

SENATE BILL REPORT

SB 5586

As Reported By Senate Committee On:
Water, Energy & Telecommunications, February 28, 2007
Ways & Means, March 5, 2007

Title: An act relating to providing for the means to encourage the use of cleaner energy thereby providing for healthier communities by reducing emissions.

Brief Description: Encouraging the use of cleaner energy.

Sponsors: Senators Murray, Poulsen, Rockefeller, Kline, Kilmer, Regala, Marr, Weinstein, Oemig, Hargrove, Keiser, Fairley, Tom, Kohl-Welles and McAuliffe.

Brief History:

Committee Activity: Water, Energy & Telecommunications: 2/13/07, 2/28/07 [DPS-WM, DNP].

Ways & Means: 3/05/07 [DP2S, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5586 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Marr, Oemig, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Delvin, Holmquist and Morton.

Staff: Margaret King (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5586 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Fairley, Hatfield, Hobbs, Keiser, Kohl-Welles, Rasmussen, Regala, Rockefeller and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Honeyford, Oemig, Parlette, Roach and Schoesler.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Richard Ramsey (786-7412)

Background: Diesel emissions retrofits and funding: The Air Pollution Control Account serves as a source of funding to the Department of Ecology (Ecology) and local air pollution control authorities. Within the Air Pollution Control Account, there exists a segregated subaccount that, until July 1, 2008, receives 58.12 percent of the revenue generated by certain fees on vehicle certificates of ownership. After July 1, 2008, the revenue from these fees are scheduled to be redirected into the Department of Transportation's road construction nickel account.

The money in the segregated subaccount must be used in certain ways. Eighty-five percent of the revenue in the subaccount must be distributed to the local air pollution control authorities in proportion to the revenue generated for the subaccount from vehicles within the boundaries of the individual authorities. The 15 percent of the revenue not transferred to local air authorities remains with Ecology.

The local air authority receiving the funding must use 85 percent of that money to retrofit school buses or other publically-owned pieces of diesel equipment with exhaust emission controls or to fund infrastructure that will allow school buses to use alternative fuels.

Air pollution control at ports: Port districts are expressly permitted to acquire and operate facilities for the control or elimination of air pollution. Once acquired or constructed, a port district may offer others the use of the facility under terms and conditions set by the port commissioners. A port district may not, however, use any tax revenues in providing pollution control facilities and may not offer use of the pollution control facility if a similar facility is available for use in the area without first receiving the consent of the other facility.

Energy Freedom Program and alternative fuels: The Energy Freedom Program is a program within the Department of Agriculture (WSDA) to aid the development of a biofuels industry in Washington. As part of the Energy Freedom Program, the WSDA can award grants and loans to applicants interested in advancing the state's biofuel industry. Specific categories of eligible applicants are not specified; however, criteria for applicants are set forth in statute.

The Motor Fuel Quality Act: Motor fuel quality is regulated by the WSDA. Motor fuel must be registered with the state and satisfy minimum standards set by the Director of the WSDA. This includes the development of standards for biodiesel. The term "biodiesel" includes fuels made from chains of acid derived from plant or animal matter.

By December of 2008, all fuel in Washington must be composed of at least 2 percent denatured alcohol. The minimum percentage of ethanol in motor fuel may be increased to 10 percent if the Director finds that adequate feedstock for that level is available in Washington and the Director of Ecology finds that a higher percentage of ethanol will not degrade Washington's air quality. The minimum ethanol requirements do not apply to federally-designated vehicles that are capable of operating on fuel made up of at least 85 percent ethanol.

Alternative fuels and taxes: The state's retail sales tax does not apply to goods or services used directly for the retail sale of biodiesel or alcohol fuels. The tax exemption only applies to goods or services used in the retail sale of alcohol-based fuels if the fuel is composed of at least 85 percent alcohol.

Summary of Bill: Diesel emissions retrofits and funding: The Office of the Superintendent of Public Instruction (OSPI) is directed to implement a school bus replacement incentive program that funds up to 10 percent of the cost of new school buses purchased by a school district. In order to qualify for the 10 percent of cost reimbursement, the bus purchased by a school district must be model year 2007 or newer and must be replacing a bus from model year 1994 or older. Any buses that are replaced under the OSPI incentive program must be surplus. The school district must provide written documentation that the surplus bus was indeed sold for scrap and not used for future road use. Violation of this requirement can be penalized as a civil penalty under the Clean Air Act. The subaccount of the Air Pollution Control Account that is funded through vehicle ownership transfer fees and used by local air authorities and Ecology to retrofit school buses and other diesel vehicles is provided with continued funding. The July 1, 2008 date that signifies when the vehicle transfer fees will be redirected from the Air Pollution Control Account to the Department of Transportation's nickel account is extended until July 1, 2020. Additionally, the authority to use the funding provided for bus emissions retrofits is expanded from only publically-owned diesel equipment to both publicly- and privately-owned diesel equipment.

Air pollution control at ports: The term "air pollution control facility" is specified to not include air quality improvement equipment that provides emission reductions for engines, vehicles, and vessels. This change allows port districts to use tax revenue to support this type of equipment and to offer the equipment to parties outside of the port district even if similar equipment exist in the area.

Energy Freedom Program and alternative fuels: Cellulosic ethanol production facilities are expressly made eligible for assistance under the Energy Freedom Program. The term "cellulosic ethanol" is defined. The definition includes ethanol derived from lignocellulosic or hemicellulosic matter, which are two types of plant materials. To be eligible for assistance, the facility producing the plant matter must do so in a renewable or reoccurring fashion. Conservation districts, public development authorities, and electric utilities are given direct authority to be involved with the biofuel industry in the state. The entities may enter into crop purchase contracts for dedicated energy crops used for the production, selling, or distribution of biodiesel produces from Washington feedstock, cellulosic ethanol, and cellulosic ethanol blends. Washington State University is directed to analyze and recommend models for possible implementation of biofuel incentive programs. Incentives to be studied include a crop insurance program, market incentives, and research grant preferences.

E85 and the Motor Fuel Quality Act: The term "E85 motor fuel" is defined within the Motor Fuel Quality Act to be an alternative fuel that is composed of a blend of denatured alcohol which represents at least 70 percent of its volume. Vehicles capable of operating on E85 motor fuel are exempted from the requirement in the Motor Fuels Quality Act that requires all motor fuels to be composed of at least 2 percent ethanol. In addition, the retail sales tax exemption that applies to goods and services used in the retail sale of alcohol-based fuels is provided to E85 motor fuels, effectively reducing the minimum required alcohol content in qualifying fuels from 85 percent to 70 percent.

Department of General Administration: The Department of General Administration (GA) is given certain mandates relating to the fuel efficiency of the state's motor fleet. By the start of 2020, the state's motor fleet must have an annual fossil fuel consumption that is at least 25

percent less than the annual consumption for the year 2006. Part of this effort requires the GA, when replacing tires on a fleet vehicle, to use replacement tires with an equal or superior rolling resistance of the tire being removed. The GA is provided with the discretionary authority to contract with public or private producers of biodiesel or ethanol, and to combine the needs of local governmental entities into the contracts. The GA may condition any contracts for alternative fuels to include provisions relating to fuel standards, crop origin, price, and delivery date.

The GA is required to develop an undetermined number of E85 and biodiesel refueling stations for state and local fleets. Stations developed by GA must be open to the general public. In addition, the GA must develop a pilot project for providing E85 fueling capacity at appropriate intervals along Interstate 5 and Interstate 90.

Vehicle electrification: The state is authorized to purchase power at its own expense that is used to recharge both private and public plug-in electric vehicles at state-owned buildings. In addition, a vehicle electrification work group (Work Group) is established. The Work Group members are to be appointed by the Governor and represent various interests and points of view. By the end of 2008, the Work Group must submit its findings on a number of subjects related to an expansion of plug-in vehicles in the state.

Clean Energy Incentive Account creation and appropriation: The Clean Energy Incentive Account (Incentive Account) is created as an appropriated account to receive receipts from any appropriations. Biofuel incentives funded from the account are directed to be prioritized according to goals and criteria. These include assisting Washington farmers and businesses in developing a biofuel market.

Direct appropriations from the account are also included. These direct appropriations for the upcoming biennium include:

- \$20 million to the Department of Community, Trade, and Economic Development to implement the act;
- \$500,000 to the GA to conduct the required E85 fueling capacity pilot project;
- \$6,750,000 to Washington State University to conduct the required biofuels incentives research;
- \$5 million to the OSPI to provide the required incentive to school districts for modernizing their bus fleets;
- \$500,000 to the Department of Community, Trade, and Economic Development for staffing the Work Group; and
- \$6,500,000 to the Department of Community, Trade, and Economic Development to allocate to projects that will implement the mandates of the state's fossil fuel reductions, implement the recommendations of the Work Group and conduct other research pilot projects.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Water, Energy & Telecommunications): The substitute bill:

- limits to 3 percent the amount of overhead to that can be retained by institutions and agencies receiving funding from the Incentive Account;
- removes a provision that delayed the lapse of the school bus funding into the Department of Transportation's nickel account;

- removes provisions relating to E85 motor fuel;
- extends the Energy Freedom Program to include forest products and the involvement of the Department of Natural Resources;
- exempts the State Patrol from the requirement that state fleet vehicles must be upgraded to more fuel efficient tires upon replacement;
- expands the Vehicle Electrification Work Group membership to include auto manufacturers and the trucking industry, and expands their scope of work to include the feasibility of expanding the state plug-in hybrid fleet and ship-side technology in ports;
- switches the recipient of funding for studying the human health impact of climate change from the Department of Health to the University of Washington;
- requires the involvement of the Department of Natural Resources (DNR) in studies involving the role of the forest sector in energy production, and adds to the study conducted by Washington State University a requirement that barriers to using forest products for fuel be analyzed;
- removes a provision creating a civil infraction if a school district fails to sell a replaced school bus for scrap;
- funds governor's executive order 07-02 stakeholders group;
- adds provisions from SB 5760 regarding Green Highways;
- adds a public utility tax credit for consumer-owned utilities that invest in energy efficiency measures;
- eliminates over \$20 million in appropriations from the Clean Energy Incentive Account; and
- appropriates \$15,250,000, or as much thereof as may be necessary, from the clean energy incentive account that is created in the bill.

EFFECT OF CHANGES MADE BY RECOMMENDED SECOND SUBSTITUTE AS PASSED COMMITTEE (Ways & Means): The second substitute bill limits the public utility tax credit for all light and power businesses allowed for energy efficient investments to a total of \$1 million per calendar year. If the Department of Revenue receives applications for the credit that exceed \$1 million prior to the end of the calendar year, the Department will apportion the credit on a method determined by the Department.

Appropriation: Yes.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Water, Energy & Telecommunications): PRO: Fossil fuel is the main cause of global warming and this bill provides steps to take right now to reduce fossil fuel use. There is a letter from over 240 businesses in Oregon and Washington that support this bill. These businesses represent over 11,000 employees and real dollars to the State's economy. Although the bill provides for funding for replacement and retro fitting of school buses, the extension of the Air Pollution Control Account will not work because funds in that account are already committed to other things. It is not cost effective to retrofit school buses prior to 1994 because EPA changed engine technology that allows retrofitting of

engines with cleaner technology. CTED is allowed to get state ready for Carbon trading which is vitally important to the state to allow it to participate in the emerging carbon markets. The E85 fuels standards will be removed because they are already in a different bill. Would like the bill to include funding and program incentives for prototypes of retrofitted vehicles. All of the wheat fields in the state could only satisfy 10 percent of the demand of ethanol. Cellulosic emphasizes is important because it provides the most promise. It is important for school bus replacement incentive program to fund up to 10 percent of the cost because the current money that the district receives from the state is not enough to purchase new buses. Expansion of port provisions to cover privately owned diesel engines is important. Pulp and paper industry supports section 606 that provides funding to develop markets. The bill increases the number of fueling stations available to the public. DNR likes the wood based ethanol definition because it provides a market for small diameter wood that comes from forest thinning. Like the bill but it should not limit the fuel but should include corn based ethanol.

Persons Testifying (Water, Energy & Telecommunications): PRO: Beth Doglio, Climate Solutions; Clifford Traisman, WEC; Dennis McLarren, Puget Sound Clean Air; Mike Ryherd, PSCA; Nancee Wildermuth, Alliance of Automobile Mfrs; Mich Denning, Alliance of Educ. Associations; Larry Ganders, Washington State University; Sean Egan, Port of Tacoma; Kevin Fullerton, Pacific Marine; Barbara Cole, Port of Seattle; Llewellyn Mathews, NW Pulp and Paper Association; Kevin Raymond, Washington Biodiesel, Pacific Forest Trust; Allan Jones, Office of the Superintendent of Public Instruction; Craig Partridge, Department of Natural Resources; Chris McCabe, Association of Washington Business.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill is one of four supported by the environmental community. The fiscal impact started at greater than \$20 million from the state General Fund, and we expect it to end up at around \$3 million.

Persons Testifying (Ways & Means): PRO: Clifford Traisman, Washington Environmental Council/Washington Conservation Voters; Mike Ryherd, Puget Sound Clean Air.