

By: Hegar

S.B. No. 645

A BILL TO BE ENTITLED

AN ACT

relating to the production and taxation of renewable diesel fuel.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 162.001, Tax Code, is amended by amending Subdivisions (7) and (19) and adding Subdivision (53-a) to read as follows:

(7) "Biodiesel fuel" has the meaning assigned to "biodiesel" by Section 16.001, Agriculture Code ~~[means any motor fuel or mixture of motor fuels that is:~~

~~[(A) derived wholly or partly from agricultural products, vegetable oils, recycled greases, or animal fats, or the wastes of those products or fats; and~~

~~[(B) advertised, offered for sale, suitable for use, or used as a motor fuel in an internal combustion engine].~~

(19) "Diesel fuel" means kerosene or another liquid, or a combination of liquids blended together, that is suitable for or used for the propulsion of diesel-powered motor vehicles. The term includes products commonly referred to as kerosene, light cycle oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel fuel, aviation jet fuel, renewable diesel, biodiesel, distillate fuel, cutter stock, or heating oil, but does not include gasoline, aviation gasoline, or liquefied gas.

(53-a) "Renewable diesel" has the meaning assigned by Section 16.001, Agriculture Code.

1           SECTION 2. Section 162.204(a), Tax Code, is amended to read  
2 as follows:

3           (a) The tax imposed by this subchapter does not apply to:

4                 (1) diesel fuel sold to the United States for its  
5 exclusive use, provided that the exemption does not apply to diesel  
6 fuel sold or delivered to a person operating under a contract with  
7 the United States;

8                 (2) diesel fuel sold to a public school district in  
9 this state for the district's exclusive use;

10                (3) diesel fuel sold to a commercial transportation  
11 company or a metropolitan rapid transit authority operating under  
12 Chapter 451, Transportation Code, that provides public school  
13 transportation services to a school district under Section 34.008,  
14 Education Code, and that uses the diesel fuel only to provide those  
15 services;

16                (4) diesel fuel exported by either a licensed supplier  
17 or a licensed exporter from this state to any other state, provided  
18 that:

19                         (A) for diesel fuel in a situation described by  
20 Subsection (d), the bill of lading indicates the destination state  
21 and the supplier collects the destination state tax; or

22                         (B) for diesel fuel in a situation described by  
23 Subsection (e), the bill of lading indicates the destination state,  
24 the diesel fuel is subsequently exported, and the exporter is  
25 licensed in the destination state to pay that state's tax and has an  
26 exporter's license issued under this subchapter;

27                 (5) diesel fuel moved by truck or railcar between

1 licensed suppliers or licensed permissive suppliers and in which  
2 the diesel fuel removed from the first terminal comes to rest in the  
3 second terminal, provided that the removal from the second terminal  
4 rack is subject to the tax imposed by this subchapter;

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

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

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

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

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

1 distributor;

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

6 (12) dyed kerosene when delivered by a supplier,  
7 distributor, or importer into a storage facility at a retail  
8 business from which all deliveries are exclusively for heating,  
9 cooking, lighting, or similar nonhighway use; or

10 (13) diesel fuel used by a person, other than a  
11 political subdivision, who owns, controls, operates, or manages a  
12 commercial motor vehicle as defined by Section 548.001,  
13 Transportation Code, if the fuel:

14 (A) is delivered exclusively into the fuel supply  
15 tank of the commercial motor vehicle; and

16 (B) is used exclusively to transport passengers  
17 for compensation or hire between points in this state on a fixed  
18 route or schedule.

19 SECTION 3. The heading to Chapter 16, Agriculture Code, is  
20 amended to read as follows:

21 CHAPTER 16. FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND RENEWABLE DIESEL  
22 PRODUCTION INCENTIVE PROGRAM

23 SECTION 4. Section 16.001, Agriculture Code, is amended by  
24 amending Subdivisions (1), (3), and (6) and adding Subdivision (7)  
25 to read as follows:

26 (1) "Account" means the fuel ethanol, ~~and~~ biodiesel,  
27 and renewable diesel production account.

1 (3) "Biodiesel" means a motor fuel that:

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

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

8 (C) meets the requirements of ASTM specification  
9 D-6751;

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

12 (E) is derived from agricultural products,  
13 vegetable oils, recycled greases, biomass, or animal fats or the  
14 wastes of those products or fats [~~a monoalkyl ester that:~~

15 [~~(A) is derived from vegetable oils, rendered~~  
16 ~~animal fats, or renewable lipids or a combination of those~~  
17 ~~ingredients; and~~

18 [~~(B) meets the requirements of ASTM PS 121, the~~  
19 ~~provisional specification for biodiesel].~~

20 (6) "Producer" means a person who operates a fuel  
21 ethanol, ~~[or]~~ biodiesel, or renewable diesel plant in this state.

22 (7) "Renewable diesel" means a motor fuel that:

23 (A) meets the registration requirements for  
24 fuels and fuel additives established by the United States  
25 Environmental Protection Agency under Section 211 of the federal  
26 Clean Air Act (42 U.S.C. Section 7545);

27 (B) is a hydrocarbon;

1                   (C) meets the requirements of ASTM specification  
2 D-975;

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

5                   (E) is derived from agricultural products,  
6 vegetable oils, recycled greases, biomass, or animal fats or the  
7 wastes of those products or fats.

8           SECTION 5. Sections 16.002(a) and (b), Agriculture Code,  
9 are amended to read as follows:

10           (a) To be eligible for a grant for fuel ethanol, ~~[or]~~  
11 biodiesel, or renewable diesel produced in a plant, a producer must  
12 apply to the office for the registration of the plant. A producer  
13 may apply for the registration of more than one plant.

14           (b) An application for the registration of a plant must show  
15 to the satisfaction of the office that:

16                   (1) the plant is capable of producing fuel ethanol,  
17 ~~[or]~~ biodiesel, or renewable diesel;

18                   (2) the producer has made a substantial investment of  
19 resources in this state in connection with the plant; and

20                   (3) the plant constitutes a permanent fixture in this  
21 state.

22           SECTION 6. Section 16.003(a), Agriculture Code, is amended  
23 to read as follows:

24           (a) On or before the fifth day of each month, a producer  
25 shall report to the office on:

26                   (1) the number of gallons of fuel ethanol, ~~[or]~~  
27 biodiesel, or renewable diesel produced at each registered plant

1 operated by the producer during the preceding month;

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

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

8 (4) the total value of agricultural products consumed  
9 in each registered plant operated by the producer during the  
10 preceding month.

11 SECTION 7. The heading to Section 16.004, Agriculture Code,  
12 is amended to read as follows:

13 Sec. 16.004. FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND RENEWABLE  
14 DIESEL PRODUCTION ACCOUNT.

15 SECTION 8. Section 16.004(a), Agriculture Code, is amended  
16 to read as follows:

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

21 SECTION 9. The heading to Section 16.005, Agriculture Code,  
22 is amended to read as follows:

23 Sec. 16.005. FEE ON FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND  
24 RENEWABLE DIESEL PRODUCTION.

25 SECTION 10. Sections 16.005(a), (b), and (d), Agriculture  
26 Code, are amended to read as follows:

27 (a) The office shall impose a fee on each producer in an

1 amount equal to 3.2 cents for each gallon of fuel ethanol, ~~[or]~~  
2 biodiesel, or renewable diesel produced in each registered plant  
3 operated by the producer.

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

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

12 SECTION 11. The heading to Section 16.006, Agriculture  
13 Code, is amended to read as follows:

14 Sec. 16.006. FUEL ETHANOL, ~~[AND]~~ BIODIESEL, AND RENEWABLE  
15 DIESEL GRANTS.

16 SECTION 12. Sections 16.006(a), (b), (c), and (e),  
17 Agriculture Code, are amended to read as follows:

18 (a) The office, after consultation with the department,  
19 shall make grants to producers as an incentive for the development  
20 of the fuel ethanol, ~~[and]~~ biodiesel, and renewable diesel industry  
21 and agricultural production in this state.

22 (b) A producer is entitled to receive from the account 20  
23 cents for each gallon of fuel ethanol, ~~[or]~~ biodiesel, or renewable  
24 diesel produced in each registered plant operated by the producer  
25 until the 10th anniversary of the date production from the plant  
26 begins.

27 (c) For each fiscal year a producer may not receive grants



1 for more than 18 million gallons of fuel ethanol, ~~[or]~~ biodiesel, or  
2 renewable diesel produced at any one registered plant.

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

10 SECTION 13. The change in law made by Section 2 of this Act  
11 does not affect tax liability accruing before the effective date of  
12 this Act. That liability continues in effect as if this Act had not  
13 been enacted, and the former law is continued in effect for the  
14 collection of taxes due and for civil and criminal enforcement of  
15 the liability for those taxes.

16 SECTION 14. The change in law made by this Act to Chapter  
17 16, Agriculture Code, applies only to a fee that is imposed on or  
18 after the effective date of this Act. A fee that is imposed before  
19 the effective date of this Act is governed by the law in effect when  
20 the fee was imposed, and that law is continued in effect for that  
21 purpose.

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