

SENATE BILL REPORT

E2SHB 1303

As Reported By Senate Committee On:
Water, Energy & Telecommunications, March 30, 2007
Ways & Means, April 2, 2007

Title: An act relating to providing for the means to encourage the use of cleaner energy thereby providing for healthier communities by reducing emissions.

Brief Description: Encouraging the use of cleaner energy.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Dickerson, B. Sullivan, Jarrett, Linville, Priest, Appleton, Pedersen, Kenney, Sells, Morrell, Lantz, O'Brien, Chase, Eickmeyer, McCoy, Haigh, Rolfes, Hurst, Eddy, Springer, Schual-Berke, Fromhold, Moeller, Hunt, Goodman, Williams, Darneille, Kagi, Lovick, Campbell, Dunshee, Sommers, Simpson, Hunter, Roberts and Miloscia).

Brief History: Passed House: 3/10/07, 79-18.

Committee Activity: Water, Energy & Telecommunications: 3/21/07, 3/30/07 [DPA-WM, DNP, w/oRec].

Ways & Means: 4/02/07 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Poulsen, Chair; Fraser, Marr, Oemig, Pridemore and Regala.

Minority Report: Do not pass.
Signed by Senators Honeyford, Ranking Minority Member and Delvin.

Minority Report: That it be referred without recommendation.
Signed by Senator Holmquist.

Staff: Margaret King (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Regala, Rockefeller and Tom.

Minority Report: Do not pass.

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.

Signed by Senator Honeyford.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland, Carrell, Parlette, Roach and Schoesler.

Staff: Kirstan Arestad (786-7708)

Background: Diesel Emissions Retrofits and Funding: The Air Pollution Control Account serves as a source of funding to the Department of Ecology (Ecology) and local air pollution control authorities. Within the Air Pollution Control Account exists a segregated subaccount that, until July 1, 2008, receives 58.12 percent of the revenue generated by certain fees on vehicle certificates of ownership. After July 1, 2008, the revenue from these fees are scheduled to be redirected into the Department of Transportation's Road Construction Nickel Account.

Money in the segregated subaccount of the Air Pollution Control Account must be used in certain ways. Eighty-five percent of the revenue in the subaccount must be distributed to the local air pollution control authorities in proportion to the revenue generated for the subaccount from vehicles within the boundaries of the individual authorities. The 15 percent not transferred to local air authorities remains with Ecology. The local air authority receiving the funding must use 85 percent of that money to retrofit school buses or other publically-owned pieces of diesel equipment with exhaust emission controls or to fund infrastructure that will allow school buses to use alternative fuels.

Air Pollution Control at Ports: Port districts are expressly permitted to acquire and operate facilities for the control or elimination of air pollution. Once acquired or constructed, a port district may offer others the use of the facility under terms and conditions set by the port commissioners. However, a port district may not use any tax revenues in providing pollution control facilities and may not offer use of the pollution control facility, if a similar facility is available for use in the area without the consent of the other facility.

Energy Freedom Program and Alternative Fuels: The Energy Freedom Program is a program within the Washington State Department of Agriculture (WSDA) to aid the development of a biofuels industry in Washington. As part of the Energy Freedom Program, the WSDA can award grants and loans to applicants interested in advancing the state's biofuel industry.

Biofuel Use at State Agencies: All state agencies are encouraged to use a fuel blend of 20 percent biodiesel and 80 percent petroleum diesel. Starting in 2006, agencies were required to use biodiesel as an additive to any ultra-low sulfur diesel that they may be using. State agencies using biodiesel fuel are required to file quarterly reports with the Department of General Administration (GA) that documents their use of the fuels and any problems that arose in their use. By 2009, all state agencies are required to use a minimum of 20 percent biodiesel.

Summary of Engrossed Second Substitute Bill: Diesel Emissions Retrofits and Funding: The Office of the Superintendent of Public Instruction (OSPI) is directed to implement a school bus replacement incentive program that funds up to 10 percent of the cost of new school buses purchased by a school district. In order to qualify for the 10 percent of cost reimbursement, the bus purchased by a school district must be model year 2007 or newer and must be replacing a bus from model year 1994 or older. Any buses that are replaced under the

OSPI incentive program must be surplus. The school district must provide written documentation that the surplus bus was sold for scrap and not used for future road use. In addition, the authority to use the funding provided for the existing bus emissions retrofit program is expanded from only publicly-owned diesel equipment to both publicly and privately-owned diesel equipment.

Air Pollution Control at Ports: The term "air pollution control facility" is specified to not include air quality improvement equipment that provides emission reductions for engines, vehicles, and vessels. This change allows port districts to use tax revenue to support this type of equipment and to offer the equipment to parties outside of the port district even if similar equipment exists in the area.

Energy Freedom Program and Alternative Fuels: The Energy Freedom Authority is created within the Department of Community, Trade, and Economic Development (CTED), and the administrative home of the Energy Freedom Account (Account) is moved to CTED from the WSDA. The position of Energy Freedom Coordinator is created within the Energy Freedom Authority. The Energy Freedom Coordinator is responsible for coordinating state efforts to develop a biofuels market, developing a plan for a complete biofuels infrastructure supply chain for public-sector end users, certifying that biofuels used by state and local government have been produced exclusively from recycled products or Washington feedstocks, working to develop biofuel fueling stations, and developing a pilot project for providing E85 fueling capacity at appropriate intervals along Interstate 5, Interstate 90, and Interstate 83.

The Energy Freedom Program is expanded to include grants or loans for refueling projects. The Energy Freedom Coordinator may award a grant or a loan if the proposed refueling project meets the following criteria:

- it will offer alternative fuel to the motoring public;
- it will not require continued state support;
- it is located within a green highway zone;
- it will contribute towards an efficient and adequately spaced alternative fuel refueling network along I-5, I-82, and I-90; and
- it will increase access to alternative fueling infrastructure for the motoring public along I-5, I-82, and I-90.

Cellulosic ethanol production facilities are expressly made eligible for assistance under the Energy Freedom Program. The term "cellulosic ethanol" is defined. The definition includes ethanol derived from lignocellulosic or hemicellulosic matter, which are two types of plant materials. To be eligible for assistance, the facility producing the plant matter must do so in a renewable or reoccurring fashion.

The Account is provided with criteria and goals to be considered when funding from the Account is distributed. These include assisting Washington farmers and businesses in developing a biofuel market. Any state agency receiving funding from the Account is prohibited from withholding more than 3 percent from the appropriation to pay for administrative overhead. Universities and other entities that are not state agencies are limited to withholding no more than 15 percent for administrative overhead. Conservation districts, public development authorities, and electric utilities are given direct authority to be involved with the biofuel industry in the state. The entities may enter into crop purchase contracts for

dedicated energy crops used for the production, selling, or distributing of biodiesel produced from Washington feedstock, cellulosic ethanol, and cellulosic ethanol blends.

Washington State University is directed to analyze and recommend models for possible implementation of biofuel incentive programs. Incentives to be studied include market incentives and research grant preferences.

Department of General Administration: The GA is given certain mandates relating to the fuel efficiency of the state's motor fleet. By the start of 2020, the state's motor fleet must have an annual fossil fuel consumption that is at least 25 percent less than the annual consumption for the year 2006. Part of this effort requires the GA, when replacing tires on a fleet vehicle other than a State Patrol Vehicle to, use replacement tires with an equal or superior rolling resistance of the tire being removed. The GA is provided with the discretionary authority to contract with public or private producers of biodiesel or ethanol, and to combine the needs of local governmental entities into the contracts. The GA may condition any contracts for alternative fuels to include provisions relating to fuel standards, crop origin, price, and delivery date.

Vehicle Electrification: The state is authorized to purchase power at its own expense that is used to recharge both private and public plug-in electric vehicles at state-owned buildings. In addition, a vehicle electrification work group (Work Group) is established. The Work Group members are to be appointed by the Governor and represent various interests and points of view. By the end of 2008, the Work Group must submit its findings on a number of subjects related to an expansion of plug-in vehicles in the state.

Biofuel Use at State Agencies: By the year 2015, all state agencies and local government subdivisions of the state must satisfy 100 percent of their fuel needs for all vessels, vehicles, and construction equipment from biofuels certified by the Clean Energy Coordinator as having been produced from recycled materials or Washington feedstocks. If after 2015, the Clean Energy Coordinator determines that the 100 percent biofuel use mandate is not practicable, then the Clean Energy Coordinator may suspend, delay, or modify the requirement until satisfied the requirement is deemed practicable.

Reports and Studies: In addition to the Work Group and the Washington State University biofuels incentive study, the CTED is directed to develop a framework for a regional approach to climate change, and the University of Washington is directed to complete a 50-year state climate change assessment and an analysis of the potential human health impacts of climate change.

EFFECT OF CHANGES MADE BY RECOMMENDED STRIKING AMENDMENT(S) AS PASSED COMMITTEE (Water, Energy & Telecommunications): The following changes are made:

- consolidated, revised, and simplified intent sections;
- existing provision in RCW that encourages state agencies to use a fuel blend of 20 percent biodiesel and 80 percent petroleum diesel for use in diesel powered vehicles and equipment is removed;
- consolidated and clarified the CTED rulemaking requirements. New goal that state agencies and local government meet 100 percent of their fuel usage needs with electricity or biofuel by 2015, "to the extent practicable," is modified to provide that

- determination of practicability is to be set by rules adopted by the CTED pursuant to a rule making process set out in section 204 of the act;
- by June 1, 2010, the CTED is required to adopt rules and define practicability with respect to the 100 percent fuel usage requirement set out in section 202. At a minimum, these rules must include criteria and consideration of factors to be considered in the rule making process;
 - changed the Energy Freedom Authority back to the Energy Freedom Program;
 - moved the Energy Freedom Program from the WSDA to the CTED. Existing loans or grants or those existing on July 1, 2007, must remain with the WSDA;
 - changed the definition of coordinator to someone appointed by the Director of the CTED;
 - replaced definition of "director" and changed it from the WSDA to the CTED;
 - clarified the role of the coordinator. The coordinator is to oversee, promote, develop, and encourage the biofuels market in the state of Washington. The coordinator is also to work with other state agencies and private sector to develop biofuel fueling stations and E85 fueling stations at appropriate intervals along routes 5, 82, and 90 throughout the state. A pilot program is added;
 - added the definition of alternative fuel, and coordinator;
 - removed language "that are made from recycled products, Washington feedstocks" from definition of biofuel.
 - changed "cellulosic ethanaol" definition to a "cellulose" definition;
 - replaced the term "alternative fuel" with "biofuel" throughout bill;
 - added provisions regarding mitigating impacts to climate change;
 - provided that eligible electric utilities may claim an annual 2 percent public utility tax credit for seven to 30 years for the cost of: (1) investments in energy efficiency measures; and (2) energy efficiency technologies, such as smart meters. Eligible electric utilities include municipal utilities, PUDs, and mutual corporations or cooperatives.
 - created the office of state climatologist; and
 - removed electrification task force.

EFFECT OF CHANGES MADE BY RECOMMENDED STRIKING AMENDMENT(S) AS PASSED COMMITTEE (Ways & Means): The Ways and Means striking amendment incorporates all the changes made by the Senate Water, Energy & Telecommunications Committee. It replaces the emission performance standards for electric utilities with the version in the House Appropriation's Committee's striking amendment on Engrossed Substitute Senate Bill 6001. It also clarifies the purposes of the public utility tax credit program and makes other technical changes and corrects grammatical errors.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Water, Energy & Telecommunications): PRO: Excessive dependence on fossil fuels jeopardizes Washington's economic security,

environmental integrity, and public health. This bill provides strategies for us to combat these threats. We as a state pay \$30 million per day on fossil fuels, which are produced outside of the state. Increasing the use of biofuels will benefit in-state businesses and reduce carbon emissions and other forms of air pollution. As a state, Washington exports millions of dollars for fossil fuels. The clean energy economy can be a large part of the state's economic future. Importantly, this bill assists the biofuels industry in growing in a way that does not use valuable food crops for energy production. The state should be a leader in reducing fossil fuel consumption, and a leader in ensuring that Washington crops are used for fuel production. Every year the environmental community organizes itself around four priorities and this bill is one of those priorities. The bill continues previous state efforts and is the next appropriate step. The bill does take money and we hope you will support it and agree with the provisions of the bill.

Expanded use of electric cars is within reach and there is a high potential that the market share for electric cars can be increased. It is important to study the opportunities and impacts of an expanded electrification market in the state.

Cleaning the state's school bus fleet is important because diesel emissions are the number one precursor to cancer in children, and offers the best cost-benefit ratio for cleaning the air.

Expanding the use of wood waste and other wood materials has the additional benefit of making the state's forests healthier. Forest health is degraded, in part, because the thinning of trees is not economically viable. A market for wood products in energy generation could produce the economic incentives necessary to make good silviculture economically viable.

We like the definitions because it doesn't limit biofuels expansion. We are working with large and small forest landowners on forest-based carbon storage for carbon marketing and the development of a biofuel industry in Washington and a carbon market. Use of woody debris and materials left after harvest and material that are thinned from overstocked in state can be used as an alternative fuel. Overcrowded and insect-infested trees in the state could be a resource for alternative fuel. We want to be included in the biofuel and carbon market; both activities result in additional cost to the Department of Natural Resources.

The type of wood used for energy is often wood waste and other underutilized products. Fuel can be generated from wood without compromising the current fiber market.

Ports are given the assistance in air pollution control that they need in order to sustain their growth and meet their air quality standards. This bill would compliment and enhance actions that the ports have already taken to reduce emissions.

OTHER: Counties provide ferries and have their own fleets of other vehicles so they don't have a uniform fleet replacement schedule like school buses. This bill is a mandate. Counties want to be part of a plan to replace vehicles but are worried that they can't meet requirements of seven years set out in the bill. Some cities have old rigs that they need to hold on to longer than seven years for financial reasons. What is the role of the "coordinator?" We want to work on language with proponents.

Persons Testifying (Water, Energy & Telecommunications): PRO: John Holbrook, AmmPower, LLC; Rich Feldman, Apollo Alliance of Washington; Kevin Raymond, Washington Biodiesel, Pacific Forest Trust, Earth Ministry; Tom Parker, Prometheus Energy;

Llewellyn Matthews, NW Pulp Paper Assoc; Allan Jones, OSPI; Jon Kroman, Greater Seattle Chamber of Commerce; Chuck Williams, King County; Mitch Denning, Alliance of Education Association; Mike Ryherd, Puget Sound Clean Air Agency; Dennis McLauren, Puget Sound Clean Air Agency; Beth Doglio, Climate Solutions; Cliff Traisman, Washington Environmental Council, Washington Conservation Voters.

OTHER: Peter Thelm, Washington State Transit Association; Ashley Probart, Association of Washington Cities; Julie Murray, Washington State Association of Counties.

Staff Summary of Public Testimony (Ways & Means): PRO: On behalf of the environmental community, this is one of the top four environmental bills. The underlying bill is essentially the same as Senate Bill 5586 which has already passed the Senate. The bill has broad support and is a work in progress. We encourage your support. The addition of Senate Bill 6001 into the Ways and Means Striking Amendment has the support of the environmental and utility companies.

Persons Testifying (Ways & Means): PRO: Collins Sprague, AVISTA Corporation; Miguel Perez-Gibson, Audubon Northwest Energy Coalition; Mike Ryherd, Puget Sound Clean Air Agency.