



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

October 19, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 72 and Senate Bill 41: Biodiesel Fuel

Assembly Bill 72 and Senate Bill 41 are companion bills that would make changes related to the definition of biodiesel fuel, and to the requirements for labeling, advertising and promoting biodiesel fuel for sale. AB 72 was introduced on February 3, 2005, and referred to the Assembly Committee on Rural Affairs and Renewable Energy. On March 24, 2005, the Committee recommended adoption of Assembly Amendment 1 to AB 72 by a vote of 8 to 0, and recommended passage as amended by a vote of 8 to 0. On September 22, 2005, AB 72 was referred to the Joint Committee on Finance. SB 41 was introduced on February 2, 2005, and referred to the Senate Committee on Natural Resources and Transportation. On April 21, 2005, the Committee recommended adoption of Senate Amendment 1 to SB 41 by a vote of 5 to 0, and recommended passage as amended by a vote of 5 to 0. On April 22, 2005, SB 41 was referred to the Joint Committee on Finance.

CURRENT LAW

The Department of Commerce inspects petroleum products that enter the state, including gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil and diesel fuel oil. Commerce is required, by rule, to prescribe minimum product grade specifications for gasoline, automotive gasoline, gasoline-alcohol fuel blends, reformulated gasoline, and kerosene, and may prescribe grade specifications for aviation gasoline, fuel oils, and diesel fuels. All devices used to draw petroleum products from storage at filling stations must be conspicuously labeled with the name and grade of the petroleum products. No person may receive, unload, use, sell or offer for sale in this state, any gasoline, gasoline-alcohol fuel blends, kerosene, fuel oils, diesel fuels or other petroleum distillates which the person knows, or reasonably should know, is misidentified as to name or grade.

In 2004-05, Commerce had 29 petroleum product inspectors working out of 12 district and sub-district laboratories throughout the state. The inspectors conduct sampling and testing of petroleum products at terminal and retail locations. The petroleum inspection program is appropriated \$4,994,500 petroleum inspection fund SEG annually with 43.5 positions in the 2005-07 biennium, of which 25 positions are petroleum product inspectors (including two vacant positions). Commerce has indicated that it intends to close the Fond du Lac sub-district lab on December 31, 2005, and might close an additional lab in 2006-07. These two actions would reduce the number of labs to 10.

The Department of Administration (DOA) is required to encourage the use of alternative fuel, including bio-diesel fuel, in state-owned vehicles. Under the DOA requirements, bio-diesel fuel is defined as fuel derived from soybean oil with glycerine extracted from the oil, either in pure form or mixed in any combination with petroleum-based diesel fuel.

SUMMARY OF BILL

AB 72 and SB 41 ("the bill") would define biodiesel fuel under the oil inspection provisions of Chapter 168 of the Statutes as a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats. The term "diesel fuel oil" in Chapter 168 would be changed to "diesel fuel," for purposes of listing the types of petroleum products that Commerce inspects, develops minimum standards for, and assesses the petroleum inspection fee on.

The bill would also change the definition of "bio-diesel fuel" under Chapter 16 provisions related to the requirement that DOA encourage the use of alternative fuels in state-owned vehicles to "a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats" (the same as the Chapter 168 definition under the bill), and would retain the current inclusion of "either in pure form or mixed in any combination with petroleum-based diesel fuel" at the end of the definition. This would expand the current definition from a fuel derived from soybean oil to also include fuels derived from vegetable oils or animal fats.

The bill would specify that no person may represent, advertise, label, or otherwise promote for sale a fuel as being biodiesel fuel unless the fuel meets all of the following requirements: (a) the fuel is registered as biodiesel fuel by a manufacturer under federal Environmental Protection Agency regulations; (b) the fuel is pure biodiesel fuel, is identified as such with the alphanumeric label "B100" and does not contain any petroleum product, any additive, or other foreign material; and (c) the fuel meets all of the applicable requirements of the American Society for Testing and Materials (ASTM).

Under the bill, no person would be allowed to represent, advertise, label, or otherwise promote for sale a fuel as being a blend of biodiesel and petroleum-based fuel unless the fuel meets all of the following requirements: (a) the volume percentage of the biodiesel fuel to the petroleum-based fuel is at least two percent; (b) the fuel is blended with petroleum-based diesel fuel; (c) the

fuel meets all of the applicable ASTM requirements; and (d) the volume percentage is disclosed to the purchaser and is identified by use of the alphanumeric Bxx, with a number replacing the xx in the alphanumeric, and with that number representing the volume percentage of biodiesel fuel blend. For example, B20, B5 and B2 are popular biodiesel fuel blends and refer to fuels that have 20%, 5% or 2% biodiesel fuel mixed with petroleum-based fuel. Biodiesel fuels blended with petroleum-based fuel, and labeled with the correct "Bxx" alphanumeric percentage under "(d)" would be considered to be correctly identified for retail sale.

AMENDMENT

Assembly Amendment 1 to AB 72 and Senate Amendment 1 to SB 41 would create a delayed effective date of July 1, 2007.

FISCAL EFFECT

The Department of Commerce submitted a fiscal estimate that indicated the Department would need to test biodiesel fuel at all retail locations where it is sold to ensure minimum quality standards. Commerce estimated that the inspection workload could be absorbed with the existing number of inspectors. The Department also indicated that promulgation of administrative rule changes necessary to define biodiesel standards and product inspections would be accomplished with existing staff.

The Department estimated that it would need to purchase 10 new IROX diesel analyzer machines to sample and test biodiesel fuel according to ASTM standards, and to determine the percentage composition of biodiesel fuel components. Each IROX analyzer would cost approximately \$25,300, plus \$3,000 for a required computer software package, for a cost of \$28,300 per unit, and a total one-time cost of \$283,000. Commerce also estimated that annual costs for maintenance, calibration and supplies for the IROX diesel analyzer units would be approximately \$2,000 per unit, or \$20,000 in total annual costs. The purchase of 10 new IROX diesel analyzer machines would provide one machine at each of the labs that would continue to operate if Commerce decides to reduce the number of labs to 10.

Commerce officials indicate that the Department currently has six to 10 machines called "Scott D11 Vapo Testers" that can be used to measure the presence of diesel fuel, but they do not differentiate between diesel fuel and biodiesel fuel. The equipment is more than 10 years old, and Commerce has learned that the equipment is no longer manufactured or serviced. Commerce indicates that after the current equipment breaks or needs servicing that is not available, the Department will have to purchase new equipment in order to continue regulating diesel fuel under current law. Commerce is considering allocating existing resources to purchase replacement equipment, which could include the capabilities of the IROX diesel analyzers in addition to the existing capabilities, looking for less expensive equipment to purchase that matches the current

capabilities (but might not be sufficient to meet the expanded testing needs under the bill). Commerce officials also indicate that they are considering utilizing some private lab testing services.

While the Department's fiscal estimate indicated that Commerce would not be able to absorb the one-time cost of \$283,000 for equipment and the \$20,000 in annual maintenance costs within its current budget, the bill does not provide additional expenditure authority to the Department. Therefore, Commerce would have to reallocate existing expenditure authority to purchase equipment or contract with private labs.

The Department of Administration submitted a fiscal estimate that indicated the bill would have no fiscal effect on state agency fuel purchases.

Prepared by: Kendra Bonderud