

2003 DRAFTING REQUEST

Bill

Received: **03/21/2003**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Dale Schultz (608) 266-0703**

By/Representing: **john**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Buildings/Safety - misc.**

Extra Copies: **TNF
ARG**

Submit via email: **YES**

Requester's email: **Sen.Schultz@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Prohibit MTBE in gasoline

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 03/21/2003	wjackson 03/24/2003		_____			State
/1	rmarchan 03/31/2003	wjackson 03/31/2003	chaskett 03/25/2003	_____	sbasford 03/25/2003		State
/2	chanaman	chanaman	pgreensl	_____	amentkow		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	04/04/2003	04/04/2003	03/31/2003	_____	03/31/2003		
/3			pgreensl	_____	sbasford	sbasford	
			04/04/2003	_____	04/04/2003	04/08/2003	
				_____		sbasford	
				_____		04/08/2003	

FE Sent For:

*At
Intro.*

<END>

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/?	rmarchan	11 WLj 3/24	1 copy 3/25	copy 1/3 3/25			

FE Sent For:

<END>

RTM

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section. 266-3561

Bill Request Form

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date MARCH 20 - 2003

Legislator, agency, or other person requesting this draft SEN. DALE SCHULTZ

Person submitting request (name and phone number) JOHN O'BRIEN, 266-0703

Persons to contact for questions about this draft (names and phone numbers) SAME ↑

Describe the problem, including any helpful examples. How do you want to solve the problem?

BANNING MTBE IN GASOLINE - MOTOR FUELS

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-2345/1 or 1999AB-67).

SEE ATTACHED TRANSCRIPT

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you?

YES NO

If yes:

Anyone who asks?
Any legislator?

YES NO
 YES NO

Only the following persons

REP FREEZE

Do you consider this request urgent? YES NO

If yes, please indicate why

Time Sensitive

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

MTBE BAN LEGISLATION DRAFT

- Sec. 1. Definitions. "MTBE" means methyl tertiary butyl ether.
"Agency" means the Wisconsin Department of Commerce.
"Trace amount" means an amount not exceeding 0.5% by volume of the motor fuel.
- Sec. 2 MTBE Prohibition. On July 1, 2006 no person shall use, sell, offer for sale, distribute, blend, or manufacture fuels in the state that contain MTBE as a motor fuel additive.
- Sec. 3 It is not a violation of this Act for a person to sell, offer for sale, distribute, or Blend a motor fuel in the state that contains trace amounts of MTBE.
- Sec. 4 Effective date. This act takes effect upon becoming law.

500 N

2003 ASSEMBLY BILL 33

February 5, 2003 - Introduced by Representatives FREESE, GRONEMUS, LOEFFELHOLZ, HAHN, BIES, M. LEHMAN, OWENS, HINES, ALBERS, MUSSER and PETROWSKI, cosponsored by Senators SCHULTZ, A. LASEE, RISSER and HARSDDORF. Referred to Committee on Rural Affairs.

REGEN

No. 11
from containing more than 0.5% by volume of methyl tertiary-butyl ether (MTBE). This prohibition first applies on July 1, 2006.
MTBE is a chemical compound that is added to gasoline to boost the gasoline's octane or to meet clean fuel oxygen requirements.
Proffer

1 AN ACT to renumber and amend 168.04; and to create 168.04 (2), 168.04 (3)
2 and 168.04 (4) of the statutes; relating to: requiring ethanol in automotive
3 gasoline, granting rule-making authority, and providing a penalty.

Prohibit

Analysis by the Legislative Reference Bureau

Current law requires the Department of Commerce (Commerce) to set minimum specifications for gasoline, reformulated gasoline, and kerosene and authorizes Commerce to set minimum specifications for other types of fuel.

This bill requires Commerce to set, by rule, minimum specifications for automotive gasoline that require automotive gasoline, with certain exceptions, to contain a specified minimum percentage of ethanol produced in the United States. The amount of required ethanol is gradually increased from July 1, 2004, to July 1, 2008, by which date automotive gasoline generally must contain at least 10% ethanol.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 168.04 of the statutes is renumbered 168.04 (1) and amended to
5 read:

ASSEMBLY BILL 33

1 168.04 (1) The department by rule shall prescribe minimum product grade
 2 specifications for gasoline, automotive gasoline, reformulated gasoline, as defined in
 3 s. 285.37 (1), and kerosene and may prescribe product grade specifications for
 4 ~~automotive gasoline~~, gasoline-alcohol fuel blends, aviation gasoline, fuel oils, and
 5 diesel fuels. ~~Automotive gasoline specifications shall include lead content. The rules~~
 6 ~~shall, to the extent feasible, be in conformity with nationally recognized standards,~~
 7 ~~specifications and classifications, such as those published by the American society~~
 8 ~~for testing and materials, the society of automotive engineers and the U.S.~~
 9 ~~environmental protection agency. The department may not promulgate or enforce~~
 10 ~~a rule prohibiting additional information from placement on the dispensing device.~~

11 SECTION 2. 168.04 (2) of the statutes is created to read:

12 168.04 (2) (a) ~~In this subsection,~~

13 1. "Domestic ethanol" means ethanol that is manufactured or produced in the
 14 United States from grain or feedstock grown in the United States.

15 2. "Nonattainment area" has the meaning given in s. 285.01 (30).

16 (b) ~~Except as provided in pars. (c) and (d),~~ ^{Not} the rule promulgated by the ^{prohibit}
 17 department under sub. (1) to set standards for automotive gasoline shall require
 18 automotive gasoline ^{to begin on July 1, 2006} ~~to meet the following minimum ethanol fuel blend~~
 19 ~~requirements:~~

20 1. Beginning on July 1, 2004, automotive gasoline shall contain at least 3%
 21 domestic ethanol.

22 2. Beginning on July 1, 2006, automotive gasoline shall contain at least 6%
 23 domestic ethanol.

24 3. Beginning on July 1, 2008, automotive gasoline shall contain at least 10%
 25 domestic ethanol.

~~from containing more than 0.5% by volume of methyl tertiary-butyl ether~~

ASSEMBLY BILL 33

1 (c) The standards established under par. (b) do not apply to automotive gasoline
2 sold or used in a nonattainment area for ozone.

3 (d) The standards established under par. (b) do not apply to automotive
4 gasoline sold as fuel for tractors, farm machinery, aircraft, small engines, boat
5 motors, motorcycles, and antique motor vehicles specified by the department, by
6 rule. In determining which tractors, farm machinery, aircraft, small engines, boat
7 motors, motorcycles, and antique motor vehicles to specify, the department shall
8 consider whether the use of an ethanol-gasoline fuel blend will cause engine damage
9 to or significantly reduce the efficiency of the tractor, farm machinery, aircraft, small
10 engine, boat motor, motorcycle, or antique motor vehicle.

11 **SECTION 3.** 168.04 (3) of the statutes is created to read:

12 168.04 (3) Except as otherwise provided in this section, rules promulgated
13 under this section shall be in conformity with nationally recognized standards,
14 specifications, and classifications, such as those published by the American Society
15 for Testing and Materials, the Society of Automotive Engineers, and the U.S.
16 Environmental Protection Agency. The department may not promulgate or enforce
17 a rule prohibiting the placement of additional information on the dispensing device.

18 **SECTION 4.** 168.04 (4) of the statutes is created to read:

19 168.04 (4) A person who sells or dispenses automotive gasoline that violates
20 any rule promulgated under sub. (1) ~~or (2)~~ shall forfeit not less than \$10 nor more
21 than \$100. Each day on which a violation occurs is a separate violation.

22 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2384/1dn

RJM:.....

Wlj

Senator Schultz:

The attached draft would prohibit automotive gasoline from containing any more than trace amounts of MTBE, beginning on July 1, 2006. Like 2003 AB-33 (requiring ethanol in automotive gasoline), the draft uses the department of commerce's current regulatory structure for petroleum products. As a result, this draft would not prohibit a manufacturer or refiner from manufacturing or blending gasoline that contains MTBE. However, the draft would prohibit a person in this state from obtaining such gasoline from the manufacturer or refiner and using or selling it.

Please let me know if you have any questions or desire any changes to the draft.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2384/1dn
RJM:wlj:cph

March 25, 2003

Senator Schultz:

The attached draft would prohibit automotive gasoline from containing any more than trace amounts of MTBE, beginning on July 1, 2006. Like 2003 AB-33 (requiring ethanol in automotive gasoline), the draft uses the Department of Commerce's current regulatory structure for petroleum products. As a result, this draft would not prohibit a manufacturer or refiner from manufacturing or blending gasoline that contains MTBE. However, the draft would prohibit a person in this state from obtaining such gasoline from the manufacturer or refiner and using or selling it.

Please let me know if you have any questions or desire any changes to the draft.

Robert J. Marchant
Legislative Attorney
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E-mail: robert.marchant@legis.state.wi.us

2003 - 2004 LEGISLATURE

TODAY

2003 BILL

LRB:1700/3
RJM:cmh&wlj:AM

3
2384/ED

DIOTE

Please Run RPM

REGEN

1 AN ACT *to renumber and amend* 168.04; and *to create* 168.04 (2) and 168.04
2 (3) of the statutes; **relating to:** prohibiting methyl tertiary-butyl ether in
3 automotive gasoline, providing an exemption from emergency rule procedures,
4 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Commerce (Commerce) to set minimum specifications for gasoline, reformulated gasoline, and kerosene and authorizes Commerce to set minimum specifications for other types of fuel.

This bill requires Commerce to set, by rule, minimum specifications for automotive gasoline that prohibit automotive gasoline from containing more than 0.5%, by volume, of methyl tertiary-butyl ether (MTBE). Similarly, the bill requires Commerce, by rule, to prohibit any person from offering for sale, distributing, blending, or manufacturing MTBE as an automotive gasoline additive (except that persons may offer for sale, distribute, blend, or manufacture automotive gasoline containing up to 0.5%, by volume, of MTBE). These prohibitions first apply on August 1, 2004. MTBE is a chemical compound that is added to gasoline, often to boost the gasoline's octane or to meet clean fuel oxygen requirements.

BILL

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 168.04 of the statutes is renumbered 168.04 (1) and amended to
2 read:

3 168.04 (1) The department by rule shall prescribe minimum product grade
4 specifications for gasoline, automotive gasoline, automotive gasoline additives, as
5 described in sub. (2) (b), reformulated gasoline, as defined in s. 285.37 (1), and
6 kerosene and may prescribe product grade specifications for ~~automotive gasoline,~~
7 ~~gasoline–alcohol fuel blends, aviation gasoline, fuel oils, and diesel fuels.~~
8 ~~Automotive gasoline specifications shall include lead content. The rules shall, to the~~
9 ~~extent feasible, be in conformity with nationally recognized standards, specifications~~
10 ~~and classifications, such as those published by the American society for testing and~~
11 ~~materials, the society of automotive engineers and the U.S. environmental~~
12 ~~protection agency. The department may not promulgate or enforce a rule prohibiting~~
13 ~~additional information from placement on the dispensing device.~~

14 SECTION 2. 168.04 (2) of the statutes is created to read:

15 168.04 (2) (a) The rule promulgated by the department under sub. (1) to set
16 standards for automotive gasoline shall prohibit automotive gasoline, beginning on
17 August 1, 2004, from containing more than 0.5%, by volume, of methyl tertiary–butyl
18 ether.

19 (b) The rule promulgated by the department under sub. (1) to set standards for
20 automotive gasoline additives shall prohibit any person from offering for sale,
21 distributing, blending, or manufacturing methyl tertiary–butyl ether as an

BILL

1 automotive gasoline additive in this state, beginning on August 1, 2004. It is not a
2 violation of such a rule for a person to offer for sale, distribute, blend, or manufacture
3 automotive gasoline containing not more than 0.5%, by volume, of methyl
4 tertiary-butyl ether.

5 **SECTION 3.** 168.04 (3) of the statutes is created to read:

6 168.04 (3) Except as otherwise provided in this section, rules promulgated
7 under this section shall be in conformity with nationally recognized standards,
8 specifications, and classifications, such as those published by the American Society
9 for Testing and Materials, the Society of Automotive Engineers, and the U.S.
10 Environmental Protection Agency. The department may not promulgate or enforce
11 a rule prohibiting the placement of additional information on the dispensing device.

12 **SECTION 4. Nonstatutory provisions.**

13 (1) EMERGENCY RULE. Using the procedure under section 227.24 of the statutes,
14 the department of commerce shall promulgate the rule described under section
15 168.04 (2) of the statutes, as created by this act, for the period before the permanent
16 rule becomes effective, but not to exceed the period authorized under section 227.24
17 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3)
18 of the statutes, the department is not required to provide evidence that promulgating
19 a rule under this subsection as an emergency rule is necessary for the preservation
20 of the public peace, health, safety, or welfare and is not required to provide a finding
21 of emergency for the rule promulgated under this subsection.

22 (2) STATEMENT OF LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that
23 methyl tertiary-butyl ether may contaminate groundwater through various means,
24 including leaking fuel storage tanks and pipelines, refueling spills, automobile
25 accidents, and improper consumer disposal of gasoline. As a result of its odor and

BILL

1 taste, methyl tertiary-butyl ether can make drinking water supplies undrinkable.
2 The purpose of section 168.04 (2) of the statutes, as created by this act, is to reduce
3 or eliminate the instances of methyl tertiary-butyl ether contaminating
4 groundwater.

5 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

2389 Edn
LRB-1700/3dn
RJM:wlj:rs

~~March 31, 2003~~

Senator Schultz

~~Representative Froese~~

Please note that I included a requirement that Commerce promulgate emergency rules. If the bill is enacted near the end of the session (for example, in March 2004), Commerce may not have enough time to promulgate a permanent rule before August 1, 2004.

Also, I have included a statement of legislative intent to make it clear that the legislature is attempting to protect the groundwater from MTBE contamination. This statement is important to avoid an argument that the legislature is improperly attempting to regulate vehicle emissions—an area that is under the exclusive authority of the federal Environmental Protection Agency. See *Oxygenated Fuels Assn., Inc. v. Pataki*, 158 F. Supp. 2d 248 (2001).

Please let me know if you desire any additional changes.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2384/2dn
RJM:cmh&wlj:pg

March 31, 2003

Senator Schultz:

Please note that I included a requirement that Commerce promulgate emergency rules. If the bill is enacted near the end of the session (for example, in March 2004), Commerce may not have enough time to promulgate a permanent rule before August 1, 2004.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2384/3dn
RJM:cmh&wlj:pg

April 4, 2003

Senator Schultz:

Please note that I included a requirement that Commerce promulgate emergency rules. If the bill is enacted near the end of the session (for example, in March 2004), Commerce may not have enough time to promulgate a permanent rule before August 1, 2004.

Also, I have included a statement of legislative intent to make it clear that the legislature is attempting to protect the groundwater from MTBE contamination. This statement is important to avoid an argument that the legislature is improperly attempting to regulate vehicle emissions—an area that is under the exclusive authority of the federal Environmental Protection Agency. See *Oxygenated Fuels Assn., Inc. v. Pataki*, 158 F. Supp. 2d 248 (2001).

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Basford, Sarah

From: OBrien, John
Sent: Tuesday, April 08, 2003 6:08 AM
To: LRB.Legal
Subject: Draft review: LRB 03-2384/2 Topic: Prohibit MTBE in gasoline

It has been requested by <OBrien, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2384/2 Topic: Prohibit MTBE in gasoline