

No. 2008-78

## AN ACT

HB 1202

Providing for the study and mandated content of biofuels.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Biofuel Development and In-State Production Incentive Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Biodiesel.” A renewable, biodegradable, mono alkyl ester combustible liquid fuel that meets American Society for Testing and Materials Specification D-6751-02, or its successor standard, Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

“Cellulosic ethanol.” The term shall have the same meaning as cellulosic biofuel set forth in section 211(o)(1)(E) of the Clean Air Act (69 Stat. 322, 42 U.S.C. § 7545(o)(1)(E)), as amended by section 201 of the Energy Independence and Security Act of 2007 (P.L. 110-140, Title II, Subtitle A, § 201, 121 Stat. 1519 (2007)).

“Department.” The Department of Agriculture of the Commonwealth.

“Nonpetroleum renewable resources.” Vegetable oils, animal fats or animal wastes.

“Renewable diesel.” A nonester diesel fuel or fuel blending component derived from nonpetroleum renewable resources that meets all of the following criteria:

- (1) Is used to replace or reduce the quantity of fossil fuels present in fuels sold to the consumer.
- (2) Is registered under 40 CFR Pt. 79 (relating to registration of fuels and fuel additives) for motor vehicle fuels or fuel additives.
- (3) Meets an established American Society for Testing and Materials Specification, such as D975 for diesel fuels or D396 for fuel oils.
- (4) Is compatible for use in engines and equipment designed to run on conventional petroleum diesel fuels.
- (5) Is derived from renewable content at the percentages required by this act.

Section 3. Biodiesel content in diesel fuel sold for on-road use.

(a) Volume standards.—The following standards shall apply:

- (1) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must

contain at least 2% biodiesel by volume one year after the in-State production volume of 40,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department.

(2) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must contain at least 5% biodiesel by volume one year after the in-State production volume of 100,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department.

(3) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must contain at least 10% biodiesel by volume one year after the in-State production volume of 200,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department.

(4) All diesel fuel sold or offered for sale to ultimate consumers in this Commonwealth for use in on-road compression ignition engines must contain at least 20% biodiesel by volume one year after the in-State production volume of 400,000,000 gallons of biodiesel has been reached and sustained for three months on an annualized basis as determined by the department.

(b) Applicability of standards.—The volume standards mandated in subsection (a)(3) and (4) shall be effective only if the department, in cooperation with the Department of Transportation and the Department of Environmental Protection, makes a determination that manufacturers of diesel-fueled vehicles that are sold in this Commonwealth have indicated publicly that they will not void or withdraw vehicle engine warranties due to the use of biodiesel blends at the percentages contained in the corresponding subsection. This determination shall be published in the Pennsylvania Bulletin and transmitted to the Majority Leader and the Minority Leader of the Senate and the Majority Leader and the Minority Leader of the House of Representatives.

(c) Calculations.—The department, in cooperation with the Department of Environmental Protection, shall determine by June 30, 2009, and each June 30 thereafter, the name and location of each biodiesel production facility located within this Commonwealth, the amount of biodiesel produced by the biodiesel production facility in the preceding year and an amount and description of any financial assistance made available to the biodiesel production facility by the Commonwealth in the preceding year.

(d) Coal-to-liquids substitution.—Nonsulfur diesel fuel derived from coal may be used in place of biodiesel to meet the requirements of this section, provided that the fuel's carbon emissions are fully offset, either through carbon sequestration or by participation in carbon offset programs.

(e) Renewable diesel substitution.—Renewable diesel produced in this Commonwealth may be used in place of biodiesel to meet the volume standard requirements of this section, up to a maximum of 25% of the volume of biodiesel necessary to meet the Statewide mandated contents required by this act. Within 180 days of the effective date of this section, the department, in collaboration with the Department of Environmental Protection, may establish reporting requirements to ensure renewable diesel meets the requirements of this act.

(f) Exception.—The requirements of this section shall not apply to aviation fuel, home heating fuel or where prohibited by law.

#### Section 4. Cellulosic ethanol content in gasoline.

(a) Cellulosic ethanol content required.—All gasoline sold or offered for sale to ultimate consumers in this Commonwealth must contain at least 10% cellulosic ethanol by volume as determined by an appropriate Environmental Protection Agency or American Society for Testing Materials standard method of analysis one year after the in-State production volume of 350,000,000 gallons of cellulosic ethanol has been reached and sustained for three months on an annualized basis as determined by the department.

(b) Renewable fuel substitution.—A person may apply to the department for approval to use renewable fuel other than cellulosic ethanol to meet the requirements of this section. The applicant shall demonstrate that the renewable fuel complies with regulations promulgated by the department which shall include, at a minimum, the following criteria:

(1) Meets the requirements of 40 CFR Pt. 79 (relating to registration of fuels and fuel additives).

(2) Has an emissions profile at least as environmentally protective as the cellulosic ethanol that the proposed renewable fuel is replacing or can demonstrate commensurate environmental or cost-effective benefits as defined by the department.

(3) Is suitable for use in motor vehicle engines.

(4) Is derived from renewable resources or feedstock.

(c) Exception.—The requirements of this section shall not apply to gasoline sold in regions of this Commonwealth where the use of cellulosic ethanol would violate, conflict with or otherwise exacerbate compliance with a National Ambient Air Quality Standards State Implementation Plan.

#### Section 5. Agency responsibilities.

(a) Compliance.—With the exception of section 3(d), the department shall ensure compliance with this act and, in consultation with the Department of Transportation and the Department of Environmental Protection, shall promulgate regulations as necessary to implement and enforce the requirements of this act.

(b) Environmental Quality Board.—The Environmental Quality Board shall promulgate regulations as necessary to ensure compliance with the carbon offset requirements of section 3(d).

(c) Report.—Beginning one year from the effective date of this act and each year thereafter, the Department of Conservation and Natural Resources shall report on the effect, if any, of in-State production of cellulosic ethanol from woody biomass on forest health, condition and productivity.

(d) Reduction.—The department, in consultation with the Department of Environmental Protection, may suspend or modify to reduce the mandated contents required by section 3 or 4 if the department determines that doing so is warranted by factors, including, but not limited to, substantially increased costs to consumers or insufficient quantity or distribution of biodiesel or cellulosic ethanol.

#### Section 6. Infrastructure reports.

(a) Certification.—At least six months prior to the effective dates of the mandated content requirements contained in sections 3(a)(1), (2), (3) and (4) and 4, the department and the Department of Transportation shall jointly make a certification as to whether there is sufficient transportation, distribution and other necessary infrastructure, including rail capability and terminal facilities, in this Commonwealth to meet the requirements of this act.

(b) Hearing.—The department and the Department of Transportation shall conduct at least three public hearings across this Commonwealth for each report required under this act.

(c) Posting.—The infrastructure reports shall be submitted to the General Assembly and posted and maintained on each department's publicly accessible Internet website.

(d) Insufficient infrastructure.—If any infrastructure report determines that there is insufficient infrastructure in place to meet any of the mandated volume standard requirements contained in section 3 or 4, that mandated content requirement shall be delayed at least six months or until the department and the Department of Transportation certify that sufficient infrastructure is in place through the issuance of a new infrastructure report, whichever is later.

#### Section 7. National Ambient Air Quality Standards impact study.

(a) Contracts.—The Department of Environmental Protection shall contract with an independent third party certified in conducting ambient air quality studies to determine the impact of this act on the Commonwealth's ability to achieve and maintain the National Ambient Air Quality Standards.

(b) Study.—The study required under subsection (a) shall be completed no later than December 31, 2009.

(c) Submission and posting.—The study required under subsection (a) shall be submitted to the General Assembly and posted and maintained on the Department of Environmental Protection's publicly accessible Internet website.

(d) Funding.—The Department of Environmental Protection is authorized to utilize up to \$200,000 of funds contained in the Clean Air Fund to pay for the study required by this section.

Section 20. Effective date.

This act shall take effect in 90 days.

APPROVED—The 10th day of July, A.D. 2008.

EDWARD G. RENDELL