

SENATE BILL NO. 2288

Introduced by

Senators Nething, Erbele, Heitkamp

Representatives DeKrey, Gruchalla, Nelson

1 A BILL for an Act to provide for a biomass energy center; to create and enact a new chapter to
2 title 54 and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating
3 to a renewable energy policy, council, and development fund for installation of geothermal,
4 solar, or wind energy devices under the simplified method of computing income tax; to amend
5 and reenact sections 4-14.1-01.1, 4-14.1-09, 6-09.17-01, 6-09.17-02, 6-09.17-03, 6-09.17-04,
6 39-04-39, and 57-38.6-03 of the North Dakota Century Code, relating to ethanol and renewable
7 fuels incentives, expansion of the biodiesel partnership in assisting community expansion
8 program, and distribution of motor vehicle registration fees and the agricultural business
9 investment tax credit; to provide an appropriation; to provide a continuing appropriation; and to
10 provide an effective date.

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

12 **SECTION 1. AMENDMENT.** Section 4-14.1-01.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **4-14.1-01.1. Definition.** In this chapter, unless the context otherwise requires, "eligible
15 facility" means an ethanol or biodiesel production plant constructed in this state after July 31,
16 2003.

17 **SECTION 2. AMENDMENT.** Section 4-14.1-09 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **4-14.1-09. Subsidy limitations.** The office of renewable energy and energy efficiency
20 may not distribute more than one million six hundred thousand dollars per eligible facility
21 annually in payments under section 4-14.1-08. No eligible facility may receive state ~~ethanol~~
22 payments that exceed a cumulative total of ten million dollars or for longer than ten years.

23 Change in ownership of an eligible facility does not affect the ten million dollar cumulative total

1 allowed to be paid to that eligible facility under this section or the ten-year limitation contained
2 in this section.

3 **SECTION 3. AMENDMENT.** Section 6-09.17-01 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **6-09.17-01. Definitions.** In this chapter, unless the context or subject matter otherwise
6 requires:

- 7 1. "~~Biodiesel~~ Biofuels partnership in assisting community expansion fund" or "fund"
8 means a fund established to buy down the interest rate on loans to ~~biodiesel~~
9 biofuels production facilities as provided under this chapter.
- 10 2. "~~Biodiesel~~ Biofuels production facility" means a corporation, limited liability
11 company, partnership, individual, or association involved in production of diesel
12 fuel containing at least five percent biodiesel meeting the specifications adopted by
13 the American society for testing and materials; a corporation, limited liability
14 company, partnership, individual, or association involved in the production of
15 corn-based ethanol or cellulose-based ethanol; or a corporation, limited liability
16 company, partnership, individual, or association involved in a soybean or canola
17 crushing facility.
- 18 3. "Community" means the city or county in which an eligible ~~biodiesel~~ biofuels
19 production facility is located, or a local development corporation, community
20 organization, or any other group whose interest is in the economic growth of the
21 area.

22 **SECTION 4. AMENDMENT.** Section 6-09.17-02 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **6-09.17-02. ~~Biodiesel~~ Biofuels partnership in assisting community expansion**
25 **fund - Continuing appropriation - Administration.** A ~~biodiesel~~ biofuels partnership in
26 assisting community expansion fund is hereby established. All moneys transferred into the
27 fund, interest on fund moneys, and payments to the fund are hereby appropriated for the
28 purposes of this chapter. This fund is subject to section 54-44.1-11 and any unexpended and
29 unobligated balance in the fund at the end of the biennium must be transferred to the state
30 general fund. The Bank of North Dakota shall administer the fund.

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

3 **6-09.17-03. Fund - Purpose - Interest rate buydown.** Moneys in the ~~biodiesel~~
4 biofuels partnership in assisting community expansion fund must be used for the purpose of
5 buying down the interest rate on loans made by a lead financial institution in participation with
6 the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty
7 percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders
8 and there is evidence of the community's commitment and ability to fund its portion of the
9 buydown, the fund's participation in the buydown must automatically be approved.

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

12 **6-09.17-04. Fund moneys - Eligible uses.**

- 13 1. a. The fund moneys may be used to participate in an interest rate buydown on a
14 loan to a ~~biodiesel~~ biofuels production facility for the following eligible uses:
 - 15 (1) Purchase of real property and equipment.
 - 16 (2) Expansion of facilities.
 - 17 (3) Working capital.
 - 18 (4) Inventory.
- 19 b. The loan funds cannot be used to refinance any existing debt or for the
20 relocation of the business within North Dakota.
- 21 2. The community shall determine the amount of the interest rate buydown and apply
22 to the Bank of North Dakota for participation from the ~~biodiesel~~ biofuels partnership
23 in assisting community expansion fund. The funds for the community's portion of
24 the buydown may come from a local development corporation, contributions,
25 community funds, future dedicated tax programs, or any other community source.
26 Any community funds provided for a buydown under chapter 6-09.14 for a
27 ~~biodiesel~~ biofuels production facility may be considered as funds for the
28 community's portion of the buydown under this chapter for that facility.
- 29 3. The fund participation portion in the buydown must be determined by the Bank of
30 North Dakota based on economic conditions in the city or county in which the
31 business is located.

- 1 4. The maximum amount from the fund in the interest rate buydown may not exceed
2 ~~four~~ five hundred thousand dollars per loan and not more than one loan may be
3 provided to any single ~~biodiesel~~ biofuels production facility under this chapter.
4 However, if the partnership in assisting community expansion fund does not have
5 adequate funds on hand for an interest rate buydown for a ~~biodiesel~~ biofuels
6 production facility, the maximum amount from the fund under this subsection is
7 increased to six hundred thousand dollars per loan. The community funds required
8 for participation in the interest rate buydown are limited to the amount required
9 when the fund provides two hundred fifty thousand dollars per loan. The fund
10 participation must be limited to the amount required to buy down the interest to five
11 hundred basis points below the national prime interest rate.
- 12 5. The Bank of North Dakota shall adopt rules to implement this chapter.

13 **SECTION 7. Biomass energy center.** The biomass energy center consists of a
14 multidisciplinary group led by North Dakota agricultural experiment station and North Dakota
15 state university extension service faculty to conduct research and provide education and
16 technical assistance related to biomass production, harvesting, transportation, and conversion.

17 **SECTION 8. Biomass research responsibilities.**

- 18 1. The North Dakota agricultural experiment station shall complete agronomic
19 research to determine the most efficient perennial grasses or other plants for
20 cellulose production and the amount of fertilization required.
- 21 2. The North Dakota agricultural experiment station shall conduct research to
22 determine the most efficient method of harvesting biomass.
- 23 3. The North Dakota agricultural experiment station shall determine the benefits of
24 biomass densification or preprocessing.
- 25 4. The North Dakota agricultural experiment station and North Dakota state university
26 extension service shall complete an economic evaluation of all steps in the
27 utilization of biomass for energy.

28 **SECTION 9. Public information activities.** The biomass energy center shall provide
29 education, technical assistance, and information to the public regarding biomass for energy
30 production. The North Dakota state university extension service shall provide this educational

1 programming. The North Dakota state university extension service is authorized a full-time
2 equivalent position to perform this function.

3 **SECTION 10. Ethanol and biomass incentives.** The biomass energy center shall
4 work to identify and evaluate incentives for cellulosic ethanol production and biomass energy
5 through the legislative assembly or at the federal level. The center shall identify and evaluate
6 incentives for producers, such as providing payment for producers to grow a dedicated
7 bio-energy crop or support equipment, harvesting, and transportation costs.

8 **SECTION 11. Funding.** The North Dakota agricultural experiment station and North
9 Dakota state university extension service shall seek funding to continue perennial biomass
10 production research and education.

11 **SECTION 12. AMENDMENT.** Section 39-04-39 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **39-04-39. Distribution of registration fees collected.** Any moneys in the registration
14 fund accruing from license fees or from other like sources, in excess of the amount required to
15 pay salaries and other necessary expenses, in accordance with the legislative assembly's
16 appropriation for such purposes, must be promptly deposited in the highway tax distribution
17 fund which must be distributed in the manner as prescribed by law. The state treasurer shall
18 transfer annually from the highway tax distribution fund to the ethanol production incentive fund
19 an amount equal to ~~forty~~ fifty percent of all sums collected for the registration of farm vehicles
20 under subsection 5 of section 39-04-19 except that no transfer may be made in an amount that
21 would result in the balance of the ethanol production incentive fund exceeding ~~five~~ ten million
22 dollars.

23 **SECTION 13.** A new chapter to title 54 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Renewable energy policy.** It is the public policy of this state to stimulate the
26 development of renewable energy within the state for the goal of providing secure, diverse,
27 sustainable, and competitive renewable energy supplies. It is also the public policy of this state
28 to promote the development of new technologies, provide innovative opportunities for farmers
29 and other residents, create additional employment and wealth that contributes to rural
30 development, decreases dependence of foreign energy supplies, improves the environment,
31 and encourages a renewable energy industry within this state that is competitive for both

1 domestic and export markets. In furtherance of these public policies, this state provides
2 assistance in research, development, and marketing of renewable energy sources necessary to
3 meet these goals.

4 **Renewable energy research council - Composition.** The industrial commission shall
5 consult with the renewable energy research council in matters of policy affecting the
6 administration of the renewable energy development fund.

- 7 1. The renewable energy research council consists of:
- 8 a. The commissioner of commerce or the commissioner's designee.
 - 9 b. The agriculture commissioner or the commissioner's designee.
 - 10 c. A member appointed by the agriculture commissioner.
 - 11 d. A member with a substantial interest in the biodiesel industry appointed by the
12 governor representing biodiesel interests.
 - 13 e. A member with a substantial interest in the biomass industry appointed by the
14 governor representing biomass interests.
 - 15 f. A member with a substantial interest in the wind industry appointed by the
16 governor representing wind interests.
 - 17 g. A member with a substantial interest in the ethanol industry appointed by the
18 governor representing ethanol interests.
 - 19 h. Two additional members appointed by the governor.
- 20 2. Subject to subsection 6, the terms of office for members of the council are three
21 years but of those first appointed, two serve for one year, two serve for two years,
22 and three serve for three years.
- 23 3. The council shall select its chairman from among its members.
- 24 4. The council shall have at least one regular meeting each year and such additional
25 meetings as the chairman determines necessary at a time and place to be fixed by
26 the chairman. Special meetings must be called by the chairman on written request
27 of any three members. Four members constitute a quorum.
- 28 5. The council shall recommend to the industrial commission the approval of grants,
29 loans, or other financial assistance necessary or appropriate for funding, research,
30 development, marketing, and educational projects or activities and any other
31 matters related to this chapter.

1 6. Members of the council appointed by the governor serve at the pleasure of the
2 governor.

3 **Access to council records.**

4 1. Materials and data submitted to, or made or received by, the council or industrial
5 commission, to the extent that the council determines the materials or data consist
6 of trade secrets or commercial, financial, or proprietary information of individuals or
7 entities applying to or contracting with the council or receiving council services
8 under this chapter, are not public records subject to section 44-04-18 and section 6
9 of article XI of the Constitution of North Dakota, and are subject to section
10 44-04-18.4.

11 2. A person or entity must file a request with the council or industrial commission to
12 have material designated as confidential under subsection 1. The request must
13 contain information required by the council and must include at least the following:

14 a. A general description of the nature of the information sought to be protected.

15 b. An explanation of why the information derives independent economic value,
16 actual or potential, from not being generally known to other persons.

17 c. An explanation of why the information is not readily ascertainable by proper
18 means by other persons.

19 d. A general description of a person or entity that may obtain economic value
20 from disclosure or use of the information, and how the person or entity may
21 obtain this value.

22 e. A description of the efforts used to maintain the secrecy of the information.

23 3. A request under subsection 2 is confidential. The council shall examine the
24 request and determine whether the information is relevant to the matter at hand
25 and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the
26 council determines the information is either not relevant or not a trade secret, the
27 council shall notify the requester and the requester may ask for the return of the
28 information and request within ten days of the notice. If no return is sought, the
29 information and request are a public record.

30 4. The names or identities of independent technical reviewers on a project or program
31 and the names of council members making recommendations are confidential, may

1 not be disclosed by the council, and are not public records subject to section
2 44-04-18 or section 6 of article XI of the Constitution of North Dakota.

3 **Industrial commission powers.** The industrial commission may:

- 4 1. Make grants or loans, and provide other forms of financial assistance as necessary
5 or appropriate, to qualified persons for feasibility studies, applied research and
6 demonstrations, venture capital investments, grants and matching grants, and
7 low-interest loans and loan buydowns to foster the development of renewable
8 energy, including wind, biofuels, biomass, solar, hydroelectric, geothermal, and
9 hydrogen, that is produced from the foregoing renewable energy sources.
- 10 2. Provide incentives for multifeed facilities to process corn ethanol, cellulosic
11 ethanol, canola biodiesel, and soy biodiesel.
- 12 3. Provide incentives for scaleable technologies.
- 13 4. Provide incentives to increase efficiencies such as coproduct utilization
14 technologies.
- 15 5. Execute contracts and all other instruments necessary or convenient for the
16 performance of its powers and functions under this chapter.
- 17 6. Accept aid, grants, or contributions of money or other things of value from any
18 source, to be held, used, and applied to carry out this chapter, subject to the
19 conditions upon which the aid, grants, or contributions are made, including aid,
20 grants, or contributions from any department, agency, or instrumentality of the
21 United States for any purpose consistent with this chapter.
- 22 7. Establish interest buydown programs for equipment needed for production,
23 harvest, storage, and transport under the special private lands open to sportsmen
24 pilot program for native grass stands.
- 25 8. Fund technical assistance from the university system and private entities to
26 producers.

27 **Renewable energy development fund - Continuing appropriation.** The renewable
28 energy development fund is a special fund in the state treasury. All funds in the renewable
29 energy development fund are appropriated to the industrial commission on a continuing basis
30 for the purpose of carrying out and effectuating this chapter. Interest earned by the fund must
31 be credited to the fund. Five million dollars of the initial twenty million dollars placed in the

1 renewable energy development fund must be used to establish incentives and financial awards
2 for projects and programs related to biomass and cellulose, including nanowhisker technology
3 and for stand establishment of native grasses and income support during the stand
4 establishment period before the first harvest. The industrial commission and the renewable
5 energy research council shall work with the game and fish department to establish a special
6 private lands open to sportsmen pilot program for stand establishment on participating acres in
7 return for public access to hunting and adherence to conservation best practices such as
8 postseason harvest, minimum stubble height, and nonharvest provisions on lands enrolled in
9 the program.

10 **SECTION 14.** A new subsection to section 57-38-30.3 of the North Dakota Century
11 Code is created and enacted as follows:

12 A taxpayer filing a return under this section is entitled to the credit provided under
13 section 57-38-01.8.

14 **SECTION 15. AMENDMENT.** Section 57-38.6-03 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **57-38.6-03. Agricultural business investment tax credit.** If a taxpayer makes a
17 qualified investment in a qualified business, the taxpayer is entitled to a credit against state
18 income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. The
19 amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by
20 the taxpayer in qualified businesses during the taxable year, subject to the following:

- 21 1. The maximum annual credit a taxpayer may obtain under this section is fifty
22 thousand dollars and no taxpayer may obtain more than two hundred fifty thousand
23 dollars in credits under this section over any combination of taxable years. This
24 subsection may not be interpreted to limit additional investment by a taxpayer for
25 which that taxpayer is not applying for a credit.
- 26 2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit
27 under this section which is attributable to qualified investments in a single taxable
28 year. The amount of the credit allowed under this section for any taxable year may
29 not exceed fifty percent of the taxpayer's tax liability as otherwise determined
30 under chapter 57-38.

- 1 3. Any amount of credit under this section not allowed because of the limitations in
2 this section may be carried forward for up to ~~five~~ ten taxable years after the taxable
3 year in which the investment was made.
- 4 4. A partnership, subchapter S corporation, limited liability company that for tax
5 purposes is treated like a partnership, or any other passthrough entity that invests
6 in a qualified business must be considered to be the taxpayer for purposes of the
7 investment limitations in this section and, except for the tax liability limitation under
8 subsection 2, the amount of the credit allowed with respect to the passthrough
9 entity's investment in a qualified business must be determined at the passthrough
10 entity level. The amount of the total credit determined at the passthrough entity
11 level must be allowed to the passthrough entity's owners, in proportion to their
12 respective ownership interests in the passthrough entity.
- 13 5. The investment must be at risk in the business. A qualified investment must be in
14 the form of a purchase of ownership interests or the right to receive payment of
15 dividends from the business. An investment for which a credit is received under
16 this section must remain in the business for at least three years. An investment
17 placed in escrow does not qualify for the credit.
- 18 6. The entire amount of an investment for which a credit is claimed under this section
19 must be expended by the qualified business for plant, equipment, research and
20 development, marketing and sales activity, or working capital for the qualified
21 business.
- 22 7. The tax commissioner may disallow any credit otherwise allowed under this section
23 if any representation by a business in the application for certification as a qualified
24 business proves to be false or if the taxpayer or qualified business fails to satisfy
25 any conditions under this section or any conditions consistent with this section
26 otherwise determined by the tax commissioner. The amount of any credit
27 disallowed by the tax commissioner that reduced the taxpayer's income tax liability
28 for any or all applicable tax years, plus penalty and interest provided under section
29 57-38-45, must be paid by the taxpayer.
- 30 8. If the taxpayer who claims the credit under this section for an investment sells the
31 taxpayer's interest in that investment before holding the interest for five years, the

1 taxpayer's claimed tax credits from all previous years must be disallowed by the
2 tax commissioner and the taxpayer is liable for all applicable taxes, plus penalty
3 and interest provided under section 57-38-45.

4 **SECTION 16. APPROPRIATION.** There is appropriated out of any moneys in the
5 resources trust fund, not otherwise appropriated, the sum of one-half of all revenues exceeding
6 \$7,000,000 per fiscal year, not to exceed \$3,000,000 per biennium, to the industrial commission
7 for the purpose of carrying out the renewable energy development functions under section 13 of
8 this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

9 **SECTION 17. APPROPRIATION.** There is appropriated out of any moneys in the
10 general fund in the state treasury, not otherwise appropriated, the sum of \$17,000,000, or so
11 much of the sum as may be necessary, to the industrial commission for the purpose of carrying
12 out the renewable energy development functions under section 13 of this Act, for the biennium
13 beginning July 1, 2007, and ending June 30, 2009.

14 **SECTION 18. APPROPRIATION.** There is appropriated out of any moneys in the
15 general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so
16 much of the sum as may be necessary, to the industrial commission for deposit in the biofuels
17 partnership in assisting community expansion fund to carry out the purposes of sections 3, 4, 5,
18 and 6 of this Act, for the biennium beginning July 1, 2007, and ending June 30, 2009.

19 **SECTION 19. EFFECTIVE DATE.** Sections 14 and 15 of this Act are effective for
20 taxable years beginning after December 31, 2006.