

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2129
(Agriculture Committee)
(At the request of the Industrial Commission)

AN ACT to create and enact a new section to chapter 54-63 of the North Dakota Century Code, relating to definitions; to amend and reenact subsection 5 of section 54-44.4-02, subsection 2 of section 54-60.1-01, and sections 54-63-01 and 54-63-03 of the North Dakota Century Code, relating to the renewable energy program; and to repeal sections 54-17-38 and 54-17-39 of the North Dakota Century Code, relating to the biomass incentive and research program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements ~~through a contract or other instrument executed~~ by the industrial commission for energy-related programs under chapters 17-05, 54-17.5, 54-17.6, ~~and 54-17.7, and 54-63~~ and under those statutes in title 38 authorizing the industrial commission to perform well and hole pluggings, reclamation work, equipment removal, leak prevention, and similar work.

SECTION 2. AMENDMENT. Subsection 2 of section 54-60.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Business incentive" means a state or political subdivision direct cash transfer, loan, or equity investment; contribution of property or infrastructure; reduction or deferral of any tax or any fee; guarantee of any payment under any loan, lease, or other obligation; or preferential use of government facilities given to a business. To be considered a business incentive, the total assistance in all forms must be valued at twenty-five thousand dollars or more committed within a year. Unless specifically provided otherwise, the term does not include:
 - a. Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, or similar criteria.
 - b. Incentives resulting from Bank of North Dakota programs unless the incentive is a direct interest rate buydown or is an investment made pursuant to the North Dakota alternative and venture capital investments and early-stage capital funds program.
 - c. Public improvements to buildings or lands owned by the state or political subdivision which serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made.
 - d. Assistance provided for the sole purpose of renovating old or decaying building stock or bringing such building stock up to code and assistance provided for designated historic preservation districts, provided that the assistance does not exceed seventy-five percent of the total cost.
 - e. Assistance to provide job-readiness and training services if the sole purpose of the assistance is to provide those services.
 - f. Assistance for housing.

- g. Assistance for pollution control or abatement.
- h. Assistance for energy conservation.
- i. Tax reductions resulting from conformity with federal tax law.
- j. Benefits derived from regulation.
- k. Indirect benefits derived from assistance to educational institutions.
- l. Assistance for a collaboration between a North Dakota institution of higher education and a business.
- m. Redevelopment if the recipient's investment in the purchase of the site and in site preparation is seventy percent or more of the assessor's current year's estimated market value.
- n. General changes in tax increment financing law and other general tax law changes of a principally technical nature.
- o. Federal assistance provided through the state or a political subdivision until the assistance has been repaid to, and reinvested by, the state or political subdivision.
- p. Federal or state assistance for the lignite research, development, and marketing program under chapter 54-17.5.
- q. Federal or state assistance for the oil and gas research, development, and marketing program under chapter 54-17.6.
- r. Federal or state assistance for the renewable energy program under chapter 54-63.

SECTION 3. A new section to chapter 54-63 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, "advanced biofuel" means fuel derived from renewable biomass and includes:

- 1. Biofuel derived from cellulose, hemicellulose, or lignin;
- 2. Biofuel derived from sugar and starch other than ethanol derived from corn kernel starch;
- 3. Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
- 4. Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;
- 5. Biogas, including landfill gas and sewage waste treatment gas, produced through the conversion of organic matter from renewable biomass;
- 6. Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and
- 7. Other fuel derived from cellulosic biomass.

SECTION 4. AMENDMENT. Section 54-63-01 of the North Dakota Century Code is amended and reenacted as follows:

54-63-01. Renewable energy council - Composition. The industrial commission shall consult with the renewable energy council in matters of policy affecting the administration of the renewable energy development fund.

1. The renewable energy council consists of:
 - a. The commissioner of commerce or the commissioner's designee.
 - b. A member with a substantial interest in the agriculture industry appointed by the governor.
 - c. A member with a substantial interest in the biodiesel industry appointed by the governor representing biodiesel interests.
 - d. A member with a substantial interest in the biomass industry appointed by the governor representing biomass interests.
 - e. A member with a substantial interest in the wind industry appointed by the governor representing wind interests.
 - f. A member with a substantial interest in the ethanol industry appointed by the governor representing ethanol interests.
 - g. A member with a substantial interest in advanced biofuel and sugar-based biofuel, appointed by the governor.
2. Subject to subsection 6, the terms of office for members of the council are three years but of those first appointed, two serve for one year, two serve for two years, and ~~three~~ two serve for three years.
3. The commissioner of commerce shall serve as chairman.
4. The council shall have at least one regular meeting each year and such additional meetings as the chairman determines necessary at a time and place to be fixed by the chairman. Special meetings must be called by the chairman on written request of any three members. Four members constitute a quorum.
5. The council shall recommend to the industrial commission the approval of grants, loans, or other financial assistance necessary or appropriate for funding, research, development, marketing, and educational projects or activities and any other matters related to this chapter. ~~Any grants, loans, or other financial assistance must be matched on a dollar for dollar basis.~~
6. Members of the council serve at the pleasure of the governor.

SECTION 5. AMENDMENT. Section 54-63-03 of the North Dakota Century Code is amended and reenacted as follows:

54-63-03. Industrial commission powers.

1. The industrial commission may:
 - a. Make grants or loans, and provide other forms of financial assistance as necessary or appropriate, to qualified persons for funding research, development, marketing, and educational projects or activities, feasibility studies, applied research and demonstrations, venture capital investments, ~~grants and matching grants,~~ and low-interest loans and loan buydowns to foster the development of renewable energy, including wind, biofuels, biomass, solar, hydroelectric, geothermal, and hydrogen, that is produced from the foregoing renewable energy sources. Any financial assistance

that the commission awards to a project must not be the project's sole support. Any financial assistance the commission awards must be conditioned on the assurance that the applicant or a third party will support the project by either monetary or nonmonetary means. The amount of this additional support is at the commission's discretion.

- b. Provide incentives for multifeed facilities to process corn ethanol, cellulosic ethanol, canola biodiesel, and soy biodiesel.
 - c. Provide incentives for scaleable technologies.
 - d. Provide incentives to increase ~~efficiencies such as~~ research and utilization of renewable energy coproduct utilization for livestock feed, human food products, and industrial use technologies.
 - e. Execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter.
 - f. Accept aid, grants, or contributions of money or other things of value from any source, to be held, used, and applied to carry out this chapter, subject to the conditions upon which the aid, grants, or contributions are made, including aid, grants, or contributions from any department, agency, or instrumentality of the United States for any purpose consistent with this chapter.
 - g. Establish interest buydown programs for equipment needed for production, harvest, storage, and transport under the special private lands open to sportsmen pilot program for native grass stands.
 - h. Fund technical assistance from the university system and private entities to producers.
 - i. Establish incentive programs that have as their purpose demonstrating to the agriculture community the commercial feasibility of producing, harvesting, storing, and delivering biomass feedstock. The program may include providing funds to producers of perennial biomass crops, including native grasses, so that such producers have an income during the time needed for these plants to mature and become ready for harvest.
 - j. Provide incentives to support research and demonstration projects and obtain matching grants for projects involving advanced biofuels and sugar-based biofuels.
2. The industrial commission shall contract with the department of commerce to provide technical assistance to the renewable energy council and the industrial commission to carry out and effectuate the purposes of this chapter, including pursuit of aid, grants, or contributions of money or other things of value from any source for any purpose consistent with this chapter. The department may contract with a public or private third party to provide any or all of the technical assistance necessary to implement the purposes of this chapter.

SECTION 6. REPEAL. Sections 54-17-38 and 54-17-39 of the North Dakota Century Code are repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2129.

Senate Vote: Yeas 44 Nays 2 Absent 1

House Vote: Yeas 79 Nays 4 Absent 11

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State