

# WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

# 2009 Wisconsin Act 401 [2009 Senate Bill 279]

# **Domestic Biofuels**

2009 Wisconsin Act 401 is the enactment of the legislative recommendations of the Joint Legislative Council's Special Committee on Domestic Biofuels, as amended by the Legislature.

#### Financial Assistance Related to Biofuels

The Act expands or clarifies the applicability of a number of state financial assistance programs as they relate to biofuels.

In particular, the Act clarifies that the industrial revenue bond program applies to all types of biorefineries, including those that produce a fuel other than alcohol. This is accomplished by repealing the statute that lists "alcohol fuel production facilities" as a type of project "eligible for financing with these bonds [s. 66.1103 (2) (k) 18., Stats.] and the recognition that other types of projects currently eligible for this financing, i.e., manufacturing or processing facilities for any products of agriculture or forestry, include biorefineries. [s. 66.1103 (2) (k) 1., Stats.]

The Act also specifies that the renewable energy grant and loan program applies to biorefineries, in general, rather than just cellulose ethanol production plants, and that the agricultural diversification grant program applies to the development of new forestry products, including alternative fuels. In addition, the Act repeals s. 93.46 (3), Stats., as the Department of Agriculture, Trade, and Consumer Protection (DATCP) no longer makes agricultural diversification grants under this subsection.

# The Definition of "Agricultural Use" for Purposes of Use Value Taxation

The Act includes the growing of short rotation woody crops, including poplars and willows, using agronomic practices, as an agricultural purpose for determining the applicability of the use value property assessment method.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <a href="http://www.legis.state.wi.us/">http://www.legis.state.wi.us/</a>.

# Strategic Bioenergy Feedstock Assessment

The Act directs the Office of Energy Independence (OEI) and specified state agencies to prepare a strategic feedstocks assessment and recommend appropriate legislation and changes in the agencies' programs and rules.

# Bioenergy Advisory Council, Voluntary Best Management Practices

The Act creates a bioenergy advisory council attached to DATCP and directs it to identify voluntary best management practices for sustainable biomass and biofuels production.

# The Agricultural Diversification Program

The Act expands the agricultural diversification program administered by DATCP to include the promotion of carbon offset credits derived from the production of agricultural commodities, other types of energy made from these commodities, and alternative fuels made from agricultural source stocks, and creates a comparable forestry diversification program administered by the Department of Natural Resources (DNR).

#### Biofuels Training Assessment

The Act requires the University of Wisconsin-Extension, in cooperation with other state entities, to conduct an educational needs assessment related to biofuels.

# Biofuels Production Facility Regulatory Review Committee

The Act creates a Biofuels Production Facility Regulatory Review Committee to review state and local regulatory burdens related to biofuels production facilities.

# Marketing Orders and Agreements for Bioenergy Feedstocks

The Act designates products used as bioenergy feedstocks, including timber and wood products, as "agricultural commodities" and authorizes the DATCP Secretary to issue a marketing order or agreement to promote their use.

# Personal Renewable Fuel Production and Use

The Act exempts the first 1,000 gallons of renewable fuel produced by a person each year, that the person uses in his or her personal vehicle, from the motor vehicle fuel excise tax, the petroleum inspection fee, petroleum inspection requirements not required by federal law, business tax registration certificate requirements, and motor vehicle fuel tax license requirements.

# Income Tax Credit for Blender Pumps

The Act allows the "ethanol and biodiesel fuel pump" income tax credit under prior law to be claimed for the installation or retrofit of blender pumps. To help ensure that blender pumps are not used to improperly fuel motor vehicles, the Department of Commerce (Commerce) must establish standards to adequately prevent, in the distribution of conventional fuel to an end-user, the inadvertent distribution of fuel containing a higher percentage of renewable fuel than the maximum percentage established by the federal Environmental Protection Agency for use in conventionally-fueled engines.

# Required Offering of Unblended Gasoline to Motor Fuel Dealers

The Act generally requires motor fuel suppliers to offer unblended gasoline to motor fuel dealers in areas of the state outside of air pollution nonattainment areas identified by the DNR and prohibits a supplier from requiring a dealer to purchase ethanol from the supplier exclusively. The Act does not prohibit a supplier from requiring the subsequent blending of unblended gasoline prior to sale to an enduser, and does not prohibit suppliers from requiring dealers to transfer renewable fuels credits under the federal renewable fuels standard to the supplier as a condition of offering unblended fuel to the dealer. The Act also establishes that a motor fuel supplier of unblended gasoline is not liable for penalties or damages arising out of the subsequent blending of the gasoline and requires a motor fuel dealer who subsequently blends such gasoline with ethanol to provide prominent notice to the dealer's customers identifying the blender.

#### State Renewable Motor Vehicle Fuels Sales Goals and Sales Requirements

The Act creates annual sales goals for renewable fuels in this state equaling 110% of the state's share, as determined under the Act, of renewable fuel sales required nationally under the federal renewable fuel standard (F-RFS). Fuels must meet or exceed F-RFS greenhouse gas reduction requirements to be included in state sales calculations.

The Act requires DATCP, in cooperation with and assistance from Commerce, the Department of Revenue (DOR), and Office of Energy Independence (OEI), to collect information needed to determine whether these annual renewable fuels sales goals are met each year. If a sales goal is not met, DATCP is generally required to assess the cause and report its findings to the Legislature and Governor.

# The State as a Leader; Renewable Fuels Use in the State Fleet

The Act codifies Executive Order #141 by directing the Department of Administration (DOA) to require state agencies to reduce the amount of gasoline and diesel fuels they use that are petroleum-based by specified percentages, requiring OEI to promote the use of alternative fuels in flex fuel vehicles owned by the state, and directing OEI and DATCP to cooperatively promote public alternative fuel refueling facilities.

# Other Duties of OEI

The Act directs OEI to work to ensure that Wisconsin is a national leader in developing biorefineries and advancing the sale and use of intermediate biofuel blends and clarifies that OEI is the central unit of state government for coordinating the activities of the state related to biofuels.

Additional information on the work of the Special Committee on Domestic Biofuels is provided in Wisconsin Legislative Council Report to the Legislature, *Special Committee on Domestic Biofuels*, RL 2009-11, dated September 16, 2009. This report is available at: <a href="http://www.legis.state.wi.us/lc/">http://www.legis.state.wi.us/lc/</a>.

*Effective date:* The provisions in 2009 Wisconsin Act 401 generally take effect on June 2, 2010, except that the provisions relating to exemptions for personal renewable fuel production and use take effect on September 1, 2010.

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