

HOUSE BILL REPORT

HB 2738

As Reported by House Committee On:
Technology, Energy & Communications
Transportation

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: Representatives Holmquist, Dunshee, Dunn, Chase, Grant, Rodne, Haler, Kessler, Kilmer, Green, Sells, Kenney, McCoy, Simpson, Roberts, Ormsby, Moeller, Morrell, Linville, Hudgins, McCune and Hinkle; by request of Governor Gregoire.

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/17/06, 1/26/06 [DPS];
Transportation: 2/2/06, 2/6/06 [DPS(TEC-A TR)].

Brief Summary of Substitute Bill

- Establishes minimum fuel content requirements for biodiesel and ethanol.
- Requires the Department of Agriculture to adopt fuel quality standards for biodiesel quality and rules for ethanol and biodiesel.
- Creates and defines the responsibilities of the Biofuels Advisory Committee.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Morris, Chair; Kilmer, Vice Chair; Haler, Assistant Ranking Minority Member; Ericks, Hankins, Hudgins, P. Sullivan, Sump, Takko and Wallace.

Minority Report: Without recommendation. Signed by 2 members: Representatives Crouse, Ranking Minority Member and Nixon.

Staff: Scott Richards (786-7156).

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 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 United States, the majority of ethanol is made from corn.

The most common blends are:

- E10 - 10 percent ethanol and 90 percent unleaded gasoline. The use of E10 is approved for 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 four million FFVs are on roads in the United States. 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's 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.

The National Technology Transfer and Advancement Act (NTTAA) became law in 1996. The NTTAA directs federal agencies with respect to their use of private sector standards and conformity assessment practices. The objective of the NTTAA is for federal agencies to adopt private sector standards, wherever possible, in lieu of creating proprietary, non-consensus standards. The NTTAA directs the NIST to bring together federal agencies, as well as state and local governments, to achieve greater reliance on voluntary standards and decreased dependence on in-house standards.

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

Washington State Department of Agriculture

The Washington State Department of Agriculture (WSDA) Weights and Measures Program promotes marketplace equity in commercial transactions through testing and inspecting commercial devices, price verification, package inspection, public education, monitoring fuel quality and investigating complaints. The WSDA Metrology Laboratory maintains the standards for mass, volume and length in order to provide reliable measurement services for government and industry.

Summary of Substitute Bill:

A minimum fuel content requirement is established for biodiesel and ethanol.

Minimum Fuel Content Requirement for Biodiesel

All diesel fuel sold or offered for sale in Washington shall contain at least 2 percent biodiesel fuel by volume when the Director of Agriculture determines that a predominant portion of the feedstock to satisfy the 2 percent requirement was grown in Washington, or the date November 30, 2008, has passed.

If the Director of Agriculture determines that both in-state oil seed crushing capacity and feedstock grown in Washington can satisfy the 2 percent requirement, all diesel fuel sold or offered for sale in Washington must contain at least 5 percent biodiesel fuel by volume. Blenders and retailers have six months to meet the 5 percent requirement.

Minimum Fuel Content Requirement for Ethanol

All gasoline sold or offered for sale in Washington shall contain at least 2 percent denatured ethanol by volume, beginning December 1, 2008.

If the Director of Ecology determines that ethanol content greater than 2 percent 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 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 all gasoline sold or offered for sale in Washington shall contain up to a maximum of 10 percent of denatured ethanol by volume. Blenders and retailers will have six months from when the Director of Agriculture makes their determination to meet the new minimum content requirement.

Rules

The Director of Agriculture shall adopt rules for enforcing and carrying out the minimum fuel content requirement for biodiesel and ethanol.

Fuel Quality Standards

The Director 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.

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 Testing

The Director 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.

Labeling

The Director of Agriculture shall require fuel pumps offering 2 percent biodiesel and ethanol blends to be identified by a label stating the percentage of biodiesel or ethanol.

Biofuels Advisory Committee

The Director of Agriculture shall establish a Biofuels Advisory Committee to advise the Director on implementing the minimum renewable fuel content requirements, including applicability to all users, and how the use of renewable fuel blends greater than 2 percent could achieve the goals of this act.

Reporting of Recommendations

The Director of Agriculture shall make recommendations to the Legislature and the Governor on the implementation of the minimum fuel content requirement by September 1, 2007.

Temporary Suspension of Minimum Fuel Content Requirement

The Director of Agriculture may suspend all or portions of the minimum renewable fuel content requirements based on a determination that the requirements are temporarily technically or economically infeasible.

Discontinuation of Minimum Fuel Content Requirement

If, by November 30, 2008, the Director of the Department 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, then the minimum fuel content requirements for biodiesel shall be null and void.

If, by November 30, 2008, the Director of the Department 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, then the minimum fuel content requirements for ethanol shall be null and void.

Substitute Bill Compared to Original Bill:

The proposed substitute makes the following changes to the bill:

Biodiesel

The minimum fuel content requirement for biodiesel is lowered from 2.5 percent to 2 percent. The effective date of minimum renewable fuel content standard for biodiesel is changed from July 1, 2007 to November 30, 2008. However, the Department of Agriculture may begin the requirement sooner when a predominant portion of the feedstock to satisfy the requirement is grown in Washington. If the Director of Agriculture determines that both in-state oil seed crushing capacity and feedstock grown in Washington can satisfy the 2 percent requirement, all diesel fuel sold or offered for sale in Washington must contain at least 5 percent biodiesel fuel by volume.

Ethanol

The minimum fuel content requirement for ethanol is lowered from 2.5 percent to 2 percent. The effective date of minimum renewable fuel content standard for biodiesel is changed from July 1, 2007 to December 1, 2008. Technical language related to the Clean Air Act is clarified.

Fuel Quality Standards

The Department of Agriculture shall not exceed ASTM standards for diesel.

Labeling

The Director of Agriculture is required to identify on fuel pumps offering 2 percent biodiesel and ethanol blends by a label stating the percentage of biodiesel or ethanol.

Biofuels Advisory Committee

The Biofuels Advisory Committee (Committee) responsibilities are detailed. The Committee is to advise the Director of Agriculture on implementing the minimum renewable fuel content requirements including applicability to all users, and how the use of renewable fuel blends greater than 2 percent could achieve the goals of this act.

Reporting of Recommendations

The Director of the Department of Agriculture shall make recommendations to the Legislature and the Governor on the implementation of this act by September 1, 2007.

Discontinuation of Minimum Fuel Content Requirement

A null and void section is added to the substitute bill for both fuels. 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, then the minimum fuel content requirements shall be null and void.

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, then the minimum fuel content requirements shall be null and void.

Appropriation: None.

Fiscal Note: Requested for substitute on January, 27, 2006.

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

Testimony For: A renewable fuel standard will complement other Washington policies already in place such as incentives or proposed policies for infrastructure investments. Washington biofuel producers need every tool in the toolbox to move forward. The renewable fuel standard is an incentive to oil interests to provide Washington producers and manufacturers market access. This bill will help ensure biofuel producers have access to market shares. Also, it will be a stimulus to our economy. It is critical that Washington farmers are at the table from the beginning. This a perfect storm of a broad range of interests coming together. Growers need a date certain so growers can have the confidence to get started. Producers need a fair economic return and need to be competitive on the market. Mandates need to be for in-state crops. 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. This bill provides an opportunity to breach the Cascade divide between Washington consumers and products. The bill helps to jumpstart a new industry. People of the state want a renewable fuel standard. Farmers and manufacturers need

economies of scale to help bring the cost of down. The Legislature should act quickly, as farmers are paying record high prices for diesel. This bill is about moving toward energy independence. Also, it's about providing opportunity for Washington farmers and small business and diversifying rural economies while providing environmental benefits. Policies such as the renewable fuels standard will help farmers stay on the farm and viable. Palm oil coming from China will not help in-state agriculture. This is bipartisan effort to help agriculture and reduce reliance on fossil fuels. If you bring the price of biodiesel down, people will choose to buy biodiesel over regular diesel.

(With concerns) We need to make sure that the small farmer is supported. 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 over a 5 percent blend.

Testimony Against: Restricting feedstocks to Washington grown will slow the industry down. The 2 percent requirement should not be tied to in-state oil production but the 5 percent could be. A regional approach may be better, allow neighboring Northwest states to supply some of the feedstocks. Government should not be in the business of creating demand. Supply and demand is best left to the free market. Incentives are more supportable than mandates. Incentives are great, mandates are a distortion in the market. Policy makers' hearts are in the right place in assisting farmers and users of biodiesel, but the mandate could lock out the high blend market by sending feedstocks to be blended into petroleum diesel. This could drive up the cost of biodiesel for those who want to use high blends. It may be best to require state agencies and municipal governments to use a higher blend of biodiesel around 20 percent that could help meet the goals of this legislation. Railroad companies may need an exemption, because manufacturers of locomotive may void warranty if there are quality issues.

Persons Testifying: (In support) Representative Janea Holmquist, prime sponsor; Representative Brian Sullivan; David Bauermeister; Jackie Tee; Mike Conklin, Cooperative Agriculture and Palouse Bio, LLC; Jim Jesernig; Washington Association of Conservation Districts; Adrian Higgenbotham, McKay Seed Company; Fred Fleming; John Plaza, Seattle Biofuels; Dan Lambert, Agriculture and Rural Caucus; Matt Steuerwalt, Governor's Office; Michael Massey; Terry Morgan, Evergreen Renewable Technology; Tom Koehler; Pacific Ethanol; Clifford Traisman, Washington Environmental Council/Washington Conservation Voters; Rich Feldman, Apollo Alliance of Washington; Jeff Stephens, Washington Biodiesel; Patrick Mazza, Climate Solutions; John Stuhlmiller, Washington Farm Bureau; Zachary Ames, University of Washington; and Dave Warren, Washington Public Utilities District Association.

(With concerns) Randy Ray; Pacific Sea Processing Association and Pacific Merchant Shipping Association; and Scott Hazelgrove, Washington State Auto Dealers Association.

(Opposed) Chris McCabe, Association of Washington Businesses; Bill Kidd, Washington State Petroleum Association; Marty Mead and Cameron Carter; Mead Biofuel; and Bill Stauffacher, BNSF Rail.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill by Committee on Technology, Energy & Communications be substituted therefor and the substitute bill as amended by Committee on Transportation do pass. Signed by 21 members: Representatives Murray, Chair; Wallace, Vice Chair; Woods, Ranking Minority Member; Skinner, Assistant Ranking Minority Member; Appleton, Campbell, Dickerson, Flannigan, Hankins, Holmquist, Hudgins, Jarrett, Kilmer, Lovick, Morris, Rodne, Simpson, B. Sullivan, Takko, Upthegrove and Wood.

Minority Report: Do not pass. Signed by 7 members: Representatives Buck, Clibborn, Curtis, Ericksen, Nixon, Schindler and Shabro.

Staff: Beth Redfield (786-7347).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Technology, Energy & Communications:

Businesses selling fuel at the distributor level in the state of Washington must provide evidence to the Department of Licensing that at least 2 percent of total diesel fuel sales were biodiesel fuel. Once it is determined that in-state seed crushing capacity and feedstock grown in-state can satisfy the 2 percent requirement, businesses selling fuel at the distributor level must provide evidence to the Department of Licensing that at least 5 percent of total diesel fuel sales were biodiesel fuel. The 2 percent biodiesel requirement must be implemented when biodiesel produced in the state from in-state grown feedstocks can satisfy the full 2 percent requirement rather than a predominant portion. The 5 percent biodiesel requirement must be implemented when biodiesel produced in the state from in-state oil crushing capacity and state grown feedstocks can supply 3 percent threshold rather than the 2 percent requirement. The state Director of Agriculture shall require fuel pumps offering any blend of biodiesel or ethanol to be identified by a label stating the percentage of biodiesel or ethanol.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill is one leg of a three legged stool, the other legs are state tax incentives and funding for infrastructure development. This leg is the fuel content requirement. The cost to the consumer will only be a few cents extra per gallon. Issues that have come up in Minnesota are due to fuel quality standards not being met, and that is

provided for in the bill. The benefits of the bill include economic development, cleaner air, and reduced oil dependence. The bill is a product of business, agriculture and environmentalists working together. Farmers are looking for alternative crops that are viable, especially for dry land. Additionally, farmers need a rotation crop for wheat. Regarding warranty issues, all major manufacturers endorse biodiesel. Fuel quality is important and the petroleum industry has been meeting standards for a long time. Biodiesel can meet these standards, too.

Testimony Against: There isn't a sufficient transition from the 2 percent content requirement to the 5 percent content requirement. When in-state producers are supplying a predominant share of the 2 percent, the jump to 5 percent will be too fast. Out of state producers will have to serve the new requirement and may put in-state producers out of business. For trucking and rail companies, warranties are voided if the fuel blend is not satisfactory to the manufacturer. The trucking industry does not yet know what the maintenance costs will be due to this requirement. Support the concepts of fuel independence and supporting agriculture, but mandates are not the way to go. An incentive based approach would be better.

Persons Testifying: (In support) Representative Holmquist, prime sponsor; Jim Armstrong, Spokane Conservation District; Jim Jesering, Washington Association Conservation District; Rich Feldman, Apollo Alliance of Washington; Neil Hartman, Washington Building and Construction Trades; Clifford Traisman, Washington Environmental Council/Washington Conservation Voters; John Plaza, Seattle BioDiesel; Matt Steuerwalt, Governor's Office; John Stuhlmiller, Washington Farm Bureau; and Chris McCabe, Association of Washington Businesses.

(Opposed) Larry Pursley, Washington State Trucking Association; Duke Schaub, Association of General Contractors - Washington; Rick Wickman, Columbia River Steamship Association; Bill Stauffacher, Burlington Northern Santa Fe Rail; Steve Bulray, Washington Aggregate Concrete Association; and Dan Riley, Tosoro Oil.

Persons Signed In To Testify But Not Testifying: None.