



North Dakota Legislative Council

Prepared for the Taxation Committee
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ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Pursuant to North Dakota Century Code Section 54-35-26, enacted in 2015, a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee once in each 6-year review cycle. The study is aimed at ensuring economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the soybean or canola crushing facility construction or retrofit credit and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, the outcome of past reviews of the incentive, and the data and testimony required to conduct an effective analysis of the incentive.

EXPLANATION OF THE SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Section 57-38-30.6 provides for a soybean or canola crushing facility construction or retrofit credit. The incentive is available to corporate income taxpayers and allows for a credit against state income tax liability in the amount of 10 percent per year for 5 years of the taxpayer's direct costs incurred after December 31, 2008, to adapt or add equipment to retrofit an existing facility or to construct a new facility in this state for the purpose of producing crushed soybeans or canola. Credit amounts exceeding a taxpayer's liability may be carried forward to each of the 5 succeeding taxable years, but a taxpayer is limited to claiming no more than \$250,000 in credits over any combination of taxable years. Eligible costs incurred by a taxpayer before a facility begins crushing soybeans or canola may not be claimed for purposes of the credit until taxable years on or after crushing begins.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Section 57-38-30.6 was created through the passage of House Bill No. 1309 (2003). As originally enacted, Section 57-38-30.6 only provided for a corporate income tax credit for costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent biodiesel fuel by volume. It was not until the passage of House Bill No. 1489 (2009) that the credit was expanded to apply to the costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing crushed soybeans or canola. Upon a review of the legislative history for House Bill No. 1489, the perceived goal of the Legislative Assembly in creating this credit was to encourage the modification of existing facilities or the construction of new facilities capable of crushing soybeans or canola in order to process those commodities in North Dakota rather than shipping the commodities out of state for processing. It was noted a large amount of soybeans were being shipped to neighboring states, such as Minnesota and South Dakota, for crushing and processing. The credit was viewed as a tool to help build a stronger rural economy in North Dakota. The estimated fiscal effect of the soybean or canola crushing facility construction or retrofit credit could not be determined during the 2009 legislative session.

The only other change impacting Section 57-38-30.6 occurred through the passage of Senate Bill No. 2034 (2011), which served to further expand the credit to apply to costs incurred to adapt or add equipment to retrofit an existing facility or construct a new facility in this state for the purpose of producing or blending diesel fuel containing at least 2 percent green diesel fuel by volume.

PAST REVIEW OF THE SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

The soybean or canola crushing facility construction or retrofit credit was last reviewed by the 2015-16 interim Political Subdivision Taxation Committee. During the course of its study, the committee was informed the soybean or canola crushing facility construction or retrofit credit had never been claimed. The committee also learned

incentives similar to the credit are found in eight other states. The committee considered bill drafts that would have repealed the soybean or canola crushing facility construction or retrofit credit. The committee received testimony from representatives of the North Dakota Soybean Growers Association, EmPower North Dakota Commission, North Dakota Soybean Council, Department of Commerce, and the Economic Development Association of North Dakota in opposition to the bill drafts.

Testimony provided in favor of retaining the credit indicated that although the credit has yet to be claimed, it is beneficial to maintain the availability of the incentive for instances in which an opportunity might arise to attract businesses to this state. Testimony indicated a large soybean processing plant that announced plans to locate in South Dakota had considered this state as a potential site of operations; however, other factors contributed to the plant's decision to locate in South Dakota. The committee learned North Dakota exports 90 percent of its soybean crop for processing outside the state. Proponents of the credit contended there is value in allowing the incentive to continue to prevent the state from being passed over for consideration by future processing plants. The committee discussed the potential benefit of increasing the amount of the credit in consideration of the high cost of equipment used in soybean and canola crushing facilities. The committee did not recommend any legislation to modify or eliminate the credit.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE SOYBEAN OR CANOLA CRUSHING FACILITY CONSTRUCTION OR RETROFIT CREDIT

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive;
5. Benefits that flow to out-of-state concerns resulting from the incentive; and
6. The use of this type of incentive in other states.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department;
3. The North Dakota Economic Development Foundation;
4. The North Dakota Soybean Growers Association; and
5. The North Dakota Soybean Council.