

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 522

(Delegate V. Clagett, *et al.*)

Environmental Matters

Environment - Gasoline Additive - Oxygenate Prohibition

This bill prohibits, beginning January 1, 2008, a person from selling or supplying gasoline that contains more than 0.5% “oxygenate” concentration by volume. “Oxygenate” means methyl tertiary butyl ether (MTBE), methyl alcohol, isopropyl alcohol, N-propyl alcohol, N-butyl alcohol, isobutyl alcohol, sec-butyl alcohol, tert-butyl alcohol, tert-pentanol, ethyl tertiary butyl ether, diisopropyl ether, and tertiary amyl methyl ether. The bill authorizes the Maryland Department of the Environment (MDE) to adopt regulations.

Fiscal Summary

State Effect: Because the petroleum industry appears to be moving away from using MTBE in gasoline, and because ethanol, which would not be banned under the bill’s definition of “oxygenate,” will likely be the oxygenate of choice in the absence of this bill, it is assumed that the bill’s prohibition would not have a significant impact on State operations or finances.

Local Effect: It is assumed that the bill’s prohibition would not have a significant impact on local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill may not be construed to prohibit transporting oxygenated gasoline for disposition outside the State, including storage that is related to such transport.

Current Law/Background: MTBE is a chemical compound used as a gasoline additive. It raises the oxygen content in gasoline, which helps engines burn cleaner, thus reducing tailpipe emissions. Since 1990, the federal Clean Air Act has required Maryland and other states that exceed federal air quality standards to use reformulated gasoline to control motor vehicle emissions. Reformulated gasoline is currently required to contain a minimum of 2% oxygen (by weight). Refiners have typically met the federal oxygenate requirement by adding MTBE to gasoline. According to MDE, reformulated gasoline is used in 14 counties in the State.

Despite the positive air quality benefits provided by reformulated gasoline, the use of MTBE has been shown to have environmental drawbacks. Because MTBE is more water soluble and less biodegradable than other gasoline components, it can be introduced into groundwater from leaking underground and aboveground petroleum storage tanks. In response to growing concerns regarding MTBE in drinking water, the U.S. Environmental Protection Agency appointed an independent Blue Ribbon Panel to investigate the air quality benefits and water quality concerns associated with oxygenates in gasoline. In 1999, the panel made several recommendations, including removing the federal oxygenate requirement. State legislation enacted in 2000 established a task force to study the environmental effects of MTBE. In its final report the task force noted, among other things, that Maryland should give careful consideration to a reduction or a complete phase-out of MTBE in gasoline sold in the State provided there is no backsliding on air quality benefits.

Concern regarding MTBE in Maryland increased in 2004 with the discovery of groundwater contamination in Harford County; MTBE contamination has also been found in other Maryland counties. Emergency regulations addressing MTBE contamination, which required improved release detection and site monitoring, took effect January 26, 2005; these regulations became permanent effective January 16, 2006.

Several bills relating to MTBE were introduced during the 2005 session. Chapter 537 of 2005 requires the testing of certain water systems for MTBE. Chapter 539 of 2005 requires notification of groundwater contamination in high-risk areas. Chapter 538 of 2005 required MDE, by December 1, 2005, to develop and submit a report to specified committees of the General Assembly on the viability of alternatives to the use of MTBE in gasoline sold in the State. MDE submitted that report in January 2006.

On August 8, 2005, President Bush signed the federal Energy Policy Act of 2005, which, among other things, removes the federal requirement that all reformulated gasoline must contain a minimum of 2% oxygen (by weight). The repeal of the oxygenate requirement will take effect in Maryland (and all other states except California, where the provision is already in effect) in May 2006. In its January 2006 report to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee, MDE noted that, once the oxygenate requirement in reformulated gasoline is removed, refiners will have more flexibility in determining how to produce compliant reformulated gasoline. As a result, refiners and others associated with the petroleum industry have either begun phasing out the use of MTBE or have started setting timetables for its removal. For example, MDE advises that BP recently announced its intent to abandon MTBE-blended gasoline and to move to an ethanol-blended reformulated gasoline in the Northeast. With this action, BP joins Motiva in making the move to ethanol. ConocoPhillips is expected to switch all of its reformulated gasoline locations to an ethanol-based product this winter. In addition, MDE advises that the Colonial Pipeline, which provides about 90% of Maryland's gasoline and diesel fuel, issued a bulletin indicating that, as of March 1, 2006, all conventional gasoline will have less than 0.5% MTBE by volume. Colonial's timeline for phasing MTBE out of reformulated gasoline is undefined but, according to MDE, will probably be next year. Accordingly, it appears that the industry is already removing MTBE and making adjustments to the product due to the repeal of the federal oxygenate requirement.

The federal Energy Policy Act of 2005 also creates a Renewable Fuels Standard that mandates the increased use of renewable fuels (primarily ethanol and biodiesel). In its January 2006 report, MDE notes that the creation of this standard ensures that ethanol will be the primary replacement for MTBE if refiners choose to use an oxygenate.

According to the National Conference of State Legislatures, as of August 2005, 26 states had either implemented MTBE bans or had enacted legislation to do so. Proposals to ban MTBE were considered by five other states, including Maryland, in 2005.

Additional Information

Prior Introductions: Although not identical, several bills were introduced during the 2005 session relating to the use of oxygenates in gasoline. HB 205 and HB 960 both received unfavorable reports from the Environmental Matters Committee. HB 388 and HB 496 were referred to the Environmental Matters Committee but were subsequently withdrawn.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Comptroller's Office, National Conference of State Legislatures, U.S. Environmental Protection Agency, The Library of Congress, Department of Legislative Services

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