

FIRST ENGROSSMENT
with Conference Committee Amendments

ENGROSSED SENATE BILL NO. 2180

Introduced by

Senators Klein, Wanzek, Wardner

Representatives Belter, Brandenburg, Pollert

1 A BILL for an Act to amend and reenact sections 6-09.17-01, 6-09.17-02, 6-09.17-03, and
2 6-09.17-04 of the North Dakota Century Code, relating to the biofuel partnership in assisting
3 community expansion fund; to provide for a legislative council study; to provide a continuing
4 appropriation; to provide an effective date; and to provide an expiration date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 6-09.17-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **6-09.17-01. Definitions.** In this chapter, unless the context or subject matter otherwise
9 requires:

- 10 1. "Biodiesel production facility" means a producer of a biodegradable, combustible
11 liquid fuel that is derived from vegetable oil or animal fat and which is suitable for
12 blending with diesel fuel for use in internal combustion diesel engines. The facility
13 must be located in this state and:
- 14 a. Agricultural producers must hold at least ten percent of the ownership interest
15 in the facility; or
- 16 b. Residents of this state must own at least fifty percent of the ownership
17 interest of the facility.
- 18 2. ~~"Biodiesel Biofuel partnership in assisting community expansion fund" or "fund"~~
19 means a fund established to buy down the interest rate on loans to biodiesel and
20 ethanol production facilities, to grain handling facilities, and to livestock operations
21 as provided under this chapter.
- 22 2. ~~"Biodiesel production facility" means a corporation, limited liability company,~~
23 ~~partnership, individual, or association involved in production of diesel fuel~~

1 ~~containing at least five percent biodiesel meeting the specifications adopted by the~~
2 ~~American society for testing and materials.~~

3 3. ~~"Community" means the city or county in which an eligible biodiesel production~~
4 ~~facility is located, or a local development corporation, community organization, or~~
5 ~~any other group whose interest is in the economic growth of the area. "Biofuels~~
6 ~~retailer" means a retailer that dispenses and distributes biodiesel fuel and gasoline~~
7 ~~blends with greater than sixty percent ethanol.~~

8 4. "Ethanol production facility" means a producer of agriculturally derived denatured
9 ethanol that is suitable for blending with a petroleum product for use in internal
10 combustion engines. The facility must be located in this state and:
11 a. Agricultural producers must hold at least ten percent of the ownership interest
12 in the facility; or
13 b. Residents of this state must own at least fifty percent of the ownership
14 interest of the facility.

15 5. "Grain handling facility" means a grain storage facility licensed under chapter
16 60-02 or 60-02.1 which provides condominium storage of grain that is principally
17 intended for the production of biofuels.

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

21 **SECTION 2. AMENDMENT.** Section 6-09.17-01 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **6-09.17-01. Definitions.** In this chapter, unless the context or subject matter otherwise
24 requires:

25 1. "Biodiesel production facility" means a producer of a biodegradable, combustible
26 liquid fuel that is derived from vegetable oil or animal fat and which is suitable for
27 blending with diesel fuel for use in internal combustion diesel engines. The facility
28 must be located in this state and:
29 a. Agricultural producers must hold at least ten percent of the ownership interest
30 in the facility; or

- 1 b. Residents of this state must own at least fifty percent of the ownership
2 interest of the facility.
- 3 2. "~~Biodiesel Biofuel~~ partnership in assisting community expansion fund" or "fund"
4 means a fund established to buy down the interest rate on loans to biodiesel and
5 ethanol production facilities and to livestock operations as provided under this
6 chapter.
- 7 2. "~~Biodiesel production facility~~" means a corporation, limited liability company,
8 partnership, individual, or association involved in production of diesel fuel
9 containing at least five percent biodiesel meeting the specifications adopted by the
10 ~~American society for testing and materials.~~
- 11 3. "Community" means the city or county in which an eligible biodiesel production
12 facility is located, or a local development corporation, community organization, or
13 any other group whose interest is in the economic growth of the area. "Ethanol
14 production facility" means a producer of agriculturally derived denatured ethanol
15 that is suitable for blending with a petroleum product for use in internal combustion
16 engines. The facility must be located in this state and:
- 17 a. Agricultural producers must hold at least ten percent of the ownership interest
18 in the facility; or
- 19 b. Residents of this state must own at least fifty percent of the ownership
20 interest of the facility.
- 21 4. "Livestock operation" means a livestock feeding, handling, milking, or holding
22 operation located in this state which uses as part of its operation a byproduct
23 produced at a biodiesel or an ethanol production facility.

24 **SECTION 3. AMENDMENT.** Section 6-09.17-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **6-09.17-02. Biodiesel Biofuel partnership in assisting community expansion fund**
27 **- Continuing appropriation - Administration.** A Effective July 1, 2007, the biodiesel
28 partnership in assisting community expansion fund is hereby established becomes the biofuel
29 partnership in assisting community expansion fund. All moneys transferred into the fund,
30 interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of
31 this chapter. This fund is not subject to section 54-44.1-11 ~~and any unexpended and~~

1 ~~unobligated balance in the fund at the end of the biennium must be transferred to the state~~
2 ~~general fund.~~ The Bank of North Dakota shall administer the fund. Notwithstanding any other
3 provision of law, the Bank may transfer any unobligated moneys between funds that have been
4 appropriated by the legislative assembly for interest buydown in the biofuel partnership in
5 assisting community expansion fund and the partnership in assisting community expansion
6 fund.

7 **SECTION 4. AMENDMENT.** Section 6-09.17-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **6-09.17-03. Fund - Purpose - Interest rate buydown.** Moneys in the ~~biodiesel~~
10 ~~partnership in assisting community expansion~~ fund must be used for the purpose of buying
11 down the interest rate on loans made by a lead financial institution in participation with the Bank
12 of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor
13 be less than fifty percent of the total loans. ~~If the loan is approved by the lenders and there is~~
14 ~~evidence of the community's commitment and ability to fund its portion of the buydown, the~~
15 ~~fund's participation in the buydown must automatically be approved.~~ During the first year of a
16 biennium, the total amount from the fund used for interest rate buydowns for biofuels retailers
17 may not exceed two hundred fifty thousand dollars and the total amount from the fund used for
18 interest rate buydowns for grain handling facilities may not exceed two hundred fifty thousand
19 dollars. The total amount from the fund used for interest rate buydowns for grain handling
20 facilities and biofuels retailers may not exceed five hundred thousand dollars per biennium.

21 **SECTION 5. AMENDMENT.** Section 6-09.17-03 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **6-09.17-03. Fund - Purpose - Interest rate buydown.** Moneys in the ~~biodiesel~~
24 ~~partnership in assisting community expansion~~ fund must be used for the purpose of buying
25 down the interest rate on loans made by a lead financial institution in participation with the Bank
26 of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor
27 be less than fifty percent of the total loans. ~~If the loan is approved by the lenders and there is~~
28 ~~evidence of the community's commitment and ability to fund its portion of the buydown, the~~
29 ~~fund's participation in the buydown must automatically be approved.~~

30 **SECTION 6. AMENDMENT.** Section 6-09.17-04 of the North Dakota Century Code is
31 amended and reenacted as follows:

- 1 **6-09.17-04. Fund moneys - Eligible uses.**
- 2 1. a. The fund moneys may be used to participate in an interest rate buydown on a
- 3 loan to a biodiesel or an ethanol production facility, to a grain handling facility,
- 4 or to a livestock operation for the following eligible uses:
- 5 (1) Purchase or construction of real property ~~and equipment.~~
- 6 (2) Expansion of facilities.
- 7 (3) ~~Working capital~~ Purchase or installation of equipment.
- 8 (4) ~~Inventory.~~
- 9 b. The fund moneys may be used to participate in an interest rate buydown on a
- 10 loan to a biofuels retailer for the purchase or installation of pumps and related
- 11 equipment.
- 12 c. The loan funds ~~cannot~~ may not be used to refinance any existing debt or for
- 13 the relocation within this state of the ~~business within North Dakota~~ biodiesel
- 14 or ethanol production facility, the grain handling facility, or the livestock
- 15 operation.
- 16 2. ~~The community shall determine the amount of the interest rate buydown and apply~~
- 17 ~~to the Bank of North Dakota for participation from the biodiesel partnership in~~
- 18 ~~assisting community expansion fund. The funds for the community's portion of the~~
- 19 ~~buydown may come from a local development corporation, contributions,~~
- 20 ~~community funds, future dedicated tax programs, or any other community source.~~
- 21 ~~Any community funds provided for a buydown under chapter 6-09.14 for a~~
- 22 ~~biodiesel production facility may be considered as funds for the community's~~
- 23 ~~portion of the buydown under this chapter for that facility.~~
- 24 3. ~~The fund participation portion in the buydown must be determined by the Bank of~~
- 25 ~~North Dakota based on economic conditions in the city or county in which the~~
- 26 ~~business is located.~~
- 27 4. The maximum amount from the fund in the interest rate buydown for a biodiesel or
- 28 ethanol production facility may not exceed ~~four~~ five hundred thousand dollars ~~per~~
- 29 ~~loan and not more than one loan may be provided to any single biodiesel or~~ or
- 30 ethanol production facility under this chapter. ~~However, if the partnership in~~
- 31 ~~assisting community expansion fund does not have adequate funds on hand for an~~

- 1 ~~interest rate buydown for a biodiesel production facility, the maximum amount from~~
2 ~~the fund under this subsection is increased to six hundred thousand dollars per~~
3 ~~loan. The community funds required for participation in the interest rate buydown~~
4 ~~are limited to the amount required when the fund provides two hundred fifty~~
5 ~~thousand dollars per loan. The maximum amount from the fund in the interest rate~~
6 ~~buydown for a livestock operation may not exceed two hundred fifty thousand~~
7 ~~dollars to any single livestock operation under this chapter. The maximum amount~~
8 ~~from the fund in the interest rate buydown for a grain handling facility may not~~
9 ~~exceed fifty thousand dollars to any single facility. The maximum amount from the~~
10 ~~fund in the interest rate buydown for a biofuels retailer may not exceed ten~~
11 ~~thousand dollars to any single location of a biofuels retailer under this chapter.~~
12 3. The fund participation ~~must be~~ is limited to the amount required to buy down the
13 interest to five hundred basis points below the national prime interest rate.
14 5. 4. The Bank of North Dakota shall adopt rules to implement this chapter.

15 **SECTION 7. AMENDMENT.** Section 6-09.17-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **6-09.17-04. Fund moneys - Eligible uses.**

- 18 1. a. The fund moneys may be used to participate in an interest rate buydown on a
19 loan to a biodiesel or an ethanol production facility or to a livestock operation
20 for the following eligible uses:
21 (1) Purchase or construction of real property ~~and equipment~~.
22 (2) Expansion of facilities.
23 (3) ~~Working capital~~ Purchase or installation of equipment.
24 (4) ~~Inventory~~.
25 b. The loan funds ~~cannot~~ may not be used to refinance any existing debt or for
26 the relocation within this state of the ~~business within North Dakota~~ biodiesel
27 or ethanol production facility or the livestock operation.
28 2. ~~The community shall determine the amount of the interest rate buydown and apply~~
29 ~~to the Bank of North Dakota for participation from the biodiesel partnership in~~
30 ~~assisting community expansion fund. The funds for the community's portion of the~~
31 ~~buydown may come from a local development corporation, contributions,~~

1 ~~community funds, future dedicated tax programs, or any other community source.~~

2 ~~Any community funds provided for a buydown under chapter 6-09.14 for a~~

3 ~~biodiesel production facility may be considered as funds for the community's~~

4 ~~portion of the buydown under this chapter for that facility.~~

5 ~~3. The fund participation portion in the buydown must be determined by the Bank of~~

6 ~~North Dakota based on economic conditions in the city or county in which the~~

7 ~~business is located.~~

8 ~~4. The maximum amount from the fund in the interest rate buydown for a biodiesel or~~

9 ~~ethanol production facility may not exceed ~~four~~ five hundred thousand dollars ~~per~~~~

10 ~~loan and not more than one loan may be provided to any single biodiesel or~~

11 ~~ethanol production facility under this chapter. ~~However, if the partnership in~~~~

12 ~~assisting community expansion fund does not have adequate funds on hand for an~~

13 ~~interest rate buydown for a biodiesel production facility, the maximum amount from~~

14 ~~the fund under this subsection is increased to six hundred thousand dollars per~~

15 ~~loan. The community funds required for participation in the interest rate buydown~~

16 ~~are limited to the amount required when the fund provides two hundred fifty~~

17 ~~thousand dollars per loan. The maximum amount from the fund in the interest rate~~

18 ~~buydown for a livestock operation may not exceed two hundred fifty thousand~~

19 ~~dollars to any single livestock operation under this chapter.~~

20 ~~3. The fund participation ~~must be~~ is limited to the amount required to buy down the~~

21 ~~interest to five hundred basis points below the national prime interest rate.~~

22 ~~5. 4. The Bank of North Dakota shall adopt rules to implement this chapter.~~

23 **SECTION 8. LEGISLATIVE COUNCIL STUDY - BIOFUELS.** The legislative council

24 shall consider studying, during the 2007-08 interim, the agronomic, economic, and

25 environmental issues related to biofuels production in North Dakota, including the availability of

26 feedstocks and other production resources, existing and future production capacity, farmer and

27 processor contracting models, public and private financial incentives, and the transportation

28 infrastructure necessary to meet optimum production and marketability levels for biofuels in this

29 state. The legislative council shall report its findings and recommendations, together with any

30 legislation required to implement the recommendations, to the sixty-first legislative assembly.

1 **SECTION 9. EFFECTIVE DATE.** Sections 2, 5, and 7 of this Act become effective on
2 August 1, 2009.

3 **SECTION 10. EXPIRATION DATE.** Sections 1, 4, and 6 of this Act are effective
4 through July 31, 2009, and after that date are ineffective.