Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 220 (Senator Pinsky, *et al.*)
Education, Health, and Environmental Affairs
and Budget and Taxation

State Government - Prohibition on Use of State Funds - Ethanol Derived from Corn

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This bill amends various provisions of State law to generally prohibit the use of State funds to encourage certain uses and production of ethanol derived from corn.

Fiscal Summary

State Effect: State expenditures may be affected to the extent the bill prevents State projects or efforts encouraging the production or use of ethanol derived from corn from being undertaken or impedes the State's ability to procure motor fuel. Any impact cannot be reliably determined at this time.

Local Effect: Local governments may be affected to the extent the bill prohibits any future State assistance for installation of ethanol infrastructure.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill's provisions specify that:

- existing production credits for the production of ethanol and biodiesel may not be granted for ethanol derived from corn and applicants for ethanol production credits must provide information demonstrating that the ethanol produced will not be derived from corn;

- “clean energy” does not include ethanol derived from corn with respect to provisions of State law applicable to the Maryland Clean Energy Center;

- State funds may not be used to encourage (1) the use of ethanol derived from corn as motor fuel or (2) the production of ethanol derived from corn for use as motor fuel (in both cases including ethanol derived from corn as a component in motor fuel);

- “clean-burning fuel,” for purposes of the motor fuel tax, does not include fuel containing ethanol derived from corn; and

- the income tax credit available for qualified research and development expenses paid or incurred for cellulosic ethanol technology research and development is not applicable to technology used to develop cellulosic biomass from corn for conversion to ethanol fuel.

Current Law:

Production Credits

Chapter 332 of 2005 authorized the payment of credits for the production of ethanol and biodiesel that meets specified requirements. Production credits of $0.20/gallon are available for ethanol produced from small grains (*e.g.*, wheat, rye, triticale, oats, and hulled or hull-less barley) and biodiesel produced from soybean oil produced in a new or expanded facility. Production credits of $0.05/gallon are available for ethanol produced from other agricultural products and biodiesel produced from other feedstock.

The Renewable Fuels Incentive Board reviews production credit certification applications and pays production credits. The board may not certify ethanol production credits for more than a total of 15 million gallons per calendar year, of which at least 10 million gallons must be produced from small grains. The board also may not certify biodiesel production credits for more than a total of 5 million gallons per calendar year, of which at least 2 million gallons must be from soybean oil produced in a new or expanded facility.

Maryland Clean Energy Center

The Maryland Clean Energy Center was established by Chapter 137 of 2008 to promote economic development and jobs in the clean energy industry sector; promote the deployment of clean energy technology; serve as an incubator for the development of a clean energy industry; collect, analyze, and disseminate industry data; and provide outreach and technical support to further the clean energy industry in the State. "Clean energy" is defined to include ethanol.

Clean-burning Fuel

"Clean-burning fuel" includes a fuel that is at least 85% ethanol. Clean-burning fuel is subject to a motor fuel tax rate of $0.235 per gasoline-equivalent gallon.

Cellulosic Ethanol Research and Development Tax Credit

Chapter 139 of 2008 established a State income tax credit for cellulosic ethanol technology research and development conducted in the State. The amount of the tax credit is equal to 10% of the eligible expenses incurred; unused amounts can be carried forward 15 tax years. The total amount available annually for all applicants is limited to $250,000.

Background: Biofuel production in the United States is predominately made up of corn-based ethanol. The production and use of biofuels in the United States has increased significantly in recent years, but makes up a relatively small amount of the transportation fuel used in the United States.

The federal Energy Independence and Security Act of 2007, however, established a Renewable Fuel Standard (RFS) that requires increasing amounts of biofuels to be included in the transportation fuel used in the United States, reaching 36 billion gallons in 2022. In 2007, according to the Renewable Fuels Association, 6.5 billion gallons of ethanol were produced in the United States.

There are considered to be limits on the amount of U.S. corn that can be used for ethanol production and, under RFS, increasing amounts of the required biofuel use will need to be made up of "advanced biofuels," including cellulosic biofuels, that are derived from other feedstocks such as perennial grasses, woody material, and crop residue.

The Renewable Fuels Incentive Board recently certified an applicant for production credits for the full amount (15 million gallons) available for ethanol. The applicant, however, was certified to receive production credits exclusively for production of ethanol from barley.

The Department of General Services' (DGS) fiscal 2009 capital budget includes $621,000 to construct E85 (85% ethanol) fuel stations in three locations, which would add to three existing State E85 fueling stations (in Baltimore, Annapolis, and near the Baltimore/Washington International Thurgood Marshall Airport). DGS advises work has not yet begun on the stations.

There are a significant number of flex-fuel vehicles (capable of operating on gasoline or alternative fuel) in the State fleet, but DGS advised in November 2008 that, on average, only a minimal amount (about 3,000 gallons) of E85 (85% ethanol) is used per month.

State Fiscal Effect: To the extent the bill prevents use of State funds for projects or efforts that will serve to increase the use of ethanol by State government or the public, expenditures may be affected. In addition, to the extent the bill prohibits the State's procurement of motor fuel containing any ethanol, expenditures may also be affected. A significant majority, if not all, of the gasoline sold in Maryland contains at least a low blend of ethanol to meet Clean Air Act requirements. The bill may impede the State's ability to procure motor fuel in general, given the predominance of ethanol in motor fuel in the State in some blend.

The bill's provision indicating that "clean-burning fuel" does not include fuel containing ethanol derived from corn is not expected to impact State finances. Clean-burning fuel, except electricity, is subject to a motor fuel tax rate of $0.235 per gasoline-equivalent gallon. Gasoline, other than aviation gasoline, is also subject to a motor fuel tax rate of $0.235 per gallon. Special fuel, other than clean-burning fuel or turbine fuel, is subject to a tax rate of $0.2425 per gallon. The Comptroller's Office indicates that E85 fuel containing ethanol derived from corn, if it was no longer considered clean-burning fuel, would likely be taxed as gasoline.

The bill is not otherwise expected to materially affect State finances. As mentioned above, an applicant was recently certified for the full amount of ethanol production incentives available, exclusively for ethanol produced from barley. The Maryland Clean Energy Center was recently launched in January 2009 and the bill's provision indicating that "clean energy" does not include ethanol derived from corn, for the purposes of the center, is not expected to affect State finances. Finally, companies are not expected to apply for the cellulosic ethanol research and development tax credit for research and development associated with ethanol derived from corn.

Local Fiscal Effect: The Maryland Energy Administration has provided funding to local governments for the installation of E85 infrastructure. To the extent the bill prohibits similar funding in the future, local governments may be impacted.

Small Business Effect: The Maryland Energy Administration's (MEA) Transportation Grant Program seeks to improve access to and the use of cleaner, more efficient modes of transportation by awarding grants to biofuels, electric transportation, and consumer behavior modification projects. MEA advises that any small businesses that would apply for installation of E85 infrastructure would not be eligible, given that currently the only commercially available ethanol is produced from corn.

Additional Comments: The Attorney General, in a 1977 opinion, concluded that a proposed bill restricting an appropriation for a specific purpose from being included in the annual budget bill or any supplementary appropriation bills was unconstitutional. As part of the analysis, the opinion indicated "[t]he Court of Appeals has stated that the funding of particular programs and projects of the State in future annual budgets is a matter constitutionally committed to the Governor's discretion" (citing *Maryland Action for Foster Children, Inc. v. State*, 279 Md. 133, 148 (1977)).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Business and Economic Development, Board of Public Works, Department of Budget and Management, Department of General Services, Comptroller's Office, Maryland Energy Administration, Renewable Fuels Association, Office of the Attorney General, Department of Legislative Services

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