

1-1 By: Gonzalez Toureilles, et al. H.B. No. 2582
1-2 (Senate Sponsor - Hegar)
1-3 (In the Senate - Received from the House May 6, 2009;
1-4 May 11, 2009, read first time and referred to Committee on
1-5 Agriculture and Rural Affairs; May 19, 2009, reported favorably by
1-6 the following vote: Yeas 3, Nays 0; May 19, 2009, sent to
1-7 printer.)

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 Subdivisions (7) and (19) and adding Subdivision (53-a) to
1-14 read as follows:
1-15 (7) "Biodiesel fuel" has the meaning assigned to
1-16 "biodiesel" by Section 16.001, Agriculture Code ~~[means any motor~~
1-17 ~~fuel or mixture of motor fuels that is:~~
1-18 ~~[(A) derived wholly or partly from agricultural~~
1-19 ~~products, vegetable oils, recycled greases, or animal fats, or the~~
1-20 ~~wastes of those products or fats; and~~
1-21 ~~[(B) advertised, offered for sale, suitable for~~
1-22 ~~use, or used as a motor fuel in an internal combustion engine].~~
1-23 (19) "Diesel fuel" means kerosene or another liquid,
1-24 or a combination of liquids blended together, that is suitable for
1-25 or used for the propulsion of diesel-powered motor vehicles. The
1-26 term includes products commonly referred to as kerosene, light
1-27 cycle oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel
1-28 fuel, aviation jet fuel, renewable diesel, biodiesel, distillate
1-29 fuel, cutter stock, or heating oil, but does not include gasoline,
1-30 aviation gasoline, or liquefied gas.
1-31 (53-a) "Renewable diesel" has the meaning assigned by
1-32 Section 16.001, Agriculture Code.
1-33 SECTION 2. Section 162.204(a), Tax Code, is amended to read
1-34 as follows:
1-35 (a) The tax imposed by this subchapter does not apply to:
1-36 (1) diesel fuel sold to the United States for its
1-37 exclusive use, provided that the exemption does not apply to diesel
1-38 fuel sold or delivered to a person operating under a contract with
1-39 the United States;
1-40 (2) diesel fuel sold to a public school district in
1-41 this state for the district's exclusive use;
1-42 (3) diesel fuel sold to a commercial transportation
1-43 company or a metropolitan rapid transit authority operating under
1-44 Chapter 451, Transportation Code, that provides public school
1-45 transportation services to a school district under Section 34.008,
1-46 Education Code, and that uses the diesel fuel only to provide those
1-47 services;
1-48 (4) diesel fuel exported by either a licensed supplier
1-49 or a licensed exporter from this state to any other state, provided
1-50 that:
1-51 (A) for diesel fuel in a situation described by
1-52 Subsection (d), the bill of lading indicates the destination state
1-53 and the supplier collects the destination state tax; or
1-54 (B) for diesel fuel in a situation described by
1-55 Subsection (e), the bill of lading indicates the destination state,
1-56 the diesel fuel is subsequently exported, and the exporter is
1-57 licensed in the destination state to pay that state's tax and has an
1-58 exporter's license issued under this subchapter;
1-59 (5) diesel fuel moved by truck or railcar between
1-60 licensed suppliers or licensed permissive suppliers and in which
1-61 the diesel fuel removed from the first terminal comes to rest in the
1-62 second terminal, provided that the removal from the second terminal
1-63 rack is subject to the tax imposed by this subchapter;
1-64 (6) diesel fuel delivered or sold into a storage

2-1 facility of a licensed aviation fuel dealer from which the diesel
 2-2 fuel will be delivered solely into the fuel supply tanks of aircraft
 2-3 or aircraft servicing equipment, or sold from one licensed aviation
 2-4 fuel dealer to another licensed aviation fuel dealer who will
 2-5 deliver the diesel fuel exclusively into the fuel supply tanks of
 2-6 aircraft or aircraft servicing equipment;

2-7 (7) diesel fuel exported to a foreign country if the
 2-8 bill of lading indicates the foreign destination and the fuel is
 2-9 actually exported to the foreign country;

2-10 (8) dyed diesel fuel sold or delivered by a supplier to
 2-11 another supplier and dyed diesel fuel sold or delivered by a
 2-12 supplier or distributor into the bulk storage facility of a dyed
 2-13 diesel fuel bonded user or to a purchaser who provides a signed
 2-14 statement as provided by Section 162.206;

2-15 (9) the volume of water, fuel ethanol, renewable
 2-16 diesel, biodiesel, or mixtures thereof that are blended together
 2-17 with taxable diesel fuel when the finished product sold or used is
 2-18 clearly identified on the retail pump, storage tank, and sales
 2-19 invoice as a combination of diesel fuel and water, fuel ethanol,
 2-20 renewable diesel, biodiesel, or mixtures thereof;

2-21 (10) dyed diesel fuel sold by a supplier or permissive
 2-22 supplier to a distributor, or by a distributor to another
 2-23 distributor;

2-24 (11) dyed diesel fuel delivered by a license holder
 2-25 into the fuel supply tanks of railway engines, motorboats, or
 2-26 refrigeration units or other stationary equipment powered by a
 2-27 separate motor from a separate fuel supply tank;

2-28 (12) dyed kerosene when delivered by a supplier,
 2-29 distributor, or importer into a storage facility at a retail
 2-30 business from which all deliveries are exclusively for heating,
 2-31 cooking, lighting, or similar nonhighway use; or

2-32 (13) diesel fuel used by a person, other than a
 2-33 political subdivision, who owns, controls, operates, or manages a
 2-34 commercial motor vehicle as defined by Section 548.001,
 2-35 Transportation Code, if the fuel:

2-36 (A) is delivered exclusively into the fuel supply
 2-37 tank of the commercial motor vehicle; and

2-38 (B) is used exclusively to transport passengers
 2-39 for compensation or hire between points in this state on a fixed
 2-40 route or schedule.

2-41 SECTION 3. The heading to Chapter 16, Agriculture Code, is
 2-42 amended to read as follows:

2-43 CHAPTER 16. FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND RENEWABLE DIESEL
 2-44 PRODUCTION INCENTIVE PROGRAM

2-45 SECTION 4. Section 16.001, Agriculture Code, is amended by
 2-46 amending Subdivisions (1), (3), and (6) and adding Subdivision (7)
 2-47 to read as follows:

2-48 (1) "Account" means the fuel ethanol, ~~[and]~~ biodiesel,
 2-49 and renewable diesel production account.

2-50 (3) "Biodiesel" means a motor fuel that:

2-51 (A) meets the registration requirements for
 2-52 fuels and fuel additives established by the United States
 2-53 Environmental Protection Agency under Section 211 of the federal
 2-54 Clean Air Act (42 U.S.C. Section 7545);

2-55 (B) is mono-alkyl esters of long chain fatty
 2-56 acids derived from vegetable oils and animal fats;

2-57 (C) meets the requirements of ASTM specification
 2-58 D-6751;

2-59 (D) is intended for use in engines that are
 2-60 designed to run on conventional, petroleum-derived diesel fuel; and

2-61 (E) is derived from agricultural products,
 2-62 vegetable oils, recycled greases, biomass, or animal fats or the
 2-63 wastes of those products or fats [a monoalkyl ester that:

2-64 ~~[(A) is derived from vegetable oils, rendered~~
 2-65 ~~animal fats, or renewable lipids or a combination of those~~
 2-66 ~~ingredients; and~~

2-67 ~~[(B) meets the requirements of ASTM PS 121, the~~
 2-68 ~~provisional specification for biodiesel].~~

2-69 (6) "Producer" means a person who operates a fuel

3-1 ethanol, ~~[or]~~ biodiesel, or renewable diesel plant in this state.
 3-2 (7) "Renewable diesel" means a motor fuel that:
 3-3 (A) meets the registration requirements for
 3-4 fuels and fuel additives established by the United States
 3-5 Environmental Protection Agency under Section 211 of the federal
 3-6 Clean Air Act (42 U.S.C. Section 7545);
 3-7 (B) is a hydrocarbon;
 3-8 (C) meets the requirements of ASTM specification
 3-9 D-975;
 3-10 (D) is intended for use in engines that are
 3-11 designed to run on conventional, petroleum-derived diesel fuel; and
 3-12 (E) is derived from agricultural products,
 3-13 vegetable oils, recycled greases, biomass, or animal fats or the
 3-14 wastes of those products or fats.
 3-15 SECTION 5. Sections 16.002(a) and (b), Agriculture Code,
 3-16 are amended to read as follows:
 3-17 (a) To be eligible for a grant for fuel ethanol, ~~[or]~~
 3-18 biodiesel, or renewable diesel produced in a plant, a producer must
 3-19 apply to the office for the registration of the plant. A producer
 3-20 may apply for the registration of more than one plant.
 3-21 (b) An application for the registration of a plant must show
 3-22 to the satisfaction of the office that:
 3-23 (1) the plant is capable of producing fuel ethanol,
 3-24 ~~[or]~~ biodiesel, or renewable diesel;
 3-25 (2) the producer has made a substantial investment of
 3-26 resources in this state in connection with the plant; and
 3-27 (3) the plant constitutes a permanent fixture in this
 3-28 state.
 3-29 SECTION 6. Section 16.003(a), Agriculture Code, is amended
 3-30 to read as follows:
 3-31 (a) On or before the fifth day of each month, a producer
 3-32 shall report to the office on:
 3-33 (1) the number of gallons of fuel ethanol, ~~[or]~~
 3-34 biodiesel, or renewable diesel produced at each registered plant
 3-35 operated by the producer during the preceding month;
 3-36 (2) the number of gallons of fuel ethanol, ~~[or]~~
 3-37 biodiesel, or renewable diesel imported into this state by the
 3-38 producer during the preceding month;
 3-39 (3) the number of gallons of fuel ethanol, ~~[or]~~
 3-40 biodiesel, or renewable diesel sold or blended with motor fuels by
 3-41 the producer during the preceding month; and
 3-42 (4) the total value of agricultural products consumed
 3-43 in each registered plant operated by the producer during the
 3-44 preceding month.
 3-45 SECTION 7. The heading to Section 16.004, Agriculture Code,
 3-46 is amended to read as follows:
 3-47 Sec. 16.004. FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND RENEWABLE
 3-48 DIESEL PRODUCTION ACCOUNT.
 3-49 SECTION 8. Section 16.004(a), Agriculture Code, is amended
 3-50 to read as follows:
 3-51 (a) The fuel ethanol, ~~[and]~~ biodiesel, and renewable diesel
 3-52 production account is an account in the general revenue fund that
 3-53 may be appropriated only to the office for the purposes of this
 3-54 chapter, including the making of grants under this chapter.
 3-55 SECTION 9. The heading to Section 16.005, Agriculture Code,
 3-56 is amended to read as follows:
 3-57 Sec. 16.005. FEE ON FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND
 3-58 RENEWABLE DIESEL PRODUCTION.
 3-59 SECTION 10. Sections 16.005(a), (b), and (d), Agriculture
 3-60 Code, are amended to read as follows:
 3-61 (a) The office shall impose a fee on each producer in an
 3-62 amount equal to 3.2 cents for each gallon of fuel ethanol, ~~[or]~~
 3-63 biodiesel, or renewable diesel produced in each registered plant
 3-64 operated by the producer.
 3-65 (b) For each fiscal year, the office may not impose fees on a
 3-66 producer for more than 18 million gallons of fuel ethanol, ~~[or]~~
 3-67 biodiesel, or renewable diesel produced at any one registered
 3-68 plant.
 3-69 (d) The office may not impose fees on a producer for fuel

4-1 ethanol, ~~[or]~~ biodiesel, or renewable diesel produced at a
4-2 registered plant after the 10th anniversary of the date production
4-3 from the plant begins.

4-4 SECTION 11. The heading to Section 16.006, Agriculture
4-5 Code, is amended to read as follows:

4-6 Sec. 16.006. FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND RENEWABLE
4-7 DIESEL GRANTS.

4-8 SECTION 12. Sections 16.006(a), (b), (c), and (e),
4-9 Agriculture Code, are amended to read as follows:

4-10 (a) The office, after consultation with the department,
4-11 shall make grants to producers as an incentive for the development
4-12 of the fuel ethanol, ~~[and]~~ biodiesel, and renewable diesel industry
4-13 and agricultural production in this state.

4-14 (b) A producer is entitled to receive from the account 20
4-15 cents for each gallon of fuel ethanol, ~~[or]~~ biodiesel, or renewable
4-16 diesel produced in each registered plant operated by the producer
4-17 until the 10th anniversary of the date production from the plant
4-18 begins. The incentive under this subsection is payable only on that
4-19 part of each gallon of fuel produced from renewable resources.

4-20 (c) For each fiscal year a producer may not receive grants
4-21 for more than 18 million gallons of fuel ethanol, ~~[or]~~ biodiesel, or
4-22 renewable diesel produced at any one registered plant.

4-23 (e) If the office determines that the amount of money
4-24 credited to the account is not sufficient to distribute the full
4-25 amount of grant funds to eligible producers as provided by this
4-26 chapter for a fiscal year, the office shall proportionately reduce
4-27 the amount of each grant for each gallon of fuel ethanol, ~~[or]~~
4-28 biodiesel, or renewable diesel produced as necessary to continue
4-29 the incentive program during the remainder of the fiscal year.

4-30 SECTION 13. The change in law made by Section 2 of this Act
4-31 does not affect tax liability accruing before the effective date of
4-32 this Act. That liability continues in effect as if this Act had not
4-33 been enacted, and the former law is continued in effect for the
4-34 collection of taxes due and for civil and criminal enforcement of
4-35 the liability for those taxes.

4-36 SECTION 14. The change in law made by this Act to Chapter
4-37 16, Agriculture Code, applies only to a fee that is imposed on or
4-38 after the effective date of this Act. A fee that is imposed before
4-39 the effective date of this Act is governed by the law in effect when
4-40 the fee was imposed, and that law is continued in effect for that
4-41 purpose.

4-42 SECTION 15. This Act takes effect immediately if it
4-43 receives a vote of two-thirds of all the members elected to each
4-44 house, as provided by Section 39, Article III, Texas Constitution.
4-45 If this Act does not receive the vote necessary for immediate
4-46 effect, this Act takes effect September 1, 2009.

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