

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1045

(Delegate Montgomery, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

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**Biodiesel and Ethanol Production Credit - Amounts**

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This bill increases the per gallon value of ethanol and biodiesel production credits established under the Renewable Fuels Promotion Act of 2005 and allows producers of ethanol produced from biomass to qualify for production credits.

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**Fiscal Summary**

**State Effect:** Expenditures (general, special, federal) could increase by up to \$2 million annually through FY 2017, assuming credits are certified for the maximum amount of gallons allowed and for fuels that receive the maximum amount per gallon. However, funding has not yet been provided for the existing credit program. Further, it is uncertain when potentially eligible facilities would become operational, whether they would be certified to receive credit payments, whether the maximum amount of credits would be certified in a given fiscal year, or at what dollar amount per gallon the credits would be paid. Therefore, the timing and amount of any future expenditure increase cannot be reliably estimated at this time. To the extent the bill creates additional incentive for ethanol or biodiesel production in the State, State tax revenues could increase.

**Local Effect:** To the extent the bill creates additional incentive for ethanol or biodiesel production in local jurisdictions, local tax revenues could increase.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The current production credit amount of 20 cents per gallon of ethanol produced from small grains is increased to 30 cents per gallon and is also made applicable to ethanol produced from biomass.

The current production credit amount of 20 cents per gallon of biodiesel produced from soybean oil produced in a facility that began operating after December 31, 2004, or under the expanded capacity of a facility that was expanded after December 31, 2004 is increased to 30 cents per gallon. In addition, the current production credit amount of 5 cents per gallon of biodiesel produced from other feedstock, including soybean oil produced in a facility that began operating on or before December 31, 2004, is increased to 20 cents per gallon.

“Biomass” is defined as cellulose or woody material and includes agricultural wastes, wood materials, municipal waste, and energy crops. Biomass does not include the whole kernel of corn but may include the nonstarch portion of the corn kernel after fractionation.

**Current Law:** The Renewable Fuels Promotion Act of 2005 (Chapter 332 of 2005) authorized the payment of credits for the production of ethanol and biodiesel to certified producers. The bill established a Renewable Fuels Incentive Board within the Maryland Department of Agriculture (MDA) to review credit certification applications and pay credits to producers over a 10-year period (beginning December 31, 2007 through December 31, 2017). For fiscal 2008 and each succeeding fiscal year, the Governor must include sufficient funds in the State budget to implement the credit program. The board must maximize the use of federal funds or matching programs to the extent possible.

Ethanol and biodiesel producers must apply to the board for certification to receive the production credits. If the board approves an application, the board must certify the producer as eligible for a credit in an amount based on the production capacity of the facility. The board may not certify ethanol production credits for more than a total of 15 million gallons per calendar year, at least 10 million gallons of which must be produced from small grains. The board may not certify biodiesel production credits for more than a total of 5 million gallons of biodiesel per calendar year, 2 million gallons of which must be from soybean oil produced in a facility that began operating after December 31, 2004 or under the expanded capacity of a facility that was expanded after December 31, 2004.

For an ethanol producer, credits are 20 cents per gallon produced from small grains and 5 cents per gallon produced from other agricultural products.

For a biodiesel producer, credits are 20 cents per gallon produced from soybean oil produced in a facility that began operating after December 31, 2004, or under the expanded capacity of a facility that was expanded after December 31, 2004. Credits are 5 cents per gallon of biodiesel produced from other feedstock, including soybean oil produced in a facility that began operating on or before December 31, 2004.

If eligible, a producer may apply to the board for certification for additional credits if the producer increases the production capacity of the facility. If a facility does not achieve its certified production capacity for two consecutive years, the board may revise the credit certification of the producer to reflect actual production.

**Background:** The Energy Information Administration's (EIA) 2007 Annual Energy Outlook reports that about 3.9 billion gallons of ethanol and 91 million gallons of biodiesel were produced in the United States in 2005. According to the report, production capacity could rise to about 7.5 billion gallons for ethanol and 1.1 billion gallons for biodiesel by 2008. Production of ethanol in the United States more than doubled between 2000 and 2005, increasing by 140%.

A federal Renewable Fuels Standard (RFS) was created by the Energy Policy Act of 2005 (Pub. L. No. 109-58), providing for production of 7.5 billion gallons of biofuels by 2012. EIA's outlook reports that current and projected real oil prices, the availability of significant tax incentives, and the federal RFS standard have created a favorable market for biofuels.

There are no ethanol or biodiesel facilities currently certified to receive production credits and according to information available to MDA, potentially eligible facilities are still in the planning stages or beginning stages of development. It is not known when eligible facilities will become operational.

MDA advises it is improbable that an ethanol facility that would be eligible to receive production credits would be operational before the spring of 2009 or that a biodiesel facility that would be eligible to receive production credits would be operational before the early part of 2008.

### **State Fiscal Effect:**

#### *Credit Payments*

State expenditures could increase by \$2 million annually through fiscal 2017 as shown in **Exhibit 1**, assuming credits are certified for the maximum amount of gallons allowed and for fuels that receive the maximum amount per gallon in a given fiscal year. However,

due to uncertainty of when eligible ethanol and biodiesel production facilities might become operational, whether those facilities would be certified to receive credits, whether the maximum amount of credits would be certified in a given year, and at what dollar amount per gallon the credits would be paid, the timing and amount of any future expenditure increase cannot be reliably estimated at this time. Nevertheless, it is unlikely that expenditures would increase in fiscal 2008 since no ethanol or biodiesel producers are currently certified to receive credit payments.

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**Exhibit 1**  
**Maximum Renewable Fuel Production Credit Payments**  
**(per calendar year)**

		<u>Production Credits</u>	
		<u>Ethanol</u>	<u>Biodiesel</u>
<i>Under Current Law</i>	Max. # of gallons certified per year	15,000,000	5,000,000
	Max. \$ amount per gallon	\$0.20	\$0.20
	<b>Potential Total Paid by State*</b>	<b>\$3,000,000</b>	<b>\$1,000,000</b>
<i>HB 1045</i>	Max. # of gallons certified per year	15,000,000	5,000,000
	Max. \$ amount per gallon	\$0.30	\$0.30
	<b>Potential Total Paid by State*</b>	<b>\$4,500,000</b>	<b>\$1,500,000</b>
	<b>Potential Expenditure Increase</b>	<b>\$1,500,000</b>	<b>\$500,000</b>

\*Assumes credits are certified for the maximum amount of gallons allowed and for fuels and/or facilities that receive the maximum amount per gallon.

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No federal or matching funding has been obtained to date. Thus, it is likely that general funds would be used to support the program. The Governor's proposed budget for fiscal 2008 does not include funding for the existing credits.

*Tax Revenue*

To the extent the increased credit amounts create additional incentive for ethanol or biodiesel production in the State, State tax revenues could increase. MDA cannot say with certainty that the bill would be directly responsible for the development of an ethanol or biodiesel plant. MDA, however, advises that the use of small grains for the production of ethanol is not a common method of producing ethanol and the increased

production credit under the bill could be a meaningful incentive for development of an ethanol plant that would utilize small grains. MDA also advises that, due to the limited economic viability of producing ethanol from biomass, it is uncertain whether the production credits available under the bill would be sufficient incentive for development of a production facility.

**Local Fiscal Effect:** Local tax revenues could similarly increase to the extent the increased credit amounts create additional incentive for ethanol or biodiesel production in local jurisdictions.

**Small Business Effect:** To the extent the increased credit amounts create additional incentive for ethanol or biodiesel production in the State, farmers could benefit from the bill's changes through increased local demand and investment opportunities. Current law requires applicants for production credits to include a plan to give Maryland farmers the opportunity to invest in the production facility.

Biodiesel is produced from vegetable oils (including soybean), yellow grease, and animal fats though the U.S. biodiesel industry relies primarily on soybean oil as a feedstock. MDA advises that the commodity markets in Maryland have strengthened considerably in the last year, in part due to biofuel demand, yet more soybeans are produced in Maryland than can be processed locally. Barley, a small grain which can be used to produce ethanol, is a consistent performing crop for farmers, yet the market for it is limited. Production of ethanol in the State using barley could increase demand.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Comptroller's Office, Maryland Energy Administration, Maryland Department of Agriculture, Energy Information Administration, Renewable Fuels Association, Department of Legislative Services

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