

# SENATE BILL REPORT

## ESHB 2738

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As Reported By Senate Committee On:  
Water, Energy & Environment, February 22, 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:** House Committee on Technology, Energy & Communications (originally sponsored by 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:** Passed House: 2/10/06, 70-28.

**Committee Activity:** Water, Energy & Environment: 2/16/06, 2/22/06 [DPA, DNP].

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Majority Report:** Do pass as amended.

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

**Minority Report:** Do not pass.

Signed by Senators Morton, Ranking Minority Member; Delvin, 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 RFS 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.

**Summary of Amended 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 occurs: (1) At least 180 days after the Director of the DOA determines that feedstock grown in Washington can satisfy the 2 percent requirement and publishes the decision in the Washington State Register; 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. The new standards do not take effect until at least 180 days after the decision is published.

Beginning December 1, 2008, certain special fuel licensees must provide evidence that gasoline sold or offered for sale in Washington meets a standard of at least 2 percent denatured ethanol. The Director may require either of the following methods to meet the standard: (a) by a requirement that every unit of gasoline sold or offered for sale in Washington be blended to meet or exceed the standard; or (b) by a requirement that the total gasoline volume sold or offered for sale in Washington by the licensee on a monthly, quarterly, or annual basis meets or exceeds the standard. The advisory committee must advise the Director on the methods, and the Director must adopt a rule by December 1, 2007. Licensees are given up to one year to comply with the new rule.

All gasoline sold or offered for sale in Washington must contain at least 2 percent, up to a maximum of 10 percent, of denatured ethanol if: (a) 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 (b) 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 adopt rules for enforcing and carrying out the renewable fuels standard for both biodiesel and ethanol. Violations are subject to existing civil, but not criminal, penalties.

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. DOA must adopt a fuel stability standard when national or international standards are available.

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, environmental, and economic issues. Additional specified duties are included. The Director must make recommendations to the Legislature and the Governor by September 1, 2007.

Washington State University (WSU) extension program must create a consumer education and outreach program regarding the use of biodiesel.

State agencies must, beginning June 1, 2009, use a minimum of 20 percent biodiesel as compared to all diesel purchases for vehicles and construction equipment. All state agencies must file quarterly reports with the Department of General Administration (GA) identifying any problems encountered with the use of biodiesel. GA must assist state agencies seeking to meet the biodiesel fuel mandate. GA may use 10 year contracts when purchasing biodiesel from in-state suppliers who use predominately in-state feedstock. GA analyzes reports of problems with biodiesel and files regular reports with the Governor and Legislature. The Governor must consider these reports in determining whether to temporarily suspend fuel content requirements.

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 the Governor issues an executive order suspending all or part of the statewide mandate for biodiesel, a second order may be issued suspending all or part of the state agency provisions mandating the use of biodiesel.

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 20 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.

**Amended Bill Compared to Original Bill:** The amended bill adds intent language; provides that biodiesel at the 2 percent level is a volumetric standard; requires licensees to report their levels of biodiesel sales; adds "special fuel users" to the list of exempt reporters; requires DOA to publish its determinations in the Washington State Register when increasing the standard; and changes to the renewable fuel standards take effect no sooner than 180 days after such determination are published. DOL will set the reporting schedule for special fuel licensees. The administrative rules may include topics recommended by the advisory committee. DOL adopts rules on confidentiality.

Ethanol is required in gasoline at 2 percent. DOA must implement this standard by December 1, 2007. The advisory committee must provide its recommendations to the director no later than June 1, 2007. DOA's rule must implement one of two specified alternatives.

The existing criminal penalties do not apply to the reporting requirements, but existing civil penalties may be imposed. The fuel standards are separated into two sections. The standards must also include fuel stability. Additional duties are provided for the biofuels advisory committee. A WSU biodiesel consumer education and outreach program is included. State agency biodiesel mandates are included. Agencies must report quarterly on any problems with biodiesel. GA must assist agencies in fuel purchases and may use long-term contracts under specific conditions. Reports from state agencies must be compiled and analyzed within 60 days.

Governor's executive orders may be used under certain conditions to suspend all or part of the state agency provisions mandating the use of biodiesel. The statewide goal for use of ethanol made from in-state feedstock is raised to 20 percent of all gasoline. Definitions are added and clarified. A severability clause is added. Other minor technical corrections are made in the striker.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Testimony For:** This bill was proposed by farmers who need assurances of minimum markets for biodiesel before they can make the investments necessary to grow the crops and process the oils. This bill is part of a package that will create markets and provide financial assistance. The bill will create economic benefits, provide cleaner air, and reduce the state's dependency on petroleum products.

**Testimony Against:** The mandates created by this bill are unnecessary. The markets will move to biodiesel as the fuel economically feasible and when consumers gain acceptance of the fuel. The state should require the state ferries to use biodiesel. The ethanol fuel standard should be a volumetric standard, providing more flexibility for the sellers of the fuels and helping protect air quality better. Biodiesel fuel quality and stability are big concerns. The focus should be on the state's own fleets.

**Who Testified:** PRO: Representative Jenea Holmquist, prime sponsor; Representative Hans Dunshee; John Plaza, Seattle Biodiesel; Bill Warren, Farm Bureau; K.C. Golden, Climate Solutions; Linda Graham, Spokane County Conservation District; Mike Conklin, Palouse-Bio LLC; Tom Koehler, Pacific Ethanol; Dr. J. Greig, NW Biofuels.

CON: Dan Riley, Tesoro.

Signed in, Unable to Testify & Submitted Written Testimony: CON: Greg Hanon, Western States Petroleum Association; Chris McCabe, Association of Washington Business.