

SENATE BILL REPORT

ESHB 2504

As of March 1, 2010

Title: An act relating to minimum renewable fuel content requirements.

Brief Description: Concerning minimum renewable fuel content requirements.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representatives Eddy, Morris, Van De Wege, McCoy, Haler, Chase, Armstrong, Schmick, Walsh, Hunt, Kessler, Ormsby and Short).

Brief History: Passed House: 2/13/10, 62-32.

Committee Activity: Environment, Water & Energy: 2/23/10, 2/24/10 [DPA-WM, DNP].
Transportation: 3/01/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Holmquist, Morton and Ranker.

Minority Report: Do not pass.

Signed by Senator Marr.

Staff: Sam Thompson (786-7413)

SENATE COMMITTEE ON TRANSPORTATION

Staff: Janice Baumgardt (786-7319)

Background: Renewable fuel is produced from plant or animal sources, as opposed to fossil fuel sources, and includes biodiesel and ethanol. Biodiesel is often blended with petroleum diesel. Labels indicate blend percentages. A blend containing 2 percent biodiesel is labeled B2.

Federal Renewable Fuel Standard. The Energy Policy Act of 2005 established a federal renewable fuel standard (RFS) program to encourage blending of renewable fuel into U.S. motor vehicle fuel. The federal RFS requires increased annual use of renewable fuel. A

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.

12.95 billion gallon mandate has been set for 2010, increasing to a 36 billion gallon mandate for 2022.

State RFS. In 2006 Washington adopted a state RFS. The state RFS requires that at least 2 percent of diesel annually sold in Washington be biodiesel or renewable diesel. The requirement may increase to at least 5 percent if the Washington State Department of Agriculture (WSDA) determines that both in-state feedstock and oil-seed crushing capacity can satisfy a 3 percent requirement. This has not occurred.

In addition, at least 2 percent of gasoline sold in Washington must be ethanol. The requirement may increase if: (1) the Department of Ecology (Ecology) determines that the increase would not jeopardize attainment of federal Clean Air Act standards; and (2) WSDA determines that sufficient raw material is available in Washington to support production of higher ethanol blends. This has not occurred.

Use by State Agencies. State agencies must generally use at least 20 percent biodiesel compared to the total volume of agency diesel purchases. However, the Washington State Ferry System (WSF) must use at least 5 percent biodiesel compared to the total volume of WSF diesel purchases in the 2009-11 fiscal biennium.

Governor's Suspension Authority The Governor may, by executive order, suspend all or parts of state RFS requirements based on a determination that requirements are temporarily, technically, or economically infeasible or pose a significant public safety risk. This has not occurred.

Summary of Bill (Recommended Amendments): Findings and Intent. The Legislature finds that in 2006 the state committed to establish a market for alternative fuels, and required state agencies to use an increasing percentage of biodiesel to operate state fleets. As a result, significant investments have been made to develop in-state feedstock and oilseed crushing capacity. To ensure the success of investments, the Legislature intends that state agencies make every effort to purchase biodiesel derived from locally grown, in-state feedstock.

Change in State RFS. Beginning April 1, 2011, all diesel sold for use in Washington by special fuel licensees must contain an annual average of at least 2 percent biodiesel or renewable diesel by volume.

Beginning 60 days after the WSDA director determines that production of biodiesel fuel in Washington from feedstock grown or produced in Washington has reached at least 15 million gallons over the preceding 12 months, all diesel fuel sold for use in Washington by a special fuel licensee must contain an annual average of at least 5 percent biodiesel or renewable diesel by volume.

Exemptions. Exemptions from RFS requirements are provided for fuel sold or offered for sale for use by:

- Railroad locomotives;
- Marine engines, except marine engines used by the Washington state ferry system.
- Equipment at electric generating plants regulated by the US Nuclear Regulatory Commission (Commission), but this exemption expires 30 days after the Commission

- approves use of diesel fuel containing 2 percent or more biodiesel fuel or renewable diesel fuel by volume in equipment at plants that it regulates; and
- Motors used to temporarily: (1) generate electricity to meet peak demand; or (2) generate electricity or deliver natural gas when normal generation or delivery is disrupted.

Penalties. The civil penalty limit for violations is increased from \$10,000 to \$20,000, but penalties may not be assessed until the Department of General Administration certifies that state agencies are meeting biodiesel requirements.

Duties of Special Fuel Licensees. Special fuel licensees must provide quarterly progress reports to the WSDA demonstrating compliance with the RFS requirements, including reporting amounts of diesel, biodiesel, and renewable diesel sold for use in the state. Information that can be identified to a particular business is exempt from public disclosure, including biodiesel production and sales information.

WSDA must adopt rules for enforcing and carrying out RFS requirements for special fuel licensees. WSDA will have access to special fuel licensee diesel, biodiesel, and renewable diesel fuel records at any reasonable time to carry out RFS requirements. Failure to maintain records or to report required information to WSDA is a violation of RFS requirements.

Duties of Biodiesel and Renewable Diesel Producers. Washington biodiesel producers must document the quantity of biodiesel they produce, including quantity produced from feedstock grown in Washington, and provide the information to WSDA. WSDA will have access to the records at any reasonable time. WSDA may adopt implementing rules. Producers failing to maintain records or submit production information to WSDA may face penalties. Information collected by WSDA that can be identified to a particular business is exempt from public disclosure requirements, including biodiesel production and sales information.

Use by State Agencies. RFS requirements applying to state agencies are revised by:

- providing that agencies must use at least 10 percent biodiesel compared to the total volume of agency diesel purchases, rather than 20 percent;
- deleting the requirement that agencies use at least 2 percent biodiesel as an additive to ultra-low sulfur diesel for lubricity; and
- deleting the requirement that WSF use at least 5 percent biodiesel compared to the total volume of WSF diesel purchases in the 2009-11 fiscal biennium (biennium), and providing that for the biennium, WSF must meet biodiesel requirements set in the pending 2009-11 transportation supplemental budget (SB 6381).

Motor Fuel Standards. WSDA motor fuel standards may include American Society for Testing and Materials standards, National Institute of Standards and Technology standards, or federal Environmental Protection Agency standards.

Report to Legislature. WSDA must report to the Governor and Legislature by December 1, 2011, regarding impacts of the act on fuel suppliers, distributors, and retailers in the state, including any problems that may have arisen regarding biodiesel fuel quality or availability.

Other. Conflicting and obsolete provisions are deleted, including a provision authorizing a defunct Biofuels Advisory Committee.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Amendments): A striking amendment makes the following changes:

- The civil penalty limit for violations is increased from \$10,000 to \$20,000, but penalties may not be assessed until the Department of General Administration certifies that state agencies are meeting biodiesel requirements.
- State agencies must use a minimum of 10 percent biodiesel compared to the total volume of agency diesel purchases, elevated to a minimum of 20 percent if WSDA determines that the state can meet the heightened requirement. For the 2009-11 biennium, Washington State ferries must meet biodiesel requirements set in the pending Transportation supplemental budget (SB 6381).
- Biodiesel mandates begin statewide on April 1, 2011. Diesel fuel sold for use in Washington by special fuel licensees must contain an annual average of at least 2 percent biodiesel or renewable diesel by volume. Special fuel licensees must provide quarterly progress reports to WSDA demonstrating compliance. WSDA must adopt rules for enforcing and carrying out requirements. Biodiesel sales information is exempt from public disclosure.
- Exemptions are provided for fuel used by: equipment at nuclear generating plants, until 30 days after the Nuclear Regulatory Commission approves use of B2 or a higher blend; and motors used to generate electricity to meet peak demand or to generate electricity or deliver natural gas during disruptions. The exemption for fuel used by marine engines is clarified.
- The 2011 report by WSDA must include an assessment of the legislation's impact on in-state producers of feedstock and biodiesel and renewable diesel. Assessment of any fuel quality or availability problems must address renewable diesel, in addition to biodiesel.

Appropriation: None.

Fiscal Note: Requested on February 17, 2010.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Environment, Water & Energy): PRO: Washington has been a leader in promoting biodiesel use since 2006. The price of biodiesel is often less than regular diesel. Exemptions should be considered only if rationally supportable. Job losses related to Washington biodiesel production have been considerable, and could increase. This legislation will help provide a sustainable market for biodiesel and build local agriculturally-based economies. Employment related to biodiesel production has helped to get persons off of public assistance. Currently, biodiesel producers are operating at a fraction of capacity, but could increase capacity to meet higher demand created by this legislation. While transition to B2 may be difficult, this legislation is necessary to address climate change concerns. The

Washington Farm Bureau supports this legislation and suggests retaining current state RFS requirements. The additional price of B2 is approximately 1.5 cents per gallon. This legislation will provide greater clarity to RFS requirements and prompt investment.

CON: This legislation should not remove the current RFS for state vehicles and ferries. Alternatives to the B2 mandate should be considered, including an averaging mandate that would provide greater flexibility for compliance. Additional time to meet the B2 requirement should be granted. Exemptions should be considered, including an exemption for heating oil, as provided under the Oregon RFS. This legislation removes consumer choice, increases fuel costs, and will create implementation problems. The state shouldn't decrease the RFS commitment made in 2006, and current requirements should be retained.

Persons Testifying (Environment, Water & Energy): PRO: Representative Eddy, prime sponsor; Jerry Smedes, Imperium Renewables, Gen-X, General Biodiesel; Todd Ellis, Viki Applegarth, Imperium Renewables; Curtis R. Hennings, farmer; Shari A. Todd, clerk; Doug Plinski, Mayor of Odessa; Pearson Burke, Inland Empire Oilseeds; Keith Bailey, Odessa Union Warehouse, Reardan Grain Growers; Steve Krueger, Washington Department of General Administration; Miguel Perez-Gibson, Climate Solutions; Scott Dilley, Washington Farm Bureau; Peter Moulton, Washington Department of Commerce; Kirk Robinson, WSDA.

CON: Greg Hanon, Western States Petroleum Association; Bill Kidd, BP; Chris McCabe, Association of Washington Business; Charlie Brown, Washington Oil Marketers Association; Brad Bell, Connell Oil; Dan Averill, Reisner Distributing.