



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5508 (Substitute H-1 as passed by the House)

Sponsor: Representative Phillip Pavlov

House Committee: Natural Resources, Great Lakes, Land Use, and Environment

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 3-14-06

CONTENT

The bill would amend the Motor Fuels Quality Act to do the following:

- Lower the maximum allowable vapor pressure of gasoline sold in counties in southeastern Michigan to 7.0 pounds per square inch (psi).**
- Allow the Governor to suspend vapor pressure requirements upon the declaration of an emergency.**
- Allow a gasoline refiner, distributor, or terminal to petition the Michigan Department of Agriculture (MDA) for a temporary variance from vapor pressure standards.**
- Impose a fine on gasoline sold or dispensed during a temporary variance period, and require the fines to be deposited in the Air Quality Mitigation Fund.**
- Eliminate references to a stage II vapor-recovery system.**

Vapor Pressure

The Act requires the MDA Director to establish standards for vapor pressure as specified by the American Society for Testing and Materials (ASTM), except as otherwise required to conform to Federal or State law.

Under the Act, "vapor pressure" means the vapor pressure of gasoline or gasoline oxygenate blend as determined by ASTM test method D323, standard test method for vapor pressure of petroleum products (Reid method) or test method D4953, standard test method for vapor pressure of gasoline and gasoline oxygenate blends (dry method). Under the bill, instead, the term would mean the vapor pressure of gasoline or gasoline oxygenate blend as determined by ASTM test method D6378 or D5191, or an ASTM method approved by the MDA.

Currently, the Director must establish the vapor pressure as 9.0 psi for retail outlets during the period beginning June 1 through September 15 of each year, except for dispensing facilities where the Director must establish the vapor pressure as 7.8 psi.

Under the bill, notwithstanding anything to the contrary in Section 10d (described below), the Director would have to establish the vapor pressure as 9.0 psi for retail outlets from June 1 through September 15 of each year, except for dispensing facilities in counties where the Director established the vapor pressure as 7.0 psi, or 7.8 psi starting in 2007.

Under Section 10d, any area of the State that is redesignated formally by the U.S. Environmental Protection Agency (EPA) as an attainment area for ozone in accordance with the requirements of the EPA and the Federal Clean Air Act, and that has demonstrated maintenance of the standards without the vapor pressure requirement of 7.8 psi for dispensing facilities from June 1 through September 15 of each year, is exempt from the requirements of Sections 9a to 9g, 9i, and 9j (described below). The MDA Director, however, retains the authority to implement the 7.8 psi requirement for dispensing facilities as a contingency measure in any redesignated area consistent with the redesignation request as approved by the EPA and the requirements of the Clean Air Act.

The bill would delete this language. Instead, beginning June 1 through September 15, 2007, and for that period of time each subsequent year, the vapor pressure standard would be 7.0 psi for dispensing facilities in Wayne, Oakland, Macomb, Washtenaw, Livingston, Monroe, St. Clair, and Lenawee Counties. The MDA Director would retain the authority to implement the 7.0 or 7.8 psi requirement in areas where it was determined necessary to attain or maintain national ambient air quality standards (NAAQS). If an area of the State that was required to use a low vapor pressure fuel of 7.8 or 7.0 psi had been redesignated by the EPA as in attainment of NAAQS, and the Department of Environmental Quality had demonstrated that maintenance of NAAQS could be achieved without the use of low vapor pressure fuel, the MDA Director, with the EPA's approval, could terminate the low vapor pressure fuel requirement for that area.

Section 9a requires the MDA Director to promulgate rules to implement specific sections of the Act. Section 9b provides that a dispensing facility that never dispenses 10,000 gallons (37,850 liters) or more of gasoline per month on average in any 12-month period is exempt from specified requirements. Section 9c pertains to stage II vapor-recovery system equipment certification, and would be repealed by the bill. Section 9d pertains to the maintenance of state I and stage II vapor-recovery systems; the bill would delete various references to a stage II vapor-recovery system. The bill also would repeal Sections 9e and 9f, which pertain to training and compliance testing for stage II vapor-recovery systems. Section 9g pertains to record-keeping by gasoline-dispensing facility operators; the bill would delete references to stage II vapor-recovery systems. Section 9i requires certain dispensing facilities to obtain a dispensing permit and pay an annual fee (described below). Section 9j prohibits a person from delivering gasoline or permitting the delivery of gasoline to a dispensing facility that lacks a stage I vapor-recovery system, and prescribes equipment standards for those systems.

Currently, "dispensing facility" means a site used for vehicle gasoline refueling that is located in an area of this State that has been designated as ozone nonattainment and classified as moderate, serious, severe, or extreme by the EPA. Under the bill, "dispensing facility" would mean a site used for gasoline refueling. The bill would delete a provision excluding from the definition a facility used exclusively for the refueling of aircraft, watercraft, or vehicles designed for agricultural purposes and used exclusively in agricultural operations.

Gasoline Regulations

In addition to prescribing the vapor pressure standards described above, Section 3 of the Act requires the MDA Director to establish standards regarding the purity and quality of gasoline sold or offered for sale in Michigan, the amount and type of additives allowed in gasoline, and the grading of gasoline. Section 3 also prohibits the Director from permitting the use of the additive methyl tertiary butyl ether (MTBE) in Michigan.

The Act contains various provisions prohibiting the blending, sale, and transfer of gasoline unless it meets the requirements of Section 3. Under the bill, the gasoline also would have to meet the requirements of Section 10d.

Vapor-Recovery Systems

The Act defines “stage II vapor-recovery system” as a gasoline dispensing system approved by the MDA that prevents at least 95% of the volatile organic compounds from being emitted during gasoline refueling. The bill would delete the definition and various references to stage II vapor recovery systems.

Currently, any area of the State that is redesignated formally by the EPA as an attainment area for ozone in accordance with the requirements of the EPA and the Clean Air Act, and that has demonstrated maintenance of the standards without the stage I vapor control program, is exempt from the requirements of Sections 9a to 9f, 9i, and 9j. The MDA Director, however, retains the authority to implement the stage I vapor control program as a contingency measure in any such formally redesignated area consistent with the redesignation request as approved by the EPA and the requirements of the Clean Air Act.

The bill would delete this language. The bill provides that the MDA Director would retain the authority to implement the stage I vapor control program in areas where it was determined necessary to attain or maintain NAAQS.

The Act requires a gasoline-dispensing facility operator to conduct equipment inspections at least weekly to determine if a stage II vapor-recovery system is operating in accordance with the Act and rules promulgated under it. Under the bill, this provision instead would apply to a stage I vapor-recovery system.

The Act also requires an operator to maintain for three years accurate records of installation and compliance testing results required for stage II vapor-recovery systems, as well as maintenance records on forms approved by the MDA. Under the bill, an operator would have to maintain for three years accurate stage I vapor-recovery or gasoline-dispensing equipment maintenance records on forms approved by the MDA.

(Under the Act, “stage I vapor-recovery system” means a vapor-tight collection system that is approved by the MDA and is designed to capture the gasoline vapors displaced during delivery into a stationary storage tank and to return at least 90% of the displaced vapors to the delivery vessel.)

Dispensing Permit

Section 9i requires a dispensing facility constructed after November 15, 1990, to obtain a dispensing permit at a cost of \$25 per year. Under the bill, this requirement would apply to a dispensing facility constructed after that date in Wayne, Oakland, Macomb, Washtenaw, Livingston, Monroe, or St. Clair County.

Temporary Variance

Under the bill, a gasoline refiner, distributor, or terminal could petition the MDA for a temporary variance from the vapor pressure standards established by the MDA Director or in the Act. In order to receive a variance, the petitioner would have to demonstrate that fuel necessary to meet the current standard could not be supplied, and that the petitioner had taken and would continue to take all reasonable steps to minimize the fuel’s vapor pressure while the variance was in effect.

The MDA could grant the variance if it found that the reason fuel that would allow the petitioner to meet the standard was not available was beyond the petitioner’s control, and that compliance with the vapor pressure standard would result in fuel shortages that could not be made up otherwise. The variance could be granted only for the minimum period necessary, which could not exceed 20 days. The allowable vapor pressure under the

variance would have to be the minimum the MDA considered necessary and could not allow the petitioner to operate with a vapor pressure over 9.0 psi.

The MDA would have to collect a fine of 10 cents per gallon of fuel sold or released for sale during the variance period. After 2006, the amount of the fine would have to be the amount charged in 2006 adjusted annually by the same percentage increase or decrease as the increase or decrease in the Detroit consumer price index. The MDA would have to collect the fines on forms generated by the Department and establish a payment schedule.

Fines collected under the bill would have to be deposited in the Air Quality Mitigation Fund and be appropriated annually by the Legislature for air quality mitigation projects in the geographic area covered by the applicable State implementation plan requirement for low vapor pressure fuel.

Emergency Temporary Variance

Under the bill, if the Governor declared an emergency under the Emergency Management Act, he or she could exercise his or her discretion to grant a temporary variance suspending the low vapor pressure fuel provisions of the Motor Fuels Quality Act or rules promulgated under it if the Governor concluded it was necessary to avoid disruptions in fuel supply.

The bill provides that fuel manufactured, sold, distributed, offered for sale or distribution, dispensed, offered for supply, stored, or transported under the variance would be deemed compliant with the Act's low vapor pressure fuel requirements. Fuel sold or distributed under an emergency temporary variance would not be subject to the fine required during a temporary variance granted by the MDA.

MCL 290.642 et al.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would result in an indeterminate increase in State revenue associated with the fines assessed for variances from the vapor pressure standards established by the Director or in the Act. The fines would be assessed at 10 cents per gallon of fuel sold during the variance period. This revenue would be deposited in the Air Quality Mitigation Fund for air quality mitigation projects, as appropriated by the Legislature. (Note: Although the bill refers to this Fund, it would not create the Fund. Similarly, the Fund currently does not exist in State law.)

The bill would increase State administrative costs to the Michigan Department of Agriculture by an indeterminate amount. These costs would have to be covered by existing resources.

Fiscal Analyst: Craig Thiel

S0506\5508sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.