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Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 25, 2005

CHAPTER _____

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

1 Section 10-1501 through 10-1507, inclusive, to be under the new subtitle
2 "Subtitle 15. Production Credits for Renewable Fuels"
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2004 Supplement)

5 BY repealing and reenacting, without amendments,
6 Article - State Government
7 Section 10-616(a)
8 Annotated Code of Maryland
9 (2004 Replacement Volume)

10 BY adding to
11 Article - State Government
12 Section 10-616(t)
13 Annotated Code of Maryland
14 (2004 Replacement Volume)

15 Preamble

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

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

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

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

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

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

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

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

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

9 **Article - Agriculture**

10 **SUBTITLE 15. PRODUCTION CREDITS FOR RENEWABLE FUELS.**

11 10-1501.

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

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

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

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

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

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

22 10-1502.

23 THIS SUBTITLE AUTHORIZES CREDITS FOR THE PRODUCTION OF:

24 (1) ETHANOL THAT:

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

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

28 (2) BIODIESEL THAT SATISFIES THE AMERICAN SOCIETY FOR TESTING AND
29 MATERIALS ~~PS424~~ D 6751.

30 10-1503.

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

32 (B) THE BOARD CONSISTS OF ~~THREE~~ FOUR MEMBERS AS FOLLOWS:

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

2 (2) THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT OR
3 THE SECRETARY'S DESIGNEE; ~~AND~~

4 (3) THE SECRETARY OF THE ENVIRONMENT OR THE SECRETARY'S
5 DESIGNEE; AND

6 (4) THE DIRECTOR OF THE MARYLAND ENERGY ADMINISTRATION OR
7 THE DIRECTOR'S DESIGNEE.

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

10 (2) THE DEPARTMENT OF AGRICULTURE, THE DEPARTMENT OF
11 BUSINESS AND ECONOMIC DEVELOPMENT, AND THE MARYLAND DEPARTMENT OF
12 THE ENVIRONMENT JOINTLY SHALL PROVIDE STAFF SUPPORT FOR THE BOARD.

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

15 10-1504.

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

19 (B) AN APPLICANT SHALL SHOW IN THE APPLICATION TO THE SATISFACTION
20 OF THE BOARD:

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

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

25 (3) THAT THE FACILITY WILL CONSTITUTE A PERMANENT FIXTURE IN
26 THE STATE;

27 (4) FOR AN ETHANOL PRODUCTION FACILITY, INFORMATION
28 DEMONSTRATING:

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

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

33 (5) FOR A BIODIESEL PRODUCTION FACILITY, INFORMATION
34 DEMONSTRATING:

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

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

5 (6) INFORMATION DEMONSTRATING:

6 (I) THE AVAILABILITY AND COST OF ENERGY SUFFICIENT TO
7 OPERATE THE FACILITY;

8 (II) THE AVAILABILITY OF SUFFICIENT WATER AND WASTE
9 DISPOSAL SYSTEMS FOR THE FACILITY;

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

12 (IV) THAT THE FACILITY WILL MEET ALL STATE AND FEDERAL
13 ENVIRONMENTAL STANDARDS;

14 (7) ANY PROPOSED MARKETING AGREEMENTS FOR THE ETHANOL OR
15 BIODIESEL PRODUCTS;

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

18 (9) THAT THE APPLICANT WILL MEET ANY OTHER REQUIREMENT
19 ESTABLISHED BY THE BOARD.

20 (C) THE BOARD SHALL:

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

22 (2) APPROVE OR DENY THE APPLICATION WITHIN 60 DAYS OF RECEIPT
23 OF THE APPLICATION; AND

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

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

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

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

31 ~~(4) 15,000,000 GALLONS PER PRODUCER PER CALENDAR YEAR; OR~~

1 ~~(H)~~ A TOTAL OF ~~45,000,000~~ 15,000,000 GALLONS PER CALENDAR
2 YEAR, OF WHICH AT LEAST ~~15,000,000~~ 10,000,000 GALLONS SHALL BE PRODUCED FROM
3 SMALL GRAINS.

4 (2) THE BOARD MAY NOT CERTIFY BIODIESEL PRODUCTION CREDITS
5 FOR MORE THAN:

6 ~~(1)~~ ~~15,000,000 GALLONS PER PRODUCER PER CALENDAR YEAR; OR~~

7 ~~(H)~~ A TOTAL OF ~~20,000,000~~ 5,000,000 GALLONS PER CALENDAR YEAR,
8 OF WHICH AT LEAST ~~10,000,000~~ 2,000,000 GALLONS SHALL BE FROM SOYBEAN OIL
9 PRODUCED:

10 ~~+~~ (I) IN A FACILITY THAT BEGAN OPERATING AFTER
11 DECEMBER 31, 2004; OR

12 ~~2-~~ (II) UNDER THE EXPANDED CAPACITY OF A FACILITY,
13 THE EXPANSION OF WHICH OCCURRED AFTER DECEMBER 31, 2004.

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

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

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

23 10-1505.

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

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

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

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

35 (I) 20 CENTS PER GALLON OF ETHANOL PRODUCED FROM SMALL
36 GRAINS; AND

1 (II) 5 CENTS PER GALLON OF ETHANOL PRODUCED FROM OTHER
2 AGRICULTURAL PRODUCTS.

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

5 (I) 20 CENTS PER GALLON OF BIODIESEL PRODUCED FROM
6 SOYBEAN OIL PRODUCED:

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

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

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

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

16 10-1506.

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

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

21 (1) (I) THE PRODUCER'S TOTAL ETHANOL PRODUCTION IN THE STATE
22 DURING THE PREVIOUS QUARTER, CATEGORIZED BY ETHANOL PRODUCED FROM
23 SMALL GRAINS AND ETHANOL PRODUCED FROM OTHER AGRICULTURAL PRODUCTS;
24 OR

25 (II) THE PRODUCER'S TOTAL BIODIESEL PRODUCTION IN
26 MARYLAND DURING THE PREVIOUS QUARTER, CATEGORIZED BY BIODIESEL
27 PRODUCED FROM:

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

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

33 (2) THE LOCATION OF THE PRODUCER;

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

1 (4) (I) FOR AN ETHANOL PRODUCER, THE NUMBER OF BUSHEL OF
2 MARYLAND-GROWN SMALL GRAINS AND OTHER AGRICULTURAL COMMODITIES
3 USED BY THE PRODUCER IN THE PREVIOUS QUARTER; OR

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

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

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

11 (1) THE TOTAL ETHANOL PRODUCTION;

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

14 (3) THE TOTAL BIODIESEL PRODUCTION; AND

15 (4) THE BREAKDOWN BETWEEN BIODIESEL PRODUCED FROM:

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

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

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

23 10-1507.

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

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

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

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

1

Article - State Government

2 10-616.

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

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

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