

State of Wisconsin



2009 Senate Bill 279

Date of enactment: **May 18, 2010**
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2009 WISCONSIN ACT 401

AN ACT *to repeal* 66.1103 (2) (k) 18. and 93.46 (3); *to renumber and amend* 16.956 (2) (c), 93.46 (1) (d) and 560.126 (1); *to amend* 16.04 (1) (a), 16.956 (3) (a) and (c), 20.115 (4) (c), 20.115 (4) (r), 70.32 (2) (c) 1g., 71.07 (5j) (b), 71.28 (5j) (b), 71.47 (5j) (b), 73.03 (50) (intro.), 93.46 (2) (a), 96.01 (3) and 96.02; and *to create* 15.137 (6), 16.045 (1) (cm) and (f), 16.045 (4m) and (6), 16.954, 16.956 (1) (bg) and (br), 16.956 (2) (c) 2. and 3., 16.956 (3) (f), 16.956 (4), 26.42, 70.32 (2) (c) 1i., 70.32 (2) (c) 1k., 71.07 (5j) (a) 2d., 71.07 (5j) (a) 2m., 71.07 (5j) (c) 3., 71.28 (5j) (a) 2d., 71.28 (5j) (a) 2m., 71.28 (5j) (c) 3., 71.47 (5j) (a) 2d., 71.47 (5j) (a) 2m., 71.47 (5j) (c) 3., 73.0303, 78.005 (13j), 78.01 (2n), 78.07 (5), 93.07 (26), 93.46 (1) (d) 1. to 4., 93.46 (1e), 93.46 (2) (b) 4m. and 5m. and (dm), 93.47, 96.01 (4m), 96.05 (1m), 100.51 (6), 100.60, 168.05 (6), 168.12 (2) and 560.126 (1d) of the statutes; **relating to:** financial assistance related to bioenergy feedstocks, biorefineries, and conversion to biomass energy; the definition of the term agricultural use for the purpose of determining the assessed value of a parcel of land; requiring a strategic bioenergy feedstock assessment; creation of a bioenergy council; the agricultural and forestry diversification programs; biofuels training assessment; a study of regulatory burdens relating to biofuel production facilities; marketing orders and agreements for bioenergy feedstocks; exempting personal renewable fuel production and use from the motor vehicle fuel tax, the petroleum inspection fee, and business tax registration requirements; an income and franchise tax credit for installing or retrofitting pumps that mix motor vehicle fuels from separate storage tanks; offering gasoline that is not blended with ethanol to motor fuel dealers; state renewable motor vehicle fuels sales goals; use of petroleum-based transportation fuels by state vehicles; use of alternative fuels in flex fuel vehicles owned by the state; use of public alternative fuel refueling facilities; duties of the Office of Energy Independence; granting rule-making authority; requiring the exercise of rule-making authority; making appropriations; and providing penalties.

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

SECTION 1. 15.137 (6) of the statutes is created to read:

15.137 (6) **BIOENERGY COUNCIL.** There is created a bioenergy council which is attached to the department of agriculture, trade and consumer protection under s. 15.03. The secretary of agriculture, trade and consumer protection shall appoint the members of the council, to serve at the pleasure of the secretary.

SECTION 2. 16.04 (1) (a) of the statutes is amended to read:

16.04 (1) (a) Develop uniform state policies and guidelines for vehicle and aircraft acquisition, use, maintenance, recording of operational and other costs, performance evaluation and replacement of vehicles and aircraft. The department shall incorporate the fuel usage requirements under s. 16.045 (4m) in any policies or guidelines developed under this paragraph.

SECTION 3. 16.045 (1) (cm) and (f) of the statutes are created to read:

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

16.045 (1) (cm) “Flex fuel vehicle” means a vehicle designed to operate on gasoline, a blend of a fuel marketed as gasoline and 85 percent ethanol or a higher percentage of ethanol, or a mixture of gasoline and that blend.

(f) “Office” means the office of energy independence.

SECTION 4. 16.045 (4m) and (6) of the statutes are created to read:

16.045 (4m) The department shall require all agencies to collectively reduce the usage of gasoline and diesel fuel in state-owned vehicles that is petroleum-based below the total amount that the agencies used in 2006 by at least the following percentages:

(a) For gasoline:

1. Twenty percent by 2010.
2. Fifty percent by 2015.

(b) For diesel fuel:

1. Ten percent by 2010.
2. Twenty-five percent by 2015.

(6) The office shall adopt, revise as necessary, and implement a plan designed to facilitate usage of alternative fuels in the flex fuel vehicles and other vehicles owned by the state. The plan shall ensure all of the following:

(a) That all flex fuel vehicles and other vehicles powered by an alternative fuel other than gasohol that are owned by the state are identifiable.

(b) That all state employees driving flex fuel vehicles and other vehicles powered by an alternative fuel other than gasohol are made aware of the alternative fuel refueling stations in the vicinity of their route of travel.

(c) That all state employees strive to use alternative fuels when operating state flex fuel and diesel-powered vehicles.

SECTION 5. 16.954 of the statutes is created to read:

16.954 Strategic bioenergy feedstock assessment.

(1) In this section:

(a) “Affected agencies” means the department of administration, the department of agriculture, trade and consumer protection, the department of natural resources, the office, and the public service commission.

(b) “Bioenergy feedstock” means biomass used to produce energy, including transportation fuel, heat, or electricity.

(c) “Office” means the office of energy independence.

(2) The office shall coordinate among affected agencies the preparation of a biennial strategic bioenergy feedstock assessment that assists producers and users of bioenergy feedstocks and state and local government policy makers in understanding trends in the production and use of bioenergy feedstocks in this state and the effects of that production and use. Using readily available information, each assessment shall do all of the following:

(a) Summarize the bioenergy feedstocks currently and projected to be produced in the state by region.

(b) Identify the current and projected significant markets for bioenergy feedstocks produced in the state and major facilities located or likely to be located in the state that use bioenergy feedstocks produced in or outside the state.

(c) Identify key factors that influence the supply of and demand for major bioenergy feedstocks in the state, including the types and amounts of land devoted to producing these feedstocks.

(d) Assess whether any of the factors identified under par. (c) are likely to change during the period covered by the assessment and, if so, how those changes may affect the availability of future bioenergy feedstocks.

(e) Assess the impacts of the increased use in the state of biomass for energy production on all of the following:

1. Other consumers of that biomass.
2. Land use.
3. Environmental quality.
4. Other benefits and services derived from the natural systems in which the biomass is produced.

(f) Recommend, as appropriate, legislation or changes in programs or rules of affected agencies, including whether the assessment should be continued.

(3) No later than April 30, 2013, and no later than April 30 of each odd-numbered year thereafter, the office shall submit a copy of an assessment prepared under sub. (2) to the governor and the appropriate standing committees of the legislature under s. 13.172 (3) and shall post a copy of the assessment on the office’s Internet site.

SECTION 6. 16.956 (1) (bg) and (br) of the statutes are created to read:

16.956 (1) (bg) “Biorefinery” means a facility, including equipment and processes, that converts biomass into fuels and products and may produce electricity.

(br) “Executive branch agency” has the meaning given in s. 16.70 (4).

SECTION 7. 16.956 (2) (c) of the statutes is renumbered 16.956 (2) (c) (intro.) and amended to read:

16.956 (2) (c) (intro.) Ensuring that Wisconsin is a national leader in groundbreaking all of the following:

1. Groundbreaking research that will make alternative energies more affordable and create well-paying jobs in this state.

SECTION 8. 16.956 (2) (c) 2. and 3. of the statutes are created to read:

16.956 (2) (c) 2. Developing biorefineries.

3. Advancing the sale and use in all types of motor vehicles of blends of gasoline and a biofuel that contain more than 10 percent of the biofuel.

SECTION 9. 16.956 (3) (a) and (c) of the statutes are amended to read:

16.956 (3) (a) Ensure and facilitate the implementation of the initiatives specified in sub. (2) and identify barriers to the implementation of such initiatives. The

office shall serve as the central unit of state government to coordinate the activities of all executive branch agencies in connection with these initiatives.

(c) Develop energy independence policy options for consideration by the governor, the legislature, and state the executive branch agencies.

SECTION 10. 16.956 (3) (f) of the statutes is created to read:

16.956 (3) (f) Pursue, in cooperation with the department of agriculture, trade and consumer protection, the establishment and maintenance of sufficient alternative fuel refueling facilities at public retail outlets to meet the traveling needs of the public.

SECTION 11. 16.956 (4) of the statutes is created to read:

16.956 (4) Other state agencies shall assist the office in fulfilling its duties under this section to the fullest extent possible.

SECTION 14. 20.115 (4) (c) of the statutes is amended to read:

20.115 (4) (c) *Agricultural investment aids.* Biennially, the amounts in the schedule for agricultural research and development grants under s. 93.46 (2) and (3).

SECTION 15. 20.115 (4) (r) of the statutes is amended to read:

20.115 (4) (r) *Agricultural investment aids, agricultural management fund.* Biennially, from the agricultural management fund, the amounts in the schedule for agricultural research and development grants under s. 93.46 (2) and (3).

SECTION 16. 26.42 of the statutes is created to read:

26.42 Forestry diversification. (1) The department shall establish a forestry diversification program and shall promote and assist the development and use of industrial and commercial products from forestry products, including all of the following:

(a) Alternative fuels, including fuels that are considered to be renewable fuels under the renewable fuel program under [42 USC 7545](#) (o).

(b) Heat.

(c) Electricity, including electricity that satisfies the requirements in s. 196.378 (2).

(d) Marketable credits for reducing emissions of greenhouse gases, as defined in s. 285.78 (1) (c), derived from appropriate management practices used in the production of timber.

(2) The department shall promote and assist the development and use of the products identified in sub. (1) (a) to (d) in cooperation with and with the assistance of the department of agriculture, trade and consumer protection and the University of Wisconsin–Extension.

SECTION 17. 66.1103 (2) (k) 18. of the statutes is repealed.

SECTION 18. 70.32 (2) (c) 1g. of the statutes is amended to read:

70.32 (2) (c) 1g. “Agricultural land” means land, exclusive of buildings and improvements and the land necessary for their location and convenience, that is devoted primarily to agricultural use, ~~as defined by rule.~~

SECTION 19. 70.32 (2) (c) 1i. of the statutes is created to read:

70.32 (2) (c) 1i. “Agricultural use” means agricultural use as defined by the department of revenue by rule and includes the growing of short rotation woody crops, including poplars and willows, using agronomic practices.

SECTION 20. 70.32 (2) (c) 1k. of the statutes is created to read:

70.32 (2) (c) 1k. “Agronomic practices” means agricultural practices generally associated with field crop production, including soil management, cultivation, and row cropping.

SECTION 21. 71.07 (5j) (a) 2d. of the statutes is created to read:

71.07 (5j) (a) 2d. “Diesel replacement renewable fuel” includes biodiesel and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the department of commerce designates by rule as a diesel replacement renewable fuel.

SECTION 22. 71.07 (5j) (a) 2m. of the statutes is created to read:

71.07 (5j) (a) 2m. “Gasoline replacement renewable fuel” includes ethanol and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the department of commerce designates by rule as a gasoline replacement renewable fuel.

SECTION 23. 71.07 (5j) (b) of the statutes, as affected by [2009 Wisconsin Act 28](#), is amended to read:

71.07 (5j) (b) *Filing claims.* Subject to the limitations provided in this subsection, for taxable years beginning after December 31, 2007, and before January 1, 2018, a claimant may claim as a credit against the taxes imposed under ss. 71.02 and 71.08, up to the amount of the taxes, an amount that is equal to 25 percent of the amount that the claimant paid in the taxable year to install or retrofit pumps located in this state that dispense motor vehicle fuel ~~consisting of at least~~ marketed as gasoline and 85 percent ethanol or a higher percentage of ethanol or at least motor vehicle fuel marketed as diesel fuel and 20 percent biodiesel fuel or that mix fuels from separate storage tanks and allow the end user to choose the percentage of gasoline replacement renewable fuel or diesel replacement renewable fuel in the motor vehicle fuel dispensed.

SECTION 23d. 71.07 (5j) (c) 3. of the statutes is created to read:

71.07 (5j) (c) 3. The department of commerce shall establish standards to adequately prevent, in the distribution of conventional fuel to an end user, the inadvertent distribution of fuel containing a higher percentage of renewable fuel than the maximum percentage established by the federal environmental protection agency for use in conventionally-fueled engines.

SECTION 24. 71.28 (5j) (a) 2d. of the statutes is created to read:

71.28 (5j) (a) 2d. “Diesel replacement renewable fuel” includes biodiesel and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the department of commerce designates by rule as a diesel replacement renewable fuel.

SECTION 25. 71.28 (5j) (a) 2m. of the statutes is created to read:

71.28 (5j) (a) 2m. “Gasoline replacement renewable fuel” includes ethanol and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the department of commerce designates by rule as a gasoline replacement renewable fuel.

SECTION 26. 71.28 (5j) (b) of the statutes is amended to read:

71.28 (5j) (b) *Filing claims.* Subject to the limitations provided in this subsection, for taxable years beginning after December 31, 2007, and before January 1, 2018, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of the taxes, an amount that is equal to 25 percent of the amount that the claimant paid in the taxable year to install or retrofit pumps located in this state that dispense motor vehicle fuel consisting of at least marketed as gasoline and 85 percent ethanol or a higher percentage of ethanol or at least motor vehicle fuel marketed as diesel fuel and 20 percent biodiesel fuel or that mix fuels from separate storage tanks and allow the end user to choose the percentage of gasoline replacement renewable fuel or diesel replacement renewable fuel in the motor vehicle fuel dispensed.

SECTION 26d. 71.28 (5j) (c) 3. of the statutes is created to read:

71.28 (5j) (c) 3. The department of commerce shall establish standards to adequately prevent, in the distribution of conventional fuel to an end user, the inadvertent distribution of fuel containing a higher percentage of renewable fuel than the maximum percentage established by the federal environmental protection agency for use in conventionally-fueled engines.

SECTION 27. 71.47 (5j) (a) 2d. of the statutes is created to read:

71.47 (5j) (a) 2d. “Diesel replacement renewable fuel” includes biodiesel and any other fuel derived from

a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the department of commerce designates by rule as a diesel replacement renewable fuel.

SECTION 28. 71.47 (5j) (a) 2m. of the statutes is created to read:

71.47 (5j) (a) 2m. “Gasoline replacement renewable fuel” includes ethanol and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel and that the department of commerce designates by rule as a gasoline replacement renewable fuel.

SECTION 29. 71.47 (5j) (b) of the statutes is amended to read:

71.47 (5j) (b) *Filing claims.* Subject to the limitations provided in this subsection, for taxable years beginning after December 31, 2007, and before January 1, 2018, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes, an amount that is equal to 25 percent of the amount that the claimant paid in the taxable year to install or retrofit pumps located in this state that dispense motor vehicle fuel consisting of at least marketed as gasoline and 85 percent ethanol or a higher percentage of ethanol or at least motor vehicle fuel marketed as diesel fuel and 20 percent biodiesel fuel or that mix fuels from separate storage tanks and allow the end user to choose the percentage of gasoline replacement renewable fuel or diesel replacement renewable fuel in the motor vehicle fuel dispensed.

SECTION 29d. 71.47 (5j) (c) 3. of the statutes is created to read:

71.47 (5j) (c) 3. The department of commerce shall establish standards to adequately prevent, in the distribution of conventional fuel to an end user, the inadvertent distribution of fuel containing a higher percentage of renewable fuel than the maximum percentage established by the federal environmental protection agency for use in conventionally-fueled engines.

SECTION 30. 73.03 (50) (intro.) of the statutes is amended to read:

73.03 (50) (intro.) With the approval of the joint committee on finance, to establish fees for obtaining a business tax registration certificate, which, except as provided in s. 73.0302, is valid for 2 years, and for renewing that certificate and, except as provided in s. ss. 73.0302 and 73.0303, shall issue and renew those certificates if the person who wishes to obtain or renew a certificate does all of the following:

SECTION 31. 73.0303 of the statutes is created to read:

73.0303 Personal renewable fuel production. The department may not require a person to obtain a business tax registration certificate related to the production or use

of renewable fuel that is exempt under s. 78.01 (2n) from the tax imposed under s. 78.01 (1).

SECTION 32. 78.005 (13j) of the statutes is created to read:

78.005 (13j) “Renewable fuel” means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel used in motor vehicle fuel. “Renewable fuel” includes biodiesel fuel, as defined in s. 168.14 (2m).

SECTION 33. 78.01 (2n) of the statutes is created to read:

78.01 (2n) **PERSONAL RENEWABLE FUEL PRODUCER EXEMPTION.** No tax is imposed under sub. (1) on the first 1,000 gallons of renewable fuel produced or converted from another purpose each year by an individual and used by that individual in his or her personal motor vehicle, if the individual does not sell any such renewable fuel during that year.

SECTION 34. 78.07 (5) of the statutes is created to read:

78.07 (5) Renewable fuel exempt under s. 78.01 (2n) from the tax under s. 78.01 (1) is not received for the purposes of this section.

SECTION 35. 93.07 (26) of the statutes is created to read:

93.07 (26) **ALTERNATIVE FUEL REFUELING FACILITIES.** To pursue in cooperation with the office of energy independence, the establishment and maintenance of sufficient alternative fuel refueling facilities at public retail outlets to meet the traveling needs of the public.

SECTION 36. 93.46 (1) (d) of the statutes is renumbered 93.46 (1) (d) (intro.) and amended to read:

93.46 (1) (d) (intro.) Promote and assist the development and use of industrial and commercial products from agricultural commodities ~~and forestry products~~ and from the production of these commodities, including ~~alternative fuels produced from agricultural source stocks~~, all of the following:

SECTION 37. 93.46 (1) (d) 1. to 4. of the statutes are created to read:

93.46 (1) (d) 1. Alternative fuels, including fuels that are considered to be renewable fuels under the renewable fuel program under [42 USC 7545](#) (o).

2. Heat.

3. Electricity, including electricity that satisfies the requirements in s. 196.378 (2).

4. Marketable credits for reducing emissions of greenhouse gases, as defined in s. 285.78 (1) (c), derived from appropriate management practices used in the production of the agricultural commodity.

SECTION 38. 93.46 (1e) of the statutes is created to read:

93.46 (1e) The department shall promote and assist the development and use of the products identified in sub. (1) (d) 1. to 4. in cooperation with and with the assistance

of the department of natural resources and the University of Wisconsin–Extension.

SECTION 39. 93.46 (2) (a) of the statutes is amended to read:

93.46 (2) (a) The department shall make agricultural and forestry research and development grants. The department may provide grants to fund demonstration projects, feasibility analyses and applied research directed toward new or alternative technologies and practices that will stimulate agricultural and forestry development and economic activity.

SECTION 40. 93.46 (2) (b) 4m. and 5m. and (dm) of the statutes are created to read:

93.46 (2) (b) 4m. Diversification and expansion of the production, processing, and distribution of forestry products that are used to produce alternative fuels, heat, or electricity.

5m. Commercial application of new technologies or practices related to the production of alternative fuels, heat, or electricity from forestry products.

(dm) If the department receives an application under this subsection for a grant for a forestry–related project, analysis, or applied research, the department shall do all of the following:

1. Consult with the department of natural resources in evaluating the grant application.

2. If the department of agriculture, trade and consumer protection awards the grant, require the grant recipient to coordinate its activities under the grant with any forestry–related programs identified by the department of natural resources in the consultation under subd. 1.

SECTION 41. 93.46 (3) of the statutes is repealed.

SECTION 42. 93.47 of the statutes is created to read:

93.47 Bioenergy council. (1) The bioenergy council shall identify voluntary best management practices for sustainable biomass and biofuels production, which may include consideration of practices related to choosing biomass species, where to plant, crop management, harvest, and processing and transport, and factors such as soil management, chemical inputs, carbon sequestration in soil and root mass, plant and animal biodiversity, and other factors at the discretion of the council. The council shall consider efforts relating to sustainable biomass and biofuels production conducted by other entities, including the council on forestry.

(2) The council shall report its findings, at least biennially, to agencies and private parties that assist producers of biofuel feedstocks and biofuels, as determined by the council.

SECTION 43. 96.01 (3) of the statutes is amended to read:

96.01 (3) “Agricultural commodity” means any agricultural, horticultural (excepting floricultural), viticultural, vegetable, poultry, and livestock products pro-

duced in this state, including for use as a bioenergy feedstock, including milk and milk products, bees and honey, or any class, variety or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor, but not including timber and wood products, except timber and wood products used as a bioenergy feedstock.

SECTION 44. 96.01 (4m) of the statutes is created to read:

96.01 (4m) “Bioenergy feedstock” has the meaning given in s. 16.954 (1) (b).

SECTION 45. 96.02 of the statutes is amended to read:

96.02 Policy. It is declared to be the policy of this state to promote orderly and efficient marketing of agricultural commodities and to prevent economic waste of the agricultural wealth of this state. Unfair methods of competition, lack of uniform grading and classification of agricultural commodities, and the inability of individual producers to obtain present markets or to develop new or larger markets for Wisconsin agricultural commodities result in disorderly marketing of such commodities. As a result agricultural producers are prevented from receiving a fair return for the products which they market. Such conditions jeopardize the continued production of an adequate food supply and energy supplies for this and other states, and may result in unemployment with its attendant burdens on the citizens of this state. The production, processing and marketing of agricultural commodities within this state is hereby declared to be affected with a public interest and this chapter is enacted for the purpose of protecting the health, peace, safety and general welfare of the people of this state.

SECTION 46. 96.05 (1m) of the statutes is created to read:

96.05 (1m) If the secretary, based on periodic assessments of markets for bioenergy feedstocks, determines that the issuance of a marketing order or agreement for bioenergy feedstocks will effectuate the declared policy of this chapter, the secretary shall propose the issuance of a marketing order or agreement under sub. (1) for bioenergy feedstocks.

SECTION 47. 100.51 (6) of the statutes is created to read:

100.51 (6) UNBLENDED GASOLINE SALES REQUIREMENT. (a) A motor fuel grantor that provides gasoline to a motor fuel dealer under a motor fuel dealership agreement shall offer gasoline to the motor fuel dealer that is not blended with ethanol and that is suitable for subsequent blending with ethanol and for resale. For purposes of this subsection, gasoline that is not blended with ethanol is not suitable for subsequent sale if the price charged for the unblended gasoline by the motor fuel grantor does not fairly reflect the average posted terminal price, as defined in s. 100.30 (2) (a).

(b) No motor fuel dealership agreement or contract between a motor fuel dealer and a motor fuel grantor may

require a motor fuel dealer to purchase ethanol for blending purposes only from the motor fuel grantor.

(c) Nothing in this subsection prohibits a motor fuel dealership agreement from requiring the motor fuel dealer to blend gasoline received under par. (a) with a specified amount of ethanol by volume prior to the sale of the gasoline to the end user.

(d) Nothing in this subsection prohibits a motor fuel dealership agreement from providing for the transfer of credits under [42 USC 7545](#) (o) (2) between the motor fuel dealer and the motor fuel grantor.

(f) A motor fuel grantor is not liable for penalties or damages arising out of the subsequent blending by another person of gasoline provided under this subsection. A motor fuel dealer that purchases gasoline that is not blended with ethanol and later sells the gasoline blended with ethanol shall provide prominent notice to the motor fuel dealer’s customers identifying the person that blended the gasoline with ethanol.

(g) Paragraph (a) does not apply to the provision of gasoline by a motor fuel grantor to a motor vehicle fuel dealer located in a nonattainment area, as defined under s. 285.01 (30).

SECTION 48. 100.60 of the statutes is created to read:

100.60 State renewable fuels goal. (1) DEFINITIONS.

In this section:

(a) “Biodiesel” means a fuel that is comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats and that meets all of the applicable requirements of the American Society for Testing and Materials.

(b) “Diesel-replacement renewable fuel” means any of the following:

1. Biodiesel.

2. Any other fuel that can substitute for petroleum-based diesel fuel, that is derived from a renewable resource, that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel, and that the department of commerce designates as a diesel-replacement renewable fuel under sub. (7) (a).

(c) “Gasoline-replacement renewable fuel” means any of the following:

1. Ethanol.

2. Any other fuel that can substitute for gasoline, that is derived from a renewable resource, that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel, and that the department of commerce designates as a gasoline-replacement renewable fuel under sub. (7) (b).

(d) “Motor vehicle fuel” means any substance used to fuel motor vehicles used for transportation on public roadways.

(e) “Renewable fuel” means a gasoline-replacement renewable fuel or a diesel-replacement renewable fuel.

(2) GOALS. (a) *Definitions.* In this subsection:

1. "Federal advanced biofuel volume" means the volume for the year listed in [42 USC 7545 \(o\) \(2\) \(B\) \(i\) \(II\)](#) or determined by the federal environmental protection agency under [42 USC 7545 \(o\) \(2\) \(B\) \(ii\)](#) for advanced biofuel, except as provided under par. (d).

2. "Federal biomass-based diesel volume" means the volume for the year listed in [42 USC 7545 \(o\) \(2\) \(b\) \(i\) \(IV\)](#) or determined by the federal environmental protection agency under [42 USC 7545 \(o\) \(2\) \(B\) \(ii\)](#) for biomass-based diesel, except as provided under par. (d).

3. "Federal cellulosic biofuel volume" means the volume for the year listed in [42 USC 7545 \(o\) \(2\) \(B\) \(i\) \(III\)](#) or determined by the federal environmental protection agency under [42 USC 7545 \(o\) \(2\) \(B\) \(ii\)](#) for cellulosic biofuel, except as provided under par. (d).

4. "Federal diesel-replacement renewable fuel percentage" means the number calculated as follows:

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

b. Subtract the amount determined under subd. 4. a. from the federal renewable fuel volume.

c. Divide the federal biomass-based diesel volume by the amount determined under subd. 4. b.

5. "Federal diesel-replacement renewable fuel volume" means the volume calculated as follows:

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

b. Multiply the federal diesel-replacement renewable fuel percentage by the amount determined under subd. 5. a.

c. Add the federal biomass-based diesel volume to the amount determined under subd. 5. b.

6. "Federal gasoline-replacement renewable fuel volume" means the volume calculated by subtracting the federal diesel-replacement renewable fuel volume from the federal renewable fuel volume.

7. "Federal renewable fuel volume" means the volume for the year listed in [42 USC 7545 \(o\) \(2\) \(B\) \(i\) \(I\)](#) or determined by the federal environmental protection agency under [42 USC 7545 \(o\) \(2\) \(B\) \(ii\)](#) for renewable fuel, except as provided under par. (d).

8. "State percentage of motor vehicle fuel sold nationally" for a year means the number calculated as follows:

a. For each of the 3 years that preceded the year, divide the total volume of motor vehicle fuel sold in this state by the total volume of motor vehicle fuel sold nationally. If complete information for the most recent year is unavailable, the department may estimate sales for that year.

b. Add the quotients calculated in subd. 8. a. and divide by 3.

9. "Year" means the year for which the gasoline-replacement renewable fuel goal or diesel-replacement renewable fuel goal is being determined.

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

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

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

(c) *Diesel-replacement renewable fuels sales volume.* The state goal for the minimum annual volume of diesel-replacement renewable fuels sold in motor vehicle fuel in the state for a year is an amount calculated as follows:

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

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

(d) *Federal volume adjustments.* 1. The department shall adjust a volume specified in par. (a) 1., 2., 3., or 7., in accordance with any waiver to the volume granted by the federal environmental protection agency under [42 USC 7545 \(o\) \(7\)](#).

2. The department shall adjust a volume specified in par. (a) 1., 2., 3., or 7., by rule if the department determines that the regulations of the federal environmental protection agency adopted under [42 USC 7545 \(o\)](#), other than [42 USC 7545 \(o\) \(7\)](#), result in the actual volume of one of these types of fuel that is required to be sold under [42 USC 7545 \(o\)](#) differing from the corresponding volume specified under par. (a) 1., 2., 3., or 7.

(3) ANNUAL SALES DETERMINATION. (a) Annually, beginning in the year after the year in which this paragraph takes effect [LRB inserts date], the department, in cooperation with and with assistance from the department of commerce, the department of revenue, and the office of energy independence, shall determine whether the annual goals for sales of renewable fuels in sub. (2) (b) and (c), for the previous year, were met in the state in that year.

(b) The department may not include sales of gasoline-replacement renewable fuel or diesel-replacement renewable fuel in making the determination under par. (a) unless the fuel meets or exceeds applicable requirements for greenhouse gas emissions reduction under [42 USC 7545 \(o\) \(1\) \(B\) \(i\), \(D\), \(E\)](#) or [\(2\) \(A\) \(i\)](#) or under [42 USC 7545 \(o\) \(4\)](#).

(4) ASSESSMENT. (a) Except as provided in par. (b), if the department determines under sub. (3) (a) that an

annual goal for sales of renewable fuels in sub. (2) (b) or (c), was not met, the department shall assess the cause and report its findings to the governor and, under s. 13.172 (3), to the standing committees of the legislature that oversee issues related to renewable fuel. The department shall include all of the following in the assessment:

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

2. A determination of whether state or federal laws prevent or impede the sale of the renewable fuels in volumes that meet the goals in sub. (2).

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

4. A determination of whether requirements for renewable fuel sales by individual refiners, wholesalers, suppliers, distributors, retailers, or any other persons involved in the production, distribution, or marketing of motor vehicle fuel, would likely result in sales of volumes of renewable fuels that meet the goals in sub. (2).

(b) If the department determines under sub. (3) (a) that an annual goal for sales of gasoline-replacement renewable fuels or diesel-replacement renewable fuels in sub. (2) (b) or (c), was not met in a year, the department has conducted an assessment under par. (a) for a previous year for the same category of renewable fuels, and the department determines that another assessment for the same category of renewable fuels will not further the purposes of this section, an assessment and report to the governor and the legislature under par. (a) are not required.

(6) REPORTING. (a) The department shall consult with the department of commerce, the department of revenue, and the office of energy independence to determine if information necessary to make a determination under sub. (3) (a) or an assessment under sub. (4) is being collected by these agencies under laws in effect on the effective date of this paragraph [LRB inserts date]. If the information is not being collected, the department may request the department of commerce, the department of revenue, or the office of energy independence to collect the information if collection by one of these agencies is more cost-effective for state government and less burdensome for the persons subject to the reporting requirements than collection of the information by the department.

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

(c) If the department requires the reporting of information under par. (b), the department shall require the reporting of information relating to the feedstocks used to produce a renewable fuel sold in this state unless the department determines that this information is not reasonably available.

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

(7) DEPARTMENT OF COMMERCE AUTHORITY. (a) The department of commerce may promulgate a rule designating a fuel that can substitute for petroleum-based diesel fuel, that is derived from a renewable resource, and that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel as a diesel-replacement renewable fuel for the purposes of this section.

(b) The department of commerce may promulgate a rule designating a fuel that can substitute for gasoline, that is derived from a renewable resource, and that meets all of the applicable requirements of the American Society for Testing and Materials for that fuel as a gasoline-replacement renewable fuel for the purposes of this section.

(8) PENALTIES. (b) Any person who fails to provide to the department information required under sub. (6) (b) shall forfeit not more than \$1,000 for each violation.

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

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

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

a. The procedure for issuing an order for an alleged violation.

b. The amount of a forfeiture that the department may assess for an alleged violation, subject to the limit in subd. 1. and the considerations in par. (e).

c. The procedure for contesting an order issued for an alleged violation.

d. The procedure for contesting the assessment of a forfeiture for an alleged violation.

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

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

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

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

1. The appropriateness of the amount of the forfeiture considering the volume of business of the person subject to the forfeiture.

2. The gravity of the violation.

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

SECTION 49. 168.05 (6) of the statutes is created to read:

168.05 (6) This section does not apply to a petroleum product that is a renewable fuel exempt under s. 78.01 (2n) from the tax under s. 78.01 (1) unless inspection is required by federal law.

SECTION 50. 168.12 (2) of the statutes is created to read:

168.12 (2) The fee under sub. (1) is not imposed on a petroleum product that is a renewable fuel exempt under s. 78.01 (2n) from the tax under s. 78.01 (1).

SECTION 51. 560.126 (1) of the statutes is renumbered 560.126 (1s), and 560.126 (1s) (d), as renumbered, is amended to read:

560.126 (1s) (d) The construction of one or more ~~cellulosic ethanol production plants~~ biorefineries.

SECTION 52. 560.126 (1d) of the statutes is created to read:

560.126 (1d) In this section, “biorefinery” has the meaning given in s. 16.956 (1) (bg).

SECTION 53. Nonstatutory provisions.

(1) BIOFUELS PRODUCTION FACILITY REGULATORY REVIEW.

(a) There is created a biofuels production facility regulatory review committee consisting of 9 members appointed by the governor.

(b) The biofuels production facility regulatory review committee shall identify state and local regulatory burdens relating to the siting, construction, operation, and expansion of facilities for the production of biofuels and shall identify opportunities for streamlining regulations related to these processes. The committee shall submit a report on its findings to the governor and the standing committees of the legislature that oversee issues related to renewable energy no later than 2 years after the effective date of this paragraph.

(c) The biofuels production facility regulatory review committee terminates upon submission of the report under paragraph (b).

(d) The department of administration shall assist the biofuels production facility regulatory review committee in the performance of its functions.

(2) BIOFUELS TRAINING ASSESSMENT.

(a) In this subsection:

1. “Extension” means the community outreach, public service, and extension services of the system.

2. “Board” means the Board of Regents of the University of Wisconsin System.

3. “System” means the University of Wisconsin System.

(b) The extension, in cooperation with other programs in the system designated by the board and with the department of workforce development, the office of energy independence, and the technical college system board, shall assess educational needs in this state related to the production of biofuels and educational needs in this state related to the development and production of feedstocks for the production of biofuels.

(c) The extension shall report the findings from its assessment under paragraph (a) no later than the first day of the 18th month beginning after the effective date of this paragraph to the governor and the standing committees of the legislature that oversee issues related to renewable energy and agriculture under section 13.172 (3) of the statutes.

SECTION 54. Initial applicability.

(1) The treatment of section 100.51 (6) of the statutes first applies to a motor vehicle fuel dealership agreement created, renewed, extended, or modified on the effective date of this subsection.

(2) The treatment of section 70.32 (2) (c) 1g., 1i., and 1k. of the statutes first applies to the property tax assessments as of January 1, 2011.

(3) The treatment of sections 71.07 (5j) (a) 2d. and 2m. and (b), 71.28 (5j) (a) 2d. and 2m. and (b), and 71.47 (5j) (a) 2d. and 2m. and (b) of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31 this treatment first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(3h) The treatment of sections 71.07 (5j) (c) 3., 71.28 (5j) (c) 3., and 71.47 (5j) (c) 3. of the statutes first applies to systems installed on the effective date of this subsection.

SECTION 55. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 73.03 (50) (intro.), 73.0303, 78.005 (13j), 78.01 (2n), 78.07 (5), 168.05 (6), and 168.12 (2) of the statutes takes effect on the first day of the 3rd month beginning after publication.