

LAK:JES:ty

03/11/2009

1 **AN ACT** *to create* 20.115 (3) (im) and 100.60 of the statutes; **relating to:** state
2 renewable motor vehicle fuels sales goals, required sales of renewable motor vehicle
3 fuels, granting rule-making authority, making an appropriation and providing
4 penalties.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the joint legislative council's special committee on domestic biofuels.

The bill draft creates annual sales goals for renewable fuels in this state equaling 110% of the state's share of renewable fuel sales required nationally under the federal renewable fuel standard (F-RFS). The bill draft groups the categories of renewable fuel under the F-RFS into two categories for purposes of the state goals: gasoline-replacement renewable fuels and diesel-replacement renewable fuels. The state's share of renewable fuels under the F-RFS is determined based on the total volume of motor vehicle fuel sold in this state as compared to the total volume of motor vehicle fuel sold nationally over the three years preceding the year for which the calculation is made. Fuels must meet or exceed F-RFS greenhouse gas reduction requirements to be included in state sales calculations.

The bill draft requires the department of agriculture, trade, and consumer protection (department), in cooperation with and assistance from the department of commerce, the department of revenue, and the office of energy independence, to collect information needed to determine whether these annual renewable fuels sales goals are met for each year following enactment of this bill. The department is also required to collect information necessary to assess the cause, and to conduct an assessment if an annual sales goal is not met, and report its findings to the legislature and governor. This assessment must include determinations related to renewable fuels systems and markets, regulatory obstacles, and the effect of potential specific individual sales requirements. If an annual sales goal is not met for gasoline-replacement renewable fuels or diesel-replacement renewable fuels and the department has previously assessed and reported on the

cause, the department may determine that the new assessment will not further the purposes of the program and is then not required to repeat the assessment and reporting process.

If the department determines in an assessment that individual sales requirements would likely result in renewable fuel sales that would meet the annual goals, the department must require such sales by rule. In addition to annual sales requirements, these rules may include reporting, recordkeeping, or testing requirements, quarterly or monthly sales requirements in certain situations, a credit trading system, procedures for the department to temporarily suspend a sales requirement, and fees for the administration and enforcement of this subsection.

The bill draft creates a program revenue appropriation to the department that funds the administration and enforcement of the renewable fuel program. This appropriation is funded by fees that the department establishes by rule as part of the implementation of the program.

The bill draft provides penalties for violations of any renewable fuel program rules adopted by the department and for violations of any of the reporting requirements authorized by the bill.

1 **SECTION 1.** 20.115 (3) (im) of the statutes is created to read:

2 20.115 (3) (im) *Renewable fuel program.* The amounts in the schedule for the
3 administration and enforcement of the renewable fuel program under s. 100.60 (5). All
4 monies received from the fees authorized by s. 100.60 (5) (f) shall be credited to this
5 appropriation account.

COMMENT: This provision creates an annual program revenue appropriation to the department for the administration and enforcement of the renewable fuel sales program created by this act under s. 100.60 (5). Thus, the appropriation will be funded only if and when the department creates this program by rule under s. 100.60 (5). The appropriation is placed in the ch. 20 appropriation schedule as one of appropriations to the department for agricultural development services.

6 **SECTION 2.** 100.60 of the statutes is created to read:

7 **100.60 State renewable fuels goal. (1) DEFINITIONS.** In this section:

8 (a) “Biodiesel” means any of the following fuels:

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

4 2. Any fuel not described in subd. 1. that can substitute for petroleum-based diesel fuel,
5 is derived from a renewable resource, that meets all of the applicable requirements of the
6 American Society for Testing and Materials, and that the department of commerce designates
7 as biodiesel.

8 (b) "Diesel fuel" includes biodiesel and petroleum-based diesel fuel.

9 (c) "Diesel-replacement renewable fuel" includes biodiesel and any other fuel derived
10 from a renewable resource that meets all of the applicable requirements of the American
11 Society for Testing and Materials for that fuel and that the department of commerce designates
12 as a diesel-replacement renewable fuel by rule.

13 (d) "Gasoline-replacement renewable fuel" includes ethanol and any other fuel derived
14 from a renewable resource that meets all of the applicable requirements of the American
15 Society for Testing and Materials for that fuel and that the department of commerce designates
16 as a gasoline-replacement renewable fuel by rule.

17 (e) "Motor vehicle fuel" means gasoline, diesel fuel, ethanol, or any other substance
18 used to fuel vehicles used for transportation on public roadways.

19 (f) "Renewable fuel" means a gasoline-replacement renewable fuel or a
20 diesel-replacement renewable fuel.

21 **(2) STANDARDS.** (a) *Gasoline-replacement renewable fuels sales volume.* The state goal
22 for the minimum annual volume of gasoline-replacement renewable fuels sold in motor
23 vehicle fuel in the state is an amount calculated as follows:

24 1. Multiply the federal gasoline-replacement renewable fuel volume for the year by 1.1.

1 2. Multiply the amount determined under subd. 1 by the state percentage of motor
2 vehicle fuel sold nationally for the year.

3 (b) *Diesel–replacement renewable fuels sales volume.* The state goal for the minimum
4 annual volume of diesel–replacement renewable fuels sold in motor vehicle fuel in the state
5 is an amount calculated as follows:

6 1. Multiply the federal diesel–replacement renewable fuel volume for the year by 1.1.

7 2. Multiply the amount determined under subd. 1 by the state percentage of motor
8 vehicle fuel sold nationally for the year.

9 (c) *Calculations.* For purposes of the calculations in par. (a) and (b):

10 1. “Federal advanced biofuel volume” means the volume for the year listed under 47
11 USC 7545 (o) (2) (B) (i) (II) for “advanced biofuel”, except as provided under par. (d).

12 2. “Federal biomass–based diesel volume” means the volume for the year listed or
13 determined by the U.S. environmental protection agency under 47 USC 7545 (o) (2) (B) (i)
14 (IV) for “biomass–based diesel”, except as provided under par. (d).

15 3. “Federal cellulosic biofuel volume” means the volume for the year listed under 47
16 USC 7545 (o) (2) (B) (i) (III) for “cellulosic biofuel”, except as provided under par. (d).

17 4. “Federal diesel–replacement renewable fuel percentage” is calculated as follows:

18 a. Subtract the sum of the federal cellulosic biofuel volume and the federal
19 biomass–based diesel volume from the federal advanced biofuel volume.

20 b. Subtract the amount determined under subpar. a. from the federal renewable fuel
21 volume.

22 c. Divide the federal biomass–based diesel volume by the amount determined under
23 subpar. b.

24 5. “Federal diesel–replacement renewable fuel volume” is calculated as follows:

1 a. Subtract the sum of the federal cellulosic biofuel volume and the federal
2 biomass–based diesel volume from the federal advanced biofuel volume.

3 b. Multiply the federal diesel–replacement renewable fuel percentage by the amount
4 determined under subpar. a.

5 c. Add federal biomass–based diesel volume to the amount determined under subpar.
6 b.

7 6. “Federal gasoline–replacement renewable fuel volume” is calculated by subtracting
8 the federal diesel–replacement renewable fuel volume from the federal renewable fuel
9 volume.

10 7. “Federal renewable fuel volume” means the volume for the year listed under 47 USC
11 7545 (o) (2) (B) (i) (I) for “renewable fuel”, except as provided under par. (d).

12 8. “State percentage of motor vehicle fuel sold nationally” is calculated as follows for
13 a year:

14 a. For the three years that preceded the year, divide the total volume of motor vehicle
15 fuel sold in this state by the total volume of motor vehicle fuel sold nationally. If complete
16 information for the most recent year is unavailable, the department may estimate sales for that
17 year.

18 b. Add the quotients calculated in subpar. a. and divide by 3.

19 9. “Year” means the year for which the gasoline–renewable fuel replacement goal or
20 diesel–renewable fuel replacement goal is being determined.

21 (d) *Federal volume adjustments.* 1. The department shall adjust a volume specified in
22 par. (c) 1., 2., 3., or 7., in accordance with any waiver to the volume granted by the federal
23 environmental protection agency under 47 USC 7545 (o) (7).

1 2. The department shall adjust a volume specified in par. (c) 1., 2., 3., or 7., by rule if
2 the department determines that the regulations of the federal environmental protection agency
3 adopted under 47 USC 7545 (o), other than 47 USC 7545 (o) (7), result in the actual volume
4 for one of these types of fuel that is required to be sold under 47 USC 7545 (o) differing from
5 the corresponding volume specified under subd. 1., 2., 3., or 7.

COMMENT: An example of an adjustment under subd. 2 would be if the federal environmental protection agency establishes that for purposes of determining compliance with the federal renewable fuels standard 1 gallon of cellulosic biomass ethanol is considered to be equivalent to 2 gallons of renewable fuel, then the department would reduce the volume of cellulosic biofuels, advanced biofuels, and renewable fuels for purposes of the calculations under pars. (a) and (b).

6 (e) *Greenhouse gas emissions reduction.* A gasoline–replacement renewable fuel or
7 diesel–replacement renewable fuel may not be included in volumes calculated under par. (a)
8 or (b) unless the fuel meets or exceeds applicable requirements for greenhouse gas emissions
9 reduction under 42 USC 7545 (o) (1) (B) (i), (D), (E), and (2) (A) (i) and regulations issued
10 by the federal environmental protection agency under those provisions, as modified under 42
11 USC 7545 (o) (4).

12 **(3) ANNUAL SALES DETERMINATION.** Annually, beginning in the year after publication
13 ... [LRB inserts date], the department, in cooperation with and with assistance from the
14 department of commerce, the department of revenue, and the office of energy independence,
15 shall determine whether the annual volumes of renewable fuels specified in sub. (2) (a) and
16 (b) for the previous year were sold in the state in that year.

17 **(4) ASSESSMENT.** (a) Except as provided in par. (b), if the department determines under
18 sub. (3) that an annual volume of renewable fuels specified in sub. (2) (a) or (b) was not sold
19 in this state, the department shall assess the cause and report its findings to the governor and

1 the standing committees of the legislature that oversee issues related to renewable fuel under
2 s. 13.172 (3). The assessment shall include:

3 1. A determination of whether renewable fuels are available in sufficient quantities and
4 at prices comparable to the type of fuel that they replace, and if so, whether fluctuations in
5 demand for renewable fuels is a cause of sales below the goal.

6 2. A determination of whether state or federal laws prevent or impede the sale of the
7 renewable fuels at volumes specified in sub. (2).

8 3. An assessment of the motor vehicle fuel production, distribution, and marketing
9 systems in this state to determine how practices could be changed to increase renewable fuel
10 sold in this state.

11 4. A determination of whether requirements for renewable fuel sales by individual
12 refiners, wholesalers, suppliers, distributors, retailers, or any other person involved in the
13 production, distribution, or marketing of motor vehicle fuel, would likely result in sales of
14 volumes of renewable fuels specified in sub. (2).

15 5. If the department has promulgated rules under sub. (5), a determination of the
16 effectiveness of the rules in stimulating renewable fuel sales in this state that meet or exceed
17 volumes of renewable fuels specified in sub. (2) and an assessment of whether changes to the
18 rules would better promote the goals of this section.

19 (b) If the department determines under sub. (3) that an annual volume of
20 gasoline-replacement renewable fuels or diesel-replacement renewable fuels under sub. (2)
21 (a) or (b) was not sold in a year, the department has conducted an assessment under par. (a)
22 for a previous year for the same category of renewable fuels, and the department determines
23 that another assessment for the same category of renewable fuels will not further the purposes

1 of this section, an assessment and report to the governor and the legislature under par. (a) is
2 not required.

3 **(5) RENEWABLE FUEL SALES REQUIREMENTS.** If the department determines under sub. (4)
4 (a) 4. or 5. that requirements for renewable fuel sales would likely result in sales of volumes
5 of renewable fuels specified in sub. (2), the department shall prescribe requirements by rule
6 to accomplish this purpose. Rules promulgated under this subsection may include any of the
7 following:

8 (a) Reporting, recordkeeping, or testing requirements.

9 (b) Annual sales requirements for sales of renewable fuels in this state.

10 (c) Quarterly or monthly sales requirements for sales of a renewable fuel if the
11 department determines that these requirements are necessary to maintain the availability of
12 the renewable fuel in the state and to prevent harm to markets for the renewable fuel in the state
13 caused by fluctuations in demand for the renewable fuel.

14 (d) A system for persons subject to the requirements to trade credit for prescribed sales
15 of the renewable fuel.

16 (e) Procedures for the department to temporarily suspend a sales requirement.

17 (f) Fees for the administration and enforcement of this subsection.

18 **(6) REPORTING.** (a) The department shall consult with the department of commerce, the
19 department of revenue, and the office of energy independence to determine if information
20 necessary to make a determination under sub. (3) or an assessment under sub. (4) or required
21 to be reported under a rule promulgated under sub. (5) is being collected by these agencies
22 under regulations or authorities in effect on the effective date of this subsection ... [LRB inserts
23 date]. If the necessary or required information is not being collected, the department may
24 request the department of commerce, the department of revenue, or the office of energy

1 independence to collect the information if the collection by one of these agencies is more
2 cost-effective for state government and less burdensome for the persons subject to the
3 reporting requirements than collection of that information by the department.

4 (b) The department may require refiners, wholesalers, suppliers, distributors, retailers,
5 or any other person involved in the production, distribution, or marketing of motor vehicle fuel
6 to report information necessary to make a determination under sub. (3) or an assessment under
7 sub. (4).

8 (c) The department shall require the reporting of information under par. (b) or sub. (5)
9 (a) relating to the feedstocks used to produce a renewable fuel sold in this state unless the
10 department determines that this information is not reasonably available.

11 (d) The department of revenue may collect information requested by the department
12 under par. (a) in the reports under s. 78.12 (1) to (3).

13 **(7) PENALTIES.** (a) Any person who violates any rule adopted under sub.(5) shall forfeit
14 not less than [\$100] nor more than [\$5,000] for each violation.

15 (b) Any person who fails to provide to the department information required under
16 sub.(6) (b) shall forfeit not less than [\$100] nor more than [\$1,000] for each violation.

17 (c) Each violation of a rule under sub. (5) or a requirement to provide information under
18 sub. (6) (b) constitutes a separate offense, and each day of continued violation is a separate
19 offense.

20 (d) 1. In lieu of any other penalty under this subsection, the department may directly
21 assess a forfeiture by issuing an order against any person who violates a rule under sub. (5)
22 or a requirement to provide information under sub. (6) (b). The department may not assess
23 a forfeiture exceeding [\$5,000] for each violation.

1 2. The department shall promulgate rules specifying the procedures governing the
2 assessment of forfeitures under this paragraph including the following:

- 3 a. The procedure for issuing an order for an alleged violation.
4 b. The amount of a forfeiture that the department may assess for an alleged violation,
5 subject to the limit under subd. 1. and the considerations in par. (e).
6 c. The procedure for contesting an order issued for an alleged violation.
7 d. The procedure for contesting the assessment of a forfeiture for an alleged violation.

8 3. The department shall remit all forfeitures paid under this paragraph to the secretary
9 of administration for deposit in the school fund.

10 4. All forfeitures that are not paid as required under this paragraph shall accrue interest
11 at the rate of 12 percent per year.

12 5. The attorney general may bring an action in the name of the state to collect any
13 forfeiture imposed, or interest accrued, under this subsection if the forfeiture or interest has
14 not been paid after the exhaustion of all administrative and judicial reviews.

15 (e) A court imposing a forfeiture under par. (a) or (b) or the department imposing a
16 forfeiture under par. (d) shall consider all of the following in determining the amount of the
17 forfeiture:

18 1. The appropriateness of the forfeiture to the volume of business of the person subject
19 to the forfeiture.

20 2. The gravity of the violation.

21 3. Any good faith attempt to achieve compliance after the person receives notice of the
22 violation.

COMMENT: These considerations for the setting of the amount of a forfeiture are based on the public utility law penalty provision in s. 196.66 (3).

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(END)