

HOUSE BILL No. 1646

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-28-6-4; IC 6-2.5-7-5; IC 6-3.1.

Synopsis: Renewable fuels grants and tax credits. Extends the retailer's sales tax collection discount for the sale of E85 through the year 2020. Provides for grants to a retail dealer or terminal operator to assist in paying for the costs of converting or establishing facilities to store and sell gasoline with an ethanol content of at least 10% or diesel with a biodiesel content of at least 2%. Eliminates the termination date for and the statewide cap on a tax credit that is available for the retail sale of diesel with a biodiesel content of at least 2%. Changes the eligibility requirements for the tax credit and the formula for calculating the tax credit. Grants a tax credit for the retail sale of gasoline with an ethanol content of at least 10%.

Effective: July 1, 2007.

**VanHaften, Gutwein, Grubb,
Davis**

January 23, 2007, read first time and referred to Committee on Ways and Means.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1646



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-28-6-4 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 4. (a) The definitions in IC 6-3.1-27 and IC 6-3.1-28**
4 **apply throughout this section. The following definitions apply**
5 **throughout this section:**
6 (1) **"Distributor"** means a person that is principally engaged
7 in distributing any combination of gasoline, diesel, blended
8 biodiesel, or ethanol at wholesale to dealers.
9 (2) **"Motor vehicle"** has the meaning set forth in
10 IC 6-6-1.1-103.
11 (3) **"Motor vehicle refueling property"** means tangible
12 property with a useful life of more than one (1) year that is
13 used for the storage of fuel or the dispensing of fuel into the
14 fuel tank of a motor vehicle propelled by the fuel. The term
15 applies only to tangible property located where the fuel is
16 dispensed into the fuel tank of a motor vehicle.
17 (4) **"Wholesale fuel distribution property"** means tangible



1 property with a useful life of more than one (1) year that is
2 used for the storage or loading of fuel into a tank wagon or
3 tank transport for transportation to a dealer. The term
4 applies only to tangible property located where the fuel is
5 loaded.

6 (b) The corporation shall establish a program to award
7 renewable fuel infrastructure improvement grants to the following:

8 (1) Distributors that install wholesale fuel distribution
9 property that is used exclusively, except as permitted under a
10 waiver granted by the corporation, to store and distribute
11 blended biodiesel or gasoline with an ethanol content of at
12 least ten percent (10%) by volume.

13 (2) Dealers that install or convert motor vehicle refueling
14 property that is used exclusively, except as permitted under a
15 waiver granted by the corporation, to store and dispense
16 blended biodiesel or gasoline with an ethanol content of at
17 least ten percent (10%) by volume.

18 (c) A distributor or dealer may apply for a grant under this
19 section on the forms and in the manner prescribed by the
20 corporation.

21 (d) The maximum amount that may be awarded in grants under
22 this section for all years to a distributor for any particular location
23 is the lesser of the following:

- 24 (1) Fifty percent (50%) of the costs incurred by the
- 25 distributor to install wholesale fuel distribution property.
- 26 (2) Fifty thousand dollars (\$50,000).

27 (e) The maximum amount that may be awarded in grants under
28 this section for all years to a dealer for any particular location is
29 the lesser of the following:

- 30 (1) Fifty percent (50%) of the costs incurred by the dealer to
- 31 install motor vehicle refueling property.
- 32 (2) Thirty thousand dollars (\$30,000).

33 (f) A grant under this section is subject to the terms and
34 conditions required by the corporation. The corporation and the
35 grant recipient shall enter into a written agreement specifying the
36 terms and conditions that apply to the grant.

37 SECTION 2. IC 6-2.5-7-5, AS AMENDED BY P.L.122-2006,
38 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 JULY 1, 2007]: Sec. 5. (a) Each retail merchant who dispenses
40 gasoline or special fuel from a metered pump shall, in the manner
41 prescribed in IC 6-2.5-6, report to the department the following
42 information:

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- 1 (1) The total number of gallons of gasoline sold from a metered
- 2 pump during the period covered by the report.
- 3 (2) The total amount of money received from the sale of gasoline
- 4 described in subdivision (1) during the period covered by the
- 5 report.
- 6 (3) That portion of the amount described in subdivision (2) which
- 7 represents state and federal taxes imposed under this article,
- 8 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- 9 (4) The total number of gallons of special fuel sold from a
- 10 metered pump during the period covered by the report.
- 11 (5) The total amount of money received from the sale of special
- 12 fuel during the period covered by the report.
- 13 (6) That portion of the amount described in subdivision (5) that
- 14 represents state and federal taxes imposed under this article,
- 15 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- 16 (7) The total number of gallons of E85 sold from a metered pump
- 17 during the period covered by the report.
- 18 (b) Concurrently with filing the report, the retail merchant shall
- 19 remit the state gross retail tax in an amount which equals five and
- 20 sixty-six hundredths percent (5.66%) of the gross receipts, including
- 21 state gross retail taxes but excluding Indiana and federal gasoline and
- 22 special fuel taxes, received by the retail merchant from the sale of the
- 23 gasoline and special fuel that is covered by the report and on which the
- 24 retail merchant was required to collect state gross retail tax. The retail
- 25 merchant shall remit that amount regardless of the amount of state
- 26 gross retail tax which ~~he~~ **the retail merchant** has actually collected
- 27 under this chapter. However, the retail merchant is entitled to deduct
- 28 and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and
- 29 IC 6-2.5-6-11.
- 30 (c) A retail merchant is entitled to deduct from the amount of state
- 31 gross retail tax required to be remitted under subsection (b) the amount
- 32 determined under STEP THREE of the following formula:
- 33 STEP ONE: Determine:
- 34 (A) the sum of the prepayment amounts made during the
- 35 period covered by the retail merchant's report; minus
- 36 (B) the sum of prepayment amounts collected by the retail
- 37 merchant, in the merchant's capacity as a qualified distributor,
- 38 during the period covered by the retail merchant's report.
- 39 STEP TWO: ~~Subject to subsection (d); for reporting periods~~
- 40 ~~ending before July 1, 2008;~~ Determine the product of:
- 41 (A) **in a reporting period ending in:**
- 42 (i) **2007**, ten cents (\$0.10);

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- 1 (ii) 2008, ten cents (\$0.10);
 2 (iii) 2009, ten cents (\$0.10);
 3 (iv) 2010, ten cents (\$0.10);
 4 (v) 2011, ten cents (\$0.10);
 5 (vi) 2012, nine cents (\$0.09);
 6 (vii) 2013, eight cents (\$0.08);
 7 (viii) 2014, seven cents (\$0.07);
 8 (ix) 2015, six cents (\$0.06);
 9 (x) 2016, five cents (\$0.05);
 10 (xi) 2017, four cents (\$0.04);
 11 (xii) 2018, three cents (\$0.03);
 12 (xiii) 2019, two cents (\$0.02);
 13 (xiv) 2020, one cent (\$0.01); multiplied by
 14 (B) the number of gallons of E85 sold at retail by the retail
 15 merchant during the period covered by the retail merchant's
 16 report.
 17 STEP THREE: Add the amounts determined under STEPS ONE
 18 and TWO.
 19 For purposes of this section, a prepayment of the gross retail tax is
 20 presumed to occur on the date on which it is invoiced.
 21 (d) The total amount of deductions allowed under subsection (c),
 22 STEP TWO may not exceed ~~two one~~ million dollars (~~\$2,000,000~~)
 23 **(\$1,000,000)** for all retail merchants in all reporting periods **ending in**
 24 **the same calendar year**. A retail merchant is not required to apply for
 25 an allocation of deductions under subsection (c), STEP TWO. If the
 26 department determines that the sum of:
 27 (1) the deductions that would otherwise be reported under
 28 subsection (c), STEP TWO for a reporting period; plus
 29 (2) the total amount of deductions granted under subsection (c),
 30 STEP TWO in all preceding reporting periods;
 31 will exceed ~~two one~~ million dollars (~~\$2,000,000~~), **(\$1,000,000) for all**
 32 **retail merchants in all reporting periods ending in the same**
 33 **calendar year**, the department shall publish in the Indiana Register a
 34 notice that the deduction program under subsection (c), STEP TWO is
 35 terminated after the date specified in the notice and that no additional
 36 deductions will be granted for retail transactions occurring after the
 37 date specified in the notice.
 38 SECTION 3. IC 6-3.1-27-0.5 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2007]: **Sec. 0.5. As used in this chapter,**
 41 **"affiliated group" means any combination of the following:**
 42 (1) An affiliated group within the meaning provided in Section

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1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.

(2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under rules adopted by the department.

SECTION 4. IC 6-3.1-27-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.7. As used in this chapter, "metered pump" has the meaning set forth in IC 6-2.5-7-1.

SECTION 5. IC 6-3.1-27-3.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3.8. As used in this chapter, "motor vehicle" means a vehicle, except a vehicle operated on rails, that is propelled by an internal combustion engine or motor and is designed to permit the vehicle's mobile use on public highways (as defined in IC 6-6-1.1-103) or land used for agricultural purposes. The term includes a farm tractor or an implement of agriculture designed to be operated primarily in a farm field or on farm premises.

SECTION 6. IC 6-3.1-27-10, AS AMENDED BY P.L.122-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) A taxpayer that:

- (1) is a dealer; and
- (2) **in a taxable year** distributes at retail blended biodiesel ~~in a taxable year;~~ **from a metered pump in Indiana for use to propel a motor vehicle;**

is entitled to a credit against the taxpayer's state tax liability.

(b) The amount of the credit allowed under this section is the product of:

- (1) ~~one cent (\$0.01);~~ **the credit amount per gallon determined under subsection (c);** multiplied by
- (2) the total number of gallons of **biodiesel (B100) contained in the blended biodiesel** distributed at retail by the taxpayer in a taxable year **to propel a motor vehicle.**

(c) ~~The total amount of credits allowed under this section may not exceed one million dollars (\$1,000,000) for all taxpayers and all taxable years.~~

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1 (d) A credit under this section may not be taken for blended
2 biodiesel distributed at retail after December 31, 2010.

3 (c) The credit amount per gallon that is applicable to a taxpayer
4 in a particular taxable year depends on the extent to which the
5 taxpayer achieves the blended biodiesel distribution goals set by
6 this section for retail fuel sales in Indiana. Achievement of the goal
7 is determined by computing the taxpayer's index for the taxable
8 year under subsection (d). The credit amount per gallon used in
9 subsection (b)(1) is equal to the credit amount specified in the
10 following table:

11 If Taxpayer's Index	Credit Amount
12 for Taxable Year is:	
13 At least 1.00	\$0.01
14 Less than 1.00	\$0.00

15 (d) A taxpayer's index for a taxable year is the amount
16 determined under STEP FIVE of the following formula:

17 STEP ONE: Determine the total number of gallons of diesel
18 that does not qualify as blended biodiesel and that is
19 distributed at retail by:

20 (A) the taxpayer; and

21 (B) the other members of any affiliated group in which the
22 taxpayer is a member;

23 in Indiana in the taxpayer's taxable year for use to propel a
24 motor vehicle.

25 STEP TWO: Determine the total number of gallons of
26 blended diesel and that is distributed at retail by:

27 (A) the taxpayer; and

28 (B) the other members of any affiliated group in which the
29 taxpayer is a member;

30 in Indiana in the taxpayer's taxable year for use to propel a
31 motor vehicle.

32 STEP THREE: Determine the sum of the STEP ONE and
33 STEP TWO amounts.

34 STEP FOUR: Divide the STEP TWO amount by the STEP
35 THREE amount, rounding to the nearest one-hundredth
36 (0.01).

37 STEP FIVE: Divide the STEP FOUR amount by five-tenths
38 (0.5), rounding to the nearest one-hundredth (0.01).

39 SECTION 7. IC 6-3.1-28-0.5 IS ADDED TO THE INDIANA
40 CODE AS A NEW SECTION TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2007]: **Sec. 0.5. As used in this chapter,**
42 **"affiliated group" means any combination of the following:**

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1 **(1) An affiliated group within the meaning provided in Section**
 2 **1504 of the Internal Revenue Code, except that the ownership**
 3 **percentage in Section 1504(a)(2) of the Internal Revenue Code**
 4 **shall be determined using fifty percent (50%) instead of**
 5 **eighty percent (80%) or a relationship described in Section**
 6 **267(b)(11) of the Internal Revenue Code.**

7 **(2) Two (2) or more partnerships (as defined in IC 6-3-1-19),**
 8 **including limited liability companies and limited liability**
 9 **partnerships, that have the same degree of mutual ownership**
 10 **as an affiliated group described in subdivision (1), as**
 11 **determined under rules adopted by the department.**

12 SECTION 8. IC 6-3.1-28-0.7 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2007]: **Sec. 0.7. As used in this chapter,**
 15 **"blended biodiesel" has the meaning set forth in IC 6-3.1-27-2.**

16 SECTION 9. IC 6-3.1-28-0.8 IS ADDED TO THE INDIANA
 17 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2007]: **Sec. 0.8. As used in this chapter,**
 19 **"blended ethanol" means gasoline with an ethanol content of at**
 20 **least ten percent (10%) by volume.**

21 SECTION 10. IC 6-3.1-28-1.5 IS ADDED TO THE INDIANA
 22 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. As used in this chapter,**
 24 **"dealer" has the meaning set forth in IC 6-6-1.1-103.**

25 SECTION 11. IC 6-3.1-28-1.7 IS ADDED TO THE INDIANA
 26 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2007]: **Sec. 1.7. As used in this chapter,**
 28 **"distribute at retail" means to sell or otherwise distribute for**
 29 **consideration to an end user in Indiana.**

30 SECTION 12. IC 6-3.1-28-3.3 IS ADDED TO THE INDIANA
 31 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2007]: **Sec. 3.3. As used in this chapter,**
 33 **"gasoline" has the meaning set forth in IC 6-6-1.1-103.**

34 SECTION 13. IC 6-3.1-28-3.5 IS ADDED TO THE INDIANA
 35 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2007]: **Sec. 3.5. As used in this chapter,**
 37 **"metered pump" has the meaning set forth in IC 6-2.5-7-1.**

38 SECTION 14. IC 6-3.1-28-3.7 IS ADDED TO THE INDIANA
 39 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2007]: **Sec. 3.7. As used in this chapter,**
 41 **"motor vehicle" means a vehicle, except a vehicle operated on rails,**
 42 **that is propelled by an internal combustion engine or motor and is**

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1 designed to permit the vehicle's mobile use on public highways (as
2 defined in IC 6-6-1.1-103) or land used for agricultural purposes.
3 The term includes a farm tractor or an implement of agriculture
4 designed to be operated primarily in a farm field or on farm
5 premises.

6 SECTION 15. IC 6-3.1-28-12 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) For all taxable years that
9 begin after December 31, 2008, a taxpayer that:

10 (1) is a dealer; and

11 (2) in a taxable year, distributes blended ethanol at retail from
12 a metered pump in Indiana for use to propel a motor vehicle;
13 is entitled to a credit against the taxpayer's state tax liability. If
14 that ethanol content of the blended ethanol qualifies the fuel as E85
15 (as defined in IC 6-6-1.1-103), the taxpayer is eligible for both the
16 credit under this section and the deduction under IC 6-2.5-7-5(c).

17 (b) The credit under subsection (a) is equal to the product of:

18 (1) the credit amount per gallon specified under subsection
19 (c); multiplied by

20 (2) the total number of gallons of ethanol contained in the
21 blended ethanol distributed by the dealer at retail from a
22 metered pump in Indiana in the taxable year to propel a
23 motor vehicle.

24 (c) The credit amount per gallon that is applicable to a taxpayer
25 in a particular taxable year depends on the extent to which the
26 taxpayer achieves the renewable fuels standard distribution goals
27 set by this section for retail fuel sales in Indiana. Achievement of
28 the goal is determined by computing the taxpayer's index for the
29 taxable year under subsection (d). The credit amount per gallon
30 used in subsection (b)(1) is equal to the credit amount specified in
31 the following table:

If Taxpayer's Index for Taxable Year is:	Credit Amount
At least 1.00	\$0.01
At least 0.98 and less than 1.00	\$0.0075
At least 0.96 and less than 0.98	\$0.005
Less than 0.96	\$0.00

38 (d) Subject to subsection (e), a taxpayer's index for a taxable
39 year is the amount determined under STEP SIX of the following
40 formula:

41 STEP ONE: Determine the sum of the following:

42 (A) The total number of gallons of gasoline that does not

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qualify as blended ethanol ant that is distributed at retail by:

- (i) the taxpayer; and
 - (ii) the other members of any affiliated group in which the taxpayer is a member;
- in Indiana from a metered pump in the taxpayer's taxable year for use to propel a motor vehicle.

(B) The total number of gallons of diesel that does not qualify as blended biodiesel ant that is distributed at retail by:

- (i) the taxpayer; and
 - (ii) the other members of any affiliated group in which the taxpayer is a member;
- in Indiana in the taxpayer's taxable year for use to propel a motor vehicle.

STEP TWO: Determine the sum of the following:

(A) The total number of gallons of blended ethanol distributed at retail by:

- (i) the taxpayer; and
 - (ii) the other members of any affiliated group in which the taxpayer is a member;
- in Indiana from a metered pump in the taxpayer's taxable year for use to propel a motor vehicle.

(B) The total number of gallons of blended diesel and that is distributed at retail by:

- (i) the taxpayer; and
 - (ii) the other members of any affiliated group in which the taxpayer is a member;
- in Indiana in the dealer's taxable year for use to propel a motor vehicle.

STEP THREE: Determine the sum of the STEP ONE and STEP TWO amounts.

STEP FOUR: Divide the STEP TWO amount by the STEP THREE amount, rounding to the nearest one-hundredth (0.01).

STEP FIVE: Determine the renewable fuels standard from the following table that is applicable to the taxpayer's taxable year:

Calendar year in which Taxable Year Begins	Renewable Fuels Standard
2009	0.10
2010	0.11

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1	2011	0.12
2	2012	0.13
3	2013	0.14
4	2014 and thereafter	0.15

5 **STEP SIX: Divide the STEP FOUR amount by the renewable**
6 **fuels standard determined under STEP FIVE, rounding to the**
7 **nearest one-hundredth (0.01).**

8 **(e) The governor may, by executive order, reduce or suspend the**
9 **renewable fuels standard required for a year under subsection (d),**
10 **STEP FIVE for any period in which the governor determines that**
11 **the average wholesale price of ethanol sold from a facility in a**
12 **period determined by the governor exceeds the sum of the:**

- 13 **(1) average wholesale price per gallon of gasoline; and**
- 14 **(2) value of the credits and deductions available per gallon for**
15 **the retail sale of gasoline blended with ethanol under this**
16 **section and IC 6-2.5-7-5.**

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