



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2005 Assembly Bill 15

**Assembly Substitute
Amendment 3, as Amended by
Assembly Amendment 4, and
Senate Amendment 1**

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Assembly Bill 15 relates to ethanol content standards for automotive gasoline.

ASSEMBLY SUBSTITUTE AMENDMENT 3

E-10 Standards for Automotive Gasoline

Current law requires the Department of Commerce (Commerce) to set by rule minimum product specifications for gasoline, automotive gasoline, gasoline-alcohol fuel blends, reformulated gasoline, and kerosene. Commerce is further authorized to set minimum specifications for other types of fuel.

Substitute Amendment 3 requires Commerce to set standards for automotive gasoline, beginning on October 1, 2006, to require that a regular automotive gasoline (automotive gasoline with an octane rating of 87) must contain not less than 9.2% nor more than 10% ethanol. These standards do not apply to automotive gasoline sold at a racetrack and used exclusively for motor sports racing at a racetrack. In the remainder of this memorandum, these standards will be referred to as the “E-10 standards.”

Ethanol Quality Testing

Under Substitute Amendment 3, an ethanol producer who sells or offers to sell ethanol for use in automotive gasoline in Wisconsin must test the ethanol to ensure that it conforms with quality standards for ethanol developed by the American Society for Testing and Materials, and must file a copy of the tests with Commerce.

Waiver for Insufficient Supply

Substitute Amendment 3 allows a retailer of automotive gasoline to request the Secretary of Administration for a waiver of the E-10 standards if the retailer is unable to obtain a sufficient supply of

automotive gasoline that meets those standards. The amendment authorizes the Secretary of Administration to waive these requirements for any retailer from whom the supplier is the retailer's regular supplier. The waiver applies for a period of time not to exceed seven days.

Inapplicability of E-10 Standards Due to Air Quality Impacts

Under the Federal Clean Air Act, each state must prepare a state implementation plan (SIP) that provides for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS). The Department of Natural Resources (DNR) is presently preparing SIPs for the eight-hour ozone and fine particulate NAAQS. The DNR is also preparing a SIP required under the Clean Air Act to address the visibility in specified federally designated areas impaired by regional haze.

Under current law, at least 60 days before the DNR is required to submit a SIP to the U.S. Environmental Protection Agency, the DNR must, in general, provide to the standing committees of the Legislature with jurisdiction over environmental matters a report that describes the proposed SIP and contains the supporting documents that the DNR intends to submit with the SIP. The DNR Secretary must then respond to written comments on the report provided to the DNR by a chairperson of one of these committees within the prescribed timeframe.

Substitute Amendment 3 directs the DNR to determine, at least 30 days before the DNR provides a report on a SIP to the standing committees, whether it is necessary as a result of the E-10 standards established under the substitute amendment to amend the SIP to include additional requirements for the reduction of the emissions of an air contaminant by air contaminant sources in any part of the state in order to attain and maintain a NAAQS or address regional haze.

In designing and conducting the analysis used to make this determination, the DNR must exercise its discretion in a manner that provides preference to the use of automotive gasoline containing ethanol derived from biological materials in accordance with the state's energy priorities law, s. 1.12 (4), Stats. This law includes a preference for using combustible renewable energy resources to meet energy demands in this state over using nonrenewable combustible energy resources.

If the DNR determines that additional requirements for reducing air contaminant emissions would be necessary, then the DNR must notify Commerce of that determination, and the DNR may not include the additional requirements in the SIP. Upon receipt of this notification, Commerce must inform the Revisor of Statutes. The Revisor must then publish in the next issue of the Wisconsin Administrative Register that the E-10 standards established under the substitute amendment no longer apply. This inapplicability begins on the first day of the first month beginning after the month in which the Revisor publishes this notice.

ASSEMBLY AMENDMENT 4 TO ASSEMBLY SUBSTITUTE AMENDMENT 3

Assembly Amendment 4 creates a new provision in Assembly Substitute Amendment 3 that directs the Secretary of the Department of Commerce to appoint a committee to study the use of cellulosic biomass ethanol. The committee must recommend a plan under which this state, by the year 2020, would be capable of producing ethanol of which 20% is cellulosic biomass ethanol. The committee must submit its plan to the Governor, the Legislature, the Departments of Commerce,

Agriculture, Trade, and Consumer Protection, and Natural Resources, and the University of Wisconsin System not later than one year after the date that the committee is appointed.

The Secretary must appoint the committee within six months after the bill's effective date. The committee must include the following members: at least one ethanol producer, at least one member of an environmental group, and one representative from each of the departments identified above and the University of Wisconsin System.

As used in this study provision, "cellulosic biomass ethanol" means ethanol derived from any lignocellulosic matter that is available on a renewable or recurring basis including the specified plant matter and waste materials. "Cellulosic biomass ethanol" also includes ethanol produced in facilities where animal wastes or other waste materials are digested or otherwise used to displace 90% or more of the fossil fuel normally used in the production of ethanol.

SENATE AMENDMENT 1

Senate Amendment 1 changes the test in Assembly Substitute Amendment 3 that the DNR must use in determining whether the E-10 standards will worsen air pollution. The test in the amendment directs the DNR to determine whether these standards cause or will cause or contribute to or will contribute to the violation of a National Ambient Air Quality Standard (NAAQS) or a federal regional haze requirement. The DNR must make this determination at least 30 days before it provides a report required under current law on a SIP to the specified standing committees in the Legislature.

If the DNR determines that the E-10 standards will worsen air pollution under the new test in the amendment, then the amendment specifies that this determination, using the process in Assembly Substitute Amendment 3, results in the voiding of the E-10 standards.

The amendment deletes the directive to the DNR in Assembly Substitute Amendment 3 on how the department should exercise its discretion in making this determination.

In addition, Senate Amendment 1 delays the effective date of the E-10 standards from October 1, 2006 to October 1, 2007.

Senate Amendment 1 also adds "hemicellulosic" matter to the definition of "cellulosic biomass ethanol" in the study provision in Assembly Amendment 4. This addition results in the definition of "cellulosic biomass ethanol" in that provision being the same as the definition of this term in the provisions in the federal Energy Policy Act of 2005 that specify nationwide renewable content requirements for motor vehicle fuel. [See 42 USC s. 7545 (o), as created by federal act.]

LEGISLATIVE HISTORY

On December 15, 2005, Representatives Freese, Davis, Townsend, and Gottlieb offered Assembly Substitute Amendment 3 and Representatives Berceau and Friske offered Assembly Amendment 4 to Assembly Substitute Amendment 3. On December 15, 2005, the Assembly adopted Assembly Amendment 4 to Assembly Substitute Amendment 3 by a vote of Ayes, 73; Noes, 20, adopted Assembly Substitute Amendment 3, as amended, by a vote of Ayes, 75; Noes, 18, and passed Assembly Bill 15, as amended, by a vote of Ayes, 54; Noes, 38; Paired, 6.

On January 31, 2006, the Senate Committee on Agriculture and Insurance recommended introduction and adoption of Senate Amendment 1 by separate votes of Ayes, 5; Noes, 1, and recommended concurrence in Assembly Bill 15, as amended, by a vote of Ayes, 4; Noes, 2.

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