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10/3/03
Date

2003 HOUSE FINANCE AND TAXATION

HB 1309

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1309**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 22, 2003

Tape Number	Side A	Side B	Meter #
1	X		24
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. WESLEY BELTER, CHAIRMAN Called the hearing to order.

REP. PAM GULLESON, DIST. 26 Introduced the bill. See written testimony plus a handout on Biodiesel Myths & Facts. She also submitted testimony from Terry Goerger, an ag producer from Mantador, ND, in Richland County.

REP. EUGENE NICHOLAS, DIST. 15 Co-sponsor of the bill. Stated he has been a long supporter of biodiesel efforts, along with ethanol production in this state. Without question, since 911, the dynamics of this whole debate has changed immensely. We are about to head to war in Iraq, and I think it is extremely significant, in the fact, that that war will take somewhere between fifty and sixty billion dollars. We all know why we are having problems with those countries that are supplying a huge amount of our domestic energy supply. It is obvious that the domestic energy industry will not be able to meet our demands. Our increasing dependence on foreign energy, is almost unbelievable. It is at crisis proportions. I think we have the greatest

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opportunity in rural America, as we move toward an independence on biodiesel and ethanol, to help resolve this problem. Not only is it good for the ag economy, it will help decrease the dependence of the American farmer on subsidies, which so many people are opposed to. The net income in rural America, comes from enhancements of the government. I think we have a huge opportunity here, as we give some incentives to these industries, both biodiesel and ethanol. There has been much opposition from many different sources and many different special agenda interests in North Dakota. We need to change that agenda.

SEN. RUSSELL THANE, DIST. 26, Testified in support of the bill. He stated he lives right in the middle of the soybean producing area. Soybeans are approximately half of their crop acres. He state they had approximately 1750 acres of soybeans, which produced 40 bushels per acre. It was a record crop. Finally, we were able to break away from subsidies. In the past, we relied on loan deficiency payments to bring our income from our soybean production, up to an acceptable level. Now we are selling at \$5.60 per bushel, which is outstanding. He referred to Terry Goerger, in his area, who burns up to twenty percent soybean oil in his pickup. He runs other percentages in his tractors. He is an enthusiastic supporter. I agree one hundred percent. We have been talking about this for the last twenty five to thirty years. We have never had a national policy that really got behind it. I think our new president, has some of the right ideas.

SEN. JOEL HEITKAMP, DIST. 26 Testified in support of the bill. If you take a good look at the bill, you see the number seven in there a number of times. He felt maybe they should be pushing even more aggressively, in regard to the fact that, North Dakota itself, raises and grows this product and it is really on the cutting edge of where we are asking our ag sector to go. This idea is reasonable. There are a number of safeguards in here. Referred to line 20, which had

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safeguards. He referred to the word "mandate", asked the committee not to be afraid of that word.

REP. FROELICH Why is there an exemption?

SEN. HEITKAMP I think because there were concerns whether the knowledge has gotten far enough to guaranty the warranty of certain engines. I think that concern will go away.

REP. WEILER Where is biodiesel produced?

SEN. HEITKAMP Quite frankly, when you do something like this, you hope that biodiesel will be produced right here in North Dakota. Right now, Minnesota is ahead of us. When you look at the bordering states, they have jumped ahead of us in terms of manufacturing.

REP. WEILER What kind of impact does biodiesel have on an engine?

SEN. HEITKAMP I believe from talking to Terry Goerger, and from the experience he has had from utilizing biodiesel, he doesn't have any negative impact. He is running all over the county with bumper stickers saying "powered by biodiesel." I know for a fact, from reading the paper now and then, he can go faster than the speed limit.

REP. KLEIN Why do we have to mandate it?

SEN. HEITKAMP As Rep. Gullekson brought up, there are additional costs. How do you get past that additional cost? Was there an additional cost when we went from regular fuel to unleaded fuel. We have to create a market for the product.

REP. JON NELSON, DIST. 7 Testified in support of the bill. He stated he agreed with the previous testifiers. He stated, the key is that this legislative session will set the table for where we go with biofuel development and use in this state. We have an opportunity to become leaders again in value-added agriculture. The largest industry in our state is a huge stakeholder in this.

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Every consumer buys gasoline, and diesel too. There are more benefits, then the problems that might arise. It benefits the environment and the people. That is how I rationalize a mandate.

It will send a strong message to an investor who wants to come into this state to build a plant.

He stated he did have an amendment he would submit later.

REP. GULLESON Introduced technical people to answer any questions.

REP. KELSH Asked how close we were coming to closing the gap on the bill versus it going to Minnesota?

REP. GULLESON Minnesota moved ahead on this ten years ago. I was hoping we could be the first in embracing our own. Richland and Cass County are the leaders in soybean production. We should have been first. This bill is modeled after Minnesota's bill. I added the extra provisions for the tax credits in upgrading facilities. Minnesota has a production plant in Mankato. There is high interest in a production plant in North Dakota. It is about the market. I think the time is so right on this.

REP. WEILER Has Minnesota mandated the use of this fuel?

REP. GULLESON Yes they have.

REP. WEILER Are there any other states that have?

REP. GULLESON No

REP. WEILER Have they begun producing yet, in Minnesota?

REP. GULLESON Yes, I believe it is the supplier for North Dakota's pipeline.

REP. GROSZ In one of the handouts you provided to us, it states that engine warranty coverage would be at risk, is a myth. The fact, states the use of biodiesel in existing diesel engines does

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not void parts and materials workmanship warranties of any engine manufacturer. In Sen.

Heitkamp's testimony, he stated there are some warranties in question,

REP. GULLESON She thought he was talking about big engines, they are doing testing with caterpillar right now. She stated they have a couple of diesel pickups, and looking in the book before she bought it, it states that the engine is covered by biodiesel fuel.

REP. KLEIN If we pass this bill, how long will it take to get a plant built and up and running?

REP. GULLESON Actually what it says, it has to be in place, and the earliest it would be would be 2007. We don't start the two percent until 2007. If you remember, two years ago, the folks from ADM came in, and they are very supportive of this, they said they would be looking at plants in Enderlin. I think there is interest.

REP. SCHMIDT Two years ago, the engine companies would not guarantee their engines, you say now, they are still testing, and still don't know if they will guarantee their engines or not?

REP. GULLESON No, I am not saying that. Actually most all of the warranties are covered with biodiesel.

REP. SCHMIDT I believe in two years, they should have gotten these engines tested.

REP. GULLESON Actually all warranties are tested.

REP. BELTER Asked whether there were some benchmarks in the Minnesota mandate.

REP. GULLESON It is the same, they needed to have production to eight million gallons.

They are a much bigger state, so we had ours a little lower level. It is also tied to the federal tax credit.

RAY MARTINSON, SOYBEAN PRODUCER, MILNOR, ND. AND ALSO

REPRESENTING THE PRODUCERS OF THE NATIONAL BIODIESEL BOARD.

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He stated the National Biodiesel Board values the fact that their efforts helped to enhance rural development opportunities, energy security and environmental stewardship. He talked about an opinion study funded by the United Serving Board, this last fall. They telephoned one thousand different individuals, nationwide, and sixty percent believe it is necessary to provide measures to increase the use of renewable fuels. He talked about the National Biodiesel Board hiring an individual who worked exclusively with engine companies to standardize their engine warranties. Every engine manufacturer wants to come up with a different engine, and we are working to try to standardize that. We talk about this mandate of 2007, we are already mandated by low sulfur fuel by 2006. When we get that, we will have to put something in the diesel fuel to lubricate to replace the lubricity that is taken out by low sulfur fuel. This is a natural fit. I have been using biodiesel on my farm for two years, we have been using a ten percent blend, we have had no problems whatsoever.

REP. IVERSON Do you have representatives of the National Biodiesel Board in every state in the nation?

RAY MARTINSON It started out with just ten states, and it is growing. The industry representatives have now surpassed the state representatives on the board. That is how much it has grown. There is a lot of interest in areas where pollution is a concern. They realize they have to do something on city buses, school buses, state fleets.

REP. KLEIN How high could you go on diesel?

RAY MARTINSON On the newer engines, I think you would be alright. On the older engines, you might have some problem. At twenty percent you would be all right.

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REP. GROSZ According to the National Biodiesel Board, any increase in cost will be accompanied by an increase in diesel quality in full blends of biodiesel releasing lubricity of diesel fuels. If it is such a good product, why are we forcing people to purchase it?

RAY MARTINSON We have nineteen applications just from last June and July, to start selling it. If we don't start using this product by the year 2006, somebody will come up with another product to replace it. That will cost money too.

ROGER JOHNSON, COMMISSIONER OF AGRICULTURE, Testified in support of the bill. See written testimony.

REP. DROVDAL Asked whether there is an increase in demand or a decrease in the production of oil?

ROGER JOHNSON I am not sure how to answer that, we are more dependent on foreign oil. The market is leading us there, whatever we can do to make ourselves more competitive, either in the domestic oil market or as the bill discusses here, in the form of the diesel area.

REP. DROVDAL In the demand for oil for fuel, which is a new market

ROGER JOHNSON I don't have those statistics, as I look around the room, I see people from the petroleum industry, who probably have those.

TED AULICK, PROCESS CHEMIST AT THE ENERGY ENVIRONMENTAL RESEARCH CENTER IN GRAND FORKS, ND, Testified in a neutral position, gave information regarding the performance of biodiesel. He stated, it is a result of a chemical reaction between oil from vegetables or animals, and the reaction of that oil with an alcohol, normally methanol. You have to have a chemical reaction to make biodiesel. People talked a lot

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about lubricity. What is going on here is, as of 2007, all diesel engines will have to be equipped with catalytical converters, according to the EPA. There is a mandate. He gave an explanation of what will have to be done to meet the mandate by the year 2007.

REP. BELTER In the production of this, is it energy efficient?

TED AULICK Biodiesel has, what is called, a life-cycle energy balance of 3.7. That means, that every gallon of biodiesel has 3.7 times the amount of energy contained within it, that was utilized to make that gallon of biodiesel. Not only do you generate that much extra energy out of that gallon, also, you limit that much less C O2 production.

REP. KLEIN What would happen if you would use this with ethanol?

TED AULICK You can make it with ethanol too. I don't know if anyone is doing that right now. The only reason they are not doing it, is cost.

REP. KLEIN I have used ethanol and methanol, they are very similar.

RICHARD SCHLOSSER, REPRESENTING THE NORTH DAKOTA FARMERS

UNION, ALSO FARM NEAR THE TOWN OF EDGELEY, ND, Testified in support of the bill. He stated, last year at convention, we had as our theme, "Ag the Cornerstone," fully recognizing that agriculture is the number one industry of North Dakota and an economic contribution to the state. We are doing what we can do to promote that. We see this bill as one piece of the puzzle. Gave history of how crops have changed in the last twenty years.

REP. IVERSON In reading the testimony, he asked how 2% biodiesel equates to 3.1 million bushels of soybeans production, what does that mean to producers in terms of dollars?

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RICHARD SCHLOSSER I don't have those numbers, but at the national Farmers Union convention, during the last farm bill energy debate, in the Senate, we did support what we call "renewable fuel standard", namely ethanol, those numbers came up, I could get that for you.

BILL BUTCHER, STATE DIRECTOR OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS, Testified in opposition of the bill. He stated his organization opposes all government mandates. The NFIB represents three thousand members, all small business owners in North Dakota, and six hundred thousand members, nation-wide. The position is taken that, with mandates, someone is always subsidized and the taxpayer always pays. The NFIB has joined a group called the Coalition Against Mandates. See copy of the prepared statement.

REP. BELTER I as an agricultural producer, probably would have been better off, had they left the sulphur in the diesel fuel, in a sense, that was a mandate. What makes this any different?

BILL BUTCHER I don't know if we would be in favor of leaving the sulfur in.

REP. BELTER That's what happened, they mandated the removal of sulfur, so it cost us more money, it might be good for the environment, which is the other trade-off.

BILL BUTCHER I don't know how to answer that question, except to say the coalition is opposed to "mandates".

J. P. WIEST, PRESIDENT OF THE NORTH DAKOTA MOTOR CARRIERS ASSN.

AND ALSO THE PRESIDENT OF WIEST TRUCK LINE, JAMESTOWN, Testified in opposition of the bill. Any cost affecting diesel fuel will be affecting me. We use approximately eighty thousand gallons per month. Hopefully, we can pass it on to our customers.

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REP. FROELICH If the price of biodiesel would be cheaper in this state, would you have any objection to the bill then?

J. P. WIEST I don't think so.

MARV SKAR, PRESIDENT OF E. W. WYLIE, FARGO, ND Testified in opposition of the bill. See written testimony. He stated he buys one hundred sixty five thousand gallons of diesel fuel every month, and not one gallon is biodiesel, and it won't be. He read a letter he received from Dr. C. Ford Runge who stated it takes it from small guys and gives it to investors. He read a letter from G. E. Transportation Systems, see attached copy. He stated, there is nothing wrong with buying biodiesel, if it is not mandated.

REP. KELSH Asked if he knew when the Minnesota mandate went into effect.

MARV SKAR I think last session.

REP. KELSH Then there must be some evidence that their trucks went through Minnesota and are using it since that time?

MARV SKAR I got this stuff, from a Minnesota trucking company. Fuel results from a 2001 fuel test in biodiesel fuel was used in six city buses in the twin city metro transit. The biodiesel fuel was 26 cents to 46 cents per gallon more expensive then regular diesel. We aren't talking about guys getting in their diesel pickup and driving around here, I am talking about spending 1.8 million dollars last year on new trucks.

REP. WINRICH The figures you had in your testimony about prices, etc., were cited as estimates. Have those estimates been borne out, is diesel fuel six cents per gallon more expensive in Moorhead then

MARV SKAR I think it is effective in 2005

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Hearing Date January 22, 2003

REP. WINRICH So the mandate for Minnesota is not in effect yet?

MARV SKAR They have the same issue we do, if you pass it, we can't put it into effect tomorrow. These are estimates. The petroleum industry, are the guys who supplied this.

REP. BELTER In your organization, nationally, what is the dialogue there, I have mixed feelings on the mandate, it was brought up that catalytic converters are going to be required on diesel trucks, so biodiesel may be one solution to dealing with the reality of a catalytic converter, so we are talking about mandating biodiesel, but then there might be other products that are going to be mandated, are you discussing those types of products that may be mandated?

MARV SKAR I can tell you this, that engine companies are scared to death regarding 2007. The biggest fear engine makers have are called boutique fuels, and that is exactly what this is, it's a boutique fuel that we are creating that is going to be a little different from everybody. They want the federal government to say, this is the standard of fuel we are going to run. They don't want California going down there and saying I want one percent sulfur emission. Because they have to create an engine that lives with this one standard. Minnesota wants five percent bio, you want two percent bio, what are these engine manufacturers supposed to do, create twenty five different engines because you have twenty five different boutique fuels out here? It should be a choice of what the user wants. I don't want to pay more for fuel. If you get biodiesel mandated in this state, you will see long-haul trucking companies by-passing our state and they can bypass Minnesota too, because we have three hundred gallons at six miles per gallon, we can go all the way into Wisconsin. I can't take the risk on a hundred thousand dollar piece of equipment without having a warranty.

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RON NESS, NORTH DAKOTA PETROLEUM COUNCIL Testified in opposition of the

bill. He stated they are opposed to a mandate of biodiesel in the state. There was a question which you asked earlier, "did you oppose the high sulfur diesel mandate"? Absolutely.

Tesoro Refinery has invested about fifty million dollars over the past few years to meet the qualifications for no sulfur diesel. This year, they will invest another fifty million dollars just to meet the clean fuel requirements that are placed upon them. They purchased that refinery a little over a year ago for three hundred and fifty million dollars, they have spent seven million branding retail locations, private individual businesses with their brands in order to sell their product, and they are going to have to continue to spend more money for this diesel clean fuel requirement, and yet the price of fuel has risen just because of those EPA mandates. Essentially, boutique fuels is the issue here, for the suppliers and refiners of fuel across the United States. Submitted a map showing boutique fuel requirements for gasoline. We have a system in the United States designed to move fuel across where product is needed. As you create boutique fuel requirements for islands of fuel, it makes it increasingly more difficult to supply those areas with fuel. He submitted a chart showing they have gone from three hundred fifty refiners in 1980 to one hundred fifty two today, in the United States. See attached chart. There are several refineries closing because they can't continually meet these requirements placed on them by the EPA.

REP. FROELICH What are the refineries or suppliers looking at to replace sulfur?

RON NESS Deferred the question to Ron Day, Environmental Coordinator.

RON DAY, ENVIRONMENTAL COORDINATOR, REFINERY IN MANDAN Answered

the question. He stated there are several additives on the market they are looking at. If biodiesel

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is a cheap alternative and they can work out how to inject that material into the diesel fuel, by all means, they would definitely consider it. Just don't mandate that option to them, let them choose.

REP. WINRICH TO RON NESS Related to his testimony, what evidence is there, that the suppliers are beginning to abandon Minnesota, in anticipation of the mandate going into effect there?

RON NESS I do not know. I think Minnesota is a completely different market place. You have a huge metropolitan area that consumes so much more product than the state of North Dakota, I don't know that it matters what you do in the state of Minnesota, there are enough suppliers and enough pipelines, refineries, etc. Last summer there was a shortage in Minneapolis, what happened is, the companies rushed their ethanol from Iowa into Minnesota, to address any price fights, because of the shortage of ethanol in that area. As you add more states to the mix, just like we did with gasoline, we added thirty two new gasolines to the mix, each refinery has to have a special recipe for that type of fuel.

DEAN PETERSON, NORTH AMERICAN COAL CORPORATION. Testified in a neutral position. See written testimony plus an amendment to the bill.

REP. FROELICH Asked whether any of Mr. Peterson's entities use biodiesel?

DEAN PETERSON No

REP. BELTER TO STATE TAX DEPARTMENT Related to the two cent federal tax, is that two cents per gallon?

GARY ANDERSON, STATE TAX DEPARTMENT Stated he was not sure how that will work, they will have to take a look at that.

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House Finance and Taxation Committee

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Hearing Date January 22, 2003

REP. BELTER This bill doesn't have any impact on the two percent special fuels tax that we have for non-rural use, is that correct?

GARY ANDERSON I believe the way the bill is written, in subsection 1 of section 1, it talks about producing eternal combustion engines, the way we interpreted that is it could apply to both on-road and off-road usage. As you know on-road has a higher tax rate then the off-road. From our point of view, it would appear to affect both.

With no further testimony, the hearing was closed.

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10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1309

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 5, 2003

Tape Number	Side A	Side B	Meter #
1		X	19.7
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

COMMITTEE ACTION

Amendments which were presented took out the mandate which was supposed to be met by 2005. The amendments leave in the tax credit, which is 16% per year and 10% per year, it caps the taxpayers limits up to \$250,000 for the five years. It also states that biodiesel has to meet specifications adopted by the American society for testing and materials.

REP. NICHOLAS Felt it is a disappointment that this is being held up by the industry in a state like North Dakota when forty percent of our economy is agriculture.

REP. CLARK Made a motion to adopt amendments #30455.0101.

REP. IVERSON Second the motion. Motion carried by voice vote, with one no vote.

REP. IVERSON Made a motion for a **DO PASS AS AMENDED**.

REP. CLARK Second the motion. **MOTION CARRIED**.

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FISCAL NOTE
Requested by Legislative Council
04/11/2003

Amendment to: HB 1309

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed HB 1309 with Conference Committee Amendments provides a corporate income tax credit for costs associated with retrofitting facilities for the purpose of producing or blending biodiesel fuel. It is uncertain how many corporations will utilize this credit, or what the costs will be. Therefore, the fiscal impact of that section cannot be determined.

The bill also allows a special fuels tax reduction for fuel containing biodiesel. It is unknown how much biodiesel fuel will actually be used in the state during the 2003-05 biennium. If ten percent of special fuels contains biodiesel, the total fiscal impact would be a biennial reduction in highway distribution, county and cities funds of -\$375,000.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	04/10/2003

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FISCAL NOTE
Requested by Legislative Council
03/24/2003

Amendment to: HB 1309

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

Engrossed HB 1309 with Senate Amendments provides a corporate income tax credit for costs associated with retrofitting facilities for the purpose of producing or blending biodiesel fuel. It is uncertain how many corporations will utilize this credit, or what the costs will be. Therefore, the fiscal impact of that section cannot be determined.

The bill also allows a special fuels tax reduction for fuel containing biodiesel. It is unknown how much biodiesel fuel will actually be used in the state during the 2003-05 biennium. If ten percent of special fuels contains biodiesel, the total fiscal impact would be a biennial reduction in highway distribution, county and cities funds of -\$333,000. (Additional work estimating the extent of likely biodiesel usage is continuing.)

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L. Strombeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	03/25/2003

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FISCAL NOTE
Requested by Legislative Council
02/07/2003

Amendment to: HB 1309

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed HB 1309 provides a corporate income tax credit for costs associated with retrofitting facilities for the purpose of producing or blending biodiesel fuel. It is uncertain how many corporations will utilize this credit, or what the costs will be. Therefore, the fiscal impact cannot be determined.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Blombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	02/07/2003

K. Costa
Operator's Signature

10/3/03
Date

P

FISCAL NOTE
Requested by Legislative Council
01/14/2003

Bill/Resolution No.: HB 1309

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

HB 1309 mandates the retail sale of biodiesel fuel by July 1, 2007. This will have no fiscal impact in the next two biennia. HB 1309 also provides a corporate income tax credit for costs associated with retrofitting facilities for the purpose of producing or blending biodiesel fuel. It is uncertain how many corporations will utilize this credit, or what the costs will be. Therefore, the fiscal impact cannot be determined.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/20/2003

La Costa Rickford
Operator's Signature

10/2/03
Date

Date: **2-5-03**
Roll Call Vote #: **1**

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. **HB 1309**

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number **30455.0101**

Action Taken **Do** **Pass** **as amended**

Motion Made By **Rep. Iverson** Seconded By **Rep. Clark**

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN	✓				
DROVIAL, VICE-CHAIR	✓				
CLARK	✓				
FROELICH	✓				
GROSZ	✓				
HEADLAND	✓				
IVERSON	✓				
KELSH	✓				
KLEIN		✓			
NICHOLAS	✓				
SCHMIDT	✓				
WEILER	✓				
WIKENHEISER	✓				
WINRICH		✓			

Total (Yes) **12** No **2**

Absent **0**

Floor Assignment **Rep. Iverson**

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 8:34 a.m.

Module No: HR-23-1786
Carrier: Iverson
Insert LC: 30455.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1309: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1309 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new section to chapter 19-10 and"

Page 1, line 2, remove "blodiesel fuel mandate and a"

Page 1, remove lines 6 through 21

Page 2, line 3, replace "sixteen" with "ten"

Page 2, line 4, after "containing" insert "at least two percent" and replace "that" with "by volume. For purposes of this section, "blodiesel" means fuel meeting the specifications adopted by the American society for testing and materials"

Page 2, line 5, remove "meets the minimum content requirements of section 1 of this Act"

Page 2, line 7, after "and" insert "each year's credit amount", remove "not", after "forward" insert "for up to five taxable years", and after the period insert "A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years."

Page 2, line 8, replace "Section 2 of this" with "This"

Renumber accordingly

2003 SENATE TRANSPORTATION

HB 1309

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La Costa Rickard
Operator's Signature

10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1309

Senate Transportation Committee

☐ Conference Committee

Hearing Date 2-²8-03

Tape Number	Side A	Side B	Meter #
1		X	1460-end
2	X		0-3600
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Senator Thomas Trenbeath opened the hearing on HB 1309 relating to a corporate income tax credit for a portion of the cost of retrofitting a facility for producing or blending diesel fuel containing biodiesel fuel and to provide an effective date.

Representative Pam Gulleon (District 26) See attached testimony in support of HB 1309.

Proposed an amendment to reinstate the original section 1. (See attached proposed amendment 30455.0201.) Also proposed a second amendment to remove the sunset clause that was added in the last session. (See attached proposed amendment 30455.0202.)

Senator Joel Heitkamp (District 26) (Meter 3622) There are 3 things to speak to: (1) The bill in its original form (2) The first amendment which puts the bill back in its original form and (3) The last amendment which would take the sunset clause off. Taking the sunset off really continues the dedication that ND put forward in the first place. The amendment is code revision. The first

Page 2
Senate Transportation Committee
Bill/Resolution Number HB 1309
Hearing Date 2-28-03

amendment putting the bill back in its original draft form goes to the heart and soul of what biodiesel was looking for which was to put ND up there as one of the leaders in the industry.

The bill as it came from the House is a good start. It needs to go forward in some form because the soybean producers in the state are watching what the legislature is doing in regards to biodiesel and renewable fuels. Biodiesel is one of the things that can be a key towards the future success of farmers in ND. ND needs to send out the signal that it is in the business when it comes to biodiesel.

(Meter 4100) Discussion concerning the existence of a biodiesel plant in ND. Right now there isn't one. Legislation is needed in order to go forward with this type of industry.

Roger Johnson (Ag Commissioner) See attached testimony in support of HB 1309.

Feels the 2% requirement should be the minimum of where ND ought to be.

Ray Martinson (Producer and Representative for Soybean Producers of ND on the National Biodiesel Board) (Meter 5195) Testified in support of HB 1309. Organization has done over \$2 million of research and study on biodiesel. It is one of the most widely tested fuels on the market. For every one unit of energy that is needed to produce biodiesel 3.24 units of energy is gained. This is the highest energy balance of any fuel. It is nontoxic and biodegradable.

(Meter 6110) Discussion about whether there was anything questionable in government policy that creates demand by mandating the use of a product and then subsidizes the production of the product.

Tape 2, Side A

(Meter 50) Discussion as to the 10% blend and where it comes from. There was also talk about the flow ability. Cold flow is not affected at 2-5%. There might be concerns at 10%. It should

Yu Costa Rickford
Operator's Signature

10/3/03
Date

Page 3
Senate Transportation Committee
Bill/Resolution Number HB 1309
Hearing Date 2-28-03

be treated like #2 diesel fuel. Some discussion also took place on additives and the price differences.

Les Alustad (Farmers Union Oil of Southern Valley) See attached testimony.

Russ Hanson (ND Petroleum Marketers Association) Supports agriculture and the agriculture products but also supports consumer demand. The retailers will provide what the consumer wants when the demand is there. Will support the promotion of products rather the government dictation of the offering of them.

LeRoy Ernst (ND Motor Carriers Association) If the committee seriously looks at the proposed amendments, he requested that they be further amended to include trucking as an exempt industry. Supports the bill as it came out of the House. They do not support the concept of mandating the product. If there is a mandate, it should come from the federal level so all the states are the same.

Senator Taylor asked if it is available at the pumps now in MN

LeRoy Ernst replied that it is not.

Ron Ness (ND Petroleum Council) (Attached coalition mandates.) The bill as amended in the House was a good move. Adamantly opposes the amended mandated fuel in the state of ND.

Ron Day (Tesoro Refinery, Mandan) Supports the bill as it came from the House. The amendments are an extreme concern. Talked about the problems of blending biodiesel during the winter months. If amended and mandated it would force them out of business.

Dean Peterson (North American Coal Corporation) (Meter 2137) Had not intended to provide testimony on the blue copy but with the proposed amendments he felt the need to submit an amendment providing for an exemption for "off-road coal mining equipment and machinery".

Page 4

Senate Transportation Committee

Bill/Resolution Number HB 1309

Hearing Date 2-28-03

Pam Guleson provided information that Minnesota passed their legislation at the 5% level with an effective date of 2005. They had the delayed date to upgrade facilities.

Senator Espegard asked if MN law mandates a 5% use on all diesel fuel within the state.

Pam Guleson: Yes

Mary Loftsgard (Supervisor of the Corporate Income Tax Section, Office of State Tax Commissioner) See attached testimony addressing questions regarding the tax credit provided in the bill.

Matt Mechtel (Chairman, ND Soybean Council) Neutral. Providing information. Biodiesel has become the Soybean Council's number one priority. The majority of dollars are being spent in the promotion and usage of biodiesel in the state. It is the first and only product to complete and pass the health effects test and requirements of the clean air act. The Council has made a commitment to biodiesel and to producers to push the product as much as they can and will educate as much as they can. Referred to booklets with facts on biodiesel. (See attached)

The hearing on HB 1309 was closed.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1309

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-13-03

Tape Number	Side A	Side B	Meter #
1		X	4900-5900
Committee Clerk Signature <i>Mary K. Monson</i>			

Minutes:

Chairman Senator Thomas Trenbeath opened HB 1309 for discussion.

Discussion by the committee members. The engrossed bill before them is simply a tax credit.

The amendments are to get rid of the sunset and get it back to a mandate of fuel. The tax credit would be for retrofitting the facilities for producing. The fiscal note cannot be determined because it is uncertain as to how many corporations would use the credit. If there is a mandate, the fuel would have to be blended. That would be a problem.

The proposed amendment .0202 would raise the tax credit from 10% for five years to 16%.

The committee felt they needed more time to study this bill before making a decision.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1309**

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-20-03

Tape Number	Side A	Side B	Meter #
1	X		30-860
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Senator Thomas Trenbeath opened HB 1309 for discussion.

Senator Trenbeath distributed amendment .0203 which he had Legislative Council prepare.

Amendment .0201 would insert the language back into the bill that was taken out by the House concerning a mandate of biodiesel use. Amendment .0202 is basically an amendment that would relieve the sunset provision of the special fuels tax that was set up specifically for biodiesel.

Amendment .0203 relieves the sunset on previous legislation but deletes the amendments with respect to the existing engrossed bill. Amendment .0203 would preserve what was done last session and, if the bill passed, would create the corporate income tax credit for biodiesel production.

There was discussion on the amendments and the tax credit.

Senator Nething moved to approve **Amendment .0203**. Seconded by **Senator Taylor**.

Roll call vote 5-0-1.

Page 2

Senate Transportation Committee

Bill/Resolution Number HB 1309

Hearing Date 3-20-03

Senator Espegard moved a Do Pass as Amended. Seconded by Senator Taylor.

Roll call vote 5-0-1. Passed. Floor carrier is Senator Taylor.

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Y. Costa Rickford
Operator's Signature

10/3/03
Date

30455.0201
Title.

Prepared by the Legislative Council staff for
Representative Gutleson
February 27, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO 1309

Page 1, line 1, after the second "to" insert "chapter 19-10 and a new section to"

Page 1, line 2, after "to" insert "a biodiesel fuel mandate and"

Page 1, after line 5, insert:

SECTION 1. A new section to chapter 19-10 of the North Dakota Century Code is created and enacted as follows:

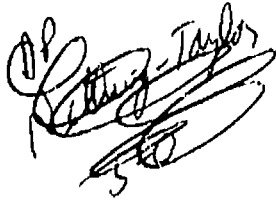
Diesel fuel required biodiesel content - Contingency - Limitation.

1. Beginning July 1, 2007, all diesel fuel sold or offered for sale in this state for use in internal combustion engines must contain at least two percent biodiesel fuel by volume.
2. Subsection 1 is not applicable unless the agriculture commissioner determines and certifies to the governor, the commissioner, and legislative council before January 1, 2007, that
 - a. Plants in this state have an annual biodiesel fuel production capacity that exceeds five million gallons, and
 - b. There exists federal law that reduces by ten cents or more the price of fuel containing at least two percent biodiesel by volume when compared to the price of diesel fuel that does not contain biodiesel.
3. Subsection 1 is not applicable to diesel fuel sold or offered for sale in this state for use in railroad locomotives or off-road coal mining equipment and machinery.

Page 1, line 18, replace "This" with "Section 2 of this"

Renumber accordingly

30455.0202
Title.



Prepared by the Legislative Council staff for
Representative Gulleason
February 28, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1309

Page 1, line 3, after the the semicolon insert "to amend and reenact sections 24-02-01.5, 57-43.2-01, and 57-43.2-02 of the North Dakota Century Code, relating to a special fuels tax reduction for fuel containing biodiesel;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. (~~Contingent effective date - See note - Effective through June 30, 2003~~) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

(~~Effective after June 30, 2003~~) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department."

Page 1, underscore line 8

Page 1, line 9, underscore "is entitled to a credit against tax liability determined under section 57-38-30 in the amount of" and replace "ten" with "sixteen"

Page 1, underscore lines 10 through 14

Page 1, line 15, remove "each year's credit amount", underscore "may" and insert immediately thereafter "not", underscore "be carried forward", remove "for up to five taxable years", underscore the period, and remove "A taxpayer is"

Page 1, remove lines 16 and 17

Page 1, after line 17, insert:

P

"SECTION 3. AMENDMENT. Section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. (~~Contingent effective date—See note—Effective through June 30, 2003~~) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Blodiesel" means 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.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.

13. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
17. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
- A manufacturing, warehousing, or loading dock operation;
 - Construction;
 - Sand and gravel processing;
 - Well drilling, well testing, or well servicing;
 - Maintenance of business premises, golf courses, or cemeteries;
 - A commercial or contract painting operation;
 - Electrical services;
 - A refrigeration unit on a truck;
 - A power-take-off unit; and
 - Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the

director has designated the lessor, renter, or some other person as the interstate motor carrier.

20. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
26. "Rack" means a mechanism used to dispense special fuel from a terminal.
27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state

department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.

33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

(Effective after June 30, 2003) Definitions. As used in this chapter, unless the context otherwise requires:

1. ~~"Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.~~
2. ~~"Commissioner" means the state tax commissioner.~~
3. ~~"Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.~~
4. ~~"Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.~~
5. ~~"Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.~~

6. ~~"Director" means the director of the department of transportation.~~
7. ~~"Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.~~
8. ~~"Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.~~
9. ~~"Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.~~
10. ~~"Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.~~
11. ~~"Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.~~
12. ~~"Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.~~
13. ~~"Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.~~
14. ~~"Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of ois, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.~~
15. ~~"Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.~~
16. ~~"Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.~~
17. ~~"Industrial purpose" means:~~
- a. ~~A manufacturing, warehousing, or loading dock operation;~~
 - b. ~~Construction;~~
 - c. ~~Sand and gravel processing;~~
 - d. ~~Well drilling, well testing, or well servicing;~~
 - e. ~~Maintenance of business premises, golf courses, or cemeteries;~~
 - f. ~~A commercial or contract painting operation;~~
 - g. ~~Electrical services;~~

- h. ~~A refrigeration unit on a truck;~~
- i. ~~A power take-off unit; and~~
- j. ~~Other similar business activity.~~

~~Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.~~

- 18. ~~"Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.~~
- 19. ~~"Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.~~
- 20. ~~"Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.~~
- 21. ~~"Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.~~
- 22. ~~"Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railroad, barrel, drum, or other receptacle.~~
- 23. ~~"Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.~~
- 24. ~~"Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.~~
- 25. ~~"Puck" means a mechanism used to dispense special fuel from a terminal.~~
- 26. ~~"Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction,~~

reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.

27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 10-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 10-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.2-01, or antifreeze as defined by section 10-16.1-02.
32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

SECTION 4. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Contingent effective date—See note—Effective through June 30, 2003) Tax Imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon

compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.

2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

~~(Effective after June 30, 2003) Tax imposed:~~

1. ~~Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.~~
2. ~~A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.~~
3. ~~The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.~~
4. ~~The person required to remit the tax imposed by this section shall pass the tax on to the customer.~~
5. ~~The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.~~

6. ~~The commissioner shall pay over all of the money received during each calendar month to the state treasurer.~~

Page 7, line 18, replace "This" with "Sections 1, 3, and 4 of this Act are effective for taxable events occurring after June 30, 2003. Section 2 of this"

Renumber accordingly

Page No. 10

30455.0202

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Prepared by the Legislative Council staff for
Senator Trenbeath
March 18, 2003

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1309

Page 1, line 3, after the the semicolon insert "to amend and reenact sections 24-02-01.5, 57-43.2-01, and 57-43.2-02 of the North Dakota Century Code, relating to a special fuels tax reduction for fuel containing biodiesel;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

~~24-02-01.5. (Contingent effective date - See note - Effective through June 30, 2003) Department of transportation - Administrative rules. The~~ department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

~~(Effective after June 30, 2003) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department."~~

Page 1, underscore lines 8 through 17

Page 1, after line 17, insert:

"SECTION 3. AMENDMENT. Section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

~~57-43.2-01. (Contingent effective date - See note - Effective through June 30, 2003) Definitions. As used in this chapter, unless the context otherwise requires:~~

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable.

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operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

2. "Biodiesel" means 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.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
13. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oills, gravel, bituminous mixture, or in any equipment used in the

preparation of any materials to be used on any type of road or highway surfacing.

16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
17. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
- a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
20. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.

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22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
 23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
 24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
 25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
 26. "Rack" means a mechanism used to dispense special fuel from a terminal.
 27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
 28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
 29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
 30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
 31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
 32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
 33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires

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special fuel by truck or railcar for storage at and distribution from a terminal in this state.

- 34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
- 35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
- 36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
- 37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

(Effective after June 30, 2003) Definitions: As used in this chapter, unless the context otherwise requires:

- 1. ~~"Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.~~
- 2. ~~"Commissioner" means the state tax commissioner.~~
- 3. ~~"Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.~~
- 4. ~~"Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.~~
- 5. ~~"Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.~~
- 6. ~~"Director" means the director of the department of transportation.~~
- 7. ~~"Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.~~
- 8. ~~"Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.~~

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9. ~~"Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.~~
10. ~~"Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.~~
11. ~~"Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.~~
12. ~~"Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.~~
13. ~~"Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.~~
14. ~~"Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.~~
15. ~~"Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.~~
16. ~~"Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.~~
17. ~~"Industrial purpose" means:~~
- ~~a. A manufacturing, warehousing, or loading dock operation;~~
 - ~~b. Construction;~~
 - ~~c. Sand and gravel processing;~~
 - ~~d. Well drilling, well testing, or well servicing;~~
 - ~~e. Maintenance of business premises, golf courses, or cemeteries;~~
 - ~~f. A commercial or contract painting operation;~~
 - ~~g. Electrical services;~~
 - ~~h. A refrigeration unit on a truck;~~
 - ~~i. A power take-off unit; and~~
 - ~~j. Other similar business activity.~~

~~Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.~~

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18. ~~"Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1170.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1170.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.~~
 19. ~~"Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack-moving unit.~~
 20. ~~"Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.~~
 21. ~~"Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.~~
 22. ~~"Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.~~
 23. ~~"Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.~~
 24. ~~"Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.~~
 25. ~~"Rack" means a mechanism used to dispense special fuel from a terminal.~~
 26. ~~"Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.~~
 27. ~~"Refiner" means a person who produces, manufactures, or refines special fuels in this state.~~
 28. ~~"Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.~~
 29. ~~"Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.~~

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30. ~~"Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.~~
31. ~~"Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.~~
32. ~~"Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.~~
33. ~~"Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.~~
34. ~~"Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.~~
35. ~~"Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.~~
36. ~~"Wholesale distribution" means the sale of special fuel by a supplier or distributor.~~

SECTION 4. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. ~~(Contingent effective date - See note - Effective through June 30, 2003)~~ Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.

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4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
 5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
 6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003) Tax imposed.

- ~~1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.~~
- ~~2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.~~
- ~~3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.~~
- ~~4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.~~
- ~~5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.~~
- ~~6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer."~~

Page 1, line 18, replace "This" with "Sections 1, 3, and 4 of this Act are effective for taxable events occurring after June 30, 2003. Section 2 of this"

Renumber accordingly

Date: 3-20-03
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1309

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment 0203

Motion Made By Senator Nething Seconded By Senator Taylor

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espegard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3-20-03
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1309

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30455.0203 Title .0300

Action Taken Do pass as amended

Motion Made By Senator Espegard Seconded By Senator Taylor

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espegard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Taylor

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 21, 2003 12:57 p.m.

Module No: SR-51-5439
Carrier: Taylor
Insert LC: 30455.0203 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1309, as engrossed: Transportation Committee (Sen. Trenbeath, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1309
was placed on the Sixth order on the calendar.

Page 1, line 3, after the the semicolon Insert "to amend and reenact sections 24-02-01.5,
57-43.2-01, and 57-43.2-02 of the North Dakota Century Code, relating to a special
fuels tax reduction for fuel containing biodiesel;"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 24-02-01.5 of the North Dakota Century
Code is amended and reenacted as follows:

**24-02-01.5. ~~(Contingent effective date - See note - Effective through
June 30, 2003)~~ Department of transportation - Administrative rules.** The
department of transportation may adopt the administrative rules necessary to carry out
its responsibilities and functions as created and transferred by sections 24-02-01.1
through 24-02-01.5. Rules adopted by the agencies whose functions relate to the
functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1
through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13,
24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of
section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01,
subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of
section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44,
subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they
are specifically amended or repealed by the department.

~~**(Effective after June 30, 2003) Department of transportation -
Administrative rules.** The department of transportation may adopt the administrative
rules necessary to carry out its responsibilities and functions as created and transferred
by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose
functions relate to the functions or agencies created, transferred, or covered by
sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section
24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of
section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01,
subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of
section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section
57-43.1-01, section 57-43.1-44, subsection 5 of section 57-43.2-01, and section
57-43.2-37 remain in effect until they are specifically amended or repealed by the
department."~~

Page 1, underscore lines 8 through 17

Page 1, after line 17, insert:

"SECTION 3. AMENDMENT. Section 57-43.2-01 of the North Dakota Century
Code is amended and reenacted as follows:

**57-43.2-01. ~~(Contingent effective date - See note - Effective through
June 30, 2003)~~ Definitions.** As used in this chapter, unless the context otherwise
requires:

1. "Agricultural purpose" means the science, art, and business of farming. It
includes raising crops, ranching, beekeeping, tree nurseries, agricultural
units of colleges and universities, custom combining, manure spreading,

and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

2. "Biodiesel" means 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.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
13. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.

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Module No: SR-51-5439
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Insert LC: 30455.0203 Title: .0300

15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
17. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.

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20. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
26. "Rack" means a mechanism used to dispense special fuel from a terminal.
27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases

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and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.

33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

~~(Effective after June 30, 2003) Definitions. As used in this chapter, unless the context otherwise requires:~~

- ~~1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.~~
- ~~2. "Commissioner" means the state tax commissioner.~~
- ~~3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.~~
- ~~4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.~~

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5. ~~"Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.~~
6. ~~"Director" means the director of the department of transportation.~~
7. ~~"Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railroad, or in a barrel, drum, or other receptacle.~~
8. ~~"Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.~~
9. ~~"Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.~~
10. ~~"Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railroad, or in a barrel, drum, or other receptacle.~~
11. ~~"Gallon" means a United States gallon (3.79 liters) measured on a gross volume basis.~~
12. ~~"Gross volume" means measurement in United States gallons (3.79 liters) without temperature or barometric adjustments.~~
13. ~~"Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.~~
14. ~~"Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of ovens, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.~~
15. ~~"Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.~~
16. ~~"Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railroad, or in a barrel, drum, or other receptacle.~~
17. ~~"Industrial purpose" means:~~
 - a. ~~A manufacturing, warehousing, or loading dock operation;~~
 - b. ~~Construction;~~
 - c. ~~Sand and gravel processing;~~

- d. ~~Well drilling, well testing, or well servicing;~~
- e. ~~Maintenance of business premises, golf courses, or cemeteries;~~
- f. ~~A commercial or contract painting operation;~~
- g. ~~Electrical services;~~
- h. ~~A refrigeration unit on a truck;~~
- i. ~~A power take off unit; and~~
- j. ~~Other similar business activity.~~

~~Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.~~

- 18. ~~"Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty six thousand pounds (1170.3401 kilograms); or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty six thousand pounds (1170.3401 kilograms) gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lesser, renter, or some other person as the interstate motor carrier.~~
- 19. ~~"Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.~~
- 20. ~~"Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.~~
- 21. ~~"Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.~~
- 22. ~~"Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railroad, barrel, drum, or other receptacle.~~
- 23. ~~"Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.~~

24. ~~"Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.~~
25. ~~"Puck" means a mechanism used to dispense special fuel from a terminal.~~
26. ~~"Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.~~
27. ~~"Refiner" means a person who produces, manufactures, or refines special fuels in this state.~~
28. ~~"Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.~~
29. ~~"Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.~~
30. ~~"Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.~~
31. ~~"Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 10 10 10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 10 10 10, except that it does not include either motor vehicle fuels as defined in section 57 43.1 01, aviation fuels as defined in section 57 43.3 01, or antifreeze as defined by section 10 16.1 02.~~
32. ~~"Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.~~
33. ~~"Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.~~
34. ~~"Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.~~
35. ~~"Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers,~~

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~~"terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.~~

36. ~~"Wholesale distribution" means the sale of special fuel by a supplier or distributor.~~

SECTION 4. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. ~~(Contingent effective date See note Effective through June 30, 2003)~~ Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

~~(Effective after June 30, 2003) Tax imposed:~~

1. ~~Except as otherwise provided in this chapter, an excise tax of twenty one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.~~
2. ~~A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.~~

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3. ~~The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.~~
4. ~~The person required to remit the tax imposed by this section shall pass the tax on to the customer.~~
5. ~~The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.~~
6. ~~The commissioner shall pay over all of the money received during each calendar month to the state treasurer."~~

Page 1, line 18, replace "This" with "Sections 1, 3, and 4 of this Act are effective for taxable events occurring after June 30, 2003. Section 2 of this"

Renumber accordingly

2003 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1309

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Lu Costa Rickford
Representative's Signature

10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1309**

House Finance and Taxation Committee

☒ Conference Committee

Hearing Date April 3, 2003

Tape Number	Side A	Side B	Meter #
1	X		0.2
Committee Clerk Signature <i>Janie Stein</i>			

Minutes:

REP. WES BELTER, CHAIRMAN Called the conference committee to order.

Rep. Belter reviewed the amendments which the Senate had attached to the bill. He presented amendment #30455.0204 to the conference committee for their approval.

JOHN WALSTAD, ATTORNEY WITH THE LEGISLATIVE COUNCIL Appeared to explain the new amendments prepared for Rep. Belter. He explained the difference between the amendments drafted by the Senate and the amendments prepared for Rep. Belter. The change in the new amendments is an overstrike of the expiration date of 2003 and a change to 2005. He stated it is a contingent effectiveness but not a contingent expiration. Section 2 of this act is effective for taxable years beginning after December 31, 2002. The significant changes are on page 1, line 10 and 11, which adds the word "direct", and the word "retrofit" is being added. He added, " retrofit a facility in this state."

SEN. TAYLOR Asked what has been the use history of that tax credit in the last biennium?

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REP. BELTER Answered stating the provision for it was in effect, but there was no tax credit until a plant was built.

JOAN GALSTER, STAFF OF THE STATE TAX DEPARTMENT Answered stating there is no plant operating in North Dakota at this time. However, there are people using blended fuel.

SEN. TAYLOR Without a tax credit?

JOAN GALSTER Yes

SEN. MUTCH Asked if Joan knew how much was shipped in and used.

JOAN GALSTER Stated it was not a lot.

REP. BELTER Asked if there was a record of how much is being sold.

JOAN GALSTER She said they report their purchases in and out, but there are no statistics on it. They report how much they sell with the blend in it. She stated if it is something that is needed, they could start tracking it, if it is being used more.

REP. GROSZ Asked about the word "retrofit". Used an example of building a new facility for biodiesel, will new facilities fit the word "retrofit"?

JOHN WALSTAD He stated, this changes an existing facility only. This would apply to the guy who is doing the blending, prior to distribution.

JOAN GALSTER Thought it would mean the guy who is producing it.

REP. BELTER Referred to two issues involved. When we are talking about the "retrofitting," we are talking about being eligible for the tax credit, it was my intent, that it should be broader than "retrofitting", that it would be a new plant. When it comes to the issue of giving the break on the tax for the fuel itself, that is dictated whether we have a new plant of ten million gallons or

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more. Is that what we want for policy, and do we want to change this language so that we get the tax credit for retrofitting as well as building a new plant?

SEN. MUTCH Said, who would spend the money if you didn't get the tax credit

SEN. ESPEGARD Stated it would generally be done at a Tesoro plant or a new plant built just for this purpose.

SEN. MUTCH What if we could sell blended biodiesel, could you blend it with dye?

JOAN GALSTER Stated you can blend biodiesel with dye.

SEN. MUTCH There would be some retrofitting then?

JOAN GALSTER Yes

REP. BELTER Stated in most cases, you would be buying the blended product in the first place.

SEN. MUTCH Stated, I would hope so, but you would need facilities for storage of two different grades of biodiesel.

MARY LOFTSGARD, STAFF OF THE STATE TAX COMMISSIONER Stated the only reason the word "retrofit" was used was because it was in the title of the bill. They were trying to be consistent with the rest of the bill.

REP. BELTER Stated he would prefer seeing the break in the fuel tax be tied to the construction of a new plant. We are already running short of highway funds, if we are going to have a fuel tax break, then we have to find some money someplace to add to our funds.

SEN. MUTCH Stated, for sure, you will have to allow the tax break for anyone who wants to build a plant.

REP. BELTER Asked committee members if they wanted to leave the bill, pretty much intact,

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as amended, except clarify the new equipment.

JOHN WALSTAD Advised committee members what needs to be changed. In the title of the bill, just replace the word "retrofitting" with the word "adapting".

Some of the committee members questioned the word "adapting".

They agreed that the tax credit would be for whatever it took to blend the biodiesel.

SEN. ESPEGARD Made a motion that the Senate recede from the Senate amendments

SEN. MUTCH Second the motion. Motion carried.

SEN. ESPEGARD Made a motion to adopt amendment 30455.0205 with changes suggested by John Walstad.

SEN. TAYLOR Second the motion. Motion carried. 5 Yes 0 No 1 Absent.

REP. BELTER Requested that the changes be reviewed by all committee members as soon as John Walstad prepared the additions to the amendments, before the bill would be turned in to the House floor.

The conference committee meeting was adjourned.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1309

House Finance and Taxation Committee

☒ Conference Committee

Hearing Date April 9, 2003

Tape Number	Side A	Side B	Meter #
1	X		0
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. WES BELTER, CHAIRMAN Called the conference committee to order with six members present.

He stated the reason he called the conference committee back to order is because Sen. Mutch had questions regarding the amendments which were adopted.

John Walstad of the Legislative Council, Mary Loftsgard and Joan Galster of the Tax

Department appeared before the conference committee to answer any questions the committee had.

SEN. MUTCH Asked where the suggestion of the amendments came from.

JOHN WALSTAD, LEGISLATIVE COUNCIL Stated some of the suggestions for the amendments came from Rep. Belter, but a lot of the technical suggestions were made by the Tax Department staff. Most of those suggestions related to the corporate income tax credit and how it would apply and who would be eligible. The facility has to be located in North Dakota, that

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was not in the amendment the Senate adopted. The taxpayer had to incur direct costs. Last time the conference committee met, we forgot to mention that, at the top of page two of the amendment, the tax department suggested that the corporate income tax credit would not be available until the time that the facility is actually producing a blending biodiesel. The way it is written, the credit would be available for costs incurred before that year, but they couldn't actually claim it until the year they start putting out biodiesel. Another change the tax department pointed out, the words "for blending" are added to that paragraph.

SEN. MUTCH All of this is either production or blending, not retailing?

JOHN WALSTAD The income tax credit here is for the diesel fuel production of blending facilities. Whether that can be done at retail, I am not sure.

MARY LOFTSGARD, STATE TAX DEPARTMENT Answered, stating she didn't know either, unless they could blend also and if they are a corporation.

SEN. MUTCH Stated, the blending will not be done by the retailer.

SEN. ESPEGARD Stated he could possibly see a retailer do it, if it costs about \$200,000 to set up a plant, a retailer could do it.

SEN. MUTCH Didn't think a retailer would think it was worth the investment, as that product would be in competition to the products he was already selling.

He also questioned the one and nine hundred cents subsidy, then in another paragraph it is one and 9 tenths cents subsidy.

JOHN WALSTAD Stated it is an equivalent reduction, it is a one twentieth reduction. The two percent tax applies to non highway users, so the one-twentieth reduction there results from the two percent down to 1.9. It is actually a .1% reduction. They go from 2.0 to 1.9, and then on the

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twenty one cent per gallon users, one twentieth of that is 1.05 cents and that is the reduction that applies to the highway users.

REP. BELTER When you talk about a ten million gallon plant, does that mean ten million gallons of biodiesel products, not biodiesel blend?

JOAN GALSTER, STATE TAX DEPARTMENT answered stating, it was her understanding that it means that a plant is capable of producing ten million gallons of biodiesel.

SEN. TAYLOR Stated he read some data, that North Dakota only sells one hundred sixty two million gallons of diesel. We would have to convert the whole state for ten million gallons of biodiesel.

JOAN GALSTER Stated that when the plant is up and running, it is not tied to what you sell. It is just that the plant has to be capable of producing ten million gallons.

SEN. MUTCH Asked how will you know if the biodiesel is coming from North Dakota or Iowa or Minnesota?

JOAN GALSTER Stated this law is unlike the ethanol law, which states that sites could only be incurred from products from North Dakota, this law does not say that. This law does not restrict a reduction in biodiesel. The way this is written, if North Dakota would have a plant, and it would be capable of ten million gallons, it would not matter where that biodiesel came from, it could come from Iowa.

SEN. MUTCH Stated this will probably be a drain on the highway fund.

JOAN GALSTER Stated it will be a drain on the highway fund. This tax will be a reduction no matter what you do with it.

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SEN. TAYLOR Was this always the intent to be ten million gallons of biodiesel? That would be five hundred million gallons of blended product, and if North Dakota only burns one hundred sixty two million, we may have a number here, where we will probably never see a plant.

SEN. MUTCH They are going to have to do some more figuring or subsidizing somehow.

REP. BELTER Stated that figure came from what was passed two years ago. He asked how that number was derived.

JOAN GALSTER Stated, the plant could always export the biodiesel. She stated if you wanted to lower the number from ten million, you may want to rethink this.

JOHN WALSTAD Stated the most you could lose would be 5% of the total amount of the 2% tax.

REP. BELTER Read the fiscal note which stated \$333,000 would be used for highway use. The fiscal note did include special fuels.

JOAN GALSTER Gave a report of the amount of gallons used per year which was 343 million gallons which added to be 4.1 million dollars of tax.

JOHN WALSTAD Stated that on page 2, paragraph 1, each place the word production shows up, the word "blending" should be added.

SEN. MUTCH Made a motion to reconsider the action by which the bill was passed out of the conference committee.

SEN. ESPEGARD Second the motion. Motion carried by voice vote.

SEN. MUTCH Made a motion to amend the presented amendment by adding the word "blending" to page 2, paragraph 1.

SEN. TAYLOR Second the motion. Motion carried by voice vote.

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SEN. MUTCH Made a motion that the Senate recede from the Senate amendments and adopt new amendment #30455.0205. and further amend by adding the word "blending" to page 2, paragraph 1.

SEN. TAYLOR Second the motion. Motion carried 5 yes 1 absent.

The conference committee was adjourned.

REPORT OF CONFERENCE COMMITTEE (420)
April 4, 2003 8:33 a.m.

Module No: HR-61-6744

Insert LC: 30455.0205

REPORT OF CONFERENCE COMMITTEE

HB 1309, as engrossed: Your conference committee (Sens. Mutch, Espgaard, Taylor and Reps. Belter, Grosz, Froelich) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1030-1038, adopt amendments as follows, and place HB 1309 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1030-1038 of the House Journal and pages 866-874 of the Senate Journal and that Engrossed House Bill No. 1309 be amended as follows:

Page 1, line 2, replace the third "a" with "an existing facility or adapting a new"

Page 1, line 3, replace "and" with "to amend and reenact sections 24-02-01.5, 57-43.2-01, 57-43.2-02, and 57-43.2-03 of the North Dakota Century Code, relating to a special fuels tax reduction for fuel containing biodiesel;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 1, after line 5, Insert:

"SECTION 1. AMENDMENT. Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. (Contingent effective date - See note - Effective through June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

(Effective after June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 5 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department."

Page 1, underscore lines 8 and 9

Page 1, replace lines 10 and 11 with "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 adapting a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel by"

(2) DESK, (2) COMM

Page No. 1

HR-61-6744

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Page 1, underscore lines 12 through 16

Page 1, line 17, underscore "section for all taxable years." and insert immediately thereafter
"A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production of diesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year production begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production begins."

Page 1, replace lines 18 and 19 with:

"SECTION 3. AMENDMENT. Section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. (Contingent effective date - See note - Effective through June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Biodiesel" means 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.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.

9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
13. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
17. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and

j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
20. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
26. "Rack" means a mechanism used to dispense special fuel from a terminal.
27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad

locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.

28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

(Effective after June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural

units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Director" means the director of the department of transportation.
7. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
9. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
10. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
11. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
12. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
13. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
14. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating

of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.

15. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
16. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
17. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

18. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
21. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
24. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack" means a mechanism used to dispense special fuel from a terminal.
26. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it

does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.

32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

SECTION 4. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Contingent effective date - See note - Effective through June 30, 2005) Tax Imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person.

When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003 2005) Tax Imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 5. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. (Contingent effective date - See note - Effective through June 30, 2003 2005) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02. The tax under this subsection is reduced to one and nine-tenths percent on all sales of diesel fuel that contains at least two percent biodiesel fuel by weight.

2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003 2005) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to

whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.

5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 6. EFFECTIVE DATE. Sections 1, 3, 4, and 5 of this Act are effective on the first day of the first month after the tax commissioner certifies to the governor and the office of the legislative council that a refining facility is operational in this state which has a production capacity of at least ten million gallons [37854000 liters] of biodiesel per year. Section 2 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 7. EXPIRATION DATE. Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, 2005, and are thereafter ineffective."

Renumber accordingly

Engrossed HB 1309 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

4-9-03

07398

(Bill Number) HB 1309 (, as (re)engrossed):

Your Conference Committee

Attendance Roll call

For the Senate:

SEN. MUTCH	P	Y
SEN. ESPEGARD	P	Y
SEN. TAYLOR	P	Y

For the House:

REP. BELTER	P	Y
REP. GROSZ	P	Y
REP. FROELICH	P	A

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on (SJ/HJ) page(s) _____

☐ and place HB 1309 on the Seventh order.

☐ , adopt (further) amendments as follows, and place
_____ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: 4/9/03

CARRIER: Belter

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Ja Costa Rickford
Operator's Signature

10/3/03
Date

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420
=====

07398

(Bill Number) HB 1309 (, as (re)engrossed):

Your Conference Committee

For the Senate:

SEN. MUTCH

SEN. ESPEGARD

SEN. TAYLOR

For the House:

REP. BELTER

REP. GROSZ

REP. FROELICH

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)
the (Senate/House) amendments on (SJ/HJ) page(s) 1030 - 1038

☐ and place 727 on the Seventh order.

☒ , adopt (further) amendments as follows, and place
HB 1309 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 620/513

((Re)Engrossed) HB 1309 was placed on the Seventh order of business on the
calendar.

DATE: 4/10/03

CARRIER: Rep. Belter

LC NO. 30455 . 0206 of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE (420)
April 10, 2003 8:26 a.m.

Module No: HR-65-7256

Insert LC: 30455.0206

REPORT OF CONFERENCE COMMITTEE

HB 1309, as engrossed: Your conference committee (Sens. Mutch, Espegard, Taylor and Reps. Belter, Grosz, Froelich) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1030-1038, adopt amendments as follows, and place HB 1309 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1030-1038 of the House Journal and pages 866-874 of the Senate Journal and that Engrossed House Bill No. 1309 be amended as follows:

Page 1, line 2, replace the third "a" with "an existing facility or adapting a new"

Page 1, line 3, replace "and" with "to amend and reenact sections 24-02-01.5, 57-43.2-01, 57-43.2-02, and 57-43.2-03 of the North Dakota Century Code, relating to a special fuels tax reduction for fuel containing biodiesel;"

Page 1, line 4, after "date" insert "; and to provide an expiration date"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Section 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. (Contingent effective date - See note - Effective through June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

(Effective after June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 5 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department."

Page 1, underscore lines 8 and 9

Page 1, replace lines 10 and 11 with "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 adapting a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel by"

(2) DESK, (2) COMM

Page No. 1

HR-65-7256

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Operator's Signature

Date

Page 1, underscore lines 12 through 16

Page 1, line 17, underscore "section for all taxable years." and insert immediately thereafter
"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 by volume, but eligible costs incurred before the taxable year production or blending begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production or blending begins."

Page 1, replace lines 18 and 19 with:

"SECTION 3. AMENDMENT. Section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. (Contingent effective date - See note - Effective through June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Biodiesel" means 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.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.

REPORT OF CONFERENCE COMMITTEE (420)
April 10, 2003 8:26 a.m.

Module No: HR-65-7256

Insert LC: 30455.0206

9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
13. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oills, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
17. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and

(2) DESK, (2) COMM

Page No. 3

HR-65-7256

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10/2/03
Date

j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
20. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminalling services at a terminal, and a terminal operator who owns special fuel in a terminal.
25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
26. "Rack" means a mechanism used to dispense special fuel from a terminal.
27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad

locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.

28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

(Effective after June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural

units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Director" means the director of the department of transportation.
7. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
9. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
10. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
11. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
12. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
13. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
14. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating

of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.

15. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
16. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
17. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

18. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
21. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
24. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack" means a mechanism used to dispense special fuel from a terminal.
26. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it

does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.

32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

SECTION 4. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Contingent effective date - See note - Effective through June 30, 2003 2005) Tax Imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person.

When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003 2005) Tax Imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 5. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. (Contingent effective date - See note - Effective through June 30, 2003 2005) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02. The tax under this subsection is reduced to one and nine-tenths percent on all sales of diesel fuel that contains at least two percent biodiesel fuel by weight.

2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003 2005) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to

whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.

5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 6. EFFECTIVE DATE. Sections 1, 3, 4, and 5 of this Act are effective on the first day of the first month after the tax commissioner certifies to the governor and the office of the legislative council that a refining facility is operational in this state which has a production capacity of at least ten million gallons [37854000 liters] of biodiesel per year. Section 2 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 7. EXPIRATION DATE. Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, 2005, and are thereafter ineffective."

Renumber accordingly

Engrossed HB 1309 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

HB 1309

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Val Costa Rickford
Operator's Signature

10/3/03
Date

HB 1309
Biodiesel Content of Fuels
Representative Pam Gulleason
District 26

I have re-introduced a biodiesel bill again this session because I am convinced that as one of the nations leaders in oil seed production that we have an opportunity before us that we need to embrace. In the United States, 52% of the petroleum used is imported. With continued turmoil in the Middle East and escalating talk of war in that region, it is more important than ever that we identify alternative forms of energy. By advancing the use of biodiesel here at home, we can play as important a role in national energy security as we currently do in food security.

Biodiesel is the name for a variety of fuels made from vegetable oils, such as soybean or sunflower, or animal fats. The concept of using vegetable oil as a fuel dates back to 1895 when Dr. Rudolf Diesel developed the first diesel engine to run on vegetable oil. Dr. Diesel demonstrated his engine at the World Exhibition in Paris in 1900 using peanut oil as fuel. Biodiesel is the only alternative fuel that can be used directly in any existing, unmodified diesel engine. It provides superior fuel lubricity, even at very low blend levels. Because it has similar properties to petroleum diesel fuel, biodiesel can be blended in any ratio with petroleum diesel fuel. Paul Feyereisen from the State Fleet Service has been incorporating biodiesel into the fleet vehicles in this state throughout the last two years with very good results. Throughout this past season, he used 20% biodiesel in the entire Fargo region fleet, with absolutely no problems or concerns raised by operators or mechanics.

The advantages for introducing Biodiesel in this state are tremendous. ND's annual diesel usage is 162 million gallons. A 2% biodiesel blend equates to 3.1 million bushel of North Dakota's soybean production. This isn't a large amount, but it is a start. Producing biodiesel from soybeans and other domestic crops provides an additional use for our oilseed crops, increasing revenue to our farmers. By adding value to our product, we take it one step up the chain and create valuable jobs to support the processing of the oilseeds into biodiesel. It is a domestically produced, renewable resource that would allow us to be less dependant on foreign petroleum for our nations fuel supply. It is biodegradable and meets the standards for lower sulfur levels that the National Energy Policy Act will require by 2007.

Securing energy independence is good public policy. Creating access to domestic renewable alternative fuels is good public policy. More than ever, this bill is the right direction for North Dakota.

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10/3/03
Date

ENGINE MANUFACTURER'S POLICIES ON THE USE OF BIODIESEL

The majority of Engine Manufacturers support use of Biodiesel.
Following is a summary list of their positions.

Manufacturer	Policy
Cummins	Open Use up to 5% volume
International	Open Use up to 20% volume
Caterpillar	Open Use up to 100% volume
Detroit Diesel *	Open use up to 20% volume
GMC	Biodiesel has not been validated for use in 6.5 or 6.6 Liter engines
John Deere	DIN 51606 or equivalent up to 100% volume
MACK	To Be Determined

Biodiesel in and of itself will not void engine warranty's.

* Failures attributed to the use of biodiesel fuel, or blends of biodiesel will not be covered by DDC product warranty.

** Engine Manufacturers do not warranty any fuel.

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Operator's Signature

Juliusa Rickard

10/2/03
Date

HB 1309 Submitted by Rep Gullerson



Biodiesel Myths and Facts

Myth: Biodiesel causes degradation of engine gaskets and seals.

Fact: The recent switch to low-sulfur diesel fuel has caused most Original Equipment Manufacturers (OEMs) to switch to components that are also suitable for use with biodiesel. In general, biodiesel used in pure form can soften and degrade certain types of elastomers and natural rubber compounds over time. Using high percent blends can impact fuel system components (primarily fuel hoses and fuel pump seals) that contain elastomer compounds incompatible with biodiesel, although the effect is lessened as the biodiesel blend level is decreased. Experience during the last seven years with B20 has found that no changes to gaskets or hoses are necessary.

Myth: No objective biodiesel fuel formulation standard exists.

Fact: The biodiesel industry has been active in setting standards for biodiesel since 1994 when the first biodiesel taskforce was formed within the American Society for Testing and Materials (ASTM). ASTM approved a provisional standard for biodiesel (ASTM PS 121) in July of 1999. The final specification (D-6751) was issued in December 2001. Copies of specifications are available from ASTM at <http://www.astm.org>.

Myth: Biodiesel does not have sufficient shelf life.

Fact: Most fuel today is used up long before six months, and many petroleum companies do not recommend storing petroleum diesel for more than six months. The current industry recommendation is that biodiesel be used within six months, or reanalyzed after six months to ensure the fuel meets ASTM specifications (D-6751). A longer shelf life is possible depending on the fuel composition and the use of storage-enhancing additives.

Myth: Engine warranty coverage would be at risk.

Fact: The use of biodiesel in existing diesel engines does not void parts and materials workmanship warranties of any engine manufacturer.

Myth: The U.S. lacks the infrastructure to prevent shortages of the product.

Fact: There are 13 companies that have invested millions of dollars into the development of the biodiesel manufacturing plants actively marketing biodiesel. Based on existing dedicated biodiesel processing capacity and long-term production agreements, more than 200 million gallons of biodiesel capacity currently exists. Many facilities are capable of doubling their production capacity within 18 months.

Myth: There is no government program to support development of a biodiesel industry.

Fact: The U.S. Department of Agriculture announced in January 2001 the implementation of the first program providing cost incentives for the production of 36 million gallons of biodiesel. Bills supporting the use of biodiesel and ethanol were also introduced to the U.S. Congress in 2001, including one that would set a renewable standard for fuel in the U.S. and one that would give biodiesel a partial fuel excise tax exemption. More than a dozen states have passed favorable biodiesel legislation.

LuCosta Rickford
Operator's Signature

10/2/02
Date



Biodiesel Myths and Facts

Myth: Biodiesel is an experimental fuel and has not been thoroughly tested.

Fact: Biodiesel is one of the most thoroughly tested alternative fuels on the market. A number of independent studies have been completed with the results showing biodiesel performs similar to petroleum diesel while benefiting the environment and human health compared to diesel. That research includes studies performed by the U.S. Department of Energy, the U.S. Department of Agriculture, Stanadyne Automotive Corp. (the largest diesel fuel injection equipment manufacturer in the U.S.), Lovelace Respiratory Research Institute, and Southwest Research Institute. Biodiesel is the first and only alternative fuel to have completed the rigorous Health Effects testing requirements of the Clean Air Act. Biodiesel has been proven to perform similarly to diesel in more 40 million successful road miles in virtually all types of diesel engines, countless off-road miles and countless marine hours. Currently more than 100 major fleets use the fuel.

Myth: Biodiesel does not perform as well as diesel.

Fact: One of the major advantages of biodiesel is the fact that it can be used in existing engines and fuel injection equipment with little impact to operating performance. Biodiesel has a higher cetane number than U.S. diesel fuel. In more than 30 million miles of in-field demonstrations, B20 showed similar fuel consumption, horsepower, torque, and haulage rates as conventional diesel fuel. Biodiesel also has superior lubricity and it has the highest BTU content of any alternative fuel (falling in the range between #1 and #2 diesel fuel).

Myth: Biodiesel doesn't perform well in cold weather.

Fact: Biodiesel will gel in very cold temperatures, just as the common #2 diesel does. Although pure biodiesel has a higher cloud point than #2 diesel fuel, typical blends of 20% biodiesel are managed with the same fuel management techniques as #2 diesel. Blends of 5% biodiesel and less have virtually no impact on cold flow.

Myth: Biodiesel causes filters to plug.

Fact: Biodiesel can be operated in any diesel engine with little or no modification to the engine or the fuel system. Pure biodiesel (B100) has a solvent effect, which may release deposits accumulated on tank walls and pipes from previous diesel fuel use. With high blends of biodiesel, the release of deposits may clog filters initially and precautions should be taken to replace fuel filters until the petroleum build-up is eliminated. This issue is less prevalent with B20 blends, and there is no evidence that lower-blend levels such as B2 have caused filters to plug.

Myth: A low-blend of biodiesel in diesel fuel will cost too much.

Fact: Using a 2% blend of biodiesel is estimated to increase the cost of diesel by 2 or 3 cents per gallon, including the fuel, transportation, storage and blending costs. Any increase in cost will be accompanied by an increase in diesel quality since low-blend levels of biodiesel greatly enhance the lubricity of diesel fuel.

Submitted by Rip Coulter

Chairman Belter and committee members of the Finance & Taxation Committee. My name is Terry Goerger and I am an agriculture producer from Mantador in Richland County North Dakota. I am in support of HB 1309.

There are several reasons I believe it is time to move ahead with the use of Biodiesel in the state of North Dakota.

In the United States, 52% of the petroleum used is imported. Our reliance on foreign suppliers is costing us billions if not trillions to protect that supply. But we have not done enough to protect and develop our own domestic supplies of renewable fuel. If we would, there would be an expansion of a fairly new industry, thereby helping the economic base in the state of North Dakota and the US. Ag producers have done a great job of growing fiber and food for all, and we want to grow the energy, produced right here in North Dakota, for your use and the future of our state. Support of biodiesel will be good for the economy.

In North Dakota we don't worry too much about the environment and what we put into it. A study by EPA (attached) reveals that "long term exposure to diesel exhaust will likely cause lung cancer". By using biodiesel the hydrocarbon and particulate emissions will be greatly reduced. Also a study shows a diesel engine school bus sitting by a curb will have the same amount of fumes and pollutants in the bus as outside after 20 minutes. Attached is an article on a school district using biodiesel to solve some of this problem. Support of biodiesel will help protect our environment and our children.

Again our reliance on foreign supplies of energy put our country at risk of not having enough to meet the needs of the people of the US and North Dakota. Use of biodiesel will take off the pressure of that 52% reliance on foreign supplies giving us a more secure source and domestic supply of energy for today and into the future. Support of biodiesel will assist in energy security for us today and far into the future.

Now is the time to help build a new industry, use more renewable energy, help an ag economy we already have and build a clean future for ourselves and our children. Economy, Environment and Energy Security. Seems like very good reasons to use and promote biodiesel. We just need some help to get it all going. I urge you to pass HB 1309. Thank you.

Terry Goerger



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Roger Johnson
Agriculture Commissioner
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Bismarck, ND 58505-0020

**Testimony of Roger Johnson
Agriculture Commissioner
House Bill 1309
House Finance & Taxation Committee
Fort Totten Room
January 22, 2003**

Chairman Belter and members of the Finance & Taxation Committee, I am Agriculture Commissioner Roger Johnson. I am here today in support of HB 1309, which relates to a biodiesel fuel mandate and a corporate income tax credit for a portion of the cost of retrofitting a facility for producing or blending diesel fuel containing biodiesel fuel.

This legislation would require that diesel fuel contain 2% biodiesel by July 1, 2007, provided that plants in this state have a production capacity that exceeds five million gallons and provided that a federal incentive is in place that reduces the price of fuel containing biodiesel by 2%. These provisions are appropriate and should seem to provide ample "ramp up" time and appropriate predictability for the industry. This legislation also provides a corporate income tax credit of 16% per year for five years on the costs incurred to retrofit a facility to produce biodiesel.

Biodiesel is the name for a variety of ester-based oxygenated fuels made from soybean oil or other vegetable or animal fats. Biodiesel can be used as a pure fuel and as a blending stock with

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Julie Costa Bickford
Operator's Signature

10/3/03
Date

petrodiesel. According to the ND Soybean Council, 25 retail locations in North Dakota currently offer biodiesel for sale to their customers.

Although biodiesel can be made from vegetable or animal plants, North Dakota's focus is primarily on biodiesel produced from soybean oil. Soybeans are a plentiful cash crop in North Dakota, with Cass County as the #1 soybean producing county in the country (2001).

Based on statistics compiled by the North Dakota Soybean Growers Association, approximately 3% of North Dakota's soybean production would be processed and utilized as biodiesel if the 2% biodiesel requirement in diesel fuel was put in place. North Dakota's annual diesel usage is approximately 162,422,000 gallons. The ND State Fleet's annual diesel usage is 900,000 gallons.

Biodiesel can be substituted for petroleum diesel in virtually any standardized diesel engine. And, used in small percentages (as proposed in this legislation) biodiesel can dramatically increase the lubricity of diesel fuel. Since the implementation of EPA regulations that require reduced sulfur content in diesel fuel from 5000 to 500 parts per million, significant wear problems have emerged in high-pressure diesel fuel pumps. These problems are expected to increase as EPA attempts to phase in an additional sulfur content reduction of diesel fuel to 15 parts per million by 2007. Biodiesel may very well be the best lubricity additive on the market, thus becoming an even more important renewable fuel. (A copy of "Commonly Asked Questions," compiled by the National Biodiesel Board (February 2002) is attached for your information.)

4P

We can and must do more to promote the production and usage of renewable fuels such as biodiesel. The US marketplace is too often overlooked by agriculture as we focus on acquiring new international markets. Biodiesel and ethanol are great examples of new demand as opposed to displaced demand often resulting from new international markets. Both are important, but new demand results in a bigger pie, not just a bigger piece of the old pie.

I believe that this legislation provides appropriate incentives and requirements for the use of biodiesel and I urge a do pass on this HB 1309. Chairman Belter and committee members, I would be happy to answer any questions you may have.

Bill Butcher - NFIB
HB 1309

Coalition Against Mandates

The organizations listed below oppose government mandates. The free enterprise system should depend upon consumer choice and competition to determine the products offered in the marketplace.

Government mandating the offering of a certain product or service is not necessary as consumer demand will create self-sustaining markets.

We want to make it eminently clear that we are not against agriculture. We fully realize the importance of agriculture's vital role in the North Dakota economy.

However, we oppose bad economic policy. Mandates restrict competition, infringe on free-enterprise, and can result in supply/distribution problems in the economy. What economic development message is being sent if government tells business which products must be sold and to consumers which products must be purchased?

Once government mandates one product, what product or service would be next? Would the government next decide what type of tractors farmers must own? Would there be a government mandate indicating what type of meat a grocery store must sell?

Associated General Contractors	Bismarek/Mandan Development Association
Bismarek/Mandan Chamber of Commerce	Burlington Northern Santa Fe Railway Company
Caterpillar	Devils Lake Chamber of Commerce
E.W. Wylie Corporation	Greater North Dakota Association
Lewis Truck Lines	Midwest Motor Express
North Dakota Grocers Association	North Dakota Retail Association
North Dakota Petroleum Council	National Federation of Independent Business
North Dakota Motor Carriers Association	Ottertail Power Corporation
PACE Local 7-10	North Dakota Petroleum Marketers Association
Qwest Corporation	Tesoro Petroleum
Utility Shareholders of North Dakota	Excell Energy of ND

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La Costa Rickford
Operator's Signature

10/3/03
Date

MAIN POINTS

- 1. STATE ECONOMIC POLICY SHOULD NOT BE IN THE PRODUCT MANDATE BUSINESS, WHERE THE GOVERNMENT PICKS THE WINNERS AND LOSERS IN THE MARKETPLACE. LIKE OTHER PRODUCTS, BIO-DIESEL SHOULD MAKE ITS SUCCESS IN THE MARKETPLACE BASED ON THE QUALITY OF PRODUCT, COMPETITIVE PRICING AND CONSUMER DESIRE AND DEMAND.**
- 2. A BIO -DIESEL MANDATE WILL COST NORTH DAKOTA DIESEL CONSUMERS MILLIONS OF ADDITIONAL DOLLARS ANNUALLY. A MANDATE WOULD BE A SUBSTANTIAL "BIO DIESEL " TAX IMPOSED ON DIESEL CONSUMERS TO FURTHER SUBSIDIZE BIO-DIESEL PROCESSORS AND INVESTORS.**
- 3. A ND BIO DIESEL MANDATE WILL NOT BENEFIT ND FARMERS, BUT WOULD BE VERY PROFITABLE TO A HANDFUL OF BIO DIESEL PROCESSORS AND INVESTORS.**
- 4. CLAIMS OF BIO DIESEL'S ENVIRONMENTAL BENEFITS HAVE NOT BEEN ACCEPTED OR SUBSTANTIATED BY THE EPA. THE EPA HAS EXPRESSED CONCERNS OVER BIO DIESEL ENVIRONMENTAL CLAIMS.**
- 5. A ND BIO DIESEL MANDATE WOULD CREATE PROBLEMS FOR STATE DIESEL SUPPLIES, SHIPPING, HANDLING AND RETAIL SALES. ND DIESEL RETAILERS WILL LOSE BUSINESS TO STATES THAT DO NOT IMPOSE A BIO DIESEL MANDATE.**

**6. OPERATORS OF DIESEL EQUIPMENT HAVE NOT RECEIVED
DEFINITE ANSWERS FROM THEIR TRUCK AND ENGINE
SUPPLIERS CONCERNING THE IMPACT OF BIO DIESEL ON
ENGINE WARRANTIES.**

IS BIO DIESEL MANDATE A GOOD PUBLIC POLICY?

**NO. A BIO DIESEL PRGVIDES NO REAL ECONOMIC AS A WHOLE. A
MANDATE SIMPLY TAKES RESOURCES FROM A FEW SEGMENTS OF
THE ECONOMY AND GIVES THOSE RESOURCES TO ANOTHER
SEGMENT. ESTIMATES OF COSTS GIVEN IN TESTIMONY IN
MINNESOTA ESTIMATED ADDING AN ADDITIONAL \$.06 PER GALLON
ON THE LOW END TO AS HIGH AS \$.26 PER GALLON ON THE HIGH
END. THIS WOULD ADD AN ADDITIONAL \$30,000,000 TO DIESEL
CONSUMERS ON THE LOW END AND AN ADDITIONAL 129,000,000 IN
THE HIGH END. THESE NUMBERS ARE BASED UPON 496,000,000
GALLONS OF DIESEL SOLD IN NORTH DAKOTA ANNUALLY.
FARMERS, SCHOOL DISTRICTS, BUS OPERATORS, CONSTRUCTION
COMPANIES, AND TRUCKERS WILL BE THE HARDEST HIT BY A
MNDATE.**

**CAN WE REALLY AFFORD TO HIT OUR ALL READY STRESSED
PUBLIC EDUCATION SYSTEMS WITH ADDITIONAL OPERATING
COSTS TO MAKE A HANDFUL OF BIO DIESEL INVESTORS
WEALTHY?**

IS BIO DIESEL MANDATE A GOOD AG POLICY?

**NO. THE PRICE OF THE NATIONAL COMMODITY PRICE OF
SOYBEANS WILL NOT BE CHANGED WHETHER WE HAVE BIO
DIESEL OR NOT. THERE WILL NOT BE ANY SUBSTANTIAL
ECONOMIC IMPROVEMENT IN COMMODITY PRICES DUE TO BIO
DIESEL. BUT FARMERS WILL GET A SUBSTANTIAL INCREASE IN
THE COST FOR BIO DIESEL. A BIO DIESEL MANDATE SIMPLY
TAKES RESOURCES FROM CONSUMERS AND GIVES THOSE
RESOURCES TO A HANDFUL OF BIO DIESEL INVESTORS.**

WHAT ABOUT ENGINE WARRANTIES?

ENGINE COMPANIES DO NOT WANT ADDITIONAL BOUTIQUE FUELS. THEY HAVE SPENT ALL OF THEIR ENERGIES TRYING TO COMPLY WITH THE 10/01 ENGINES AND NEW 2007 EMISSIONS RULES. THE ONLY TESTING THEY HAVE DONE SUBSTANTIALLY IS IN EUROPE. THEY HAVE FOUND THAT ENGINE SEALS HAVE NOT LASTED AS LONG AS NORMAL DIESEL. THEIR BIGGEST FEAR CONCERNING BIO DIESEL IS BACTERIA GROWTH ON THE BIO OIL BEING CONSIDERED A BIO HAZARD. ONE COMPANY GENERAL ELECTRIC HAS NOTIFIED THE RAILROAD ASSOCIATION THAT IT WOULD NOT HONOR ENGINE WARRANTIES IF BIO DIESEL WERE USED.

REAL LOSS OF TRUCK STOP REVENUE? EVERY TIME A TRUCK STOPS HE GENERALLY SPENDS \$25.00 IN ADDITION TO THE FUEL PURCHASED FOR HIS TRUCK. MOST LARGE TRUCKING COMPANIES DESIGNATE WHICH TRUCK STOPS THEIR FLEETS ARE AUTHORIZED TO PURCHASE FUEL. TRUCKS HAVE ENOUGH TANK CAPACITY TO COMPLETELY BYPASS NORTH DAKOTA. TRUCKERS WILL PAY THE FUEL TAX OWED TO ND BECAUSE OF THE MILES DRIVEN BUT THEY DON'T HAVE TO BUY FUEL. THE PETROLEUM PEOPLE ARE PROBABLY BETTER SUITED TO TELL YOU THE ECONOMIC IMPACT OF TRUCKS BYPASSING NORTH DAKOTA.

SUPPLY CHAIN PROBLEMS?

WE DO NOT HAVE ADEQUATE SUPPLY CHAIN SYSTEMS TO HANDLE A MANDATE. THE PETROLEUM PEOPLE CAN BETTER ANSWER THESE QUESTIONS. DO YOU THINK THAT SUPPLIERS MIGHT LOSE SALES TO NEIGHBORING STATE DISTRIBUTORS WHO DO NOT HAVE A MANDATE?

ARE EPA CLAIMS VALID?

**UNPROVEN EPA CLAIMS: TESTIMONY GIVEN IN MN CHALLENGED
THE VALIDITY OF ANY EPA IMPROVEMENT WITH BIO DIESEL
ESPECIALLY AT A 2% LEVEL. EPA OFFICIALS WERE CONCERNED
OVER THE CLAIMS OF ENVIRONMENTAL BENEFITS FROM BIO
DIESEL.**

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Lu Costa Rickford
Operator's Signature

10/3/03
Date

GE Transportation Systems

*used in
Maw Skan Testimony #B1309*

One Team Dedicated to Customer Success ... Worldwide™

To:
Mike Rush
Association of American Railroads

Dear Sir,

This letter is notifying you and your members of the implications of using biodiesel fuels in GE Transportation Systems locomotives.

GE Transportation Systems will not honor any warranty claims on locomotives found to be using biodiesel fuels. Biodiesel has not been proven to be an acceptable fuel for either our FDL or HDL engine families, and as such we cannot accept product failure responsibility resulting from its use.

The medium speed diesel engines, that are used in our locomotives, are designed to meet performance and reliability goals based on the use of petroleum fuel oil. The addition of "bio" components into the combustion process can produce various in-cylinder problems and we cannot recommend the use of this fuel in GE Transportation Systems locomotives.

Finally, I would caution you and your members on the use of biodiesel in any locomotives that are under regulation by the USEPA. Biodiesel will void our emissions warranty and shift the burden of emissions warranty compliance from the builder to the owner operator.

If you have any questions, please do not hesitate to call me at (303) 753-2253

Thank you;

Adam Oser
GE Transportation Systems
Product Development Manager

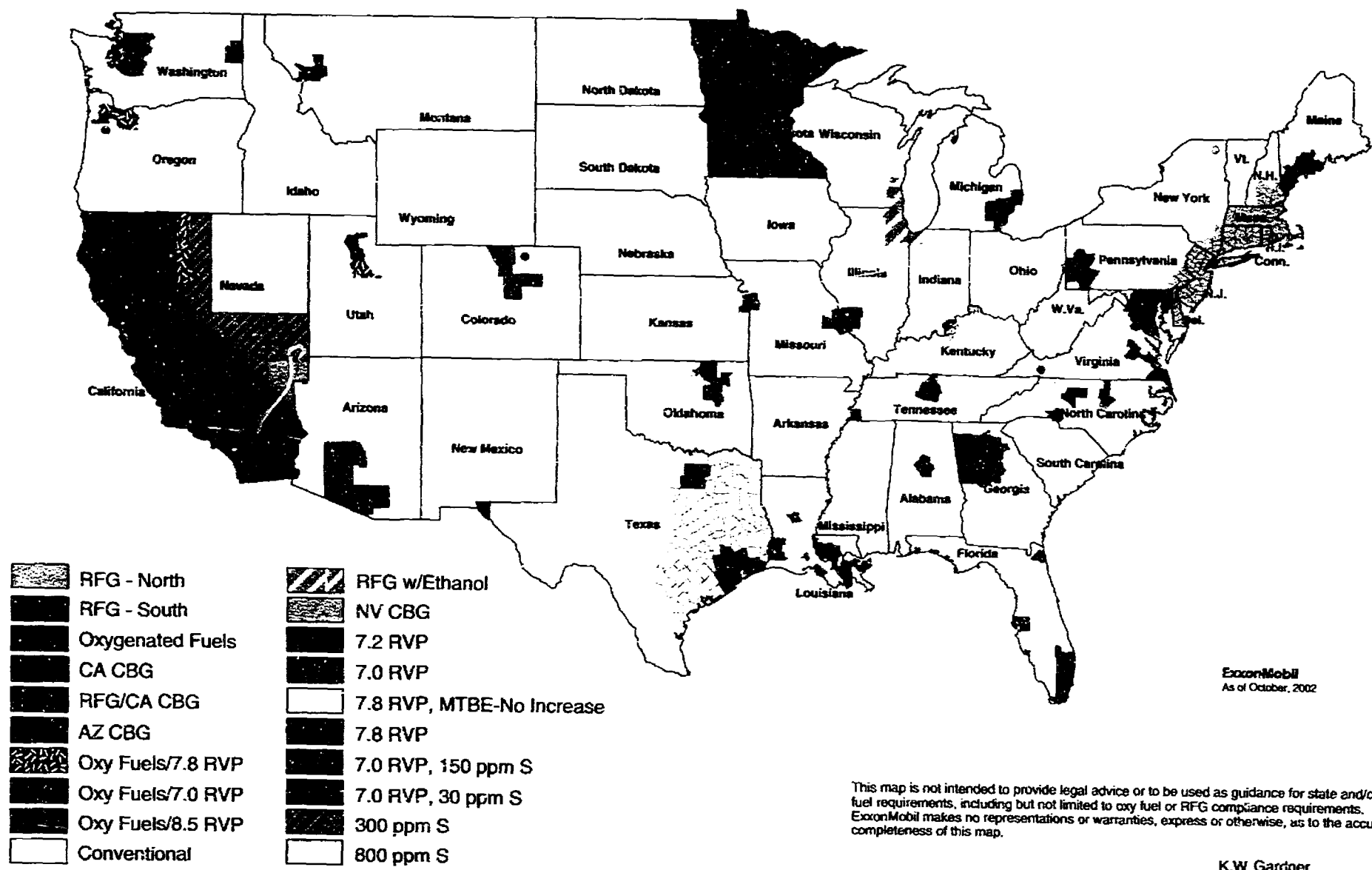
Cc: J. Cooper
V. Palekar
P. Bedapudi
G. Corner
D. McAndrew

La Costa Rickford
Operator's Signature

10/2/03
Date

Ron Ness - ND Pet
 HB 1309
 Council

U.S. Gasoline Requirements



ExxonMobil
 As of October, 2002

This map is not intended to provide legal advice or to be used as guidance for state and/or federal fuel requirements, including but not limited to oxy fuel or RFG compliance requirements. ExxonMobil makes no representations or warranties, express or otherwise, as to the accuracy or completeness of this map.

K.W. Gardner
 000002

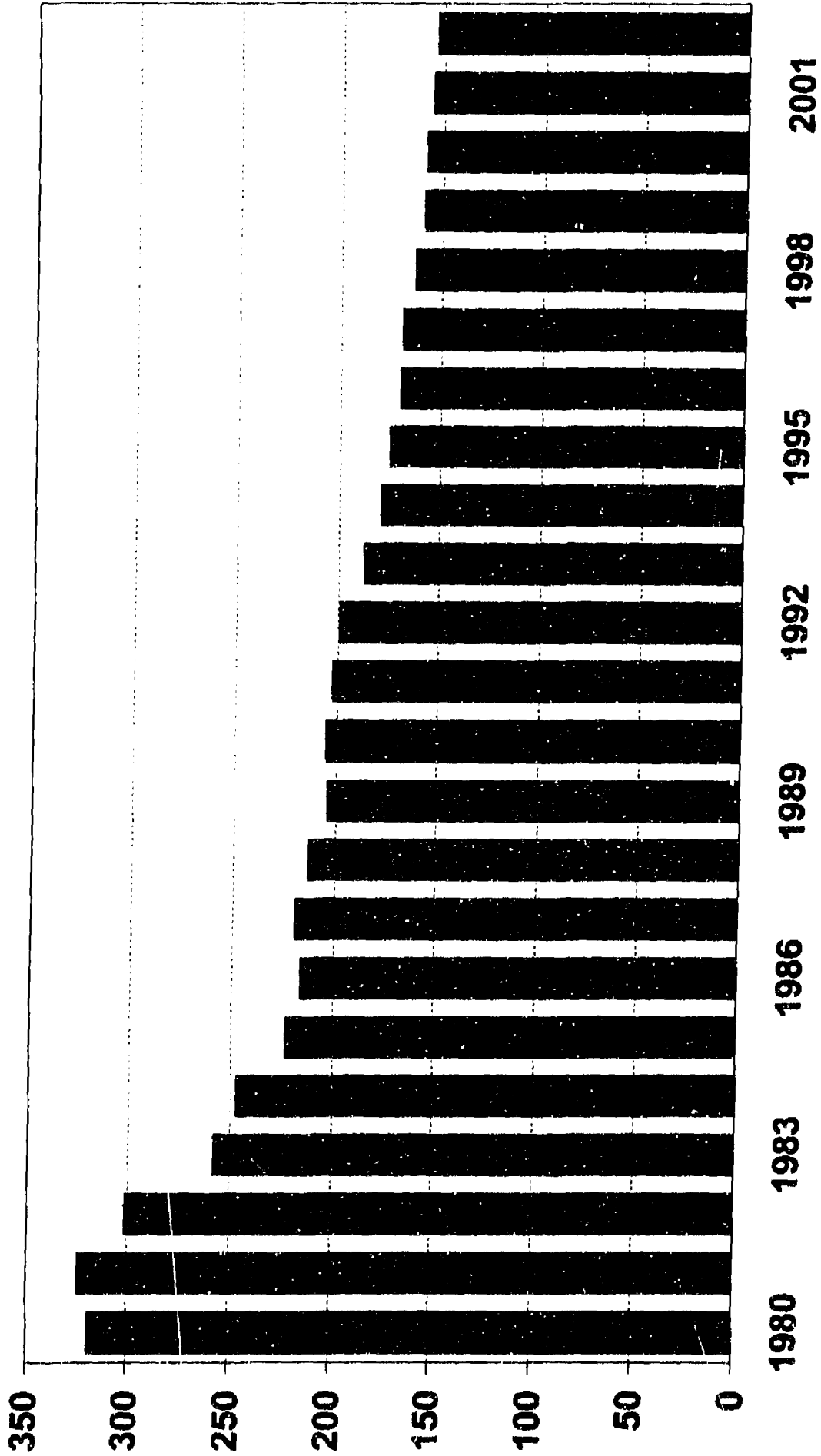
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Operator's Signature Melissa Rickford 10/3/03
 Date

Ron Ness - ND Petr. Council
#01309

U.S. Petroleum Refineries: 1980 - 2002

source: Energy Information Administration



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La Costa Rickford
Operator's Signature

10/3/03
Date

**TESTIMONY BEFORE THE HOUSE FINANCE AND
TAXATION COMMITTEE**

Concerning HB1309

January 22, 2003

**Dean Peterson, THE NORTH AMERICAN COAL
CORPORATION**

Mr. Chairman and members of the Committee, my name is Dean Peterson. I am here today representing The North American Coal Corporation – North Dakota's largest lignite producer. North American Coal has two subsidiaries, The Coteau Properties Company and The Falkirk Mining Company that collectively produce over 23 million tons of lignite each year for energy conversion facilities located in North Dakota.

Subsection 3 of section 1 provides for an exemption for "off-road coal mining equipment and machinery" from the provisions of this proposed bill. For the sake of clarity we would request that the words "~~off-road coal mining equipment and machinery~~" be deleted from line 21 and the words "surface coal mining and reclamation operations as defined in NDCC 38-14.1" be inserted.

January 24, 2003

The Honorable Wesley Belter
Chairman, Finance and Taxation Committee
North Dakota House of Representatives
State Capitol
Bismarck, North Dakota

RE: H.B. 1309 – Biodiesel Mandate

Dear Chairman Belter:

The Engine Manufacturers Association (EMA) is a trade association representing the major manufacturers of internal combustion engines including diesel-fueled compression ignition engines for nonroad equipment, trucks and buses, and stationary electric generators. EMA represents engine manufacturers before federal and state governments on many legislative and regulatory issues including fuels and emission standards.

North Dakota House Bill 1309 would require that all diesel fuel sold or offered for sale in the state contain two percent biodiesel fuel by volume. EMA and its member companies generally support research, development, and incentives regarding the use of alternative fuels; however, our association opposes state-by-state mandates regarding fuel additives or fuel content requirements. Mandates create boutique fuels and small regional markets that increase the likelihood of fuel shortages and higher costs to operators. The proposed mandate language does not define biodiesel fuel nor does it require conformance to any quality or performance specifications thus potentially creating fuels of varied quality with unknown impacts on engine performance and emissions.

New national standards to reduce the sulfur content of diesel fuel and improve emissions for on-road diesel vehicles take effect in 2006, and the US EPA is currently considering changes to nonroad diesel fuel and emissions standards. We believe it is inappropriate for the state to adopt a biodiesel mandate that would affect diesel fuel formulation when these other changes are taking place. In addition, engine manufacturers do not have sufficient information to determine how biodiesel blends will affect advanced emissions control equipment needed to meet the increasingly stringent emissions standards set for 2007 and beyond.

Mr. Chairman, for the above reasons, EMA opposes passage of the biodiesel mandate provisions currently in H. B. 1309. Rather than impose a mandate on all diesel-fuel users, North Dakota could encourage the production and use of biodiesel fuel through incentives or other voluntary mechanisms.

Please feel free to call me at (312) 827-8734 if you have any questions.

Sincerely,

Joe Suchecki
Joseph L. Suchecki

EMA European Office, C.P. 85, CH-1231 Conches, Switzerland
Telephone and Facsimile: +41 22 784 3349

La Costa Rickard
Signature

10/2/03
Date

HB 1309
Submitted after
the hearing

Biodiesel Testimony

Dear Chairman Belter, and Representatives on the House Finance and Taxation Committee,

My name is Edmund Goerger, a farmer from the southeast corner of the state by Wyndmere. First I would like to thank the Chairman for allowing testimony to come in at this later date. I had the privilege of listening to the testimony on January 21 but time did not allow me to speak.

On our farm we have used biodiesel at the 20% blend level for two years without any major problems. The range of engines I have used it in range from a 1964 John Deere 4020 all the way up to a 2001 John Deere 8110. Starting, pulling and economy have all been equal to when I ran premium diesel fuel. The one problem I encountered was when the temperature fell to 10 degrees at night; the new engines with a finer micron filter system had a lack of power for the first 30 minutes until the system warmed up. That was at 20%; in the fall of 2002 I put in 5% blend and to this day (January 28, 2003) have had no trouble starting tractors that have been sitting outside. The lubricity is easily noticed; old valves on the bulk fuel tank that used to turn hard now spin down with a flick of the wrist.

On availability, our local dealer in town has started offering it at the pump in the 2% blend, or for bulk distribution. As far as I can see concerning "designer fuel" that Mr. Ness referred to. All major truck stops carry 2 if not 3 different grades of fuel, and gas stations regularly sell 3 grades of gasoline. Some their own "special blend". I doubt if it would be a great inconvenience to change out what is in the tank. Mr. Ness also express concern that there has been a decrease in brand names due to all the specialized fuels, I would suggest that the decrease in brand names has to do with mergers and buyouts rather than specialized fuel. And I believe I heard on CNBC that the reason for refineries closing in this country is due to old inefficient plants not being able to compete with the new one's coming on line, and at the same time trying to meet new E.P.A. regulations with the old equipment.

Mr. Skar from E.W. WyLie trucking expressed great fear of the price to his operation. If I understand the bill correctly it would only take affect if the federal government passes a law with a \$.02/gallon credit towards a 2% blend. Thus eliminating the extra cost to his operation. The \$.05-\$.26 cost per gallon he quoted from Minnesota dealt with a 5% up to a 20% blend in that state. The range it has cost me for my 5 tanker loads of 20% biodiesel

Edmund Goerger
Operator's Signature

10/3/03
Date

range from \$.06-\$.16/gallon more than the premium by itself would have cost. I also find it interesting that he was concerned about the 2% biodiesel might have an environmental hazard if a fungus were to grow on it. I think the E.P.A. would be more concern with the removal of the remaining 98% of petroleum diesel than the biodegradable fungus and biodiesel.

On the issue of warranties, I know JD has issued a bulletin backing the use up to 20%. And as far as I know Cummings and Cat will back engine workmanship as long as the fuel meets federal regulations, which biodiesel does.

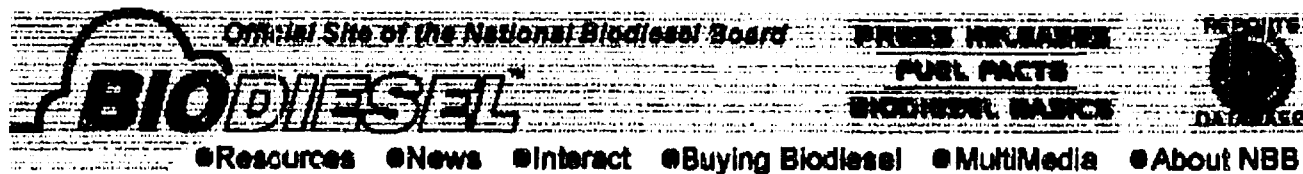
Thank you, Mr. Chairman and committee members again for allowing this added testimony.

Sincerely,

Edmund Goerger

La Costa Rickford
Signature

10/3/03
Date

MEMBERS
AREAMARKET
ANALYSIS

Standards and Warranties

Background on Standards

All engines are designed and manufactured for a fuel that has certain characteristics. In the US, the industry organization that defines the consensus on fuels is the American Society for Testing and Materials (ASTM). In the case of diesel fuel (including biodiesel), the responsibility for setting standards lies within ASTM Committee D02 on Petroleum Products and Lubricants. In order to assure that the standards are rigorous and robust, ASTM committee D02 is comprised of fuel producers, engine equipment manufacturers, and third party interests (users, government agencies, consultants). ASTM also uses a complicated ballot process in which a single negative vote is enough to defeat a ballot, so this is a true consensus organization. An ASTM standard is not easily achieved. Some standards can take over 10 years to gain agreement and be issued by ASTM. This rigorous, time-consuming process is why ASTM standards are recognized and adopted by others worldwide.

ASTM fuel standards are the minimum accepted values for properties of the fuel to provide adequate customer satisfaction and/or protection. For diesel fuel, the ASTM standard is ASTM D 975. All engine and fuel injection manufacturers design their engines around ASTM D 975. In cooperative discussions with the engine community early in the biodiesel industry's recent development, engine manufacturers strongly encouraged the biodiesel industry to develop an ASTM standard for biodiesel fuel which would allow them to provide their customers with a more definitive judgment on how the fuel would affect engine and fuel system operation compared to ASTM D 975 fuel for which an engine was designed.

In June of 1994, a task force was formed within ASTM Subcommittee E on Burner, Diesel, Non-Aviation Gas Turbine, and Marine Fuels of ASTM Committee D02, with the expressed objective of developing an ASTM standard for biodiesel. The biodiesel standard, ASTM PS 121-99, was approved by Subcommittee E, and subsequently issued by ASTM in June of 1999 (for copies, see the ASTM web site at www.astm.org). In December of 2001, ASTM approved the full standard for biodiesel, with the new designation of D-6751 (succeeds PS 121-99). This standard covers pure biodiesel (B100), for blending with petrodiesel in levels up to 20% by volume. Higher levels of biodiesel are allowed on a case-by-case basis after discussion with the individual engine company, since most of the experience in the US thus far has been with B20 blends.

The approval of this biodiesel standard, and the discussions and technical reviews necessary to secure its approval, has provided both the engine community and customers with the information needed to assure trouble free operation with biodiesel blends.

Engine Warranties

All diesel engine companies warranty the product they make - engines. They warranty their engines for

http://www.biodiesel.org/resources/fuelfactsheets/standards_and_warranties.shtml

1/28/2003

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Representative Signature

10/3/03
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'materials and workmanship'. If there is a problem with an engine part or with engine operation due to an error in manufacturing or assembly within the prescribed warranty period, the problem will be covered by the engine company. Typically, an engine company will define what fuel the engine was designed for and will recommend the use of that fuel to their customers in their owner's manuals.

Engine companies do not manufacture fuel or fuel components. Therefore, engine companies do not warranty fuel - whether that fuel is biodiesel or petrodiesel fuel. Since engine manufacturers warranty the materials and workmanship of their engines, they do not warranty fuel of any kind. If there are engine problems caused by a fuel (again, whether that fuel is petrodiesel fuel or biodiesel fuel) these problems are not related to the materials or workmanship of the engine, but the responsibility of the fuel supplier and not the engine manufacturer. Any reputable fuel supplier (biodiesel, petrodiesel, or a blend of both) should stand behind its products and cover any fuel quality problems if they occur.

Therefore, the most important aspect regarding engine warranties and biodiesel is whether an engine manufacturer will void its parts and workmanship warranty when biodiesel is used, and whether the fuel producer or marketer will stand behind its fuels should problems occur.

Most major engine companies have stated formally that the use of blends up to B20 will not void their parts and workmanship warranties. This includes blends below 20% biodiesel, such as the 2% biodiesel blends that are becoming more and more common. Several statements from the engine companies are available on the [NBB website](#). Some engine companies have already specified that the biodiesel must meet ASTM D-6751 as a condition, while others are still in the process of adopting D-6751 within their company or have their own set of guidelines for biodiesel use that were developed prior to the approval of D-6751. It is anticipated that the entire industry will incorporate the ASTM biodiesel standard into their owner's manuals over time.

The National Biodiesel Board, the trade association for the biodiesel industry, has formed the National Biodiesel Accreditation Commission (NBAC) to audit fuel producers and marketers in order to enforce fuel quality standards in the US. NBAC issues a 'Certified Biodiesel Marketer' seal of approval for biodiesel marketers that have met all requirements of fuel accreditation audits. This seal of approval will provide added assurance to customers, as well as engine manufacturers, that the biodiesel marketed by these companies meets the ASTM standards for biodiesel and that the fuel supplier will stand behind its products.

With biodiesel that meets the D-6751 specification, there have been over 45 million miles of successful, problem-free, real-world operation with B20 blends in a wide variety of engines, climates, and applications. The steps taken by the biodiesel industry to work with the engine companies and to ensure that fuel meets the newly accepted ASTM standards provides confidence to users and engine manufacturers that their biodiesel experiences will be positive and trouble-free.

- [Caterpillar](#)
- [Cummins](#)
- [Detroit Diesel](#) - (extracted pages from DDC's Sept 2002 Lubricating Oil, Fuel and Filters Engine Requirements guide. For a complete copy of the document visit: <http://www.detroitdiesel.com/public/technicalguides/7se270.pdf>)
- [International](#)
- [John Deere](#)

• [General Interest](#)
 • [Premium Diesel](#)
 • [Mining](#)
 • [Transect](#)
 • [Marine](#)
 • [Fleets](#)
 • [Electrical Generation](#)
 • [Heating Oil](#)
 • [Farming](#)

3337a Emerald Lane • PO Box 104898 • Jefferson City, MO 65110-4898
 (800) 841-8849 • Fax (873) 638-7913 • info@biodiesel.org

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NEWS

FOR IMMEDIATE RELEASE

Contacts: Jenna Higgins/National Biodiesel Board
1-800-841-5849
Steve Howell/ASTM biodiesel taskforce chairman
(816) 635-5772

May 3, 2002

ASTM Issues Biodiesel Fuel Standard

Fuel specification will increase consumer confidence and streamline purchase process

WASHINGTON, DC – The premier standard-setting organization in the United States has issued a fuel specification for biodiesel, an alternative fuel that can be made from any fat or oil, such as soybean oil. The American Society of Testing and Materials (ASTM) issued Specification D 6751 for all biodiesel fuel bought and sold in the U.S., marking a major milestone for the biodiesel industry.

"Now that the full standard is in place, it sets the bar for all biodiesel production," said Steve Howell, Chairman of the ASTM Biodiesel Standards Task Force. "It will help protect consumers from poor products and reduce the cost of buying and selling biodiesel. While many adopted the provisional specification in 1999 [PS 121], those that didn't had to negotiate a specification. With the final passage of D 6751, they won't have to go through that process any more."

Although ASTM Committee D2 approved the standard in December, it only recently became available to the public. The process of reaching the standard, entitled "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," was extremely thorough according to ASTM officials.

"The biodiesel standard was developed through a consensus process that reflects many points of view," said Dave Bradley, ASTM Manager, Committee D2. "You have fuel producers, users, engine makers and others all having an opportunity to provide input." The ASTM Biodiesel Task Force began working on the standard in 1994.

Biodiesel can be used in any diesel engine, usually with no modifications to the engine necessary. It performs comparably to diesel, with similar BTU content and higher cetane. It offers excellent lubricity and lower emissions compared to petroleum diesel. D 6751 covers the incorporation of pure biodiesel (B100) into conventional diesel fuel up to 20 percent by volume (B20). Higher blend levels may be acceptable, depending on the experience of the engine company. More than 100 major fleets currently use B20, including the U.S. Postal Service, the City of Philadelphia, the U.S. Department of Agriculture (USDA), several public transit systems, national parks, school districts, private recycling and concrete companies and the National Aeronautics & Space Administration (NASA).

Biodiesel is registered with the Environmental Protection Agency (EPA) as a fuel and fuel additive. It is the only alternative fuel to have completed the rigorous Health Effects testing requirements of the Clean Air Act. Results show biodiesel reduces carcinogenic air toxics by 75-90% compared to diesel. Pure biodiesel (B100) is also non-toxic, biodegradable and essentially free of sulfur. Emissions it reduces include particulate matter, unburned hydrocarbons, carbon monoxide and sulfates. B100 (pure biodiesel) also reduces life cycle carbon dioxide by 78% compared to petroleum diesel according to a joint U.S. Department of Agriculture/Department of Energy study.

Those interested in getting a copy of the standard can buy it for \$30 at www.astm.org. To contact ASTM customer service directly, call (610) 832-9585 or e-mail service@astm.org.

Readers can learn more about biodiesel by visiting www.biodiesel.org. The National Biodiesel Board is funded in part by the United Soybean Board and state soybean board checkoff programs.

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Operator's Signature

10/2/02
Date



Charles Hatcher
<hatch_ch@yahoo.co
m>

To: pgulleso@state.nd.us
cc: tgrgr@rrt.net
Subject: email from Terry Goerger

02/26/2003 12:56 PM

Chairman and committee members of the Finance and Taxation Committee. My name is Terry Goerger and I am an agriculture producer from Mantador in Richland County North Dakota. I am in support of HB 1309.

I have used Biodiesel at a 20% blend for the last two years in all diesel engines on my farm. I have not encountered any problems with power loss, in fact older engines run smoother with biodiesel. There is a cleaner burn with biodiesel and a cooking oil smell from exhaust using 20% blend Biodiesel. My experience with biodiesel has been all positive. A concern I have with the fuel standards to take effect in 2006 is that the process to remove sulphur down to 15ppm will remove more lubricity from the fuel requiring me to add lubricity back in. Biodiesel does this at a blend as low as 2%.

There are several reasons I believe it is time to move ahead with the use of biodiesel in the state of North Dakota.

In the US, 52% of the petroleum used is imported.

Our reliance on foreign suppliers is costing us billions if not trillions to protect that supply. But we have not done enough to protect and develop our own domestic supplies of renewable fuel. If we would, there would be an expansion of a fairly new industry, thereby helping the economic base in the state of ND and the US. Ag producers have done a great job of growing fiber and food for all and now we want to GROW THE ENERGY, produced right here in ND, for your use and the future of our state. Support of biodiesel will be good for the economy.

In ND we don't worry too much about the environment and what EPA reveals that long term exposure to diesel exhaust will likely cause lung cancer. Also, biodiesel reduces compounds linked to cancer by 80-90% compared to petro diesel. By using biodiesel the hydrocarbons, particulate and carbon dioxide emissions are greatly reduced. Also a study shows a diesel engine school bus sitting by a curb will have the same amount of fumes and pollutants in the bus as outside after 20 minutes. Support of biodiesel will help protect our environment and our children.

Again our reliance on foreign supplies of energy put our country at risk of not having enough to meet the needs of the people of the US and ND. Use of biodiesel will take off the pressure of that 52% reliance on foreign supplies giving us a more secure source and domestic supply of energy for today and into the future. Support of biodiesel will assist in energy security for us today and far into the future.

Other states have passed this type of legislation and many others have proposed legislation similar to this bill and proposed legislation at the federal

La Costa Rickford
Operator's Signature

10/2/03
Date

level is following what I hope to see accomplished by this bill.

Now is the time to build a new industry, use more renewable energy, help an ag economy we already have and build a clean future for ourselves and our children. Economy, Environment and Energy Security. Seems like very good reasons to use and promote biodiesel. It is the right thing to do. All citizens benefit from the use and promotion of biodiesel and help build a better tax base for ND. WE just need some help to get it all going. I urge you to pass HB 1309. Thank You.

Terry Goerger, 8475 Co Rd 3, Mantador, ND 58058
701-242-7007 tgrgr@rrt.net

Do you Yahoo!?

Yahoo! Tax Center - forms, calculators, tips, more
<http://taxes.yahoo.com/>

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La Costa Rickard
Operator's Signature

10/2/03
Date

Roger Johnson
Agriculture Commissioner
www.agdepartment.com



Phone (701) 328-2231
Toll Free (800) 242-7535
Fax (701) 328-4567

600 E Boulevard Ave., Dept. 602
Bismarck, ND 58505-0020

Testimony of Roger Johnson
Agriculture Commissioner
House Bill 1309
Senate Transportation Committee
Lewis & Clark Room
February 28, 2003

Chairman Trenbeath and members of the Transportation Committee, I am Agriculture Commissioner Roger Johnson. I am here today to offer testimony on HB 1309, which as amended, now only relates to a corporate income tax credit for a portion of the cost of retrofitting a facility for producing or blending diesel fuel containing biodiesel fuel.

HB 1309, in its original form, required that diesel fuel contain 2% biodiesel by July 1, 2007, provided that plants in this state have a production capacity that exceeds five million gallons and provided that a federal incentive is in place that reduces the price of fuel containing biodiesel by 2%.

I would urge this committee to amend the engrossed version of HB 1309 and add back in 2% biodiesel requirement in diesel fuel into this legislation. These provisions are certainly appropriate and should seem to provide ample "ramp up" time and appropriate predictability for the industry.

La Costa Rickford
Operator's Signature

10/3/03
Date

Biodiesel is the name for a variety of ester-based oxygenated fuels made from soybean oil or other vegetable or animal fats. Biodiesel can be used as a pure fuel and as a blending stock with petrodiesel. According to the ND Soybean Council, 25 retail locations in North Dakota currently offer biodiesel for sale to their customers.

Although biodiesel can be made from vegetable or animal plants, North Dakota's focus is primarily on biodiesel produced from soybean oil. Soybeans are a plentiful cash crop in North Dakota, with Cass County as the #1 soybean producing county in the country (2001).

Based on statistics compiled by the North Dakota Soybean Growers Association, approximately 3% of North Dakota's soybean production would be processed and utilized as biodiesel if the 2% biodiesel requirement in diesel fuel was put in place. North Dakota's annual diesel usage is approximately 162,422,000 gallons. The ND State Fleet's annual diesel usage is 900,000 gallons.

Biodiesel can be substituted for petroleum diesel in virtually any standardized diesel engine. And, used in small percentages (as proposed in this legislation) biodiesel can dramatically increase the lubricity of diesel fuel. Since the implementation of EPA regulations that require reduced sulfur content in diesel fuel from 5000 to 500 parts per million, significant wear problems have emerged in high-pressure diesel fuel pumps. These problems are expected to increase as EPA attempts to phase in an additional sulfur content reduction of diesel fuel to 15 parts per million by 2007. Biodiesel may very well be the best lubricity additive on the market,

thus becoming an even more important renewable fuel. (A copy of "Commonly Asked Questions," compiled by the National Biodiesel Board (February 2002) is attached for your information.)

We can and must do more to promote the production and usage of renewable fuels such as biodiesel. The US marketplace is too often overlooked by agriculture as we focus on acquiring new international markets. Biodiesel and ethanol are great examples of new demand as opposed to displaced demand often resulting from new international markets. Both are important, but new demand results in a bigger pie, not just a bigger piece of the old pie.

I believe that a combination of the 2% requirement and corporate tax credits will provide appropriate incentives and requirements for the use of biodiesel in the state of North Dakota. I would urge this committee to amend the first engrossment of this legislation to include a 2% requirement for biodiesel in diesel fuel, contingent on the conditions set forth in the original legislation. Chairman Trenbeath and committee members, I would be happy to answer any questions you may have.

FARMERS UNION OIL OF SOUTHERN VALLEY

204 Front Street
PO Box 153
FAIRMOUNT ND 58030
701-474-5440 • 800-382-9046



711 Buffalo Avenue Suite A
BRECKENRIDGE MN 56520
218-643-2651 • 800-554-2647

February 26, 2003

North Dakota State Finance & Tax Committee
Bismark, ND

Re: HB1309 Biodiesel mandate

Keith and I represent Farmers Union Oil of Southern Valley at Fairmount, ND.

We started a Biodiesel program last year. We sold 79,000 gallons ranging from B2 to B20. The end users were farmers. We have not had any complaints from any of the users. Some of the Biodiesel was used this winter. The farmer, in some cases, added an anti-gel additive. A milder winter did not challenge us a much. All blending was made before the cold weather.

The Pros for us are that our farmers will be able to use an alternate fuel to ease the pressure on imported petroleum. The farmer can determine the percentage he/she would be comfortable trying. Biodiesel will offer our growers an alternate use for their product that could help them get more for their soybeans. Our customers are asking for Biodiesel.

Farmers Union Oil of Southern Valley plans to install a new tank at one-site and change products in a tank at another site to carry bulk soy oil. We are investing over \$23,000 in this project. **We want to be a leader in Southeast North Dakota in promoting a farmer value added product to our customers.** We have made a commitment to our customers to offer Biodiesel. They need to decide what percentage they want. **Farmers Union Oil of Southern Valley will be using Biodiesel in all of our rolling stock this year.** Our Ag equipment including Terra Gators, Row Gators, Tractors, and Trucks will be using B5. We will track maintenance, performance, and equipment compatibility.

We believe that in the long haul Biodiesel could increase the soybean price our North Dakota farmers receive by 12 to 14 cents per bushel. The Ag industry needs this boost and we don't have to import the results. It happens right here. Once we start using Biodiesel, it will create some North Dakota jobs as well. A number of years ago we promoted the use of an ethanol blend gasoline. Last year our total gasoline sales were 57.5 percent ethanol blended gas. This means that our customers are using a product that they help bring to the market. This is all gas sold through bulk delivery and our four retail islands.

Sincerely,

MOORETON ND
701-274-8288

FAIRMOUNT AG
701-474-5882



BRECKENRIDGE AG
218-643-5578

WAHPETON ND
701-642-8035

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La Costa Rickford
Operator's Signature

10/3/03
Date

TESTIMONY BEFORE THE HOUSE

TRANSPORTATION COMMITTEE

HB 1309

MARY LOFTSGARD

FEBRUARY 28, 2003

Chairman Trenbeath, members of the committee, for the record, my name is Mary Loftsgard. I am the supervisor of the Corporate Income Tax Section of the Office of State Tax Commissioner. I appear before you today neither in support of, or opposition to, HB 1309. Rather, I am here to address some questions we have regarding the tax credit provided in the bill.

The original version of HB 1309 contained a section requiring that, by July 1, 2007, all diesel fuel sold or offered for sale in North Dakota contain at least 2% biodiesel fuel. This section was amended out in the first engrossment of the bill and what remains in the bill before you is simply a provision for a tax credit. The tax credit would be based on a percentage of "costs incurred" to adapt or equip a plant to produce such biodiesel fuel.

We have a number of questions about the provisions for the credit. Let me begin with Line 11 of the bill which indicates the credit is available for costs in a "facility required to produce or blend diesel fuel..." [Emphasis added]. Since the bill no longer contains a requirement for a biodiesel blend, we question whether the credit will actually be available until such a requirement is put in place.

We also would appreciate clarification as to whether the credit is available for costs incurred at any facility, wherever located. As it is currently written, HB 1309 does not specify the facility must be in North Dakota. Consider then a corporation which does business in both Minnesota and North Dakota, but has a facility in Minnesota which it is adapting to produce biodiesel fuel. As the bill is written now, it appears the corporation would be allowed to take a credit on its North Dakota tax return for the costs incurred at the Minnesota facility.

Lines 9 through 11 of HB 1309 indicate the credit to be allowed is "...ten percent per year for five years of the taxpayer's costs incurred to adapt or add equipment to a facility..." We would appreciate clarification as to what "costs" are to be allowed in computing the credit. Are these only direct costs such as the cost of machinery and installation? Or may the costs include indirect costs, such as an administrative or overhead charge from a corporation's headquarters?

HB 1309 is effective for taxable years beginning after December 31, 2002. Does this also mean that only "costs" incurred subsequent to taxable years beginning after December 31, 2002 may be included in computing the credit? Or, if a facility has incurred costs prior to that date, may these costs be included in computing the credit for the first taxable year after December 31, 2002?

The last question I have relates to lines 12 and 13 of the bill which indicate the biodiesel fuel "...means fuel meeting

the specifications adopted by the American society for testing and materials". Tax Department employees are not trained in assessing such specifications and we are uncertain how it would be determined that the specifications have been met.

The Tax Department is available to assist in drafting any changes to the bill the committee might feel would clarify the items I have addressed. If there are any questions, I will be glad to respond.

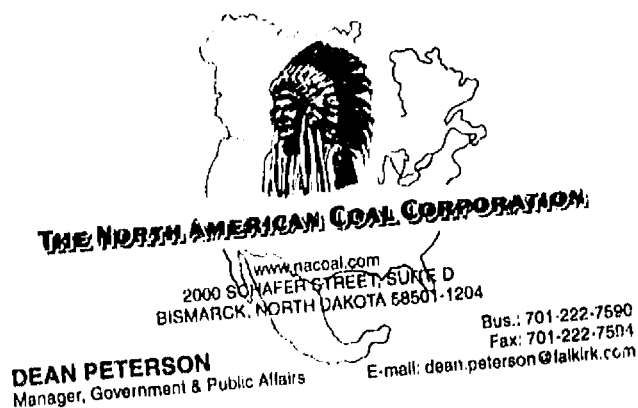
Ja Costa Rickford
Operator's Signature

10/2/03
Date

Dean Peterson

Concerning HB1309

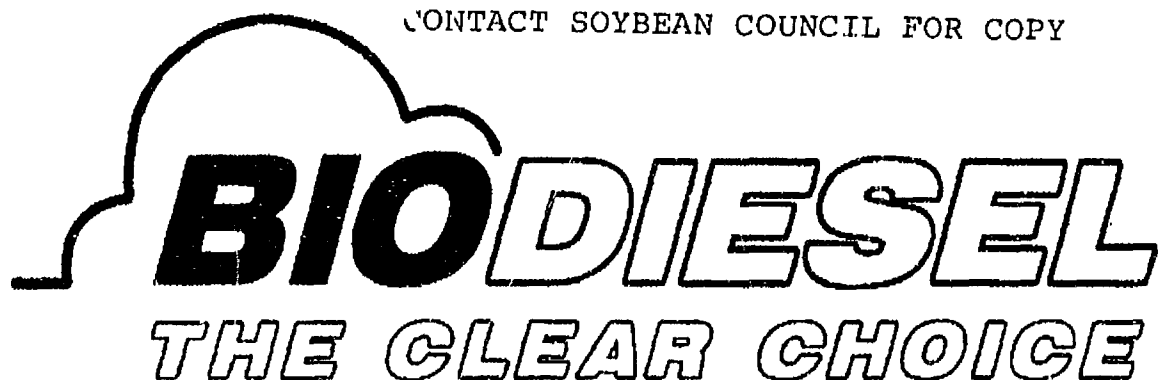
We do note that subsection 3 of section 1 provides for an exemption for "off-road coal mining equipment and machinery" from the provisions of this proposed bill. For the sake of clarity we would request that the words "~~off road coal mining equipment and machinery~~" be deleted from line 21 and the words "surface coal mining and reclamation operations as defined in NDCC 38-14.1" be inserted.



La Costa Rickford
Operator's Signature

10/3/03
Date

CONTACT SOYBEAN COUNCIL FOR COPY



Facts and Information About Biodiesel

February 2003



1411 32nd Street SW

Fargo, ND 58103

1-888-469-6409

Fax: (701) 239-7195

soybeancouncil@ndsoybean.org

www.ndsoybean.org

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Lu Costa Rickford
Operator's Signature

10/3/03
Date



COMMONLY ASKED QUESTIONS

What is Biodiesel?

Biodiesel is the name of a clean burning alternative fuel, produced from domestic, renewable resources. Biodiesel contains no petroleum, but it can be blended at any level with petroleum diesel to create a biodiesel blend. It can be used in compression-ignition (diesel) engines with no major modifications. Biodiesel is simple to use, biodegradable, nontoxic, and essentially free of sulfur and aromatics.

Is biodiesel used as a pure fuel or is it blended with petroleum diesel?

Biodiesel can be used as a pure fuel or blended with petroleum in any percentage. B20 (a blend of 20 percent by volume biodiesel with 80 percent by volume petroleum diesel) has demonstrated significant environmental benefits with a minimum increase in cost for fleet operations and other consumers.

Is it approved for use in the US?

Biodiesel is registered as a fuel and fuel additive with the Environmental Protection Agency (EPA) and meets clean diesel standards established by the California Air Resources Board (CARB). Neat (100 percent) biodiesel has been designated as an alternative fuel by the Department of Energy (DOE) and the US Department of Transportation (DOT).

How do biodiesel emissions compare to petroleum diesel?

Biodiesel is the only alternative fuel to have fully completed the health effects testing requirements of the Clean Air Act. The use of biodiesel in a conventional diesel engine results in substantial reduction of unburned hydrocarbons, carbon monoxide, and particulate matter compared to emissions from diesel fuel. In addition, the exhaust emissions of sulfur oxides and sulfates (major components of acid rain) from biodiesel are essentially eliminated compared to diesel.

Of the major exhaust pollutants, both unburned hydrocarbons and nitrogen oxides are ozone or smog forming precursors. The use of biodiesel results in a substantial reduction of unburned hydrocarbons. Emissions of nitrogen oxides are either slightly reduced or slightly increased depending on the duty cycle of the engine and testing methods used. Based on engine testing, using the most stringent emissions testing protocols required by EPA for certification of fuels or fuel additives in the US, the overall ozone forming potential of the speciated hydrocarbon emissions from biodiesel was nearly 50 percent less than that measured for diesel fuel.

Can biodiesel help mitigate "global warming"?

A 1998 biodiesel lifecycle study, jointly sponsored by the US Department of Energy and the US Department of Agriculture, concluded biodiesel reduces net CO₂ emissions by 78 percent compared to petroleum diesel. This is due to biodiesel's closed carbon cycle. The CO₂ released into the atmosphere when biodiesel is burned is recycled by growing plants, which are later processed into fuel.

Is biodiesel safer than petroleum diesel?

Scientific research confirms that biodiesel exhaust has a less harmful impact on human health than petroleum diesel fuel. Biodiesel emissions have decreased levels of polycyclic aromatic hydrocarbons (PAH) and nitrated PAH compounds that have been identified as potential cancer causing compounds. Test results indicate PAH compounds were reduced by 75 to 85 percent, with the exception of benzo(a)anthracene, which was reduced by roughly 50 percent. Targeted nPAH compounds were also reduced dramatically with biodiesel fuel, with 2-nitrofluorene and 1-nitropyrene reduced by 90 percent, and the rest of the nPAH compounds reduced to only trace levels.

Does biodiesel cost more than other alternative fuels?

When reviewing the high costs associated with other alternative fuel systems, many fleet managers have determined biodiesel is their least-cost-strategy to comply with state and federal regulations. Use of biodiesel does not require major engine modifications. That means operators keep their fleets, their spare parts inventories, their refueling stations and their skilled mechanics. The only thing that changes is air quality.

Do I need special storage facilities?

In general, the standard storage and handling procedures used for petroleum diesel can be used for biodiesel. The fuel should be stored in a clean, dry, dark environment. Acceptable storage tank materials include aluminum, steel, fluorinated polyethylene, fluorinated polypropylene and teflon. Copper, brass, lead, tin, and zinc should be avoided.

Can I use biodiesel in my existing diesel engine?

Biodiesel can be operated in any diesel engine with little or no modification to the engine or the fuel system. Biodiesel has a solvent effect that may release deposits accumulated on tank walls and pipes from previous diesel fuel storage. The release of deposits may clog filters initially and precautions should be taken. Ensure that only fuel meeting the biodiesel specification is used.

Where can I purchase biodiesel?

Biodiesel can be made available anywhere in the US. The National Biodiesel Board (NBB) maintains a list of registered fuel marketers. A current list is available on the biodiesel web site at www.biodiesel.org or by calling the NBB at (800) 841-5849.

Who can answer my questions about biodiesel?

The NBB maintains the largest library of biodiesel information in the US. Information can be requested by visiting the biodiesel web site at www.biodiesel.org, by emailing the NBB at info@nbb.org, or by calling NBB's toll free number (800) 841-5849.



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Coalition Against Mandates

The organizations listed below oppose government mandates. The free enterprise system should depend upon consumer choice and competition to determine the products offered in the marketplace.

Government mandating the offering of a certain product or service is not necessary as consumer demand will create self-sustaining markets.

We want to make it eminently clear that we are not against agriculture. We fully realize the importance of agriculture's vital role in the North Dakota economy.

However, we oppose bad economic policy. Mandates restrict competition, infringe on free-enterprise, and can result in supply/distribution problems in the economy. What economic development message is being sent if government tells business which products must be sold and to consumers which products must be purchased?

Once government mandates one product, what product or service would be next? Would the government next decide what type of tractors farmers must own? Would there be a government mandate indicating what type of meat a grocery store must sell?

Associated General Contractors	Bismarck/Mandan Development Association
Bismarck/Mandan Chamber of Commerce	Burlington Northern Santa Fe Railway Company
Caterpillar	Devils Lake Chamber of Commerce
E.W. Wylie Corporation	Greater North Dakota Association
Lewis Truck Lines	Midwest Motor Express
North Dakota Grocers Association	North Dakota Motor Carriers Association
North Dakota Retail Association	North Dakota Petroleum Council
Ottertail Power Corporation	National Federation of Independent Business
PACE Local 7-10	North Dakota Petroleum Marketers Association
Qwest Corporation	Tesoro Petroleum
Utility Shareholders of North Dakota	Xcel Energy