Bethany Boyd *Legislative Service Commission*

Sub. S.B. 144*

124th General Assembly
(As Reported by S. Ways & Means)

Sen. Mumper

BILL SUMMARY

- Creates the Ethanol Incentive Board, whose sole duty is to review the business plan submitted to it by any owner of an ethanol production plant who desires investors in the plant to be eligible for a nonrefundable tax credit for their investments.
- Beginning in 2001 and ending 2011, allows a nonrefundable tax credit against corporation franchise or personal income tax liability for an investor in an ethanol production plant for which a certificate of approval of the plant's business plan has been issued by the Board.
- Provides that the tax credit is equal to 50% of the money invested in such a plant, but the credit cannot exceed $5,000.
- Includes ethanol production plants in the types of air quality facilities for which the Ohio Air Quality Development Authority may issue bonds or make loans or grants.

CONTENT AND OPERATION

Overview

The bill creates a nonrefundable tax credit for corporation franchise or income tax taxpayers who invest money in an ethanol production plant located in Ohio, if the plant's business plan is approved by the Ethanol Incentive Board created by the bill. The bill also adds ethanol plants to the types of "air quality

* *This analysis was prepared before the report of the Senate Ways and Means Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

facilities" for which the Ohio Air Quality Development Authority (OAQDA) may make loans and grants, and issue bonds under its existing law.

For purposes of the entire bill, "ethanol" is defined as fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources that meet all of the specifications in the American Society for Testing and Materials (ASTM) specification D 4806-88 and is denatured as specified in Parts 20 and 21 of Title 27 of the Code of Federal Regulations.

Ethanol Incentive Board

Composition

(R.C. 901.13(B))

The bill creates the Ethanol Incentive Board, consisting of the following five members: the Director of Agriculture, who serves as chairperson of the Board; the Director of Development; the Executive Director of the OAQDA; one member appointed by the Speaker of the House of Representatives; and one member appointed by the President of the Senate. Initial appointments to the Board must be made within 30 days of the bill's effective date. Vacancies must be filled in the same manner provided for original appointments. Board members are to serve without compensation.

Under the bill, the Board is to meet and conduct its business as directed by the chairperson. The Board ceases to exist January 1, 2012.

Review and approval of business plans; requirements for the plans

(R.C. 901.13(A), (C), (D), and (F))

The Board's sole duty is to review applications submitted to it to determine whether an applicant's business plan for a "facility," meaning an ethanol production plant that will be located in Ohio, satisfies statutory requirements. If the Board approves an application, the Board must issue a certificate of approval, and any taxpayer that invests money in the facility for which a certificate has been issued may claim a tax credit for the investment in accordance with the bill's tax credit provisions (see "***Tax credits for investments in ethanol plants***," below). The Board may approve an application only if it determines, by the affirmative vote of all Board members, that an applicant's business plan for a facility meets the requirements established by the bill.

The owner of a facility may apply to the Board, on an application provided by the Director of Agriculture, for approval of the facility's business plan. Within 60 days of receipt of an application, the Board is required to determine whether the applicant's business plan meets the following requirements:

(1) The business plan is for the construction and operation of a facility;

(2) The business plan contains detailed information regarding the availability and price of corn in the area where the facility will be located; the availability and cost of energy needed for operation of the facility; the availability of water and waste disposal systems in the area where the facility will be located; and the availability of labor and a qualified site manager for the facility.

(3) The business plan analyzes any proposed marketing agreements for the products produced by the facility;

(4) The facility to be constructed and operated under the business plan meets eligibility requirements to apply to the OAQDA (see "***Ohio Air Quality Development Authority***," below) for a loan, grant, or other financing under existing Authority law;

(5) The facility to be constructed and operated under the business plan is majority-owned by Ohio farmers or will be prior to the first day the facility commences production;

(6) The business plan meets any other requirements established by the Board under rules adopted under the bill.

The Board is required to notify the Tax Commissioner of any certificate of approval issued under the bill, within ten days of its issuance.

Business plan not a public record

(R.C. 901.13(E))

Any business plan submitted to the Board under the bill is not a public record under continuing law that requires public offices to make certain records available for inspection and copying.

Rulemaking

(R.C. 901.13(G))

The bill requires that the Director of Agriculture, in consultation with the Director of Development, adopt rules necessary to implement the Ethanol

Incentive Board provision, including rules prescribing procedures and forms for administering the provision. The rules must be adopted in accordance with existing law (R.C. Chapter 119.) that requires notice and public hearing for the adoption of rules.

Board is not subject to review by the Sunset Review Committee

(R.C. 109.13(H))

The bill provides that the Board is not an agency for purposes of continuing law that requires that boards and agencies expire unless they are reviewed by the Sunset Review Committee and renewed by the passage of a bill.

Tax credits for investments in ethanol plants

Credit eligibility; amount of credit

(R.C. 5733.46 and 5747.75)

The bill creates a nonrefundable credit, commencing in 2001 and ending in 2011, against the corporation franchise and personal income taxes, for a taxpayer that invests money in an ethanol production plant for which a certificate of approval has been issued (a "certified ethanol plant") by the Ethanol Incentive Board. The amount of the credit equals 50% of the money the taxpayer invests in a certified ethanol plant, but the credit amount cannot exceed $5,000.

Claiming the credit; three-year carry forward

(R.C. 5733.45, 5733.98, 5747.75, and 5747.98)

The bill requires that the credit be claimed in the tax year, under the corporation franchise tax, or the taxable year, under the personal income tax, in which the investment in a certified ethanol plant was made. The taxpayer must claim the credit in the same order existing law prescribes for claiming nonrefundable corporation franchise or personal income tax credits. Any credit amount in excess of the corporation franchise or personal income tax due, after allowing for any other credits preceding it in that prescribed order, may be carried forward for three years, but the amount of the excess credit allowed in any such year must be deducted from the balance carried forward to the next year.

If the taxpayer is subject to the personal income tax and is a direct or indirect investor in a pass-through entity (e.g., S corporations, partnerships, some limited liability companies, and certain trusts) that has made an investment in a certified ethanol plant, the taxpayer may claim its proportionate or distributive share of the credit.

Under the bill, the Tax Commissioner may require that the taxpayer furnish information as is necessary to support the claim for the tax credit, and no credit will be allowed unless the information is provided.

Ohio Air Quality Development Authority

General responsibilities of the Authority

(R.C. Chapter 3706.)

Under continuing law, the Ohio Air Quality Development Authority operates to promote the conservation of clean air and the prevention of pollution of it. To accomplish this, the Authority, along with its other powers, may make loans and grants to governmental agencies for the acquisition or construction of "air quality facilities," and may make loans and issue air quality revenue bonds for air quality facilities for industry, commerce, distribution, or research, including public utility companies. Property that is part of an air quality facility is not subject to taxes or assessments so long as the bonds or notes issued to finance the costs of the facility are outstanding. In addition, the transfer of the property to the person to whom a loan or installment or conditional sale with respect to the facility is made is not subject to the state sales or use tax.

Ethanol production plants are air quality facilities

(R.C. 3706.01(G), (R), and (S))

The bill amends the definition of "air quality facility" to include ethanol facilities, including any equipment used at an ethanol facility for the production of ethanol. This change enables the Authority to make loans and issue bonds for ethanol facilities that meet the requirements for such financing established in the Authority's existing law (R.C. Chapter 3706.).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-10-01	p. 813
Reported, S. Ways & Means	---	---

s0144-rs.124/kl