



2009 SENATE BILL 459

January 14, 2010 – Introduced by LAW REVISION COMMITTEE. Referred to Committee on Commerce, Utilities, Energy, and Rail.

1 **AN ACT** *to renumber and amend* 101.142 (1) (a); *to amend* 20.143 (3) (dm),
2 101.09 (1) (a), 101.09 (1) (b), 101.09 (2) (title), 101.09 (2) (a), 101.09 (2) (b),
3 101.09 (2) (c), 101.09 (2) (cm) (intro.), 101.09 (3) (a), 101.09 (3) (b), 101.09 (3) (c),
4 101.09 (3) (d), 101.142 (title), 101.142 (1) (b) and 101.142 (2); and *to create*
5 101.09 (1) (cm) and 101.142 (1) (a) 2. of the statutes; **relating to:** storing certain
6 flammable, combustible, and hazardous liquids and maintaining an inventory
7 of storage tanks containing petroleum products and certain hazardous
8 substances (suggested as remedial legislation by the Department of
9 Commerce).

Analysis by the Legislative Reference Bureau

Under current law, the Department of Commerce (Commerce) promulgates rules regulating the installation, abandonment, and maintenance of movable tanks and tanks at fixed locations that contain flammable or combustible liquids or federally regulated hazardous substances. Under current law, a “flammable liquid” is defined as a liquid having a flash point below 100 degrees Fahrenheit, and a “combustible liquid” is defined as having a flash point at or above 100 degrees Fahrenheit and below 200 degrees Fahrenheit. This bill eliminates the 200-degree

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maximum so that any liquid with a flash point at or above 100 degrees Fahrenheit is defined to be a “combustible liquid.” Under current law, aboveground tanks that hold less than 5,000 gallons are exempt from these rules. The bill lowers the capacity amount to 110 gallons.

Current law also requires Commerce to maintain an inventory of aboveground and underground tanks at fixed locations that have a capacity in excess of 60 gallons. This bill increases the 60-gallon requirement to 110 gallons for aboveground storage tanks. Under current law, only fixed tanks containing petroleum products are required to be inventoried. Under the bill, fixed tanks containing substances that are covered under federal rules regulating underground storage tanks are also subject to this inventory requirement.

Under current administrative rules, Commerce requires certification for persons who work with tanks that hold flammable or combustible liquids or hazardous substances. This bill authorizes Commerce to promulgate rules requiring that persons who install, test, or maintain systems on these tanks to prevent corrosion also be certified.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Commerce and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 20.143 (3) (dm) of the statutes is amended to read:

2 20.143 (3) (dm) *Storage tank inventory.* The amounts in the schedule to conduct
3 an inventory of aboveground ~~petroleum-product~~ storage tanks and unused
4 underground ~~petroleum-product~~ storage tanks under s. 101.142.

5 **SECTION 2.** 101.09 (1) (a) of the statutes is amended to read:

6 101.09 (1) (a) “Combustible liquid” means ~~a liquid having a flash point at or~~
7 above 100 degrees ~~fahrenheit and below 200 degrees fahrenheit~~ Fahrenheit.

NOTE: According to the Department of Commerce, the current definition conflicts with applicable federal regulations, which do not include an upper temperature limit for liquids that must be regulated as being combustible. See 40 CFR 280.10.

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1 **SECTION 3.** 101.09 (1) (b) of the statutes is amended to read:

2 101.09 (1) (b) “Flammable liquid” means ~~a liquid~~ having a flash point below
3 100 degrees ~~fahrenheit~~ Fahrenheit.

4 **SECTION 4.** 101.09 (1) (cm) of the statutes is created to read:

5 101.09 (1) (cm) “Tank system” means a tank and its associated piping and
6 equipment.

7 **SECTION 5.** 101.09 (2) (title) of the statutes is amended to read:

8 101.09 (2) (title) ~~STORAGE TANKS~~ TANK SYSTEMS.

9 **SECTION 6.** 101.09 (2) (a) of the statutes is amended to read:

10 101.09 (2) (a) Except as provided under pars. (b) to (d), every person who
11 constructs, owns or controls a tank system for the storage, handling or use of liquid
12 that is flammable or combustible or that is a federally regulated hazardous
13 substance shall comply with the standards adopted under sub. (3).

14 **SECTION 7.** 101.09 (2) (b) of the statutes is amended to read:

15 101.09 (2) (b) This section does not apply to storage tanks ~~tanks~~ tank systems which
16 require a hazardous waste license under s. 291.25.

17 **SECTION 8.** 101.09 (2) (c) of the statutes is amended to read:

18 101.09 (2) (c) This section does not apply to storage tanks ~~tanks~~ tank systems which
19 are installed above ground level and which are less than ~~5,000~~ 110 gallons in
20 capacity.

NOTE: According to the Department of Commerce, since 1991 ch. Comm 10, Wis. Adm. Code, has applied the department’s fire and environmental protection requirements to all underground tanks and to aboveground tanks as small as 110 gallons, in compliance with federal regulations. The current reference to aboveground tanks less than 5,000 gallons is thus outdated.

21 **SECTION 9.** 101.09 (2) (cm) (intro.) of the statutes is amended to read:

SENATE BILL 459**SECTION 9**

1 101.09 (2) (cm) (intro.) Any rules promulgated under sub. (3) requiring an
2 owner to test the ability of a storage tank, ~~connected piping or ancillary equipment~~
3 ~~system~~ to prevent an inadvertent release of a stored substance liquid do not apply
4 to storage tanks tank systems that satisfy all of the following:

5 **SECTION 10.** 101.09 (3) (a) of the statutes is amended to read:

6 101.09 (3) (a) The department shall promulgate by rule construction,
7 maintenance and abandonment standards applicable to tanks tank systems for the
8 storage, handling, or use of liquids that are flammable or combustible or that are
9 federally regulated hazardous substances, and to the property and facilities where
10 the tanks tank systems are located, for the purpose of protecting the waters of the
11 state from harm due to contamination by liquids that are flammable or combustible
12 or that are federally regulated hazardous substances. The rule shall comply with ch.
13 160. The rule may include different standards for new and existing tanks tank
14 systems, but all standards shall provide substantially similar protection for the
15 waters of the state. The rule shall include maintenance requirements related to the
16 detection and prevention of leaks.

17 (am) The rule promulgated under par. (a) may require any person supplying
18 heating oil to any noncommercial storage tank for consumptive use on the premises
19 to submit to the department, within 30 days after the department requests, the
20 location, contents and size of any such tank.

21 **SECTION 11.** 101.09 (3) (b) of the statutes is amended to read:

22 101.09 (3) (b) The department may transfer any information which the
23 department receives under par. (a) (am) to any other agency or governmental unit.
24 The department and any such agency shall treat the name of the owner and the
25 location of any noncommercial storage tank which stores heating oil for consumptive

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1 use on the premises, required to be submitted to the department under par. (a) (am),
2 as confidential and shall not permit inspection or copying under s. 19.35 of any record
3 containing the information.

NOTE: Sections 10 and 11 reorganize s. 101.09 (3) (a) and (b), stats., to distinguish regulation of home heating oil tanks from other tanks.

4 **SECTION 12.** 101.09 (3) (c) of the statutes is amended to read:

5 101.09 (3) (c) The rule promulgated under par. (a) may require the certification
6 or registration of persons who install, remove, clean, line, perform tightness testing
7 on, and inspect ~~tanks~~ tank systems; persons who design, install, test, and maintain
8 cathodic protection systems for tank systems; and persons who perform site
9 assessments. Any rule requiring certification or registration shall also authorize the
10 revocation or suspension of the certification or registration.

NOTE: The addition of persons who design, install, test, and maintain cathodic protection systems for tank systems is, according to the Department of Commerce, consistent with applicable federal regulations (see 40 CFR 280.12) and with administrative rules recently promulgated by the department.

11 **SECTION 13.** 101.09 (3) (d) of the statutes is amended to read:

12 101.09 (3) (d) The department shall promulgate a rule specifying fees for plan
13 review and inspection of ~~tanks~~ tank systems for the storage, handling, or use of
14 ~~flammable or combustible liquids that are flammable or combustible or that are~~
15 federally regulated hazardous substances and for any certification or registration
16 required under par. (c).

17 **SECTION 14.** 101.142 (title) of the statutes is amended to read:

18 **101.142 (title) Inventory of ~~petroleum product~~ storage tanks for**
19 **certain regulated products.**

20 **SECTION 15.** 101.142 (1) (a) of the statutes is renumbered 101.142 (1) (a) (intro.)
21 and amended to read:

SENATE BILL 459**SECTION 15**

1 101.142 (1) (a) (intro.) “Petroleum Regulated product” means materials any of
2 the following:

3 1. Substances derived from petroleum, natural gas, or asphalt deposits and
4 ~~includes~~ including gasoline, diesel and heating fuels, liquefied ~~petroleum~~ gases,
5 lubricants, waxes, greases, and petrochemicals.

6 **SECTION 16.** 101.142 (1) (a) 2. of the statutes is created to read:

7 101.142 (1) (a) 2. Any other substances regulated under 40 CFR 280.

NOTE: According to the Department of Commerce, SECTIONS 15 and 16 make the list of substances that are defined to be petroleum products, for purposes of inventorying storage tanks, consistent with applicable federal regulations. (See 40 CFR 280.)

8 **SECTION 17.** 101.142 (1) (b) of the statutes is amended to read:

9 101.142 (1) (b) “Storage tank” means an enclosed container ~~with a capacity in~~
10 ~~excess of 60 gallons~~ which is used to hold a petroleum regulated product, regardless
11 of the duration of storage, and which is intended for use as a fixed, rather than as
12 a portable, installation.

NOTE: According to the Department of Commerce, the revisions to the definition of “storage tank” for purposes of tanks included in a statewide inventory are made for consistency with industry practice and ch. Comm 10, Wis. Adm. Code. See, also, SECTIONS 15 and 16.

13 **SECTION 18.** 101.142 (2) of the statutes is amended to read:

14 101.142 (2) INVENTORY OF STORAGE TANKS. The department shall undertake a
15 program to inventory and determine the location of every aboveground storage tanks
16 tank with a capacity of 110 gallons or more and every underground storage tanks
17 tank with a capacity of 60 gallons or more. The department may require its deputies
18 and any person engaged in the business of distributing petroleum regulated products
19 to provide information on the location of these aboveground storage tanks and
20 underground storage tanks. The department shall develop uniform procedures for

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1 reporting the location of these aboveground storage tanks and underground storage
2 tanks.

3 (END)