

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7000

BILL NUMBER: SB 378

NOTE PREPARED: Jan 5, 2005

BILL AMENDED:

SUBJECT: Biodiesel and Ethanol Tax Incentives.

FIRST AUTHOR: Sen. Weatherwax

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: The bill increases the maximum amount of Biodiesel Production Tax Credits, Blended Biodiesel Production Tax Credits, Blended Biodiesel Retail Sales Tax Credits, and Ethanol Production Tax Credits that may be granted. The bill transfers responsibility for determining whether a person is qualified for a credit and allocating the maximum amount of available credits from the Department of State Revenue to the Recycling and Energy Development Board. The bill also extends the Blended Diesel Retail Sales Tax Credits to dealers that distribute blended diesel at retail by a means other than a metered pump. It also corrects an internal reference and makes other related changes.

Effective Date: Upon passage; January 1, 2005 (retroactive).

Explanation of State Expenditures: *Summary:* The new Office of Energy Policy would incur some administrative expenses relating to the biodiesel and ethanol tax credit certification process established under the bill. The bill requires persons who want to obtain tax credits under current statute for biodiesel, blended biodiesel, or ethanol production, or for biodiesel sales, to apply for credit certifications from the Indiana Recycling and Energy Development Board. The bill also establishes an application review and certification process for the Board. Currently, the Indiana Department of Commerce (IDOC) provides administrative assistance to the Board. However, this responsibility will shift to the new Office of Energy Policy as of July 1, 2005, when the IDOC is abolished under current statute. At that time, the duties of the IDOC relating to energy policy are to be transferred to a new Office of Energy Policy. The November 4, 2004, state staffing table indicates that the IDOC has 31 vacant full-time positions, including regional office positions. To the extent that these vacant positions are transferred to the Office of Energy Policy on July 1, 2005, they could potentially be utilized to assist the Board with the certification process.

Background: P. L. 224-2003 established the Indiana Economic Development Corporation (IEDC) and transferred the responsibilities of the IDOC relating to economic development in Indiana to the IEDC as of July 1, 2005. P. L. 224-2003 also transferred current IDOC duties relating to energy policy to a newly created Office of Energy Policy, and current IDOC duties relating to tourism and community development to a new Department of Tourism and Community Development, as of July 1, 2005.

Explanation of State Revenues: *Summary:* The bill makes several changes relating to the current tax credits for biodiesel, blended biodiesel, and ethanol production, and for blended biodiesel sales effective beginning in 2005.

(1) The bill requires a taxpayer who wants to claim any of the credits to obtain certification of credits from the Indiana Recycling and Energy Development Board and provide the certification to the DOR in order to claim the credit. A noncode section of the bill requires that a taxpayer who is eligible for the biodiesel, blended biodiesel, or ethanol production credits in 2005 under current law is eligible under the bill only if the taxpayer complies with the new requirements of the bill. This requirement, however, does not apply to taxpayers eligible for the blended biodiesel sales credit under the current law.

(2) The bill increases the aggregate credit limits from \$1.0 M to \$3.0 M applicable to tax credits for biodiesel and blended biodiesel production, and for the sale of blended biodiesel. In addition, the bill establishes a limit of \$1.0 M that a single taxpayer may claim under each of these three credits. As sufficient data is unavailable relating to production and sales of biodiesel and blended biodiesel in Indiana, the potential utilization of these credits in future years is indeterminable. It is important to note that the National Biodiesel Board (NBB) reports that there are currently 25 active biodiesel production plants operating in the U.S., with an annual production capacity of about 150 M gallons. The NBB also reports that 20 additional production plants have been proposed around the U.S. However, none of the active or proposed plants are in Indiana. The NBB also reports that a total of 24 biodiesel retailers currently operate in Indiana.

(3) The bill increases the aggregate credit limit from \$10.0 M to \$20.0 M applicable to the tax credit for ethanol production. Data from the Renewable Fuels Association suggests that about 95 M gallons of ethanol are produced annually in Indiana. If credits are claimed on this annual production total, they could total about \$11.9 M in a single year.

(4) The bill provides that the tax credits may be claimed by shareholders, partners, or members of a pass through entity if the entity producing or selling biodiesel, blended biodiesel, or ethanol and receiving tax credits is a pass through entity.

(5) The bill eliminates the provision in current law requiring production credits to be reduced by any federal tax credit a taxpayer receives for biodiesel production. Recently, federal legislation was enacted providing federal excise tax and income tax credits for biodiesel production.

(6) The bill changes applicability of the credit for sales of blended biodiesel by Indiana retailers. Under current law, the sales must be by a dealer operating a service station at which the blended biodiesel is dispensed through metered pumps. The bill eliminates these requirements and provides that the credit is applicable to blended biodiesel sales to end users in Indiana. This change would increase the number of vendors who could obtain the credit, but only up to the proposed new credit limit of \$1.0 M per taxpayer and \$3.0 M for all taxpayers.

Background: Current statute provides credits against a taxpayer's Sales and Use Tax, Adjusted Gross Income Tax, Financial Institutions Tax, or Insurance Premiums Tax liability for the production of biodiesel, blended biodiesel, and ethanol, and for the sale of blended biodiesel. Ethanol is defined as agriculturally derived ethyl alcohol. Biodiesel is defined as a renewable, biodegradable, mono alkyl ester, combustible liquid fuel derived from agricultural plant oils or animal fats. Blended biodiesel is petroleum diesel blended with at least 2% biodiesel. Current statute prohibits the amount of credit claimed for each of the biodiesel and blended biodiesel tax credits from exceeding \$1.0 M for all taxpayers and all taxable years. In addition, the production credits are reduced by an amount equal to any federal tax credits received for biodiesel production. Current law also limits the amount of ethanol credit claimed by a single taxpayer to \$5.0 M, and all taxpayers and all taxable years to \$10.0 M. The tax credits are as follows:

- (1) A credit equal to \$1.00 for each gallon of biodiesel manufactured in Indiana and used to produce blended biodiesel.
- (2) A credit equal to \$0.02 per gallon of blended biodiesel produced in Indiana and using biodiesel produced in Indiana.
- (3) A credit equal to \$0.01 per gallon of blended biodiesel sold by Indiana retailers.
- (4) A credit equal to \$0.125 per gallon of ethanol produced at an eligible facility in Indiana.

Revenue from the corporate AGI tax, the Insurance Premiums Tax, and the Financial Institutions Tax is deposited in the state General Fund. The revenue from the individual AGI Tax is deposited in the state General Fund (86%) and the Property Tax Replacement Fund (14%). Sales Tax revenue is deposited in the Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%)

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Indiana Recycling and Energy Development Board; Office of Energy Policy; Department of State Revenue.

Local Agencies Affected:

Information Sources: National Biodiesel Board; Renewable Fuels Association; Congressional Joint Committee on Taxation.

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