

2007 ASSEMBLY BILL 682

January 11, 2008 – Introduced by Representatives SUDER, SHERIDAN, DAVIS, GRONEMUS, ZEPNICK, HAHN, JORGENSEN, ALBERS, GARTHWAITE, MUSSER, SMITH, HILGENBERG, HRAYCHUCK and SINICKI, cosponsored by Senators KREITLOW, SCHULTZ, JAUCH, HARS DORF, OLSEN and VINEHOUT. Referred to Committee on Biofuels and Sustainable Energy.

- 1 **AN ACT to create** 100.60 of the statutes; **relating to:** the sale of renewable motor
2 vehicle fuels, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill relates to renewable motor vehicle fuels. Under the bill, renewable fuels consist of ethanol, biodiesel, and hydrogen produced using wind power. In addition, the bill authorizes the Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules designating additional fuels, other than petroleum-based fuels, as renewable fuels.

This bill generally subjects a refiner to a penalty if the percentage of renewable fuel sold by the refiner, beginning in 2009, is less than a percentage set in the bill. The percentage of renewable fuel sold is determined by dividing the total volume of wholesale sales of renewable fuel in a year by the refiner's five year rolling average volume of wholesale sales of all motor vehicle fuel, other than diesel fuel, and multiplying by 100. The percentage begins at 10 percent and increases to 25 percent in 2025 and thereafter. The bill authorizes DATCP to implement a system of credit trading for refiners, under which a refiner who sells more than the required percentage of renewable fuels in a year could sell credits to refiners who fail to meet the renewable fuel requirements, enabling the purchasing refiners to avoid a penalty. The bill authorizes DATCP to temporarily suspend the requirements imposed on wholesalers if a sufficient supply of renewable fuel is not available.

This bill also provides that if the total amount of biodiesel fuel sold at retail in this state in 2007 is less than 40,000,000 gallons, a person who sells diesel fuel at retail is generally subject to a penalty if the volume of biodiesel fuel sold by the person

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in a year, beginning in 2009, is less than five percent of the total volume of diesel fuel sold by the person at retail in that year. The bill authorizes DATCP to temporarily suspend the requirements imposed on retailers if a sufficient supply of biodiesel is not available.

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.** 100.60 of the statutes is created to read:

2 **100.60 Renewable fuel standards. (1) DEFINITIONS.** In this section:

3 (a) “Biodiesel fuel” means any of the following:

4 1. A fuel that is comprised of monoalkyl esters of long chain fatty acids derived
5 from vegetable oils or animal fats and that meets all of the applicable requirements
6 of the American Society for Testing and Materials.

7 2. Any fuel not described in subd. 1. that can substitute for petroleum-based
8 diesel fuel and that the department designates as biodiesel fuel under sub. (5) (am).

9 (b) “Diesel fuel” includes biodiesel fuel and petroleum-based diesel fuel.

10 (c) “Motor vehicle fuel” means gasoline, diesel fuel, ethanol, or any other
11 substance used to fuel vehicles that are primarily used for transportation on public
12 roadways.

13 (d) “Percentage of renewable fuel sold” means the percentage that results from
14 dividing the total volume of wholesale sales of renewable fuel sold in this state in a
15 year by the average total volume of wholesale sales of motor vehicle fuel, other than
16 diesel fuel, in this state in that year and the previous 4 years and multiplying by 100.

17 (e) “Refiner” means a person who makes wholesale sales of at least 40,000,000
18 gallons of motor vehicle fuel in a year at terminals located in this state.

19 (f) “Renewable fuel” means any of the following:

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- 1 1. Ethanol.
- 2 2. Biodiesel fuel.
- 3 3. Hydrogen produced using wind power.
- 4 4. Any other fuel that the department designates as a renewable fuel in rules
- 5 promulgated under sub. (5) (b).

6 (g) “Terminal” means a facility for storing and distributing motor vehicle fuel
7 that is supplied by a pipeline or marine vessel and from which motor vehicle fuel may
8 be removed at a rack and loaded onto trucks for further distribution.

9 (h) “Wholesale sale” means the transfer of motor vehicle fuel to a jobber,
10 wholesaler, retailer, or other person at a terminal in this state.

11 **(2) STANDARD FOR RENEWABLE FUEL.** Except as provided under sub. (5) (c) or (d),
12 a refiner is subject to the penalties in sub. (6) (a) if the percentage of renewable fuel
13 sold by the refiner in this state in a year is less than the following:

14 (a) In 2009 to 2014, 10 percent.

15 (b) In 2015 to 2019, 15 percent.

16 (c) In 2020 to 2024, 20 percent.

17 (d) In 2025 and thereafter, 25 percent.

18 **(4) BIODIESEL.** (a) No later than June 30, 2008, the department shall determine
19 the total volume of biodiesel fuel sold at retail in this state in 2007.

20 (b) If the volume determined under par. (a) is less than 40,000,000 gallons, the
21 department shall notify the legislative reference bureau and the legislative reference
22 bureau shall publish in the next issue of the Wisconsin Administrative Register a
23 notice that the requirement in par. (c) applies beginning in 2009.

24 (c) If the legislative reference bureau publishes the notice under par. (b), except
25 as provided under sub. (5) (c), beginning in 2009, a person who sells diesel fuel at

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1 retail in this state is subject to the penalties in sub. (6) (b) if the volume of biodiesel
2 fuel sold by the person in this state in a year is less than 5 percent of the total volume
3 of diesel fuel sold by the person at retail in this state in that year.

4 **(5) RULES.** (a) The department shall promulgate rules for the administration
5 of this section, including rules for any reporting necessary to determine compliance
6 with subs. (2) and (4) (c).

7 (am) The department may promulgate rules designating a fuel that is derived
8 from a renewable source and that can substitute for petroleum-based diesel fuel as
9 biodiesel fuel. In rules under this paragraph, the department shall include
10 standards to ensure the reliable operation of motor vehicles using the fuel.

11 (b) The department may promulgate rules designating a motor vehicle fuel,
12 other than a petroleum-based fuel and other than hydrogen that is produced using
13 a petroleum-based fuel, as a renewable fuel.

14 (c) If the department determines that a sufficient supply of renewable fuel is
15 not available to refiners, the department may temporarily suspend the requirements
16 under sub. (2) by promulgating a rule using the procedure under s. 227.24. If the
17 department determines that a sufficient supply of biodiesel fuel is not available to
18 persons selling diesel fuel, the department may temporarily suspend the
19 requirement under sub. (4) (c) by promulgating a rule using the procedure under s.
20 227.24. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not
21 required to provide evidence that promulgating a rule under this paragraph as an
22 emergency rule is necessary for the preservation of the public peace, health, safety,
23 or welfare and is not required to provide a finding of emergency for a rule
24 promulgated under this paragraph.

