



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-3382/1

MCP:skw

2023 SENATE BILL 746

December 8, 2023 - Introduced by Senators JAMES, COWLES and L. JOHNSON, cosponsored by Representatives SUMMERFIELD, SHANKLAND, C. ANDERSON, CONLEY, ORTIZ-VELEZ and PALMERI. Referred to Committee on Labor, Regulatory Reform, Veterans and Military Affairs.

AN ACT *to renumber and amend* 168.21 (1), 168.22 (3) and 168.28 (1) (a); *to amend* 168.125, 168.21 (4), 168.21 (5), 168.22 (title), 168.22 (1), 168.22 (2), 168.22 (4) (intro.), 168.23 (1), 168.23 (2), 168.23 (3), 168.23 (4), 168.23 (5) (a), 168.23 (5) (b), 168.28 (title), 168.28 (1) (b) and 168.28 (2); and *to create* 168.06 (4), 168.21 (1g), 168.21 (2m), 168.21 (5d), (5h), (5p) and (5t), 168.21 (6m), 168.22 (3) (a), (b), (c) and (d), 168.22 (6), 168.23 (1g), 168.25 (1m), 168.255, 168.28 (1) (a) 2. and 168.28 (1) (a) 3. of the statutes; **relating to:** petroleum products, storage of dangerous substances, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill makes changes involving the Department of Agriculture, Trade and Consumer Protection's regulation of petroleum products and the storage of dangerous substances. Under current law, DATCP regulates and promulgates rules addressing the installation, maintenance, and abandonment of storage tanks that contain flammable or combustible liquids or federally regulated hazardous

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substances. Current law also authorizes DATCP to make inspections and conduct investigations involving petroleum products.

The bill does the following involving petroleum products and storage of dangerous substances:

1. Changes the definition of “combustible liquid,” thereby changing which substances are subject to DATCP regulation. Current law defines “combustible liquid” as a liquid having a flash point at or above 100 degrees Fahrenheit and below 200 degrees Fahrenheit. Under the bill, “combustible liquid” is defined as a liquid having a flash point at or above 100 degrees Fahrenheit and below 200 degrees Fahrenheit when stored in a tank that is installed above ground level or, for liquids stored in an underground storage tank, having a flash point at or above 100 degrees Fahrenheit.

2. Changes a current law exemption for certain aboveground storage tanks from regulation by DATCP. Current law exempts aboveground storage tanks that have a capacity of less than 5,000 gallons from regulation by DATCP. The bill provides, instead, that an aboveground storage tank that is used to contain a liquid that is flammable or combustible or that is a hazardous substance is exempt from regulation by DATCP if 1) it has a capacity of less than 110 gallons; 2) it has a capacity of less than 1,100 gallons and is installed at a fleet vehicle motor fuel dispensing facility or is used to store certain types of liquids; 3) is a portable tank; or 4) is an asphalt plant tank.

3. Requires DATCP to maintain an inventory of storage tanks used to contain regulated products. The bill requires the inventory to include every aboveground storage tank with a capacity of at least 110 gallons and every underground storage tank with a capacity of at least 60 gallons. The bill defines a “regulated product” as a liquid that is a substance derived from petroleum, natural gas, or asphalt deposits or a liquid that is a federally regulated hazardous substance or regulated by certain other federal regulations. Current law requires DATCP to maintain an inventory of every aboveground and underground storage tank that is used to contain a petroleum product and that has a capacity of at least 60 gallons.

4. Authorizes DATCP to promulgate rules to require the certification or registration of persons who design, install, test, or maintain corrosion prevention systems on storage tanks used to contain flammable or combustible liquids or hazardous substances.

5. Authorizes DATCP to establish fees by rule for fuel quality inspections and investigations.

6. Requires the Department of Justice or proper district attorney, upon DATCP’s request, to prosecute actions to enforce the storage tank statutes and rules.

7. Authorizes DATCP to promulgate fire safety rules for the storage and handling of flammable or combustible liquids or hazardous substances.

8. Authorizes DATCP to contract with persons for services to administer or implement storage tank requirements.

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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:

SECTION 1. 168.06 (4) of the statutes is created to read:

168.06 (4) The department may by rule set fees for department costs incurred in performing miscellaneous fuel quality inspections or investigations authorized under this subchapter.

SECTION 2. 168.125 of the statutes is amended to read:

168.125 Reports; payment. Persons who are liable for the fee under ~~this subchapter s. 168.12~~ shall state the number of gallons of petroleum products on which the fee is due and the amount of their liability for the fee in the reports under s. 78.12 (1) to (3). The requirements for payment of the motor vehicle fuel tax under s. 78.12 (5) apply to the fee under ~~this subchapter s. 168.12~~.

SECTION 3. 168.21 (1) of the statutes is renumbered 168.21 (1r) and amended to read:

168.21 (1r) “Combustible liquid” means a liquid having a flash point at or above 100 degrees ~~fahrenheit~~ Fahrenheit and below 200 degrees ~~fahrenheit~~ Fahrenheit when stored in a tank that is installed above ground level or a liquid having a flash point at or above 100 degrees Fahrenheit when stored in an underground storage tank.

SECTION 4. 168.21 (1g) of the statutes is created to read:

168.21 (1g) “Asphalt plant tank” means a tank that is used as a burner tank

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or a material supply tank in the process of producing asphalt if all of the following apply:

(a) The products stored in the tank are asphalt cements or Class II or Class III liquids as defined under national fire protection association standard NFPA 30, including heating oil, used oil, or a number 4 or number 5 heavy oil that conforms with ASTM International specifications.

(b) The tank configuration is single-walled or double-walled, regardless of whether the configuration includes heating coils.

(c) The tank and related asphalt process equipment are located on a property for no more than 24 consecutive months, regardless of whether the property is owned by the tank owner and regardless of whether the tank owner or other persons undertake commercial or industrial activities on the property in addition to the production of asphalt, including the operation of a quarry.

SECTION 5. 168.21 (2m) of the statutes is created to read:

168.21 (2m) “Farm tank” means an aboveground tank system installed on a farm premises, as defined in s. 102.04 (3), that is less than 5,000 gallons in capacity.

SECTION 6. 168.21 (4) of the statutes is amended to read:

168.21 (4) “Flammable liquid” means a liquid having a flash point below 100 degrees ~~fahrenheit~~ Fahrenheit.

SECTION 7. 168.21 (5) of the statutes is amended to read:

168.21 (5) “Flash point” means the minimum temperature at which a flammable liquid or combustible liquid will give off sufficient flammable vapors to

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form an ignitable mixture with air near the surface of the liquid or within the vessel which contains the liquid.

SECTION 8. 168.21 (5d), (5h), (5p) and (5t) of the statutes are created to read:

168.21 **(5d)** “Fleet vehicle motor fuel dispensing facility” means a motor fuel dispensing facility at a commercial, industrial, governmental, or manufacturing property where motor fuels are dispensed into the fuel tanks of motor vehicles that are used in connection with the business or operation of that property by persons employed by or contracted with the business or operation.

(5h) “Intermediate bulk container” means a container that is manufactured and marked in accordance with 49 CFR part 178, is intended for the storage of regulated substances within warehouses and other storage areas with automatic wet-pipe sprinkler systems, and has a liquid capacity of 793 gallons or less.

(5p) “Motor fuel dispensing facility” means a property or portion of a property where motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles or into approved containers, including all equipment used in connection with such storing and dispensing.

(5t) “Portable tank” means an aboveground closed vessel that is equipped with skids, mountings, or accessories to facilitate handling of the tank by mechanical means, that is not intended for use as a fixed installation, and that is located on a property for not more than 24 consecutive months. “Portable tank” includes all of the following:

(a) An intermediate bulk container.

(b) A tank from which motor fuels are dispensed into the fuel tanks of motor

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vehicles that are used in connection with the business or operation of the tank owner by persons employed by or contracted with the business or operation.

SECTION 9. 168.21 (6m) of the statutes is created to read:

168.21 **(6m)** “Tank system” means a tank and its associated piping and equipment.

SECTION 10. 168.22 (title) of the statutes is amended to read:

168.22 (title) **Storage ~~tanks~~ tank systems.**

SECTION 11. 168.22 (1) of the statutes is amended to read:

168.22 **(1)** Except as provided under subs. (2) to ~~(5)~~ **(6)**, every person who constructs, owns, or controls a tank system for the storage, handling, or use of ~~liquid that is a flammable or liquid, combustible liquid, or liquid that is~~ a federally regulated hazardous substance shall comply with the standards adopted under s. 168.23.

SECTION 12. 168.22 (2) of the statutes is amended to read:

168.22 **(2)** This subchapter does not apply to storage ~~tanks which~~ tank systems that require a hazardous waste license under s. 291.25.

SECTION 13. 168.22 (3) of the statutes is renumbered 168.22 (3) (intro.) and amended to read:

168.22 **(3)** (intro.) This subchapter does not apply to storage ~~tanks which~~ tank systems that are installed above ground level and ~~which are less than 5,000 gallons in capacity.~~ that meet any of the following conditions:

SECTION 14. 168.22 (3) (a), (b), (c) and (d) of the statutes are created to read:

168.22 **(3)** (a) The tank system is less than 110 gallons in capacity.

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(b) The tank system is less than 1,100 gallons in capacity and is installed at a fleet vehicle motor fuel dispensing facility or is used to store a product that is a Class IIIB liquid as defined under national fire protection association standards NFPA 30 or 30A.

(c) The tank system is a portable tank.

(d) The tank system is an asphalt plant tank.

SECTION 15. 168.22 (4) (intro.) of the statutes is amended to read:

168.22 (4) (intro.) Any rules promulgated under s. 168.23 requiring an owner to test the ability of a storage tank, ~~connected piping or ancillary equipment system~~ to prevent an inadvertent release of a stored ~~substance~~ liquid do not apply to storage ~~tanks~~ tank systems that satisfy all of the following:

SECTION 16. 168.22 (6) of the statutes is created to read:

168.22 (6) Except for the reporting of information for the inventory described in s. 168.28 (2), this subchapter does not apply to farm tanks.

SECTION 17. 168.23 (1) of the statutes is amended to read:

168.23 (1) The department shall promulgate by rule construction, maintenance, and abandonment standards applicable to ~~tanks~~ tank systems for the storage, handling, or use of ~~liquids that are flammable or~~ liquids, combustible liquids, or liquids that are federally regulated hazardous substances, and to the property and facilities where the ~~tanks~~ tank systems are located, for the purpose of protecting the waters of the state from harm due to contamination by ~~liquids that are flammable or~~ liquids, combustible liquids, or liquids that are federally regulated hazardous substances. The rule shall comply with ch. 160. The rule may

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include different standards for new and existing ~~tanks~~ tank systems, but all standards shall provide substantially similar protection for the waters of the state. The rule shall include maintenance requirements related to the detection and prevention of leaks.

(1r) The rule promulgated under sub. (1) may require any person supplying heating oil to any noncommercial storage tank for consumptive use on the premises to submit to the department, within 30 days after the department requests, the location, contents, and size of any such tank.

SECTION 18. 168.23 (1g) of the statutes is created to read:

168.23 **(1g)** The department may promulgate rules to provide fire and life safety by ensuring the safe storage, display, installation, operation, use, maintenance, and transportation of flammable liquids, combustible liquids, or liquids that are federally regulated hazardous substances and the equipment, facilities, buildings, and premises that are used to store, transfer, and dispense those liquids.

SECTION 19. 168.23 (2) of the statutes is amended to read:

168.23 **(2)** The department may transfer any information ~~which~~ that the department receives under sub. ~~(1)~~ (1r) to any other agency or governmental unit. The department and any such agency shall treat the name of the owner and the location of any noncommercial storage tank ~~which~~ that stores heating oil for consumptive use on the premises, required to be submitted to the department under sub. ~~(1)~~ (1r), as confidential and shall not permit inspection or copying under s. 19.35 of any record containing the information.

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SECTION 20. 168.23 (3) of the statutes is amended to read:

168.23 (3) The rule promulgated under sub. (1) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect ~~tanks~~ tank systems; persons who design, install, test, and maintain cathodic protection systems for tank systems; and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration. The department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay any fee that may be charged pursuant to such a rule.

SECTION 21. 168.23 (4) of the statutes is amended to read:

168.23 (4) The department shall promulgate a rule specifying fees for plan review and inspection of ~~tanks~~ tank systems for the storage, handling, or use of flammable ~~or~~ liquids, combustible liquids, or liquids that are federally regulated hazardous substances and for any certification or registration required under sub. (3).

SECTION 22. 168.23 (5) (a) of the statutes is amended to read:

168.23 (5) (a) Subject to par. (b), in addition to any fee charged by the department by rule for plan review and approval for the construction of a new or additional installation or change in operation of a previously approved installation for the storage, handling, or use of a ~~liquid that is flammable or~~ liquid, combustible liquid, or liquid that is a federally regulated hazardous substance, as defined in s. 168.21 (3), the department shall collect a groundwater fee of \$100 for each plan

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review submittal. The moneys collected under this subsection shall be credited to the environmental fund for environmental management.

SECTION 23. 168.23 (5) (b) of the statutes is amended to read:

168.23 (5) (b) Notwithstanding par. (a), an installation for the storage, handling, or use of a ~~liquid that is flammable or liquid, combustible liquid, or liquid~~ that is a federally regulated hazardous substance, as defined in s. 168.21 (3), that has a capacity of less than 1,000 gallons is not subject to the groundwater fee under par. (a).

SECTION 24. 168.25 (1m) of the statutes is created to read:

168.25 (1m) The department may contract with any person for services to administer or implement this subchapter.

SECTION 25. 168.255 of the statutes is created to read:

168.255 Attorney general and district attorney to prosecute. Upon request of the department, the attorney general or proper district attorney shall prosecute any action to enforce this subchapter.

SECTION 26. 168.28 (title) of the statutes is amended to read:

168.28 (title) Inventory of ~~petroleum product~~ storage tanks for certain regulated products.

SECTION 27. 168.28 (1) (a) of the statutes is renumbered 168.28 (1) (a) (intro.) and amended to read:

168.28 (1) (a) (intro.) ~~Notwithstanding s. 168.01 (3), "petroleum~~ "Regulated product" means materials a liquid that is any of the following:

1. A substance derived from petroleum, natural gas, or asphalt deposits and

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~~includes, including~~ gasoline, diesel and heating fuels, liquefied petroleum gases, lubricants, waxes, greases, and petrochemicals.

SECTION 28. 168.28 (1) (a) 2. of the statutes is created to read:

168.28 (1) (a) 2. A federally regulated hazardous substance.

SECTION 29. 168.28 (1) (a) 3. of the statutes is created to read:

168.28 (1) (a) 3. Any other substance regulated under 40 CFR part 280.

SECTION 30. 168.28 (1) (b) of the statutes is amended to read:

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

SECTION 31. 168.28 (2) of the statutes is amended to read:

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

(END)