

B-Engrossed
House Bill 3463

Ordered by the Senate June 3
Including House Amendments dated April 29 and Senate Amendments
dated June 3

Sponsored by Representatives JENSON, CLEM; Representatives BAILEY, BARNHART, CAMERON, Senators
NELSON, ROSENBAUM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires notice to dealers when capacity of biodiesel production facilities in Oregon reaches specified levels. Prohibits sale of diesel fuel that does not contain specified percentage of biodiesel after certain date. Commences regulation of diesel fuel that contains other renewable diesel on January 2, 2012.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to biodiesel; creating new provisions; amending ORS 646.905, 646.921, 646.922, 646.923 and
3 646.957 and section 16, chapter 739, Oregon Laws 2007; and declaring an emergency.

4 The Legislative Assembly finds that:

5 (1) The technology to produce other renewable diesel is not fully developed, approval of other
6 renewable diesel as a registered fuel by the United States Environmental Protection Agency has
7 been obtained in only one state and production of other renewable diesel for general market con-
8 sumption is not occurring in Oregon or any other state at the present time.

9 (2) Appropriate definitions and standards for the production and use of other renewable diesel
10 have not been fully ascertained or established.

11 (3) The efficiencies and consequences of producing and using diesel fuel that contains other
12 renewable diesel are unknown and remain to be identified on a national level.

13 (4) It would be premature for Oregon to attempt to regulate other renewable diesel given the
14 lack of technology and standards for the production and use of other renewable diesel. Given the
15 interest in other renewable diesel, it is anticipated that a market for, and the means for production
16 of, other renewable diesel will be established within the next two years, at which time Oregon may
17 adopt appropriate regulations of other renewable diesel.

18 (5) It would not serve the interests of encouraging the development of a market and the means
19 for production of other renewable diesel to implement a ban or prohibition on other renewable die-
20 sel; therefore it is the policy of this state to neither regulate nor prohibit the production, sale or
21 use of other renewable diesel, whether produced in Oregon or another state, until after January 2,
22 2012.

23 (6) The technology and standardization for production, use and sale of biodiesel fuel currently
24 exists to a commercially viable degree in Oregon and elsewhere.

25 (7) Given the current state of the market for and the means to produce biodiesel fuel, it is a

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 legitimate and appropriate exercise of Oregon's police powers to regulate the production, use and
2 sale of biodiesel fuel in this state.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 646.921 is amended to read:

5 646.921. (1) The State Department of Agriculture shall study and monitor biodiesel fuel pro-
6 duction, use and sales and certificates of analysis in this state.

7 *[(2) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and*
8 *Montana reaches a level of at least 5 million gallons on an annualized basis for at least three months,*
9 *the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in*
10 *a notice that meets the requirements of subsection (5) of this section.]*

11 **(2) At least two weeks before each of the dates specified in paragraphs (a) and (b) of this**
12 **subsection, the department shall notify all retail dealers, nonretail dealers and wholesale**
13 **dealers in this state that the capacity of biodiesel production facilities in Oregon has reached**
14 **a level of at least five million gallons on an annualized basis and that a retail dealer,**
15 **nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only as described in**
16 **ORS 646.922 (1) as follows:**

17 **(a) After August 1, 2009, in the counties of:**

18 **(A) Clackamas;**

19 **(B) Clatsop;**

20 **(C) Columbia;**

21 **(D) Marion;**

22 **(E) Multnomah;**

23 **(F) Polk;**

24 **(G) Tillamook;**

25 **(H) Washington; and**

26 **(I) Yamhill; and**

27 **(b) After October 1, 2009, in all other counties in this state not included in paragraph (a)**
28 **of this subsection.**

29 (3) When the [*production of biodiesel in this state from sources in Oregon, Washington, Idaho and*
30 *Montana*] **capacity of biodiesel production facilities in Oregon** reaches a level of at least 15
31 million gallons on an annualized basis [*for at least three months*], the department shall notify all re-
32 tail dealers, nonretail dealers and wholesale dealers in this state[, *in a notice that meets the re-*
33 *quirements of subsection (5) of this section*] **that the capacity of biodiesel production facilities in**
34 **Oregon has reached a level of at least 15 million gallons on an annualized basis and that a**
35 **retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only**
36 **as described in ORS 646.922 (2) after the date that is two months after the date of the notice**
37 **given by the department under this subsection.**

38 (4) All retail dealers, nonretail dealers and wholesale dealers in Oregon are required to provide,
39 upon the request of the department, a certificate of analysis for biodiesel received.

40 *[(5) The notices required under this section shall inform retail dealers, nonretail dealers and*
41 *wholesale dealers that:]*

42 *[(a) The production of biodiesel has reached the level described in subsection (2) or (3) of this*
43 *section, as appropriate; and]*

44 *[(b) Three months after the date of the notice, a retail dealer, nonretail dealer or wholesale dealer*
45 *may sell or offer for sale diesel fuel only as described in ORS 646.922.]*

SECTION 2. ORS 646.922 is amended to read:

646.922. (1) *[Three months after the date]* **Upon receipt** of the notice given under ORS 646.921 (2) **and after the dates specified in ORS 646.921 (2)(a) and (b)**, a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume *[or other renewable diesel with at least two percent renewable component by volume]*.

(2) *[Three]* **Two** months after the date of the notice given under ORS 646.921 (3), a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume *[or other renewable diesel with at least five percent renewable component by volume]*. Diesel fuel containing more than five percent biodiesel by volume *[or other renewable diesel with more than five percent renewable component by volume]* must be labeled as provided by the State Department of Agriculture by rule.

(3) The department shall adopt standards for biodiesel *[or other renewable diesel]* sold in this state. The department shall consult the specifications established for biodiesel *[or other renewable diesel]* by ASTM International in forming its standards. The department may review specifications adopted by ASTM International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(4) The minimum biodiesel fuel content *[or renewable component in other renewable diesel]* requirements under subsections (1) and (2) of this section do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines or home heating.

SECTION 3. ORS 646.905 is amended to read:

646.905. As used in ORS 646.910 to 646.923:

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D 6751.

(3) "Certificate of analysis" means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with, at a minimum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

- (A) Flash point (ASTM D 93);
- (B) Acid number (ASTM D 664);
- (C) Cloud point (ASTM D 2500);
- (D) Water and sediment (ASTM D 2709);
- (E) Visual appearance (ASTM D 4176);
- (F) Free glycerin (ASTM D 6854); and
- (G) Total glycerin (ASTM D 6854); and

(b) Certification of feedstock origination describing the percent of the feedstock sourced outside of the states of Oregon, Washington, Idaho and Montana.

(4) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(5) "Ethanol" means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(6) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

1 (7) "Methanol" means methyl alcohol, a flammable liquid having the formula CH₃OH used or
2 sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

3 (8) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical
4 contrivances that are propelled by internal combustion engines or motors.

5 (9) "Nonretail dealer" means any person who owns, operates, controls or supervises an estab-
6 lishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing
7 device to nonretail customers.

8 [(10) "Other renewable diesel" means a diesel fuel substitute, produced from nonfossil renewable
9 resources, that has an established ASTM standard, is approved by the United States Environmental
10 Protection Agency, meets specifications of the National Conference on Weights and Measures, and
11 complies with standards promulgated under ORS 646.957.]

12 [(11)] (10) "Retail dealer" means any person who owns, operates, controls or supervises an es-
13 tablishment at which gasoline is sold or offered for sale to the public.

14 [(12)] (11) "Wholesale dealer" means any person engaged in the sale of gasoline if the seller
15 knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or
16 an altered form to another.

17 **SECTION 4.** ORS 646.923 is amended to read:

18 646.923. (1) Each biodiesel [*or other renewable diesel*] producer, each operator of a biodiesel bulk
19 facility and each person who imports biodiesel [*or other renewable diesel*] into this state for sale in
20 this state shall keep for at least one year, at the person's registered place of business, the certificate
21 of analysis for each batch or production lot of B100 biodiesel sold or delivered in this state.

22 (2) The Director of Agriculture, or the director's authorized agent, upon reasonable oral or
23 written notice, may make such examinations of books, papers, records and equipment the director
24 requires to be kept by a biodiesel [*or other renewable diesel*] producer, facility operator or importer
25 as may be necessary to carry out the duties of the director under ORS 646.910 to 646.923.

26 (3) The director, or the director's authorized agent, may test biodiesel [*or other renewable
27 diesel*] for the purpose of inspecting the biodiesel [*or other renewable diesel*] of any producer, bulk
28 facility, business or other establishment that sells, offers for sale, distributes, transports, hauls, de-
29 livers or stores biodiesel [*or other renewable diesel*] that is subsequently sold or offered for sale, for
30 compliance with the motor fuel quality standards adopted pursuant to ORS 646.957.

31 (4) For the purpose of ensuring the quality of B100 biodiesel, the director, or the director's au-
32 thorized agent, may obtain, at no cost to the department and as often as deemed necessary, a rep-
33 resentative sample of B100 biodiesel from any producer, bulk facility, business or other
34 establishment that sells, offers for sale, distributes, transports, hauls, delivers or stores biodiesel.
35 The State Department of Agriculture shall adopt rules establishing the number of samples to be
36 tested. The entire cost of transportation and testing of the samples shall be the responsibility of and
37 invoiced directly to the business from which the sample was obtained.

38 **SECTION 5.** ORS 646.957 is amended to read:

39 646.957. (1) In accordance with any applicable provision of ORS chapter 183, the Director of
40 Agriculture, not later than December 1, 1997, shall adopt rules to carry out the provisions of ORS
41 646.947 to 646.963. Such rules may include, but are not limited to, motor vehicle fuel grade adver-
42 tising, pump grade labeling, testing procedures, quality standards and identification requirements for
43 motor vehicle fuels and ethanol[,] **and** biodiesel [*and other renewable diesel*], as those terms are de-
44 fined in ORS 646.905. Rules adopted by the director under this section shall be consistent, to the
45 extent the director considers appropriate, with the most recent standards adopted by the American

1 Society for Testing and Materials. As standards of the society are revised, the director shall revise
2 the rules in a manner consistent with the revisions unless the director determines that those revised
3 rules will significantly interfere with the director's ability to carry out the provisions of ORS 646.947
4 to 646.963. Rules adopted pursuant to this section must adequately protect confidential business in-
5 formation and trade secrets that the director or the director's authorized agent may discover when
6 inspecting books, papers and records pursuant to ORS 646.955.

7 (2) Testing requirements, specifications and frequency of testing for each production lot of
8 biodiesel[,] **or** biodiesel blend [*or other renewable diesel*] produced in or brought into this state shall
9 be defined by the director by rule.

10 **SECTION 6.** ORS 646.922, as amended by section 2 of this 2009 Act, is amended to read:

11 646.922. (1) Upon receipt of the notice given under ORS 646.921 (2) and after the dates specified
12 in ORS 646.921 (2)(a) and (b), a retail dealer, nonretail dealer or wholesale dealer may not sell or
13 offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume **or**
14 **other renewable diesel with at least two percent renewable component by volume.**

15 (2) Two months after the date of the notice given under ORS 646.921 (3), a retail dealer,
16 nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel
17 contains at least five percent biodiesel by volume **or other renewable diesel with at least five**
18 **percent renewable component by volume.** Diesel fuel containing more than five percent biodiesel
19 by volume **or other renewable diesel with more than five percent renewable component by**
20 **volume** must be labeled as provided by the State Department of Agriculture by rule.

21 (3) The department shall adopt standards for biodiesel **or other renewable diesel** sold in this
22 state. The department shall consult the specifications established for biodiesel **or other renewable**
23 **diesel** by ASTM International in forming its standards. The department may review specifications
24 adopted by ASTM International, or equivalent organizations, and revise the standards adopted pur-
25 suant to this subsection as necessary.

26 (4) The minimum biodiesel fuel content **or renewable component in other renewable diesel**
27 requirements under subsections (1) and (2) of this section do not apply to diesel fuel sold or offered
28 for sale for use by railroad locomotives, marine engines or home heating.

29 **SECTION 7.** ORS 646.905, as amended by section 3 of this 2009 Act, is amended to read:

30 646.905. As used in ORS 646.910 to 646.923:

31 (1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used
32 or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and
33 commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

34 (2) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty
35 acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm
36 oil, designated as B100 and complying with ASTM D 6751.

37 (3) "Certificate of analysis" means:

38 (a) A document verifying that B100 biodiesel has been analyzed and complies with, at a mini-
39 mum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

40 (A) Flash point (ASTM D 93);

41 (B) Acid number (ASTM D 664);

42 (C) Cloud point (ASTM D 2500);

43 (D) Water and sediment (ASTM D 2709);

44 (E) Visual appearance (ASTM D 4176);

45 (F) Free glycerin (ASTM D 6854); and

1 (G) Total glycerin (ASTM D 6854); and

2 (b) Certification of feedstock origination describing the percent of the feedstock sourced outside
3 of the states of Oregon, Washington, Idaho and Montana.

4 (4) "Co-solvent" means an alcohol other than methanol which is blended with either methanol
5 or ethanol or both to minimize phase separation in gasoline.

6 (5) "Ethanol" means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold
7 for the purpose of blending or mixing with gasoline for use in motor vehicles.

8 (6) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

9 (7) "Methanol" means methyl alcohol, a flammable liquid having the formula CH_3OH used or
10 sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

11 (8) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical
12 contrivances that are propelled by internal combustion engines or motors.

13 (9) "Nonretail dealer" means any person who owns, operates, controls or supervises an estab-
14 lishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing
15 device to nonretail customers.

16 (10) **"Other renewable diesel" means a diesel fuel substitute, produced from nonfossil**
17 **renewable resources, that has an established ASTM standard, is approved by the United**
18 **States Environmental Protection Agency, meets specifications of the National Conference**
19 **on Weights and Measures, and complies with standards promulgated under ORS 646.957.**

20 [(10)] (11) "Retail dealer" means any person who owns, operates, controls or supervises an es-
21 tablishment at which gasoline is sold or offered for sale to the public.

22 [(11)] (12) "Wholesale dealer" means any person engaged in the sale of gasoline if the seller
23 knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or
24 an altered form to another.

25 **SECTION 8.** ORS 646.923, as amended by section 4 of this 2009 Act, is amended to read:

26 646.923. (1) Each biodiesel **or other renewable diesel** producer, each operator of a biodiesel
27 bulk facility and each person who imports biodiesel **or other renewable diesel** into this state for
28 sale in this state shall keep for at least one year, at the person's registered place of business, the
29 certificate of analysis for each batch or production lot of B100 biodiesel sold or delivered in this
30 state.

31 (2) The Director of Agriculture, or the director's authorized agent, upon reasonable oral or
32 written notice, may make such examinations of books, papers, records and equipment the director
33 requires to be kept by a biodiesel **or other renewable diesel** producer, facility operator or importer
34 as may be necessary to carry out the duties of the director under ORS 646.910 to 646.923.

35 (3) The director, or the director's authorized agent, may test biodiesel **or other renewable**
36 **diesel** for the purpose of inspecting the biodiesel **or other renewable diesel** of any producer, bulk
37 facility, business or other establishment that sells, offers for sale, distributes, transports, hauls, de-
38 livers or stores biodiesel **or other renewable diesel** that is subsequently sold or offered for sale,
39 for compliance with the motor fuel quality standards adopted pursuant to ORS 646.957.

40 (4) For the purpose of ensuring the quality of B100 biodiesel, the director, or the director's au-
41 thorized agent, may obtain, at no cost to the department and as often as deemed necessary, a rep-
42 resentative sample of B100 biodiesel from any producer, bulk facility, business or other
43 establishment that sells, offers for sale, distributes, transports, hauls, delivers or stores biodiesel.
44 The State Department of Agriculture shall adopt rules establishing the number of samples to be
45 tested. The entire cost of transportation and testing of the samples shall be the responsibility of and

1 invoiced directly to the business from which the sample was obtained.

2 **SECTION 9.** ORS 646.957, as amended by section 5 of this 2009 Act, is amended to read:

3 646.957. (1) In accordance with any applicable provision of ORS chapter 183, the Director of
4 Agriculture, not later than December 1, 1997, shall adopt rules to carry out the provisions of ORS
5 646.947 to 646.963. Such rules may include, but are not limited to, motor vehicle fuel grade adver-
6 tising, pump grade labeling, testing procedures, quality standards and identification requirements for
7 motor vehicle fuels and ethanol, [*and*] biodiesel **and other renewable diesel**, as those terms are
8 defined in ORS 646.905. Rules adopted by the director under this section shall be consistent, to the
9 extent the director considers appropriate, with the most recent standards adopted by the American
10 Society for Testing and Materials. As standards of the society are revised, the director shall revise
11 the rules in a manner consistent with the revisions unless the director determines that those revised
12 rules will significantly interfere with the director's ability to carry out the provisions of ORS 646.947
13 to 646.963. Rules adopted pursuant to this section must adequately protect confidential business in-
14 formation and trade secrets that the director or the director's authorized agent may discover when
15 inspecting books, papers and records pursuant to ORS 646.955.

16 (2) Testing requirements, specifications and frequency of testing for each production lot of
17 biodiesel, [*or*] biodiesel blend **or other renewable diesel** produced in or brought into this state shall
18 be defined by the director by rule.

19 **SECTION 10.** Section 16, chapter 739, Oregon Laws 2007, is amended to read:

20 **Sec. 16.** [*Sections 14 and 15 of this 2007 Act*] **ORS 646.922 (2) and 646.923** become operative on
21 a date that is [*three*] **two** months following the date of the first notice required under [*section 13 (2)*
22 *of this 2007 Act*] **ORS 646.921 (3)**.

23 **SECTION 11.** **The amendments to ORS 646.905, 646.922, 646.923 and 646.957 by sections 6**
24 **to 9 of this 2009 Act become operative on January 2, 2012.**

25 **SECTION 12.** **This 2009 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
27 **on its passage.**

28