

# SENATE BILL REPORT

## ESSB 6508

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As Passed Senate, February 13, 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:** 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:** Water, Energy & Environment: 1/24/06, 1/31/06 [DPS, DNP, w/oRec].

Passed Senate: 2/13/06, 27-20.

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Majority Report:** That Substitute Senate Bill No. 6508 be substituted therefor, and the substitute bill do pass.

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

**Minority Report:** Do not pass.

Signed by Senators Morton, Ranking Minority Member and Delvin.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Honeyford and Mulliken.

**Staff:** Richard Rodger (786-7461)

**Background:** 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 Renewable Fuel Standard or have passed legislation to use biofuels on a state level.

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 (B100). According to the United States Department of Energy, biodiesel blends of up to 20 percent (B20) 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 may be produced from a variety of feed stocks such as corn, wheat, barley, potatoes, sugarcane, and the cellulose of straw and trees. In the United States the majority of ethanol is made from corn. The most common blends are:

- E10 - 10 percent ethanol and 90 percent unleaded gasoline. E10 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; and
- E85 - 85 percent ethanol and 15 percent unleaded gasoline. E85 is an alternative fuel for use in flexible fuel vehicles (FFVs). When E85 is not available, FFVs can operate on gasoline or any ethanol blend up to 85 percent.

The Department of Agriculture's (DOA) fuel sampling, testing, and enforcement program adopts fuel standards provided in the *Annual Book of the American Society for Testing and Materials* (ASTM), along with applicable Environmental Protection Act (EPA) standards. EPA standards prevail if there is a conflict. The DOA may establish a laboratory for testing motor vehicle fuels.

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 Bill:** Certain special fuel licensees must provide evidence to the Department of Licensing that at least 2 percent of total annual diesel fuel sales are biodiesel fuel sales, whenever the earlier of two events occur: (1) When the Director of the DOA determines that feedstock grown in Washington can satisfy the 2 percent requirement; or (2) on November 30, 2008.

Certain special fuel licensees must provide evidence to the Department of Licensing that at least 5 percent of total annual diesel fuel sales are biodiesel fuel sales, when the Director of DOA determines that both in-state oil seed crushing capacity and feedstock grown in Washington can satisfy 3 percent of total annual diesel fuel sales.

Beginning December 1, 2008, all gasoline sold or offered for sale in Washington must contain at least 2 percent denatured ethanol. All gasoline sold or offered for sale in Washington must contain up to a maximum of 10 percent of denatured ethanol by volume, if the Director of the Department of Ecology (DOE) determines that ethanol content greater than 2 percent will not jeopardize continued attainment of federal clean air act standards, and the Director of DOA determines that sufficient raw materials are available within Washington to support economical production of ethanol at higher levels.

The Director must allow blenders and retailers of biodiesel or ethanol six months to meet the new minimum content requirement. The Director must adopt rules for enforcing and carrying out the renewable fuels standard for both biodiesel and ethanol.

DOA's standards for biodiesel fuels must, in addition to the ASTM and EPA standards, include the *National Institute of Standards and Technology Handbook* (NIST) standards. If a conflict exists between these standards, the EPA standards take precedence. DOA's standards must not exceed the ASTM standards for diesel.

As an alternative to using a DOA testing laboratory, the Director may contract with a laboratory for testing. The Director of DOA must require fuel pumps offering biodiesel or ethanol blends to be identified by a label stating the content level.

The Director of DOA must establish a biofuels advisory committee to advise the Director in implementing or suspending the minimum renewable fuel content requirements. The committee will advise the Director on logistical, technical, and economic issues. The Director must make recommendations to the Legislature and the Governor by September 1, 2007.

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 vehicles and construction equipment.

The Department of General Administration (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. GA may use long-term contracts of up to 10 years to secure a sufficient and stable supply of biodiesel for use by state agencies.

All state agencies using biodiesel fuel must, beginning on July 1, 2006, file quarterly reports with the GA documenting any problems encountered with the use of the fuel and a description of how the problems were resolved. GA must compile and analyze these reports and report its findings and recommendations to the Governor and Legislature within thirty 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 Governor may, by executive order, suspend all or portions of the minimum renewable fuel content requirements standard if it is determined that requirements are temporarily technically or economically infeasible.

If, by November 30, 2008, the Director of Agriculture determines that the state's diesel fuel supply is comprised of at least 10 percent biodiesel made predominantly from Washington feedstock, and the goals of this act have been achieved, the Governor and Legislature must be notified. Upon notification, the Governor must suspend the applicability of the minimum fuel content requirements by executive order.

If, by November 30, 2008, the Director of Agriculture determines that the state's gasoline fuel supply is comprised of at least 5 percent ethanol made predominantly from Washington feedstock, without jeopardizing continued attainment of the federal Clean Air Act's National Ambient Air Quality Standard for ozone pollution, and the goals of this act have been achieved, the Governor and Legislature must be notified. Upon notification, the Governor must suspend the applicability of the minimum fuel content requirements by executive order.

After November 30, 2008, if the Director of DOA determines the goals of the act have been accomplished notice must be given to the Governor and Legislature. The Governor must then

prepare executive request legislation repealing the applicable minimum fuel content requirement.

"Diesel" fuel is defined for the purposed of this act to mean special fuel and dyed special fuel.

**Appropriation:** None.

**Fiscal Note:** Available on the original bill.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** This bill will help create additional demand for biodiesel in Washington. Biodiesel has many benefits over diesel fuel. Its substitution for diesel will improve air quality, reduce dependency on oil, help diversify and create new crops for farmers, and improve the local economy. Biodiesel has been proven a success by the many businesses, agencies, and individuals who currently use it on a regular basis. A renewable fuel standard will complement other Washington-proposed policies for infrastructure investments. Growers need a date certain so growers can have the confidence to get started. There is a crisis in agriculture; farms have a difficult time being profitable even when they are very productive. Farmers need alternative crops to be profitable. If this bill is not tied to Washington crops, the demand will be met from other states and Canada. An oil seed industry will give farmers an opportunity to diversify and lower their marketing risks.

**Testimony Against:** The ethanol mandates raise air quality concerns, as the 2 percent blend may not provide the benefits sought and is not enough to remove any water from the fuel. Supply problems may result if everyone is required to use ethanol. There are concerns about the effects of biodiesel blends, the quality of the fuel, and the consistency of supply. Engine manufacturers may not provide warranty coverage for vehicles using biodiesel. Biodiesel has been shown to have problems at low temperatures and problems with fuel placed in storage. Restricting feedstock to Washington grown will slow the industry down. Government should not be in the business of creating demand, but should let the markets work for themselves. Incentives are more supportable than mandates. Railroad companies may need an exemption, because manufacturers of locomotive may void warranties if there are quality issues.

**Testimony Other:** Pushing the trigger dates back will allow Washington producers to get started. This is not a tool that will fix everything, but will be very helpful. As the bill is now, it does not recognize in-state feedstock production. Mandates may not be the best way to help establish markets; incentives are better. There are safety concerns about sea vessels and perhaps they should be exempted. Some automobile consumer's warranties may be voided if they use more than a 5 percent blend.

**Who Testified:** PRO: Senator Marilyn Rasmussen, prime sponsor; Matt Steuerwalt, Governor's Office; Rhys Roth; Climate Solutions; Rob Elam, Propel Fuels; Todd Ellis, Seattle Biodiesel; Jeff Stephens, Washington Biodiesel; Clifford Traisman, Washington Environmental Council/Washington Conservation Voters; Fred Fleming, grower; Mike Massey, grower; Jim Armstrong, Spokane Conservation District; Jim Jesernig; Washington Association of Conservation Districts; John Stuhlmiller, Washington Farm Bureau; Fritz Glover, Economic Development Group of Kittitas County.

CON: Duke Schaub, Associated General Contractors of Washington; Chris McCabe, Association of Washington Businesses; Bill Kidd, Washington State Petroleum Association; Bill Stauffacher, BNSF Rail.

OTHER: Charlie Brown, Washington Oil Marketers Association; Jim Pederson, PetroCard Company.

**House Amendment(s):** Additional intent language is added. The Legislature intends consumers to have a choice of fuels ranging from zero renewable content to completely renewable fuel. Decisions by the DOA to change fuel content levels must be published and changes do not take effect for at least 180 days.

Ethanol requirements are made volumetric. Nothing in the act limits the use of E85, or the use of high octane gasoline, without ethanol, for use by aircraft.

DOL must ensure that information submitted by fuel licensees is combined or aggregated without releasing identifying individual company information, unless otherwise directed by a court. The public disclosure act is amended to include an exemption for financial and commercial information provided by the fuel licensees under this act, except when aggregated.

Fuel licensees reporting under this act are exempt from existing criminal penalties. Civil penalties may be imposed for violations.

The DOA's rules must ensure that the biodiesel refiner is responsible for meeting the ASTM standards when providing biodiesel fuel into the distribution system. Likewise, diesel refiners are responsible for meeting the ASTM standards when providing diesel into the distribution system. Biodiesel rules must include fuel stability standards when national or international standards have been adopted.

The Biofuels Advisory Committee must also advise DOA on: potential for credit trading; compliance and enforcement issues; tracking and reporting requirements; and other fuels produced from nonpetroleum renewable sources, besides biodiesel or ethanol, which could achieve the goals of the act.

The state agency mandates to use 20 percent biodiesel is changed to a volumetric standard. The fuel volume in that calculation must include fuel for state agency vessels.

The Governor's ability to suspend all or a portion of the fuel requirements, by executive order, is expanded to include state agency mandates. The reasons for suspension are expanded to include when there is a significant risk to public safety.

The statewide goal for usage of ethanol is raised to 20 percent of the state's gasoline supply. A definition is added for biodiesel fuel and the definition of motor fuel is revised to include biodiesel.

A severability clause and an effective date (July 1, 2006) are added. Other technical and clarifying amendments are made.