



Bethany Boyd

*Bill Analysis*  
*Legislative Service Commission*

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

126th General Assembly  
(As Passed by the House)

**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, C. Evans, D. Evans, Flowers, Garrison, Gibbs, Gilb, Hartnett, Harwood, Healy, Martin, Mason, Miller, Oelslager, Otterman, S. Patton, T. Patton, Peterson, Raussen, Reidelbach, Schaffer, Schneider, Skindell, G. Smith, D. Stewart, J. Stewart, Taylor, Trakas, Wagoner, White, Widener, Williams, Wolpert, Yates, Yuko**

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### **BILL SUMMARY**

- Requires the Department of Development to administer an Idle Reduction Retrofit Revolving Loan Program, with the purpose of conserving fuel and reducing air emissions, noise, and engine wear by assisting local governments in reducing the amount of time that heavy-duty trucks and other vehicles idle their engines.
- Beginning July 1, 2006, requires that at least 90% of the new motor vehicles acquired during every two-year period by the Department of Administrative Services (DAS) and state agencies that have been delegated fleet management duties be capable of using alternative fuels.
- Requires that the fuel purchased for use in fleets of state-owned motor vehicles be alternative fuels, beginning with 30% for the period from the bill's effective date through June 30, 2006, increasing to 50% for fiscal year 2007, 75% for fiscal year 2008, and 90% for each fiscal year thereafter.
- Provides that in awarding any contract for the procurement of vehicles, a state agency must give preference to an otherwise qualified bidder who will fulfill the contract through the use of vehicles that use ethanol

produced from Ohio corn, or biodiesel produced from Ohio soybeans or Ohio corn.

- Requires DAS to establish and administer a 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.
- Requires the Director of Agriculture to establish an Alternative Fuel Transportation Grant Program to make grants for purchasing and installing alternative fuel refueling facilities and for purchasing and using alternative fuel.
- Creates credits against the corporation franchise tax and the income tax for the sale of ethanol-blended gasoline, and the installation of E85 blend fuel pumps or the retrofitting of existing pumps in order to sell E85 blend fuel.
- 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 bill 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 an Idle Reduction Retrofit Revolving Loan Program;

(2) The acquisition by the Department of Administrative Services of 90% 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 awarding by a state agency of a contract that requires the procurement of motor vehicles and that gives preference to a bidder who will supply vehicles that use either ethanol or biodiesel from Ohio crop sources;

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

(5) The establishment by the Director of Agriculture of an Alternative Fuel Transportation Grant Program;

(6) Credits against the corporation franchise or the income tax for the sale of ethanol-blended gasoline and the installation of ethanol fuel pumps;

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

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

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

**Department of Development Idle Reduction Retrofit Revolving Loan Program**

(R.C. 122.86)

The bill requires the Department of Development to administer an Idle Reduction Retrofit Revolving Loan Program. The purpose of the Program is to conserve fuel and reduce air emissions, noise, and engine wear by assisting local governments in reducing the amount of time that heavy-duty trucks or other vehicles idle their engines. A loan made under the Program must carry interest and may carry a repayment term of up to five years. All loans are to be made from money in the Idle Reduction Retrofit Revolving Loan Fund, which the bill creates in the state treasury. The Fund consists of money appropriated to the Fund by the General Assembly and any grants, gifts, or contributions of money made to the Fund. The Fund must be used to make loans under the Program and to pay Program administrative costs. The Director of Development, in accordance with the Administrative Procedure Act, is required to adopt rules for the Program. At a minimum, the rules must establish application requirements and procedures, loan eligibility requirements, requirements for minimum contributions from local

governments toward projects that are the subjects of the loans, and requirements and procedures for loan repayment. The Director of Development must consult with the Director of Environmental Protection in adopting the rules.

**Department of Administrative Services fleet management program**

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

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

The bill requires the Department of Administrative Services (DAS) to ensure that at least 90% of the total number of new motor vehicles the state acquires for use by state agencies during the two-year period beginning July 1, 2006, and extending through June 30, 2008, and during each two-year period thereafter, are capable of using alternative fuels. The bill defines "alternative fuel" as the following fuels used in a motor vehicle: E85 blend fuel (at least 85% ethanol and not more than 15% gasoline or other liquid motor fuel by volume<sup>1</sup>); blended biodiesel (a blend of diesel fuel and biodiesel derived from vegetable oils or animal fats that contains at least 20% 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.

A state agency that has been delegated fleet management duties under continuing law must report annually to the Director of Administrative Services, 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, other than 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, or the courts or any judicial agency. The motor vehicles to which the requirement applies are automobiles, car minivans, 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.

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<sup>1</sup> E85 blend fuel may contain a lower percentage (but not less than 75%) of ethanol if the United States Department of Energy determines by rule that a lower percentage is necessary for cold start, safety, or vehicle functions.

If DAS determines that the percentage of alternatively fueled motor vehicles acquired during any applicable two-year period exceeds the 90% requirement, the excess purchases or leases are credited to any future two-year period that DAS designates. If the 90% requirement is not met during any applicable two-year period, DAS is prohibited 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 during any subsequent two-year period until the percentage deficiency is satisfied, unless one or both of the following apply:

(1) DAS or the state agency is unable to acquire or operate motor vehicles within cost limitations established by rule.

(2) The use of alternative fuels would not meet the energy conservation and exhaust emissions criteria established by rule.

The bill requires the rules to be adopted by the Director of Administrative Services in accordance with the Administrative Procedure Act.

**Use of alternative fuels in state-owned motor vehicles**

(R.C. 125.834(C))

Between the bill's effective date and June 30, 2006, at least 30% of the fuel purchased for use in fleets of state-owned motor vehicles must be an alternative fuel. For the subsequent fiscal year ending June 30, 2007, the required percentage rises to 50%. For the subsequent fiscal year ending June 30, 2008, the required percentage rises to 75%. Beginning July 1, 2008, and for each fiscal year thereafter, the required percentage is 90%.

**Contracts that require the procurement of vehicles**

(R.C. 125.835)

The bill provides that in awarding any contract that requires the procurement of vehicles, a state agency, including any state-supported institution of higher education, must give preference to an otherwise qualified bidder who will fulfill the contract through the use of vehicles that use as a fuel component ethanol produced from Ohio corn or biodiesel produced from Ohio soybeans or Ohio corn.

Under the bill, "biodiesel" is a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents, and that meets the American Society for Testing and Materials (ASTM) Specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels.

And "ethanol" is 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 ASTM specification D4806-88 and is denatured (i.e., materials are added to make the alcohol unfit for beverage or internal human medicinal use) as specified in 27 C.F.R. Parts 20 and 21.

**DAS vehicle credit banking and selling program**

(R.C. 125.836)

The bill requires DAS to establish and administer a vehicle credit banking and selling program, and permits DAS to sell or trade vehicle credits in accordance with procedures established pursuant to the federal Energy Policy Act of 1992. Covered fleets earn one vehicle credit for every light-duty (8,500 pounds or less) alternative fuel 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 fuel vehicle they acquire annually. These credits may be traded between fleets that need to buy or sell banked credits.

The bill also creates in the state treasury the Biodiesel Revolving Fund, consisting of any money DAS receives from the sale of credits, any money appropriated to the 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.

**Alternative Fuel Transportation Grant Program of the Director of Agriculture**

(R.C. 901.14)

The bill provides that for the purpose of improving the air quality in Ohio, the Director of Agriculture 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, terminals, and distribution facilities, and for the purchase and use of alternative fuel.

In accordance with the Administrative Procedure Act, 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) Procedures for prioritizing the award of grants under the Program. The procedures must give preference to all of the following:

(a) Publicly accessible refueling facilities;

(b) Entities seeking grants that have secured funding from other sources, including private or federal grants;

(c) Entities that have presented compelling evidence of demand in the market in which the facilities or terminals will be located;

(d) Entities that have committed to utilizing purchased or installed facilities or terminals for the greatest number of years;

(e) Entities that will be purchasing or installing facilities or terminals for both blended biodiesel and E85 blend fuel.

(3) A requirement that the maximum grant for the purchase and installation of an alternative fuel refueling facility, terminal, or distribution facility be 80% of the facility or terminal cost;

(4) A requirement that the maximum grant for the purchase of alternative fuel be 75% of the incremental cost of the fuel. The bill defines "incremental cost" as either the difference in cost between E85 blend fuel and gasoline containing 10% or less ethanol at the time the E85 blend fuel was purchased, or the difference in the cost between blended biodiesel and diesel fuel containing 2% or less biodiesel at the time the blended biodiesel is purchased.

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

The bill creates the Alternative Fuel Transportation Grant Fund in the state treasury. The Fund consists of money that is appropriated to it by the General Assembly, and is to be used to make grants and to administer the Program.

## **Tax credits**

### **Tax credits for the sale of ethanol-blended gasoline**

(R.C. 5733.47, 5733.98(A)(31), 5747.76, and 5747.98(A)(33))

The bill creates a nonrefundable tax credit against both the corporation franchise tax and the income tax for a retail dealer that owns or operates a retail service station at which more than 60% of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer in the tax or taxable year is ethanol-blended gasoline (containing at least 10% ethanol).<sup>2</sup> The amount of the credit for each eligible retail service station is two and one-half cents multiplied by the total number of gallons of ethanol-blended gasoline sold and dispensed through all metered pumps located at that retail service station during the tax or taxable year in excess of 60% of all gasoline sold and dispensed through metered pumps at that station. The credit must be calculated separately for each retail service station site owned or operated by that retail dealer. A "retail dealer" is a taxpayer that sells or distributes gasoline at a retail service station located in Ohio.

The credit against the corporation franchise tax may be claimed beginning with tax year 2006, while the credit against the income tax may be claimed for taxable years beginning on or after January 1, 2006. The Tax Commissioner may require the retail dealer to furnish all information necessary to support a claim for either of the credits, and neither credit may be allowed unless the information is provided. The credit must be claimed in the order prescribed by continuing law.

### **Tax credits for installing ethanol fuel pumps or retrofitting existing fuel pumps**

(R.C. 5733.48, 5733.98(A)(30), 5747.77, and 5747.98(A)(32))

The bill creates a nonrefundable tax credit against both the corporation franchise tax and the income tax for a motor fuel retail dealer that is a corporation or a pass-through entity that installs or retrofits at a retail service station located in Ohio one or more pumps for the purpose of dispensing E85 blend fuel for sale to the general public.<sup>3</sup> The amount of the credit equals the lesser of the net cost of

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<sup>2</sup> Eventually, this credit will no longer be available for retail dealers that are corporation franchise tax taxpayers because that tax is being phased-out by 2010 and will only apply to financial institutions.

<sup>3</sup> Under the bill, a "pass-through" entity is an S corporation, partnership, limited liability company, or sole proprietorship.

installing or retrofitting the pump, or \$10,000. The credit amount cannot exceed \$10,000, regardless of the number of pumps installed or retrofitted by the dealer at a retail service station during the preceding calendar year and regardless of the number of retail service stations at which the dealer installs or retrofits a pump during the preceding calendar year. Unlike the previously discussed credit, which was limited to dealers who sell or distribute gasoline, this tax credit applies to dealers who sell or distribute motor fuel, which includes gasoline, diesel fuel, K-1 kerosene, liquid petroleum gas, or liquid natural gas and who hold valid licenses.

The credits must be claimed in the order prescribed by continuing law. The credit against the corporation franchise tax is limited to tax years 2006, 2007, 2008, and 2009. This credit must be claimed in the tax year immediately following the calendar year in which a pump is installed or retrofitted. The credit against the income tax is limited to taxable years beginning in 2005, 2006, 2007, and 2008. This credit must be claimed for the taxable year in which a pump is installed or retrofitted. The Tax Commissioner may require that a motor fuel retail dealer furnish all information necessary to support a claim for either of the tax credits, and neither credit may be allowed unless the information is provided.

Pass-through treatment of the income tax credit is allowed under the bill.

**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 the sales tax.<sup>4</sup> The bill 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 3)

The bill 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>4</sup> *The only circumstance in which the retail sale of motor fuel is subject to the sales 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 sales 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 bill'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 4)

The bill 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 the markets of these fuels is unnecessary. Not later than one year after the bill'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	JOURNAL ENTRY
Introduced	05-05-05	p. 758
Reported, H. Transportation, Public Safety & Homeland Security	06-16-05	p. 968
Passed House (95-0)	10-05-05	pp. 1685-1703

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