

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2217

In lieu of the amendments adopted by the House as printed on pages 1459-1461 of the House Journal, Engrossed Senate Bill No. 2217 is 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. 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:

- a. Purchase of real property and equipment.
- b. Expansion of facilities.
- c. Working capital.
- d. Inventory.

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 two hundred fifty 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 five hundred thousand dollars per loan and, in that event, the community funds required for participation in the interest rate buydown must be 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 with respect to the entity's investments 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 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 with respect to the entity's investments 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, 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