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Gov. Arnold Schwarzenegger
Office of the Governor
State Capitol Building
Sacramento, CA 95814 4633
And by facsimile, 916 445-~~2841~~

September 13, 2007

Dear Gov. Schwarzenegger,

The Foundation for Taxpayer and Consumer Rights urges you to veto AB 868, “Gasoline Dispensing, Weights and Measures,” by Assemblyman Mike Davis. This legislation, billed by Asm. Davis and Assembly Speaker Fabian Núñez as a consumer protection, is in fact the opposite of consumer-friendly. The measure was written and supported by the California Independent Oil Marketers Association, an industry lobbying group. There was no input or approval from consumer groups or, despite the deceptive title, by the state’s own regulators of weights and measures.

AB868, touted by Speaker Núñez as a path to fixing the retail sales of “hot fuel” that cost California drivers an estimated \$450 million a year at the pump, would delay or deny a solution.

California’s estimated year-round average fuel temperature at the pump is 75 degrees Fahrenheit, according to a 2002-2004 federal study. California drivers thus lose 1% on each purchase to fuel expansion, when compared to a gallon at the national temperature standard of 60 degrees. At 90 degrees, a common gasoline temperature in the summer driving season, the loss is 2%, according to the National Conference on Weights and Measures and the National Institute of Standards and Technology.

Gasoline sales at the refinery and wholesale levels are adjusted for temperature, meaning that at temperatures above the national standard of 60 degrees, the buyer is provided enough additional fuel to make up for the energy that is lost to expansion. At temperatures below 60 degrees, the buyer gets slightly less, to compensate for contraction that increases the energy level of the fuel.

Retail gasoline purchasers get no temperature adjustment and in California are almost always at the short end of the stick.

- Specifically, AB868 should be vetoed because:
- **California’s own Division of Measurement Standards is more than halfway through a year-long confirmational study of the state’s gasoline temperatures.** AB868 would take the results of the study out of the hands of the state’s weights and measures experts and bury them in a political process that will certainly delay and may prevent the sale of gasoline adjusted for temperature. The facts of the study will not require additional “study” and interpretation. The numbers are what they are. In addition, the California Energy Commission will be required to study effects of temperature on alternative fuels, which will repeat work already done or in progress by state and national weights and measures bodies. This is an unnecessary burden on the California budget.
- **The measurement standards agency has already stated that there is no legal barrier to the sale of temperature-adjusted gasoline in California and has certified American-made temperature-adjusting pump equipment for California use.** AB868 is a direct repudiation of the state regulators’ action. It could undo the agency’s work by putting temperature adjustment on indefinite hold or, in recommendations to the Legislature, disallowing temperature adjustment at the pump. These are the outcomes desired by the oil marketing lobby as well as by the major integrated oil companies, in statements before the House Domestic Policy subcommittee.
- **The Division of Measurement Standards, in conjunction with the National Council on Weights and Measures, is well along in the process of developing national standards for the retail sale of temperature-adjusted gasoline.** At a special meeting in Chicago Aug. 27 and 28, NCWM experts indicated it was likely that standards long in place in Canada could be largely transferable to U.S. sales. The process should be in the hands of the California DMS and national NCWM, not of a politically appointed committee.
- **National and regional weights and measures officials are finding that installation costs of temperature measuring equipment for retail sale will be a fraction of the \$4,000 per pump that oil companies and gasoline marketers assert..** This is especially true if the change occurs as part of regular equipment upgrades, which occur in roughly 8-year cycles. The cost of phasing in temperature adjustment should not be estimated by a committee that lacks technical expertise and is under political pressure.
- **Temperature adjustment is not a recently discovered issue requiring study.** Weights and measures officials long ago developed the standards for wholesale and other bulk transactions to be temperature adjusted. Temperature adjusted sales are seen as the only fair transaction method at the wholesale level. This issue does not require reinvention by a new state body or committee. The only point of such extended study would be to delay or prevent the introduction of temperature-compensated retail sales.

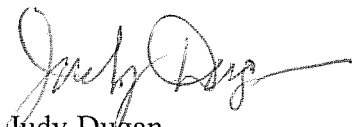
- **A study of “costs and benefits” may not account for fundamental fairness and is an opening for lobbyists’ exaggerations.** Consumers have no way of knowing the temperature of gasoline they are buying, and the business incentive is for wholesalers to deliver and retailers to sell the warmest possible fuel. The CEC, which the bill instructs to conduct this study, has no experience in overseeing retail sale of motor fuels. Its appointment of an “advisory group” for this study will increase the politicization of the outcome.
- **Political interference in government regulatory processes discredits and embarrasses legitimate government agencies.** This recently happened when the Federal Trade Commission, using arguments that could not have come from weights and measures officials, issued an “opinion letter” Aug. 28 on fuel temperature adjustment that underestimated the loss to consumers by more than 90%. The National Institute of Standards and Technology issued the rebuttal data that slammed this politically motivated cost-benefit opinion. FTC chairwoman Deborah Majoras was forced to apologize and rescind the letter.

There is no group more interested in “hot fuel” than us, other than perhaps independent truckers, who are also against AB868. The Foundation for Taxpayer and Consumer Rights launched a national campaign to correct the current unfair method of sales of motor fuels. Consumers are increasingly aware of the issue and their own stake in correcting it.

We have not always seen eye to eye, Governor, but on this issue, we have been in agreement with your own state Division of Measurement Standards. This bill undermines the department’s scientific integrity as well as our efforts to correct the problem.

Sincerely,


Jamie Court


Judy Dugan