



## **Sub. H.B. 245**

126th General Assembly  
(As Passed by the General Assembly)

**Reps. Reinhard, Aslanides, Barrett, Buehrer, Core, Faber, Hagan, Hughes, Kearns, Latta, McGregor, Schlichter, Seaver, Seitz, Setzer, Ujvagi, Wagner, Webster, Widowfield, Willamowski, Fende, Perry, Key, Law, Sayre, Bubb, Uecker, Hoops, Blessing, Boccieri, Book, Calvert, Carano, Carmichael, Cassell, Chandler, Collier, Combs, Daniels, DeBose, DeGeeter, Distel, Dolan, Domenick, Evans, C., Evans, D., Flowers, Garrison, Gibbs, Gilb, Hartnett, Harwood, Healy, Martin, Mason, Miller, Oelslager, Otterman, Patton, S., Patton, T., Peterson, Raussen, Reidelbach, Schaffer, Schneider, Skindell, Smith, G., Stewart, D., Stewart, J., Taylor, Trakas, Wagoner, White, Widener, Williams, Wolpert, Yates, Yuko**

**Sens. Schuler, Spada, Roberts, Fingerhut, Zurz, Dann, Amstutz, Carey, Clancy, Coughlin, Fedor, Grendell, Kearney, Mumper, Niehaus, Padgett, Wachtmann, Harris, Armbruster**

**Effective date:** \*

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### **ACT SUMMARY**

- Requires the Department of Development to administer a Diesel Emissions Reduction Grant Program and a Diesel Emissions Reduction Revolving Loan Program, for the purpose of reducing emissions from diesel engines; the Programs must implement section 793 of the federal Energy Policy Act of 2005.
- Beginning July 1, 2006, requires that all new motor vehicles acquired by the Department of Administrative Services (DAS) and state agencies that have been delegated fleet management duties be capable of using alternative fuels and sets minimum E85 blend fuel and biodiesel use requirements for those vehicles.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Requires DAS to establish and administer an alternative fueled vehicle credit banking and selling program, and permits DAS to sell or trade vehicle credits in accordance with federal law.
- Creates the "Biodiesel Revolving Fund," consisting of money received from the sale of those credits, to pay for the incremental cost of biodiesel for use in vehicles owned or leased by the state that use diesel fuel.
- Expands the Alternative Fuel Transportation Grant Program to make grants for purchasing and installing alternative fuel distribution facilities and terminals, and for paying the costs of educational and promotional materials and activities regarding alternative fuel.
- Increases the maximum grant amount under that Program for the purchase and installation of an alternative fuel refueling or distribution facility or terminal, and for the purchase of alternative fuel.
- Makes an appropriation of \$1 million, from the Energy Efficiency Revolving Loan Fund to the Alternative Fuel Transportation Grant Fund, in fiscal year 2007.
- Requires that the Director of Administrative Services designate an alternative fuel resource officer, and provides that DAS compile a report of purchases of alternative fuels by each state department and agency.
- Provides that directional signs that display business logos along state highways must permit the business logos of alternative fuel sellers.
- Prohibits political subdivisions from taxing alternative fuel.
- Requires the Department of Taxation to study the feasibility of encouraging the use of alternative fuels by reducing the motor fuel tax rate on those fuels to reflect their lower energy content.
- Requires the Department of Development to study making the production, sale, and use of biodiesel and blended ethanol fuels a commercially viable and self-sustaining industry in Ohio.

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## CONTENT AND OPERATION

### Overview

The act contains a number of provisions that relate to the use of alternative fuels in motor vehicles. These provisions cover topics as follows:

(1) The establishment by the Department of Development of a Diesel Emissions Reduction Grant Program and Diesel Emissions Reduction Revolving Loan Program;

(2) The acquisition by the Department of Administrative Services of new motor vehicles for state fleets that are capable of using alternative fuels, and the use of alternative fuels in those vehicles;

(3) The establishment of a vehicle credit banking and selling program, which involves the selling or trading of vehicle credits in accordance with federal law;

(4) Expansion of the Alternative Fuel Transportation Grant Program and an increase in the maximum grant permitted under the Program;

(5) An appropriation of \$1 million to the Alternative Fuel Transportation Grant Fund;



(6) Designation by the Director of Administrative Services of an alternative fuel resource officer;

(7) Reports by the Director of Administrative Services of data on state use of alternative fuels;

(8) Highway business logo signs of alternative fuel sellers;

(9) Prohibiting political subdivisions from taxing the buying, selling, handling, or consuming of alternative fuel;

(10) Studying the feasibility of encouraging use of alternative fuels by reducing the motor fuel tax rate on those fuels;

(11) Studying making the production, sale, and use of certain alternative fuels a commercially viable and self-sustaining industry in Ohio.

**Department of Development diesel emissions programs**

(R.C. 122.861)

The act requires the Department of Development to administer a Diesel Emissions Reduction Grant Program and a Diesel Emissions Reduction Revolving Loan Program for the purpose of reducing emissions from diesel engines. The programs must provide for the implementation of section 793 of the federal Energy Policy Act of 2005, 42 U.S.C. 16133 (the "federal Act"), which establishes a national grant and loan program to aid states and eligible nonprofit organizations to achieve significant reductions in diesel emissions. A grant or loan provided under section 793 may be used for a project relating to a "certified engine configuration" or a "verified technology."

The act follows the federal law by defining a "certified engine configuration" as a new, rebuilt, or remanufactured engine configuration that has been certified by the Administrator of the United States Environmental Protection Agency (EPA) or the California Air Resources Board, and that meets or is rebuilt or remanufactured to a more stringent set of engine emission standards than when originally manufactured, as determined under the federal Act. In the case of a certified engine configuration involving the replacement of an existing engine, the "certified engine configuration" is the engine configuration that replaced an engine that was removed from the vehicle and returned to the supplier for remanufacturing to a more stringent set of engine emission standards, or for scrappage.

"Verified technology" means a pollution control technology, including a retrofit technology, advanced truckstop electrification system, or auxiliary power

unit, that has been verified by the federal EPA Administrator or the California Air Resources Board.

The programs must be administered in compliance with section 793 and any regulations issued under that law. The Director of Development must apply to the federal EPA Administrator for grant or loan funds available under the federal Act to help fund both programs. Upon the Director of Development's request, the Ohio Director of Environmental Protection must assist the Director of Development to the extent necessary to develop diesel emission reduction plans, goals, or methods, including the role of certified engine configurations and verified technologies, and to prepare the application for grants or loans under the federal Act.

As part of the programs, the act creates two funds in the state treasury: the Diesel Emissions Grant Fund and the Diesel Emissions Reduction Revolving Loan Fund. Both funds consist of money appropriated to them by the General Assembly, any grants obtained from the federal government under section 793, and any other grants, gifts, or other contributions of money made to the credit of the funds. Money in the Grant Fund must be used for making grants for projects relating to certified engine configurations and verified technologies in a manner consistent with section 793 and regulations issued under that section. Money in the Loan Fund must be used for making loans for the same types of projects. Interest earned from moneys in the Grant Fund must be used to administer the Diesel Emissions Reduction Grant Program, and interest earned from moneys in the Loan Fund must be used to administer the Diesel Emissions Reduction Revolving Loan Program.

**Department of Administrative Services fleet management program**

**Acquisition of new motor vehicles by DAS and certain state agencies**

(R.C. 125.831, 125.832, and 125.834(A), (B), and (D))

The act requires the Department of Administrative Services (DAS) to ensure that all new motor vehicles the state acquires on and after July 1, 2006, for use by state agencies are capable of using alternative fuels. The act defines "alternative fuel" as the following fuels used in a motor vehicle: E85 blend fuel; blended biodiesel; natural gas; liquefied petroleum gas; hydrogen; any power source, including electricity; or any other fuel that the United States Department of Energy determines, by final rule, to be substantially not petroleum, and that would yield substantial energy security and environmental benefits. "E85 blend fuel" is fuel that is at least 85% ethanol and not more than 15% gasoline or other liquid motor fuel by volume and that meets the American Society for Testing and Materials specification for E85 blend fuel and any other standards the Director of DAS adopts by rule. (E85 blend fuel may contain a lower percentage of ethanol,

but not less than 70%, if the United States Department of Energy has determined by rule that a lower percentage is necessary for cold start, safety, or vehicle function.) "Blended biodiesel" fuel is a blend of diesel and biodiesel fuel that consists of at least 20% biodiesel and that meets the American Society for Testing and Materials specification for blended biodiesel and any other standards the Director of DAS adopts by rule. "Biodiesel" is a fuel that is derived from vegetable oils or animal fats and that meets the American Society for Testing and Materials specification for biodiesel fuel and any other standards the Director of DAS adopts by rule.

A state agency that has been delegated fleet management duties under continuing law must report annually to the Director of DAS, in a manner that the Director prescribes, the number of new motor vehicles acquired by that state agency and the number of those motor vehicles that are capable of using alternative fuel. The state agencies to which the acquisition requirement applies are all bodies, offices, or agencies established by the laws of the state for the exercise of any function of state government, except for a state-supported institution of higher education, the office of the Governor, Lieutenant Governor, Auditor of State, Treasurer of State, Secretary of State, or Attorney General, the General Assembly or any legislative agency, the courts or any judicial agency, or any state retirement system. The motor vehicles to which the requirement applies are automobiles, car minivans, cargo vans, passenger vans, sport utility vehicles, and pickup trucks with a weight of under 12,000 pounds, but not vehicles used by law enforcement agencies or that are equipped with specialized equipment not normally found on such vehicles and that are used to carry out specific and specialized duties.

The act prohibits DAS from purchasing or leasing, or authorizing the purchase or lease by a state agency of, any motor vehicles that are not capable of using alternative fuels, unless one or more of the following apply:

- (1) DAS or the state agency is unable to acquire or operate motor vehicles within cost limitations established by rule of the Director of DAS (see "*Rulemaking and state directives*," below).
- (2) The use of alternative fuels would not meet the energy conservation and exhaust emissions criteria established by rule.
- (3) An emergency exists or exigent circumstances exist, as determined by DAS.

### **Fuel use requirements**

(R.C. 125.834(C))

Not later than 90 days after the act's effective date, all motor vehicles owned or leased by the state that are capable of using an alternative fuel must use that fuel if it is reasonably available at a reasonable price. This requirement applies to all of the motor vehicles described in "**Acquisition of new motor vehicles by DAS and certain state agencies**," above, and also to all on-road and off-road vehicles powered by diesel fuel, regardless of gross vehicle weight. Subject to rules adopted by the Director of DAS, the motor vehicles must use at least 60,000 gallons of E85 blend fuel per calendar year by January 1, 2007, with an increase of 5,000 gallons per calendar year each calendar year thereafter, and at least one million gallons of biodiesel per calendar year by that date, with annual increases of 100,000 gallons per calendar year.

### **Rulemaking and state directives**

(R.C. 125.834(C) and (D))

The Director of DAS must adopt rules under the Administrative Procedure Act (public notice and a hearing) to implement the fuel use requirements, and the directors and heads of all state departments and agencies must issue a directive to all state employees who use state motor vehicles informing them of the fuel use requirements. The directive must instruct state employees to purchase alternative fuels at retail fuel facilities whenever possible.

The Director of DAS also must adopt, and may amend, rules under the Administrative Procedure Act that establish requirements for state agencies in the procurement of alternative fuels and motor vehicles capable of using those fuels, cost limitations for the acquisition and operation of those vehicles, and energy conservation and exhaust emissions criteria for motor vehicles capable of using alternative fuels.

### **DAS vehicle credit banking and selling program**

(R.C. 125.836)

The act requires DAS to establish and administer an alternative fueled vehicle credit banking and selling program, and authorizes DAS to sell or trade credits in accordance with procedures established under the federal Energy Policy Act of 1992. Covered fleets earn one vehicle credit for every light-duty (8,500 pounds or less) alternative fueled vehicle they acquire beyond their base vehicle acquisition requirements. Once they have satisfied their annual light-duty acquisition requirements, covered fleets also may earn one credit for every heavy-



duty alternative fueled vehicle they acquire annually. These credits may be traded between fleets that need to buy or sell banked credits.

The act creates in the state treasury the Biodiesel Revolving Fund, consisting of any money DAS receives from the sale of credits, any money appropriated to that Fund by the General Assembly, and any other money obtained or accepted by DAS for credit to the Fund. All money credited to the Fund must be used to pay for the incremental cost of biodiesel for use in vehicles owned or leased by the state that use diesel fuel. "Incremental cost" means the difference in cost between blended biodiesel and conventional petroleum-based diesel fuel at the time the blended biodiesel is purchased.

The Director of DAS, after consultation with the Director of Development, may direct the Director of Budget and Management to transfer available moneys in the Biodiesel Revolving Fund to the Alternative Fuel Transportation Grant Fund to be used by the Department of Development for the purposes specified in "*The Alternative Fuel Transportation Grant Fund*," below.

The Director of DAS must adopt rules under the Administrative Procedure Act that are necessary for the administration of the credit banking and selling program.

#### *Alternative Fuel Transportation Grant Program*

(R.C. 122.075)

Continuing law provides that, for the purpose of improving the air quality in Ohio, the Director of Development must establish an Alternative Fuel Transportation Grant Program. Under the Program, the Director may make grants to businesses, nonprofit organizations, public school systems, or local governments for the purchase and installation of alternative fuel refueling facilities and for the purchase and use of alternative fuel. The act expands the Program to allow the Director also to make grants for the purchase and installation of alternative fuel distribution facilities and terminals, and to pay the costs of educational and promotional materials and activities intended for prospective alternative fuel consumers, fuel marketers, and others in order to increase the availability and use of alternative fuel.

Under continuing law, the Director must adopt any rules that are necessary for the administration of the Program. The rules must establish at least all of the following:

- (1) An application form and procedures governing the grant application process;
- (2) A procedure for prioritizing the award of grants under the Program;

(3) A requirement that the maximum grant for the purchase and installation of an alternative fuel refueling facility be no more than 50% of the cost of the facility;

(4) A requirement that the maximum grant for the purchase of alternative fuel be no more than 50% of the "incremental cost" of the fuel;<sup>1</sup>

(5) Any other criteria, procedures, or guidelines that the Director determines are necessary to administer the Program.

The act requires that additional procedures for prioritizing the award of grants be considered in (2), above. The procedures must give preference to all of the following:

- Publicly accessible refueling facilities;
- Entities seeking grants that have secured funding from other sources, including private or federal grants;
- Entities that have presented compelling evidence of demand in the market in which the facilities or terminals will be located;
- Entities that have committed to utilizing purchased or installed facilities or terminals for the greatest number of years;
- Entities that will be purchasing or installing facilities or terminals for both blended biodiesel and blended gasoline.<sup>2</sup>

The act increases the maximum grant for the purchase and installation of an alternative fuel refueling facility, to no more than 80% of the facility's cost, and adds alternative fuel distribution facilities or terminals as facilities that are eligible for a grant. The act further provides that at least 20% of the total net cost of a facility or terminal must be incurred by the grant recipient and not compensated for by any other source.

The act also increases the maximum grant for the purchase of alternative fuel (in (4) above) to 80% of the incremental cost of the fuel.

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<sup>1</sup> "Incremental cost" means, in this context, the difference in cost between blended gasoline and gasoline containing 10% or less ethanol at the time the blended gasoline is purchased, or the difference in cost between blended biodiesel and diesel fuel containing 2% or less biodiesel at the time the blended biodiesel is purchased.

<sup>2</sup> "Blended gasoline" is the same as E85 blend fuel elsewhere in the act--gasoline containing at least 85% ethanol by volume.

The act requires an applicant for a grant under the Program that sells motor vehicle fuel at retail to agree that if the applicant receives a grant, the applicant will report to the Director of Development the gallon amounts of blended gasoline and blended biodiesel the applicant sells at retail in Ohio for a period of three years after the grant is awarded. The Director must enter into a written confidentiality agreement with the applicant regarding the gallon amounts sold, and upon execution of the agreement, this information is not a public record.

**Appropriation to the Alternative Fuel Transportation Grant Fund**

(R.C. 122.075(E) and 125.836(C); Sections 3 to 6)

The act makes an appropriation of \$1 million from the Energy Efficiency Revolving Loan Fund to the Alternative Fuel Transportation Grant Fund in fiscal year 2007.

The act also provides that money in the Biodiesel Revolving Fund may be transferred to the Alternative Fuel Transportation Grant Fund at the direction of the Director of DAS, to be used by the Department of Development to make grants under the Alternative Fuel Transportation Grant Program and to administer the Program.

**Alternative fuel resource officer**

(R.C. 125.837)

The act requires that the Director of DAS designate an employee within DAS as the state alternative fuel resource officer. The officer must monitor federal activity that affects Ohio in its use of motor vehicles that are capable of using an alternative fuel. The officer must be available to all state departments and agencies to explain the laws that apply to the purchase of motor vehicles that are capable of using an alternative fuel, the laws governing alternative fuels, and any other relevant issues that relate to motor vehicles that are capable of using an alternative fuel, such as the locations of motor vehicle fueling facilities that sell alternate fuels.

If time and resources permit, the officer may assist political subdivisions with any questions or issues relating to alternative fuels and to motor vehicles that are capable of using an alternative fuel.

**Report of alternative fuel purchases**

(R.C. 125.838)

The act requires DAS to compile on a quarterly basis all data relating to the purchase by each state department and agency of alternative fuels, including the

amounts of alternative fuels and conventional fuels purchased, the per-gallon prices paid for each fuel, and the locations at which alternative fuels were purchased and the fuel amount purchased at each such location. By April 1 of each year, DAS must prepare a report that contains all of this data for the preceding calendar year and submit a copy of it to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate. The report also must list the number and types of motor vehicles each state department and agency owns or leases that are capable of using an alternative fuel, and the locations at which these motor vehicles are routinely parked.

**Highway logo signs for alternative fuel**

(R.C. 4511.101(F))

The Director of Transportation established a program under continuing law for the placement of business logos for identification purposes on state directional signs along state highways. The act provides that the program must permit the business logo signs of a seller of motor vehicle fuel to include on the seller's signs a marking or symbol indicating that the seller sells one or more types of alternative fuel, so long as the seller in fact does so.

**Prohibition against political subdivisions taxing motor fuel and alternative fuels**

(R.C. 5735.40)

Under continuing law, the retail sale of motor fuel generally is not subject to taxation, other than motor fuel taxes.<sup>3</sup> The act specifically prohibits any political subdivision from levying or collecting any excise, license, privilege, or occupational tax on alternative fuel, or on the buying, selling, handling, or consuming of alternative fuel.

**Feasibility study of the Department of Taxation**

(Section 7)

The act requires the Department of Taxation to study the feasibility of encouraging the use of alternative fuels by reducing the motor fuel tax rate on

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<sup>3</sup> *The only circumstance in which the retail sale of motor fuel is subject to another tax is when a person purchases motor fuel at retail and uses the fuel for purposes that do not involve public streets (such as stationary gasoline engines) or uses the fuel in certain watercraft. The person can obtain a refund of the motor fuel tax that was paid when the fuel was purchased, but the sale of the fuel then becomes subject to both state and local "piggyback" sales or use taxes, or lodging taxes.*

those fuels, to the extent they are taxed, to reflect their lower energy content and the need to use more gallons of an alternative fuel to travel the same distance. The study must examine the British thermal unit (Btu) of each alternative fuel that may be used in motor vehicles and determine at what rate each alternative fuel may be taxed to result in an effective tax rate that is equalized to conventional fuels, such as gasoline and diesel, according to their relative Btu content by volume. Among any other matters the Department determines to be pertinent to the study, the Department must consider the experience of other states that have encouraged the use of alternative fuels by reducing their fuel tax rates on those fuels. Not later than one year after the act's effective date, the Department is required to prepare a report regarding its findings and to submit a copy of the report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

**Department of Development study**

(Section 8)

The act requires the Department of Development, in conjunction with the Departments of Agriculture and Commerce, to conduct a study evaluating the factors involved in making the production, sale, and use of blended biodiesel and E85 blend fuel a commercially viable and self-sustaining industry in Ohio so that government intervention and support for these fuel markets is unnecessary. Not later than one year after the act's effective date, the Department of Development is required to prepare a report regarding its findings and to submit a copy of the report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

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**HISTORY**

ACTION	DATE
Introduced	05-05-05
Reported, H. Transportation, Public Safety & Homeland Security	06-16-05
Passed House (95-0)	10-05-05
Reported, S. Ways & Means & Economic Development	03-29-06
Passed Senate (31-0)	03-29-06
House concurred in Senate amendments (96-0)	05-09-06

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