

HOUSE BILL REPORT

ESSB 6508

As Passed House - Amended:

March 1, 2006

Title: An act relating to developing minimum renewable fuel content requirements and fuel quality standards.

Brief Description: Developing minimum renewable fuel content requirements and fuel quality standards in an alternative fuels market.

Sponsors: By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Rasmussen, Poulsen, Kline, McCaslin, Brown, Oke, Schmidt, Swecker, Finkbeiner and Kohl-Welles; by request of Governor Gregoire).

Brief History:

Committee Activity:

Technology, Energy & Communications: 2/16/06, 2/21/06 [DPA].

Floor Activity:

Passed House - Amended: 3/1/06, 68-30.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Establishes minimum renewable fuel content requirements and fuel quality standards for biodiesel and ethanol.
- Creates the Biofuels Advisory Committee.
- Requires state agencies to use a minimum of 20 percent biodiesel in diesel-powered vessels, vehicles and construction equipment.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: Do pass as amended. Signed by 7 members: Representatives Morris, Chair; Kilmer, Vice Chair; Ericks, Hudgins, P. Sullivan, Takko and Wallace.

Minority Report: Do not pass. Signed by 3 members: Representatives Haler, Assistant Ranking Minority Member; Hankins and Nixon.

Staff: Scott Richards (786-7156).

Background:

Renewable Fuel Standard

A Renewable Fuel Standard (RFS) requires that a certain percentage of motor fuel be obtained from renewable sources, such as ethanol or biodiesel. Currently, five states including California, Ohio, Hawaii, Minnesota and Montana have either a RFS or have passed legislation to use biofuels on a state level.

Biodiesel

Biodiesel is a non-petroleum diesel fuel produced from renewable resources such as vegetable oils, animal fats, and recycled cooking oils. It can be blended at any percentage with petroleum diesel or used as a pure product (neat diesel). Like petroleum diesel, biodiesel operates in compression-ignition engines. According to the U.S. Department of Energy, biodiesel blends of up to 20 percent biodiesel can be used in nearly all diesel equipment with little or no engine modifications. Higher blends can also be used in many engines built since 1994 with little or no engine modification.

Ethanol

Ethanol may be produced from a variety of feedstocks such as corn, wheat, barley, potatoes, sugarcane and the cellulose of straw and trees. In the U.S., the majority of ethanol is made from corn. The most common blends are:

- E10 - 10 percent ethanol and 90 percent unleaded gasoline. The E10 blend is approved for use in any make or model of vehicle sold in the U.S. In 2004, about one-third of America's gasoline was blended with ethanol, most in this 10 percent variety.
- E85 - 85 percent ethanol and 15 percent unleaded gasoline. The E85 blend is an alternative fuel for use in flexible fuel vehicles (FFVs). The FFVs are designed to run on a variety of mixtures of unleaded gasoline and an alcohol fuel (usually ethanol). Currently more than 4 million FFVs are on roads in the U.S. When E85 is not available, FFVs can operate on gasoline or any ethanol blend up to 85 percent.

National Institute for Standards and Technology

The National Institute for Standards and Technology (NIST) is a non-regulatory federal agency within the U.S. Commerce Department's Technology Administration. The NIST mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. The NIST has a statutory responsibility to promote "cooperation with the states in securing uniformity of weights and measures laws and methods of inspection."

Annually, the NIST publishes the Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality (Handbook 130). The purpose of Uniform Laws and Regulations such as Handbook 130 is to achieve, to the maximum extent possible, standardization in weights and measures laws and regulations among the various states and local jurisdictions in order to facilitate trade between the states, permit fair competition among businesses, and provide uniform and sufficient protection to all consumers in commercial weights and measures practices.

ASTM International

The ASTM International is composed of more than 132 technical standards writing committees. Together, they have published more than 9,100 standard specifications, tests, practices, guides, and definitions for materials, products, systems, and services. The ASTM International has published standards dealing with metals, flammability, chemical products, lubricants, fossil fuels, textiles, paint, plastics, rubber, pipe, forensic sciences, electronics, energy, medical devices, and countless other topics.

United States Environmental Protection Agency

The United States Environmental Protection Agency's (EPA) Biodiesel Emissions Analysis Program quantifies the air pollution emission effects of biodiesel for diesel engines that have not been specifically modified to operate on biodiesel. The program examined the emission impacts of biodiesel and biodiesel/diesel blends for both regulated and unregulated pollutants, as well as fuel economy.

Special Fuel

Special fuel means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel nor does it include dyed special fuel as defined by federal regulations, unless the use is in violation of state law.

International Fuel Tax Agreement

According to the International Fuel Tax Association, the International Fuel Tax Agreement (Agreement) is a multi-jurisdictional fuel use tax collection agreement. The purpose of the Agreement is to promote and encourage the fullest and most efficient possible use of the highway system by making uniform the administration of motor fuels use taxation laws with respect to qualified motor vehicles operated in multiple member jurisdictions.

Current State Efforts to Promote Biodiesel

All state agencies are encouraged to use a fuel blend of 20 percent biodiesel and 80 percent petroleum diesel for use in diesel-powered vehicles and equipment.

Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the EPA for on-highway diesel fuel, agencies must use biodiesel as an additive to ultra-low sulfur diesel for lubricity. The amount of biodiesel added to the ultra-low sulfur diesel fuel must be not less than 2 percent.

The Governor's Executive Order 05-01 requires state agencies to use a 20 percent biodiesel blend by September 1, 2009. The order also encourages the agencies to use a 5 percent blend as soon as practicable.

Summary of Amended Bill:

BiodieselSpecial fuel licensees, other than international fuel tax agreement licensees, dyed special fuel users, and special fuel distributors, shall provide evidence to the Department of Licensing that at least 2 percent of the total annual diesel fuel sold in Washington is biodiesel

fuel, following the earlier of: (a) November 30, 2008; or (b) when a determination is made by the Director of Agriculture, published in the Washington State Register, that feedstock grown in Washington can satisfy a 2 percent requirement.

The same special fuel licensees shall provide evidence to the Department of Licensing that at least 5 percent of total annual diesel fuel sold in Washington is biodiesel fuel, when the Director of Agriculture determines, and publishes this determination in the Washington State Register, that both in-state oil seed crushing capacity and feedstock grown in Washington can satisfy a 3 percent requirement.

Ethanol

By December 1, 2008, motor vehicle fuel licensees, other than motor vehicle fuel distributors, shall provide evidence to the Department of Licensing that at least 2 percent of total gasoline sold in Washington, measured on a quarterly basis, is denatured ethanol.

If the Director of Ecology determines that ethanol content greater than 2 percent of the total gasoline sold in Washington will not jeopardize continued attainment of the federal Clean Air Act's National Ambient Air Quality Standard for ozone pollution in Washington and the Director of Agriculture determines and publishes this determination in the Washington State Register that sufficient raw materials are available within Washington to support economical production of ethanol at higher levels, the Director of Agriculture may require by rule that licensees provide evidence to the Department of Licensing that denatured ethanol comprises between 2 percent and at least 10 percent of total gasoline sold in Washington, measured on a quarterly basis.

Adoption of Rules and Effective Date of Requirements

The Director of Agriculture and the Director of Licensing shall each adopt rules, in coordination with each other, for enforcing and carrying out the minimum renewable fuel content requirement for biodiesel and ethanol. Minimum renewable fuel content requirements shall take effect no sooner than 180 days after the determination has been published in the Washington State Register.

Confidentiality of Information

The Department of Licensing shall not publicly release content requirement information submitted as evidence of the act, except only as information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees. Financial, and commercial information provided as evidence to the Department of Licensing by fuel licensees is exempt from disclosure.

Criminal and Civil Penalties

Violators of the minimum renewable fuel content requirements are not subject to criminal penalties. The Director of Licensing shall assess a civil penalty ranging from \$100 to \$10,000 per occurrence. Civil penalties collected shall be deposited into the Motor Vehicle Fund.

Fuel Quality StandardsThe Director of the Department of Agriculture shall adopt rules for maintaining standards for biodiesel fuel or fuel blended with biodiesel fuel by adopting all or part of the standards set forth in the Annual Book of American ASTM Standards and supplements, amendments, or revisions of the standards set forth in the Handbook 130 and

Uniform Laws and Regulations together with applicable federal EPA standards. Diesel and biodiesel refiners are responsible for meeting the ASTM standards when providing fuel into the distribution system. If a conflict exists between federal EPA standards, ASTM standards, or NIST standards, for purposes of uniformity, federal EPA standards shall take precedence over ASTM and NIST standards. The Department of Agriculture shall not exceed ASTM standards for diesel.

Fuel TestingThe Director of the Department of Agriculture may establish a fuel testing laboratory or may contract with a laboratory for testing and may adopt rules on false and misleading advertising, labeling and posting of prices, and the standards for, and identity of, motor fuels.

LabelingThe Director of the Department of Agriculture shall require the label on fuel pumps to reflect the percentage of biodiesel or ethanol.**Biofuels Advisory Committee**The Director of the Department of Agriculture shall establish the Biofuels Advisory Committee (Committee) to advise the Director of the Department of Agriculture on implementing or suspending the minimum renewable fuel content requirements. The Committee shall advise the Director of the Department of Agriculture on applicability to all users; logistical, technical, and economic issues of implementation, including the potential for credit trading, compliance and enforcement provisions, and tracking and reporting requirements; and how the use of renewable fuel blends greater than 2 percent and other renewable fuels other than biodiesel or ethanol could achieve the goals of this act. The Committee shall make recommendations to the Legislature and the Governor on the potential use of alternatives to biodiesel, which are produced from nonpetroleum renewable sources such as vegetable and animal fats in meeting the minimum renewable fuel content requirement. The Director of the Department of Agriculture will make recommendations to the Legislature and the Governor on the implementation or suspension of this act by September 1, 2007.**State Agencies Minimum Renewable Fuel Requirement**Effective June 1, 2009, all state agencies are required to use a minimum of 20 percent biodiesel as compared to total volume of all diesel purchases made by the agency for the operation of its diesel-powered vessels, vehicles and construction equipment.

All state agencies using biodiesel fuel must, beginning on July 1, 2006, file quarterly reports with the Department of General Administration (GA) documenting any problems encountered with the use of the fuel and a description of how the problems were resolved.

The GA must compile and analyze these reports and report its findings and recommendations to the Governor and Legislature within 30 days from the end of each reporting period. The Governor must consider these reports in determining whether to temporarily suspend the statewide minimum renewable fuel content standards.

The GA must assist state agencies seeking to meet the biodiesel fuel mandates by coordinating the purchase and delivery of biodiesel if requested by any state agency. The GA may use long-term contracts of up to 10 years, when purchasing from in-state suppliers who use predominantly in-state feedstock, to secure a sufficient and stable supply of biodiesel for use by state agencies. **Suspension of Minimum Renewable Fuel Content Requirement**

The Governor may suspend all or portions of the minimum renewable fuel content requirements based on a determination that such requirements are temporarily technically or

economically infeasible, or pose a significant risk to public safety.**Goals of Legislation**

AchievedBy November 30, 2008, the Director of the Department of Agriculture shall determine whether the state's diesel fuel supply is comprised of at least 10 percent biodiesel and whether the state's gasoline supply is comprised of at least 20 percent ethanol both made predominantly from Washington feedstock. By December 1, 2008, the Director shall notify the Governor and Legislature of the findings. If one or both of the goals have been met, the Governor shall issue an Executive Order declaring that either the biodiesel or the ethanol requirement, or both, are no longer applicable. If neither goal is achieved by November 30, 2008, the Director shall monitor the state's diesel and gasoline supply until such time as those goals, or either of them, is met. Upon notification that a goal has been met, the Governor shall prepare an executive request legislation repealing the minimum renewable fuel content requirements for either biodiesel or ethanol, or both.

Definition of Diesel of Biodiesel"Diesel" fuel is defined as a special fuel as defined in 82.38.020 RCW. and diesel fuel dyed in accordance with the regulation in 26 Code of Federal Regulations Section 48.4082-1T as of October 24, 2005. Biodiesel fuel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the federal Environmental Protection Agency and standards established by the American Society of Testing and Materials.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect July 1, 2006.

Testimony For: (In support) To improve the state economy, it is important to buy Washington products. With this bill, there is an opportunity to build two industries: biodiesel production and oil seed feedstocks. Tying biodiesel production to Washington grown feedstock is important for the Washington agricultural economy. This bill helps Washington farmers. Alternative fuel development is a local economic development, an environmental and a national security issue. There is an overwhelming, growing consensus that it is time to work towards energy independence. Biodiesel production is an answer to the President's call to make our country more energy independent. Biodiesel is safer for the environment. This bill will provide for significant industrial job creation and economic development. There is the potential to site a number of ethanol facilities in the state. The minimum fuel content requirement helps develop stable fuel markets. A stable market assists biofuel producers and manufacturers when seeking capital for investments to make the case that buyers exist for their products.

(With concerns) There are no assurances that engine manufacturers will honor warranties. Biodiesel needs to be certified for quality. There are a lot of question that need to be answered before implementing this bill such as, where the certification for biodiesel fuel quality will occur and which agency will ensure quality. This is a step in the right direction but will not

fix all critical issues for agriculture. Mandates may not be the best policy to achieve the goals of the legislation.

Testimony Against: Diesel engine manufacturers for the trucking industry are concerned about the use of biodiesel fuel. There are three main concerns of the trucking industry: engine warranty, fuel mileage and the manufacturing and storage of biodiesel. There are unknown long-term maintenance costs associated with biodiesel. The trucking industry is concerned about possible fuel price increases in the state. It is important to make sure that manufacturers of biodiesel fuel have enough liability insurance for fuel quality issues. There should be one federal biodiesel standard not a number of state standards. Washington should focus on state fleets first to allow time to work out the problems associated with delivery, performance and consumer acceptance. The Washington State Ferry system should be included in provisions related to a state minimum renewable fuel content requirement. The ferry system is a large user of diesel and can help drive the market. It should be made clear that biodiesel refiners must meet the ASTM standards. There should be a volumetric approach to ethanol rather than blended approach. There should be partial cost recovery of capital expenses if the state repeals the legislation at some point. An incentives based approach is better than a mandate. Commercial fishing vessels would need to be exempt from this legislation due to safety concerns.

Persons Testifying: (In support) Senator Rasmussen, prime sponsor; Linda Graham, Spokane County Conservation District; John Stuhlmiller, Washington Farm Bureau; John Plaza, Seattle Biodiesel; Rich Feldman, Apollo Alliance; KC Golden, Climate Solutions; Kevin Raymond, Washington Biodiesel; Matt Steuerwalt, Governor's Office; and Bill Warren, Columbia Blue Mountain Farm Bureau.

(With concerns) Duke Schaub, Associated General Contractors of Washington; Rick Wickman, Columbia River Steamship Operators Association; Jim Jesernig, Washington Association of Conservation Districts; Charlie Brown, Washington Oil Marketers Association; and Ed Owens, Coalition of Coastal Fisheries.

(Opposed) Larry Pursley, Washington Trucking Association; Greg Hanon, Western States Petroleum Association; Dan Riley, Tesoro; Chris McCabe, Association of Washington Businesses; and Randy Ray, Pacific Seafood Processors Association.

Persons Signed In To Testify But Not Testifying: None.