



Joseph G. Aninao

*Bill Analysis*  
*Legislative Service Commission*

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

126th General Assembly

(As Reported by H. Transportation, Public Safety, and Homeland Security)

**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, Bubp, Uecker, Hoops**

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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.
- Requires at least 90% of the new motor vehicles acquired by the Department of Administrative Services (DAS) and state agencies that have been delegated fleet management duties during each two-year period beginning July 1, 2006, be capable of using alternative fuels.
- Requires annual increasing percentages of the fuel purchased for use in fleets of state-owned motor vehicles to 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 that requires 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 as a fuel component ethanol produced from Ohio corn or biodiesel produced from Ohio soybeans or Ohio corn.
- Requires DAS to establish and administer a credit banking and selling program, and permits DAS to sell or trade vehicle credits in accordance with federal law.

- Creates the "Biodiesel Revolving Fund" 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 the Alternative Fuel Transportation Grant Program.
- Creates credits against the corporate franchise tax and the income tax for the sale of ethanol-blended gasoline and the installation of ethanol fuel pumps or the retrofitting of existing pumps in order to sell ethanol.

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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. The topics of these provisions are 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 a certain percentage of new motor vehicles that are capable of using alternative fuels, and the use of alternative fuels in state-owned motor vehicles;

(3) The awarding by a state agency of a contract that requires the procurement of motor vehicles and the preference that must be given to a bidder who will supply vehicles that use as a fuel component either ethanol or biodiesel from Ohio crop sources;

(4) The establishment of a credit banking and selling program, which may involve 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 corporate franchise tax and the income tax for the sale of ethanol-blended gasoline and the installation of ethanol fuel pumps.

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

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 and other vehicles idle their engines. A loan made under the loan program must carry interest and may carry a repayment term of up to five years. All such 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 it by the General Assembly and any grants, gifts, or contributions of money credited to it. The purpose of the fund is to make loans under the loan program and to pay fund administration costs. The Director of Development, in accordance with the Administrative Procedure Act, is required to adopt rules for the loan program. The rules at the least 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 when adopting the rules. (Sec. 122.86.)

**Department of Administrative Services fleet management program**

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

The bill requires the Department of Administrative Services 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. A state agency that has been delegated fleet management duties under current law must report 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 motor vehicles that are capable of using alternative fuel. (Sec. 125.834(A).)

If DAS determines that the percentage of alternative fuel 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. (Sec. 125.834(A) and (B).)

The bill requires the rules to be adopted by the Director of Administrative Services in accordance with the Administrative Procedure Act (sec. 125.834(D)).

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

Under the bill, 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 1, 2008, the required percentage rises to 75%. Beginning July 1, 2008, and for each fiscal year thereafter, the required percentage is 90%. (Sec. 125.834(C).)

**Contracts that require the procurement of motor vehicles**

The bill provides that in awarding any contract that requires 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 as a fuel component ethanol produced from Ohio corn or biodiesel produced from Ohio soybeans or Ohio corn (sec. 125.835(B)).

"Biodiesel" means 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 Specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels (sec. 125.835(A)(1)).

"Ethanol" means 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 as specified in 27 C.F.R. 20 and 21 (sec. 125.835(A)(2)).

**DAS vehicle credit banking and selling program**

The bill requires DAS to establish and administer a 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" (sec. 125.836(B)). Covered fleets earn one vehicle credit for every light-duty 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. (Sec. 125.836(B) and (C).) "Incremental cost" means the difference in cost between blended biodiesel and conventional petroleum-based diesel fuel at the time the blended biodiesel is purchased (sec. 125.836(A)(3)).

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

The bill provides that for the purpose of improving the air quality in this state, the Director of Agriculture must establish the 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. (Sec. 901.14(B).)

In accordance with the Administrative Procedure Act, the Director must adopt any rules that are necessary for the administration of the grant 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. "E85 blend fuel" is a motor fuel that consists of at least 85% ethanol and no more than 15% gasoline or other liquid motor fuel by volume.

(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;

(5) Any other criteria, procedures, or guidelines that the Director determines are necessary to administer the program. (Sec. 901.14(C).)

The bill creates the Alternative Fuel Transportation Grant Fund in the state treasury, consisting of money that is appropriated to it by the General Assembly, to pay out the grants. (Sec. 901.14(D).)

### **Tax credits**

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

The bill creates a nonrefundable tax credit against both the corporate 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 year is ethanol-blended gasoline. The amount of each of the credits 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 year in excess of 60% of all gasoline sold and dispensed through metered pumps at that retail service station during the tax year. Each credit must be calculated separately for each retail service station site owned or operated by that retail dealer.

The credit against the corporate 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. (Secs. 5733.47(B), (C), (D), and (E), 5733.98(A)(33), 5747.76(B), (C), (D), and (E), and 5747.98(A)(37).)

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

The bill creates a nonrefundable tax credit against both the corporate franchise tax and the income tax for a motor fuel retail dealer that installs or retrofits at a retail service station located in this state one or more pumps for the purpose of dispensing E85 blend fuel for sale to the general public. The amount of the credit cannot exceed \$10,000, regardless of the number of pumps installed or retrofitted by the dealer at a retail service station during the year and regardless of the number of retail service stations at which the dealer installs or retrofits a pump.

The credit against the corporate 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. (Secs. 5733.48(B) and (C), 5733.98(A)(30), 5747.77(B), (C), and (D), and 5747.98(A)(32).)

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

Under current law, the retail sale of motor fuel generally is not subject to sales tax.<sup>1</sup> The bill specifically prohibits any political subdivision from levying or collecting any excise, license, privilege, or occupational tax on alternative fuel, or upon the buying, selling, handling, or consuming of alternative fuel (sec. 5735.40(B)).

**Feasibility study of the Department of Taxation**

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 those fuels, to the extent they are taxed under the motor fuel tax provisions, 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

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<sup>1</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 vehicle 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 tax.*

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 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. (Section 3.)

**Study of the Department of Development**

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 this state 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 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. (Section 4.)

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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

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