

HOUSE REPUBLICAN STAFF ANALYSIS

Bill:	House File 2128	House Committee:	PASSED on 1/26/22 (16-8)
Committee:	Ways and Means	House Floor:	PASSED on 4/26/22 (81-13)
Floor Manager:	Rep. Hein	Senate Floor:	PASSED on 2/2/22 (42-10)
Date:	Final	Governor:	SIGNED on 5/17/22
Staff:	Kristi Kious (2-5290)		

Governor's Biofuel Access Bill

- This is the governor's renewable fuel bill. The bill requires dealers with compatible infrastructure to offer E-15. It also provides for waivers from the access standard in certain situations. The bill makes changes to retailer fuel tax credits as well as fuel production tax credits. Additionally, the bill makes changes to the renewable fuel infrastructure program.

Section by Section Analysis

DIVISION I—COMPLIANCE REQUIREMENTS—STANDARDS AND CLASSIFICATIONS FOR GASOLINE—MOTOR FUEL STORAGE AND DISPENSING INFRASTRUCTURE

PART A—E-15 Access Standard

Section 1 – E-15 access standard--establishment (214A.31)

(New section) This section establishes an E-15 access standard.

Section 2 – E-15 access standard—retail dealer compliance (214A.32)

(New section) This section establishes that a retail dealer must advertise for sale and sell E-15. It provides that the retailer complies with the E-15 access standard if they dispense E-15 from the following:

- One qualified pump, if there is only one qualified pump, or
- At least 50 percent of all qualified pumps, if there is more than one.
- **This applies to new retailers as of January 1, 2023.**

A retailer complies with an alternative E-15 access standard if all of the following apply:

- On and after January 1, 2023—the retailer does not install, replace, or convert a fuel storage tank and
- On and after January 1, 2026—the retailer sells E-15 from at least one qualifying pump.
- **This applies to existing retailers (unless they install new tanks).**

This section provides that the E-15 access standard does not prohibit a retailer from selling fuel from any number of nonqualifying pumps. A nonqualifying pump is one that exclusively dispenses aviation fuel, diesel, or kerosene. This would exempt diesel-only truck stops and airports. A nonqualifying pump also includes one that is part of a tank vehicle that is not used to dispense gas at the retailer location.

This section provides that a retailer is not in violation of the E-15 access standard during an excusable event. Excusable events are limited to:

- Maintenance, repair, or reconditioning of fuel storage and dispensing infrastructure and
- Installation, expansion, replacement, or conversion of fuel storage and dispensing infrastructure.

This section provides that it is to be implemented on January 1, 2023.

Section 3 – Suspension of E-15 access standard by order issued by governor (214A.33)

(New section) This section provides that the Governor may issue or renew an executive order that temporarily suspends the E-15 access standard for retailers. The order must be supported by the determination that any of the following apply:

- There is inadequate supply.
- The market price may cause consumer hardship.
- Existing infrastructure is inadequate.

The executive order may be on a statewide or regional basis. This section provides that it is to be implemented on January 1, 2023.

Section 4 – Waiver of E-15 access standard by order issued by secretary of agriculture—E-15 unavailability (214A.34)

(New section) This section provides that the Secretary of Agriculture may issue an administrative order that temporarily waives the E-15 access standard for individual retailers based on E-15 availability. Additionally, a retailer may apply to IDALS for a waiver of the E-15 access standard based on E-15 availability. The retailer's application must be supported by credible evidence and signed. This section provides that it is to be implemented on January 1, 2023.

Section 5 – Waiver of E-15 access standard by order issued by secretary of agriculture—E-15 incompatible infrastructure (214A.35)

(New section) This section provides that the Secretary of Agriculture shall issue an administrative order that temporarily waives the E-15 access standard for retailers based on the incompatibility of the fuel storage or pumps to store and pump E-15.

Additionally, a retailer may apply to IDALS for a waiver of the E-15 access standard based on incompatibility of infrastructure. The retailer's application must be supported by credible evidence and signed. The application must provide information regarding infrastructure located at the retail site. IDALS may require supporting documentation to include an inspection report by a certified professional retail motor fuel site installer. IDALS will review and evaluate applications to determine whether they are supported by evidence sufficient for granting the waiver. IDALS will approve or deny applications within 120 days from their receipt. IDALS may inspect the retail site during normal business hours to enforce this section and may cooperate with the DNR and State Fire Marshal to administer and enforce this section.

The Secretary of Agriculture shall terminate the E-15 incompatible infrastructure waiver order if a terminable event occurs. Terminable events are limited to:

- The failure of a retailer to be licensed as required to use a commercial weighing and measuring device when dispensing fuel.
- The retailer no longer advertising or selling fuel.
- The installation, replacement, or conversion of a fuel storage tank at the retailer.

IDALS may require that retailers notify them of terminable events.

The Secretary of Agriculture shall issue an E-15 incompatible infrastructure class 1 waiver. This is a waiver based on the age of the tanks. If IDALS determines an inspection of the retailer is necessary, it may either conduct the inspection or accept an inspection report by a certified installer. The order must be supported by evidence that all fuel storage tanks at the retailer fall within any of the following categories:

- Each tank not constructed of fiberglass was installed in 1985 or before.
- Each tank constructed of fiberglass was installed during or prior to the following years:
 - For double-wall, 1991
 - For single-wall, 1996

The Secretary of Agriculture shall issue an E-15 incompatible infrastructure class 2 waiver. This is a waiver based on cost to upgrade and dispense E-15 from one pump. This waiver shall be based on the inspection of a retail site. IDALS may conduct the inspection or accept an inspection report by a certified installer. The inspection report must include a completed checklist form used by IDALS to confirm that the fuel storage and dispensing infrastructure is not compatible with E-15. The report must also provide a total estimated cost of improvements needed to comply with the E-15 access standard by installing, replacing, or converting the storage tanks and pumps at the retail site.

IDALS shall determine whether to issue a class 2 waiver based on an eligibility assessment. If the cost to be able to dispense E-15 is more than \$71,000, IDALS will issue the class 2 waiver. This determination is not impacted by the retailer's receipt of past grants from RFIP.

This section provides that it is to be implemented on January 1, 2023 and repealed on January 1, 2041.

Section 6 – Exemption from E-15 access standard for small retail motor fuel sites—by order issued by secretary of agriculture (214A.36)

(New section) This section creates a small retailer exemption for stations that sell 300,000 gallons or less per year based on 3-year average.

Section 7 – Disciplinary action (214A.36)

(New section) This section provides that IDALS may refuse to issue or renew and may suspend and revoke a retailer's license for not complying with the E-15 access standards.

Section 8 – Issuance of orders suspending or waiving E-15 access standard

This section allows the Governor and the Secretary of Agriculture to issue suspension and waiver orders prior to January 1, 2023 if they determine it is necessary.

Section 9 – Adoption of rules implementing E-15 access standard and E-15 incompatible infrastructure waiver order

This section provides that IDALS shall adopt rules prior to January 1, 2023 to administer and enforce the E-15 access standard and waivers.

PART B—Related Renewable Fuels and Infrastructure Provisions

Section 10 – Definitions (214.1)

(New subsections) This section provides new definitions for E-15, motor fuel dispensers, and infrastructure as needed by the bill.

Section 11 – Definitions (214.1)

This section amends current definitions as needed.

Section 12 – Self-service motor fuel pumps (214.9)

This section specifies that pumps are dispensers.

Section 13 – Inspections of motor fuel dispensers—E-15 access standards (214.12)

(New section) This section makes technical changes related to inspections.

Section 14 – Definitions (214A.1)

(New subsections) This section makes technical definitional changes.

Section 15 – Rules (214A.1)

(New section) This section provides that IDALS shall adopt rules necessary to administer and enforce this chapter.

Section 16 – Tests and standards (214A.2)

This section provides that IDALS shall adopt rules relating to the standards and classifications for renewable and bio fuels.

Section 17 – Tests and standards (214A.2)

(New subparagraph) This section provides that biodiesel blended fuels higher than B-20 must conform to the standards adopted by IDALS.

Section 18 – Prohibition (214A.8)

This section adds *classifications* to account for the new E-15 access standard.

Sections 19 & 20 – Advertising (214A.11)

These sections provide that a retailer who applies for a waiver from the E-15 access standard that contains untrue information is committing perjury.

Section 21 – Limitation on liability (214A.20)

This section provides that a retailer, etc are not liable if an end user puts fuel in a motor that is incompatible as long as it was labeled correctly.

PART C—Code Organization

Sections 22 and 23 – Technical

DIVISION II—COMPLIANCE REQUIREMENTS—RENEWABLE FUEL INFRASTRUCTURE

PART A—Principal Provisions

Sections 24 through 28 – Technical

Section 29 – E-85 gasoline compatible infrastructure—compliance requirement (455G.32)

(New section) This section provides that a retailer shall not install, replace, or convert infrastructure used for E-15 or higher unless it is E-85 compatible.

Section 30 – B-20 diesel fuel compatible infrastructure—compliance requirement (455G.33)

(New section) This section provides that a retailer shall not install, replace, or convert infrastructure unless it is B-20 compatible.

Section 31 – Effective date

This section provides that Division II, Part A is effective January 1, 2023.

PART B—Implementation

Section 32 – Administrative rules

This section provides that the DNR and the State Fire Marshal may adopt rules to administer Part A, Division II. The DNR regulates/inspects all underground storage tanks and the State Fire Marshal and IDALS are responsible for the above ground infrastructure.

DIVISION III—COMPLIANCE REQUIREMENTS—QUALIFIED RENEWABLE FUEL USE BY STATE MOTOR VEHICLES

Section 33 – Special definitions (8A.360)

(New section) This section adds the necessary definitions.

Sections 34 through 36 – State fleet

These sections provide that the state fleet (DAS) must use the highest available and compatible renewable fuel available so long as:

- it is warranted by the motor vehicle’s manufacturer,
- that classification is available, and
- an emergency situation does not exist.

Section 37 – Motor vehicle purchases – qualified renewable fuels – reports (8A.362C)

(New section) This section requires DAS to submit a state fleet renewable fuels compliance report by March 1 each year.

Sections 38 through 41 – State fleet

These sections apply conforming changes to the other entities regarding their fleet. The state entities involved are Commission for the Blind, Boards of Regents, DOT, and DOC.

Section 42 – State fleet qualified renewable fuels compliance report.

This section provides that DAS shall submit the first compliance report no later than July 1, 2023.

DIVISION IV—RENEWABLE FUEL STANDARDS AND CLASSIFICATIONS—PROMOTIONAL INITIATIVES APPLIED TO INCOME TAXES

PART A—E-85 Gasoline Promotion Tax Credit

Section 43 – E-85 gasoline promotion tax credit (422.110)

This section makes a conforming change.

Section 44 – E-85 gasoline promotion tax credit (422.110)

This section repeals the E-15 tax credit on January 1, 2026 instead of 2025 (one-year extension).

Section 45 – E-85 gasoline promotion tax credit (422.110)

This section repeals the E-85 tax credit on January 1, 2028 instead of 2024.

Section 46 – Corporate tax imposed—credit (422.33)

This section makes a conforming change related to the E-85 tax credit.

Section 47 – Conforming change related to E-85

PART B—Biodiesel Blended Fuel Tax Credit

Section 48 – Biodiesel blended fuel tax credit (422.11P)

This section provides for a one percent tolerance when classifying the biodiesel blended fuel.

Section 49 – Biodiesel blended fuel tax credit (422.11P)

This section specifies tax credit rates.

- For biodiesel blended fuel classified as B-11 or higher up to but not including B-20 the rate is 5 cents.
- For biodiesel blended fuel classified as B-20 or higher up to but not including B-30, the rate is 7 cents.
- For biodiesel blended fuel classified as B-30 or higher, the rate is 10 cents.

Section 50 – Biodiesel blended fuel tax credit (422.11P)

This section extends the biodiesel tax credits from 2025 through the end of 2027.

Section 51 – Biodiesel blended fuel tax credit (422.33)

This section makes a conforming change related to biodiesel tax credits.

Section 52 – Conforming change related to extending retail biodiesel tax credits from 2024 to 2027

Section 53 – Effective date

This section provides that Division IV, Part B is effective January 1, 2023.

PART C—E-15 Plus Gasoline Promotion Tax Credit

Section 54 – E-15 plus gasoline promotion tax credit (422.11Y)

This section provides that the E-15 tax credit is increased from three cents to nine cents. The credit is available year-round.

Section 55 – E-15 plus gasoline promotion tax credit (422.11Y)

This section extends the E-15 tax credit to December 31, 2025. The next day the E-15 access standard goes into effect, thus the state will no longer incentivize a required behavior.

Section 56 – Conforming change related to extending E-15 tax credit

Section 57 – Tax credit availability

This section makes a conforming change related to extending the E-15 tax credit.

Section 58 – Effective date

This section provides that Division IV, Part C is effective January 1, 2023.

PART D—Administration

Section 59 – Administrative rules

This section provides that the Department of Revenue may adopt rules prior to the effective date of Division IV, Parts B and C if they need to.

DIVISION V—RENEWABLE FUEL STANDARDS AND CLASSIFICATIONS—PROMOTIONAL INITIATIVES APPLIED TO EXCISE TAX ON ETHANOL BLENDED GASOLINE AND BIODIESEL BLENDED FUEL

PART A—Reporting Requirements

Section 60 – Definitions (452A.2)

(New subsection) This section makes a cross reference for the definition of *renewable fuel*.

Section 61 – Standards and classifications of fuel (452A.2A)

(New section) This section makes a cross reference to standards and classifications provided for in the motor fuel chapter.

Sections 62 through 68 – Special terms (452A.31)

These sections make conforming changes.

Sections 69 through 73 – Reporting requirements (451A.33)

These sections require that all retailers report their total gasoline and diesel fuel gallonage and make conforming changes.

Section 74 – Emergency rules

This section provides that the Department of Revenue may adopt emergency rules to implement Division V, Part A.

Section 75 – Effective date

This section provides that Division V, Part A is effective upon enactment.

Section 76 – Retroactive applicability

This section provides that Division V, Part A applies retroactively to January 1, 2022.

Part B—Excise Tax Imposed on Gasoline and Diesel Fuel

Section 77 – Levy of excise tax (452A.3)

This section extends the fuel tax differential from 2026 to 2030 for both ethanol and biodiesel.

Sections 78 and 79 – Levy of excise tax (452A.3)

These sections provide that the biodiesel fuel tax differential (based on market-share) is based on B-20 instead of B-11.

Section 80 – Effective date

This section provides that Division V, Part B is effective July 1, 2024.

Part C—Deduction of Excise Tax Imposed on Biofuel Used in Blending with Gasoline and Diesel Fuel

Section 81 – Tax reports—computation of payments and tax—credits (452A.8)

(New subparagraph) This section provides a technical change from the Department of Revenue.

DIVISION VI—RENEWABLE FUEL STANDARDS AND CLASSIFICATIONS—PROMOTIONAL INITIATIVES APPLIED TO SALES AND USE TAX—REFUND PAID TO BIODIESEL PRODUCERS

Part A—Principal Provisions

Section 82 – Refunds (423.4)

This section provides that the biodiesel production tax credit is increased from 2 cents to 4 cents. Additionally, the tax credit is extended from 2025 until 2028. This is a tax credit for the biodiesel plants in Iowa.

Section 83 – Effective date

This section provides that Division VI, Part A is effective January 1, 2023.

Part B—Implementation

Section 84 – Administrative rules

This section provides that the Department of Revenue may adopt rules to administer Division VI, Part A.

DIVISION VII—PROMOTIONAL INITIATIVES—RENEWABLE FUEL INFRASTRUCTURE

Part A—Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites

Sections 85 through 87 – Definitions (159A.11)

These sections provide cross-references to definitions and striking definitions that are no longer applicable.

Section 88 – Classification of renewable fuel (159A.12)

This section provides cross-references to classifications.

Section 89 – Renewable fuel infrastructure board (159A.13)

This section strikes the renewable fuel infrastructure board requirement to meet with the underground storage tank board.

Sections 90 through 97 – Renewable fuel infrastructure program for retail motor fuel sites (159A.14)

These sections set forth requirements for the renewable fuel infrastructure program (RFIP). This program requires that all funded ethanol infrastructure be E-85 compatible. Additionally, all funded biodiesel infrastructure must be B-20 compatible. These sections remove the participation of the underground storage tank fund board and place the program solely with the infrastructure board.

These sections prioritize RFIP awards in this order, (1) retailers ineligible for waivers (2) retailers who sell less than 140,000 gallons, (3) retailers who sell less than 450,000 gallons, (4) retailers who sell more than 450,000 gallons.

These sections require an awardee offer E-15 for five years (cost-share agreement). Additionally, these sections require those retailers to sell B-11 or higher during April 1 through October 31 in funded infrastructure.

For fuel retailers who sell:

Under 140,000 gallons of gasoline annually AND have 10 stations or less and don't already offer E15:

- State match of 90% or up to \$63,900 with retailer paying 10% (\$7,100)

140,001-450,000 gallons of gasoline annually AND have 10 stations or less and don't already offer E15:

- State match of 75% or up to \$53,250 with retailer paying 25% (\$17,750) 450,000+ gallons annually (current practice for RFIP):
- State match of 70% or up to \$50,000 with retailer paying 30% (\$21,000)

These sections strike the three-year agreements. They also provide that if a retail site has already received RFIP funds in the past, they can still receive them in the future in order to comply with the E-15 access standard.

Section 98 – Renewable fuel infrastructure program for biodiesel terminal facilities (159A.15)

This section removes a reference to the underground storage tank fund board.

Section 99 – Effective date

This section provides that Division VII, Part A is effective January 1, 2023.

Part B—Rulemaking

Section 100 – Administrative rules

This section provides that IDALS shall submit rules by July 1, 2022 for Part A of Division VII.
