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Introduced and read first time: February 11, 2005  
Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Renewable Fuels Promotion Act of 2005**

3 FOR the purpose of establishing certain production credits for certain ethanol and  
4 biodiesel products; establishing the Renewable Fuels Incentive Board to  
5 implement and govern the production credits; providing for the membership and  
6 staff of the Board; establishing certain application procedures for certification of  
7 the production credits; requiring an application to contain certain information;  
8 requiring the Board to approve or deny an application within a certain period of  
9 time; requiring the Board to certify certain producers as eligible for the  
10 production credits; establishing certain limits on the amount of production  
11 credits the Board may certify per producer and the total amount of production  
12 credits the Board may certify; authorizing an increase or reduction in production  
13 credits for a producer under certain circumstances; prohibiting the Board from  
14 paying production credits after a certain date; establishing a claims process to  
15 provide for production credit payments to producers; requiring a claim for a  
16 production credit payment to include certain information; providing that an  
17 application or a claim is not subject to public disclosure; providing for certain  
18 funding to implement the production credits; defining certain terms; and  
19 generally relating to production credits for certain ethanol and biodiesel  
20 products.

21 BY adding to  
22 Article - Agriculture  
23 Section 10-1501 through 10-1507, inclusive, to be under the new subtitle  
24 "Subtitle 15. Production Credits for Renewable Fuels"  
25 Annotated Code of Maryland  
26 (1999 Replacement Volume and 2004 Supplement)

27 BY repealing and reenacting, without amendments,  
28 Article - State Government

1 Section 10-616(a)  
2 Annotated Code of Maryland  
3 (2004 Replacement Volume)

4 BY adding to  
5 Article - State Government  
6 Section 10-616(t)  
7 Annotated Code of Maryland  
8 (2004 Replacement Volume)

9 Preamble

10 WHEREAS, The United States imports more than 62% of its oil and this  
11 percentage is expected to grow to more than 77% by the year 2025; and

12 WHEREAS, The use and production of clean burning, domestically produced  
13 renewable fuels, such as ethanol and biodiesel, will reduce the United States'  
14 dependence on foreign oil; and

15 WHEREAS, Ethanol production has doubled nationally in the last ten years, to  
16 a level where 84 plants in 20 states have a capacity to produce 3.4 billion gallons  
17 annually, mostly in states that have offered production credits and other incentives;  
18 and

19 WHEREAS, Biodiesel production is anticipated to grow from its current 30  
20 million gallons annually to 150 million gallons annually, due in part to the increased  
21 demand for a clean-burning alternative to sulphur in diesel fuel; and

22 WHEREAS, The construction of ethanol and biodiesel production facilities will  
23 provide expanded market opportunities for farmers and a value added enterprise that  
24 will promote economic development in rural areas; and

25 WHEREAS, A facility producing biodiesel fuel made from Maryland soybean oil  
26 would serve to create a stronger and more diverse local market for Maryland soybean  
27 producers; and

28 WHEREAS, Small grains grown as a winter crop under a nutrient management  
29 plan serve to take up nutrients remaining from the previous crop, holding these  
30 nutrients in the field rather than polluting the Chesapeake Bay, and have been shown  
31 to be extremely effective as cover crops; and

32 WHEREAS, An ethanol production facility producing 15 million gallons of  
33 ethanol annually from small grains will generate the production of the equivalent of  
34 an additional 100,000 acres of cover crops towards the acreage goals of the  
35 Chesapeake Bay Commission and the Tributary Strategy Teams, which groups  
36 consider cover crops to be one of the most cost effective methods of reducing the  
37 amount of nutrients entering the Chesapeake Bay; now, therefore,

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Agriculture**

4 SUBTITLE 15. PRODUCTION CREDITS FOR RENEWABLE FUELS.

5 10-1501.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
7 INDICATED.

8 (B) "BIODIESEL" MEANS AN ALTERNATIVE MOTOR FUEL PRODUCED FROM A  
9 RENEWABLE RESOURCE SUCH AS VEGETABLE OIL OR ANIMAL FAT.

10 (C) "BOARD" MEANS THE RENEWABLE FUELS INCENTIVE BOARD.

11 (D) "ETHANOL" MEANS FERMENTED ETHYL ALCOHOL DERIVED FROM  
12 AGRICULTURAL OR FOREST PRODUCTS.

13 (E) (1) "SMALL GRAINS" MEANS A WINTER GRAIN CROP.

14 (2) "SMALL GRAINS" INCLUDES WHEAT, RYE, TRITICALE, OATS, AND  
15 HULLED OR HULL-LESS BARLEY.

16 10-1502.

17 THIS SUBTITLE AUTHORIZES CREDITS FOR THE PRODUCTION OF:

18 (1) ETHANOL THAT:

19 (I) SATISFIES THE AMERICAN SOCIETY FOR TESTING AND MATERIALS  
20 SPECIFICATIONS D 4806-88; AND

21 (II) IS DENATURED AS SPECIFIED IN 27 C.F.R. PARTS 20 AND 21; AND

22 (2) BIODIESEL THAT SATISFIES THE AMERICAN SOCIETY FOR TESTING AND  
23 MATERIALS PS121.

24 10-1503.

25 (A) THERE IS A RENEWABLE FUELS INCENTIVE BOARD.

26 (B) THE BOARD CONSISTS OF THREE MEMBERS AS FOLLOWS:

27 (1) THE SECRETARY OF AGRICULTURE OR THE SECRETARY'S DESIGNEE;

28 (2) THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT OR  
29 THE SECRETARY'S DESIGNEE; AND

1 (3) THE SECRETARY OF THE ENVIRONMENT OR THE SECRETARY'S  
2 DESIGNEE.

3 (C) (1) THE SECRETARY OF AGRICULTURE OR THE SECRETARY'S DESIGNEE  
4 SHALL SERVE AS THE CHAIR OF THE BOARD.

5 (2) THE DEPARTMENT OF AGRICULTURE, THE DEPARTMENT OF  
6 BUSINESS AND ECONOMIC DEVELOPMENT, AND THE MARYLAND DEPARTMENT OF  
7 THE ENVIRONMENT JOINTLY SHALL PROVIDE STAFF SUPPORT FOR THE BOARD.

8 (D) THE BOARD SHALL REVIEW CREDIT CERTIFICATION APPLICATIONS AND  
9 PAY CREDITS UNDER THIS SUBTITLE.

10 10-1504.

11 (A) TO BE ELIGIBLE FOR CREDITS UNDER THIS SUBTITLE, AN ETHANOL OR  
12 BIODIESEL PRODUCER SHALL APPLY TO THE BOARD FOR CERTIFICATION ON AN  
13 APPLICATION PROVIDED BY THE BOARD.

14 (B) AN APPLICANT SHALL SHOW IN THE APPLICATION TO THE SATISFACTION  
15 OF THE BOARD:

16 (1) THAT THE APPLICANT WILL CONSTRUCT OR OPERATE A FACILITY  
17 CAPABLE OF PRODUCING ETHANOL OR BIODIESEL;

18 (2) THAT THE APPLICANT WILL INVEST OR HAS INVESTED SUBSTANTIAL  
19 RESOURCES IN THE STATE IN CONNECTION WITH THE FACILITY;

20 (3) THAT THE FACILITY WILL CONSTITUTE A PERMANENT FIXTURE IN  
21 THE STATE;

22 (4) FOR AN ETHANOL PRODUCTION FACILITY, INFORMATION  
23 DEMONSTRATING:

24 (I) THE PRODUCTION CAPACITY OF THE FACILITY; AND

25 (II) THE QUANTITY AND AVAILABILITY OF SMALL GRAINS AND  
26 OTHER SUITABLE AGRICULTURAL PRODUCTS IN THE VICINITY OF THE PRODUCTION  
27 FACILITY THAT MAY BE USED BY THE FACILITY;

28 (5) FOR A BIODIESEL PRODUCTION FACILITY, INFORMATION  
29 DEMONSTRATING:

30 (I) THE PRODUCTION CAPACITY OF THE FACILITY; AND

31 (II) THE QUANTITY AND AVAILABILITY OF SOYBEAN OIL AND  
32 OTHER SUITABLE BIO-BASED OILS IN THE VICINITY OF THE PRODUCTION FACILITY  
33 THAT MAY BE USED BY THE FACILITY;

34 (6) INFORMATION DEMONSTRATING:

1 (I) THE AVAILABILITY AND COST OF ENERGY SUFFICIENT TO  
2 OPERATE THE FACILITY;

3 (II) THE AVAILABILITY OF SUFFICIENT WATER AND WASTE  
4 DISPOSAL SYSTEMS FOR THE FACILITY;

5 (III) THE AVAILABILITY OF SUFFICIENT LABOR AND A QUALIFIED  
6 SITE MANAGER FOR THE FACILITY; AND

7 (IV) THAT THE FACILITY WILL MEET ALL STATE AND FEDERAL  
8 ENVIRONMENTAL STANDARDS;

9 (7) ANY PROPOSED MARKETING AGREEMENTS FOR THE ETHANOL OR  
10 BIODIESEL PRODUCTS;

11 (8) A PLAN TO GIVE FARMERS IN THE STATE THE OPPORTUNITY TO  
12 INVEST IN THE FACILITY; AND

13 (9) THAT THE APPLICANT WILL MEET ANY OTHER REQUIREMENT  
14 ESTABLISHED BY THE BOARD.

15 (C) THE BOARD SHALL:

16 (1) REVIEW EACH APPLICATION SUBMITTED UNDER THIS SUBTITLE;

17 (2) APPROVE OR DENY THE APPLICATION WITHIN 60 DAYS OF RECEIPT  
18 OF THE APPLICATION; AND

19 (3) FOR AN APPROVED APPLICATION, CERTIFY THE PRODUCER AS  
20 ELIGIBLE FOR A CREDIT IN AN AMOUNT THAT IS:

21 (I) BASED ON THE PRODUCTION CAPACITY OF THE FACILITY, AS  
22 DETERMINED BY THE BOARD; AND

23 (II) CONSISTENT WITH SUBSECTION (D) OF THIS SECTION.

24 (D) (1) THE BOARD MAY NOT CERTIFY ETHANOL PRODUCTION CREDITS FOR  
25 MORE THAN:

26 (I) 15,000,000 GALLONS PER PRODUCER PER CALENDAR YEAR; OR

27 (II) A TOTAL OF 45,000,000 GALLONS PER CALENDAR YEAR, OF  
28 WHICH AT LEAST 15,000,000 GALLONS SHALL BE PRODUCED FROM SMALL GRAINS.

29 (2) THE BOARD MAY NOT CERTIFY BIODIESEL PRODUCTION CREDITS  
30 FOR MORE THAN:

31 (I) 15,000,000 GALLONS PER PRODUCER PER CALENDAR YEAR; OR

32 (II) A TOTAL OF 20,000,000 GALLONS PER CALENDAR YEAR, OF  
33 WHICH AT LEAST 10,000,000 GALLONS SHALL BE FROM SOYBEAN OIL PRODUCED:

1 1. IN A FACILITY THAT BEGAN OPERATING AFTER  
2 DECEMBER 31, 2004; OR

3 2. UNDER THE EXPANDED CAPACITY OF A FACILITY, THE  
4 EXPANSION OF WHICH OCCURRED AFTER DECEMBER 31, 2004.

5 (E) (1) IF ELIGIBLE, A PRODUCER MAY APPLY TO THE BOARD FOR  
6 CERTIFICATION FOR ADDITIONAL CREDITS IF THE PRODUCER INCREASES THE  
7 PRODUCTION CAPACITY OF THE FACILITY.

8 (2) IF A FACILITY DOES NOT ACHIEVE ITS CERTIFIED PRODUCTION  
9 CAPACITY FOR TWO CONSECUTIVE YEARS, THE BOARD MAY REVISE THE STATED  
10 PRODUCTION CAPACITY OF THE FACILITY AND THE CORRESPONDING CREDIT  
11 CERTIFICATION OF THE PRODUCER TO REFLECT ACTUAL PRODUCTION.

12 (F) AN APPLICATION SUBMITTED TO THE BOARD UNDER THIS SECTION IS  
13 NOT SUBJECT TO DISCLOSURE UNDER THE MARYLAND PUBLIC INFORMATION ACT.

14 10-1505.

15 (A) (1) THE BOARD MAY PAY CREDITS AS CALCULATED UNDER THIS  
16 SECTION TO CERTIFIED PRODUCERS OF ETHANOL OR BIODIESEL IN THE STATE FOR  
17 ETHANOL OR BIODIESEL PRODUCED ON OR AFTER DECEMBER 31, 2007.

18 (2) (I) FOR THE PURPOSES OF THIS SUBTITLE, A PERSON THAT HOLDS  
19 A CONTROLLING INTEREST IN MORE THAN ONE ETHANOL PRODUCTION FACILITY IS  
20 CONSIDERED TO BE A SINGLE ETHANOL PRODUCER.

21 (II) FOR THE PURPOSES OF THIS SUBTITLE, A PERSON THAT HOLDS  
22 A CONTROLLING INTEREST IN MORE THAN ONE BIODIESEL PRODUCTION FACILITY IS  
23 CONSIDERED TO BE A SINGLE BIODIESEL PRODUCER.

24 (B) (1) FOR AN ETHANOL PRODUCER, A CREDIT MAY NOT EXCEED THE  
25 MAXIMUM AMOUNT CERTIFIED BY THE BOARD AND SHALL BE:

26 (I) 20 CENTS PER GALLON OF ETHANOL PRODUCED FROM SMALL  
27 GRAINS; AND

28 (II) 5 CENTS PER GALLON OF ETHANOL PRODUCED FROM OTHER  
29 AGRICULTURAL PRODUCTS.

30 (2) FOR A BIODIESEL PRODUCER, A CREDIT MAY NOT EXCEED THE  
31 MAXIMUM AMOUNT CERTIFIED BY THE BOARD AND SHALL BE:

32 (I) 20 CENTS PER GALLON OF BIODIESEL PRODUCED FROM  
33 SOYBEAN OIL PRODUCED:

34 1. IN A FACILITY THAT BEGAN OPERATING AFTER  
35 DECEMBER 31, 2004; OR

1                                 2.         UNDER THE EXPANDED CAPACITY OF A FACILITY, THE  
2 EXPANSION OF WHICH OCCURRED AFTER DECEMBER 31, 2004; AND

3                                 (II)       5 CENTS PER GALLON OF BIODIESEL PRODUCED FROM OTHER  
4 FEEDSTOCK, INCLUDING SOYBEAN OIL PRODUCED IN A FACILITY THAT BEGAN  
5 OPERATING ON OR BEFORE DECEMBER 31, 2004.

6         (C)       THE BOARD MAY NOT PAY A CREDIT FOR ETHANOL OR BIODIESEL  
7 PRODUCED AFTER DECEMBER 31, 2017.

8 10-1506.

9         (A)       AFTER FEBRUARY 1, 2008, TO RECEIVE A CREDIT PAYMENT A CERTIFIED  
10 ETHANOL OR BIODIESEL PRODUCER SHALL FILE A CLAIM WITH THE BOARD BY THE  
11 END OF JANUARY, APRIL, JULY, AND OCTOBER OF EACH YEAR.

12         (B)       A CLAIM FILED UNDER THIS SECTION SHALL STATE:

13                     (1)       (I)       THE PRODUCER'S TOTAL ETHANOL PRODUCTION IN THE STATE  
14 DURING THE PREVIOUS QUARTER, CATEGORIZED BY ETHANOL PRODUCED FROM  
15 SMALL GRAINS AND ETHANOL PRODUCED FROM OTHER AGRICULTURAL PRODUCTS;  
16 OR

17                     (II)       THE PRODUCER'S TOTAL BIODIESEL PRODUCTION IN  
18 MARYLAND DURING THE PREVIOUS QUARTER, CATEGORIZED BY BIODIESEL  
19 PRODUCED FROM:

20                                 1.       SOYBEAN OIL PRODUCED IN A FACILITY THAT BEGAN  
21 OPERATING AFTER DECEMBER 31, 2004, OR UNDER THE EXPANDED CAPACITY OF A  
22 FACILITY, THE EXPANSION OF WHICH OCCURRED AFTER DECEMBER 31, 2004; AND

23                                 2.       OTHER FEEDSTOCK, INCLUDING SOYBEAN OIL PRODUCED  
24 IN A FACILITY THAT BEGAN OPERATING ON OR BEFORE DECEMBER 31, 2004;

25                     (2)       THE LOCATION OF THE PRODUCER;

26                     (3)       THE AVERAGE NUMBER OF MARYLAND CITIZENS EMPLOYED BY THE  
27 PRODUCER IN THE PREVIOUS QUARTER;

28                     (4)       (I)       FOR AN ETHANOL PRODUCER, THE NUMBER OF BUSHELS OF  
29 MARYLAND-GROWN SMALL GRAINS AND OTHER AGRICULTURAL COMMODITIES  
30 USED BY THE PRODUCER IN THE PREVIOUS QUARTER; OR

31                     (II)       FOR A BIODIESEL PRODUCER, THE NUMBER OF GALLONS OF  
32 MARYLAND-PRODUCED SOYBEAN OIL AND OTHER BIO-BASED OILS USED BY THE  
33 PRODUCER IN THE PREVIOUS QUARTER; AND

34                     (5)       ANY OTHER INFORMATION THAT THE BOARD REQUIRES.

1 (C) A CLAIM FILED UNDER THIS SECTION SHALL BE REVIEWED BY AN  
2 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT WITH RESPECT TO, AS  
3 APPROPRIATE:

4 (1) THE TOTAL ETHANOL PRODUCTION;

5 (2) THE BREAKDOWN BETWEEN ETHANOL PRODUCED FROM SMALL  
6 GRAINS AND ETHANOL PRODUCED FROM OTHER AGRICULTURAL PRODUCTS;

7 (3) THE TOTAL BIODIESEL PRODUCTION; AND

8 (4) THE BREAKDOWN BETWEEN BIODIESEL PRODUCED FROM:

9 (I) SOYBEAN OIL PRODUCED IN A FACILITY THAT BEGAN  
10 OPERATING AFTER DECEMBER 31, 2004, OR UNDER THE EXPANDED CAPACITY OF A  
11 FACILITY, THE EXPANSION OF WHICH OCCURRED AFTER DECEMBER 31, 2004; AND

12 (II) OTHER FEEDSTOCK, INCLUDING SOYBEAN OIL PRODUCED IN A  
13 FACILITY THAT BEGAN OPERATING ON OR BEFORE DECEMBER 31, 2004.

14 (D) A CLAIM SUBMITTED TO THE BOARD UNDER THIS SECTION IS NOT  
15 SUBJECT TO DISCLOSURE UNDER THE MARYLAND PUBLIC INFORMATION ACT.

16 10-1507.

17 (A) FOR FISCAL YEAR 2008 AND EACH SUCCEEDING FISCAL YEAR, THE  
18 GOVERNOR SHALL INCLUDE SUFFICIENT FUNDS IN THE STATE BUDGET TO  
19 IMPLEMENT THIS SUBTITLE.

20 (B) TO IMPLEMENT THIS SUBTITLE, THE BOARD:

21 (1) SHALL MAXIMIZE THE USE OF FEDERAL FUNDS OR MATCHING  
22 PROGRAMS TO THE EXTENT POSSIBLE; AND

23 (2) MAY SOLICIT AND ACCEPT GRANTS OR DONATIONS FROM STATE,  
24 LOCAL, OR PRIVATE ENTITIES.

25 **Article - State Government**

26 10-616.

27 (a) Unless otherwise provided by law, a custodian shall deny inspection of a  
28 public record, as provided in this section.

29 (T) A CUSTODIAN SHALL DENY INSPECTION OF AN APPLICATION FOR  
30 RENEWABLE ENERGY CREDIT CERTIFICATION OR A CLAIM FOR RENEWABLE ENERGY  
31 CREDITS UNDER TITLE 10, SUBTITLE 15 OF THE AGRICULTURE ARTICLE.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2005.