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FISCAL IMPACT STATEMENT

LS 7000 | **NOTE PREPARED:** Feb 25, 2005
BILL NUMBER: SB 378 | **BILL AMENDED:** Feb 24, 2005

SUBJECT: Biodiesel and Ethanol Tax Incentives.

FIRST AUTHOR: Sen. Weatherwax | **BILL STATUS:** CR Adopted - 1st House
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State
X **DEDICATED**
FEDERAL

Summary of Legislation: (Amended) The bill provides that the Indiana Economic Development Corporation reviews and approves applications for the Biodiesel, Blended Biodiesel, and Ethanol Income Tax Credits. The bill also provides standards that the Corporation must apply. The bill creates a $20,000,000 overall cap for the biodiesel, blended biodiesel, and ethanol producer credits. It allows the Corporation to allocate the maximum credits for all taxpayers for all taxable years so long as each credit has a cap of at least $4,000,000. The bill establishes a credit cap for a particular producer at $3,000,000 for all taxable years and allows credit carryovers for six taxable years. The bill creates a new Coal Gasification Income Tax Credit and provides that the credit is 50% if less than 95% of the coal used at the taxpayer's coal gasification plant was Indiana coal. The bill provides for the expiration of the Blended Biodiesel Retailer Credit as of January 1, 2007. The bill extends the Blended Biodiesel Retail Sales Tax Credits to dealers that distribute blended biodiesel at retail by a means other than a metered pump. The bill also corrects an internal reference and makes other related changes.

Effective Date: (Amended) Upon passage; January 1, 2005 (retroactive); January 1, 2006.

Explanation of State Expenditures: (Revised) *Indiana Economic Development Corporation (IEDC):* The bill provides for the IEDC to administer the application and approval process for: (1) the existing Biodiesel, Blended Biodiesel, and Ethanol Income Tax Credits; and (2) the Coal Gasification Technology Investment Tax Credit (created by the bill). The IEDC also must monitor compliance of recipients of the Coal Gasification Technology Investment Credit with the provisions the tax credit agreement between the IEDC and the credit recipient. The IEDC should be able to implement this program with current staffing and resource levels.

Department of State Revenue (DOR): The DOR would incur administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the Coal Gasification Technology Investment Tax Credit. The DOR should be able to implement these changes with current staffing and resource levels

Indiana Utility Regulatory Commission (IURC): The IURC would have to make determination relating to the public necessity for new integrated coal gasification powerplants proposed to the IEDC for the Coal Gasification Technology Investment Tax Credit.

Explanation of State Revenues: (Revised) *Biodiesel/Ethanol Tax Credits:* 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 the biodiesel, blended biodiesel, and ethanol production credits to obtain certification of credits from the Indiana Economic Development Corporation. The taxpayer must 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 provides that the credit for sales of blended biodiesel by Indiana retailers may not be taken for amounts distributed at retail after December 31, 2006. In addition, the bill changes the applicability of the credit. 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 current law limit of $1.0 M for all taxpayers and all taxable years.

(3) The bill establishes a new taxpayer and aggregate credit limits for the ethanol production, biodiesel production, and blended biodiesel production credits. The three credits combined would be limited to $20 M for all taxpayers and all taxable years. Within that limit, the maximum amount claimed for each credit may not be less than $4 M. In addition, the taxpayer limit for each credit would be set at $3 M. Currently, the biodiesel and blended biodiesel credits are limited to $1.0 M for all taxpayers and all taxable years. The ethanol credit is limited to $5 M per taxpayer, and $10 M for all taxpayers and all taxable years.

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.

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.

Coal Gasification Technology Investment Tax Credit: This tax credit could potentially reduce revenue from the Utilities Receipts Tax, the Adjusted Gross Income (AGI) Tax, the Financial Institutions Tax, and the Insurance Premiums Tax when a taxpayer undertakes qualified investment in an integrated coal gasification powerplant. The potential tax credits that may be granted under this program is indeterminable and would depend upon review and approval by the IEDC and a determination by the IURC that the public convenience and necessity requires the construction of the integrated coal gasification powerplant. The net revenue impact of the tax credit also depends on the extent that tax collections on powerplant employees and other taxable activities attributable to the powerplant is less than or exceeds the credits granted to the taxpayer for the powerplant investment. However, if the powerplant investment would have occurred in the absence of the tax credit, the net impact would be the total credits claimed by the taxpayer.

The tax credit would be effective beginning in tax year 2006. The review and determinations by the IEDC and the IURC required by the bill could potentially delay somewhat any fiscal impact of the credit. However, the credit may be claimed beginning in the year granted by the IEDC.

As an example, however, the tax credit for qualified investment totaling $1,000 M could equal a low of $31 M or a high of $75 M. The credit could be taken in 10 equal annual installments ranging from a low of $3.1 M to a high of $7.5 M annually.

Background: Biodiesel/Ethanol Tax Credits: 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. 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.

Coal Gasification Technology Investment Tax Credit: The bill establishes a tax credit against a taxpayer's tax liability arising under the Utility Receipts Tax, AGI Tax, Financial Institutions Tax, and Insurance Premiums Tax for qualified investment in an integrated coal gasification powerplant. The credit is equal to 5% of the first $250 M in qualified investment, and 2.5% of the qualified investment exceeding $250 M. However, if at least 95% of the coal used by the taxpayer in the powerplant is Indiana coal, the credit is equal to 10% of the first $500 M in qualified investment, and 5% of the qualified investment exceeding $500

M. The credit could be taken by the taxpayer in 10 annual installments beginning with the year in which the taxpayer places the integrated coal gasification powerplant into service. The annual credit installment is equal to the lesser of: (1) one-tenth of the credit amount; or (2) 25% of the taxpayer's total state tax liability for the taxable year. The taxpayer's total state tax liability is the total of the liabilities under the Utility Receipts Tax, the AGI Tax, Financial Institutions Tax, and Insurance Premiums Tax for the taxable year. Excess credits may be carried over for up to 6 years. Credits may not be carried back, refunded, or assigned.

To qualify for the tax credit, the taxpayer must make qualified investment in an integrated coal gasification powerplant. The investment includes expenditures in real and tangible personal property incorporated in such a powerplant, and transmission equipment located at the powerplant site and used to serve the powerplant. The powerplant must (1) be newly constructed; (2) convert coal into synthesis gas that can be used as a fuel to generate energy; (3) use the synthesis gas as a fuel to generate electric energy; and (4) be dedicated primarily to serving Indiana retail electric utility consumers. Credits would be approved by the IEDC upon entering into a tax credit agreement with the taxpayer. The provisions of the agreement would include:

(1) a requirement that the taxpayer obtain from the IURC a determination that public convenience and necessity requires the construction of the powerplant:

(2) a requirement that the taxpayer maintain operations at the powerplant for at least 10 years during the time the tax credit is available; and

(3) a requirement that the taxpayer pay an average wage each taxable year that the credit is available at least 150% of the average wage in the county where the powerplant is located.

Distribution of Affected Taxes: Revenue from the Utility Receipts Tax, 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 Economic Development Corporation; Department of State Revenue; Indiana Utility Regulatory Commission.

Local Agencies Affected:

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

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