

Senator Jacalyn L. Cilley, D. 6: That's okay.

Mr. Rose: Fortunately, they don't break very often, but when they break they generally break in favor of the consumer. So, of course, we're not making any more deliveries that day, because we can't afford to give away the product. So immediately that truck is then dispatched to a repair garage, where the meter is repaired and then gain it has to be tested and certified to make sure it's right. And then in the past, we've always been able to put on that security seal.

Senator Betsi DeVries, D. 18: So your concern is that there's no emergency component to what the State is attempting to do that would allow for you to ...

Mr. Rose: Right, I mean if even ...

Senator Betsi DeVries, D. 18: ...where very quickly get your vehicle up and running.

Mr. Rose: If we had to sit there for two days and not use that truck, that causes severe hardship.

Senator Betsi DeVries, D. 18: Alright, thank you. Learning more than I ever thought I would.

Mr. Rose: Than you ever wanted to know.

Senator Betsi DeVries, D. 18: Well, it's interesting stuff actually.

Senator Martha Fuller Clark, D. 24: Thank you so much.

Mr. Rose: Thank you.

Senator Martha Fuller Clark, D. 24: Floyd Hayes. Welcome.

Mr. Floyd Hayes: Good afternoon, Madam Vice Chair. My name is Floyd Hayes with Aranco Oil Company, representing the Independent Oil Marketers Association. I'm here in support of SB 514.

Basically, what this bill does, and I'm just going to go through how it benefits the consumer. For the past 16 years, as you've heard, private contractors have been allowed to certify all the weighing devices. In conjunction with the Department of Agriculture, which has checks and balances to double check what these private contractors have been doing. So you basically have two forums, independent folks checking meters, scales throughout the state of New Hampshire.

Fast forward to this past December, the policy has been reversed after 16 plus years, basically saying that the Department of Agriculture is going to go in and do this. There is nobody to check the Department of Agriculture. Not that they're never going to make a mistake. No one's perfect. If they do make a mistake, generally that will be in favor of the consumer, generally against business. I just feel that's anti-business and I believe that the policy that was in place was very effective over the past 16 years.

You've heard testimony that private industry is somehow the foxes and the chickens and that type of business. And you heard testimony from the Commissioner that the reason why they changed this 16 plus years ago was due to budget reasons. I remember this past year, we had some serious budget problems here in the state of New Hampshire, and now we're going back to this. So I was unclear on where she was going with that particular point.

I would say this: you've got 16 plus years without any documented evidence that the industry has been either the foxes or the chickens. And I think that's a point that regardless of what you hear in this testimony today, the system works. We are unique throughout the United States in that we are one of the few states, not the only state, that does this particular way of measuring devices. And I feel it would be a travesty to change this just for the mere sake of plugging \$500,000 to the General Fund.

With that being said, if there's any questions I could add from the gasoline service station side of the equation.

Senator Martha Fuller Clark, D. 24: Yes, Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair, and thank you, Mr. Hayes. I did hear a willingness to see if you and the Department could come to some accommodation, however, did I not?

Mr. Hayes: Yes, and that conversation dwelled around the language of how the bill was currently written. If there is a compromise there to allow private industry to still maintain what they've been doing for the past 16 plus years, and give the Department the full authority to find, double check the private contractors, I feel there's no reason why anybody from the Independent Oil Marketers side would have any issue with that particular. I think it's a win-win-win, it's good for business. It's obviously good for the consumer to have two people doing it. And what further prompted that conversation was the fact that Director Cote made the comment due to, I believe, Senator Downing's question. So what you are telling me is these

meters aren't going to be done every year. I own these meters and I have a lot of them. If I'm paying this fee and it's not being done, I got nobody checking it unless I pay for it the second time around, to have it done. And then if I do it the second time around and they happen to spot check me with the three people that they currently have, I'm going to pay for it a third time. So if I'm going to pay for something, I would expect a service to be rendered.

On top of that, the service they're offering is basically just the calibration and the sealing. They will not adjust the pumps, and this is gas pumps now. So if they're off a few cubic inches, they will not adjust it. That would necessitate me to call a private contractor like one of these folks, to drive from wherever, to change one pump, that cost could be anywhere from \$100 to \$200 just to be there for five minutes. Right now, when I'm having that same pump done and is off a few cubic meters, these gentlemen, the private contractors will adjust it while they're there, put the seal on it and put that little sticker on it and off they go. Then I would hope that the Department with their three spot checkers would randomly show up at some of my locations and say, hey, Mr. Hayes, your pump is off eight cubic inches. You know, what's going on? We're putting it out of service. Then I would expect to have to call them back in to do it. That system works because it's checks and balances.

Senator Martha Fuller Clark, D. 24: Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: So if I could follow-up. Mr. Rose just testified and I don't know when you came back into the room and what you heard. He mentioned that states, because he does six states, he mentioned that other states such as Massachusetts, have their state inspectors. And I think I told you that from a policy standpoint, I'm in agreement with that. But they have this melded system where private contractors can address some of the very significant and I think very real concerns that you have. Is that an amendment, the type of thing that you could live with.

Mr. Hayes: Yes, Senator, because I believe from the business owners' side and the contracting side, it keeps them in business providing the service. It gives the protection to the consumer of the double check. And third, if that device was, what he was referring to, in the event that the State does not show up to do one of these devices and they have an inventory issue. In New Hampshire, you're allowed 30 days to lose x amount of inventory. Anything more, you need to tell the Department of Environmental Services why. Well, if I'm leaking it into the ground, I've got serious problems. But if I'm giving it away at the meter to the customer, I'm not going to know until 30 days later. So therefore, that type of, that issue that he was referring to was a company that saw that and said, you know, I can't wait for the State to show

up. I've got to send my guy down there to do it before I start digging into the aquifer to find out if I'm leaking the diesel fuel into the ground, or gasoline.

Senator Jacalyn L. Cilley, D. 6: Okay.

Mr. Hayes: That's where I think that came from.

Senator Jacalyn L. Cilley, D. 6: Final.

Senator Martha Fuller Clark, D. 24: Yes, certainly.

Senator Jacalyn L. Cilley, D. 6: I guess what I would ask in that case. We're not, we are under the gun because we have crossover next week. We need to exec this bill on Thursday. I don't know what kind of time you all have, but I'm wondering if you couldn't get together with the Department and see if you can find some compromise language.

Mr. Hayes: Yes, the IMA would support compromising the language, so long as it allows the current system to exist with the current checks and balances and with the fees.

Senator Jacalyn L. Cilley, D. 6: I'm just wondering if you'll go and try.

Mr. Hayes: And I will go.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Martha Fuller Clark, D. 24: Thank you.

Senator Jacalyn L. Cilley, D. 6: Wonderful to see you again.

Senator Martha Fuller Clark, D. 24: Rick Demmons.

Mr. Rick Demmons: Thank you, Madam Chair. May I invite the owner of Gaftek? We're from the same company.

Senator Martha Fuller Clark, D. 24: Yes, I was actually going to suggest that. Of course you may.

Mr. Burne Gaff: Good afternoon. I have some handouts I'd like to pass out, if that's okay. I'm Burne Gaff, I'm the President and owner of Gaftek, LLC.

Senator Martha Fuller Clark, D. 24: Thank you for being here.

Mr. Gaff: A New Hampshire based business of Epsom, New Hampshire. We are the largest petroleum service and construction company in the state and one of the largest in New England. I've personally been sealing meters for 20 years.

This statute has had a severe impact on my business, basically in the form of lost revenue. While our fixed costs remain the same, we still have to have our cans tested. We still have to train our technicians, they still have to be certified, with the loss of that revenue stream. I currently have 16 people that are Weights and Measures certified in the state of New Hampshire. Two years ago, we sent all of these people to a 2 day class put on by the Department of Agriculture. That class, in the form of lost wages and revenue, cost my company \$50,000, and then some. And now that revenue stream's been cut off. Unfortunately, I'm forced to pass this burden on to my customers and inevitably they will pass it on to the consumers of New Hampshire in the form of higher rates and then in the form of higher gas prices. I've talked to several of my customers and they all agree with this.

Bear with me, there's a lot of stuff said, so I'm doing my best to get through it and Ill be quick. There's 20,000 meters in the state of New Hampshire, and their goal is to try to get to them all. I heard testimony earlier from one of their inspectors. He did 73 meters in six weeks. I did some quick math, that's 500 a year. Four inspectors, that's 2,000 meters. So you're only doing 10 percent of the meters. And frankly, my customers are very upset about this. They're concerned that their meters are not going to be calibrated and they're going to be off.

As far as fraud and people forcing us to adjust their meters in a way that benefits our customers, I've never seen that. And I would like to see examples. I've heard a lot of fraud, a lot of problems, especially with the guy with 73 locations. But there's no who, what, when and where. We do not see this. Our customers, they do not want to see any variance. It's not good for them to have losses, obviously. It's not good for them to have gains, because it plays havoc with their underground inventory and their regulatory issues. This didn't seem like that much and I wrote it.

I'd like to answer your question of how long it would take if the meter is put out of service, for that meter to get repaired. And the answer is 24 to 48 hours, unless it's a priority and then the customer's going to pay substantially more to get there faster. So there will be an impact to locations that have their meters put out of service. And I'm generally talking about petroleum meters.

I just don't want to repeat anything. So my customers are very concerned because there's a redundant charge here. In my letter, there's some numbers. One of my customers, there's going to be a \$40,000 impact just in additional fees. With the new sticker fee and the calibration fee, let alone fees from my company to return and adjust meters when necessary.

As far as the fox in the chicken coop, I'd like to be on record that's a very unfair statement to the people in this room. I know a lot of people in this room and wish the Commissioner was here, because I think that was uncalled for. So, we're not the fox in the henhouse. **See written testimony of Mr. Burne Gaff and letter to Maurice Pilotte attached hereto and hereafter referred to as Attachments 2 and 3.**

Senator Martha Fuller Clark, D. 24: Thank you. Senator Carson.

Senator Sharon M. Carson, D. 14: Thank you, Madam Chair, and thank you for staying so late in the day.

Mr. Gaff: You're welcome.

Senator Sharon M. Carson, D. 14: One of the things that we talked a little bit about was the incidence of fraud, that people are out there doing things that they shouldn't be doing. And as a businessman who bases your business and your reputation on doing good work, if you go to work for a company and you fix their measuring devices and you seal it and everything is good, and then within a short period of time there's a problem. Doesn't that impact your business and your reputation, that you're not doing a good job?

Mr. Gaff: Absolutely.

Senator Sharon M. Carson, D. 14: Okay, thank you.

Senator Betsi DeVries, D. 18: Oh, I'm sorry, thank you, Madam Chair. I did that last time. Thank you for coming before us to testify and I just hope I can take you through the numbers on the fact sheet that you gave us. And I know that you just mentioned that one of your large customers or larger customers would see a cost increase of \$40,000. And it seems that you are basing that on \$16 per additional meter?

Mr. Gaff: Yes.

Senator Betsi DeVries, D. 18: So you're saying, what is that, 250-ish scales?

Mr. Gaff: Yeah. Petroleum gas station meters.

Senator Betsi DeVries, D. 18: So I'm assuming that's a grocer?

Mr. Gaff: No.

Senator Betsi DeVries, D. 18: Gas station.

Mr. Gaff: All meters in the pumps.

Senator Betsi DeVries, D. 18: Gas stations throughout the entire state.

Mr. Gaff: Yes, yeah. There's roughly six meters in every newer style gas pump.

Senator Betsi DeVries, D. 18: How many gas stations would that ...?

Mr. Gaff: I think it was 200, 250.

Senator Betsi DeVries, D. 18: Pumps.

Mr. Gaff: I'm sorry, meters, meters, no pumps, it's meters. A four dispenser gas station could have up to 36 meters. But each one of those ...

Senator Betsi DeVries, D. 18: So four pumps, that's what a dispenser is, right? So four pumps would be 36 meters?

Mr. Gaff: Right. It's six meters per dispenser.

Senator Betsi DeVries, D. 18: Gotcha, for each ...

Mr. Gaff: There's regular, plus and supreme on each side.

Senator Betsi DeVries, D. 18: Yup, yup.

Mr. Gaff: And they buy a license for each one of those. And we test each one of those meters. So even if there's one hose, we're doing three tests per side of the pump, slow and fast, 6 times.

Senator Betsi DeVries, D. 18: Okay, thank you.

Senator Martha Fuller Clark, D. 24: Thank you very much. Did you have some comments that you would like to make?

Mr. Demmons: I just have one thing to add. That I think is, that Burne didn't cover. But one thing we're able to do with our customers is we're able to offer the service of calibrating their meters while we're on site doing other services. So we kind of, that's an impact to us because without, you know, being able to offer the calibration service at this time, that is taking away from our business and that impacts us. And it also impacts our customer, because now they'll have to pay us a second time if the State comes to their station, puts meters out of service and we'll have to charge them an additional trip charge and additional labor charge for coming out another time.

Right now, we're doing the service while we're on site. We usually incorporate it with the Department of Environmental Services UST inspection and at the same time we would calibrate their meters while we're there. So that makes a pretty significant change to the business. I just thought I'd point that out.

Senator Martha Fuller Clark, D. 24: Thank you. And I do have a question for you. You heard in the previous testimony some discussion about working out a compromise, such as the way we heard that it perhaps is handled in Massachusetts. Where the state does their inspection sort of as a final check, but in the interim, that that can be handled by the private sector. What is the response to that combination?

Mr. Demmons: I'm not sure I understand that, all of that. But if that means going back to the way it was, we're all for that. Because ...

Senator Martha Fuller Clark, D. 24: No, what we're saying, yeah, I guess

Mr. Gaff: It seems to me that's how it is currently before the change in January.

Senator Martha Fuller Clark, D. 24: Okay.

Mr. Gaff: That they were policing us.

Senator Betsi DeVries, D. 18: I would think the chair of our Committee could probably speak to that, because it seems that you've been involved in some potential ...

Senator Jacalyn L. Cilley, D. 6: Well, it's my understanding and we're getting into almost executive session stuff. But just for folks in the room, because I'm not sure everybody will be here on Thursday when we exec this

bill. The, it appears to me and I need to have more conversations with the Department of Agriculture. That program was essentially gutted back, you know, 16 years ago. It was just given out while the authority was, continued to be seated within the Department of Agriculture and there was very little oversight about it. So now, with four inspectors, you know, there is I think, from what I've been hearing, a potential compromise of some similarities with Massachusetts. That we have our inspectors. We have a good solid program, but there's room for the folks that have been doing it for 16 years. That's my hope. That we can come to some kind of accommodation. I will tell you personally that I am not in favor of vastly changing the policy, where this kind of regulatory authority belongs to State government. If you believe in regulation at all, then and you know, that's my philosophy. But I do think there's probably room to get to a closer place, I'm hoping. And I think those conversations are going on in the hall, so.

Mr. Demmons: Can I add something as well? I took a lot of notes.

Senator Martha Fuller Clark, D. 24: Certainly. There was a question, I believe, by someone, how it's going to impact jobs in New Hampshire. And I can say for my company, it will impact jobs at my company. Up to four jobs, so there is a substantial impact.

Senator Martha Fuller Clark, D. 24: Thank you.

Senator Betsi DeVries, D. 18: Sorry. Did you say it would impact up to four jobs?

Mr. Demmons: Yes, it will.

Senator Betsi DeVries, D. 18: Your testimony was saying 200 jobs, the written.

Mr. Demmons: 200, we have, I guess I'm confused, at my company.

Senator Betsi DeVries, D. 18: I don't know where I read it, but I thought I saw.

Mr. Demmons: That was speaking towards the state, having to make layoffs at the beginning of last year.

Senator Betsi DeVries, D. 18: So within your company, the loss of jobs would be 4.

Mr. Demmons: Yes.

Senator Betsi DeVries, D. 18: Thank you.

Senator Jacalyn L. Cilley, D. 6: I understand the conversations are going on out in the hall, so you may want to join that.

Mr. Demmons: Okay, thank you.

Mr. Gaff: Thank you for your time.

Senator Martha Fuller Clark, D. 24: Thank you. Timothy Roy.

Mr. Timothy Roy: Yes, ma'am. I don't have anything to add.

Senator Martha Fuller Clark, D. 24: Thank you very much.

Senator Jacalyn L. Cilley, D. 6: You get the gold star.

Senator Martha Fuller Clark, D. 24: Thomas Rymes.

Mr. Thomas Rymes: I'm going to try to be as close to that as I can.

Senator Martha Fuller Clark, D. 24: Nice to see you, again.

Mr. Rymes: Thank you. Madam Chair, Senators. Really, I think we're here because the old system...

Senator Martha Fuller Clark, D. 24: You need to say who you for the ...

Mr. Rymes: Oh, I'm sorry. I'm Thomas Rymes, Tom Rymes, from Rymes Propane and Oil. We operate pretty much throughout the state. And I think I said it before, I'm getting a heck of an education in participatory democracy here.

But, I think the reason we're here is the old system had one flaw and the only one that I can think of. Was that there was insufficient budget allotted to the Department. The rules, regulations, the authorities were all there but no one gave them the money to hire inspectors to do it. But then they got the money and changed the rules. And herein lies the unhappiness, because if they'd taken the money and hired inspectors and then gone through and double checked all of the work that we were already doing, that was working just well. And you'll know that we don't have any examples of large fraud. We don't have, you know, any major issues with that. I'm sure there are

devices out there that are being operated that haven't been inspected, but that's just failure to comply with the law, like any other law.

But now what we've done is, we've added all these inspectors and the new system won't work. They don't have enough resources. They've come more strongly than before, come right out and said that they're not going to get to all these devices. So those companies are still going to be responsible for having them inspected because they're required by law, it's their duty by law to make sure they're operating accurately. They'll have to pay someone to come out and inspect them, and then the State will eventually get around to coming back out as resources allow. This doesn't really reduce, and again I also agree that the fox in the henhouse was a little bit, a bit of a barb on it. But it doesn't really reduce fraud. If someone wants to be fraudulent, they can just as easily as before, cut the security seals off. You know, fix the device so it does what they want it to do. Close it up, put new seals on it. No one's the wiser, it has a sticker from the State, everyone's happy. They feel nice about it, but that's it.

Today, we have a device operating unsealed. We had a meter that was sealed, under the old regime, had to change it due to corrosion and it wasn't working properly. So we removed the top, got it calibrated. Put it on a prover, proved it, did all the work that we used to always do. Did everything but put a sticker on it. And now it's driving around with a little handmade little brother label on it that says, changed, put in service 3/16/10. So if Mrs. Jones at her house happens to walk by if we're delivering or if someone else walks by and says hey, what's this? We have to say, well, no, we're not stealing from you. It's not that we're operating an unsealed meter. It's just that the State doesn't have the people to come get it. And we don't have the sticker.

So I don't know what we're gaining here. The changes in hiring inspectors I think are a step forward in consumer protection. I think there may be a few too many for simple spot checking. But the changes in the rules that keep the private technicians from certifying and sealing devices and actually applying the stamp are solving a problem no one had. Because the fixation, it seems from my discussions with the Department and others, seems to be the fixation is on the actual seal as a legal implement and I don't know the rest of that. But therein lies the trouble, because now we can't do it so we're going to have to take all of our trucks off the road. And this is really where the problems come in, is we can do, we can have our trucks certified today. That meter came off today. He certified it, didn't need it yet, but we got it done so when it's in Lancaster two months from now and it needs certification, we don't have to do it because it's already been done. We don't

have to go up and take 10 trucks off the road and do them at all once the way we will with the State doing it.

So those are the costs. I feel that we've just solved the problem that no one had, and I just, I think it's important. I just wanted to state what I feel that this bill does not do. It's not preventing the State from checking devices. It's not preventing them from protecting consumers or enforcing compliance. It's not reducing their funding. It's not hampering any of the enforcement efforts. And it's not placing consumers at risk, because the technicians are already licensed by the State. And really what it is doing, at least what it's intended to do, I think, is to close holes in the system for those devices that need service or that do fail or are pulled out of service by the State so they can be sealed properly. And cover, frankly, cover holes that are going to come out of the system.

They have four inspectors now, they got the funding. We know how dire the budget is, you guys far more than I do. And the difficulty here is next year or next biennium when it comes up for funding again, they're not likely to get a huge increase to make it so they'll be able to cover that gap. We're always going to have a gap here in the system the way it's designed, whereas there isn't going to be enough funding to implement it properly. So this, by allowing private technicians to seal these devices and yet still providing funding to the Department to double check their work. Not check every device like they're trying to do now. But, this bill doesn't change that yet, but it allows us to cover those holes, because they're not going to be able to do it all. They've acknowledged it and I don't think anyone in the room sees them getting more funding to fill that hole. So, I'm sure there's more I wanted to say but I don't want to keep everyone here any longer than we already have.

Senator Martha Fuller Clark, D. 24: Thank you for your excellent testimony. Are there questions? Thank you. Rick Belanger.

Mr. Chris Nicolopoulos: Thank you, Madam Chair. My name's Chris Nicolopoulos, I'm here on behalf of Rick Belanger.

Senator Jacalyn L. Cilley, D. 6: I was going to say, I know, you cannot sneak that one by me.

Mr. Nicolopoulos: I tried it.

Senator Martha Fuller Clark, D. 24: He did write down here, very small though.

Mr. Nicolopoulos: With a name like Chris Nicolopoulos and Rick Belanger, it doesn't allow for a lot of space. I'm down to saying one point hasn't been raised, or actually it has been raised, but I think Rick will beat me if I don't at least say that.

If you're going to look for an amendment for Thursday, it seems to me that we've established the State doesn't have the ability to certify each meter each year. At least not yet. So if there's going to be an amendment, let's put it back to the way it was 17 years, allow these certified technicians under the Department to do everything they're doing and seal them. And direct these four technicians to the 50 percent of the units that have no seals, the people that aren't in compliance, and allow them to fine. They have the authority. Use the ability to fine and to teach the owners of these non-compliant measuring devices. Advising them of what the statute is, get them in compliance and as time goes on, we'll see if there's really an issue with units that are sealed in accordance with the way it's always been done.

I think if we draft an amendment that only requires, only allows them to seal them in the interim and then requires the State to still do 20,000 seals a year or inspections a year, we're just not going to meet that.

Senator Martha Fuller Clark, D. 24: Thank you.

Mr. Nicolopoulos: I thank you for the time.

Senator Martha Fuller Clark, D. 24: Questions? Thank you. Norman Brown.

Mr. Norman Brown: Thank you, Madam Chair.

Senator Martha Fuller Clark, D. 24: Thank you.

Mr. Brown: My name is Norman Brown, I'm the service manager for Advanced Scale. I'm one of those guys that goes out and seals the scales, used to.

When we test the scale for accuracy, we have to follow specs by the National Institute of Standards and Technology. These are the rules, these are what we're licensed for. I'm licensed for the State of New Hampshire to do this. I have over 25,000 lbs. of test weight that are calibrated and tested every year. I've been doing this for 16 years. In 2009, these are the reports that I have of placing scales in service and certifying them. There's a lot of work here that I'm going to lose. And compound that with the manufacturing side of my

business, which is slow now, I'm going to lose 25 percent of my workforce due to layoff.

Just a couple of things I want to make note of that I've heard today. The State of Maine, I am able to certify a scale. I do it every year.

Really, that's about it. I'm in favor of this bill. I think that the comments you made in regard to negotiation, to compromise, I think that's the way it was prior to this change. It's just that they need more enforcement. They need people to go out there to say to the owners of the scales and the measuring devices, why isn't your scale tested and calibrated? Nobody's been doing that. That's why they're finding so many devices that are out of compliance. It's not really my job to tell people. They're going to tell me to go take a ... And I can only tell them what the law is, but we've got to get them to have it done.

Senator Martha Fuller Clark, D. 24: Thank you very much.

Mr. Brown: Thank you. Appreciate your time.

Senator Martha Fuller Clark, D. 24: Are there questions for Mr. Brown?
Senator Downing.

Senator Michael W. Downing, D. 22: Thank you, Madam Chair. You said you were licensed by the State of New Hampshire to do this work.

Mr. Brown: Yes, I am. Been licensed for 16 years.

Senator Michael W. Downing, D. 22: How often do you have to renew your license?

Mr. Brown: Every year.

Senator Michael W. Downing, D. 22: What is the cost of that?

Mr. Brown: I have four technicians plus myself. It costs me, I think it was about \$800 altogether.

Senator Michael W. Downing, D. 22: Final question?

Senator Martha Fuller Clark, D. 24: Yes, certainly.

Senator Michael W. Downing, D. 22: Thank you, Madam Chairman. You said you had weights that were certified by the State as well. Is there an

expense for that and where do you have to, do they come to certify them or do you have to go ...

Mr. Brown: No, I have, oh, close to 4000 lbs. of 50 lb. test weights. I have small weight kits for doing small deli scales. Long story short, I have to bring a lot of weights up to the lab in the State of Vermont because the New Hampshire lab just doesn't have the capability to test all my weights. And at a cost, yes. Not only the technician has to bring them up there for a day, plus the cost of having the weights tested.

Senator Michael W. Downing, D. 22: Thank you.

Senator Martha Fuller Clark, D. 24: Thank you.

Mr. Brown: Thank you very much.

Senator Martha Fuller Clark, D. 24: Peter Emanuel. And I believe, according to my list, that you are the last person to speak who has signed up. So we're glad to have you here, thank you.

Mr. Peter Emanuel: Yeah. I, along with my brother, own a recycling facility and basically our only interface with Weights and Measures is the use of ...

Cathy Mullen, Senate Secretary: Excuse me, could you introduce yourself for the record?

Mr. Emanuel: Peter Emanuel. And I work for Bow Recycling Center. We have a truck scale which has to be certified annually. As a matter of fact, Norm is the technician that usually does our scale and I'm very pleased with the way the system worked before 2000 (sic), the changes that occurred this year. And my concern is that when you involve the State to have to come out and double check on it, I don't know how long I'm going to have to disable my scale to do that. It might be at a very inopportune point in the day when, if I have to hold my customers up and shut the scale down for a period of time, I could lose business.

And currently, with a private sector technician like Norm's company, Advanced Scale, they work with me. I tell them what time of day works good for them to show up and if I have a rush of trucks, they step off to the side of the scale and let me do business. And then when the trucks slow down, they continue their operation. And I'm not quite sure how customer friendly the Weights and Measures will be when they come. With a state employee who's going to inspect the scale, I would imagine they will be less flexible.

Senator Martha Fuller Clark, D. 24: Thank you very much. Are there questions? Thank you.

Mr. Emanuel: Furthermore, I would just also like to say I would also be concerned with the extra fees, or the extra cost to my business for the new regime. I'm not quite sure how it's all going to pan out yet, because I haven't been through it yet. But I have some concern about that as well. Thank you.

Senator Martha Fuller Clark, D. 24: Sure. Thank you. Is there anyone else who wishes to speak to this bill who has not signed up? Yes, if you could come forward, sir, and introduce yourself so we can have you on record, we'd be very appreciative.

Mr. Kevin Young: Good afternoon. My name's Kevin Young, I'm an investigator with Weights and Measures. I've got almost 33 years of service, 31 years in Weights and Measures. I've tested just about every device that you can imagine out there.

I understand all these people in here have got their own agendas, completely understand that. But you need, really, to do what's best for the public. I'm going to retire here shortly, so it's not going to affect me really in my job. It's really a public policy issue, what's best for the public. There's been some, our department is really a small agency. We're really discreet in what we do. We're not high publicized, we don't publicize all the violators and all that. But we have a lot of violations. They're all on record in the Department. It's all open to the public. Anybody can walk in there and look through the files.

I'm going to just tell you a couple of things that I have experienced. I had a scale company place an inspection stamp on a truck scale that was out of tolerance. It was broken and needed to be replaced, the whole truck scale. This scale is used to weigh, is used to charge the public and New Hampshire towns for their disposal fees. That's right here in Wheelabrator in Concord. They went in and put the state seal on it, they didn't put any weights on it, certified it and sent the paperwork in. Falsified the paperwork. Talking to the company, the company says the reason is to help their customers get by until the customer was able and ready to spend the money to buy a new scale. That's firsthand information, that's my investigation.

Got another company that installs gasoline pumps. They installed some gasoline pumps, I think it was Somersworth, Rochester. Installed the pumps, probably about 24 meters.

Senator Jacalyn L. Cilley, D. 6: You checked which district I was in, didn't you?

Mr. Young: Just trying to take care of you. There was about 24 pumps there, 24 meters. You take a five gallon test, you get two and a half gallons. I know what was wrong with it. They never bled the system when they put it together and the customers were being shorted two and a half gallons out of five.

Some of the technicians are very knowledgeable, really good guys, to get along with. That's not really the issue. The issue is not that they're really competent or not, or that they make mistakes or that we make mistakes. It's really who is going to be the third party here, that's going to be, not have a financial interest over here and to separate that and to say, well, you really need to do this. This is what you need to do to make it correct.

Senator Martha Fuller Clark, D. 24: Yes.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. On that point, Mr. Young. You heard me earlier say, I think you were in the room. I agree with the public policy that Weights and Measures is a regulatory function and if something is regulatory, then it's in the purview of government. However, you've also heard some discussion about this sort of blended system where, you know, Massachusetts utilizes people in between. Would you agree that four technicians, four inspectors are not going to be able to get to every device in the state of New Hampshire?

Mr. Kevin Young: Five or six may not get to every device, but the ones they get to will be inspected correctly and there won't be any conflict of interest.

Senator Jacalyn L. Cilley, D. 6: But, if I may?

Senator Martha Fuller Clark, D. 24: Yes, you certainly may.

Senator Jacalyn L. Cilley, D. 6: My concern is that we have a system in place, that I think there's some evidence that you know, it has not worked as perfectly as some would have it. But it's working and the devices do get inspected presumably. There are not enough people working on the Department of Agriculture. And I guess I'm wondering, and Mr. Cote, did you want to jump in here with saying, are we arriving at any kind of consensus with some of kind of a compromise?

Director Cote: We're going to take tomorrow.

Senator Jacalyn L. Cilley, D. 6: Then, I think I'll leave that there, in that case.

Mr. Kevin Young: Some of these companies license their own people. A company, a gasoline company, license their own technicians to inspect their own devices. I went in the files today with this one company, local, has 714 meters. And I looked in the files and they were being certified every two to three years. And that person testified to you today. Up to five years, some of those pumps were not done.

We have propane meters, one particular company, testified for you today. Two to three years out of compliance. And that's not, I didn't generate these figures out of the air. I pulled them out of the computer. And they're testing their own equipment. And that's where I think this fox in the henhouse thing is being brought up. But really, that's unethical. It's not a good practice to have your own company inspect your own equipment. Like Mobil Corporation inspecting all their own equipment. That's not good.

Senator Jacalyn L. Cilley, D. 6: I think Senator Downing has a question.

Senator Martha Fuller Clark, D. 24: Senator Downing.

Senator Michael W. Downing, D. 22: Thank you, Madam Chairman. Mr. Young, just getting back to the incident, Wheelabrator Frye. Was that company and the person who certified that machine fined and license revoked to do those inspections?

Mr. Young: They had a meeting with the Commissioner and that meeting is on record. And you could go to the Commissioner and they'd tell you what happened. It's not for me to ...

Senator Michael W. Downing, D. 22: Further question?

Senator Martha Fuller Clark, D. 24: Yes, Senator Downing.

Senator Michael W. Downing, D. 22: The testimony that we heard today, the State actually certifies those individuals doing the inspections. They actually license them. There's no test to be taken. They just fill out a form, weight certified and pay a fee. So there's really no test.

Senator Michael W. Downing, D. 22: Well, that leads to a different question. Do you feel that there should be some type of a ...

Mr. Young: If they're going to do that, they should be tested annually. And there was a school and my understanding, it was optional. You either go to the school or take a test. And one of the contractors here decided to take the school, said he lost \$50,000. He could have taken the test. So that's the kind of information that's not really, you not really getting the straight information.

Senator Michael W. Downing, D. 22: Further question?

Senator Martha Fuller Clark, D. 24: Yes, certainly, Senator Downing.

Senator Michael W. Downing, D. 22: Thank you very much. You know, I agree that an industry shouldn't regulate itself, but the State actually has control over who does the inspections by certifying them. And to set the standards as to what that certification would be. And it also has the opportunity to fine or revoke that certification. Or fine the individual or the company if we find any violations. Has that been happening?

Mr. Young: It has. Some technicians have been fined. Is that what you're asking me?

Senator Michael W. Downing, D. 22: Right.

Mr. Young: Yes, some technicians have been fined. Some technicians, their license has been suspended. We try to work with them as much as we can. We don't want, we try not to have an adversarial type relationship, because that's what it turns into a lot of times. You know, they violate the law, I end up writing them up. They end up paying fines. So there is that aspect of it.

Senator Michael W. Downing, D. 22: Madam Chairman? Further question?

Mr. Young: And to regulate that many people, you'd have to have more than four inspectors.

Senator Michael W. Downing, D. 22: I don't want to put you on the spot or anything else. But it almost sounds like you're not getting the support that you need in your position from your agency, to actually go out there and enforce the regulations.

Mr. Young: I'll tell you straight up. We just need a couple more people and it would take the burden off us investigators taking up the slack. It would work, it's a workable system that works in 48 other states. I don't know what

else to tell you about that. It'll work, it works, works in California, works in New Jersey, Pennsylvania, New York, Maine.

Senator Michael W. Downing, D. 22: So Madam Chair, if I might, further question. So in your opinion, the existing system is broken beyond repair and you can't fix it?

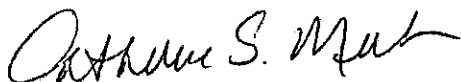
Mr. Young: I say that the existing system is not in the best interest of the State of New Hampshire for the public. It's not in their best interests, because the technician has a financial interest in whether he certifies that scale. That's his bread and butter, that's why they're all in here today, it's their bread and butter. And they've got plenty of work to do. There's plenty of calibrations and all of that. It's not like they're not going to do anything. There's plenty of work, especially when we reject the devices. Somebody's got to come out and fix them.

And there was some testimony about rejecting the device, the seal wasn't going to be on it. That's not true. That's absolutely not true. State seal is always on the device, always, even when it's rejected, unless it is so bad, so wacked out we would put a "not seal" sticker on it and try to wire it off so they couldn't use it. And if somebody has a gas pump, this 24 hour, 48 hour thing. That's not really true. Somebody has himself 50 nozzles, we go in and reject one or two. They've got 48 nozzles to use. Nobody's being put out of business. There's no hardship there. And that extra money they're talking about losing? The businesses are paying it anyway. They're already paying it to the scale people for doing their job of putting the seal on. In fact, we charge less than they do.

Senator Jacalyn L. Cilley, D. 6: Were there further questions? Okay, seeing no further questions, thank you very much. I'm going to close the hearing on Senate Bill 514.

Hearing concluded at 5:04 p.m.

Respectfully submitted,



Catherine S. Mullen
Senate Secretary
3/19/10

3 Attachments

Attachment I

New Hampshire
Department of Agriculture,
Markets & Food

Lorraine S. Merrill, Commissioner

March 16, 2010

Honorable Senator Jacalyn L. Cilley, Chair
New Hampshire Senate
Executive Departments and Administration Committee
Concord, NH 03301

RE: Senate Bill 514

Dear Senator Cilley:

The Department of Agriculture, Markets & Food strongly opposes SB 514. This bill would give private industry regulatory authority in the enforcement of the Weights and Measures Act as codified in RSA 438. This would be a major and unwise change to longstanding public policy.

The inspection, approval (sealing) and rejection of commercial weighing and measuring devices is a government function in 49 states, including New Hampshire and 530 out of 530 local and county jurisdictions. There are sound and wise reasons for this. Please consider a few of these:

Mission of Weights and Measures: The mission of the department is to ensure equity in the marketplace. Part of this equity function is to ensure that weighing and measuring devices used commercially meet certain specifications, tolerances and technical requirements. State inspectors make decisions devoid of any personal financial interest. They base their decisions on established standards in order to protect the public interest. Servicemen are understandably motivated or influenced by their bottom line. Many business owners have expressed to us that inspection should be separate from the service, maintenance, repair or sales of devices. Nor should service providers be subject to pressure to approve a device or lose the business to a competitor.

Public Perception: The public concern is that a consumer gets what they pay for, and that sellers compete on a level playing field. The public expects and demands that devices which affect their pocketbook are inspected by an independent, unbiased government agency. During the legislative hearings a year ago on restoring the inspection function to state staff, members of the House Finance Committee expressed shock and dismay that these inspections were not performed by department staff in recent years.

Conflict of Interest: It is a violation of the public trust for a commercial device owner to certify and seal its own equipment or the equipment of another device owner. Owners of companies and corporations constantly change. This is not to say there are not honest business owners and operators. But foxes should not be put in charge of the chicken coops. The public trusts in the department's non-biased, third-party inspection of devices used to weigh or measure

goods sold in commerce. The department makes its decisions based on its core mission of equity and fairness in the marketplace.

Consistency of Inspection Fees: A major complaint heard from device owners from 1992 to 2009 was that exorbitant fees charged for the annual sealing of their equipment by some companies. The state fees are set by rule and are the same throughout the state. These fees generate sufficient revenue to pay for the inspection program as well as modestly enhance general fund revenues.

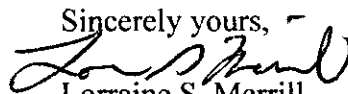
Accountability: It is impossible for the department to supervise the activities of 150+ servicemen.

Regulatory and Enforcement Powers: The legislature has empowered the department with the powers necessary to deal with various violations it may encounter. This ranges from written warnings to the seizing of incorrect devices, accompanied by administrative and criminal complaints. Many of these violations are encountered in the annual inspection of weighing and measuring devices by the department's inspectors. Servicemen are neither legally nor practically equipped to deal with violations of the law, nor should they be.

2010 State Inspections: Inspection involves more than the technical condition and operation of a device. The department has found a variety of violations of the weights and measures laws with small scales sealed by servicemen. These include scales that were not suitable for their intended use; scales found without security seals which prevent unintended calibrations; and scales located in such a way that the weighing operation or indications could not be observed by a customer. These violations facilitate fraud, and provide examples of the weights and measures laws that cannot be enforced by servicemen. *Please see attachment listing the violations found to date in 12% of the 1,500 inspections performed since January 1.*

The department's inspection program has just been reinstated, and operating since January. We have reached out to device owners and service companies, and are working to make the transition as smooth as possible. We have sought input from businesses on how to make inspections as convenient as possible. When violations of weights and measures laws are found, as described above, our inspectors are educating device owners and their staff on proper use and consumer protection statutes. They will then return to assure that the prescribed changes have been made. Fines will not be levied unless repeated violations are found.

In conclusion, government inspection of weights and measures devices and their usage represents a basic tenet of policy for consumer protection and fair competition for businesses.

Sincerely yours, 
Lorraine S. Merrill
Commissioner

New Hampshire
*Department of Agriculture,
Markets & Food*

Lorraine S. Merrill, Commissioner

Department of Agriculture, Markets & Food

Division of Weights & Measures

Scale Inspection Program Preliminary Report

Total Scales inspected January through March 12, 2010: 1,500

Violations

Not legal-for-trade—2

No security seals—107

Out of tolerance—37

No customer indication—4

Scales cheating the public (incorrect Price Look Up tares)—10

Scales cheating the owner (incorrect Price Look Up tares)—12

Scale platform or indication cannot be viewed by customer—12

Not suitable for application—1

Total—185 violations or 12.3% of inspections conducted

Richard P. Cote, Director

Division of Weights and Measures

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Email: rcote@agr.state.nh.us



Attachment 2

2083 Dover Rd.
Epsom, NH 03234
Phone: 603-736-5898
Fax: 603-736-5890

TESTIMONY IN SUPPORT OF SENATE BILL 514

I. Some customers are concerned about paying a higher fee for calibrations

- In the past Gaftek calibrated and adjusted meters all in one visit to the station.
 - The calibration is usually done in conjunction with other services (i.e. DES UST inspection) in order to show the customer savings by doing everything in one visit.
- The new method will be a higher cost to the customer since the Division of weights and measures will charge more for their audit and will not make any adjustments.
- A follow up visit by a Service Repairman will need to be made to adjust meters that have been found out of tolerance by Weights and Measures.
- Gaftek will have to increase our rates to cover the costs for responding to a location to make adjustments to a few meters rather than checking the entire site.
- Previously Gaftek charged by the meter but now will charge an hourly rate and a trip charge to respond to adjust individual meters rather than the complete site calibration.

II. Some customers will continue to have Gaftek check calibrations because they feel it will take Weights and Measures too long to visit their site for a calibration check.

- The previous method employed approximately 200 licensed Repair Servicemen. They have now been replaced by four Weights and Measures employees.
- It is not realistic to believe that four people can maintain the annual schedule of 200 people.
- Since these customers will pay Gaftek to continue doing annual calibrations of their meters because they believe it is their responsibility to keep them within tolerance, they will be charged a redundant calibration fee when Weights and Measures finally visits their site.
- This redundant charge will ultimately be passed on to the end user with higher gas prices. It is how business is done. Higher fees and charges are not absorbed by the owners, they are passed on to the end user to cover the costs of doing business.

III. Some customers are concerned that their pumps will be placed out of order if they are found to be out of tolerance and will cost more to have them repaired.

- This is an added cost to the customer because they will lose each fueling position that is placed out of order.
- This will, in most cases, require the customer to call Gaftek for an emergency service call. They are not willing to leave a dispenser out of service for several days and incur lost sales. Gaftek will charge a higher rate for an emergency response to make

adjustments and put the dispenser back in service. In the past, Gaftek corrected meters that were out of tolerance while on site checking calibrations.

IV. Some customers are concerned that their customers (end users) will view their dispensers as out of calibration when they see old calibration stickers.

- The Department of Weights and Measures will not replace the old stickers until they visit each site. This means 2009 stickers could remain on the dispensers for two to three years. This sends the wrong message to the consumer.
- In the past, Gaftek replaced the old calibration sticker with a new one once all calibrations were completed on an annual basis.

V. Some customers do not intend to have calibrations checked until Weights and Measures visits their location.

- This is a loss of revenue for Gaftek. We are already seeing a down turn in the number of calibrations that are being done from last year, especially with the Mom and Pop locations.

VI. In 2008 Gaftek was required to send all Service Repairmen to a two day seminar (total of four days) for Weights and Measures.

- Gaftek paid for 16 technicians to attend this two day seminar. It cost us \$65.00 per technician totaling \$1,040.00.
- The additional cost for this seminar was reflected in having 16 people out of service for two full 8 hour days. This increased the cost of overtime for the remaining technicians to accomplish the service workload for all four days.
- With the new proposed changes for Weights and Measures to take over checking calibrations. The investment in the seminar seems to be a lost investment since we will lose a significant number of calibration with the new policy

Maurice L. Pilotte

In August of 2009 I received a letter from Richard P. Cote that stated in no uncertain terms that the State of New Hampshire was taking over annual inspection and testing of the states commercial weighing and measuring devices. This was of great concern; however the decision was in Richard's words "a done deal".

Unfortunately it was not until very recently that I discovered that this decision was not a "done deal". I'm writing this letter hoping that it may shed some light on issues that will affect my company, its customers, and most important, the consumers of New Hampshire.

Gaftek is the largest company that calibrates in the state, and this new rule may result in layoffs. Gaftek has invested a significant amount of time and resources ensuring that our licensing, training, and equipment are all up to date.

Our customers will also share the burden of this new rule. They depend on us to insure that their meters are accurate. There seems to be a misnomer floating around that Petroleum Companies in New Hampshire want to "cheat" the consumer, I can guarantee that this is not the case. All, I repeat, All of my customers want their meters calibrated as accurately as possible. When meters are out of calibration in either direction, it is an accounting nightmare with their underground inventory. Furthermore, none of our customers want to be labeled as dishonest, or cheats.

The third and most important reason that this rule should be voted down is the consumer. My business starts with the consumer, without them, I have no job. Comments have been made that the state "intends" to calibrate "up to" 95 percent of the fuel meters in 2010. I would like to know how 4 people intent to do this. The petroleum service providers in New Hampshire calibrate every fuel meter in the state. If they don't, the station is out of compliance and will be issued a citation. How can a consumer pull up to a pump and be certain they are getting the amount of fuel that they are paying for if the state cannot guarantee it can get all of the meters calibrated. Short answer, they can't. Furthermore, the new hirer license fee, service fee and an even higher calibration fee will force station owners to pass this along to the consumer as well in the form of higher fuel prices.

This is a lose, lose, lose scenario for the people of New Hampshire. I hope I'm not too late.

Sincerely,

Burnie Gaff
President, Gaftek LLC

The Facts

- **Why Now?**
 - We are in the middle of one of the worst economic environments many of us have seen.
 - The state has been forced to make difficult decisions and have subsequently laid off approximately 200 people.
 - The state has been forced to make numerous budget cuts while this department continues to spend money that will ultimately cost the consumer at the pump.
 - This new rule will lead to higher fuel and food costs statewide.
 - There have been no reports of fraud that I am aware of.
 - This will put more people in the unemployment line.

- **What is the Cost?**
 - Presently there are over 200 licenses issued to calibrate in New Hampshire. They will see a sharp decline in workload, if not all of it.
 - How are 4 people going to calibrate all of New Hampshire's pumps, let alone scales, in one calendar year? By the way, only in warm weather?
 - We have estimated that it will take 2-3 years for four people to accomplish this.
 - Currently it costs \$18.00 for a license fee and approximately \$15.00 per meter for us to calibrate. The new fee would be \$24.00 per license and \$25.00 for calibration. That's \$16.00 additional per meter and \$576.00 per 4 location site more, if we do not have to return to adjust. One of our larger customers could see and increase in cost in excess of \$40,000.

- **Electronics Cabinet/Stand Alone Mode**
 - The state intends to put dispensers into "Stand Alone Mode" during their calibrations. Stand Alone Mode allows the calibrating technician to pump fuel without sales clerk authorization, leading to faster less invasive calibration. This is a must on medium to large locations and can be done by entering the electronics cabinet on most models.
 - New gas dispensers are very technical and require entry into the electronics cabinet to be placed into stand-alone. (Warranties will be voided if uncertified personnel enter these electronics cabinets of units under warranty)
 - Damage to the electronics portion of the dispenser is a real possibility as well. This could prove to be very costly if unqualified people are entering this equipment.
 - Furthermore, there is an electrocution hazard inside many of the different types of units.
 - Many of our customers remove keypads in the electronics cabinet to prevent tampering. If unqualified personnel were to plug a service keypad

into the wrong cable, the dispenser could be damaged leading to thousands of dollars of damage.

- **The Station Owner**

- Under the new rule if a pump needs to be recalibrated, they call us and we get on site the next day (maybe), meanwhile that location (assuming 4 dispenser) is one quarter out of business. Currently we make repairs or calibrations on-site during our visit. This prevents unnecessary down time and cost.
- There will be an added expense if units need to be re-calibrated. The state's proposed fees are more expensive than we charge. Now they will have to pay an extra high calibration fee, and any repairs that are made will cost them even further. This idea is flawed.
- We schedule locations based on many factors including station size and how busy they are at different periods of time. We will send multiple techs to these locations to minimize downtime and inconvenience.

- **The Consumer**

- Can they feel confident that they are getting the accurate amount at the pump if it takes 3 years to get calibrated? Sometimes meters go bad, and we routinely repair these during our calibrations.
- Ultimately, and most important, a higher cost will be passed on to the consumer.

Speakers

Senate Executive Departments and Administration Committee: Sign-In Sheet

Date: March 16, 2010

Time: 3:00 pm

Public Hearing on SB 514

SB 514 relative to commercial weighing or measuring devices.

Name PLEASE PRINT Representing

Name PLEASE PRINT Representing		Support	Oppose	Speaking?	Yes	No
✓ Senator Downing	D-22	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Stephen Chausier	Carroll County Dist	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Sen Letourneau	D-19	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
✓ Richard Coste	Agriculture	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ LORRAINE MERRILL	Dept. of Agriculture	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ John Dumais	NH GROCERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ KRISTOPHER HEATH	DEPT. OF AGRICULTURE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bob Betanga	Garbage Salvage	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Kevin Young	Agriculture	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
✓ JOSEPH ROSE	PROANE GAS ASSOC. ^{NEW} EXISTING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Floyd Hayes	Independent Oil Marketers Assn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Rick Demmons	Gaftek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ BURNIE GAFF	GAFTEK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ Timothy Roy	Roy Petroleum, LLC	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ THOMAS RYMES	RYMES PROPANE + OIL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ BOB SCULLY		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	Speaking?	<input type="checkbox"/>	<input type="checkbox"/>

Testimony



Knowledge Creating Value

| 114 North Main Street | Suite 401 | Concord, NH 03301
| Phone: 603.228.3322 | Fax: 603.228.0713 | www.dupontgroup.com

Statement in Support of SB 514 relative to commercial weighing or measuring devices
Ed Dupont, on behalf of the
Oil Heat Council of New Hampshire

The Oil Heat Council of New Hampshire and its 50+ member home heating fuel dealers strongly supports this legislation.

The current system of allowing State- licensed technicians to certify the accuracy of oil and propane meters on delivery vehicles has worked well and has proven itself as being much more efficient than under the former N.H. Department of Agriculture model.

The public has been protected through the previous model, as technicians lose their license if their work does not meet state standards for accuracy. Private sector testing has eliminated the need for additional state employees and the expenditure of large sums of money for equipment and vehicles - the reason the state stopped conducting the testing in the 1990's.

The change back to the old system will be expensive to the state as it will require the hiring of state employees, new vehicle purchases and testing equipment. Worse, the proposal will cause the loss of a number of private sector tax paying jobs at NH businesses, and these employees will be replaced with state employees at a time when unemployment in the state is at record highs and the state is struggling to pay its bills.

The likely the cost of implementing the new program will far exceed the revenue generated and the impact of the loss jobs at NH businesses.

For these reasons we support SB514 and ask the Senate to allow OHCNH members to choose the state or our current vendor for meter certification.

The Oil Heat Council of New Hampshire is a trade association representing over 50 New Hampshire home heating oil dealers for over 35 years.

Submission B

Independent Oil Marketers Association of New England

March 16, 2010

Dear Members of the Senate Executive Departments and Administration Committee:

I am the president of the Independent Oil Marketers Association of New England (IOMA). IOMA members are independent gasoline distributors of gasoline who reside, hire, and invest capital in the state of New Hampshire. I am writing to you in support of SB 514. My members are very concerned with recent policy changes for inspections of gasoline service stations implemented by the Division of Weights and Measurers.

The policy change, as I understand it, enables state inspectors to inspect and private enterprise to correct deficiencies. This inefficient redundancy is a critical concern for our members especially in view of the fact that private industry has been testing, certifying, and sealing pumps effectively since 1992.

IOMA believes that during these difficult economic times, any state initiative, which places an additional burden on private enterprise and the consumer, should be viewed as counterproductive to the welfare of the state. SB 514 intends to ensure that the policy which began in 1992 continues which reduces costs and administrative burdens on the small businesses IOMA represents.

Thank you for your time and consideration.

Sincerely,

Peter Romano

Peter Romano
President & COO
Independent Oil Marketers Association

PO BOX 1827
Falmouth, MA 02556
romano@iomane.com

Voting Sheets

Senate ED&A Committee

EXECUTIVE SESSION

Bill # SB 514

Hearing date: 3-16-10

Executive session date: 3-18-10

Motion of: OTPA

VOTE: 3-0

Made by
Senator:

Cilley
Fuller Clark
DeVries
Downing
Carson

Seconded
by Senator:

Cilley
Fuller Clark
DeVries
Downing
Carson

Reported
by Senator:

Cilley
Fuller Clark
DeVries
Downing
Carson

Motion of: Amend 1087 S

VOTE: 3-0

Made by
Senator:

Cilley
Fuller Clark
DeVries
Downing
Carson

Seconded
by Senator:

Cilley
Fuller Clark
DeVries
Downing
Carson

Reported
by Senator:

Cilley
Fuller Clark
DeVries
Downing
Carson

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Cilley, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Fuller Clark, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator DeVries	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Downing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Carson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: OTPA m1
BD

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: March 18, 2010

THE COMMITTEE ON Executive Departments and Administration
to which was referred Senate Bill 514

AN ACT relative to commercial weighing or measuring devices.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3-0

AMENDMENT # 1118s

Senator Michael W. Downing
For the Committee

Cathy Mullen 271-3067

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB 514 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: 1-3

SIGN-UP SHEET (2)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 10875 _____ - AMENDMENT # _____
 - AMENDMENT # 11185 _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: A, B

EXECUTIVE SESSION REPORT

_____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

10/5/10

Cathy Muller
COMMITTEE SECRETARY