

ENERGY

CHAPTER 187

SENATE BILL NO. 2291 (Senators Erbele, Dotzenrod, Wanzek) (Representatives Brandenburg, D. Johnson, Onstad)

AN ACT to amend and reenact section 17-03-04 of the North Dakota Century Code, relating to the biofuel partnership in assisting community expansion fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-03-04 of the North Dakota Century Code, as effective after July 31, 2009, is amended and reenacted as follows:

17-03-04. (Effective after July 31, 2009) 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 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 production facility or the livestock operation.
2. a. The maximum amount from the fund in the interest rate buydown for a biodiesel or ethanol production facility may not exceed five hundred thousand dollars to any single biodiesel or ethanol production facility under this chapter.
- b. ~~The~~ 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.

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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.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 188

SENATE BILL NO. 2245

(Senators Pomeroy, Anderson, Erbele, Warner)
(Representatives Mueller, Myxter)

AN ACT to amend and reenact sections 17-04-01, 17-04-03, and 17-04-05 of the North Dakota Century Code, relating to the development of wind power.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-04-01 of the North Dakota Century Code is amended and reenacted as follows:

17-04-01. Wind option agreement - Definition - Termination. A wind option agreement is a contract in which the owner of property gives another the right to produce energy from wind power on that property at a fixed price within a time period not to exceed five years on agreed terms. A wind option agreement is void and terminates if development to produce energy from wind power has not occurred on the property that is the subject of the agreement within five years after the wind option agreement commences the following have not occurred with respect to the property that is the subject of the wind option agreement within five years after the wind option agreement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

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

17-04-03. Wind easements - Creation - Term - Development required. A property owner may grant a wind easement in the same manner and with the same effect as the conveyance of an interest in real property. The easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement. However, the easement is void if no development to produce energy from wind power associated with the easement has occurred within five years after the easement is created the following have not occurred with respect to the property that is the subject of the easement within five years after the easement commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

SECTION 3. AMENDMENT. Section 17-04-05 of the North Dakota Century Code is amended and reenacted as follows:

17-04-05. Wind energy leases - Termination. A lease for wind energy purposes is void and terminates if development to produce energy from wind power

has not occurred on the leasehold within five years after the lease commences the following have not occurred with respect to the property that is the subject of the lease within five years after the lease commences:

1. A certificate of site compatibility or conditional use permit has been issued, if required; and
2. A transmission interconnection request is in process and not under suspension.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 189

HOUSE BILL NO. 1509

(Representatives Nelson, DeKrey, Mueller)
(Senators Andrist, Klein, Triplett)

AN ACT to create and enact a new section to chapter 17-04 of the North Dakota Century Code, relating to requirements for wind easement and wind energy leases; and to provide for a legislative council study of wind easement and wind energy leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 17-04 of the North Dakota Century Code is created and enacted as follows:

Requirements for wind easements and wind energy leases.

1. In a wind easement and a wind energy lease, the easement and lease:
 - a. Must be delivered to the property owner with a cover page containing the following paragraph with the correct term of years in the blank and in at least sixteen-point type:

Special message to property owners

This is an important agreement our lawyers have drafted that will bind you and your land for up to _____ years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may talk with your neighbors about the wind project and find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.
 - b. May not be executed by the parties until at least ten business days after the first proposed easement or lease has been delivered to the property owner.
 - c. May not require either party to maintain the confidentiality of any negotiations or the terms of any proposed lease or easement except that the parties may agree to a mutual confidentiality agreement in the final executed lease or easement.
 - d. Must preserve the right of the property owner to continue conducting business operations as currently conducted for the term of the agreement. When a wind energy facility is being constructed and when it is completed, the property owner must make accommodations to the developer, owner, or operator of the facility for the facility's business operations to allow the construction and operation of the wind energy facility.

- e. May not make the property owner liable for any property tax associated with the wind energy facility or other equipment related to wind energy generation.
 - f. May not make the property owner liable for any damages caused by the wind energy facility and equipment or the operation of the generating facility and equipment, including liability or damage to the property owner or to third parties.
 - g. Must obligate the developer, owner, and operator of the wind energy facility to comply with federal, state, and local laws and regulations and may not make the property owner liable in the case of a violation.
 - h. Must allow the property owner to terminate the agreement if the wind energy facility has not operated for a period of at least three years unless the property owner receives the normal minimum lease payments that would have occurred if the wind energy facility had been operating during that time. For the purposes of this subdivision, the term "normal minimum lease payments" means a payment in the lease or easement called a "base amount" or "minimum payment", or similar language, or if this language is not provided for in the lease or easement, payments at least equal to the periodic payments received by the property owner in the last calendar year that the wind energy facility was in full operation.
 - i. Must state clearly any circumstances that will allow the developer, owner, and operator of the wind energy facility to withhold payments from the property owner.
2. The owner of the wind energy facility shall carry general liability insurance relating to claims for property damage or bodily injury arising out of the construction or operation of the wind energy facility project site and may include the property owner as an additional insured on the policy.
3. If the terms of the wind easement or wind energy lease are not in accordance with this section, the court may reform the easement or lease in accordance with this section, void the easement or lease, or order any relief allowed by law.

SECTION 2. LEGISLATIVE COUNCIL STUDY - WIND EASEMENTS AND WIND ENERGY LEASES. During the 2009-2010 interim, the legislative council shall consider studying wind easements and wind energy leases. The study must include consideration of confidentiality clauses, the liability of each party for damages and taxes, instrument provisions relating to insurance and the need for insurance, and the concerns of property owners and wind developers. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved May 4, 2009
Filed May 5, 2009

CHAPTER 190

SENATE BILL NO. 2376 (Senators Wardner, Freborg, Triplett) (Representatives S. Kelsh, Klein, Porter)

AN ACT to amend and reenact section 17-05-08 of the North Dakota Century Code, relating to replenishing a reserve fund for a portion of bonds issued by the transmission authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 17-05-08 of the North Dakota Century Code is amended and reenacted as follows:

17-05-08. Evidences of indebtedness.

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.
2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
 - a. Revenues that may be received by the authority from transmission facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such transmission facilities except depreciation.
 - b. Amounts received by the authority under loans authorized under this chapter.
 - c. Revenues received by the authority under this chapter from any source other than general tax revenues.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.

4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:
 - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.
 - b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.
 - c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.
 - d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.
5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.
6. The commission may approve a resolution for the issuance of bonds as provided in this section which states in substance that this subsection is applicable to any required debt service reserve for bonds issued under that resolution in an aggregate amount not to exceed two hundred forty million dollars plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter. The amount of any refinancing, however, may not be counted toward the two hundred forty million dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced. No more than thirty percent of the total project costs for any single transmission facility project may be financed by bonds issued under this section which are supported by the debt service reserve fund approved by the commission under this subsection. To ensure the maintenance of the required debt service reserve fund approved by the commission under this subsection, the legislative assembly shall appropriate and pay to the authority for deposit in the reserve fund any sum, certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve fund approved by the commission.
7. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by

which a pledge is created need be filed or recorded, except in the records of the authority.

- ~~7-~~ 8. The authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.
- ~~8-~~ 9. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.
- ~~9-~~ 10. When the authority has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the authority shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
- a. Pay the expenses of operating and maintaining the transmission facilities;
 - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
 - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

Approved March 19, 2009

Filed March 19, 2009

CHAPTER 191

SENATE BILL NO. 2350

(Senators Wanzek, Miller, Triplett)

(Representatives Brandenburg, Mueller, Vigesaa)

AN ACT to provide for the creation of an ethanol council; to amend and reenact sections 4-24-09 and 4-24-10 of the North Dakota Century Code, relating to the agricultural commodity assessments funds and a report to the legislative assembly; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 13 of this Act:

1. "Council" means the North Dakota ethanol council.
2. "Producer" means the owner of a facility that is located in this state and which produces annually more than one million gallons of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines.

SECTION 2. Council - Membership - Election - Term.

1. The council consists of one individual appointed by each producer.
2. Each member of the council must be a resident of this state and employed by a producer.
3. The term of each member is four years and begins on April first following the members' appointment. The terms must be staggered by the council to ensure that an approximately equal number of appointments expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided by this section, the member's office is deemed vacant and the producer who appointed that member shall appoint another qualified individual for the remainder of the term.
5. A member may not serve more than two consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

SECTION 3. Election of chairman - Meetings.

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

SECTION 4. Council members - Compensation. Each member of the council is entitled to receive compensation in the amount established by the council, but not exceeding one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

SECTION 5. Council - Powers.

1. The council may:
 - a. Expend moneys collected pursuant to sections 1 through 13 of this Act for its administration;
 - b. Employ, bond, and compensate necessary personnel;
 - c. Accept gifts, grants, and donations of money, property, and services to carry out sections 1 through 13 of this Act;
 - d. Contract with any person for any purpose permitted under sections 1 through 13 of this Act;
 - e. Sue and be sued; and
 - f. Do all things necessary and proper to enforce and administer sections 1 through 13 of this Act.
2. The council may not engage in a commercial business enterprise.

SECTION 6. Council - Duties.

1. The council shall determine the uses to which any moneys raised under sections 1 through 13 of this Act may be expended. The uses may include:
 - a. The funding of research, education programs, promotion, and market development efforts; and
 - b. The support of state, regional, national, and international entities that promote ethanol utilization.
2. The council shall develop and disseminate information regarding the purpose of the ethanol assessment and ways in which the assessment benefits producers.

SECTION 7. Assessment. An assessment at the rate of three one-hundredths of one cent per gallon is imposed upon all ethanol produced and sold in this state.

SECTION 8. Calculation of assessment - Records.

1. Each producer shall calculate the assessment imposed by section 7 of this Act at the time of sale.
2. Each producer shall keep documents regarding its ethanol production and sales for a period of three years. The producer shall make these records available to the council for examination upon request.

3. No later than thirty days after the conclusion of each calendar quarter, each producer shall file with the council a report stating the quantity of ethanol produced and the quantity sold during the preceding quarter.

SECTION 9. Submission of assessments - Civil penalty.

1. Each producer shall forward to the council all assessments imposed by section 7 of this Act within thirty days after the conclusion of each calendar quarter.
2. If a producer fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of twelve percent per annum from the due date.

SECTION 10. Refund of assessment.

1. To receive a refund of any assessment paid in accordance with sections 1 through 13 of this Act, a producer shall submit to the council a written request for a refund application within sixty days after the conclusion of each calendar quarter.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the conclusion of each calendar quarter. The council shall then refund the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.

SECTION 11. Expenditure of funds. The council shall approve all expenditures made pursuant to sections 1 through 13 of this Act. The expenditures must be recorded as directed by the office of management and budget.

SECTION 12. Continuing appropriation. The council shall forward all moneys received under sections 1 through 13 of this Act to the state treasurer for deposit in the ethanol fund. All moneys in the ethanol fund are appropriated on a continuing basis to the council to carry out sections 1 through 13 of this Act.

SECTION 13. Penalty. Any person willfully violating sections 1 through 13 of this Act is guilty of a class B misdemeanor.

SECTION 14. AMENDMENT. Section 4-24-09 of the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, ethanol fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity

organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

SECTION 15. AMENDMENT. Section 4-24-10 of the North Dakota Century Code is amended and reenacted as follows:

4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota ethanol council, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry bean council, the North Dakota dry pea and lentil council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

Approved April 22, 2009
Filed April 23, 2009

CHAPTER 192

HOUSE BILL NO. 1322

(Representatives Porter, Brandenburg, S. Kelsh)
(Senators Flakoll, Triplett, Wardner)

AN ACT to create and enact a new chapter to title 17 of the North Dakota Century Code, relating to an energy policy commission; to provide for a water resources study; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 17 of the North Dakota Century Code is created and enacted as follows:

Energy policy commission.

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 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.
2. Each member of the commission shall serve for a term of two years, beginning July first, may be reappointed for additional terms, and serves at the pleasure of the governor.
 3. The commissioner of commerce is chairman of the commission.
 4. The commission shall meet at least four times per biennium or as often as the chairman deems necessary. The commission shall hold at least two public hearings per biennium, at which time interested parties may present testimony regarding issues pertinent to the development of the policy. The department of commerce shall provide staffing for the commission.
 5. The commission shall develop a comprehensive energy policy for the state. The commission shall monitor progress made toward the goals outlined in the energy policy and make changes to the energy policy as needed. The commission shall report biennially to the legislative council.
 6. The members of the commission who are not state employees are entitled to mileage and expenses as provided by law for state officers and employees. Unless otherwise provided in this subsection, the expenses of appointed members are to be paid by the department of commerce. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.

SECTION 2. WATER RESOURCES STUDY - REPORT TO LEGISLATIVE COUNCIL.

1. During the 2009-10 interim, the state water commission shall conduct a study to:
 - a. Determine unit water use for each sector of energy production, including:
 - (1) Petroleum;
 - (2) Ethanol;
 - (3) Electrical generation; and
 - (4) Biodiesel;
 - b. Identify water quality constraints for each energy sector;
 - c. Estimate projected water use in each energy production sector based upon growth projections provided by the energy policy commission; and
 - d. Provide a qualitative assessment of the state's water resources and identify specific sources that have the potential of providing significant quantities of water energy development.

2. The state water commission shall cooperate with the energy policy commission in conducting this study.
3. The water commission shall report its findings and recommendations to the legislative council before September 1, 2010.

SECTION 3. LEGISLATIVE COUNCIL STUDY - LIVESTOCK FEEDING FACILITY PERMITTING PROCESS. The legislative council shall consider studying, during the 2009-10 interim, issues related to the development of livestock feeding facilities and the use of byproducts from biofuels production as a feedstock. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 193

SENATE BILL NO. 2228

(Senators Stenehjem, O'Connell)
(Representatives Boucher, Carlson)
(At the request of the Governor)

AN ACT to create and enact a new chapter to title 17 of the North Dakota Century Code, relating to the creation of a biofuel blender pump incentive fund; to amend and reenact sections 19-10-19, 19-10-20, and 19-10-21 of the North Dakota Century Code, relating to petroleum products; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 17 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Biodiesel" means any non-petroleum-based diesel fuel made from a renewable resource such as vegetable oil or animal fat.
2. "E85 fuel" means a petroleum product that:
 - a. Is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline;
 - b. Typically contains eighty-five percent ethanol by volume but must at a minimum contain sixty percent ethanol by volume; and
 - c. Complies with the American society for testing materials specification D 5798-96.
3. "Motor fuel retailer" means a person that acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.
4. "Retail location" means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.

Biofuel blender pump incentive fund - Administration.

1. The department of commerce shall administer the biofuel blender pump incentive fund and use moneys in the fund to provide cost-share grants of up to five thousand dollars per pump to motor fuel retailers for the installation of biofuel blender pumps and associated equipment at retail locations.
2. In determining eligibility for grant funds, the department shall establish by rule criteria governing:

- a. The verification of costs for biofuel blender pumps and associated equipment;
 - b. The eligibility of grant recipients;
 - c. The application and grant award procedure; and
 - d. Reporting and accountability procedures for grant recipients.
3. The amount of incentives payable to any retail location under this chapter may not exceed two percent of the total amount appropriated or transferred to the biofuel blender pump incentive fund.

Blender pumps - Requirements.

1. To qualify for a grant under this chapter, a retailer must install an ethanol blender pump and an associated storage and piping system. The pump must be the type that:
 - a. Dispenses at retail a blend of gasoline and ethanol in the ratio selected by the purchaser;
 - b. Is manufactured to an industry standard and carries a warranty for compatibility with dispenser components and storage and piping systems;
 - c. Has at least four hoses and dispenses the following:
 - (1) Either a blend of ten percent ethanol or the minimum blend percentage approved for all vehicles by the United States environmental protection agency;
 - (2) A blend of at least twenty percent ethanol; and
 - (3) E85 fuel; and
 - d. Complies with all alternative fuel, biofuel, and flexible fuel requirements established by law.
2. In order to qualify for a grant under this chapter, a retailer must install a biodiesel blender pump that:
 - a. Dispenses at retail varying blends of biodiesel and mineral diesel in the ratio selected by the purchaser; and
 - b. Complies with all alternative fuel, biofuel, and flexible fuel requirements established by law.

Biofuel blender pump incentive fund - Administrative costs. The department may use up to five percent of any amount appropriated to the biofuel blender pump incentive fund for administration, the dissemination of information regarding the biofuel blender pump incentive program, and the dissemination of information regarding the benefits of biofuels.

SECTION 2. AMENDMENT. Section 19-10-19 of the North Dakota Century Code is amended and reenacted as follows:

19-10-19. Inspection fees. Every person licensed by the tax commissioner as a motor vehicle fuel or special fuels dealer shall pay to the tax commissioner an inspection fee of one-fortieth of one cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, ~~or diesel fuel~~, or alternative fuel sold or used during a calendar month except those gallons sold out of state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee must accompany the monthly report required in the following section and is due no later than the twenty-fifth day of each calendar month for the preceding month. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The tax commissioner shall make available annually a report by licensed dealer listing the number of gallons [liters] of motor vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

SECTION 3. AMENDMENT. Section 19-10-20 of the North Dakota Century Code is amended and reenacted as follows:

19-10-20. Report to tax commissioner of petroleum products - Contents - Fuels. No later than the twenty-fifth day of each calendar month, every person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer shall send to the tax commissioner a correct report of all purchases and sales of gasoline, kerosene, tractor fuel, heating oil, ~~or diesel fuel~~, or alternative fuel during the preceding month. The report must include the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes. Failure to send the report and inspection fee required by the preceding section to the tax commissioner constitutes a violation of the provisions of this chapter.

SECTION 4. AMENDMENT. Section 19-10-21 of the North Dakota Century Code is amended and reenacted as follows:

19-10-21. Bond may be required of Fuel dealer in petroleum products - Bond. The tax commissioner may require any person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer to furnish a surety bond payable to the state of North Dakota in the sum of five hundred dollars, or twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, ~~and diesel fuel~~, and alternative fuel and the payment of all inspection fees provided for in this chapter. The tax commissioner shall determine the sufficiency of the bond. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

SECTION 5. BIOFUEL BLENDER PUMP INCENTIVE FUND - TRANSFER. The state treasurer shall transfer any moneys in the biofuel blender pump incentive fund on November 30, 2010, to the general fund.

SECTION 6. EFFECTIVE DATE. This Act becomes effective on July 1, 2009.

SECTION 7. EXPIRATION DATE. This Act is effective through November 30, 2010, and after that date is ineffective.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 22, 2009
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