
SENATE BILL No. 350

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-7-5; IC 15-15-12.

Synopsis: Corn marketing council. Repeals provisions concerning deductions to retail merchants under the E85 reimbursement program. Adds requirements applying to membership on the corn marketing council (council). Changes the date by which a petition for candidacy to the council may be filed. Provides that the council operates on the basis of its own fiscal year. (Current law requires the council to operate on a state fiscal year basis.) Establishes a formula to determine the maximum administrative expenses of the council. Provides that the cost of processing refunds and the cost of applying for grants are not administrative expenses. Requires a first purchaser of corn to remit the corn sale assessment within 30 days after collection. Requires a first purchaser that is not subject to assessment to sign and date an exemption form. Establishes an assessment refund schedule based upon the amount owed. Makes a technical change.

Effective: July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Agriculture and Natural Resources.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 350



A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

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

- 1 SECTION 1. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2012]: Sec. 5. (a) Each retail merchant who dispenses
- 4 gasoline or special fuel from a metered pump shall, in the manner
- 5 prescribed in IC 6-2.5-6, report to the department the following
- 6 information:
- 7 (1) The total number of gallons of gasoline sold from a metered
- 8 pump during the period covered by the report.
- 9 (2) The total amount of money received from the sale of gasoline
- 10 described in subdivision (1) during the period covered by the
- 11 report.
- 12 (3) That portion of the amount described in subdivision (2) which
- 13 represents state and federal taxes imposed under this article,
- 14 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- 15 (4) The total number of gallons of special fuel sold from a
- 16 metered pump during the period covered by the report.
- 17 (5) The total amount of money received from the sale of special



1 fuel during the period covered by the report.
 2 (6) That portion of the amount described in subdivision (5) that
 3 represents state and federal taxes imposed under this article,
 4 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
 5 (7) The total number of gallons of E85 sold from a metered pump
 6 during the period covered by the report.

7 (b) Concurrently with filing the report, the retail merchant shall
 8 remit the state gross retail tax in an amount which equals six and
 9 fifty-four hundredths percent (6.54%) of the gross receipts, including
 10 state gross retail taxes but excluding Indiana and federal gasoline and
 11 special fuel taxes, received by the retail merchant from the sale of the
 12 gasoline and special fuel that is covered by the report and on which the
 13 retail merchant was required to collect state gross retail tax. The retail
 14 merchant shall remit that amount regardless of the amount of state
 15 gross retail tax which the merchant has actually collected under this
 16 chapter. However, the retail merchant is entitled to deduct and retain
 17 the amounts prescribed in subsection (c); IC 6-2.5-6-10 and
 18 IC 6-2.5-6-11.

19 (c) A retail merchant is entitled to deduct from the amount of state
 20 gross retail tax required to be remitted under subsection (b) the amount
 21 determined under STEP THREE of the following formula:

22 STEP ONE: Determine:

- 23 (A) the sum of the prepayment amounts made during the
- 24 period covered by the retail merchant's report; minus
- 25 (B) the sum of prepayment amounts collected by the retail
- 26 merchant, in the merchant's capacity as a qualified distributor,
- 27 during the period covered by the retail merchant's report.

28 STEP TWO: Subject to subsections (d) and (f); for qualified
 29 reporting periods beginning after June 30, 2009; and ending
 30 before July 1, 2020; determine the product of:

- 31 (A) eighteen cents (\$0.18); multiplied by
- 32 (B) the number of gallons of E85 sold at retail by the retail
- 33 merchant during the period covered by the retail merchant's
- 34 report.

35 STEP THREE: Add the amounts determined under STEPS ONE
 36 and TWO.

37 For purposes of this section, a prepayment of the gross retail tax is
 38 presumed to occur on the date on which it is invoiced.

39 (d) The total amount of deductions allowed under subsection (c)
 40 STEP TWO may not exceed the amount of money that the budget
 41 agency determines is available in the retail merchant E85 deduction
 42 reimbursement fund established under IC 15-15-12-30.5 for the

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1 deductions for all retail merchants in a particular qualified reporting
 2 period. A retail merchant is not required to apply for an allocation of
 3 deductions under subsection (c) STEP TWO. Before August 1 of each
 4 year, the budget agency shall estimate whether the amount of
 5 deductions from the immediately preceding qualified reporting period
 6 that are subject to reimbursement under IC 15-15-12-30.5(f) and the
 7 deductions expected to be reported under subsection (c) STEP TWO
 8 for the qualified reporting periods beginning after December 31 and
 9 ending before April 1 of the following year will exceed the amount of
 10 money available in the retail merchant E85 deduction reimbursement
 11 fund for the deductions. If the budget agency determines that the
 12 amount of money in the retail merchant E85 deduction reimbursement
 13 fund is insufficient to cover the amount of the deductions expected to
 14 be reported, the budget agency shall publish in the Indiana Register a
 15 notice that the deduction program under subsection (c) STEP TWO is
 16 suspended with respect to the qualified reporting periods occurring in
 17 the following calendar year and that no deductions will be granted for
 18 retail transactions occurring in the qualified reporting periods occurring
 19 in the following calendar year.

20 (e) As used in this section, "qualified reporting period" refers to a
 21 reporting period beginning after December 31 and ending before April
 22 1 of each year.

23 (f) The budget agency may suspend the deduction program under
 24 subsection (c) STEP TWO for a particular year at any time during a
 25 qualified reporting period if the budget agency determines that the
 26 amount of money in the retail merchant E85 deduction reimbursement
 27 fund and the amount of money that will be transferred to the fund on
 28 July 1 will not be sufficient to reimburse the deductions expected to
 29 occur before the deduction program for the year ends on March 31. The
 30 budget agency shall immediately provide notice to the participating
 31 retail merchants of the decision to suspend the deduction program for
 32 that year.

33 SECTION 2. IC 6-2.5-7-6 IS REPEALED [EFFECTIVE JULY 1,
 34 2012]. Sec. 6: (a) If the deduction under section 5(c) of this chapter
 35 exceeds the amount of gross retail tax required to be remitted under
 36 section 5(b) of this chapter, the retail merchant is entitled to a credit.
 37 The credit shall be used as follows:

38 (1) First, the credit shall be applied against gross retail and use
 39 tax liability of the retail merchant that is required to be remitted
 40 under IC 6-2.5-6.

41 (2) Second, any amount remaining shall be applied against the
 42 gasoline tax liability of the retail merchant, as determined under

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1 IC 6-6-1.1, excluding any liability for gasoline delivered to a
2 taxable marine facility.

3 A retail merchant may file a claim for a refund instead of taking a
4 credit or for a refund of any excess tax payment remaining after the
5 credits allowed by this section. In addition, a retail merchant may file
6 a claim for a refund under section 12 of this chapter.

7 (b) A retail merchant that is entitled to a refund under this section
8 must file a claim for the refund on the form approved by the
9 department and must include any supporting documentation reasonably
10 required by the department. If a retail merchant files a completed
11 refund claim form that includes all supporting documentation, the
12 excess tax payment that is not refunded within ninety (90) days accrues
13 interest as provided in IC 6-8.1-9-2.

14 (c) Before the fifth day of each month, the department shall
15 determine and notify the treasurer of state of the amount of credits
16 applied during the preceding month against the gasoline tax under this
17 section. The treasurer of state shall transfer from the general fund:

- 18 (1) to the highway, road, and street fund, twenty-five percent
19 (25%) of the amount set forth in the department's notice; and
20 (2) to the motor fuel tax fund of the motor vehicle highway
21 account, seventy-five percent (75%) of the amount set forth in the
22 department's notice.

23 SECTION 3. IC 15-15-12-17, AS ADDED BY P.L.2-2008,
24 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2012]: Sec. 17. (a) The Indiana corn marketing council is
26 established. The council is a public body corporate and politic, and
27 though it is separate from the state, the exercise by the council of its
28 powers constitutes an essential governmental function. The council
29 may sue and be sued and plead and be impleaded.

30 (b) The council consists of seventeen (17) voting and eight (8) ex
31 officio, nonvoting members. The elected members from districts listed
32 under section 21(a) of this chapter must: ~~be:~~

- 33 (1) ~~be~~ registered as voters in Indiana;
34 (2) ~~be~~ at least eighteen (18) years of age; ~~and~~
35 (3) ~~be~~ producers;
36 (4) **be owners of corn or owners of an interest in corn;**
37 (5) **have been subject to an assessment under section 32 of this**
38 **chapter made during the previous two (2) years; and**
39 (6) **not be in arrears or default on payments on assessments**
40 **under section 32 of this chapter.**

41 (c) Each elected member of the council must reside in the district
42 identified in section 21(a) of this chapter from which the member is

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elected.
(d) Each member of the council is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency. However, council members are not entitled to a salary or per diem.

SECTION 4. IC 15-15-12-23, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 23. (a) The ballot for the election of a district council member must include the name of each producer who:

- (1) meets the qualifications set forth in section 17(b) of this chapter; and
- (2) files with the council, **before not later than** June 30 of the year of the election, a petition in support of candidacy signed by ten (10) other producers who reside in the district.

(b) The council shall provide petition forms upon request and shall make forms available:

- (1) at cooperative extension service offices located in the district; and
- (2) via the council's Internet web site.

(c) The council shall allow a producer to request a ballot through the council's Internet web site.

(d) A name other than the names of the producers who have qualified under this section may not be printed on the ballot by the council. All names on the ballot must be listed in alphabetical order based on the producer's surname.

(e) The council shall require each producer who submits a ballot to provide a separate attestation that the person is an eligible producer.

SECTION 5. IC 15-15-12-29, AS AMENDED BY P.L.148-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 29. (a) The council shall pay all expenses incurred under this chapter with money from the assessments remitted to the council under this chapter.

(b) The council may invest all money the council receives under this chapter, including gifts or grants that are given for the express purpose of implementing this chapter, in the same way allowed by law for public funds.

(c) The council may expend money from assessments and from investment income not needed for expenses for market development, promotion, and research.

(d) The council may not use money received, collected, or accrued

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1 under this chapter for any purpose other than the purposes authorized
 2 by this chapter. The amount of money expended on administering this
 3 chapter in a ~~state~~ **the council's** fiscal year may not exceed ten percent
 4 (10%) of the ~~total~~ **average** amount of assessments, grants, and gifts
 5 received by the council in that state fiscal year: **as calculated under**
 6 **subsection (e).**

7 **(e) The council shall determine the amount that it may expend**
 8 **to administer this chapter using the following formula:**

9 **STEP ONE: Determine the amount of assessments, grants,**
 10 **and gifts received by the council in each of the preceding five**
 11 **(5) fiscal years beginning with the immediately preceding**
 12 **fiscal year.**

13 **STEP TWO: Determine the average annual amount of**
 14 **assessments, grants, and gifts received by the council in each**
 15 **fiscal year using three (3) of the five (5) fiscal years described**
 16 **in STEP ONE after excluding the years in which the total**
 17 **amount of assessments, grants, and gifts received by the**
 18 **council were the highest and lowest.**

19 **STEP THREE: Divide the amount in STEP TWO by ten (10).**
 20 **The amount determined under STEP THREE is the maximum**
 21 **amount that the council may expend on administering this chapter**
 22 **for the current fiscal year.**

23 **(f) The cost of processing refunds and the cost of applying for**
 24 **grants are not administrative expenses under this section.**

25 SECTION 6. IC 15-15-12-30.5 IS REPEALED [EFFECTIVE JULY
 26 1, 2012]. Sec. 30.5: (a) The retail merchant E85 deduction
 27 reimbursement fund is established. The fund consists of:

- 28 (1) assessments transferred by the council for deposit in the fund
 29 under section 32.5 of this chapter;
 30 (2) gifts; and
 31 (3) grants.

32 (b) Except as provided in subsection (g), money in the fund may
 33 only be used for the purposes described in subsection (d).

34 (c) On May 1, the budget agency shall determine the sum of all
 35 retail merchant deductions allowed under IC 6-2.5-7-5(d) in the
 36 immediately preceding qualified reporting period (as defined in
 37 IC 6-2.5-7-5(e)).

38 (d) The budget agency shall transfer the amount determined under
 39 subsection (c) from the fund for deposit. The amount transferred under
 40 this subsection shall be deposited in the same manner as state gross
 41 retail and use taxes are required to be deposited under IC 6-2.5-10-1.

42 (e) The treasurer of state shall invest the money in the fund not

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1 currently needed to meet the obligations of the fund in the same
 2 manner as other public money may be invested. Interest that accrues
 3 from these investments shall be deposited in the fund.

4 (f) If the amount of money in the fund on May 1 is insufficient to
 5 reimburse the state for all retail merchant deductions allowed under
 6 IC 6-2.5-7-5(d) in the immediately preceding qualified reporting period
 7 (as defined in IC 6-2.5-7-5(e)); the budget agency shall deduct from
 8 any amounts transferred for deposit into the fund in the remainder of
 9 that calendar year an amount sufficient to cure the insufficiency. The
 10 budget agency shall transfer any amounts deducted under this
 11 subsection for deposit in the same manner as state gross retail and use
 12 taxes are required to be deposited under IC 6-2.5-10-1.

13 (g) If the retail merchant E85 deduction program is terminated, any
 14 balance in the fund must be transferred to the council.

15 SECTION 7. IC 15-15-12-32, AS ADDED BY P.L.2-2008,
 16 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2012]: Sec. 32. (a) An assessment of one-half cent (\$0.005)
 18 per bushel must be collected on all corn sold in Indiana. The
 19 assessment may be imposed and collected on a quantity of corn only
 20 once and must be collected by the first purchaser. A buyer of corn who
 21 purchases more than one hundred thousand (100,000) bushels annually
 22 for the buyer's own use as seed or feed is responsible only for collecting
 23 checkoff assessments on corn purchases made after the buyer exceeds
 24 the one hundred thousand (100,000) bushel threshold and becomes a
 25 first purchaser. The rate of the assessment imposed by this section may
 26 be changed only by the general assembly.

27 (b) The first purchaser of a quantity of corn shall deduct the
 28 assessment on the corn from the money to be paid to the producer
 29 based on the sale of the corn. ~~A first purchaser shall accumulate~~
 30 ~~assessments collected under this subsection throughout each of the~~
 31 ~~following periods:~~

32 (1) ~~January, February, and March.~~

33 (2) ~~April, May, and June.~~

34 (3) ~~July, August, and September.~~

35 (4) ~~October, November, and December.~~

36 (c) ~~At the end of each period,~~ The first purchaser shall remit to the
 37 council all assessments collected ~~during the period: by the purchaser~~
 38 **not later than thirty (30) days after collection.** A first purchaser who
 39 remits all assessments collected ~~during a period within~~ **not later than**
 40 **thirty (30) days after the end of the period collection** is entitled to
 41 retain three percent (3%) of the total of the assessments as a handling
 42 fee.



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1 **(d) A first purchaser who is not subject to the assessment under**
 2 **this section shall sign and date an exemption form. The council**
 3 **shall prepare the exemption form.**

4 SECTION 8. IC 15-15-12-32.5 IS REPEALED [EFFECTIVE JULY
 5 1, 2012]. Sec. 32.5: (a) ~~On July 1, 2010, the council shall transfer five~~
 6 ~~hundred thousand dollars (\$500,000) to the budget agency for deposit~~
 7 ~~in the retail merchant E85 deduction reimbursement fund established~~
 8 ~~by section 30.5 of this chapter.~~

9 ~~(b) On July 1, 2011, and each year thereafter, the council shall~~
 10 ~~transfer to the budget agency for deposit in the retail merchant E85~~
 11 ~~deduction reimbursement fund established by section 30.5 of this~~
 12 ~~chapter an amount equal to the difference between:~~

13 ~~(1) five hundred thousand dollars (\$500,000); minus~~

14 ~~(2) the balance remaining in the fund on June 30.~~

15 ~~However, the amount transferred under this subsection may not exceed~~
 16 ~~five hundred thousand dollars (\$500,000).~~

17 SECTION 9. IC 15-15-12-33, AS AMENDED BY P.L.148-2009,
 18 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2012]: Sec. 33. (a) If a producer has sold corn and the state
 20 assessment was deducted from the sale price of the corn, the producer
 21 may secure a refund equal to the amount deducted upon filing a written
 22 application.

23 (b) A producer's application for a refund under this section must be
 24 made to the council not more than one hundred eighty (180) days after
 25 the state assessment is deducted from the sale price of the producer's
 26 corn.

27 (c) The council shall provide application forms to a first purchaser
 28 for purposes of this section upon request and make application forms
 29 available on the council's Internet web site. ~~Before July 1, 2009, a first~~
 30 ~~purchaser shall provide an application form to each producer along~~
 31 ~~with each settlement form that shows a deduction. After June 30, 2009,~~
 32 A first purchaser shall make application forms available in plain view
 33 at the first purchaser's place of business.

34 (d) Proof that an assessment has been deducted from the sale price
 35 of a producer's corn must be attached to each application for a refund
 36 submitted under this section by a producer. The proof that an
 37 assessment was deducted may be in the form of a duplicate or an
 38 original copy of the purchase invoice or settlement sheet from the first
 39 purchaser. The refund form and proof of assessment may be mailed or
 40 faxed to the council. The refund form must clearly state how to request
 41 a refund, the address where the form may be mailed, and the fax
 42 number where the form may be faxed.

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1 (e) If a refund is due under this section, the council shall remit the
 2 refund to the producer **as follows:**
 3 **(1) For:**
 4 **(A) refunds of more than twenty-five dollars (\$25); or**
 5 **(B) multiple refunds that total more than twenty-five**
 6 **dollars (\$25);**
 7 **the council shall remit the refund** not later than thirty (30) days
 8 after the date the producer's completed application and proof of
 9 assessment are received.
 10 **(2) For refunds of twenty-five dollars (\$25) or less, the council**
 11 **shall remit the refund:**
 12 **(A) on March 31, if the producer's completed application**
 13 **and proof of assessment are received before March 1; or**
 14 **(B) on September 30, if the producer's completed**
 15 **application and proof of assessment are received on or**
 16 **after March 1 and before September 1.**

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