50590.0300

FIRST ENGROSSMENT with House Amendments

Fifty-ninth Legislative Assembly of North Dakota

ENGROSSED SENATE BILL NO. 2217

Introduced by

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Senators Klein, Grindberg, Taylor

Representatives DeKrey, Mueller, Pollert

- 1 A BILL for an Act to create and enact chapter 6-09.17, two new sections to chapter 57-38, a
- 2 new subsection to section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North
- 3 Dakota Century Code, relating to a biodiesel partnership in assisting community expansion
- 4 program and corporate and individual income tax credits and a sales tax exemption for
- 5 blending of biodiesel fuel and purchase of biodiesel production equipment; to provide an
- 6 appropriation; to provide a continuing appropriation; and to provide an effective date.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 8 **SECTION 1.** Chapter 6-09.17 of the North Dakota Century Code is created and 9 enacted as follows:
- 10 <u>6-09.17-01. Definitions.</u> In this chapter, unless the context or subject matter otherwise 11 <u>requires:</u>
 - "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.
- 22 <u>6-09.17-02</u>. Biodiesel partnership in assisting community expansion fund -
- Continuing appropriation Administration. A biodiesel partnership in assisting community
 expansion fund is hereby established. This is a revolving fund, and all moneys transferred into

1 the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the 2 purposes of this chapter. This fund is not subject to section 54-44.1-11. The Bank of North 3 Dakota shall administer the fund. 4 **6-09.17-03. Fund - Purpose - Interest rate buydown.** Moneys in the biodiesel 5 partnership in assisting community expansion fund must be used for the purpose of buying 6 down the interest rate on loans made by a lead financial institution in participation with the Bank 7 of North Dakota. The Bank of North Dakota's participation may not exceed seventy percent of 8 the total loans. If the loan is approved by the lenders and there is evidence of the community's 9 commitment and ability to fund its portion of the buydown, the fund's participation in the 10 buydown must automatically be approved. 11 6-09.17-04. Fund moneys - Eligible uses. 12 The fund moneys may be used to participate in an interest rate buydown on a loan 13 to a biodiesel production facility for the following eligible uses: 14 Purchase of real property and equipment. a. 15 b. Expansion of facilities. 16 Working capital. C. 17 d. Inventory. 18 The loan funds cannot be used to refinance any existing debt or for the relocation 19 of the business within North Dakota. 20 The community shall determine the amount of the interest rate buydown and apply <u>2.</u> 21 to the Bank of North Dakota for participation from the biodiesel partnership in 22 assisting community expansion fund. The funds for the community's portion of the 23 buydown may come from a local development corporation, contributions, 24 community funds, future dedicated tax programs, or any other community source. 25 The fund participation portion in the buydown must be determined by the Bank of 3. 26 North Dakota based on economic conditions in the city or county in which the 27 business is located. 28 The maximum amount from the fund in the interest rate buydown may not exceed <u>4.</u> 29 two hundred fifty thousand dollars per loan and not more than one loan may be 30 provided to any single biodiesel production facility under this chapter. The fund

ı	participation must be limited to the amount required to buy down the interest to live
2	hundred basis points below the national prime interest rate.
3	5. The Bank of North Dakota shall adopt rules to implement this chapter.
4	SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is
5	created and enacted as follows:
6	Income tax credit for blending of biodiesel fuel. A fuel supplier licensed pursuant to
7	section 57-43.2-05 who blends biodiesel fuel is entitled to a credit against tax liability
8	determined under section 57-38-29, 57-38-30, or 57-38-30.3 in the amount of five cents per
9	gallon [3.79 liters] of biodiesel fuel of at least five percent blend, otherwise known as B5. For
10	purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the
11	American society for testing and materials. The credit under this section may not exceed the
12	taxpayer's liability as determined under this chapter for the taxable year and each year's
13	unused credit amount may be carried forward for up to five taxable years.
14	A partnership, subchapter S corporation, limited partnership, limited liability company, or
15	any other passthrough entity entitled to the credit under this section must be considered to be
16	the taxpayer for purposes of this section, and the amount of the credit allowed with respect to
17	the entity's investments must be determined at the passthrough entity level. The amount of the
18	total credit determined at the entity level must be passed through to the partners, shareholders,
19	or members in proportion to their respective interests in the passthrough entity.
20	SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is
21	created and enacted as follows:
22	Income tax credit for biodiesel sales equipment costs. A seller of biodiesel fuel is
23	entitled to a credit against tax liability determined under section 57-38-29, 57-38-30, or
24	57-38-30.3 in the amount of ten percent per year for five years of the biodiesel fuel seller's
25	direct costs incurred after December 31, 2004, to adapt or add equipment to a facility, licensed
26	and authorized by the state of North Dakota, to enable the facility to sell diesel fuel containing
27	at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel fuel"
28	means fuel meeting the specifications adopted by the American society for testing and
29	materials. The credit under this section may not exceed a taxpayer's liability as determined
30	under this chapter for the taxable year and each year's unused credit amount may be carried
31	forward for up to five taxable years. A biodiesel fuel seller is limited to fifty thousand dollars in

1 the cumulative amount of credits under this section for all taxable years. A biodiesel fuel seller 2 may not claim a credit under this section for any taxable year before the taxable year in which 3 the facility begins selling biodiesel fuel containing at least two percent biodiesel fuel by volume, 4 but eligible costs incurred before the taxable year sales begin may be claimed for purposes of 5 the credit under this section for taxable years on or after the taxable year sales of biodiesel fuel 6 begin. 7 A partnership, subchapter S corporation, limited partnership, limited liability company, or 8 any other passthrough entity entitled to the credit under this section must be considered to be 9 the taxpayer for purposes of this section, and the amount of the credit allowed with respect to 10 the entity's investments must be determined at the passthrough entity level. The amount of the 11 total credit determined at the entity level must be passed through to the partners, shareholders, 12 or members in proportion to their respective interests in the passthrough entity. 13 **SECTION 4.** A new subsection to section 57-38-30.3 of the North Dakota Century 14 Code is created and enacted as follows: 15 A taxpayer filing a return under this section is entitled to the credits provided under 16 sections 2 and 3 of this Act. 17 **SECTION 5.** A new subsection to section 57-39.2-04 of the North Dakota Century 18 Code is created and enacted as follows: 19 Gross receipts from the sale of equipment to a facility, licensed and authorized by 20 the state of North Dakota, to enable the facility to sell diesel fuel containing at least 21 two percent biodiesel fuel by volume. For purposes of this subsection, "biodiesel 22 fuel" means fuel meeting the specifications adopted by the American society for 23 testing and materials. 24 **SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the 25 general fund in the state treasury, not otherwise appropriated, the sum of \$1,200,000, or so 26 much of the sum as may be necessary, to the Bank of North Dakota for deposit in the biodiesel 27 partnership in assisting community expansion fund for use as provided in chapter 6-09.17, for 28 the biennium beginning July 1, 2005, and ending June 30, 2007. 29 **SECTION 7. EFFECTIVE DATE.** Sections 2, 3, and 4 of this Act are effective for 30 taxable years beginning after December 31, 2004. Section 5 of this Act is effective for taxable 31 events occurring after June 30, 2005.