



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-3440/1
KP:skw

2021 SENATE BILL 381

May 25, 2021 - Introduced by Senators COWLES, SMITH, BERNIER and PFAFF, cosponsored by Representatives JAMES, SHANKLAND, NOVAK, SUMMERFIELD, HEBL, TITTL, SHELTON, CALLAHAN, SUBECK, CONLEY, CONSIDINE, SPREITZER, MOSES, BALDEH and STUBBS. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to renumber and amend* 168.28 (1) (a); *to amend* 20.115 (1) (c),
2 168.125, 168.21 (1), 168.21 (4), 168.21 (5), 168.22 (title), 168.22 (1), 168.22 (2),
3 168.22 (3), 168.22 (4) (intro.), 168.23 (1), 168.23 (2), 168.23 (3), 168.23 (4),
4 168.23 (5) (a), 168.23 (5) (b), 168.28 (title), 168.28 (1) (b) and 168.28 (2); and *to*
5 **create** 168.06 (4), 168.21 (6m), 168.23 (1g), 168.25 (1m), 168.255, 168.28 (1) (a)
6 2. and 168.28 (1) (a) 3. of the statutes; **relating to:** petroleum products, storage
7 of dangerous substances, granting rule-making authority, and making an
8 appropriation.

Analysis by the Legislative Reference Bureau

This bill makes changes involving the Department of Agriculture, Trade and Consumer Protection's regulation of petroleum products and the storage of dangerous substances. Under current law, DATCP regulates and promulgates rules addressing the installation, maintenance, and abandonment of storage tanks that contain flammable or combustible liquids or federally regulated hazardous substances. Current law also authorizes DATCP to make inspections and conduct investigations involving petroleum products.

The bill does the following involving petroleum products and storage of dangerous substances:

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1. Exempts aboveground storage tanks used to contain a liquid that is flammable or combustible or that is a hazardous substance and that have a capacity of less than 110 gallons from regulation by DATCP. Current law exempts aboveground storage tanks that have a capacity of less than 5,000 gallons from regulation by DATCP.

2. Requires DATCP to maintain an inventory of storage tanks used to contain certain regulated products. The bill requires the inventory to include every aboveground storage tank with a capacity of at least 110 gallons and every underground storage tank with a capacity of at least 60 gallons. The bill defines a “regulated product” as a liquid that is a substance derived from petroleum, natural gas, or asphalt deposits or a liquid that is a federally regulated hazardous substance or regulated by certain other federal regulations. Current law requires DATCP to maintain an inventory of every aboveground and underground storage tank with a capacity of at least 60 gallons that is used to contain a petroleum product.

3. Specifies that DATCP may promulgate rules to require the certification or registration of persons who install, test, or maintain corrosion prevention systems on storage tanks used to contain flammable or combustible liquids or hazardous substances. Current law authorizes DATCP to promulgate rules requiring the certification or registration of persons who install, remove, maintain, clean, or test storage tanks used to contain flammable or combustible liquids or hazardous substances.

4. Specifies that DATCP may establish fees by rule for fuel quality inspections and investigations.

5. Specifies that upon request of DATCP, the Department of Justice or proper district attorney shall prosecute actions to enforce the storage tank statutes and rules.

6. Specifies that DATCP may promulgate fire safety rules for the storage and handling of flammable or combustible liquids or hazardous substances.

7. Authorizes DATCP to contract with persons for services to administer or implement storage tank requirements.

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.** 20.115 (1) (c) of the statutes is amended to read:

2 20.115 (1) (c) ~~Petroleum products; storage~~ Storage tank inventory. The amounts
3 in the schedule to conduct an inventory of aboveground ~~petroleum product~~ storage
4 tanks and ~~unused~~ underground ~~petroleum product~~ storage tanks under s. 168.28.

5 **SECTION 2.** 168.06 (4) of the statutes is created to read:

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1 168.06 (4) The department may by rule set fees for department costs incurred
2 in performing miscellaneous fuel quality inspections or investigations authorized
3 under this subchapter.

4 **SECTION 3.** 168.125 of the statutes is amended to read:

5 **168.125 Reports; payment.** Persons who are liable for the fee under this
6 ~~subchapter s. 168.12~~ shall state the number of gallons of petroleum products on
7 which the fee is due and the amount of their liability for the fee in the reports under
8 s. 78.12 (1) to (3). The requirements for payment of the motor vehicle fuel tax under
9 s. 78.12 (5) apply to the fee under ~~this subchapter s. 168.12.~~

10 **SECTION 4.** 168.21 (1) of the statutes is amended to read:

11 168.21 (1) “Combustible liquid” means a liquid having a flash point at or above
12 100 degrees fahrenheit ~~and below 200 degrees fahrenheit~~ Fahrenheit.

13 **SECTION 5.** 168.21 (4) of the statutes is amended to read:

14 168.21 (4) “Flammable liquid” means a liquid having a flash point below 100
15 degrees fahrenheit Fahrenheit.

16 **SECTION 6.** 168.21 (5) of the statutes is amended to read:

17 168.21 (5) “Flash point” means the minimum temperature at which a
18 flammable liquid or combustible liquid will give off sufficient flammable vapors to
19 form an ignitable mixture with air near the surface of the liquid or within the vessel
20 which contains the liquid.

21 **SECTION 7.** 168.21 (6m) of the statutes is created to read:

22 168.21 (6m) “Tank system” means a tank and its associated piping and
23 equipment.

24 **SECTION 8.** 168.22 (title) of the statutes is amended to read:

25 **168.22 (title) Storage tanks tank systems.**

SENATE BILL 381**SECTION 9**

1 **SECTION 9.** 168.22 (1) of the statutes is amended to read:

2 168.22 (1) Except as provided under subs. (2) to (5), every person who
3 constructs, owns, or controls a tank system for the storage, handling, or use of liquid
4 ~~that is a flammable or liquid, combustible liquid, or liquid that is~~ a federally
5 regulated hazardous substance shall comply with the standards adopted under s.
6 168.23.

7 **SECTION 10.** 168.22 (2) of the statutes is amended to read:

8 168.22 (2) This subchapter does not apply to storage tanks ~~which~~ tank systems
9 that require a hazardous waste license under s. 291.25.

10 **SECTION 11.** 168.22 (3) of the statutes is amended to read:

11 168.22 (3) This subchapter does not apply to storage tanks ~~which~~ tank systems
12 that are installed above ground level and ~~which~~ that are less than 5,000 110 gallons
13 in capacity.

14 **SECTION 12.** 168.22 (4) (intro.) of the statutes is amended to read:

15 168.22 (4) (intro.) Any rules promulgated under s. 168.23 requiring an owner
16 to test the ability of a storage tank, ~~connected piping or ancillary equipment~~ system
17 to prevent an inadvertent release of a stored ~~substance~~ liquid do not apply to storage
18 tanks tank systems that satisfy all of the following:

19 **SECTION 13.** 168.23 (1) of the statutes is amended to read:

20 168.23 (1) The department shall promulgate by rule construction,
21 maintenance, and abandonment standards applicable to tanks tank systems for the
22 storage, handling, or use of liquids ~~that are flammable or liquids, combustible~~
23 liquids, or liquids that are federally regulated hazardous substances, and to the
24 property and facilities where the tanks tank systems are located, for the purpose of
25 protecting the waters of the state from harm due to contamination by liquids ~~that are~~

SENATE BILL 381**SECTION 13**

1 flammable ~~or liquids~~, combustible liquids, or liquids that are federally regulated
2 hazardous substances. The rule shall comply with ch. 160. The rule may include
3 different standards for new and existing ~~tanks~~ tank systems, but all standards shall
4 provide substantially similar protection for the waters of the state. The rule shall
5 include maintenance requirements related to the detection and prevention of leaks.

6 **(1r)** The rule promulgated under sub. (1) may require any person supplying
7 heating oil to any noncommercial storage tank for consumptive use on the premises
8 to submit to the department, within 30 days after the department requests, the
9 location, contents, and size of any such tank.

10 **SECTION 14.** 168.23 (1g) of the statutes is created to read:

11 168.23 **(1g)** The department may promulgate rules to provide fire and life
12 safety by ensuring the safe storage, display, installation, operation, use,
13 maintenance, and transportation of flammable liquids, combustible liquids, or
14 liquids that are federally regulated hazardous substances and the equipment,
15 facilities, buildings, and premises that are used to store, transfer, and dispense those
16 liquids.

17 **SECTION 15.** 168.23 (2) of the statutes is amended to read:

18 168.23 **(2)** The department may transfer any information ~~which~~ that the
19 department receives under sub. ~~(1)~~ (1r) to any other agency or governmental unit.
20 The department and any such agency shall treat the name of the owner and the
21 location of any noncommercial storage tank ~~which~~ that stores heating oil for
22 consumptive use on the premises, required to be submitted to the department under
23 sub. ~~(1)~~ (1r), as confidential and shall not permit inspection or copying under s. 19.35
24 of any record containing the information.

25 **SECTION 16.** 168.23 (3) of the statutes is amended to read:

SENATE BILL 381**SECTION 16**

1 168.23 (3) The rule promulgated under sub. (1) may require the certification
2 or registration of persons who install, remove, clean, line, perform tightness testing
3 on and inspect ~~tanks~~ tank systems; ~~persons who design, install, test, and maintain~~
4 cathodic protection systems for tank systems; and persons who perform site
5 assessments. Any rule requiring certification or registration shall also authorize the
6 revocation or suspension of the certification or registration. The department may not
7 require an individual who is eligible for the veterans fee waiver program under s.
8 45.44 to pay any fee that may be charged pursuant to such a rule.

9 **SECTION 17.** 168.23 (4) of the statutes is amended to read:

10 168.23 (4) The department shall promulgate a rule specifying fees for plan
11 review and inspection of ~~tanks~~ tank systems for the storage, handling, or use of
12 flammable ~~or liquids~~, combustible liquids, or liquids that are federally regulated
13 hazardous substances and for any certification or registration required under sub.
14 (3).

15 **SECTION 18.** 168.23 (5) (a) of the statutes is amended to read:

16 168.23 (5) (a) Subject to par. (b), in addition to any fee charged by the
17 department by rule for plan review and approval for the construction of a new or
18 additional installation or change in operation of a previously approved installation
19 for the storage, handling, or use of a ~~liquid that is flammable or liquid~~, combustible
20 liquid, or liquid that is a federally regulated hazardous substance, as defined in s.
21 168.21 (3), the department shall collect a groundwater fee of \$100 for each plan
22 review submittal. The moneys collected under this subsection shall be credited to the
23 environmental fund for environmental management.

24 **SECTION 19.** 168.23 (5) (b) of the statutes is amended to read:

SENATE BILL 381**SECTION 19**

1 168.23 (5) (b) Notwithstanding par. (a), an installation for the storage,
2 handling, or use of a liquid that is flammable or liquid, combustible liquid, or liquid
3 that is a federally regulated hazardous substance, as defined in s. 168.21 (3), that has
4 a capacity of less than 1,000 gallons is not subject to the groundwater fee under par.
5 (a).

6 **SECTION 20.** 168.25 (1m) of the statutes is created to read:

7 168.25 (1m) The department may contract with any person for services to
8 administer or implement this subchapter.

9 **SECTION 21.** 168.255 of the statutes is created to read:

10 **168.255 Attorney general and district attorney to prosecute.** Upon
11 request of the department, the attorney general or proper district attorney shall
12 prosecute any action to enforce this subchapter.

13 **SECTION 22.** 168.28 (title) of the statutes is amended to read:

14 **168.28 (title) Inventory of petroleum product storage tanks for certain**
15 **regulated products.**

16 **SECTION 23.** 168.28 (1) (a) of the statutes is renumbered 168.28 (1) (a) (intro.)
17 and amended to read:

18 168.28 (1) (a) (intro.) Notwithstanding s. 168.01 (3), “petroleum “Regulated
19 product” means materials a liquid that is any of the following:

20 1. A substance derived from petroleum, natural gas, or asphalt deposits and
21 includes, including gasoline, diesel and heating fuels, liquefied petroleum gases,
22 lubricants, waxes, greases, and petrochemicals.

23 **SECTION 24.** 168.28 (1) (a) 2. of the statutes is created to read:

24 168.28 (1) (a) 2. A federally regulated hazardous substance.

25 **SECTION 25.** 168.28 (1) (a) 3. of the statutes is created to read:

SENATE BILL 381**SECTION 25**

1 168.28 (1) (a) 3. Any other substance regulated under 40 CFR part 280.

2 **SECTION 26.** 168.28 (1) (b) of the statutes is amended to read:

3 168.28 (1) (b) "Storage tank" means an enclosed container ~~with a capacity in~~
4 ~~excess of 60 gallons which~~ that is used to hold a ~~petroleum~~ regulated product,
5 regardless of the duration of storage and ~~which~~ that is intended for use as a fixed,
6 rather than as a portable, installation.

7 **SECTION 27.** 168.28 (2) of the statutes is amended to read:

8 168.28 (2) INVENTORY OF STORAGE TANKS. The department shall undertake a
9 program to inventory and determine the location of every aboveground storage tanks
10 tank with a capacity of 110 gallons or more and every underground storage tanks
11 tank with a capacity of 60 gallons or more. The department may require its deputies
12 and any person engaged in the business of distributing ~~petroleum~~ regulated products
13 to provide information on the location of aboveground storage tanks and
14 underground storage tanks. The department shall develop uniform procedures for
15 reporting the location of aboveground storage tanks and underground storage tanks.

16 (END)