
By: **Senators Middleton, Brinkley, Colburn, Dyson, Gladden, Greenip,
Hafer, Haines, Jacobs, Munson, Pipkin, and Teitelbaum**

Introduced and read first time: February 4, 2005

Assigned to: Budget and Taxation

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

29 Section 10-616(a)

30 Annotated Code of Maryland

31 (2004 Replacement Volume)

1 BY adding to
2 Article - State Government
3 Section 10-616(t)
4 Annotated Code of Maryland
5 (2004 Replacement Volume)

6 Preamble

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

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

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

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

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

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

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

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

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

Article - Agriculture

1

2

SUBTITLE 15. PRODUCTION CREDITS FOR RENEWABLE FUELS.

3 10-1501.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
5 INDICATED.

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

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

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

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

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

14 10-1502.

15 THIS SUBTITLE AUTHORIZES CREDITS FOR THE PRODUCTION OF:

16 (1) ETHANOL THAT:

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

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

20 (2) BIODIESEL THAT SATISFIES THE AMERICAN SOCIETY FOR TESTING AND
21 MATERIALS PS121.

22 10-1503.

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

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

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

26 (2) THE SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT OR
27 THE SECRETARY'S DESIGNEE; AND

28 (3) THE SECRETARY OF THE ENVIRONMENT OR THE SECRETARY'S
29 DESIGNEE.

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

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

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

8 10-1504.

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

12 (B) AN APPLICANT SHALL SHOW IN THE APPLICATION TO THE SATISFACTION
13 OF THE BOARD:

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

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

18 (3) THAT THE FACILITY WILL CONSTITUTE A PERMANENT FIXTURE IN
19 THE STATE;

20 (4) FOR AN ETHANOL PRODUCTION FACILITY, INFORMATION
21 DEMONSTRATING:

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

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

26 (5) FOR A BIODIESEL PRODUCTION FACILITY, INFORMATION
27 DEMONSTRATING:

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

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

32 (6) INFORMATION DEMONSTRATING:

33 (I) THE AVAILABILITY AND COST OF ENERGY SUFFICIENT TO
34 OPERATE THE FACILITY;

1 (II) THE AVAILABILITY OF SUFFICIENT WATER AND WASTE
2 DISPOSAL SYSTEMS FOR THE FACILITY;

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

5 (IV) THAT THE FACILITY WILL MEET ALL STATE AND FEDERAL
6 ENVIRONMENTAL STANDARDS;

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

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

11 (9) THAT THE APPLICANT WILL MEET ANY OTHER REQUIREMENT
12 ESTABLISHED BY THE BOARD.

13 (C) THE BOARD SHALL:

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

15 (2) APPROVE OR DENY THE APPLICATION WITHIN 60 DAYS OF RECEIPT
16 OF THE APPLICATION; AND

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

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

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

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

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

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

27 (2) THE BOARD MAY NOT CERTIFY BIODIESEL PRODUCTION CREDITS
28 FOR MORE THAN:

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

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

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

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

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

6 10-1506.

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

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

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

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

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

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

23 (2) THE LOCATION OF THE PRODUCER;

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

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

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

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

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

36 (1) THE TOTAL ETHANOL PRODUCTION;

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

3 (3) THE TOTAL BIODIESEL PRODUCTION; AND

4 (4) THE BREAKDOWN BETWEEN BIODIESEL PRODUCED FROM:

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

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

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

12 10-1507.

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

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

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

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

21 **Article - State Government**

22 10-616.

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

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

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