

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1253 Session of
2001

INTRODUCED BY WAUGH, MADIGAN, WENGER, JUBELIRER, O'PAKE,
D. WHITE, PUNT, ROBBINS, MOWERY, HOLL, ERICKSON AND LEMMOND,
DECEMBER 26, 2001

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, DECEMBER 26, 2001

AN ACT

1 Amending Titles 3 (Agriculture) and 75 (Vehicles) of the
2 Pennsylvania Consolidated Statutes, providing for
3 agricultural fuels development grants; establishing the
4 Agricultural Fuels Development Fund and the Agricultural
5 Fuels Capital Investment Account; imposing powers and duties
6 on the Department of Agriculture; further providing for
7 alternative fuels definitions, for the Alternative Fuels
8 Incentive Grant Fund and for alternative fuels reports;
9 providing for a phase-out of certain fuel and for a penalty;
10 further providing for liquid fuels and fuels tax definitions;
11 and providing for an agricultural fuels tax credit.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Title 3 of the Pennsylvania Consolidated Statutes
15 is amended by adding a chapter to read:

16 CHAPTER 43

17 AGRICULTURAL FUELS

18 Subchapter

19 A. Preliminary Provisions

20 B. Fuels Development

21 C. Capital Investment

22 SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

4301. Definitions.

4302. Department.

4303. Fund.

4304. Account.

4305. Expiration.

§ 4301. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Account." The Agricultural Fuels Capital Investment Account established in section 4304 (relating to account).

"Agricultural fuel." Any of the following:

(1) Bioethanol.

(2) Biodiesel.

(3) Liquid fuel other than bioethanol or biodiesel

which:

(i) is derived from agricultural or renewable biological products; and

(ii) meets American Society for Testing and Materials Specifications.

"Base products." Includes:

(1) Agricultural products. This paragraph includes potatoes, cereal, grains, oilseeds, cheese whey and sugar beets.

(2) Forest products.

(3) Recycled vegetable oils, animal fats and spent restaurant grease.

(4) Starch or sugar residues resulting from food

processing.

(5) Other renewable resources.

"Biodiesel." Simple Alkyl Ester which:

(1) is derived from base products; and

(2) meets American Society for Testing and Materials Specification PS121.

"Bioethanol." Fermentation ethyl alcohol which:

(1) is derived from base products;

(2) meets the specifications in American Society for Testing and Materials Specifications D4806-01; and

(3) is denatured as specified in 27 CFR Pts. 20

(relating to distribution and use of denatured alcohol and rum) and 21 (relating to formulas for denatured alcohol and rum).

"Capital investment." Includes money used to purchase manufacturing machinery, fixtures, equipment, tools, land and other items, which are related to production.

"Controlling interest." Ownership of:

(1) a sole proprietorship; or

(2) at least 5% of the voting stock in a corporation.

"Farmer." A person that is engaged in agricultural production for commercial purposes.

"Fund." The Agricultural Fuels Development Fund established in section 4303 (relating to fund).

"Producer." An entity which produces an agricultural fuel in this Commonwealth.

A person that holds a controlling interest in more than one production plant is a single producer.

§ 4302. Department.

The department has the following powers and duties:

- 1 (1) Administer this chapter.
- 2 (2) Promulgate regulations to implement this chapter.
- 3 (3) Utilize the fund under section 4311 (relating to
- 4 payments).
- 5 (4) Utilize the money under 75 Pa.C.S. § 7202(b)(1)(i)
- 6 (relating to alternative fuels incentive grant fund) for
- 7 grants under section 4321 (relating to grants).

8 § 4303. Fund.

9 (a) Establishment.--The Agricultural Fuels Development Fund
10 is established as a separate fund in the State Treasury.

11 (b) Source.--The sources of the fund are as follows:

12 (1) Appropriations.

13 (2) Interest.

14 (c) Utilization.--The department shall utilize the fund as
15 follows:

16 (1) To make payments under section 4311 (relating to
17 payments).

18 (2) To administer Subchapter B (relating to fuels
19 development). No more than 10% of the money in the fund may
20 be used under this paragraph in a single fiscal year.

21 (d) Continuing appropriation.--

22 (1) The money in the fund is continuously appropriated
23 to the fund. Except as set forth in paragraph (2), this
24 appropriation shall not lapse at the end of any fiscal year.

25 (2) Money in the fund which is not encumbered on the
26 date set forth in section 4305 (relating to expiration) is
27 hereby appropriated to the Alternative Fuels Incentive Grant
28 Fund.

29 § 4304. Account.

30 (a) Establishment.--The Agricultural Fuels Capital

1 Investment Account is established as a separate account in the
2 Alternative Fuels Incentive Grant Fund.

3 (b) Source.--The sources of the account are as follows:

4 (1) Appropriations.

5 (2) Interest.

6 (c) Utilization.--The department shall utilize the account
7 as follows:

8 (1) To make payments under section 4321 (relating to
9 grants).

10 (2) To administer Subchapter C (relating to capital
11 investment). No more than 10% of the money in the account may
12 be used under this paragraph for a single project.

13 (d) Continuing appropriation.--

14 (1) The money in the account is continuously
15 appropriated to the account. Except as set forth in paragraph
16 (2), this appropriation shall not lapse at the end of any
17 fiscal year.

18 (2) Money in the account which is not encumbered on the
19 date set forth in section 4305 (relating to expiration) is
20 hereby appropriated to the Alternative Fuels Incentive Grant
21 Fund.

22 § 4305. Expiration.

23 This chapter shall expire June 30, 2015.

24 SUBCHAPTER B

25 FUELS DEVELOPMENT

26 Sec.

27 4311. Payments.

28 § 4311. Payments.

29 (a) Authorization.--The department may make payments from
30 the fund to producers that have commenced production before July

1 1, 2005, for each gallon of agricultural fuel produced before
2 the later of:

3 (1) July 1, 2006; or

4 (2) ten years after production commences.

5 (b) Amount.--The amount of a payment to a producer of
6 agricultural fuel is as follows:

7 (1) For the first 15,000,000 gallons, 20¢ per gallon.

8 (2) For the next 10,000,000 gallons, 10¢ per gallon.

9 (3) For production beyond 25,000,000 gallons, no
10 payment.

11 (4) A payment to a single producer under this paragraph
12 may not exceed \$4,000,000 in a single fiscal year.

13 (5) Total payments under this paragraph may not exceed
14 \$24,000,000 in a single fiscal year.

15 (c) Eligibility.--To be eligible for payment under
16 subsection (b), a producer must be:

17 (1) a farmer;

18 (2) an entity in which one or more farmers hold a
19 controlling interest; or

20 (3) a producer.

21 (d) Application.--

22 (1) For each quarter, a claim for payment must be filed
23 with the department by the last business day of the first
24 month after the quarter ends.

25 (2) A claim must include all of the following:

26 (i) Identification of producer by name, type of
27 business and location.

28 (ii) Quantity for which payment is sought.

29 (iii) Other information required by regulation of
30 the department.

(e) Determination.--

(1) Within 30 days of receipt of the claim, the department shall grant or deny the claim based on all of the following:

(i) The criteria set forth in subsections (a), (b) and (c).

(ii) The amount of money in the fund. If there is not sufficient money for full payments, proportionate payments may be made.

(2) Failure to act within the time period shall be deemed a grant of the claim.

(3) Denial of a claim is subject to 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

SUBCHAPTER C

CAPITAL INVESTMENT

Sec.

4321. Grants.

§ 4321. Grants.

(a) Authorization.--The department may make grants to producers for capital investments used in the production of agricultural fuel.

(b) Amount.--

(1) Subject to paragraphs (2) and (3), the amount of a grant may be up to 100% of the capital investment by the producer during the prior year.

(2) A grant to a single producer may not exceed \$1,500,000 in a single fiscal year.

(3) Total grants under this subsection may not exceed \$18,500,000 in a single fiscal year.

1 (c) Eligibility.--To be eligible for a grant, a producer
2 must be:

- 3 (1) a farmer;
- 4 (2) an entity in which one or more farmers hold a
5 controlling interest; or
- 6 (3) a producer.

7 (d) Application.--

8 (1) By the last business day of January, a request must
9 be filed with the department for a grant for the prior year.

10 (2) A request must include all of the following:

- 11 (i) Identification of producer by name, type of
12 business and location.
- 13 (ii) Description of capital investments for which
14 the grant is requested.
- 15 (iii) Other information required by regulation of
16 the department.

17 (e) Determination.--

18 (1) Within 30 days of receipt of the request, the
19 department shall grant or deny the request based on all of
20 the following:

21 (i) The criteria set forth in subsections (a), (b)
22 and (c).

23 (ii) The amount of money in the account. If there is
24 not sufficient money for full payments, proportionate
25 payments may be made.

26 (2) Failure to act within the time period shall be
27 deemed a grant of the request.

28 (3) Denial of a request is subject to 2 Pa.C.S. Ch. 7
29 Subch. A (relating to judicial review of Commonwealth agency
30 action).

Section 2. The definition of "alternative fuels" in section 7201 of Title 75 is amended and the section is amended by adding definitions to read:

§ 7201. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural fuel." Any of the following:

(1) Bioethanol.

(2) Biodiesel.

(3) Liquid fuel other than bioethanol or biodiesel

which:

(i) is derived from agricultural or biological products; and

(ii) meets American Society for Testing and Materials Specifications.

* * *

"Alternative fuels." Motor vehicle fuels and fuel systems which when compared to conventional gasoline or reformulated gasoline, will result in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof. These shall include compressed natural gas (CNG), liquified natural gas (LNG), liquid propane gas (LPG), alcohols (ethanol - e85 and methanol - m85), agricultural fuels, hydrogen, hythane (a combination of CNG and hydrogen) and electricity.

"Base products." Any of the following:

(1) Agricultural products. This paragraph includes potatoes, cereal, grains, oilseeds, cheese whey and sugar beets.

1 (2) Forest products.

2 (3) Recycled vegetable oils, animal fats and spent
3 restaurant grease.

4 (4) Starch or sugar residues resulting from food
5 processing.

6 (5) Other renewable resources.

7 "Biodiesel." Simple Alkyl Ester which:

8 (1) is derived from base products; and

9 (2) meets American Society for Testing and Materials
10 Specification PS121.

11 "Bioethanol." Fermentation ethyl alcohol which:

12 (1) is derived from base products;

13 (2) meets the specifications in American Society for
14 Testing and Materials Specification D4806-01; and

15 (3) is denatured as specified in 27 CFR Pts. 20
16 (relating to distribution and use of denatured alcohol and
17 rum) and 21 (relating to formulas for denatured alcohol and
18 rum).

19 * * *

20 "MTBE." The gasoline additive methyl tertiary butyl ether.

21 * * *

22 Section 3. Section 7202(a), (b)(1) and (c) of Title 75 are
23 amended and the section is amended by adding a subsection to
24 read:

25 § 7202. Alternative Fuels Incentive Grant Fund.

26 (a) Establishment.--There is hereby established a separate
27 account in the State Treasury to be known as the Alternative
28 Fuels Incentive Grant Fund. This fund shall be administered
29 jointly by the [PEO] Department of Agriculture and the
30 Department of Environmental Protection. The fund shall consist

1 of that portion of revenues collected under the utilities gross
2 receipts tax as set forth in section 7204 (relating to
3 appropriation).

4 (b) Expenditures.--

5 (1) [Moneys] Money from the fund shall be expended by
6 the [PEO] Department of Agriculture and the Department of
7 Environmental Protection as grants in equal amounts:

8 (i) Grants shall be made by the Department of
9 Agriculture under 3 Pa.C.S. § 4321 (relating to grants).

10 (ii) Grants shall be made to school districts,
11 municipal authorities, political subdivisions, nonprofit
12 entities and corporations or partnerships incorporated or
13 registered in this Commonwealth and to residents of this
14 Commonwealth to meet 60% of the expenses relative to
15 retrofitting vehicles to operate on alternative fuels as
16 either a bi-fuel, dual-fuel or dedicated vehicle,
17 including the incremental cost of purchase of dedicated
18 vehicles and to meet 60% of the cost to install the
19 necessary fueling equipment. Two years after the
20 effective date of this chapter and for every two-year
21 period thereafter, the grant funding amount offered by
22 the [PEO] Department of Environmental Protection shall be
23 reduced 10% until it reaches 20% of the retrofit cost
24 where it will remain until economic or other conditions
25 warrant it be changed.

26 * * *

27 (c) Regulatory powers.--[The PEO] Except as set forth in
28 subsection (d), the Department of Agriculture shall promulgate
29 regulations necessary to carry out the provisions of this
30 chapter which shall include a method by which grant applications

will be prioritized according but not limited to the following goals and/or criteria:

- (1) The improvement of this Commonwealth's air quality.
- (2) The fulfillment of the State's requirements under the Clean Air Act (Public Law 95-95, 42 U.S.C. § 7401 et seq.).
- (3) The protection of this Commonwealth's natural environment, including land, water and wildlife.
- (4) The advancement of economic development in this Commonwealth and the promotion of this Commonwealth's indigenous resources.
- (5) The reduction of this Commonwealth's dependence on imported crude oil and other petroleum products.
- (6) The most cost-effective use of private and public funding.
- (7) The transfer and commercialization of innovative energy technologies.

(d) Department of Environmental Protection.--The Department of Environmental Protection shall promulgate regulations to implement subsection (b)(1)(ii).

Section 4. Section 7203 of Title 75 is amended to read:

§ 7203. Reports.

(a) Annual report.--The [PEO] Department of Agriculture and the Department of Environmental Protection shall annually make a report to the General Assembly on the activities undertaken pursuant to this chapter, including the number of grants awarded and other expenditures from the fund.

(b) Special report.--The Department of Revenue, in consultation with the [PEO] Department of Agriculture, the Department of Environmental Protection and the Department of

1 Transportation, shall submit a report to the General Assembly
2 within two years after the effective date of this chapter which
3 analyzes the impact of alternatively fueled vehicles on revenue
4 from State taxes on motor fuels at the time and projected five
5 years into the future and make recommendations on mechanisms to
6 replace any revenue losses.

7 Section 5. Title 75 is amended by adding a section to read:
8 § 7206. Phasing out of MTBE.

9 (a) Program.--

10 (1) The department, in conjunction with the Pennsylvania
11 Petroleum Institute, shall develop and implement a three-year
12 plan to phase out the use of the gasoline additive MTBE.

13 (2) The department shall submit an annual report on the
14 program under this subsection, beginning six months after the
15 effective date of this section, to the Environmental
16 Resources and Energy Committee of the Senate and the
17 Environmental Resources and Energy Committee of the House of
18 Representatives.

19 (b) Prohibition.--

20 (1) MTBE may not be used as a gasoline additive.

21 (2) MTBE may not be discharged.

22 (c) Penalty.--

23 (1) Except as set forth in paragraph (2), a person that
24 violates subsection (b)(2) commits a misdemeanor of the
25 second degree. Each day of violation constitutes a separate
26 offense.

27 (2) A person that, after being sentenced under paragraph
28 (1) violates subsection (b)(2), commits a misdemeanor of the
29 second degree. Each day of violation constitutes a separate
30 offense.

Section 6. The definition of "alternative fuels" in section 9002 of Title 75 is amended and the section is amended by adding definitions to read:

§ 9002. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural fuel." Any of the following:

(1) Bioethanol.

(2) Biodiesel.

(3) Liquid fuel other than bioethanol or biodiesel

which:

(i) is derived from agricultural or renewable biological products; and

(ii) meets American Society for Testing and Materials Specifications.

"Alternative fuels." Natural gas[,]; compressed natural gas (CNG)[,]; liquified natural gas (LNG)[,]; liquid propane gas and liquified petroleum gas (LPG)[,]; alcohols, gasoline-alcohol mixtures containing at least 85% alcohol by volume, hydrogen, hythane, electricity; agricultural fuels; and any other fuel used to propel motor vehicles on the public highways which is not taxable as fuels or liquid fuels under this chapter.

* * *

"Base products." Any of the following:

(1) Agricultural products. This paragraph includes potatoes, cereal, grains, oilseeds, cheese whey and sugar beets.

(2) Forest products.

(3) Recycled vegetable oils, animal fats and spent

1 restaurant grease.

2 (4) Starch or sugar residues resulting from food
3 processing.

4 (5) Other renewable resources.

5 "Biodiesel." Simple Alkyl Ester which:

6 (1) is derived from base products; and

7 (2) meets American Society for Testing and Materials
8 Specification PS121.

9 "Bioethanol." Fermentation ethyl alcohol which:

10 (1) is derived from base products;

11 (2) meets the specifications in American Society for
12 Testing and Materials Specification D4806-01; and

13 (3) is denatured as specified in 27 CFR Pts. 20
14 (relating to distribution and use of denatured alcohol and
15 rum) and 21 (relating to formulas for denatured alcohol and
16 rum).

17 * * *

18 Section 7. Title 75 is amended by adding a section to read:

19 § 9017.1. Tax credit for agricultural fuels.

20 (a) General rule.--For three years from the effective date
21 of this section, a distributor shall be reimbursed from the
22 General Fund the amount of tax imposed under section 9004(d)
23 (relating to imposition of tax, exemptions and deductions) on
24 agricultural fuel produced in this Commonwealth, in the
25 following manner:

26 (1) for the first year, the entire amount of tax
27 imposed;

28 (2) for the second year, two-thirds of the tax imposed;
29 and

30 (3) for the third year, one-third of the tax imposed.

1 (b) Intent.--It is the intent of this section that all
2 proceeds from the tax paid on agricultural fuels used within
3 this Commonwealth be paid without the diminution of the Motor
4 License Fund. The tax relief received by a distributor on
5 agricultural fuels shall be passed on to the retailer.

6 Section 8. This act shall take effect as follows:

7 (1) This section shall take effect immediately.

8 (2) The addition of 75 Pa.C.S. § 7206(b) shall take
9 effect in three years.

10 (3) The remainder of this act shall take effect July 1,
11 2002, or immediately, whichever is later.