

FIRST REGULAR SESSION

# HOUSE BILL NO. 505

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor), MUNZLINGER, LEMBKE, FISHER,  
DOUGHERTY, SATER, SANDER, MOORE, SCHNEIDER, GUEST,  
GRILL AND HOLSMAN (Co-sponsors).

Read 1st time January 22, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1219L.01I

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### AN ACT

To repeal section 142.803, RSMo, and to enact in lieu thereof three new sections relating to alternative fuels.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 142.803, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 135.705, 142.803, and 407.836, to read as follows:

**135.705. 1. As used in this section, the following terms mean:**

- 2       **(1) "Alternative fuels", any motor fuel at least eighty percent of the volume of**  
3 **which consists of ethanol;**  
4       **(2) "Department", the department of natural resources;**  
5       **(3) "Eligible applicant", a firm or corporation that is the owner of a qualified**  
6 **alternative fuel vehicle refueling property;**  
7       **(4) "Existing pump", the tank and gas pump used for storing and dispensing any**  
8 **nonalternative fuel;**  
9       **(5) "Qualified alternative fuel vehicle refueling property", property in this state**  
10 **owned by a firm or corporation and used for storing alternative fuels and for dispensing**  
11 **such alternative fuels into fuel tanks of motor vehicles owned by such firm or corporation**  
12 **or private citizens.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13           **2. For all tax years beginning on or after January 1, 2008, but before January 1,**  
14 **2011, any eligible applicant who installs and operates a qualified alternative fuel vehicle**  
15 **refueling property shall be allowed a credit against the tax otherwise due under chapter**  
16 **143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or**  
17 **due under chapter 147, RSMo, or chapter 148, RSMo, for any tax year in which the**  
18 **applicant is constructing the refueling property. The credit allowed in this section per**  
19 **eligible refueling property shall not exceed two thousand dollars of the total costs directly**  
20 **associated with the conversion of an existing pump to a pump for the dispensing of**  
21 **alternative fuels on any qualified alternative fuel vehicle refueling property, which shall**  
22 **not include the following:**

23           **(1) Costs associated with the purchase of land upon which to place a qualified**  
24 **alternative fuel vehicle refueling property;**

25           **(2) Costs associated with the purchase of an existing qualified alternative fuel**  
26 **vehicle refueling property; or**

27           **(3) Costs for the construction or purchase of any structure.**

28           **3. The tax credits allowed by this section shall be claimed by the eligible applicant**  
29 **at the time such applicant files a return for the tax year in which the storage and**  
30 **dispensing facilities were placed in service at a qualified alternative fuel vehicle refueling**  
31 **property, and shall be applied against the income tax liability imposed by chapter 143,**  
32 **RSMo, after all other credits provided by law have been applied. The cumulative amount**  
33 **of tax credits which may be claimed by eligible applicants claiming all credits authorized**  
34 **in this section shall not exceed the following amounts:**

35           **(1) In taxable year 2008, two million dollars;**

36           **(2) In taxable year 2009, one million five hundred thousand dollars; and**

37           **(3) In taxable year 2010, one million dollars.**

38           **4. If the amount of the tax credit exceeds the eligible applicant's tax liability, the**  
39 **difference shall not be refundable. Any amount of credit that an eligible applicant is**  
40 **prohibited by this section from claiming in a taxable year may be carried forward to any**  
41 **of such applicant's two subsequent taxable years. Tax credits allowed under this section**  
42 **may be assigned, transferred, sold, or otherwise conveyed.**

43           **5. The director of revenue shall establish the procedure by which the tax credits in**  
44 **this section may be claimed, and shall establish a procedure by which the cumulative**  
45 **amount of tax credits is apportioned among all eligible applicants claiming the credit. To**  
46 **the maximum extent possible, the director of revenue shall establish the procedure**  
47 **described in this subsection in such a manner as to ensure that eligible applicants can claim**

48 all the tax credits possible up to the cumulative amount of tax credits available for the  
49 taxable year.

50 6. Any eligible applicant desiring to claim a tax credit under this section shall  
51 submit the appropriate application for such credit with the department. The application  
52 for a tax credit under this section shall include any information required by the  
53 department. The department shall review the applications and certify to the department  
54 of revenue each eligible applicant that qualifies for the tax credit.

55 7. The department and the department of revenue may promulgate rules to  
56 implement the provisions of this section. Any rule or portion of a rule, as that term is  
57 defined in section 536.010, RSMo, that is created under the authority delegated in this  
58 section shall become effective only if it complies with and is subject to all of the provisions  
59 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter  
60 536, RSMo, are nonseverable and if any of the powers vested with the general assembly  
61 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and  
62 annul a rule are subsequently held unconstitutional, then the grant of rulemaking  
63 authority and any rule proposed or adopted after August 28, 2007, shall be invalid and  
64 void.

142.803. 1. A tax is levied and imposed on all motor fuel used or consumed in this state  
2 as follows:

3 (1) Motor fuel, seventeen cents per gallon;

4 (2) Alternative fuels, not subject to the decal fees as provided in section 142.869, with  
5 a power potential equivalent of motor fuel. In the event alternative fuel, which is not commonly  
6 sold or measured by the gallon, is used in motor vehicles on the highways of this state, the  
7 director is authorized to assess and collect a tax upon such alternative fuel measured by the  
8 nearest power potential equivalent to that of one gallon of regular grade gasoline. The  
9 determination by the director of the power potential equivalent of such alternative fuel shall be  
10 prima facie correct;

11 (3) Aviation fuel used in propelling aircraft with reciprocating engines, nine cents per  
12 gallon as levied and imposed by section 155.080, RSMo, to be collected as required under this  
13 chapter;

14 (4) **E85, a blend of eighty-five percent ethanol and fifteen percent gasoline, thirteen**  
15 **cents per gallon.**

16 2. All taxes, surcharges and fees are imposed upon the ultimate consumer, but are to be  
17 precollected as described in this chapter, for the facility and convenience of the consumer. The  
18 levy and assessment on other persons as specified in this chapter shall be as agents of this state  
19 for the precollection of the tax.

**407.836. 1. Notwithstanding the terms of any franchise agreement, no franchisor  
2 or fuel distributor shall prohibit a fuel station franchisee from purchasing, selling, or  
3 dispensing from a pump located under the franchisee's filling station canopy an alternative  
4 fuel. Alternative fuel, as used in this section, shall include a blend of eighty-five percent  
5 ethanol and fifteen percent gasoline or a blend of at least two percent methyl-ester,  
6 commonly referred to as biodiesel and diesel motor fuel;**

**7 2. Any franchise agreement containing terms in violation of subsection 1 of this  
8 section shall be null and void with regard to those particular terms;**

**9 3. Any filling station franchisee may bring an action in any court of competent  
10 jurisdiction against a filling station franchisor with whom the franchisee has a franchise  
11 for violating subsection 1 of this section to recover damages sustained by reason thereof  
12 and, where appropriate, such filling station franchisee shall be entitled to injunctive relief.  
13 The remedies set forth in this section shall not be deemed exclusive and shall be in addition  
14 to any other remedies permitted by law.**

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