

HOUSE BILL REPORT

ESHB 2504

As Passed House:
February 13, 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:

Committee Activity:

Technology, Energy & Communications: 1/14/10, 1/28/10 [DPS];
Transportation: 2/3/10, 2/8/10 [DPS (TEC)].

Floor Activity:

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

Brief Summary of Engrossed Substitute Bill

- Changes the Renewable Fuel Standard (RFS) for biodiesel from a 2 percent of diesel sales standard to a minimum of 2 percent biodiesel fuel by volume standard.
- Eliminates the RFS for ethanol.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives McCoy, Chair; Finn, Vice Chair; Haler, Assistant Ranking Minority Member; Carlyle, Eddy, Hudgins, Jacks, Morris, Nealey, Takko and Van De Wege.

Minority Report: Do not pass. Signed by 6 members: Representatives Crouse, Ranking Minority Member; Condotta, Hasegawa, Hinkle, McCune and Taylor.

Staff: Kara Durbin (786-7133).

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.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Clibborn, Chair; Liias, Vice Chair; Armstrong, Dickerson, Eddy, Finn, Flannigan, Moeller, Morris, Nealey, Rolfes, Sells, Simpson, Springer, Takko, Upthegrove, Williams and Wood.

Minority Report: Do not pass. Signed by 9 members: Representatives Roach, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Driscoll, Ericksen, Johnson, Klippert, Kristiansen and Shea.

Staff: Debbie Driver (786-7143).

Background:

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 with petroleum diesel or used as a pure product (known as B100).

Renewable Fuel Standards.

A Renewable Fuel Standard (RFS) requires that a certain percentage of motor fuel be obtained from renewable sources such as ethanol or biodiesel. Several states have a RFS or have passed legislation requiring state agencies to use biodiesel in their operations.

In 2005 the U.S. Environmental Protection Agency (EPA) was directed to design a federal RFS program. This RFS program requires a minimum volume of renewable fuel be used each year in the transportation sector. These volumetric requirements increase annually and range from a 12.95 billion gallon requirement in 2010 to a 36 billion gallon requirement in 2022. Beginning in 2013 a certain percentage of the total renewable fuels requirement must be met with biomass-based biodiesel, cellulosic biofuels, and advanced biofuels.

In 2006 Washington adopted a state RFS for biodiesel and ethanol use. Certain special fuel licensees must provide evidence to the Department of Licensing (DOL) that at least 2 percent of the total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel. This requirement will increase to 5 percent 180 days after the Director of the Washington State Department of Agriculture (WSDA) determines that in-state feedstocks and oil-seed crushing capacity can meet a 3 percent requirement.

In addition, at least 2 percent of the total gasoline sold in the state must be denatured ethanol. Motor vehicle fuel licensees must provide evidence to the DOL that this standard has been met. This ethanol requirement may be increased if: (1) the Director of the Department of Ecology determines that this increase would not jeopardize the state's continued attainment of federal Clean Air Act standards; and (2) the Director of the WSDA determines that the state can economically support the production of higher ethanol blends.

To date, the WSDA has not made a determination that in-state feedstocks and oil-seed crushing capacity can meet a 3 percent requirement.

Biofuel and Electricity Use by State Agencies.

State agencies are required to use a minimum of 20 percent biodiesel as compared to total volume of all diesel purchases made by the agencies. During the 2009-2011 biennium, the Washington State Ferries (WSF) are required to use a minimum of 5 percent biodiesel as compared to total volume of all diesel purchases by the WSF if the per gallon price of B5 (5 percent biodiesel) does not exceed the per gallon price of diesel by more than 5 percent.

By June 1, 2013, 40 percent of state agency and local government fleet fuel use must be met by electricity or biofuels, to the extent determined practicable by the Department of Commerce (Commerce). Beginning June 1, 2015, 100 percent of state agency and local government fleet fuel use must be met by electricity or biofuels, to the extent practicable. The Commerce may suspend the 100 percent requirement after 2015 if it determines that 100 percent usage is not practicable.

Summary of Engrossed Substitute Bill:

Changes to the Renewable Fuel Standard.

All diesel fuel sold or offered for sale in western Washington must contain at least 2 percent biodiesel fuel or renewable diesel fuel by volume beginning January 1, 2011. In eastern Washington, all diesel fuel sold or offered for sale must contain at least 2 percent biodiesel fuel or renewable diesel fuel by volume beginning July 1, 2011. The Renewable Fuel Standard for ethanol is eliminated.

If the Director of the Washington State Department of Agriculture (WSDA) determines that at least 15 million gallons of biodiesel have been produced over the preceding 12 months using feedstock grown or produced in the state, then the requirement will increase to 5 percent biodiesel fuel or renewable diesel fuel by volume.

These requirements do not apply to fuel sold or offered for sale for use by railroad locomotives or marine engines, except for the Washington State Ferries.

Biodiesel Use by State Agencies.

The requirement under current law for state agencies to purchase a minimum of 20 percent biodiesel as compared to total diesel purchases is removed. State agencies are no longer required to purchase 20 percent biodiesel.

The exemption for the Washington State Ferries (WSF) from the 20 percent biodiesel requirement for the 2009-11 biennium is removed. The WSF are no longer required to purchase 5 percent biodiesel for the 2009-11 biennium.

The requirement that state agencies use a minimum of 2 percent biodiesel as an additive to ultra-low sulfur diesel for lubricity is removed.

Motor Fuel Standards.

The Director of the WSDA must adopt by rule, standards for motor fuel. These standards may be part or all of the American Society for Testing and Materials (ASTM) standards, standards from the National Institute of Standards and Technology (NIST) handbook, or U.S. Environmental Protection Agency standards.

Reporting.

Each biodiesel producer in Washington must document the quantity of biodiesel produced, including the quantity produced from agricultural and nonagricultural feedstocks grown in the state.

The Director of the WSDA will have access to these records and may adopt rules to implement the documentation requirements. Any failure to maintain records or submit production information to the WSDA may result in penalties.

Biodiesel production information that can be identified to a particular business is not subject to public disclosure. Provisions that prohibit the Department of Licensing from releasing fuel information are removed.

The Department of Agriculture must report to the Governor and the Legislature by December 1, 2011, regarding the impacts of this bill on fuel suppliers, distributors, and retailers in the state, including any difficulties that may have arisen regarding biodiesel fuel quality or availability.

Other Changes.

The 2008 biodiesel and ethanol supply determination requirements are removed. The Biofuels Advisory Committee is terminated.

Legislative findings and intent pertaining to the purchase of biodiesel that is derived from in-state feedstocks by state agencies are specified.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Technology, Energy & Communications):

(In support) Our current renewable fuel standard has resulted in confusion. Administration and enforcement of the standard adopted has not been effective. This is an opportunity to clarify the state's policy.

Our state imports and burns over 5 million gallons of fuel a year. This usage translates into 52 million tons of carbon dioxide emitted in our state. Further regulations of carbon dioxide

and greenhouse gases are coming. This is an important step towards combating climate change in our state and it is part of our clean energy future.

Our state did make a commitment four years ago to biofuels in order to support the agriculture industry, the environment, and the local economy. Local companies stepped up to the challenge and invested tens of millions of dollars in order to begin producing biofuels here. Canola has proven to be an important rotational crop that improves wheat yields by preventing disease.

The biofuels industry has made significant investments to develop the facilities and capacity to meet the biofuel demand. Oregon has made a commitment to the biofuels industry and their approach has been effective. The logistical concerns with biofuels can and have been overcome. This bill addresses mechanical issues with the current renewable fuel standard.

The premium on B2 is relatively small, only 1 to 2 cents per gallon. This would cost purchasers \$8 more a year, which will not result in economic hardship. Performance concerns with biodiesel are relatively minor. Semi-trucks are running on B40 with one fuel filter change and have had no problems.

(Opposed) We do support the development of biofuels and feedstocks, but not the approach taken in this bill. We also support removing regulatory barriers and creating incentives for biofuels. In 2006 the Legislature and the Governor committed the state to lead in this area and use 20 percent biodiesel by June of 2009. The largest public consumer of diesel is the Department of Transportation (DOT) through the WSF system, and their use of biodiesel has gone a long way towards the state meeting its current 2 percent volumetric biodiesel standard. Last year's Transportation Budget let the WSF off the hook by exempting them from the 20 percent requirement for the 2009-11 biennium and only requiring them to use 5 percent biodiesel.

State government has not lived up to its promise of using 20 percent biodiesel in its state fleet. Current usage by the state is at about 7 percent. One of the conditions of the exemption for the WSF is that DOT had to conduct an analysis to determine whether the price of B5 was 5 percent or higher than the price of regular diesel. If the price was less than 5 percent, then the WSF was supposed to use 5 percent biodiesel. The analysis showed the differential was less than 5 percent, but still the WSF is only using 1 percent biodiesel in their ferries. The federal renewable fuel standard will subsume any state standard, thus making a state standard unnecessary. This standard affects passenger vehicles primarily, with large users being exempt. There are serious penalties available under the bill, including the possibility of jail time. This seems unfair when state agencies are currently not in compliance with the law.

We are concerned about price spikes. If there is a supply interruption, this could cause a sharp price increase for biodiesel. There needs to be a way to suspend the standard without waiting for the Governor to make a determination. Some feedstocks used to produce biodiesel are more prone to gelling than others. We are concerned about product reliability.

This bill limits the consumer's choice of fuels and requires that every gallon of diesel, including dyed diesel, would need to contain biodiesel. We have experience working with

Oregon's mandate, which is similar to the one in this bill. Requiring 2 percent biodiesel in every gallon could cause fuel filters to clog and will cost consumers more money. You may want to revise how the hazardous substance tax is assessed so that it is not, in some instances, paid twice.

Staff Summary of Public Testimony (Transportation):

(In support) The bill provides a more efficient and effective means of implementing the existing policy regarding renewable fuel content. Moving from a volumetric to a universal content requirement mirrors Oregon's requirement and creates a more uniform policy framework for regional diesel distribution and consumption. The debate about biodiesel fuel is not about quality but about cost and fuel pricing is and will continue to be highly volatile. Currently, the price differential between biodiesel and diesel is small and trend data shows that as the price of petroleum increases, the price differential between petroleum and biodiesel decreases. Since the initial adoption of the renewable fuel standards in 2006 there has been much confusion between distributors, biodiesel researchers, and consumers. This proposal would provide much needed clarification and shows continued support to Washington's biofuel industry. It provides encouragement for state energy freedom projects including the support of in-state grown oil seed crops.

This bill is about commitment and credibility. Four years ago when the state enacted renewable fuel standards (RFS) legislation they were making a commitment and challenging the private sector to make the investment in crop development. The private sector responded yet many of the companies that started out in response to this commitment no longer exist. This is because the state hasn't met their commitment to provide the market certainty needed to survive. This bill creates a more stable market place that will result in fully reduced prices. Additionally, biodiesel quite dramatically increases lubricity of ultra-low sulfur diesel. Even a 2 percent blend means they do not have to add a lubricity additive.

The original legislation went a long way to accomplishing its original goals. The current bill recognizes that biodiesel relies on a wide range of job creation and retention efforts in rural agriculture communities. State investments of about \$4.3 million and the investment of shareholders has created at least 19 jobs in the biodiesel arena. This bill reduces cost in the entire system as it treats all of the distributors fairly. The bill rightly includes the ferries in the state's biodiesel goals. When the infrastructure is installed to blend biodiesel at the ferry terminals, it will be a standard part of fuel consumption in the state. This, by its nature, will make biodiesel more available, increase the supply, and therefore decrease costs. Suppliers in the state are logistically located well and are well-positioned to provide biodiesel to the Northwest.

Increasing locally produced biodiesel is still a critical component of the state's plan to meet climate change goals. The bill also addresses the importance of growing a clean energy economy. Washington should invest in Washington farm-based resources to keep money in Washington farms and to invest in Washington businesses. Using local feedstocks and local biodiesel refineries will lead consumers away from the current fossil-fuel roller coaster as well as reduce the impacts of global warming.

(Opposed) The reason we oppose this bill is due to price. Often the price for biofuel ranges between 2 to 4 cents per gallon over diesel. This creates a difficult scenario for those in the trucking industry. The bill is a departure from the poor principle adopted in 2006 which was a departure from guaranteeing consumer choice of fuel. When eliminating consumer choice is coupled with two other issues, it creates an awkward policy choice. The first issue is the state's failure to implement the current B20 requirement, and the second is the exemption of the largest private fuel consumer in the state. The general public will be required to purchase biofuel, and the state and largest private sector consumer will not.

The 2006 legislation's volumetric measures are preferred and the state should let the market continue to sort itself out. Mandates are not good signals for markets, price is the primary signal for success. There are some customer issues including carbonization of plugs in filters can occur, water can be held in suspension in some bioblends, and filters need to be cleaned almost immediately when introduced into vehicles. The future B5 goal in the bill would require additional additives as well as an increase in costs of between 3 and 5 cents per gallon. In Oregon, a similar policy may result in a customer spending up to \$16,000 in costs related to the mandate.

The federal government's RFS rules require 1.15 billion gallons be used in 2010. The bill before you will complicate the rules and make things confusing for the sector. Companies are entering into agreements to build renewable diesel plants which will produce 250,000 gallons a day of renewable diesel. Renewable diesel has the same chemical properties as diesel and jet fuel and requires no segregation. One advantage of the renewable diesel is that the ferries would not have to build any inline blending infrastructure.

Persons Testifying (Technology, Energy & Communications): (In support) Representative Eddy, prime sponsor; Jerry Smedes, GenX; Cameron Hewes, General Biodiesel; Steve Starr, Inland Empire Oilseeds; Todd Ellis, Imperium Renewables; Troy Goodman, Sound Refining; Jessica Finn Coven, Climate Solutions; and Mary Beth Lang, Washington State Department of Agriculture.

(Opposed) Chris McCabe, Association of Washington Business; Greg Hanon, Western States Petroleum Association; Tim Hamilton, AUTO; Charlie Brown, Washington Oil Marketers Association; and Todd Shaw, Vancouver Oil Company.

Persons Testifying (Transportation): (In support) Representative Eddy, prime sponsor; Peter Moulton, Department of Commerce and the Governor's Office; Kirk Robinson, Washington State Department of Agriculture; Jerry Smedes, Imperium Renewables, Gen-X Energy Group, and General Biodiesel; Steve Starr, Inland Empire Oilseeds; Scott Dilley, Washington Farm Bureau; and Miguel Perez, Climate Solutions.

(Opposed) Larry Pursley, Washington Trucking Association; Greg Hanon, Western States Petroleum Association; Charlie Brown, Washington Oil Marketers Association; and Kip Knudson, Tesoro Refining.

Persons Signed In To Testify But Not Testifying (Technology, Energy & Communications): None.

Persons Signed In To Testify But Not Testifying (Transportation): None.