

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB562

Hearing Date: Tuesday February 07, 2023
Committee On: Agriculture
Introducer: Dorn
One Liner: Adopt the E-15 Access Standard Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Brewer, Halloran, Hansen, B., Holdcroft, Hughes, Ibach
Nay:		
Absent:		
Present Not Voting:	2	Senators Raybould, Riepe

Testimony:

Proponents:

Senator Myron Dorn
Andrew Johansen

Andrew Dunkley
Micheal Dibbern
Gary Brandt
Taylor Nelson
Danielle Scheele
John Hansen
Jan BenseI

Opponents:

DeLone Wilson

Matt Lippincott

Mark Whitehead
Melissa Lindsey
Jennifer Weiss
Tommy Hergert
Jessica Shelburn
Doug Coziah

Neutral:

Representing:

Self
Renewable Fuels Nebraska, Nebraska Farm Bureau,
Nebraska State Dairy Association, Nebraska
Soybean Association, Nebraska Wheat Growers
Association, Nebraska Pork Producers Association
Nebraska Farm Bureau
Nebraska Corn Growers Association
Cooperative Producers Inc.
Nebraska Ethanol Board
Self
Nebraska Farmers Union
Nebraska Ethanol Board

Representing:

Nebraska Grocery Industry Association, Nebraska
Retail, Cubby's Convenience Stores
Nebraska Iowa Supply, Nebraska Petroleum,
Marketers Association
Whitehead Oil Company
Casey's General Store
NPCA
Hergert Oil Company
Americans for Prosperity
Nebraska Petroleum Covenant Association

Representing:

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 562 Establishes standards regarding the availability of E-15 fuel blends at retail motor fuel locations and assigns related duties and authorities to the Department of Agriculture. As introduced, LB 562 would also enhance cost share assistance offered to motor fuel retailers through the Renewable Fuel Infrastructure Program.

Sec. 1: Designates sections 1 – 10 as the E-15 Access Standard Act

Sec. 2: Declares legislative intent

Sec. 3: Defines terms used in the Act

Sec 4: Beginning January 1, 2024, requires retail dealers to make E-15 fuel blends available from at least 50% of qualifying fuel dispensers at a retail location, unless:

- The retailer has not installed, replaced or converted a motor fuel storage tank at that location after January 1, 2024, and
- The retailer makes E-15 blends available at least one qualifying dispenser at that location beginning January 1, 2027.

Provides that this section does not apply to fuels sold at non-qualifying fuel dispensers. This section further provides that a retailer is not in violation during periods when fuel storage and dispensing infrastructure is being installed, repaired or modified and authorizes the Dept. of Agriculture to require retailers to give advance notice of such work.

Sec 5: Authorizes the Governor to temporarily suspend the E-15 standard during periods of E-15 fuel shortage or pricing conditions causing economic harm to consumers.

Sec 6: Authorizes the Director to waive the E-15 access standard for individual retail locations due to supply shortage. Prescribes procedures and conditions for applying for, granting and terminating the waiver.

Sec 7: Authorizes the Director to waive the E-15 standard for individual retail locations due to incompatibility of fuel storage and dispensing infrastructure at that location and excessive cost to modify the site to be in compliance. Prescribes procedures and conditions for applying for, granting and terminating the waiver. Prescribes documentation to be provided by the waiver applicant to include:

- an assessment attested by a professional retail fuel site installer designated by the Department as competent for purposes of this assessment that existing infrastructure is incompatible and that the cost of replacing infrastructure components to offer E-15 would exceed \$100,000; or
- Information verifying that all fuel tanks at the site are of specified construction materials and manufactured prior to specified dates.

Sec 8: Authorizes the Director to waive the E-15 standard for small volume fuel retail locations. A retail location is eligible for the waiver if the location has only one qualifying dispenser or the three-year annual average motor fuel sales at the location do not exceed 300,000 gallons Prescribes procedures and conditions for applying for, granting and terminating the waiver.

Sec 9: Provides that non-compliance with the E-15 standard is cause authorizing the Department to suspend or revoke a fuel dealer's weighing and measuring establishment permit.

Sec 10: Grants the Department rule and regulation authority to carry out the Act.

Sec 11: Amends §66-2205 to revise the terms of grants under the Renewable Fuel Infrastructure Program which authorizes cost-share assistance to fuel retailers installing renewable fuel compatible infrastructure at fuel retail locations. Currently, this section authorizes the commitment of up to \$1 million in grants per calendar year and limits the program to providing the lesser of 50% or \$30,000 of an individual project cost for a three-year agreement, or the lesser of 70% or \$50,000 for a five-year agreement. LB 562 increases the annual cap on obligations of awards to \$10 million and terminates approvals of new grant awards after calendar year 2026. The bill further eliminates the distinction between 3 and 5 year agreements and limits cost-share assistance to the lesser of 50% or \$150,000 per project.

Sec 12: Repealers

Explanation of amendments:

The Committee Amendment (AM1248) is a white copy amendment which replaces the bill. The differences between LB 562 as amended and as introduced are described in the following section- by-section summary:

Sec. 1: Designates section 1 – 11 as the E-15 Access Standard Act

Sec. 2: Declares legislative intent

Sec. 3: Defines terms used in the Act. AM1248 makes two clarifications from this section as introduced:

- Clarifies the defined term “qualified fuel dispenser” to be clear the term does not include non- qualified fuel dispensers.
- Clarifies the term “motor fuel storage and dispensing infrastructure” does not include signage apart from the signage on the dispenser.

Sec. 4: New Section 4 clarifies that the E-15 offering standard applies to retailers as follows:

Beginning January 1, 2024, a retail motor fuel site shall advertise for sale and offer E-15 at least 50% of dispensers at:

- any new retail motor fuel site built after that date, or
- any existing retail motor fuel site if, after that date, the retailer replaces more than 80% of facilities and infrastructure at the retail site

Beginning January 1, 2028, a retail motor fuel site shall offer E-15 from at least one dispenser if:

- The site has had no new infrastructure replacements or installations bringing it within the requirement to offer E-15 at 50% of dispensers, and
- The statewide average ethanol blend-rate for 2027 is less than 14% (blend-rate is determined according to new section 9).

The standard in subsection 2 requiring E-15 to be offered from at least one dispenser does not apply to any retail location issued a waiver due to excessive cost to bring a retail site into compliance pursuant to section 6, are exempted under section 7 (all tanks at site are one of exempt category) or exempted under section 8 (low volume retailer) The amendment retains portions of original section 4 that provides that this section does not affect fuels sold at non-qualifying fuel dispensers, that a retailer is not in violation during periods when fuel storage and dispensing infrastructure is under construction, and the authorization that the Dept. of Agriculture to require retailers to give advance notice of such work.

Sec. 5: Identical to introduced section 5. Retains authorization for the Governor to temporarily suspend the E-15 standard during periods of E-15 fuel shortage or pricing conditions causing economic harm to consumers

Sec. 6: AM1248 omits original section 6. The purpose of original section 7 are contained in section 6 of the amendment with the following revisions:

- The excessive cost threshold to qualify for the waiver is reduced to \$15,000
- The qualification that all tanks at the site are of construction materials manufactured prior to certain specified dates is removed from this section and set out as an exemption in section 7 of AM1248.

All remaining provisions pertaining to procedures for application for the waiver, the review and granting of the waiver, and the conditions for terminating the waiver are substantively identical to the introduced provisions.

Sec. 7: Inserts a new section exempting a site having all tanks made of specified construction materials manufactured prior to specified dates, originally included as qualifying supporting evidence for the excessive cost waiver contained in section 7 of the bill as introduced.

Sec 8: Creates an exemption for small volume motor fuel retail sites. Eliminates the requirement to apply for a waiver contained in the original bill and provides that a retailer may simply attest to the Department that one or more sites fall within this exemption. Retains procedures and authorizations for the Department to verify qualification for the exemption.

Sec. 9: Inserts a new section assigning a duty beginning in 2025 to the Department of Revenue and the Dept. of Environment and Energy to publish a report of the annual statewide ethanol blend rate. This section simultaneously assigns a duty to fuel retailers to quarterly report motor fuel sales data, including the percentage of ethanol.

Sec. 10: The original section 9 is renumbered section 10. The authority to suspend or revoke weighing and measuring establishment permits is effective:

- Beginning January 1, 2024, for retailers not in compliance with the standard to offer E-15 of dispenses pursuant to subsection (1) of Section 4.
- Beginning April 1, 2028 for retailers who are not in compliance with the standard to offer of E-15 from at least 1 dispenser pursuant to subsection (2) of Section 4.

Sec. 11: Contains the authorization for the Department of Agriculture to promulgate rules and regulation originally contained in section 10 of LB 526 as introduced. Original section 11 of LB 562 making revisions to the Renewable Fuel Infrastructure Program is omitted from AM1248.

Secs. 12 – 15: Inserts new sections amending sections 77-7002 through 77-7004 and 77-7007 which creates a refundable income tax credit offered to retailers selling E-15 and higher blends. Currently, the credit is in an amount equal to 5 cents / gallon of E-15 and 8 cents / gallon of E-25 or higher blends sold. The cumulative amount of credits allowed is capped at \$2 million the initial year and the cap is adjusted annually according to the amount of credits claimed the previous year but may not exceed \$4 million. No new credit applications are accepted after Dec. 31, 2026. AM1248 changes the credit provisions to apply the same credit amount/gallon to all E-15 or higher blends, The credit amount by year is CY 2024 -- 8 cents, CY 2025 -- 9 cents, CY 2026 – 8 cents; CY 2027 – 7 cents, CY 2028 – 5 cents. The cumulative amount of credits allowed is capped at \$5 million / year for all years. Extends the period for acceptance of credit applications to Dec. 31, 2028.

Sec. 16: Repealers

Steve Halloran, Chairperson