

1-1 By: Hegar S.B. No. 663
1-2 (In the Senate - Filed February 15, 2007; February 28, 2007,
1-3 read first time and referred to Committee on Natural Resources;
1-4 April 3, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 10, Nays 0; April 3, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 663 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the production and taxation of renewable diesel fuel.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 162.001, Tax Code, is amended by
1-13 amending Subdivision (19) and adding Subdivision (53-a) to read as
1-14 follows:
1-15 (19) "Diesel fuel" means kerosene or another liquid,
1-16 or a combination of liquids blended together, that is suitable for
1-17 or used for the propulsion of diesel-powered motor vehicles. The
1-18 term includes products commonly referred to as kerosene, light
1-19 cycle oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel
1-20 fuel, aviation jet fuel, renewable diesel, biodiesel, distillate
1-21 fuel, cutter stock, or heating oil, but does not include gasoline,
1-22 aviation gasoline, or liquefied gas.
1-23 (53-a) "Renewable diesel" means a motor fuel that:
1-24 (A) meets the registration requirements for
1-25 fuels and fuel additives established by the United States
1-26 Environmental Protection Agency under Section 211 of the federal
1-27 Clean Air Act (42 U.S.C. Section 7545);
1-28 (B) is not a mono-alkyl ester;
1-29 (C) either as produced or when blended in various
1-30 proportions with other typical diesel fuel components or additives
1-31 results in a fuel product that meets the requirements of the most
1-32 current version of ASTM D-975;
1-33 (D) is intended for use in engines that are
1-34 designed to run on conventional, petroleum-derived diesel fuel; and
1-35 (E) is derived from agricultural products,
1-36 vegetable oils, recycled greases, biomass, or animal fats or the
1-37 wastes of those products or fats.
1-38 SECTION 2. Subsection (a), Section 162.204, Tax Code, is
1-39 amended to read as follows:
1-40 (a) The tax imposed by this subchapter does not apply to:
1-41 (1) diesel fuel sold to the United States for its
1-42 exclusive use, provided that the exemption does not apply to diesel
1-43 fuel sold or delivered to a person operating under a contract with
1-44 the United States;
1-45 (2) diesel fuel sold to a public school district in
1-46 this state for the district's exclusive use;
1-47 (3) diesel fuel sold to a commercial transportation
1-48 company that provides public school transportation services to a
1-49 school district under Section 34.008, Education Code, and that uses
1-50 the diesel fuel only to provide those services;
1-51 (4) diesel fuel exported by either a licensed supplier
1-52 or a licensed exporter from this state to any other state, provided
1-53 that:
1-54 (A) for diesel fuel in a situation described by
1-55 Subsection (d), the bill of lading indicates the destination state
1-56 and the supplier collects the destination state tax; or
1-57 (B) for diesel fuel in a situation described by
1-58 Subsection (e), the bill of lading indicates the destination state,
1-59 the diesel fuel is subsequently exported, and the exporter is
1-60 licensed in the destination state to pay that state's tax and has an
1-61 exporter's license issued under this subchapter;
1-62 (5) diesel fuel moved by truck or railcar between
1-63 licensed suppliers or licensed permissive suppliers and in which

2-1 the diesel fuel removed from the first terminal comes to rest in the
 2-2 second terminal, provided that the removal from the second terminal
 2-3 rack is subject to the tax imposed by this subchapter;

2-4 (6) diesel fuel delivered or sold into a storage
 2-5 facility of a licensed aviation fuel dealer from which the diesel
 2-6 fuel will be delivered solely into the fuel supply tanks of aircraft
 2-7 or aircraft servicing equipment, or sold from one licensed aviation
 2-8 fuel dealer to another licensed aviation fuel dealer who will
 2-9 deliver the diesel fuel exclusively into the fuel supply tanks of
 2-10 aircraft or aircraft servicing equipment;

2-11 (7) diesel fuel exported to a foreign country if the
 2-12 bill of lading indicates the foreign destination and the fuel is
 2-13 actually exported to the foreign country;

2-14 (8) dyed diesel fuel sold or delivered by a supplier to
 2-15 another supplier and dyed diesel fuel sold or delivered by a
 2-16 supplier or distributor into the bulk storage facility of a dyed
 2-17 diesel fuel bonded user or to a purchaser who provides a signed
 2-18 statement as provided by Section 162.206;

2-19 (9) the volume of water, fuel ethanol, renewable
 2-20 diesel, biodiesel, or mixtures thereof that are blended together
 2-21 with taxable diesel fuel when the finished product sold or used is
 2-22 clearly identified on the retail pump, storage tank, and sales
 2-23 invoice as a combination of diesel fuel and water, fuel ethanol,
 2-24 renewable diesel, biodiesel, or mixtures thereof;

2-25 (10) dyed diesel fuel sold by a supplier or permissive
 2-26 supplier to a distributor, or by a distributor to another
 2-27 distributor;

2-28 (11) dyed diesel fuel delivered by a license holder
 2-29 into the fuel supply tanks of railway engines, motorboats, or
 2-30 refrigeration units or other stationary equipment powered by a
 2-31 separate motor from a separate fuel supply tank;

2-32 (12) dyed kerosene when delivered by a supplier,
 2-33 distributor, or importer into a storage facility at a retail
 2-34 business from which all deliveries are exclusively for heating,
 2-35 cooking, lighting, or similar nonhighway use; or

2-36 (13) diesel fuel used by a person, other than a
 2-37 political subdivision, who owns, controls, operates, or manages a
 2-38 commercial motor vehicle as defined by Section 548.001,
 2-39 Transportation Code, if the fuel:

2-40 (A) is delivered exclusively into the fuel supply
 2-41 tank of the commercial motor vehicle; and

2-42 (B) is used exclusively to transport passengers
 2-43 for compensation or hire between points in this state on a fixed
 2-44 route or schedule.

2-45 SECTION 3. The heading to Chapter 16, Agriculture Code, is
 2-46 amended to read as follows:

2-47 CHAPTER 16. FUEL ETHANOL, ~~AND~~ BIODIESEL, AND RENEWABLE DIESEL
 2-48 PRODUCTION INCENTIVE PROGRAM

2-49 SECTION 4. Section 16.001, Agriculture Code, is amended by
 2-50 amending Subdivisions (1) and (6) and adding Subdivision (7) to
 2-51 read as follows:

2-52 (1) "Account" means the fuel ethanol, ~~and~~ biodiesel,
 2-53 and renewable diesel production account.

2-54 (6) "Producer" means a person who operates a fuel
 2-55 ethanol, ~~or~~ biodiesel, or renewable diesel plant in this state.

2-56 (7) "Renewable diesel" means a motor fuel that:

2-57 (A) meets the registration requirements for
 2-58 fuels and fuel additives established by the United States
 2-59 Environmental Protection Agency under Section 211 of the federal
 2-60 Clean Air Act (42 U.S.C. Section 7545);

2-61 (B) is not a mono-alkyl ester;

2-62 (C) either as produced or when blended in various
 2-63 proportions with other typical diesel fuel components or additives
 2-64 results in a fuel product that meets the requirements of the most
 2-65 current version of ASTM D-975;

2-66 (D) is intended for use in engines that are
 2-67 designed to run on conventional, petroleum-derived diesel fuel; and

2-68 (E) is derived from agricultural products,
 2-69 vegetable oils, recycled greases, biomass, or animal fats or the

3-1 wastes of those products or fats.

3-2 SECTION 5. Subsections (a) and (b), Section 16.002,
3-3 Agriculture Code, are amended to read as follows:

3-4 (a) To be eligible for a grant for fuel ethanol, ~~[or]~~
3-5 biodiesel, or renewable diesel produced in a plant, a producer must
3-6 apply to the office for the registration of the plant. A producer
3-7 may apply for the registration of more than one plant.

3-8 (b) An application for the registration of a plant must show
3-9 to the satisfaction of the office that:

3-10 (1) the plant is capable of producing fuel ethanol,
3-11 ~~[or]~~ biodiesel, or renewable diesel;

3-12 (2) the producer has made a substantial investment of
3-13 resources in this state in connection with the plant; and

3-14 (3) the plant constitutes a permanent fixture in this
3-15 state.

3-16 SECTION 6. Subsection (a), Section 16.003, Agriculture
3-17 Code, is amended to read as follows:

3-18 (a) On or before the fifth day of each month, a producer
3-19 shall report to the office on:

3-20 (1) the number of gallons of fuel ethanol, ~~[or]~~
3-21 biodiesel, or renewable diesel produced at each registered plant
3-22 operated by the producer during the preceding month;

3-23 (2) the number of gallons of fuel ethanol, ~~[or]~~
3-24 biodiesel, or renewable diesel imported into this state by the
3-25 producer during the preceding month;

3-26 (3) the number of gallons of fuel ethanol, ~~[or]~~
3-27 biodiesel, or renewable diesel sold or blended with motor fuels by
3-28 the producer during the preceding month; and

3-29 (4) the total value of agricultural products consumed
3-30 in each registered plant operated by the producer during the
3-31 preceding month.

3-32 SECTION 7. The heading to Section 16.004, Agriculture Code,
3-33 is amended to read as follows:

3-34 Sec. 16.004. FUEL ETHANOL, [AND] BIODIESEL, AND RENEWABLE
3-35 DIESEL PRODUCTION ACCOUNT.

3-36 SECTION 8. Subsection (a), Section 16.004, Agriculture
3-37 Code, is amended to read as follows:

3-38 (a) The fuel ethanol, ~~[and]~~ biodiesel, and renewable diesel
3-39 production account is an account in the general revenue fund that
3-40 may be appropriated only to the office for the purposes of this
3-41 chapter, including the making of grants under this chapter.

3-42 SECTION 9. The heading to Section 16.005, Agriculture Code,
3-43 is amended to read as follows:

3-44 Sec. 16.005. FEE ON FUEL ETHANOL, [AND] BIODIESEL, AND
3-45 RENEWABLE DIESEL PRODUCTION.

3-46 SECTION 10. Subsections (a), (b), and (d), Section 16.005,
3-47 Agriculture Code, are amended to read as follows:

3-48 (a) The office shall impose a fee on each producer in an
3-49 amount equal to 3.2 cents for each gallon of fuel ethanol, ~~[or]~~
3-50 biodiesel, or renewable diesel produced in each registered plant
3-51 operated by the producer.

3-52 (b) For each fiscal year, the office may not impose fees on a
3-53 producer for more than 18 million gallons of fuel ethanol, ~~[or]~~
3-54 biodiesel, or renewable diesel produced at any one registered
3-55 plant.

3-56 (d) The office may not impose fees on a producer for fuel
3-57 ethanol, ~~[or]~~ biodiesel, or renewable diesel produced at a
3-58 registered plant after the 10th anniversary of the date production
3-59 from the plant begins.

3-60 SECTION 11. The heading to Section 16.006, Agriculture
3-61 Code, is amended to read as follows:

3-62 Sec. 16.006. FUEL ETHANOL, [AND] BIODIESEL, AND RENEWABLE
3-63 DIESEL GRANTS.

3-64 SECTION 12. Subsections (a), (b), (c), and (e), Section
3-65 16.006, Agriculture Code, are amended to read as follows:

3-66 (a) The office, after consultation with the department,
3-67 shall make grants to producers as an incentive for the development
3-68 of the fuel ethanol, ~~[and]~~ biodiesel, and renewable diesel industry
3-69 and agricultural production in this state.

4-1 (b) A producer is entitled to receive from the account 20
4-2 cents for each gallon of fuel ethanol, ~~[or]~~ biodiesel, or renewable
4-3 diesel produced in each registered plant operated by the producer
4-4 until the 10th anniversary of the date production from the plant
4-5 begins.

4-6 (c) For each fiscal year a producer may not receive grants
4-7 for more than 18 million gallons of fuel ethanol, ~~[or]~~ biodiesel, or
4-8 renewable diesel produced at any one registered plant.

4-9 (e) If the office determines that the amount of money
4-10 credited to the account is not sufficient to distribute the full
4-11 amount of grant funds to eligible producers as provided by this
4-12 chapter for a fiscal year, the office shall proportionately reduce
4-13 the amount of each grant for each gallon of fuel ethanol, ~~[or]~~
4-14 biodiesel, or renewable diesel produced as necessary to continue
4-15 the incentive program during the remainder of the fiscal year.

4-16 SECTION 13. The change in law made by Section 2 of this Act
4-17 does not affect tax liability accruing before the effective date of
4-18 this Act. That liability continues in effect as if this Act had not
4-19 been enacted, and the former law is continued in effect for the
4-20 collection of taxes due and for civil and criminal enforcement of
4-21 the liability for those taxes.

4-22 SECTION 14. The change in law made by this Act to Chapter
4-23 16, Agriculture Code, applies only to a fee that is imposed on or
4-24 after the effective date of this Act. A fee that is imposed before
4-25 the effective date of this Act is governed by the law in effect when
4-26 the fee was imposed, and that law is continued in effect for that
4-27 purpose.

4-28 SECTION 15. This Act takes effect immediately if it
4-29 receives a vote of two-thirds of all the members elected to each
4-30 house, as provided by Section 39, Article III, Texas Constitution.
4-31 If this Act does not receive the vote necessary for immediate
4-32 effect, this Act takes effect September 1, 2007.

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