

2009 HOUSE FINANCE AND TAXATION

HB 1489

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1489**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: **February 3, 2009**

Recorder Job Number: 8438

Committee Clerk Signature



Minutes:

Chairman Belter opened the hearing of HB 1489.

Representative Craig Headland, District 29, introduced the bill. This tweaks a credit that is already available for biodiesel production. We are adding language that would allow canola or a soybean crushing facility to take advantage of this the tax credit that is not being utilized as we saw it when we passed the legislation. Soybeans are a large crop for the state now and we do not do a lot of processing in the state currently. Most of our soybeans are being shipped out. This costs the producer. We believe this bill would encourage a facility that is being talked about to possibly look at locating in the state instead of a neighboring state. This bill transfers an available credit for biodiesel which is not being utilized because it is not profitable. This would allow a facility to crush soybeans and canola and use those oils for products that are today profitable. The way the bill was written it did not specifically address a facility. I had this amendment drafted to take care of that. **(Attachment 1)**

Scott Rising, ND Soybean Growers Association, testified on behalf of the bill. **(Attachment 2)**

Representative Pinkerton: This looks like a very good bill but I question why are limiting to soybeans and canola and not including sunflowers?

Rising: Let me share with you a discussion I had about 10 days ago with a gentlemen from the sunflower community. His pitch to me was that they have market for their product that they can't achieve fulfilling already. I am aware there are places in the country that produce sunflower oil to produce biodiesel. I don't know that there are very many producing for biodiesel. I don't know if it has gone beyond testing.

Representative Pinkerton: The way I understand the bill it doesn't limit it to be for biodiesel.

Rising: No, that's the idea behind the cyclical part. Rather than have a plan based on the biodiesel market, this allows selling oil to the market. As the biodiesel comes up at some point, it will be available for that too. They will go where the market is the most profitable. The idea is not to create something that starts up and stops. That creates a myriad of problems.

Representative Pinkerton: The \$250,000 that was established in 2002 doesn't seem like that would be enough money. Was some thought given to making it a larger amount.

Rising: I would agree with you. It does allow us to move away from the start and stop scenario. What's important here is to let the market send the signal that we are open for business.

Representative Pinkerton: The construction of the plant—is that construed so a co-op could use it?

Rising: I will have to defer that question. I don't know.

Representative Froseth: The canola crushing plant in Velva was not able to take advantage of this tax credit. Is that right?

Rising: I don't know.

Representative Froseth: Are there plans to build such a facility in the state?

Rising: I am aware, because I talked about this issue a couple of time, that some are certainly considering it. I am aware of a group in the eastern part of the state that is seriously considering it. They have been at this for a couple of years.

Robert Runck, Jr., board member, ND Soybean Growers Association, testified in favor of the bill. (Attachment 3)

Representative Froseth: Where do your soybeans go now to be crushed?

Runck: Most go to the Pacific Northwest by rail. There are also crushing facilities on the Minnesota and South Dakota side. We used to have one in Enderlin.

Representative Froseth: How about the finished product then? How do you move that?

Runck: They would. Last winter I put on about 2800 miles traveling the eastern and western soybean areas, specifically looking at crushing and biodiesel facilities. You have biodiesel facilities that can be of any size—some as much as a million gallon. As far as distribution, yes we would need to be able to distribute the oil across various areas and probably out of state also depending on the size of the crushing facility. My discussion with folks from Missouri, where I think they are far advanced with this area, is that you need to build to scales of economy. The crushing plant has to be of a big enough size. If you build a crushing facility to scale of the biodiesel, your crushing margins are not enough. If you have a mega-crushing facility you have distribution to smaller biodiesel.

Representative Brandenburg: Isn't there some new technology . . . unintelligible.

Runck: BRC in Grand Forks have been working with hydro and splitting the molecule and then putting it back together. This renewable fuels industry—we are not close to what is happening—it is moving fast. What we are trying to do with this legislation is be ready.

Barry Pullman, ND Canola Growers' Association, spoke in favor of the bill. We have four crushing plants in the state that crush canola. They probably crush 98% of the canola grown

here. The processing is certainly good for the state. Last year it was kind of rumored that BDM might put in a larger extractor which costs about \$15 million. I would certainly hope that it can be done. I think something like this bill would help to push them over the edge and actually make that commitment. If we had more people competing for the grower's soybeans and canola, it is certainly better for the growers. Canola oil has grown in the US. The use for food has grown six times in five years—it's just phenomenal growth. We are taking market share away from other products. The unfortunate thing is the growers north of the border have benefitting primarily. We think this bill would offer better opportunities for our industry.

Deana Wiese, administrator, ND Ag Coalition spoke in support of the bill. **(Attachment 4)**

Representative Winrich: I would like to ask a question of the tax department. This would extend the tax credit to crushing facilities. Earlier we heard another bill, 1066, that created an income tax credit for manufacturing equipment. I know there are certain sales tax exemptions for manufacturing. Could we find out if I build a soybean crushing plant how many tax credits I qualify for.

Mary Loftsgard, associate director, office of the Tax Commissioner: Off the top of my head I can't tell you that but we can certainly take a look at that and get back to you.

Representative Pinkerton asked whether a co-op could take advantage of these credits.

Co-ops do file as corporations and this is only a corporate tax credit. It is not available to

individuals. Yes co-ops can take advantage of this credit. I would like to point out that

cooperatives are only taxable on the non patronage income. I assume this would be

patronage because the dividends would go back to the members of the co-op. Yes, a co-op

could benefit, but whether or not there would be income enough to take a lot of benefit. That

would be a question I would ask.

Representative Pinkerton: If the sponsor so chose, could the legislation be rewritten so that it would be a credit to a pass through entity—a co-op and a corporation?

Loftsgard: As far as a co-op, there is no reason to change anything but certainly there are other credits where there is language in the statute that says if it is a pass-through entity essentially the credit then flows through the members or the partners however you make the statute applicable.

Representative Headland: In 57.38.06, there are credits available to taxpayers for the development of qualified businesses already. I think for individuals who would invest in a co-op there currently are tax credit available already.

There being no further testimony, Chairman Belter closed the hearing of 1489.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1489

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/04/09

Recorder Job Number: 8630

Committee Clerk Signature *Lou Engelson*

Minutes:

Chairman Belter opened the hearing on HB 1489.

Chairman Belter: Are there any amendments to that?

Rep. Kelsh: I could get an amendment that we need to put on.

Chairman Belter: The amendments have been moved by Rep. Kelsh. Do I have a second?

Rep. Grande: Second.

Chairman Belter: Any discussion on the amendments? .101 is that correct? Page 1, line 2 after "crushing" you put "facility". And on page 1, line 8 after "crushing" insert "facility". Page 1, line 14 replace "crushing" with "producing crushed". Any discussion on the amendments? Seeing no discussion, all those in favor of amendments .0101 for 1489 indicate by saying yes. Those opposed say nay. Hearing no opposition, amendments are passed. We have HB 1489 as amended before us. What are the committees wishes.

Rep. Brandenburg: I make a motion for a do pass.

Chairman Belter: A motion by Rep. Brandenburg is a do pass. Is there a second?

Rep. Schmidt: Second.

Chairman Belter: Rep. Schmidt, you can second that one. Discussion? As amended, does this one have fiscal note? We'll check that.

Rep. Winrich: During the hearing on this debate, at close, I asked the tax department about other credits that might be applicable to building such a crushing facility. I think this was distributed to all the committee but I'd just like to review it. The memorandum from Mary Loftsgard. (See attachment #1) In addition to this tax credit, the tax benefit for building a new crushing facility or expanding an existing business includes a property tax exemption for new and expanding businesses that may be granted by the local governing body for up to five years, sales tax exemptions for construction materials to construct an agricultural commodity processing facility and for machinery and equipment used primarily for manufacturing or agricultural processing. Primary sector business income tax credit that is available to a business that adds value to a product or process that brings new wealth in North Dakota. Investors in an agricultural processing facility may claim an income tax credit based on their investment so that the investors in such a facility would get a personal tax credit. There are also three different income tax credits that are related to the production of biodiesel fuel. If the soy bean or canola oil is actually used in the production of biodiesel, and there are four other tax credits that are listed here that may be available depending on how the business is operated including a credit for the installation of biomass geothermal solar or wind energy, employing interns, research and experimental expenditures or workforce recruitment. I guess I'm beginning to share Rep. Wrangham's suspicion of income tax credits. If all of these incentives are not working to encourage the building of these facilities, I would like to see some evidence that this one might work.

Rep. Headland: I would like to address that. These credits are currently available. However, if you look on the sheet that Mary Loftsgard distributed, number 3 on the second page. A corporation is allowed that credit. That's true for biodiesel. However, what this bill is seeking to do is expand that just to a crushing facility that chooses maybe not to produce biodiesel.

The credit is there for biodiesel so it's not really an expansion of credits. For whatever reason, I can't explain why it hasn't been utilized for biodiesel. However, it's pretty clear that in that section it's directed at biodiesel. We're just trying to allow a crushing facility to use their products in some other way and not be forced to make biodiesel. That's where the expansion of the credits exist. So it's not a new credit essentially. We're trying to allow a facility not to have to be forced to take advantage of the credit without being forced to make biodiesel.

Chairman Belter: Other comments?

Rep. Froseth: I think it was also pointed out soy beans might be crushed for other purposes than for oil. That was clearly defined in that definition.

Chairman Belter: Further comments on 1489.

Rep. Pinkerton: In the Bismarck paper I noticed that there was an article that a canola plant had closed in North Dakota. I think it's really important for our livestock industry and for many reasons that we have crushing in the state, and I certainly support this bill.

Chairman Belter: Other comments? Seeing none I'll ask the clerk to read a do pass as amended on HB 1489.

The roll call was read by the clerk.

11 yes, 2 no, 0 absent. Rep. Brandenburg was assigned to carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: HB 1489

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1489 creates a corporate income tax credit for soybean and canola crushing equipment costs.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact of HB 1489 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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	02/02/2009

90885.0101
Title.

Prepared by the Legislative Council staff for
Representative Headland
January 30, 2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1489

Page 1, line 2, after "crushing" insert "facility"

Page 1, line 8, after "crushing" insert "facility"

Page 1, line 14, replace "crushing" with "producing crushed"

Renumber accordingly

VR
2/4/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1489

Page 1, line 2, after "crushing" insert "facility"

Page 1, line 8, after "crushing" insert "facillity"

Page 1, line 14, replace "crushing" with "producing crushed"

Renumber accordingly

Amendment passed.

Date: 2/4/09

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1489

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Brandenburg Seconded By Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich	/	
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt	/	
Representative Grande		/	Representative Winrich	/	/
Representative Headland	/				
Representative Weiler	/				
Representative Wrangham	/				

Total (Yes) ~~10~~ 11 No ~~1~~ 2

Absent 0

Floor Assignment Brandenburg

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

REPORT OF STANDING COMMITTEE

HB 1489: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1489 was placed on the Sixth order on the calendar.

Page 1, line 2, after "crushing" insert "facility"

Page 1, line 8, after "crushing" insert "facility"

Page 1, line 14, replace "crushing" with "producing crushed"

Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HB 1489

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1489

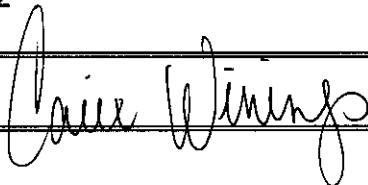
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/04/2009

Recorder Job Number: 10182

Committee Clerk Signature



Minutes:

Chairman Cook: opened hearing on HB 1489.

Representative Craig Headland, District 29: Testified as sponsor and in support of the bill.

(Explained the bill). This bill would allow a facility to produce crushed soybeans or canola and continue to receive to get a credit. Currently biodiesel is not profitable, and there are a lot of other uses for the product. The impact would be minimal compared to what the benefit would be.

1.58 **Chairman Cook:** The bill does say to retrofit a facility as well.

Rep. Headland: You are correct.

3.15 **Vice Chairman Miller:** Testified in support of the bill. Crushing plants could be an important part towards building a stronger local and rural economy. Crushing plants could be much more profitable in the smaller communities in North Dakota. This credit could move a group of investors to start a facility.

5.00 **Senator Dotzenrod:** Testified in support of the bill. My thought on this bill is that it is a hand in glove relationship between the biodiesel and the crushing. Those plants that are going to do biodiesel are going to have to have some way of doing something on the order of crushing or a process that involves crushing and that if they are going to market this product,

they may need to have an ability to enter the market where they can do the biodiesel and at the same time if that market isn't good at the time, they may be able to use that plant for other things.

6.45 **Senator Anderson:** Counties do have the ability to do something like this or do they not?

Senator Dotzenrod: I think with property tax and I don't know on income tax if they can or not.

Chairman Cook: I looked at this bill and I look at the language that starts at the end of line 11 with the word or and if I were to take the word or out and all of line 12 out, all of line 13 out, all of line 14 out up to the word producing, would it have any change to this bill whatsoever?

Senator Dotzenrod: I think it will have. They are talking about adding equipment or to take an existing facility in this state for producing these crushing facilities. I think that is an important part of the bill.

Chairman Cook: I need to understand exactly what we are doing.

8.39 **Bob Runck, North Dakota Soybean Growers Association, Casselton Farmer:** See Attachment #1 for testimony in support of this bill.

13.45 **Senator Dotzenrod:** Where is the nearest facility?

Bob Runck: Brewster, MN.

Senator Dotzenrod: The soybean biodiesel, where is it coming from?

Bob Runck: It is imported from Minnesota.

15.29 **Senator Anderson:** The way I read this, it is \$250,000 total.

Bob Runck: \$50,000 a year for 5 years.

Senator Anderson: What if you take \$40,000 one year; can you take \$60,000 the next?

Chairman Cook: The tax department will answer that.

17.00 **Scott Rising, North Dakota Soybean Growers Association:** See Attachment #2 for testimony in support of the bill.

31.50 **Chairman Cook:** What is Minnesota's tax policy on something like this?

Scott Rising: I am not sure, I would guess not as favorable as North Dakota.

Chairman Cook: Why is there a need for a tax credit to get this done?

Scott Rising: The only answer that I have is that the company that I know of that wants to come in looks at the credit as part of the package.

Bob Runck: North Dakota is a state that does not like mandates. We need to have better enhancements than other states to get businesses to come here. We have to give them more.

Chairman Cook: You are saying that because they have mandates that they are more likely to get a crushing plant than we are?

Bob Runck: I'd build where I can make the most money.

Senator Oehlke: Doesn't Northwood have a facility to crush soybeans?

Scott Rising: I thought they were crushing canola.

Senator Oehlke: They can't do soybeans?

Scott Rising: I cannot testify to that.

Bob Runck: To the best of my knowledge that the facility in Northwood went to canola and they cannot do the quantities needed.

38.40 **Scott Rising:** I could find that out for you.

38.55 **Barry Coleman, North Dakota Canola Growers Association:** Testified in support of the bill. We have crush plants in Enderlin, Velva, and West Fargo. The plants in Enderlin and West Fargo crush sunflowers as well as canola. The Fargo plants just picked up a contract with McDonalds to crush canola for oil for their fryers. Something like this would help businesses to come in here and more growth in the state would be good.

41.20 **Chairman Cook:** When you crush soybeans, what does the total amount come down to?

Scott Rising: I could check into that.

Chairman Cook: How many bushels does it take to make a gallon of oil?

Scott Rising: Appendix 4 of handout answers that.

43.00 **Deana Wiese, North Dakota Ag Coalition:** See Attachment # 3 for testimony in support of the bill. (75% of the members have to be in favor to testify)

Chairman Cook: Any further testimony? (no)

Senator Dotzenrod: Comments. (not pertinent to the bill)

Chairman Cook: I would like the tax department to weigh in on this. What does the bill accomplish if we take out the portion that I mentioned?

Mary Loftsgard, Tax Department: One of the things to consider is that I think that the original said that they needed to produce biodiesel that would blend of at least 2%, so you are taking out that requirement.

Chairman Cook: What does that requirement do if we amend the bill?

Mary Loftsgard: My understanding of what the intent was in the bill was to allow either a biodiesel production plant or a crushing facility. I think that is why the language is such.

Chairman Cook: They have to crush anyway to produce biodiesel.

Vice Chairman Miller: They can produce biodiesel out of just the oil and not have crushed it.

Chairman Cook: I see, it is clear now. Closed hearing.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1489

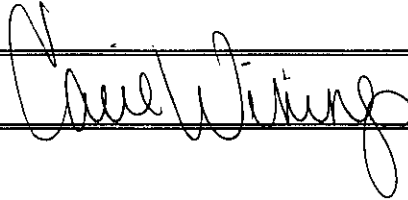
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 10989

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened Discussion on HB 1489. Comments?

Senator Anderson: I guess I have always been a fan to these kinds of credits for building. I am inclined to support it.

Senator Oehlke: I feel the same way. This could be a really good thing.

Chairman Cook: Asks Donnita Wald to take a look at it, and questions on exact language adding on lines 13 and 14. How long is this credit good for?

Donnita Wald: The credit is 10% for five years.

Chairman Cook: It is possible now with the existing law that there could be some investors that got a credit of 10% for five years to build a plant to produce biodiesel and now they could get another 10% credit for another five years to retrofit that very same plant.

Donnita Wald: To retrofit it to crush soybeans or canola.

Chairman Cook: Or we could amend for it to apply to a brand new facility?

Donnita Wald: I don't know if that would serve the purpose the bill was presented for. Are you wanting to make this easier to read or...?

Chairman Cook: I am thinking both. I am thinking that they could have built a plant to produce biodiesel as which they had an incentive of 10% for five years and then they could reinvest to change it over to crush and take another 10% credit on a separate investment.

Donnita Wald: Yes, on a new investment if it was to adapt or add in order to crush soybeans and quit doing the biodiesel, I don't think there are any that want to do that.

Chairman Cook: I think we heard that in testimony. There is definitely a market for the crushed product.

Donnita Wald: I also heard that. Instead of getting it crushed from in state, it would be more economical for them to be able to crush their own.

Senator Dotzenrod: To your knowledge has anyone used this section of the law?

Donnita Wald: Less than five have taken it according to the data I have.

Senator Hogue: It seems to me that ADA in Velva would have used it.

9.20 **Senator Triplett:** My problem with the bill is that I think that this particular tax credit was intended when it was written to help our alternative fuels industry. We are changing this to a value added ag production piece. Does this put soybeans and canola ahead of other value added ag producing industries. There is some benefit in keeping all of our different industries on a level playing field and by doing this are we disrupting that?

Donnita Wald: There are a number of different incentives out there for everyone.

Chairman Cook: Would that be available for a crushing plant also?

Donnita Wald: For investors of that crushing plant.

Chairman Cook: Could they take both of them?

Donnita Wald: It really is a credit for two different activities. One is for your direct investment cost, for the taxpayer who is actually doing that. The other one is for to get investors in and get some seed capital money to get a plant going.

Senator Triplett: Would these folks be eligible for sales tax exemptions?

Donnita Wald: By existing law.

Senator Triplett: My concern is upsetting the apple cart.

Chairman Cook: Are there credits available for a new malting (?) plant?

Donnita Wald: There is that ag investment tax credit out there. This is something different than that. It is intended to adapt a new facility. If you see it says to adapt a new facility in this state.

Chairman Cook: How do you adapt something that isn't built?

Donnita Wald: I think that what we were thinking is that we as a department thought that it meant the part of the new plant that was to do the crushing not the whole plant.

Senator Triplett: I think this is a full employment for architects and engineers. First we pay them to do it as though we weren't doing the crushing and then we pay them to adapt the drawings to do the crushing.

14.45 **Senator Anderson:** You were talking about the other program. Is there any tax credit for that in adapting an existing plant?

Donnita Wald: That credit is for investments in an ag commodity processing facility.

Senator Anderson: If they had to put in an expansion to adapt it to something else, would that also qualify?

Donnita Wald: I do not know the exact language of that one.

Chairman Cook: Do you know the amount of that credit and how many years you can get it?

Donnita Wald: It is 45% of the investment tax credit.

Chairman Cook: How many years can that be carried over?

Donnita Wald: I think it is 15 years.

Chairman Cook: Can you tell us how many credits have been issued for that?

Donnita Wald: It is 30% for 10 years. The seed capital is 45%. Ag commodity investment credit was \$805,000 in 2007; \$629,000 in 2006; and in 2005 \$1.2 million. That was total dollars and that is for individuals only. It is unreportable for corporations; less than 5 taxpayers. Approximately 430 people took that credit.

Chairman Cook: That would apply to a brand new crushing plant?

Donnita Wald: Yes.

Chairman Cook: Could they get both that one and this one if they built a new crushing plant?

Donnita Wald: The investors would get this one. The taxpayer gets the other one/ the company that will be doing the crushing.

Senator Dotzenrod: If you take out the word adapting and put in constructing, does that change the bill?

Donnita Wald: That would change my interpretation of it.

20.20 Chairman Cook: What if you took out the word new?

Donnita Wald: No.

Chairman Cook: What is the difference between retrofitting and adapting?

Donnita Wald: I don't know that there is a difference.

Discussion: A discussion followed on what would happen if new was taken out and what happens with adapting....etc. (Discussed how to change the bill)

Donnita Wald: Stated that the tax department has no problem with this the way that it is, but others have voiced reasons for it.

Chairman Cook: Could you tell me exactly what you want this bill to do?

Scott Rising, North Dakota Soybean Council: This bill is to create a new incentive for a new facility that will just crush and for someone currently crushing something else to change out their facility to do this.

Chairman Cook: If you have a plant right now that has already received the credit and they are crushing canola or soybeans for producing biodiesel, what opportunities would be available to them?

Scott Rising: They could be buying their crushed soybeans. I am thinking of facilities that currently exist, there could be one out there that would do that.

27.44 Senator Triplett: Are we opening Pandora's box for everyone else to come in next time and ask for more credits.

Discussion: A discussion occurred between Senator Triplett and Scott Rising on whether or not this was going to cause the oil commodities to move ahead of the other commodities in the state.

Scott rising: In SD there is an equity situation with a soybean facility and the investors.

Chairman Cook: Were they able to take advantage of the ag investment credit that was available?

Scott Rising: I believe the individual would be able to.

Senator Triplett: Could you tell us the list of other things that can be crushed for oil that can be used for biodiesel?

Scott Rising: Sunflowers (they specifically did not want to be part of this bill), I could not think of any others.

34.04 Chairman Cook: Does the language have to be changed?

Discussion: The committee generally agreed that the language is confusing and repetitive. Each one weighed in on what they felt about it.

39.00 Senator Triplett: Motioned to amend the bill to remove "or adapting a new facility" from lines 11 and 14.

Senator Anderson: Seconded.

A voice vote was taken: Yea 7, Nay 0, Absent 0.

Motion passed.

Chairman Cook: Discussion?

Senator Anderson: Moved a do pass as amended and re-refer to appropriations.

Senator Oehlke: Seconded.

Discussion: A discussion occurred among the members on whether this would unbalance the commodities in the state.

Chairman Cook: Could we withdraw the motions for now?

Senator Triplett and Senator Anderson: Motions withdrawn.

Chairman Cook: Discussion suspended.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1489

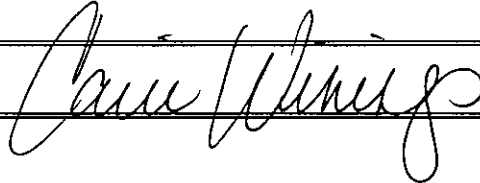
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/16/2009

Recorder Job Number: 11055

Committee Clerk Signature



Minutes:

Chairman Cook: Opened discussion.

Donnita Wald, Legal Council, Tax Department: See Attachment #1 for additional information on the different incentives that are available.

Chairman Cook: These two credits that you have under income tax exemptions and credits, are they both available to an ag crushing plant?

Donnita Wald: Yes.

Chairman Cook: Are they all available to corporations, pass through and individuals?

Donnita Wald: Yes.

Senator Oehlke: So if someone was building a new facility that is for ethanol and then they want to also build an arm to do crushing, what would get the credit?

Donnita Wald: There are a number of different credits/incentives that facility would be able to get under a new facility. The arm for crushing would get that credit.

Senator Oehlke: The way we crossed out "or adapting a new facility" would either one of those or both of them, or only one, have access to the credit in this section?

Donnita Wald: Not with the new facility. You took that language out.

Chairman Cook: We have it before us and it is amended. Your wishes?

5.55 Senator Dotzenrod: If a company wants to build a plant that crushes soybeans and produces biodiesel fuel, they would be able to have the ag commodity provisions of that law. The get a property tax deduction, they get an income tax exemption as long as they get this primary business designation from the Department of Commerce, and the things that they buy to go in the plant would be tax exempt. So, it looks like for a new facility that is built from scratch there are a lot of things there they can use. This bill really only applies to a facility that has already been built that would change it to crush. I don't know if there are any facilities that are in the state that would be eligible and could be retrofitted for this purpose. There are a couple of plants that do crushing right now I suppose.

Chairman Cook: They don't have to produce biodiesel to crush.

Senator Triplett: This statute as it is already in place I think was intended to promote alternative fuels. Now we are proposing to use this just for ag. There is a reason to promote alternative fuel. I am uncomfortable with using an alternative fuels tax credit and molding it to do this.

Senator Anderson: It is what we have. **Moved Do Pass As Amended and Re-Refer to Appropriations.**

Vice Chairman Miller: **Seconded.**

Chairman Cook: Discussion? (no)

A Roll Call vote was taken: Yea 6, Nay 1, Absent 0.

Senator Miller will carry the bill.

March 16, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1489

Page 1, line 11, overstrike "or adapting a new facility"

Page 1, line 14, remove "or adapting a new facility"

Renumber accordingly

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 1109

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Amend

Legislative Council Amendment Number

"Or adapting a new facility" ~~in this~~
line 11 + 14

Action Taken

☐ Do Pass☐ Do Not Pass☐ Amended

Motion Made By

Motion Made By Senator Triplett Seconded By Senator Anderson

Seconded By

Senator Anderson

[illegible]

Total: Yes 1

No

Absent

Floor Assignment

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

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 1109

Senate	Finance and Taxation	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

☒ Do Pass

☐ Do Not Pass

☒ Amended

Motion Made By

Senator Anderson

Seconded By

Senarai Dohike

[illegible]

	Yes	No
Total:	10	10

Absent _____

Floor Assignment

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

Date: 03/16/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.: 1489

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Re - Refer to Appropriations

Action Taken

☒ Do Pass

☐ Do Not Pass

☒ Amended^{AS}

Motion Made By

Senator Anderson

Seconded By

Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett		✓
Sen. Dave Oehlke	✓				

Total: Yes

6

No

1

Absent

Floor Assignment

Senator Miller

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

REPORT OF STANDING COMMITTEE

HB 1489, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS,
1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1489 was placed on the Sixth
order on the calendar.

Page 1, line 11, overstrike "or adapting a new facility"

Page 1, line 14, remove "or adapting a new facility"

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

CONFERENCE COMMITTEE

HB 1489

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1489**

House Finance and Taxation Committee

☒ Check here for Conference Committee

Hearing Date: April 20, 2009

Recorder Job Number: 11964

Committee Clerk Signature

Minutes:

Chairman Headland: Can somebody from the Senate explain their amendments.

Senator Miller: The main reason was it was our belief that the language was simply not needed.

Senator Oehlke: It took me a few minutes to review. I think our basic thought was if you have got a new facility, it's a new facility. There shouldn't be any confusion about whether they are building it for biodiesel or whether they are building it for crushing. There shouldn't be confusion on that. What they are looking for in this bill was the idea to provide a tax credit for something they are switching over to. It has been one type of plant and now they want to change it and use it for soybean or canola crushing facility and that isn't what it was intended for originally. I think basically that is what we accomplished there when we took out the new facility idea. Are we the ones who added the new facility on too? I believe we did. That isn't too mysterious. The legislative council, it looks like it says shall consider studying, so they may or may not. Senator Dotzenrod, do you have anything to add to that?

Senator Dotzenrod: When we had this discussion in the committee, we were puzzled by the term "adapting a new facility" because it seemed to us that when you build a facility, the plans are comprehensive. You don't plan a facility and then...usually when you adapt something, it

is an existing thing that you are trying to build on to. Our thought was that it sat up in the books because when this was first enacted, so that we could try to encourage an alternative fuel, try to grow a new industry, bring a new industry and as near as I know, this has not been used. This section of the code, whenever it was put on the century code, has not been used yet. It has a limit of \$250,000 of tax credit. There are two facilities in the state right now that are doing the crushing; I don't know if we have anybody that is producing biodiesel in the state. But it seemed like if you were building a new plant, then you would probably have crushing as part of that new plant. You would probably qualify for this because it is a credit that is allowed for the production of biodiesel. Most of the time you would have crushing, although not necessarily.

Representative Headland: Let me just comment. I guess I am not completely convinced that you haven't taken new facilities out of it. It was clearly the intent of the House to have an existing facility, give them the eligibility to be retrofitted into a crushing facility or the intent was if there is a new facility built, that they would also receive the credit for crushing. I think with that, biodiesel is a different process than making ethanol or anything else because first you have to crush. It is just a way of processing the oil after it has been crushed in order to make biodiesel. The intent of this bill is to allow this credit to move over to crushing and processing. Soybeans are pretty adaptable. There are many many uses for the oil as well as the meal. I think in order to get back to the intent of the House (I do agree that the language that we sent over was somewhat confusing), we have prepared an amendment that I think will clear it all up and I guess at this time, I will distribute that. It is fairly simple. If you go to the bill we are dealing with now, which is .0400, on page 1, if you just remove the overstrike "adapting a new facility" and then further down on page 1, line 13, overstrike "adapt or add equipment to retrofit

an existing" and replace that with just "build a new facility", I think we believe now the intent is more clear. I would hope we would be in agreement.

Representative Brandenburg: I think one thing with soybeans I have learned is there is so much technology happening right now with soybeans and the soybean plants that have been built. In order to change the method that you use to get the product out of it, you almost have to build a whole new process to do it. How they used to do soybean is there was technology out there and you go through a process. There is a new process they are working with so the language needs to be flexible, they almost may have to build a new part onto the plant that is there right now to make this work for the new process. That is the why the language is worded the way it is. There may be some new credits; you may qualify for new credits if you need to add on. You are almost building a whole new process onto a facility that is doing crushing right now because the numbers don't quite come together. In Minot they tried to make it work and it didn't come together because the numbers didn't come together. There are other places working on processes where they don't have to use as much water or use existing water, but they may have to take the facility that is in place and actually build almost a new part to it. So this credit would apply to building that new facility. That is what this language would allow.

Senator Dotzenrod: When we had the bill in our tax committee, I think there were members of the committee that thought that if we put this in the century code originally to encourage and give a tax break so we could get this alternative fuel developed and create this industry, some of the members on the committee didn't like the idea that we were taking that same credit and moving it over to something that maybe has other uses other than to create an alternative fuel. Some of the objections when we talked about this in committee were if you take this credit and start applying it to crushing equipment, which may be able to be used for alternative fuel, maybe it will be used for something else. They thought that there would be other ag

processing that would want to have a similar credit even though they have nothing to do with producing alternative fuel. That was part of the discussion. Some of the members of the committee who pushed to get this amended wanted to make sure it kept it narrow enough so that it would just deal with that part of the plant that has to do with producing this alternative fuel. They were willing to go along with the idea that you might have to adapt something that has already been built to get the crushing, to get the oil. They weren't very comfortable with the idea that soybean crushing equipment which would get this credit may not have anything to do with producing an alternative.

Chairman Headland: If that is the case, that clearly changes the intent of the bill as it was passed out of the House. We wanted this credit to be available for just the crushing. Since you can take an existing plant, that in order to receive the credit would have to process biodiesel, and it just didn't make any sense to us to force that language on a plant, possibly a new plant, that could be profitable on the crushing end but they would not be eligible to receive this credit if they did not fully develop the process all the way to biodiesel. That was the whole intent of our bill, my bill. You have also taken and added this study, which I think changes this bill quite a bit too. I am not sure it belongs on this bill. If your intent was to not allow a new facility, I just don't think we can agree with that at all. I certainly don't know if we want to muddy it up with this study. However, if you would agree to adapting our amendment, I think we can certainly do our best to convince our House colleagues that the study is needed.

Senator Oehlke: As I look around the committee, I realize I am the only one who doesn't wear coveralls and hop up on a tractor every day so I am a little bit like that duck out of water. Does this bill with the amendment you are talking about, does that put the crushing plant at an adverse or better advantage than other types of ag plants as far as investment people are looking at as far as credits that I might get on my tax return if I want to make a big investment?

Representative Brandenburg: I really think bills like these are deal busters.

Senator Oehlke: This is going to bust the deal or make it?

Representative Brandenburg: Make it. It is going to allow it to go into the black.

Senator Oehlke: Kind of like the wind deal last session?

Representative Brandenburg: Right on. Look at what has happened. This could be the start of many soybean crushing plants. We have got to make the decision.

Senator Oehlke: We are going to crush them left and right. We don't have any in the state right now, do we?

Representative Schmidt: I know that Senator Dotzenrod was concerned about others taking advantage, but this bill states soybeans and canola, nothing else. Is that right, Mr. Chairman?

Chairman Headland: That's what it says.

Representative Schmidt: We need to get some some soybean plants going. Biodiesel is the coming thing. What can we do to get it going?

Chairman Headland: We might as well be up front with what is going on. There is the possibility of a new facility locating in this state. The problem we have is the surrounding states are trying to court those builders to build there as well. This is just a little something. It only gets used if a new plant is going to get built. I don't see one of our two major crushing facilities that we currently have in the state rushing to convert over. They may utilize it, but I think this bill is to try to convince that new facility that is going to be built somewhere in this tri-state area to build in ND. I think it is important. I think it is important that we adapt this language so it is in statute that a new facility will qualify; and without it, I am not sure that the bill accomplishes anything.

Senator Oehlke: Is that a motion?

Senator Miller: I am not convinced that it was the committee's discussion that we didn't want a new facility built. I think we thought that this, as we amended it, would take care of that. I am wondering if this language shouldn't be something "existing to adapt" or "add equipment to retrofit an existing facility" or "construction of a new facility" rather than this adapting word similar to what you have done. Then leave "adapt or add equipment direct to a preexisting facility or construction of a new facility". That might be cleaner and easier to interpret and that would accomplish what you want to do.

Chairman Headland: Can you go over that again?

Senator Miller: Rather than "adapting a new facility", "construction of a new facility" on line 11.

Chairman Headland: Or "construct a new facility".

Senator Miller: Or "construction of a new facility or constructing a new facility".

Senator Oehlke: I think that was part of our confusion because if you have got a new facility, what are you building it for if it is not going to incorporate the crushing idea? If you build a new house, you don't build it with the idea it is not going to be a barn unless you are building a barn. I think that is what Senator Miller is trying to do is clarify that business

Chairman Headland: Okay. Or "construct a new facility".

Senator Miller: But leave that "adapt and add equipment to retrofit" language all in there as it is, but then just simply in line 14 after "facility for construction of a new facility", "construct a new facility". (20:53)

Chairman Headland: So after "facility", you are talking "retrofit an existing facility or construction of a new facility in this state" for the purposes of. I think that will work.

Senator Miller: I don't think you want to take the language "adapt or add" because part of the thing was.

Chairman Headland: Is there anyone from the Tax Department who could confirm that that would work?

Donnita Wald, Tax Department: That would work. If you leave the "retrofit an existing facility" in and then also allow that clarifying that building a new one would qualify as well. I think it works well.

Senator Miller: The concern I think with why we want the bill is partly because we want to build a new one, but partly also because of existing facilities that are somewhat in that business, whether it be sunflowers or whatever other oil type crop, they can make that adaptation to soybeans or canola and qualify for this. There is going to be a cost involved in that as well. They can crush some sunflowers and if that market falls out and they move over to soybeans. They can move around and crush whatever is profitable.

Chairman Headland: If that works, I think we would be in agreement. Do we have to officially have an amendment drawn or can we?

Senator Oehlke: I don't think we have any heartburn on the study if you want to.

Chairman Headland: I think we can probably live with the study as well.

Senator Dotzenrod: Is it your intention that if we pass this bill that it would be a bill that would provide this tax credit for a plant that is built solely for the purpose of crushing?

Chairman Headland: That is correct.

Senator Dotzenrod: And it would not necessarily have anything to do at all with producing the biodiesel?

Chairman Headland: That is correct.

Senator Dotzenrod: I want you to understand that in matters of agriculture that when I speak and express my opinion, it may not reflect the views of our chairman. We sometimes don't agree on things. I want to be careful in what I say when I represent the Senate here in this

conference committee, the opinions that that chairman and several of the members of the committee have, I sort of argued the case that we should be expansive in our views of the way we deal with these credits. I live 25 miles from the Minnesota border and I have been involved in a couple of these, the corn sweetener plant, where we got into a real strong competition with Minnesota. The Governor of Minnesota was very involved in promoting a big package with incentives to get that plant in Minnesota and we got it in ND by coming up with a whole bunch of incentives. The ethanol plant at Hankinson was very similar. There was competition between the states and we had many sessions with the Governor and the Lt. Governor of ND, telling us we need to make sure we do whatever we have to do to get that plant built in ND. There were incentives put together. My argument in the committee was if we knew there was a plant that was being considered to be located in either Minnesota or ND, I know from experience that this \$250,000 credit would be just openers for what we would be—we would be competing with Minnesota and we would be offering all kinds of incentives to get that plant built in ND. My position and my view on it is I am personally fine with the idea that it applied to a crushing plant. But I know if I want to speak and represent the position of the committee, that was the concern of some of the members. They felt that this section was established as a way to promote an alternative supply of energy. Now they looked at what this bill did and they were concerned that what we were doing was using that something an argument that was made to get this enacted as a way to bring in other ventures. That is why the amendments were put on the way they were. Those members of the committee that felt strongly about it wanted to try to limit it to the original intent of the section, which was an alternative form of energy.

House Finance and Taxation Committee

Bill/Resolution No. HB 1489

Hearing Date: April 20, 2009

Chairman Headland: Certainly this language is going to be an expansion of this credit. If you are not going to expand the credit, I think there is really no need for the bill if you are going to keep it relative to producing biodiesel because the credit is already available in that respect.

Senator Dotzenrod: The expansion that we had when we voted on this in committee was to allow it to be extended to building and adding and buying the material as needed to have crushing be part of those two existing plants. Personally, if we are getting to the point where we are going to vote on it, I am prepared to support the position that you have. I want everyone to be aware that the position of the committee we are representing may be somewhat different.

Chairman Headland: I think we understand that. I think we are just going to have to take our chances that you gentlemen can convince the rest of your colleagues and we can convince the rest of our colleagues that this was what the bill really was intended to do. Without that, I am not sure the bill is needed. Do we have time to vote this out and get this out of committee?

Senator Miller: I will move whatever you said. (27:34)

Representative Brandenburg: Motion to amend. Do you want to accede to the House amendments? We are not quite in agreement there in language.

Chairman Headland: I think we are going to further amend. Do we recede? We are acceding to the Senate amendments. We are receding to the Senate amendments and further amending?

Senator Oehlke: You are accepting the study. We can't recede from the amendments because we are the second house.

Representative Brandenburg: Mr. Chairman, Senator Miller and I both have to go to a conference committee. If you figure the language out, we will come back.

Senator Headland: We essentially agree. We will get together with you and get the language right.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1489

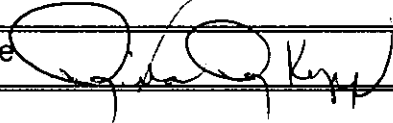
House Finance and Taxation Committee

X Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12083

Committee Clerk Signature



Minutes:

Chairman Headland: Good morning everybody. We just passed out the amendments so if everybody is in agreement that this is the proper language, I would entertain a motion.

Representative Brandenburg: I so move that the House accede to the Senate amendments and further amend on page 1, line 11 after "facility", insert "construction of a new facility" and page 1, line 14, after "facility", insert "construction of a new facility".

Senator Miller: Second.

Chairman Headland: It has been moved and seconded. Any discussion? Seeing none, would the clerk take the roll. **(A roll call vote resulted in 6 ayes, 0 nays, 0 absent.) Motion is passed.** With that being all the business we have for this committee, we stand adjourned.

YR
4/21/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1489

That the Senate recede from its amendments as printed on page 1009 of the House Journal and pages 795 and 869 of the Senate Journal and that Engrossed House Bill No. 1489 be amended as follows:

Page 1, line 3, after "costs" insert "; to provide for a legislative council study"

Page 1, line 11, overstrike "adapting" and insert immediately thereafter "construction of"

Page 1, line 14, replace "adapting" with "construction of"

Page 2, after line 2, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - INCENTIVES FOR VALUE-ADDED AGRICULTURE. During the 2009-10 interim, the legislative council shall consider studying the availability of tax incentives, grant programs, and any other direct or indirect public subsidization designed to encourage and promote value-added agriculture and any public and private benefits that accrue as a result of such availability. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE (ACCEDE/RECEDE)

Bill Number HB 1489 (, as (re)engrossed):

Date: April 20, 2009

Your Conference Committee _____

For the Senate:

For the House:

Att		YES / NO	Att		YES / NO
X	Sen. Gehlke		X	Rep. Headland	
X	Sen. Miller		X	Rep. Brandenburg	
X	Sen. Dotzenrod		X	Rep. Schmidt	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1009 - _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place 1489 on the Seventh order:

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

((Re)Engrossed) 1489 was placed on the Seventh order of business on the calendar.

DATE: 4-22-09

CARRIER: Headland

LC NO. <u>90885.0203</u> of amendment <u>0500</u>
LC NO. _____ of engrossment _____
Emergency clause added or deleted
Statement of purpose of amendment

MOTION MADE BY: Rep Brandenburg

SECONDED BY: Sen. Miller

OTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1489, as engrossed: Your conference committee (Sens. Oehlke, Miller, Dotzenrod and Reps. Headland, Brandenburg, Schmidt) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1009, adopt amendments as follows, and place HB 1489 on the Seventh order:

That the Senate recede from its amendments as printed on page 1009 of the House Journal and pages 795 and 869 of the Senate Journal and that Engrossed House Bill No. 1489 be amended as follows:

Page 1, line 3, after "costs" insert "; to provide for a legislative council study"

Page 1, line 11, overstrike "adapting" and insert immediately thereafter "construction of"

Page 1, line 14, replace "adapting" with "construction of"

Page 2, after line 2, insert:

"SECTION 2. LEGISLATIVE COUNCIL STUDY - INCENTIVES FOR VALUE-ADDED AGRICULTURE. During the 2009-10 interim, the legislative council shall consider studying the availability of tax incentives, grant programs, and any other direct or indirect public subsidization designed to encourage and promote value-added agriculture and any public and private benefits that accrue as a result of such availability. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

Engrossed HB 1489 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1489

Testimony 2
February 3, 2009



Testimony for HB 1489

Good morning Chairman Belter & Committee Members . . . I am Scott Rising.

I am here this morning on behalf of Soybean Growers across ND seeking your favorable consideration of HB 1489.

The provisions of HB 1489 amend section 57-38-30.6 of the ND Century Code which provides for a maximum corporate tax credit of \$250,000 for producing or blending of biodiesel fuel. HB 1489 would add the soybean and canola crushing equipment and facilities required to produce the raw oil fundamental to biodiesel production. A similar provision exists in section 57-38.6-01 2c., under the definition of "Biofuels Production Facility" in the Agricultural Business Investment Tax Credit chapter of the NDCC. (Last Page of you handout)

Why do we propose this change?

The recently released Empower Commission Report includes the goal to grow the biodiesel industry within ND. We are intending to "**tweak**" this existing corporate tax incentive , and thus the possibility, that soybean processing will take root in North Dakota. We are seeking ways to signal that now is the time for processors to act.

We seek to include these crushing activities under the biodiesel provisions of the Century Code because these oils are the primary ingredients in the production of biodiesel fuels. With the addition, these provisions eliminate the requirement for crush

facilities to be integrated into a mega-biodiesel production facility and increase the likelihood that crushing facilities could be spread cross commodity production areas of our state.

We believe the wildly rising mineral based fuel prices of 2008 provided a cost “preview” of our energy future with declining petroleum reserves, indicating a clear need for alternatives. Production of commodity based oils as replacements to mineral based petroleum products and uses, while not the fabled silver bullet, is essential.

What do we do?

The Empower Commission Report suggests a counter-cyclical program similar to that of ethanol for biodiesel. We have looked at this at some length, as have others, and concluded that the mechanisms of such a program are difficult at this time. Instead we are suggesting a market based approach. Those same oils for biodiesel are also alternative source ingredients for a wide variety of other industrial and commercial products and uses. In effect, let the more stable market opportunities of those products and uses, with less price sensitive profit margins than biodiesel; function as a “market based” counter-cyclical program for these oils. Taking advantage of these opportunities may allow commodity based oil production to achieve a level of stability while yielding the desired biodiesel raw ingredients, without the state sponsored payments of counter-cyclical programs we are more familiar with.

While we do not know the whole future of soybeans and their use, we do know that the efforts of the Department of Commerce and the Governor’s Centers of Excellence

programs have produced a magic in the laboratories of UND and NDSU, under the direction of researchers like Dr. Seams and Dr. Webster, that is ever expanding the effectiveness of known processes and defining "the new" future of soybean uses. Just as this blend of private and publicly funded research is succeeding at substituting mineral based petrochemicals with Agri-- based oils, we would ask this body to recognize a similar expansion of the "bio" terminology in "biodiesel" to include the production of soybean on canola oil in the same manner, as we look to the future.

Who Benefits with Processing?

The ND soybean farmer. Local processing opportunities reduce the distance to market for growers and thus transportation and a variety handling costs and fees. All of the soybean feasibility studies I have read in the last few months indicate that these reductions add from 5 cents to 25 cents to every bushel of beans a grower sells to local processing operations. A conservative analysis at the ~~10~~ cent level is attached.

All of ND main streets. Over the years we all have heard a variety of estimates of how many times an agricultural dollar turns over of in our communities. Recently, I was told that for commodities, like soybeans, that figure is 3.5 times; and for livestock operations it is just over 4 times. In addition, these processing activities provide jobs in local communities and a wide variety of opportunities that have an increased potential to keep family and friends here in ND.

- Most Importantly - When we increase the value-added Agri--processing capacity of ND, we grow the entire agricultural pie, not just soybeans share. The meal produced from crushing operations is more readily available for our livestock, poultry and swine industries. This in turn reduces their transportation costs and with the increased

availability of feed stocks, potential growth opportunities in these industries are achieved as well. Again, our goal is to grow North Dakota's Agricultural Pie, thus increasing the prosperity of our State.

What Happens Without Processing in ND?

In 2009 we are expecting to harvest over 100 million bushels of soybeans. We will harvest the BILLION-th bushel of ND soybeans this coming year. We have every expectation that Billion-th bushel, and the rest, will be processed somewhere.

Unfortunately, it will not be in ND. We are hopeful that your positive action on this bill will "trigger" what we ultimately seek, soybean processing in ND, and maybe, just maybe it will be in time for some of the 2010 crop . . .

thus Growing the ND's Ag Pie for the future.

We enthusiastically request a "Do Pass" recommendation on HB 1489.

. . . . and before I attempt to field questions, please let me take this opportunity to thank each of you for your service on behalf of all Soybean Growers in ND. Thank You.

Contact Information:
Scott Rising
701-527-1073 (cell)
grwbeans@earthlink.net

Soybean Value Worksheet

Our example Soybean Crushing Facility requires approximately 30 Million Bushels of beans per year (900,000 tons).

- 30 million bushels / 31.2 Bu per acre (5 yr avg) = 961,538 production acres.
- 31.2 Bu (avg Bu per acre) X 10 cents (increase with processing) = \$3.12 per acre.
- \$3.12 per acre X 961,538 production acres = \$2,999,998 of increased value to the producers of those soybeans + the value of that turned over in local communities.
- State revenues flow in the form of income, sales and excise taxes.

North Dakota Data – Soybeans (USDA National Agricultural Statistics Service)

Year	Acres Planted	Acres Harvested	Average Yield	Total Production	Average Price	Total Value
2004	3,750,000	3,570,000	23 bu	82,110,000	\$5.75	\$472,133,000
2005	2,950,000	2,000,000	36.5 bu	105,850,000	\$5.37	\$560,628,000
2006	3,900,000	3,870,000	31.5 bu	121,905,000	\$5.98	\$717,421,000
2007	3,100,000	3,060,000	35.5 bu	108,630,000	\$9.80	\$1,025,570,000
2008	3,800,000	3,760,000	28 bu	105,280,000	Not Currently	Available
Avg			31.2 bu			

Each Bushel of Soybeans =
(approximately)

48 pounds of meal
11 pounds of oil
01 pounds of hulls
60 pounds Total

\$307 per ton *
\$32.73 per lb *

* Jan 31 Chicago Board of Trade

*Same language
given to
Senate.*

CHAPTER 57-38.6
AGRICULTURAL BUSINESS INVESTMENT TAX CREDIT

57-38.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means:
 - a. A facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state; or
 - b. A livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility.
2. "Biofuels production facility" means a corporation, limited liability company, partnership, individual, or association in this state:
 - a. Involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials;
 - b. Involved in the production of corn-based ethanol or cellulose-based ethanol; or
 - c. Involved in a soybean or canola crushing facility.
3. "Director" means the director of the department of commerce division of economic development and finance.
4. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
 - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of being an agricultural commodity processing facility;
 - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state; and
 - c. Has an agricultural commodity processing facility, or intends to locate one, in this state.
5. "Qualified investment" means an investment in cash or an investment of a fee simple interest in real property located in this state. For purposes of this chapter, the definition of real property does not include any personal property that may become a fixture to the real property, as defined by chapter 41-09, which is added to the real property following investment of the real property in the qualified business.
6. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company.

57-38.6-02. Certification - Investment reporting by qualified businesses.

1. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.
2. A qualified business may apply to the director for a recertification. Only one recertification is available to a qualified business. The application for recertification

must be filed with the director within ninety days before the original certification expiry date. The recertification issued by the director must comply with the provisions of subsection 3.

3. The director may not certify more than ten qualified businesses during each calendar year. This limitation does not apply to a qualified business that is seeking recertification during the calendar year.
4. A certification letter must be issued by the director to the qualified business. The certification letter must include:
 - a. The certification effective date.
 - b. The certification expiry date. The expiry date may not be more than four years from the certification effective date.

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3.

1. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year.
2. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
3. The credit under this section may not exceed the liability for tax under chapter 57-38. If the amount of credit under this section exceeds the liability for tax, the excess may be carried forward for up to ten taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purposes of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.
6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified

business. Real property that qualifies as an investment must be used in, and be an integral part of, the qualified business's North Dakota business operations.

8. If the investment is a contribution of real property:
 - a. The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser licensed or certified under the requirements of sections 43-23.3-04, 43-23.3-04.1, 43-23.3-05, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, and 43-23.3-12.
 - b. The value of the contribution must be approved by the governing body of the qualified business applying the valuation standards set forth in subsection 3 of section 10-19.1-63.
 - c. The qualified business receiving the contribution of real property shall provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
 - d. A taxpayer making a contribution of real property is entitled to the tax credit in the taxable year in which the instrument transferring title to the real property is recorded with the register of deeds as provided in chapter 47-19.
9. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

57-38.6-04. Taxable year for agricultural business investment tax credit. The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which the investment in the qualified business was received by the qualified business.

57-38.6-05. Agricultural business investment tax credit - Procedure - Rules. To receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.6-06.

57-38.6-06. Investment reporting forms. Within thirty days after the date on which an investment in a qualified business is purchased, the qualified business shall file with the tax commissioner and the director and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the qualified business the following:

1. The name, address, and social security number of the taxpayer who made the investment.
2. The dollar amount paid for the investment by the taxpayer.
3. The date on which full consideration was received by the qualified business for the investment.

57-38.6-07. Rules and administration. The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers for

purposes of this chapter as provided under section 57-38-56. The director is charged with administration of this chapter as it relates to certification of qualified businesses and the director may adopt rules for that purpose.

Testimony 3
February 3, 2009

TESTIMONY HB# 1489

Amend Section 57-38-30.6 of North Dakota Century Code

Good Morning Chairman Belter and Committee Members:

I am Robert Runck Jr. a board member of the North Dakota Soybean Growers Association, and also a farmer in the Casselton North Dakota area. Today I am going to give Testimony with my farmers cap on. I live in the county that has more soybean acres than any other in the county in the United States, yet I'm forced to ship my soybeans out of state to be processed.

I support House Bill 1489 and here are some of my reasons for supporting this Legislation.

- (1) This Bill would help enhance current Legislation that is already in place under: Chapter 57-38.6 in the North Dakota Century Code: (Business Investment Tax Credit).
- (2) In an ever changing economy, we need to be open minded on how "Crushing and/or Processing Facilities" may be structured now and in the future. It has almost or will become cost prohibited for public funds to try and venture into this arena alone, without the help from a "Major Partner", and most likely that Partner being a Corporation in nature.
- (3) If we were to leave the Legislation as is, it would force the Crushing Facility, to also be the producer of the biodiesel. Which in turn may detour major partners from investing, because it could possibly limit the size of a Facility, which may no longer interest them?

(4) I in vision a Crushing Facility that has the desire to produce biodiesel, but may not want all oils to go to biodiesel, because of "Environment of the Economies".

(5) Possibly a "Mega Crushing Facility" would be built, with the ability to supply oil to many refineries or processors within the State or States, thus adding to Economic Development for the State of North Dakota.

(6) One thing I do know is: The world of Agriculture is forever changing, and changing very fast. We as a State need to stay in step as; I quote Robb Fraley Chief Technology Officer with Monsanto: Fifteen years from now, we will be well on our way to doubling corn and soybean yields in the US, with improved agronomics practice and biotechnology traits. (January 2009 issue of Corn and Soybean Digest, page 11).

(7) My goal as a farmer in the State of North Dakota, and I hope that of others is: To keep "Value Added Processing" of my agricultural products, "West of the Red River and North of the South Dakota Border", along with helping this State to become more Energy Independent.

My hope is that, yours is one of the same and support House Bill #1489.





P.O. Box 2599
Bismarck, ND 58502
(701) 355-4458
FAX (701) 223-4645

MEMBERS

AmeriFlax
BNSF Railway Company
Independent Beef Association of North Dakota
Milk Producers Association of North Dakota, Inc.
Minn-Dak Farmers Co-op
North Dakota Ag Aviation Association
North Dakota Ag Consultants
North Dakota Agricultural Association
North Dakota Agri-Women
North Dakota Association of Soil Conservation Districts
North Dakota Association of Agricultural Educators
North Dakota Barley Council
North Dakota Beef Commission
North Dakota Corn Growers Association
North Dakota Corn Utilization
North Dakota Crop Improvement and Seed Association
North Dakota Department of Agriculture
North Dakota Dry Bean Council
North Dakota Dry Edible Bean Seed Growers
North Dakota Elk Growers
North Dakota Farm Bureau
North Dakota Farm Credit Council
North Dakota Farmers Union
North Dakota Grain Dealers Association
North Dakota Grain Growers Association
North Dakota Lamb and Wool Producers
North Dakota Oilseed Council
North Dakota Pork Producers
North Dakota Soybean Council
North Dakota Soybean Growers Association
North Dakota State Seed Commission
North Dakota State University Agriculture and University Extension
North Dakota Wheat Commission
Northern Canola Growers Association
Northern Food Grade Soybean Association
Northern Plains Potato Growers Association
Northern Pulse Growers Association
Red River Valley Sugarbeet Growers

Testimony 4
February 3, 2009

**Testimony of Deana Wiese
North Dakota Ag Coalition
In Support of HB 1489
February 3, 2009**

*Same to
given to
Senate.*

Chairman Belter and members of the House Finance and Taxation Committee:

For the record, I am Deana Wiese, administrator of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of HB 1489.

The Ag Coalition has provided a unified voice for North Dakota agricultural interests for more than 25 years. Today, we represent 38 statewide organizations and associations that represent specific commodities or have a direct interest in agriculture. The Ag Coalition takes a position on a limited number of issues brought to us by our members that have significant impact on North Dakota's agriculture industry.

The expansion of value-added agriculture is vital to the growth and development of North Dakota's number one industry - agriculture. Incentivizing the expansion of soybean and canola processing plants will add value locally to North Dakota commodities that are increasing in acreage and yield. Expanding the state's processing capacity will lead to economic development opportunities for rural communities and decreased shipping costs for producers. It also will make the products and byproducts more economical for North Dakota consumers.

We appreciate your past support of the expansion of value-added agriculture as it has been and will continue to be an integral component in the growth and development of North Dakota's agriculture industry and the state as a whole.

For these reasons we encourage your support of HB 1489.

Wiese testimony in support of HB 1489.



STATE OF NORTH DAKOTA Attachment #1
OFFICE OF STATE TAX COMMISSIONER
Cory Fong, Commissioner

Memorandum

To: Chairman Belter and Members of the House Finance and Taxation Committee
From: Mary Loftsgard, Associate Director, Tax Administration
Date: February 3, 2009
Subject: House Bill 1489

This memo is to address a question raised at this morning's House Finance and Taxation Committee hearing on House Bill 1489. Representative Winrich asked for a list of all tax incentives, credits, etc. that could be utilized by facilities such as those specified in North Dakota Century Code (N.D.C.C.) § 57-38-30.6 (biodiesel production facilities), or contemplated in House Bill 1489 (soybean and canola crushing facilities).

The information which follows briefly describes tax benefits that are currently available. In the interest of brevity, I have limited the description of each benefit. Some do have specific parameters that must be met in order to qualify. For further reference, I have listed the applicable N.D.C.C. section. Additional information is available in our brochure on North Dakota Tax Incentives for Business which can be accessed on our website at <http://www.nd.gov/tax/genpubs/business-incentives.pdf>. We would certainly be glad to answer any further questions about the information provided herein.

Property tax exemption for a new or expanding business – This exemption may be granted by the local governing body for up to 5 years. Agricultural processors may be granted a partial or full exemption for up to 5 additional years. In addition to, or instead of, an exemption, local governments and any project operator may negotiate payments in lieu of property taxes for up to 20 years from the date project operations commence. *See N.D.C.C. ch. 40-57.*

Sales/Use Tax Exemptions:

1. Construction materials used to construct an agricultural commodity processing facility are exempt from sales and use taxes. *See N.D.C.C. § 57-39.2-04.4.*
2. Machinery or equipment used primarily for manufacturing or agricultural processing in a new or expanding plant is exempt from sales and use tax if it is used primarily for manufacturing or agricultural processing. *See N.D.C.C. § 57-39.2-04.3.*

Income Tax Exemptions and Credits:

1. A primary sector business (i.e., a business that adds value to a product, process or service that produces new wealth in North Dakota) may qualify for an income tax exemption for up to five

years. The exemption is granted by the State Board of Equalization and is available to corporations, passthrough entities and individuals. *See N.D.C.C. ch. 40-57.1.*

2. Investors in an agricultural processing facility may claim an income tax credit based on their investment in the facility. The investment may be in cash or a transfer of an interest in North Dakota property. The credit equals 30% of the investment, but the maximum credit that can be claimed in any years is \$50,000. There is a lifetime cap of \$250,000 in credit. Unused credit may be carried forward for up to 10 years. The credit is available to corporations, passthrough entities and individuals. *See N.D.C.C. ch. 57-38.6.*
3. There are three income tax credits related to the production of biodiesel.
 - A corporation is allowed a credit equal to 10% per year for 5 years of the direct costs to establish, adapt or retrofit a facility to produce or blend at least 2% biodiesel fuel. There is a lifetime cap of \$250,000 in credit. Unused credit may be carried forward for up to 5 years. *See N.D.C.C. §57-38-30.6.* [Note: It is this credit that HB 1489 seeks to extend to soybean and canola crushing facilities.]
 - A licensed fuel supplier who blends at least 5% biodiesel fuel is allowed an income tax credit of 5 cents per gallon of blended fuel. Unused credit may be carried forward for up to five years. The credit is available to corporations, passthrough entities and individuals. *See N.D.C.C. § 57-38-01.22.*
 - A seller of biodiesel fuel of at least a 2% blend is allowed a tax credit of 10% per year for 5 years, of the seller's direct costs incurred to adapt or add equipment to their facility to enable then to sell the biodiesel blend. There is a lifetime cap of \$50,000 in credit. Unused credit may be carried forward for up to 5 years. The credit is available to corporations, passthrough entities and individuals. *See N.D.C.C. § 57-38-01.23.*

The exemptions and credits noted above have specific application to agricultural processing facilities. Additionally, there are a number of "general business" credits that a taxpayer with an agricultural processing facility might utilize. All of the credits listed below are available to corporations, passthrough entities and individuals. They include:

- A credit for the installation of a biomass, geothermal, solar or wind energy device. *See N.D.C.C. §57-38-01.8.*
- A credit for employing interns. *See N.D.C.C. §57-38-01.24.*
- A credit for research and experimental expenditures. *See N.D.C.C. § 57-38-30.5.*
- A credit for workforce recruitment. *See N.D.C.C. §57-38-01.25.*

Should there be any question about this information, please contact me by telephone at 328-2045 or by email at mloftsgard@nd.gov.

TESTIMONY HB# 1489

Amend Section 57-38-30.6 of North Dakota Century Code

Good morning Chairman Cook and Committee Members:

I am Bob Runck Jr. a board member of the North Dakota Soybean Growers Association, and also a farmer in the Casselton North Dakota area. Today my Testimony will be with my farmers cap on.

I support House Bill 1489 and here are some of my reasons for supporting this Legislation.

- (1) This Bill would help enhance current Legislation that is already in place under: Chapter 57-38.6 in the North Dakota Century Code: (Business Investment Tax Credit).
- (2) In an ever changing economy, we need to be open minded on how "Crushing and/or Processing Facilities" may be structured now and in the future. It has almost or will become cost prohibited for public funds to try and venture into this arena alone, without the help from a "Major Partner", and most likely that Partner being a Corporation in nature.
- (3) If we were to leave the Legislation as is, it would force the Crushing Facility, to also be the producer of the biodiesel. Which in turn may detour major partners from investing, because it could possibly limit the size of a Facility, which may no longer interest them?
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- (7) My goal as a farmer in the State of North Dakota, and I hope that of others is: To keep "Value Added Processing" of my agricultural products, "West of the Red River and North of the South Dakota Border", along with helping this State to become more Energy Independent.

My hope is that, yours is one of the same and support House Bill #1489.

Bob Runck Jr.



Testimony for HB 1489

Good morning Chairman Cook & Senate Finance & Tax Committee Members . . .

My name is Scott Rising. I am here this morning on behalf of Soybean Growers across ND seeking your favorable consideration for HB 1489.

The provisions of HB 1489 amend section 57-38-30.6 of the ND Century Code which provides for a maximum corporate tax credit of \$250,000 for producing or blending of biodiesel fuel. HB 1489 would extend that credit to soybean and canola crushing equipment and the facilities required to produce the raw oil fundamental to biodiesel production. A similar provision exists in section 57-38.6-01 2c., under the definition of "Biofuels Production Facility" in the Agricultural Business Investment Tax Credit chapter of the NDCC.

(Biofuels Definition in 57-

38.6 - Appendix 1)

Why do we propose this change?

We are seeking to first initiate, and then grow, soybean processing capacity in North Dakota. Currently, soybean processing in our state is only done on an ad hoc basis.

We intend to change that. ND Soybean Growers are producing over 100 million bushels of soybeans each year. It makes no sense to ship them, and their value-added economic opportunities, elsewhere.

(ND Soybean Production Totals - Appendix 2)

Current production levels, in both quantity and quality, are well beyond "the possible" as understood by our farm grandfathers and they likely exceed any "the probable" expectations of our fathers as well. Our current yields are strong testimony to the success we've enjoyed in genetic research, modern breeding programs and other test plot victories. Today, our understanding of the possibilities and probabilities of soybean yields is that they are likely to double within the next 10 to 12 years, going from 30 to 35 bushels per acre to 60 and 70 bushels per acre across the Northern Plains, even as they continue to evolve, perhaps incorporating very specific application genetics.

While the test plot will continue to be important for production purposes, the future of the soybean's utility is in the Technology Park. The oil of the soybean can be, and is being adapted for; use in place of mineral based petroleum in every way, in addition to being engineered for uses that petroleum derivatives have never served.

(Soybean Uses – Appendix 3)

It's the Oil . . .

This change is about the renewable oil. The fact is . . . crushing these commodities yields oil. And . . . while these oils are the primary ingredients for the production of biodiesel fuels, and thus the current incentive, it is not the most profit stable, nor the only use of these oils. In fact, when biofuel prices fall below \$2.75 per gallon we start to see a reduction in the number of facilities producing biodiesel fuels. Reduced production obviously has negative economic consequences in communities that produce the fuels . . . thus creating a "Boom & Bust" cycle.

The recently released Empower Commission Report includes the goal to grow the biodiesel industry within ND. To counter the “Boom & Bust” cycle potential, a Counter Cyclical Production Incentive similar to that of the Ethanol Program has been proposed. The Soybean Growers found little support for such a program this last Fall with either the Governors Office or Legislators we’ve talked with. So . . . we took a step back and tried to find a better approach.

What do we do? An Idea . . .

How about a market oriented approach? Those same oils that are the core ingredient for biodiesel are also alternative source ingredients for a wide variety of other industrial and commercial products and uses. So . . . why not let the more stable market opportunities of those products and uses, with less price sensitive profit margins than biodiesel; function as a “market based” counter-cyclical program in lieu of a state funded counter cyclical program? We are proposing to create a safety net by “**tweaking**” an existing corporate tax incentive and allowing soybean and canola oil producers the flexibility to market their raw oil in more stable markets as well as in the price sensitive biodiesel arena when those markets are profitable. This “**Tweak**” eliminates the requirement for crush facilities to be integrated into a mega-biodiesel production facility. In addition to providing a mechanism to navigate “Boom & Bust” cycles this decoupling of crushing and biofuels production in a single facility dramatically increases the potential that crushing facilities could be spread cross the commodity production areas of our state, rather in one or two mega-operations, in only one or two locations. Taking

advantage of these opportunities may allow commodity based oil production to achieve a level of stability while yielding the desired biodiesel raw ingredients

We believe that the wildly rising mineral based fuel prices of 2008 provided a "preview" of our energy future with declining mineral based petroleum reserves, indicating a clear need for alternatives. We believe strongly that the production of commodity based oils as replacements to mineral based petroleum products and uses while not the fabled silver bullet, is essential.

The Soybean's Future Utility?

While we do not know the whole future of soybeans and their use, we do know that the efforts of the Department of Commerce and the Governor's Centers of Excellence programs have produced a magic in the laboratories of UND and NDSU, under the direction of researchers like Dr. Seams and Dr. Webster, that is ever expanding the effectiveness of known processes and defining "the new" future of commodity oils and their uses. Just as this blend of private and publicly funded research is succeeding at substituting mineral based petrochemicals with commodity based oils, we would ask the Senate to recognize a similar expansion of the "bio" terminology in "biodiesel" to include the production of soybean on canola oil in the same manner, as we look to the future.

Who Benefits with Processing?

The ND soybean farmer. Local processing opportunities reduce the distance to market for growers and thus transportation and a variety handling costs and fees. All of the soybean processing feasibility studies I have read in the last few months indicate

that these reductions add from 5 cents to 25 cents to every bushel of beans a grower sells to local processing operations. A conservative analysis at the 10 cent level is attached.

(Grower Analysis – Appendix 4)

All of ND main streets. Over the years we all have heard a variety of estimates of how many times an agricultural dollar turns over of in our communities. Recently, I was told that for commodities, like soybeans, that figure is 3.5 times; and for livestock operations it is just over 4 times. In addition, these processing activities provide jobs in local communities and a wide variety of opportunities that have an increased potential to keep family and friends here in ND.

- **Most Importantly** - When we increase the value-added Agri-processing capacity of ND, we grow the entire agricultural pie, not just the soybean growers share. The meal produced from crushing operations is more readily available locally for North Dakota's livestock, poultry and swine industries. In turn, locally available high-protein feedstock reduces their input costs, and provides potential growth opportunities in these industries as well. Again, we grow North Dakota's Agricultural Pie, thus increasing prosperity across our State.

What Happens Without Processing in ND?

In 2009 we are expecting to harvest another 100 million (plus) bushels of soybeans. We may very well harvest the BILLIONth bushel of ND soybeans in just 11 years. We have every expectation that all of these will be processed somewhere. Unfortunately, we know it will not be in ND. We are hopeful that your positive action on this bill will “trigger” what we seek, the Initiation and Growth of Soybean Processing in ND, and maybe, just maybe, it will be in time for some of the 2010 crop . . .

... thus **Growing the ND's Ag Pie for the future.**

We enthusiastically request a "Do Pass" recommendation on HB 1489.

And before I attempt to field questions, please let me take this opportunity to thank each of you for your service to all citizens of North Dakota on behalf of our Soybean Growers.

Thank You.

Contact Information:
Scott Rising
701-527-1073 (cell)
grwbeans@earthlink.net

North Dakota Data - Soybeans

Planted, Harvested, Yield, Production, Price (MYA), Value of Production

Year	Planted All Purposes	Harvested	Yield	Production	Price per Unit	Value of production
1942	7 thousand acres	4 thousand acres	10 bushel	40 thousand bushels	1.67 dols / bu	67 thousand dollars
1945	7 thousand acres	5 thousand acres	11.5 bushel	58 thousand bushels	2.10 dols / bu	122 thousand dollars
1950	44 thousand acres	41 thousand acres	10.5 bushel	430 thousand bushels	2.48 dols / bu	1,066 thousand dollars
1955	90 thousand acres	88 thousand acres	15.5 bushel	1,364 thousand bushels	2.11 dols / bu	2,878 thousand dollars
1960	182 thousand acres	176 thousand acres	13 bushel	2,288 thousand bushels	2.16 dols / bu	4,942 thousand dollars
1965	214 thousand acres	211 thousand acres	19 bushel	4,009 thousand bushels	2.47 dols / bu	9,902 thousand dollars
1970	184 thousand acres	181 thousand acres	15 bushel	2,715 thousand bushels	2.72 dols / bu	7,385 thousand dollars
1975	180 thousand acres	149 thousand acres	19.5 bushel	2,906 thousand bushels	4.99 dols / bu	14,501 thousand dollars
1980	210 thousand acres	200 thousand acres	17.5 bushel	3,500 thousand bushels	7.04 dols / bu	24,640 thousand dollars
1985	500 thousand acres	490 thousand acres	26 bushel	12,740 thousand bushels	4.79 dols / bu	61,025 thousand dollars
1986	475 thousand acres	470 thousand acres	35 bushel	16,450 thousand bushels	4.63 dols / bu	76,164 thousand dollars
1987	520 thousand acres	515 thousand acres	32.5 bushel	16,738 thousand bushels	5.27 dols / bu	88,209 thousand dollars
1988	750 thousand acres	690 thousand acres	18 bushel	12,420 thousand bushels	6.95 dols / bu	86,319 thousand dollars
1989	640 thousand acres	630 thousand acres	22 bushel	13,860 thousand bushels	5.40 dols / bu	74,844 thousand dollars
1990	500 thousand acres	495 thousand acres	26 bushel	12,870 thousand bushels	5.53 dols / bu	71,171 thousand dollars
1991	635 thousand acres	630 thousand acres	30.5 bushel	19,215 thousand bushels	5.40 dols / bu	103,761 thousand dollars
1992	700 thousand acres	690 thousand acres	25 bushel	17,250 thousand bushels	5.32 dols / bu	91,770 thousand dollars
1993	600 thousand acres	540 thousand acres	17 bushel	9,180 thousand bushels	6.12 dols / bu	56,182 thousand dollars
1994	640 thousand acres	610 thousand acres	31 bushel	18,910 thousand bushels	5.19 dols / bu	98,143 thousand dollars
1995	660 thousand acres	640 thousand acres	29 bushel	18,560 thousand bushels	6.49 dols / bu	120,454 thousand dollars
1996	850 thousand acres	845 thousand acres	29 bushel	24,505 thousand bushels	7.05 dols / bu	172,760 thousand dollars
1997	1,150 thousand acres	1,140 thousand acres	29.5 bushel	33,630 thousand bushels	6.10 dols / bu	205,143 thousand dollars
1998	1,500 thousand acres	1,475 thousand acres	32 bushel	47,200 thousand bushels	4.64 dols / bu	219,008 thousand dollars
1999	1,350 thousand acres	1,340 thousand acres	35 bushel	46,900 thousand bushels	4.19 dols / bu	196,511 thousand dollars
2000	1,900 thousand acres	1,850 thousand acres	32 bushel	59,200 thousand bushels	4.23 dols / bu	250,416 thousand dollars
2001	2,150 thousand acres	2,110 thousand acres	33.5 bushel	70,685 thousand bushels	4.05 dols / bu	286,274 thousand dollars
2002	2,670 thousand acres	2,630 thousand acres	33 bushel	86,790 thousand bushels	5.32 dols / bu	461,723 thousand dollars
2003	3,150 thousand acres	3,050 thousand acres	29 bushel	88,450 thousand bushels	6.62 dols / bu	585,539 thousand dollars
2004	3,750 thousand acres	3,570 thousand acres	23 bushel	82,110 thousand bushels	5.75 dols / bu	472,133 thousand dollars
2005	2,950 thousand acres	2,900 thousand acres	36.5 bushel	105,850 thousand bushels	5.37 dols / bu	568,415 thousand dollars
2006	3,900 thousand acres	3,870 thousand acres	31.5 bushel	121,905 thousand bushels	5.98 dols / bu	728,992 thousand dollars
2007	3,100 thousand acres	3,060 thousand acres	35.5 bushel	108,630 thousand bushels	9.63 dols / bu	1,046,107 thousand dollars
2008	3,800 thousand acres	3,760 thousand acres	28 bushel	105,280 thousand bushels	9.10 dols / bu	958,048 thousand dollars
1942 - 2008 Totals				1.26 Billion Bushels	\$6.08 / bu	\$7.687 Billion
Last 10 Years				875,800,000 bu	\$6.34 / bu	\$5,554,158,000

Adhesive
Agricultural Adjuvants
All-Purpose Lubricants
Alternative Fuels
Analytical Reagents
Animal Care Products
Antibiotics
Anti-Corrosion Agents
Anti-Foam Agents

Alcohol
Yeast

Anti-Spattering Agents

Margarine

Anti-Static Agents
Asphalt Emulsions
Auto Care Products
Bar Chain Oils
Binders - Wood Resin
Blockseal Fuel
Building Products
Candles
Carpet Backing
Caulking Compounds
Core Oils
Cleaning Products
Cleansing Materials
Composites
Concrete Supplies
Crayons
Dielectric Fluids
Diesel Additives

Disinfectants Dispensing Agents

Paint
Inks
Insecticides
Rubber

Dust Suppressants
Dust Control Agents
Electrical Insulation
Engine Oils
Epoxyes
Fermentation Aids/Nutrients
Filter Material
Flame for Packaging
Fuel Additives
Fuel Oil Emulsifiers
Fungicides
Furniture Care Products
Hair Care Products
Hand Cleaners
Home and Lawn Products
Hydraulic Fluids
Industrial Cleaners
Industrial Lubricants
Industrial Solvents
Industrial Proteins
Insulation
Leather Substitutes
Linoleum Backing
Lubricants
Metal - Casting/Working
Metalworking Fluids
Odor Reduction
Oiled Fabrics
Paper Coating
Paint Strippers
Paints - Water Based

Particle Boards
Personal Care Products
Pesticides
Pesticides/Fungicides
Pharmaceuticals
Plastics
Plasticizers
Polyesters
Printing Inks
Printing Supplies
Protective Coatings
Putty
Resins
Saw Guide Oils
Soap/Shampoo/Detergents
Solvents
Stabilizing Agents

Shortening

Textiles
Textile Fibers
Two-Cycle Engine Oils
Varnishes
Vinyl Plastics
Wallboard
Waterproof Cement
Waxes
Wetting Agents

Calf Milk Replacers
Cosmetics

Industrial Uses

Human Consumption

Alimentary Pastes

Antioxidants

Baby Food

Batters and Breading

Baking Applications

Baked Soybeans

Bakery Ingredients

Bakery Products

Beer & Ale

Beverage Powders

Breads Specialty

Bread and Rolls

Breakfast Cereals

Cakes and Cake Mixes

Canned Meats

Cereals

Cheeses

Coarsely-Chopped Meats

Coffee Creamers

Coffee Whiteners

Cookies

Cooking Oils

Deserts

Dietary Supplements

Soy Isoflavones

Vitamin E

Phytosterols

Doughnuts

Emulsified Meats

Emulsifying Agents

Bakery Products

Candy/Chocolate Coatings

Pharmaceuticals

Filled Milks

Food Drinks

Frozen Dairy Desserts

Full Fat Soy Flour

Bread

Candy

Doughnut Mix

Frozen Dessert

Instant Milk Drinks

Low-Cost Gruels

Pancake Flour

Pan Grease Extender

Pie Crust

Sweet Goods

Graves

Grits

High Fiber Breads

Hypo Allergenic Milk

Infant Formulas

Margarine

Mayonnaise

Meat Products

Noodles

Oriental Foods

Pancakes

Pastries

Pasta Products

Peanut Butter

Pharmaceuticals

Prepared Mixes

Roasted Soybeans

Candies/Confections

Cookie Ingredient Topping

Crackers

Dietary Items

Fountain Topping

Soy Nut Butter

Soy Coffee

Salted Dressings

Salted Oils

Sandwich Spreads

Sauces

Sausage Casings

Shortenings

Stock Foods

Soups

Soy Flour Concentrates

Soy Flour Isolates

Soy Sprouts

Sweet Rolls

Traditional Soyfoods

Miso

Soy Milk

Soy Sauce

Tofu

Tempeh

Whipped Toppings

Whole Muscle Meats

Animal Consumption

Aquaculture

Bee Foods

Calf Milk Replacers

Cattle Feeds

Dairy Feeds

Fish Food

Fox & Mink Feeds

Pet Foods

Poultry Feeds

Protein Concentrates

Soybean Meal

Stock Feeds

Swine Feeds

Milk Replacers for young animals

Edible Uses

Soybean Grower Analysis

Our example Soybean Crushing Facility requires approximately 30 Million Bushels of beans per year (900,000 tons).

- 30 million bushels / 31.2 Bu per acre (5 yr avg) = 961,538 production acres.
- 31.2 Bu (avg Bu per acre) X 10 cents (increase with processing) = \$3.12 per acre.
- \$3.12 per acre X 961,538 production acres = \$2,999,998 of increased value to the producers of those soybeans + the value of that turned over in local communities.
- State revenues flow back in the form of income, sales and excise taxes.

North Dakota Data – Soybeans (USDA National Agricultural Statistics Service)

Year	Acres Planted	Acres Harvested	Average Yield	Total Production	Average Price	Total Value
2004	3,750,000	3,570,000	23 bu	82,110,000	\$5.75	\$472,133,000
2005	2,950,000	2,000,000	36.5 bu	105,850,000	\$5.37	\$560,628,000
2006	3,900,000	3,870,000	31.5 bu	121,905,000	\$5.98	\$717,421,000
2007	3,100,000	3,060,000	35.5 bu	108,630,000	\$9.80	\$1,025,570,000
2008	3,800,000	3,760,000	28 bu	105,280,000	Not Currently	Available
Avg			31.2 bu			

Each Bushel of Soybeans = (approximately)	48 pounds of meal	\$ 6.43	\$268 per ton *
	11 pounds of oil	\$ 3.31	\$.301 per lb *
	01 pounds of hulls	\$ 0.04	\$ 75 per ton **
	60 pounds Total	\$ 9.78	

* Mar 09 Chicago Board of Trade

** Mar 03 South Dakota Soybean Processors