LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 17, 2007

TO: Honorable Kip Averitt, Chair, Senate Committee on Natural Resources

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3168** by Swinford (Relating to incentives for and the regulation of biofuel production and distribution in this state.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3168, As Engrossed: a positive impact of $6,000,000 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	$3,000,000
2009	$3,000,000
2010	$3,000,000
2011	$3,000,000
2012	$3,000,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Probable Revenue Gain/(Loss) from *FUEL ETHANOL & BIODIESEL PRODUCTION* 5112
2008	$3,000,000	($571,428)
2009	$3,000,000	($571,429)
2010	$3,000,000	($571,428)
2011	$3,000,000	($571,429)
2012	$3,000,000	($571,428)

Fiscal Analysis

The bill would include renewable methane in the Fuel Ethanol and Biodiesel Incentive Program administered by the Department of Agriculture (TDA). The bill would provide that under the program, producers of renewable methane would be charged a fee of 3.2 cents per each MMBtu of renewable methane, the 3.2 cents would be matched by a 16.8 cents incentive payment (from unobligated General Revenue), and the producers would be entitled to receive a total of 20 cents for each MMBtu of renewable methane. The bill also specifies that there would be a cap on the amount of renewable methane eligible for incentive grants; for purposes of this fiscal note it is assumed that this cap would be the MMBtu equivalent of 18 million gallons. Given that one MMBtu equals 7,480 gallons, the cap would be 2,406 MMBtus. This fiscal note also assumes that all participating plants would produce the maximum amount allowed: 2,406 MMBtus.

The bill also would reduce the producer's fee under the Fuel Ethanol and Biodiesel Incentive Program for each gallon of biodiesel from 3.2 cents to 1.6 cents and correspondingly the incentive payment to producers of biodiesel from 20 to 10 cents per gallon.

In addition, the bill would add a new section to Chapter 16 of the Agriculture Code that prohibits any state agency from adopting or implementing rules, except for the Reid vapor pressure requirements for gasoline used as control measures in the state implementation plans (SIP), which would restrict the production or distribution of fuel ethanol or biodiesel beyond what is required by federal law. The new section does allow the Texas Commission on Environmental Quality (TCEQ) to impose restrictions after January 1, 2009, if it has determined that the emissions from the use of fuel ethanol or biodiesel would jeopardize state implementation plans (SIP) for meeting the national ambient air quality standards. This provision could result in a 2 percent increase in nitrogen oxide emissions and therefore rulemaking and SIP analysis will be required. The TCEQ, however, anticipates being able to absorb any costs associated with these tasks within existing resources.

The bill would also require the State Energy Conservation Office within the Fiscal Programs of the Comptroller of Public Accounts to deliver a report to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the standing committees of the Legislature with primary jurisdiction over environmental, economic, and transportation matters by October 1, 2008, providing a coherent strategy and recommendations for increasing the availability of low-emission automotive fuels. The Comptroller’s office has indicated that any additional costs associated with implementing the provisions of the bill could be absorbed within existing resources.

Methodology

TDA anticipates that at most, by 2012, there would be 9 renewable methane producing plants participating in the incentive program and based on the maximum production of 2,406 MMBtus and a 16.8 cents incentive for each MMBtu produced, the total cost for incentive payments would be at most $3,638 a fiscal year. Consequently, these incentives payments would not have a significant fiscal impact on the state. It is also anticipated that any administrative costs associated with the bill could be absorbed within existing agency resources.

To date, the Conference Committee on House Bill 1 has adopted $12,000,000 out of General Revenue and $2,285,714 out of the General Revenue-Dedicated Fuel Ethanol and Biodiesel Production Account No. 5112 for biodiesel production incentives for the 2008-09 biennium. Based on this appropriation level, the potential biennial fiscal impact to the state could be a $6,000,000 savings to General Revenue and a loss of $1,142,857 to General Revenue-Dedicated Fuel Ethanol and Biodiesel Production Account No. 5112 funds, if this legislation is passed.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 332 Department of Housing and Community Affairs, 551 Department of Agriculture

LBB Staff: JOB, DB, AH, SD, WK, ZS, JF