

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2034
(Legislative Management)
(Energy Development and Transmission Committee)

AN ACT to create and enact a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definition of green diesel; to amend and reenact sections 17-03-01, 17-03-04, and 17-03-05, subsection 1 of section 17-07-01, sections 19-10-01, 54-17.7-02, 54-44.5-09, 57-38-01.22, and 57-38-01.23, subsection 7 of section 57-38-30.3, section 57-38-30.6, subsection 2 of section 57-38.6-01, and subsection 51 of section 57-39.2-04 of the North Dakota Century Code, relating to green diesel; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-03-01 of the North Dakota Century Code is amended and reenacted as follows:

17-03-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Biodiesel production facility" means a producer of a biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines~~fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oil or animal fats that meets American society for testing and materials specification D 6751. The facility must be located in this state and:
 - a. ~~Agricultural producers must hold at least ten percent of the ownership interest in the facility; or~~
 - b. ~~Residents of this state must own at least fifty percent of the ownership interest of the facility.~~
2. "Biofuel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel ~~and, ethanol, and green diesel~~ production facilities and to livestock operations as provided under this chapter.
3. "Ethanol production facility" means a producer of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines. The facility must be located in this state and:
 - a. ~~Agricultural producers must hold at least ten percent of the ownership interest in the facility; or~~
 - b. ~~Residents of this state must own at least fifty percent of the ownership interest of the facility.~~
4. "Green diesel production facility" means a producer of a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications. The facility must be located in this state.

5. "Livestock operation" means a livestock feeding, handling, milking, or holding operation located in this state which uses as part of its operation a byproduct produced at a biodiesel or an ethanol production facility.

SECTION 2. AMENDMENT. Section 17-03-04 of the North Dakota Century Code is amended and reenacted as follows:

17-03-04. Fund moneys - Eligible uses.

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel or an ethanol, or green diesel production facility or to a livestock operation for the following eligible uses:
 - (1) Purchase or construction of real property.
 - (2) Expansion of facilities.
 - (3) Purchase or installation of equipment, including a biodigester system.
- b. The loan funds may not be used to refinance any existing debt or for the relocation within this state of the biodiesel or ethanol, or green diesel production facility or the livestock operation.
2. a. The maximum amount from the fund in the interest rate buydown for a biodiesel or ethanol, or green diesel production facility may not exceed five hundred thousand dollars to any single biodiesel or ethanol, or green diesel production facility under this chapter.
- b. Except as provided in subdivision c, the maximum amount from the fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter.
- c. If a livestock operation has reached the limit provided for in subdivision b as a result of any activity other than the purchase or installation of a biodigester, that operation is entitled to receive from the fund up to two hundred fifty thousand dollars as an additional interest rate buydown on the operation's purchase or installation of a biodigester system.
3. The fund participation is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
4. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 3. AMENDMENT. Section 17-03-05 of the North Dakota Century Code is amended and reenacted as follows:

17-03-05. Partnership in assisting community expansion fund incentive limitation.

A biodiesel production facility or ethanol, or green diesel production facility that receives interest buydown from the biofuel partnership in assisting community expansion fund is not eligible to receive interest buydown from the partnership in assisting community expansion fund for the same project during the same biennium.

SECTION 4. AMENDMENT. Subsection 1 of section 17-07-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The energy policy commission is composed of:
 - a. The commissioner of commerce;
 - b. A representative of the agriculture community appointed by the governor;

- c. A representative recommended by the lignite energy council appointed by the governor;
- d. A representative recommended by the North Dakota petroleum council appointed by the governor;
- e. A member from the biodiesel or green diesel industry appointed by the governor;
- f. A member from the biomass industry appointed by the governor;
- g. A member from the wind industry appointed by the governor;
- h. A member from the ethanol industry appointed by the governor;
- i. A representative recommended by the North Dakota petroleum marketers association appointed by the governor;
- j. A member from the North Dakota investor-owned electric utility industry appointed by the governor;
- k. A member from the generation and transmission electric cooperative industry appointed by the governor;
- l. A member from the lignite coal-producing industry appointed by the governor;
- m. A member from the refining or gas-processing industry appointed by the governor; and
- n. Additional nonvoting members appointed by the governor.

SECTION 5. AMENDMENT. Section 19-10-01 of the North Dakota Century Code is amended and reenacted as follows:

19-10-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

- 1. "Adulterated", when used to describe any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which fails to meet the specifications prescribed by this chapter.
- 2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other than a petroleum-based fuel. The term includes biodiesel and green diesel as defined in section 57-43.2-01.
- 3. ~~"Biodiesel" means any non-petroleum-based diesel fuel made from renewable resources such as vegetable oils or animal fats.~~
- 4. "Department" means the state department of health.
- ~~5.4.~~ "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.
- ~~6.5.~~ "Gasoline" is a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.
- ~~7.6.~~ "Heating oil" is any product intended for use or offered for sale as a furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in burners other than wick burners regardless of whether the product is designated as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.

- ~~8-7.~~ "Kerosene" is a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.
- ~~9-8.~~ "Lubricating oil" is any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines.
- ~~10-9.~~ "Misbranded", when used in connection with any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which is not labeled as required under the provisions of this chapter.
- ~~11-10.~~ "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.
- ~~12-11.~~ "Tractor fuel" is any product, other than gasoline or kerosene, intended for use or offered for sale as a fuel for tractors, regardless of whether the product is designated as distillate, gas oil, fuel oil, or is given any other name or designation.

SECTION 6. AMENDMENT. Section 54-17.7-02 of the North Dakota Century Code is amended and reenacted as follows:

54-17.7-02. Definitions.

As used in this chapter:

1. "Authority" means the industrial commission acting as the North Dakota pipeline authority.
2. "Commission" means the North Dakota industrial commission.
3. "Energy-related commodities" means any substance, element, or compound, either gaseous, liquid, or solid, associated with the production, refining, or processing of renewable energy, crude oil, natural gas, coal, or coal byproducts, including oil, natural gas liquids, refined petroleum products, carbon dioxide, hydrogen, ethanol, propane, butane, ethane, methane, sulfur, helium, synthetic fuels, nitrogen, biodiesel, green diesel, and liquids made from coal.
4. "Natural gas" means hydrocarbons or nonhydrocarbons that at atmospheric conditions of temperature and pressure are in a gaseous phase.
5. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct pipeline facilities contemplated by the authority or to provide services fulfilling the need for such pipeline facilities.
6. "Pipeline facilities" means pipelines, pumps, compressors, storage, and all other facilities, structures, and properties incidental and necessary or useful in the interconnection of pipelines or the transportation, distribution, and delivery of energy-related commodities to points of sale or consumption or to the point or points of distribution for consumption located within and without this state.
7. "Project area" means the geographic area in which construction of a pipeline facility contemplated by the authority is likely to occur.

SECTION 7. AMENDMENT. Section 54-44.5-09 of the North Dakota Century Code is amended and reenacted as follows:

54-44.5-09. Office of renewable energy and energy efficiency.

The office of renewable energy and energy efficiency is established within the division of community services. The office shall assist in the development of renewable energy within this state to provide secure, diverse, sustainable, and competitive renewable energy supplies and promote the conservation of energy and the wise use of energy resources in both the public and private sectors. The office shall

communicate and disseminate information concerning state and federal energy conservation and renewable energy incentives, including tax credits, financing and grants to business entities seeking to invest in wind-generated power and transmission, ethanol production and distribution; and the development of biodiesel, green diesel, biomass, solar, hydropower, geothermal, and other renewable energy sources. The office also shall ~~also~~ manage and distribute all production incentive payments as authorized by chapter 17-02.

SECTION 8. AMENDMENT. Section 57-38-01.22 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.22. Income tax credit for blending of biodiesel fuel or green diesel fuel.

A fuel supplier licensed pursuant to section 57-43.2-05 who blends biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of five cents per gallon [3.79 liters] of biodiesel fuel or green diesel fuel of at least five percent blend, otherwise known as B5. For purposes of this section, "biodiesel" ~~means~~ and "green diesel" ~~mean~~ fuel meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 9. AMENDMENT. Section 57-38-01.23 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.23. Income tax credit for biodiesel or green diesel sales equipment costs.

A seller of biodiesel fuel or green diesel fuel is entitled to a credit against tax liability determined under section 57-38-30 or 57-38-30.3 in the amount of ten percent per year for five years of the biodiesel or green diesel fuel seller's direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume. For purposes of this section, "biodiesel fuel" ~~means~~ and "green diesel fuel" ~~mean~~ fuel meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01. The credit under this section may not exceed a taxpayer's liability as determined under this chapter for the taxable year and each year's unused credit amount may be carried forward for up to five taxable years. A biodiesel or green diesel fuel seller is limited to fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A biodiesel or green diesel fuel seller may not claim a credit under this section for any taxable year before the taxable year in which the facility begins selling biodiesel or green diesel fuel containing at least two percent biodiesel or green diesel fuel by volume, but eligible costs incurred before the taxable year sales begin may be claimed for purposes of the credit under this section for taxable years on or after the taxable year sales of biodiesel or green diesel fuel begin.

A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 10. AMENDMENT. Subsection 7 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

7. A taxpayer filing a return under this section is entitled to the following tax credits:

- a. Family care tax credit under section 57-38-01.20.
- b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
- c. Agricultural business investment tax credit under section 57-38.6-03.
- d. Seed capital investment tax credit under section 57-38.5-03.
- e. Planned gift tax credit under section 57-38-01.21.
- f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and 57-38-01.23.
- g. Internship employment tax credit under section 57-38-01.24.
- h. Workforce recruitment credit under section 57-38-01.25.
- i. Angel fund investment tax credit under section 57-38-01.26.
- j. Microbusiness tax credit under section 57-38-01.27.
- k. Marriage penalty credit under section 57-38-01.28.
- l. Homestead income tax credit under section 57-38-01.29.
- m. Commercial property income tax credit under section 57-38-01.30.
- n. Research and experimental expenditures under section 57-38-30.5.
- o. Geothermal energy device installation credit under section 57-38-01.8.
- p. Long-term care partnership plan premiums income tax credit under section 57-38-29.3.
- q. Employer tax credit for salary and related retirement plan contributions of mobilized employees under section 57-38-01.31.

SECTION 11. AMENDMENT. Section 57-38-30.6 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.6. Corporate income tax credit for biodiesel or green diesel production or soybean and canola crushing facility equipment costs.

A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or construction of a new facility in this state for the purpose of producing crushed soybeans or canola. For purposes of this section, "biodiesel" ~~means and~~ "green diesel" mean fuel meeting the specifications adopted by the American society for testing and materials as defined in section 57-43.2-01. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel or green diesel fuel by volume or begins crushing soybeans or canola, but eligible costs incurred before the taxable year production, blending, or crushing begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production, blending, or crushing begins.

SECTION 12. AMENDMENT. Subsection 2 of section 57-38.6-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
 - a. Involved in production of diesel fuel containing at least five percent biodiesel ~~meeting the specifications adopted by the American society for testing and materials~~ or green diesel as defined in section 57-43.2-01;
 - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
 - c. Involved in a soybean or canola crushing facility.

SECTION 13. AMENDMENT. Subsection 51 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

51. Gross receipts from the sale of equipment to a facility, licensed under section 57-43.2-05, to enable the facility to sell diesel fuel containing at least two percent biodiesel or green diesel fuel as defined under section 57-43.2-01 by volume. ~~For purposes of this subsection, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials.~~

SECTION 14. A new subsection to section 57-43.2-01 of the North Dakota Century Code is created and enacted as follows:

"Green diesel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants, animal fats, residue, and waste generated from the production, processing, and marketing of agricultural products, silvicultural products, and other renewable resources, which meets applicable American society for testing and materials specifications.

SECTION 15. EFFECTIVE DATE. Section 13 of this Act is effective for taxable events after June 30, 2011.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2034.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 85 Nays 5 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State