

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3653H.02C
Bill No.: HCS for HB 1875
Subject: Department of Agriculture; Energy; Motor Fuel; Tax Credits; Weights and Measures
Type: Original
Date: February 2, 2022

Bill Summary: This proposal creates tax credits for producers of biodiesel fuels.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund*	Could exceed (\$150,408)	Up to (\$3,516,508) to (\$20,162,907)	Up to (\$3,519,766) to (\$20,166,165)
Total Estimated Net Effect on General Revenue	Could exceed (\$150,408)	Up to (\$3,516,508) to (\$20,162,907)	Up to (\$3,519,766) to (\$20,166,165)

Oversight notes the fiscal impact estimates range from current average activity (or estimated activity) to the programs' annual caps.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue Fund	3 FTE	3 FTE	3 FTE
Total Estimated Net Effect on FTE	3 FTE	3 FTE	3 FTE

- ☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- ☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§135.775 Retail Sellers Tax Credit

Officials from the **Department of Revenue (DOR)** note:

This proposal creates a new tax credit for a retail dealer that sells biodiesel fuel. To qualify as biodiesel fuel it must be a blend of diesel and biodiesel between 5% and 20% for on-road and off-road diesel-fuel vehicle use. Proof that that biodiesel meets ASTM International specifications will need to be provided to the Department. The tax credit will be equal to two cents (\$0.02) per gallon on biodiesel blend of 5% but no more than 10% mix or five cents (\$0.05) per gallon sold on a biodiesel blend in excess of 10%.

The retailer must show proof they own or operate the station and meet all the specifications in the proposal in order to apply for the credit. Verification and certification processes are usually handled by other agencies. Once another agency verifies a person's qualifications, they are given a receipt that is attached to the tax return for DOR to process. Requiring DOR to do the verification and certification is outside our normal administrative scope. The proposal indicates that DOR can work with the Department of Agriculture (MDA) to do some of this verification. MDA has indicated that this is also outside their normal scope of work. DOR assumes in order to do this verification it will need 1 Auditor FTE and 2 Associate Customer Service Representatives to do the necessary verifications.

This tax credit is to begin on January 1, 2023. Tax returns claiming the credit will not be filed until January 2024 (FY 2024). This tax credit has a \$16 million cap annually. The credit is refundable but cannot be sold, transferred or assigned. This credit says that if the cap is reached then the credit must be apportioned among all applicants.

The U.S. Energy Information Administration reported that in 2019 (the most recent complete year of data) 3.7 trillion Btu of biodiesel was consumed in Missouri. At a conversion rate of 120,286 Btu per gallon, it is estimated that Missouri used 30,760,021.95 gallons of fuel. It should be noted this information does not indicate the percent of mix of the fuel. For fiscal note purposes it is assumed that all of the fuel would qualify for the five cents per gallon credit. It is estimated at five cents per gallon it could generate \$1,538,001 in tax credits.

The motor fuel tax is paid by a supplier/distributor. They purchase and mix the fuel then distribute to a retail station to sell to customers. DOR has a report on the number of biodiesel blended each month; however, the suppliers do not indicate the mix amount (such as E15 or E85).

Calendar Year	Total Biodiesel Gallons
2018	54,990,702
2019	52,352,437
2020	63,683,900
2021(incomplete)	49,536,202

Based on figures reported by the suppliers/distributors of what fuel they mixed, they show 63,683,900 gallons (last complete year of data) mixed of biodiesel in calendar year 2020. At the five cents per gallon credit this would result in \$3,184,195 in credits being issued. It is unclear if all these gallons would meet the requirements of this proposal.

At the estimated amount sold in 2019 and 2020 it does not appear this will reach its apportionment cap inside the fiscal note period. DOR estimates a loss to general revenue of \$1,538,000 to \$16,000,000.

This credit will need to be added to the MO-TC form as well as into the individual income tax filing system. The estimated cost of this change is \$3,596. Additionally DOR will need the 1 Auditor (\$40,978) and the 2 Associate Customer Service Representatives (\$26,328) for the verification and apportionment of the credit.

Officials from the **Office of Administration – Budget & Planning (B&P)** assume the HCS for HB 1875 has no changes to the fund summary, but the definition and language changes were substantial enough to merit a new/revised response (see CAPS below).

This section would create a tax credit to be taken against a retail dealer's OR A DISTRIBUTOR'S state income tax liability. The amount of the credit shall equal two cents per gallon of biodiesel blend of at least five percent but not more than ten percent and five cents per gallon of biodiesel blend in excess of ten percent sold by the retail dealer at a retail service station OR A DISTRIBUTOR THAT SELLS A BIODIESEL BLEND DIRECTLY TO THE FINAL USER IN THIS STATE during the tax year in which the tax credit is claimed. IF THE TAX CREDIT CAP IS NOT MET, THE REMAINING AMOUNT SHALL BE APPLIED TO THE TAX CREDIT IN SECTION 135.778, IF THAT SECTION'S CAP HAS BEEN MET. The total amount of tax credits shall not exceed \$16 million per fiscal year.

According to data from the U.S. Energy Information Administration, Missouri consumed 0.7 million barrels of biodiesel in 2019 (0.7M barrels * 42 gallons per barrel = 29,400,000 gallons). If all of the biodiesel sold fit the eligibility for the tax credit, the cost to the state could be between \$588,000 (0.02 * 29,400,000) and \$1,470,000 (0.05 * 29,400,000). This tax credit may incentivize additional biodiesel retail sales in Missouri, however no estimate of a potential increase in sales is available.

This provision could reduce general and total state revenue between (\$588,000) and

(\$16,000,000) annually beginning in FY24 and could impact the calculation under Article X, Section 18(e).

Oversight notes that Missouri ranked among the top one-third of states in biodiesel consumption of 29 million gallons in 2019. ([State by State Biodiesel Consumption EIA.GOV](#)). Oversight agrees with the DOR's estimated impact of this tax credit; however, will show the lower estimated impact as average of the total sales between 2% & 5% because the actual sales information does not indicate the percent of mix of the fuel estimates. Oversight calculate the average of sales as follow:

Total Consumption 2019	30,760,022 gallons
2% credit per gallon	\$615,200
5% credit per gallon	\$1,538,001
Average of 2% & 5%	\$1,076,601

Therefore, for purpose of this fiscal note (extreme fluctuation of biodiesel markets 2020 & 2021 due to COVID-19), **Oversight** will show the impact as a loss to general revenue beginning FY 2024 ranging from \$1,076,601 to \$16,000,000 (using 2019 consumption of biodiesel). Additionally, **Oversight** will note DOR's requested 1 Auditor FTE (\$40,978 annually) and 2 Associate Customer Service Representatives FTE (\$26,328 annually per each representative needed) for implementation and necessary verifications of this program beginning FY 2023.

Oversight assumes the DOR will be able to absorb the cost for additional part time positions needed to maintain compliance of Section 135.775.4 (part time FTE hired at \$10,164 annually) as they are ordinarily hiring part time positions annually in order to handle the extra overflow of tax filings.

§135.778 - "Biodiesel fuel" - Producer Tax Credit

Officials from the **Department of Revenue (DOR)** assume this proposal creates a new tax credit for a producer of biodiesel fuel. Starting January 1, 2023, this will allow a credit against their state income tax liability. The amount of the credit will be \$0.02 per gallon of biodiesel fuel produced by a Missouri biodiesel producer. The Department notes there are currently 6 producers in the state.

The producer must show proof they are registered with the United States Environmental Protection Agency and began construction on their facility before August 28, 2022. Verification and certification processes are usually handled by other agencies. Once another agency verifies a person's qualifications, they are given a receipt that is attached to the tax return for DOR to process. Requiring DOR to do the verification and certification is outside DOR's normal administrative scope. The proposal indicates that DOR can work with the Department of Agriculture to do some of this verification. MDA has indicated that this is also outside their normal scope of work. DOR assumes in order to do this verification it will need 1 Auditor FTE and 2 Associate Customer Service Representatives to do the necessary verifications. DOR believes the same staff needed for the retailers could handle these producers as well.

The tax credit cannot be transferred, sold or assigned but is refundable. This proposal places a \$4 million annual cap on the credit. This credit says that if the cap is reached then the credit must be apportioned among all applicants.

Using the same number of gallons calculated above, 30,760,021.95, this \$0.02 per gallon credit could result in a loss to general revenue of \$615,200. Additionally, if it is assumed the suppliers reported the 63,683,900 gallons and that all were Missouri produced then this would result in \$1,273,678 in credits being issued. DOR will show the loss from \$615,200 to \$4,000,000.

This credit will need to be added to the MO-TC form as well as into the individual income tax filing system. The estimated cost of this change is \$3,596. The FTE required for the retailer's tax credit are estimated to be able to handle this credit as well.

It should be noted that this proposal is allowing the producers' tax credits to be claimed against the income tax liability imposed by Chapter 143. However, the proposal is not excluding withholding tax as is the usual practice. Allowing this credit against withholding tax could require additional programming changes expected to exceed \$10,000.

Officials from the **Office of Administration Budget & Planning (B&P)** assume:

Section 135.778 Biodiesel Producers

This proposal would create a tax credit to be taken against a Missouri biodiesel producer's state income tax liability. The amount of the credit shall equal two cents per gallon of biodiesel fuel produced by a biodiesel facility that qualifies as a "Missouri biodiesel producer" DOING BUSINESS IN THIS STATE according the bill language. (REMOVED 51% RESIDENT OWNERSHIP AND 80% FEEDSTOCK REQUIREMENT, AND PRORATED FEEDSTOCK LANGUAGE). IF THE TAX CREDIT CAP IS NOT MET, THE REMAINING AMOUNT SHALL BE APPLIED TO THE TAX CREDIT IN SECTION 135.775, IF THAT SECTION'S CAP HAS BEEN MET. The total amount of tax credits shall not exceed \$4,000,000 per fiscal year.

According to the Missouri Department of Natural Resources, as of April 2020, Missouri had five commercial biodiesel production facilities. The total nameplate capacity in the state is around 216 million gallons, which roughly accounts for 9% of the nation's capacity of nearly 2.5 billion gallons.

If all of Missouri's biodiesel facilities qualify as a "Missouri biodiesel producer" according to the bill language (status of qualifications are unknown), and produce between 80% and 100% of their capacity, the cost to the state could be between \$3,456,000 ($\$0.02 * 216\text{M gallons} * 80\%$) and \$4,320,000 ($\$0.02 * 216\text{M gallons} * 100\%$). However, with a \$4M maximum, the range would be between \$3,456,000 and \$4,000,000. Please note that the bill does not restrict the tax credit to facilities located in Missouri.

This provision could reduce general and total state revenue between (\$3,456,000) and (\$4,000,000) annually beginning in FY24 and could impact the calculation under Article X, Section 18(e).

Oversight notes taxpayers will be able to claim the tax credit January 1, 2024.

Oversight notes that Missouri ranked among the top one-third of states in a biodiesel production of 253 million gallons in 2019. ([State by State Biodiesel Consumption EIA.GOV](#)). Oversight agrees with the B&P's estimated impact of this tax credit. Oversight will assume that there is range of 50% and 100% participation rate in this program for purpose of this fiscal note. Therefore, **Oversight** will reflect the estimated impact of reduction in general revenues beginning Fiscal Year 2024 ranging from \$2,277,000 up to all available cap of \$4,000,000 (see table below). Additionally, **Oversight** will reflect the DOR cost for programing changes which could exceed \$10,000 beginning FY 2023.

Origination Type	Tax Credit* Annual Consumption	Total
Blend of at least eighty percent feedstock originates in Missouri	$(\$0.02 * 253,000,000) * .8$	\$ 4,048,000
100% percent blend	$(\$0.02 * 253,000,000) * 1$	\$5,060,000
Average of both @ 100% participation rate		\$4,554,000
Average of both @ 50% participation rate		\$2,277,000

Officials from the **Department of Economic Development, Department of Natural Resources, Missouri Department of Agriculture, Saint Louis – Budget Division, City of Saint Louis – Budget Division, City of Kansas City, and the City of Springfield** each assume the proposal will have no fiscal impact on their organizations.

Officials from the above organizations assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these organizations.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and

regulations to implement the act. The Secretary of State's office is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to Secretary of State's office for Administrative Rules is less than \$5,000. The Secretary of State's office recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes SOS is provided with core funding to handle a certain amount of activity each year. Oversight assumes SOS could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, SOS could request funding through the appropriation process.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Revenue Reduction – Section 135.775 – Tax Credit for Retail Sellers of Biodiesel (p. 5)</u>	\$0	Up to (\$1,076,601) to (\$16,000,000)	Up to (\$1,076,601) to (\$16,000,000)
<u>Revenue Reduction – Section 135.778 – Tax Credit for Producers of Biodiesel (p. 7)</u>	\$0	Up to (\$2,277,000) to (\$4,000,000)	Up to (\$2,277,000) to (\$4,000,000)
<u>Cost – DOR – Section 135.775.04 implementation (p. 3)</u>			
Personal Services	(\$78,028)	(\$86,555)	(\$88,286)
Fringe Benefits	(\$52,623)	(\$64,411)	(\$65,699)
Expense and Equipment	(\$9,756)	(\$11,941)	(\$12,180)
<u>Total Costs – DOR</u>	(\$140,408)	(\$162,907)	(\$166,165)
FTE Change – DOR	3 FTE	3 FTE	3 FTE
<u>Cost – DOR ITSD - Section 135.778 – Tax Credit for Producers of Biodiesel programing changes for withholding (p. 6)</u>	Could exceed (\$10,000)	\$0	\$0
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	Could exceed (\$150,408)	Up to (\$3,516,508) to (\$20,162,907)	Up to (\$3,519,766) to (\$20,166,165)
Estimated Net FTE Change on Other State Funds	3 FTE	3 FTE	3 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

This proposed legislation could positively impact any small business that qualifies for the various tax credits.

FISCAL DESCRIPTION

For all tax years beginning on or after January 1, 2023, the bill authorizes a tax credit for retail dealers selling a biodiesel blend at the retail dealer's service station. The credit will be equal to \$0.02 per gallon for between a 5% and 10% blend and \$0.05 per gallon of in excess of a 10% blend sold and dispensed through metered pumps at the service station during the tax year. If the tax credit exceeds the taxpayers' tax liability, the difference shall be refundable. The total amount of tax credits authorized under the bill for retail dealers in a given fiscal year will not exceed \$16 million. The program will sunset on December 31, 2028, unless reauthorized by the General Assembly.

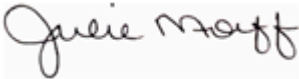
For all tax years beginning on or after January 1, 2023, the bill authorizes a tax credit for Missouri biodiesel producers in the state. The credit will be equal to \$0.02 per gallon produced by the Missouri biodiesel producer during the tax year. A biodiesel producer that does not qualify as a Missouri biodiesel producer, as defined by in the bill, may no longer claim a prorated tax credit based on the percentage of the producer's feedstock that originates in Missouri.

If the tax credit exceeds the taxpayers' tax liability, the difference shall be refundable. The total amount of tax credits authorized under the bill for producers in a given fiscal year will not exceed \$4 million. The program will sunset on December 31, 2028, unless reauthorized by the General Assembly.

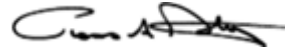
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Revenue
Office of Administration – Budget & Planning
Office of the Secretary of State
Department of Economic Development
Department of Natural Resources
Missouri Department of Agriculture
Joint Committee on Administrative Rules
City of Kansas City
City of Springfield
Saint Louis – Budget Division



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