

## JOURNAL OF THE HOUSE

## Fifty-ninth Legislative Assembly

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Bismarck, April 20, 2005

The House convened at 8:00 a.m., with Speaker Klein presiding.

The prayer was offered by Pastor Al Shaner, Grace Lutheran Bretheran Church, Bismarck.

The roll was called and all members were present except Representative Belter.

A quorum was declared by the Speaker.

**COMMUNICATION FROM GOVERNOR JOHN HOEVEN**

This is to inform you that on April 18, 2005, I have signed the following: HB 1203, HB 1222, HB 1231, HB 1417, HB 1434, and HB 1453.

Also, on April 20, 2005, I have signed the following: HB 1275 and HB 1437.

**MOTION**

**REP. MONSON MOVED** that the House stand in recess until 1:00 p.m., which motion prevailed.

**THE HOUSE RECONVENED** pursuant to recess taken, with Speaker Klein presiding.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has amended and subsequently passed: HCR 3060.

**SENATE AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3060**

Page 1, after line 18, insert:

"**WHEREAS**, North Dakota has a thriving commercial and private air service industry that could be beneficial to assisting in this initiative and the state pledges to work cooperatively to ensure all military, private, and public air service needs are met; and"

Renumber accordingly

**CONSIDERATION OF MESSAGE FROM THE SENATE**

**REP. MONSON MOVED** that the House do concur in the Senate amendments to HCR 3060, which motion prevailed on a voice vote.

HCR 3060, as amended, was placed on the Eleventh order of business.

**SECOND READING OF HOUSE CONCURRENT RESOLUTION**

**HCR 3060:** A concurrent resolution urging the Department of Defense to use North Dakota for the Department of Defense's air space and special forces ground training initiatives.

The question being on the final passage of the amended resolution, which has been read, and has committee recommendation of DO PASS.

HCR 3060, as amended, passed on a voice vote.

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**REPORT OF CONFERENCE COMMITTEE**

**SB 2217, as engrossed:** Your conference committee (Sens. Wardner, Tollefson, Bercier and Reps. Belter, Brandenburg, S. Kelsh) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1282-1285, adopt amendments as follows, and place SB 2217 on the Seventh order:

That the House recede from its amendments as printed on pages 1282-1285 of the Senate Journal and pages 1549-1552 of the House Journal and that Engrossed Senate Bill No. 2217 be amended as follows:

Page 1, line 1, after "enact" insert "chapter 6-09.17," and after "57-38" insert ", a new subsection to section 57-38-30.3,"

Page 1, line 2, after the second "to" insert "a biodiesel partnership in assisting community expansion program," and after "corporate" insert "and individual"

Page 1, line 3, after "credits" insert a comma

Page 1, line 4, after "equipment" insert "; to amend and reenact section 7 of chapter 531 of the 2003 Session Laws, relating to extending the time special fuels tax reductions are available for biodiesel fuel", replace "and" with "to provide an appropriation; to provide a continuing appropriation;", and after "date" insert "; and to provide an expiration date"

Page 1, after line 5, insert:

**"SECTION 1.** Chapter 6-09.17 of the North Dakota Century Code is created and enacted as follows:

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

1. "Biodiesel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel production facilities as provided under this chapter.
2. "Biodiesel production facility" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.
3. "Community" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area.

6-09.17-02. Biodiesel partnership in assisting community expansion fund - Continuing appropriation - Administration. A biodiesel partnership in assisting community expansion fund is hereby established. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at the end of the biennium must be transferred to the state general fund. The Bank of North Dakota shall administer the fund.

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

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

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel production facility for the following eligible uses:
  - (1) Purchase of real property and equipment.
  - (2) Expansion of facilities.
  - (3) Working capital.
  - (4) Inventory.
- b. The loan funds cannot be used to refinance any existing debt or for the relocation of the business within North Dakota.

2. The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09.14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.
3. The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.
4. The maximum amount from the fund in the interest rate buydown may not exceed four hundred thousand dollars per loan and not more than one loan may be provided to any single biodiesel production facility under this chapter. However, if the partnership in assisting community expansion fund does not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The fund participation must be limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
5. The Bank of North Dakota shall adopt rules to implement this chapter."

Page 1, line 8, replace "Corporate income" with "Income"

Page 1, line 10, after "section" insert "57-38-29," and after "57-38-30" insert ", or 57-38-30.3"

Page 1, after line 15, insert:

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

Page 1, line 18, replace "Corporate income" with "Income" and replace "taxpayer" with "seller of biodiesel fuel"

Page 1, line 19, after "section" insert "57-38-29," and after "57-38-30" insert ", or 57-38-30.3"

Page 1, line 20, replace "taxpayer's" with "biodiesel fuel seller's"

Page 1, line 21, replace "and authorized by the state of North Dakota" with "under section 57-43.2-05"

Page 2, line 1, replace the first "the" with "a"

Page 2, line 2, replace "taxpayer" with "biodiesel fuel seller"

Page 2, line 4, replace "taxpayer" with "biodiesel fuel seller"

Page 2, after line 8, insert:

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

**SECTION 4.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credits provided under sections 2 and 3 of this Act."

Page 2, line 11, replace "and authorized by" with "under section 57-43.2-05"

Page 2, line 12, remove "the state of North Dakota"

Page 2, after line 15, insert:

**"SECTION 6. AMENDMENT.** Section 7 of chapter 531 of the 2003 Session Laws is amended and reenacted as follows:

**SECTION 7. EXPIRATION DATE.** Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, ~~2005~~ 2007, and are thereafter ineffective.

**SECTION 7. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so much of the sum as may be necessary, to the Bank of North Dakota for deposit in the biodiesel partnership in assisting community expansion fund for use as provided in chapter 6-09.17, for the biennium beginning July 1, 2005, and ending June 30, 2007."

Page 2, line 16, replace "1 and 2" with "2, 3, and 4"

Page 2, line 17, replace "1" with "31" and replace "3" with "5"

Renumber accordingly

Engrossed SB 2217 was placed on the Seventh order of business on the calendar.

#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**REP. BELTER MOVED** that the conference committee report on Engrossed SB 2217 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2217, as amended, was placed on the Fourteenth order.

#### **SECOND READING OF SENATE BILL**

**SB 2217:** A BILL for an Act to create and enact chapter 6-09.17, two new sections to chapter 57-38, a new subsection to section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a biodiesel partnership in assisting community expansion program, corporate and individual income tax credits, and a sales tax exemption for blending of biodiesel fuel and purchase of biodiesel production equipment; to amend and reenact section 7 of chapter 531 of the 2003 Session Laws, relating to extending the time special fuels tax reductions are available for biodiesel fuel; to provide an appropriation; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

#### **ROLL CALL**

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 90 YEAS, 1 NAY, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Bellew; Belter; Berg; Bernstein; Boe; Boehning; Boucher; Brandenburg; Brusegaard; Carlisle; Carlson; Charging; Clark; Conrad; Damschen; DeKrey; Delmore; Delzer; Devlin; Dietrich; Dosch; Drovdal; Ekstrom; Froelich; Froseth; Galvin; Glassheim; Grande; Gulleon; Haas; Hanson; Hawken; Headland; Herbel; Horter; Hunskor; Iverson; Johnson, D.; Johnson, N.; Kasper; Keiser; Kelsch, R.; Kelsh, S.; Kempenich; Kerzman; Kingsbury; Klemin; Koppelman; Kreidt; Kretschmar; Kroeber; Maragos; Martinson; Meier, L.; Metcalf; Meyer, S.; Monson; Mueller; Nelson; Nicholas; Norland; Nottestad; Onstad; Owens; Pietsch; Pollert; Porter; Potter; Rennerfeldt; Ruby; Sandvig; Schmidt; Sitte; Solberg; Svedjan; Thoreson; Thorpe; Timm; Uglem; Vigasaa; Wald; Wall; Weiler; Wieland; Williams; Wrangham; Zaiser; Speaker Klein

**NAYS:** Skarphol

**ABSENT AND NOT VOTING:** Kaldor; Price; Weisz

Engrossed SB 2217 passed and the title was agreed to.

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**REPORT OF CONFERENCE COMMITTEE**

**SB 2270, as reengrossed:** Your conference committee (Sens. Klein, Mutch, Heitkamp and Reps. Belter, Headland, S. Kelsh) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1285-1286, adopt amendments as follows, and place SB 2270 on the Seventh order:

That the House recede from its amendments as printed on pages 1285 and 1286 of the Senate Journal and pages 1306-1308 of the House Journal and that Reengrossed Senate Bill No. 2270 be amended as follows:

Page 1, line 1, replace "section" with "sections" and after "4-14.1-07.1" insert "and 4-14.1-07.2"

Page 1, line 2, replace "section" with "sections 4-14.1-08 and"

Page 1, after line 7, insert:

**"4-14.1-07.1. Ethanol plant production incentives - Report to budget section."**

1. a. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to nine hundred thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
- b. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more in the previous fiscal year is eligible to receive up to four hundred fifty thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers.
3. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

**SECTION 2.** Section 4-14.1-07.2 of the North Dakota Century Code is created and enacted as follows:"

Page 1, line 8, replace "**4-14.1-07.1**" with "**4-14.1-07.2**"

Page 1, after line 13, insert:

**"SECTION 3. AMENDMENT.** Section 4-14.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-14.1-08. Ethanol production incentive - Calculation - Payment.** The agricultural products utilization commission shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79

liters] of ethanol during the quarter, as compiled by ~~the American coalition for ethanol~~ AXXIS petroleum. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1. a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the agricultural products utilization commission shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the agricultural products utilization commission shall add zero to any amount payable under this section.
- c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the agricultural products utilization commission shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the agricultural products utilization commission shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the agricultural products utilization commission shall subtract zero from any amount payable under this section.
- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the agricultural products utilization commission shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter."

Page 1, line 21, after "4-14.1-07.1" insert ", 4-14.1-07.2"

Renumber accordingly

Reengrossed SB 2270 was placed on the Seventh order of business on the calendar.

#### **CONSIDERATION OF CONFERENCE COMMITTEE REPORT**

**REP. BELTER MOVED** that the conference committee report on Reengrossed SB 2270 be adopted, which motion prevailed on a voice vote.

Reengrossed SB 2270, as amended, was placed on the Fourteenth order.

#### **SECOND READING OF SENATE BILL**

**SB 2270:** A BILL for an Act to create and enact sections 4-14.1-07.1 and 4-14.1-07.2 of the North Dakota Century Code, relating to ethanol plant production incentives; to amend and reenact sections 4-14.1-08 and 4-14.1-10 of the North Dakota Century Code, relating to the ethanol production incentive fund; and to provide a continuing appropriation.

#### **ROLL CALL**

The question being on the final passage of the amended bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 85 YEAS, 6 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Aarsvold; Amerman; Belter; Berg; Bernstein; Boe; Boehning; Boucher; Brandenburg; Brusegaard; Carlisle; Carlson; Charging; Clark; Conrad; Damschen; DeKrey; Delmore; Devlin; Dietrich; Drovda; Ekstrom; Froelich; Froseth; Galvin; Glassheim; Grande; Gulleon; Haas; Hanson; Hawken; Headland; Herbel; Horter; Hunsdor; Iverson;

Johnson, D.; Johnson, N.; Kasper; Keiser; Kelsch, R.; Kelsh, S.; Kempenich; Kerzman; Kingsbury; Klemm; Koppelman; Kreidt; Kretschmar; Kroeber; Maragos; Martinson; Meier, L.; Metcalf; Meyer, S.; Monson; Mueller; Nelson; Nicholas; Norland; Nottestad; Onstad; Owens; Pietsch; Pollert; Potter; Rennerfeldt; Sandvig; Schmidt; Sitte; Solberg; Svedjan; Thoreson; Thorpe; Timm; Uglem; Vigesaa; Wald; Wall; Weiler; Wieland; Williams; Wrangham; Zaiser; Speaker Klein

**NAYS:** Bellew; Delzer; Dosch; Porter; Ruby; Skarphol

**ABSENT AND NOT VOTING:** Kaldor; Price; Weisz

Reengrossed SB 2270 passed and the title was agreed to.

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**MOTION**

**REP. MONSON MOVED** that the House stand in recess until 4:30 p.m., which motion prevailed.

**THE HOUSE RECONVENED** pursuant to recess taken, with Speaker Klein presiding.

**MOTION**

**REP. MONSON MOVED** that the Speaker appoint Rep. Brusegaard to replace Rep. Wald on HB 1020 and SB 2003, which motion prevailed.

**MOTION**

**REP. MONSON MOVED** that HB 1004, HB 1397, SB 2002 and SB 2004 be laid over one legislative day, and SB 2007, SB 2019 and SB 2157 be laid over one legislative day, which motion prevailed.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has appointed Rep. Brusegaard to replace Rep. Wald on the Conference Committee on HB 1020.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has appointed Rep. Brusegaard to replace Rep. Wald on the Conference Committee on SB 2003.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has adopted the conference committee report and subsequently passed: SB 2217, SB 2270.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The House has concurred in the Senate amendments and subsequently passed: HCR 3060.

**MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)**

**MR. PRESIDENT:** The Speaker has signed: HB 1108, HB 1189, HB 1342, HB 1346, HB 1370, HB 1454, HB 1500, HB 1531.

**DELIVERY OF ENROLLED BILLS AND RESOLUTIONS**

The following bills were delivered to the Governor for approval on April 20, 2005: HB 1108, HB 1189, HB 1342, HB 1346, HB 1370, HB 1454, HB 1500, HB 1531.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2359.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report on: SB 2050.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report, subsequently passed, and the emergency clause carried: SB 2228.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2016.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The Senate has adopted the conference committee report and subsequently passed: SB 2267.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2217, SB 2270.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The President has signed: SB 2361, SB 2388.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** The President has signed: HB 1074, HB 1172, HB 1181, HB 1291, HB 1301, HB 1332, HB 1522, HCR 3036.

**MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)**

**MR. SPEAKER:** Your signature is respectfully requested on: SB 2204, SB 2274.

**MOTION**

**REP. MONSON MOVED** that the absent member be excused, which motion prevailed.

**MOTION**

**REP. MONSON MOVED** that the House be on the Fifth, Thirteenth, Fourteenth, and Sixteenth orders of business and at the conclusion of those orders, the House stand adjourned until 8:00 a.m., Thursday, April 21, 2005, which motion prevailed.

The House stood adjourned pursuant to Representative Monson's motion.

**Bradley C. Fay, Chief Clerk**