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FISCAL IMPACT STATEMENT

LS 7413

BILL NUMBER: SB 431

NOTE PREPARED: Apr 4, 2007

BILL AMENDED: Apr 3, 2007

SUBJECT: Environmental Matters.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR: Rep. Pflum

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Animal Feeding Operations:* The bill defines "applicant", "modification", and "responsible party" for purposes of confined feeding control statutes. It specifies that confined feeding control statutes apply to both confined feeding operations (CFOs) and concentrated animal feeding operations (CAFOs), and to both original construction and modifications. The bill establishes good character disclosure requirements for CFOs and CAFOs. It provides that a new CFO may not be constructed within one mile of the boundary of a school, a licensed health facility, or a municipality. It allows an expansion of an existing operation by a person who has not committed an environmental violation. It allows the Department of Environmental Management (IDEM) to review and act on disclosed good character information. The bill applies certain provisions of the act to pending confined feeding projects. It makes conforming amendments.

Fees for CFOs and CAFOs: The bill establishes a construction and modification fee and annual fee for CFOs and CAFOs. It establishes a confined feeding inspection fund. It requires IDEM to establish civil penalty matrices for various categories of violations relating to CFOs. IDEM must inspect a CFO at least one time each year if the owner or operator has committed a violation of environmental management laws or a rule adopted by the Water Pollution Control Board. It specifies which governmental entities have regulatory authority concerning CFOs and CAFOs.

State Chemist: The bill also requires the State Chemist to adopt rules relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers; and the establishment of a training and educational program for manure haulers and applicators.

Department of Agriculture (IDOA): The bill requires the IDOA to communicate with the executive of each

county to encourage the county to adopt and assist the county in adopting an ordinance to address land use and zoning issues related to CFOs.

Voluntary Certified Livestock Producer Program: The bill requires the IDOA to implement a voluntary certified livestock producer program to provide incentives and recognition for producers who use innovative environmental, animal health, and general management practices.

Property Tax Deduction for Biomass Conversion Units: The bill establishes a property tax deduction for property equipped with an organic waste biomass conversion unit.

Biomass Grant Program: The bill establishes a biomass grant program administered by the Office of Energy and Defense Development (OEDD) to provide grants to defray part of the cost of installing certain biomass energy projects. Applies certain provisions of the act to pending confined feeding projects.

Utility Regulatory Commission (IURC): This bill changes the definition of alternative energy production facility to include organic waste biomass conversion facilities.

Confined Feeding Equipment Investment Tax Credit: The bill establishes state tax liability credits for investments in confined feeding equipment and biodiesel facilities.

Sales Tax Exemption for Confined Feeding Equipment: The bill provides that transactions involving confined feeding equipment are exempt from the State Gross Retail Tax under certain circumstances.

Biomass Conversion Electricity Tax Credit: The bill establishes a Utility Receipts Tax credit for a taxpayer that purchases electricity for resale at retail from an individual or entity that operates an organic waste biomass conversion unit and generates the electricity from the unit.

Confined Feeding Equipment Abatements: The bill establishes a property tax abatement for equipment at a confined feeding operation used for the anaerobic digestion of manure or the control of odors ("confined feeding equipment").

Effective Date: (Amended) January 1, 2007 (Retroactive); March 1, 2007 (Retroactive); Upon Passage; July 1, 2007.

Explanation of State Expenditures: (Revised) *Biomass Grant Program:* The bill establishes a Biomass Grant Program to be administered by the OEDD. The bill requires the IDOA to assist the OEDD in carrying out its duties relating to the grant program. The bill authorizes the OEDD to provide grants to individuals and various entities to defray part of the cost of installing a biomass energy project using anaerobic digestion, gasification, or fast pyrolysis. The grant program would be effective only in FY 2008 and FY 2009. The bill limits to \$2.0 M the total grants that may be awarded under the Program each fiscal year. In addition, the bill makes an annual appropriation to the OEDD in an amount necessary to implement the Program.

Grants could be awarded to individuals, corporations, pass through entities, unincorporated associations, governmental entities, or any other legal entity. A grant to an individual or entity may not exceed the greater of 25% of the project costs or \$250,000. Thus, a single project costing \$8.0 M or more could potentially receive the total aggregate grant amount of \$2.0 M available in a fiscal year.

(Revised) *IDEM:* A person and a responsible party must submit to IDEM a disclosure statement and certain

additional information. IDEM may investigate and verify the information provided. Based on findings, the commissioner may deny the application. The bill provides that the Solid Waste Management Board may adopt rules to administer the provisions of the bill. IDEM should be able to cover any additional expenses associated with these provisions given its existing level of resources.

The bill also requires IDEM to certify that equipment qualifies the tax credit for qualified investment in certain confined feeding equipment. The certification would only occur if a taxpayer applies to the IEDC for the tax credit. IDEM's current level of resources should be sufficient to fulfill this administrative task. The April 2, 2007, state position vacancy report indicates that IDEM has 134 vacant full-time positions.

Inspections: IDEM must inspect CFOs and CAFOs at least once each year if IDEM determines that the owner or operator has committed a violation of environmental management laws or a rule adopted by the board. Currently, IDEM is required to inspect all operations once every five years. The increase in staff, if any, that will be needed will depend on the number of future violators.

State Chemist: The State Chemist must adopt rules to establish a training and educational program for manure haulers and applicators concerning the application to land of manure generated from a confined feeding operation. The program must include the following topics concerning manure hauling and application:

- (1) Manure testing.
- (2) Soil testing.
- (3) Transportation.
- (4) Manure application and handling.
- (5) Any other topics determined by the State Chemist.

Before November 1, 2007, the State Chemist must submit a report concerning the status of the program to the General Assembly in an electronic format.

The overall anticipated cost for the program is \$116,800 per year beginning in FY 2009. During FY 2008, the State Chemist's Office will promulgate rules. Beginning with the implementation of the program, which will likely be in 2009, additional expenses for the State Chemist's Office will include the addition of a Data Entry Position, related support/benefit costs, computer equipment and related supplies, along with additional costs associated with adding responsibility to a secretary and an Engineer Specialist who will assume supervisory responsibility for the program. Costs will also involve continued IT support to design, develop, test, and implement the program.

If the State Chemist were to institute a \$100 annual fee for the program, the program could generate around \$140,000 given that there are an estimated 1,400 haulers and applicators who might be involved. If the program was administered in a manner that is comparable to the pesticide program, a portion of the fee, which would likely be \$10, would be used to support education programs. There are no appropriations in the bill. Any fees collected would be deposited with the Purdue University Treasurer.

Department of Agriculture (IDOA): The IDOA currently communicates with the executive of each county to encourage the county to adopt and assist the county in adopting an ordinance to address land use and zoning issues related to CFOs. Consequently, this provision will have no impact.

(Revised) Voluntary Certified Livestock Producer Program: The bill requires the IDOA to implement a voluntary certified livestock producer program to provide incentives and recognition for producers who use

innovative environmental, animal health, and general management practices. The impact of this provision will depend on the number of participants in the program. The IDOA should be able to implement the program given its existing level of resources.

(Revised) *Utility Regulatory Commission (IURC)*: This bill changes the definition of alternative energy production facility to include organic waste biomass conversion facilities. There could be an increase in administrative expenditures for the IURC to the extent that they have to develop new procedures and amend existing rules concerning contracts, rates, and incentives for alternative energy production facilities due to this change in the definition.

(Revised) *Department of State Revenue (DOR)*: The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the new tax credits and Sales Tax exemption proposed in this bill. The DOR's current level of resources should be sufficient to implement these administrative tasks.

(Revised) *Indiana Economic Development Corporation (IEDC)*: The bill requires the IEDC to administer two new tax credit programs for (1) various qualified investment, including investment in machinery, equipment, facilities, buildings, infrastructure improvements, or patented processes and related trademarks; and (2) qualified investment in certain confined feeding equipment. The IEDC's current level of resources should be sufficient to fulfill these administrative tasks. The April 2, 2007, state position vacancy report indicates that the IEDC has 32 vacant full-time positions.

Explanation of State Revenues: *Summary--Fees for CFOs and CAFOs*: The bill would decrease permit revenue in the Environmental Management Permit Operation Fund by an estimated \$12,200 annually and would provide revenue of \$2,200 in the Confined Feeding Operation Inspection Fund. The individual provisions are described below.

Fees for CFOs and CAFOs: The bill establishes a \$1 fee payable to IDEM for CFOs and CAFOs. This provision should generate an estimated \$2,234. IDEM must deposit the fee in the Confined Feeding Operation Inspection Fund. IDEM must administer the fund. Money in the fund is annually appropriated to IDEM for inspection purposes. Expenses of administering the fund must be paid from money in the fund. The Treasurer of State must invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Money in the fund at the end of a fiscal year does not revert to the state General Fund.

Fee Decrease for Application for Approval of Construction or Modification: The bill decreases from \$100 to \$1 the fee for a CFO application for approval of construction or modification. An estimated 120 applications will be received in FY 2008. Given this figure, the fee revenue decrease would equal (\$11,880 ((120 * \$1)- (120 * \$100)). The current fee generates about \$12,000.

Repeal of CAFO NPDES Fee: Under existing law, a large CAFO has to have either an individual NPDES permit or a general NPDES permit. The bill repeals IC 13-18-20-11.5, which provides an initial or renewal fee of \$100 for a general CAFO NPDES and a \$250 fee for an individual CAFO NPDES initial or renewal permit. With respect to the \$100 general fee for CAFO NPDES, there are 413 facilities to which the fee applies which generates \$41,300 every five years, or \$8,260 annually. With respect to the individual permits, there are 11 facilities to which the \$250 fee applies which generates \$2,750 every five years, or \$550 annually. The total reduction in fees would equal \$8,810 annually.

Wastewater Treatment Facilities: The bill increases the fee for a NPDES permit from \$50 to \$75. This provision will apply to about 340 facilities and will increase revenue by an estimated \$8,500 annually.

In total, there would be a net decrease in revenue to the Environmental Management Permit Operation Fund equal to an estimated \$12,200. There would be an increase in revenue to the Confined Feeding Operation Inspection Fund of \$2,200.

Civil Penalties Matrix: The range of the penalties for each category of the civil penalty matrix is as follows:

- (1) First time violations, \$100 to \$25,000 for each day of violation.
- (2) Repeat violations, \$500 to \$50,000 for each day of violation.
- (3) Intentional violators, \$10,000 to \$100,000 for each day of violation.

The amount of revenue that will be collected from civil penalties is indeterminable. Civil penalties are deposited in the state General Fund.

(Revised) Sales Tax Exemption for Confined Feeding Equipment: This bill specifies that transactions involving confined feeding equipment are exempt from the Sales Tax if the person acquiring the equipment is occupationally engaged in the production of food or commodities that the person sells for human or animal consumption; or uses for further food or food ingredient or commodity production. The impact of this provision is currently indeterminable and will ultimately depend on the equipment purchases which are used by the people and in the occupation specified in the bill. The bill provides that the exemption is first effective for transactions occurring after June 30, 2007. The bill defines confined feeding equipment as equipment used for either:

- (1) anaerobic digestion of manure; or
- (2) control of odors;

at a confined feeding operation, including a concentrated animal feeding operation.

(Revised) Biomass Conversion Electricity Tax Credit: The bill establishes a nonrefundable credit against the Utility Receipts Tax (URT) for taxpayers that purchase electricity for resale at retail from an individual or entity that operates, and generates the electricity from, an "organic waste biomass conversion unit." The revenue loss that could potentially result from this credit is indeterminable and likely would not begin before FY 2008. It is estimated that only about 0.1% of total power generation during 2002 (the latest data available) in Indiana resulted from biomass sources. Thus, the fiscal impact of the credit would depend on several factors, including the number of conversion units that currently exist, the potential for future growth in conversion unit operations, and the response of utilities to the credit.

The tax credit is equal to the additional cost incurred by the taxpayer to purchase the electricity generated by an individual or entity from an organic biomass conversion unit for all rating periods during the taxable year. The bill specifies a formula for determining the additional purchase cost incurred by the taxpayer. The bill also requires the Indiana Utility Regulatory Commission (IURC) to disregard the credit amount in determining a taxpayer's utility rates. The taxpayer is entitled to the credit in the taxable year when the electricity is received, and may carry over excess credits for up to three years. The credit is not refundable, and the taxpayer may not carry back excess credits. The credit is effective beginning in tax year 2007.

(Revised) Investment Tax Credit: The bill establishes a nonrefundable credit against various state taxes for various qualified investment, including investment in machinery, equipment, facilities, buildings, infrastructure improvements, or patented processes and related trademarks. The tax credit may be taken by a taxpayer against the Sales and Use Tax, Adjusted Gross Income (AGI) Tax, Financial Institutions Tax, or

Insurance Premiums Tax liability in the year in which the taxpayer places the qualified investment in service. Under the bill, the IEDC administers the tax credit program and certifies the credits. The bill also provides for a clawback of the tax credit if a taxpayer fails to make the qualified investment in its entirety within five years of the IEDC certification. While the amount of tax credits that may be awarded by the IEDC is indeterminable, the bill limits the total to \$10 M for all taxpayers and all taxable years. The fiscal impact from credits could potentially begin in FY 2008 or FY 2009.

Eligibility for the tax credit is determined by the IEDC upon application by the taxpayer. The credit amount is equal to the amount of the taxpayer's qualified investment placed in service in the taxable year. However, the maximum credit amount is equal to \$2.0 M for any one taxpayer or any one location for all taxable years, and total credits for all taxpayers and all tax years are limited to \$10 M. The credit is not refundable and can not be carried back. The credit may be carried forward by the taxpayer. The taxpayer must place the facilities and equipment in service within five years of having credits certified by the IEDC. Since the credit is effective for qualified investment placed in service beginning in 2008 and dependent on IEDC approval, the fiscal impact likely would not commence before FY 2009.

(Revised) *Confined Feeding Equipment Investment Tax Credit*: The bill establishes a nonrefundable credit against various state taxes for investment in equipment at a confined feeding operation that is used for the anaerobic digestion of manure or the control of odors. The tax credit may be taken by a taxpayer against the AGI Tax, Financial Institutions Tax, or Insurance Premiums Tax liability. Under the bill, the IEDC administers the tax credit program and certifies the credits. The revenue loss that could potentially result from this tax credit is indeterminable and likely would not begin before FY 2008.

Eligibility is determined by the IEDC upon application by the taxpayer. IDEM is also responsible for certifying that the equipment is confined feeding equipment for purposes of the tax credit. The tax credit is equal to 50% of the taxpayer's qualified investment. The taxpayer must claim the credit in four equal installments during the year the equipment is placed in service and the succeeding three years. The bill does not provide refunds, or for credits exceeding the taxpayer's state tax liability to be carried forward or carried back. The bill specifies the manner in which the credit may be taken by a member of an affiliated group of corporations filing a consolidated corporate tax return or by shareholders, partners, or members of the pass through entity. Since the credit is effective beginning in tax year 2007 and dependent on IEDC approval, the fiscal impact likely would not commence before FY 2008.

(Revised) *Property Tax Deduction for Biomass Conversion Units*: The bill establishes an annual assessed value (AV) deduction for "organic waste biomass conversion units." (The definition of an organic waste biomass conversion unit is provided below.) Property tax deductions exclude property from the property tax base. The state levies a small tax rate for the State Fair and State Forestry funds that applies to all AV. If property is not a part of the tax base, the state cannot assess this tax on the property. Any decrease in the AV base as a result of deductions reduces the property tax revenue collected for these two funds.

Explanation of Local Expenditures:

Explanation of Local Revenues: (Revised) *Confined Feeding Equipment Abatements*: Under current law, new manufacturing, research & logistical distribution equipment, and logistics equipment may qualify for property tax abatements. The abatements are available for up to ten years.

This bill would allow abatements for new confined feeding equipment used for either the anaerobic digestion of manure or odor control. This abatement would be available for up to five years.

If there is an increase in investment because of this proposal, the new property would, at some point, be placed on the tax rolls. This could help spread the property tax burden and could possibly reduce some tax rates. However, if one assumes that the investment would be made with or without the abatement, an increase in abatements could cause a delay of the shift of the property tax burden from all taxpayers to the owners of the new property until the property is placed on the tax rolls. In all cases, the granting of an abatement is a local decision.

(Revised) *Property Tax Deduction for Biomass Conversion Units*: The bill establishes an AV deduction for "organic waste biomass conversion units." The annual deduction is equal to the difference between the AV of the taxpayer's property, including the AV of the organic waste biomass conversion unit; minus the AV of the taxpayer's property, excluding the AV of the organic waste biomass conversion unit. The deduction applies to property taxes first due and payable after December 31, 2007. Taxpayers must apply for the deduction in the same manner provided under current statute for the AV deduction for wind power devices.

Additional deductions reduce the AV tax base. This reduction causes a shift of the property tax burden from the taxpayers receiving the deductions to all taxpayers in the form of an increased tax rate. The amount of the deduction is indeterminable. Total local revenues would not be affected, except that the revenue in rate-controlled funds would be reduced.

State Agencies Affected: IDEM; Department of State Revenue; Utility Regulatory Commission; Indiana Economic Development Corporation; Office of Energy and Defense Development; Department of Agriculture; Department of Local Government Finance; State Fair; State Forestry.

Local Agencies Affected:

Information Sources: Sandra Flum, IDEM, 317-233-9479; Bruce Palin, Assistant Commissioner for the Office of Land Quality, 233-6591; Dr Rod Noel, Associate. *2005 Indiana Renewable Energy Resources Study*, State Utility Forecasting Group, Purdue University.

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