

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

S

2

SENATE BILL 1272  
House Committee Substitute Favorable 7/27/07

Short Title: Promote Use of Biofuels.

(Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO: (1) PROVIDE A TAX CREDIT FOR PRODUCERS OF BIODIESEL THAT MEETS CERTAIN QUALITY STANDARDS; (2) EXEMPT BIODIESEL THAT IS PRODUCED BY AN INDIVIDUAL FOR PERSONAL USE IN A PRIVATE PASSENGER VEHICLE FROM THE MOTOR FUEL EXCISE TAX; AND (3) DESIGNATE THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AS THE LEAD AGENCY IN MATTERS PERTAINING TO BIOFUEL.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-129.16F reads as rewritten:

**"§ 105-129.16F. (Effective for taxable years beginning on or after January 1, 2008, and repealed for taxable years beginning on or after January 1, 2010) Credit for biodiesel producers.**

(a) Credit. – A biodiesel provider that produces at least 100,000 gallons of biodiesel during the taxable year is allowed a credit equal to the per gallon excise tax the producer paid under Article 36C of this Chapter on the biodiesel. ~~For the purposes of this section, "biodiesel" is liquid fuel derived in whole from agricultural products, animal fats, or wastes from agricultural products or animal fats.~~ The credit does not apply to tax paid on diesel fuel included in a biodiesel blend. The credit may not exceed five hundred thousand dollars (\$500,000) and is subject to the limitations of G.S. 105-129.17.

(b) Sunset. – This section is repealed for taxable years beginning on or after January 1, 2010.

(c) Definitions. – The following definitions apply in this section:

(1) ASTM. – The American Society for Testing and Materials.

(2) Biodiesel. – Fuel that meets both of the following conditions:

a. The definition of biodiesel as defined in G.S. 105-449.60.

1                   b.     The agricultural products, animal fats, or wastes from these  
2                             products or fats that are used to produce the fuel must meet the  
3                             requirements of ASTM D-6751.

4                   (3)     Biodiesel provider. – Has the same meaning as in G.S. 105-449.60."

5                   **SECTION 2.** G.S. 105-449.88 is amended by adding a new subdivision to  
6 read:

7                   "**§ 105-449.88. Exemptions from the excise tax.**

8                   The excise tax on motor fuel does not apply to the following:

9                   (1)     Motor fuel removed, by transport truck or another means of transfer  
10                             outside the terminal transfer system, from a terminal for export, if the  
11                             motor fuel is removed by a licensed distributor or a licensed exporter  
12                             and the supplier of the motor fuel collects tax on it at the rate of the  
13                             motor fuel's destination state.

14                   (1a)    Motor fuel removed by transport truck from a terminal for export if the  
15                             motor fuel is removed by a licensed distributor or licensed exporter,  
16                             the supplier that is the position holder for the motor fuel sells the  
17                             motor fuel to another supplier as the motor fuel crosses the terminal  
18                             rack, the purchasing supplier or its customer receives the motor fuel at  
19                             the terminal rack for export, and the supplier that is the position holder  
20                             collects tax on the motor fuel at the rate of the motor fuel's destination  
21                             state.

22                   (2)     Motor fuel sold to the federal government for its use.

23                   (3)     Motor fuel sold to the State for its use.

24                   (4)     Motor fuel sold to a local board of education for use in the public  
25                             school system.

26                   (5)     Diesel that is kerosene and is sold to an airport.

27                   (6)     Motor fuel sold to a charter school for use for charter school purposes.

28                   (7)     Motor fuel sold to a community college for use for community college  
29                             purposes.

30                   (8)     Motor fuel sold to a county or a municipal corporation for its use.

31                   (9)     Biodiesel that meets both the following conditions:

32                             a.     Is derived in whole from vegetable cooking oil discarded by a  
33                             restaurant after use.

34                             b.     Is produced by an individual for use in a private passenger  
35                             vehicle registered in that individual's name pursuant to Chapter  
36                             20 of the General Statutes. For the purposes of this subdivision,  
37                             the term 'private passenger vehicle' has the same meaning as in  
38                             G.S. 20-4.01."

39                   **SECTION 3.** Chapter 119 of the General Statutes is amended by adding a  
40 new Article to read:

41   "Article 3A.

42   "Regulation of Biofuels.

43                   "**§ 119-47.1. Legislative findings and purpose.**

1        The General Assembly finds and declares that it is in the best interests of the citizens  
2 of North Carolina to promote and encourage the development of biofuel resources in the  
3 State in order to augment motor fuel supplies. The General Assembly further finds and  
4 declares that it is in the best interests of the citizens of North Carolina that biofuels meet  
5 recognized standards that will ensure that these fuels are compatible with motor vehicle  
6 manufacturer's specifications in order to protect consumers and thereby increase  
7 reliance upon and demand for biofuels.

8 **"§ 119-47.2. Definitions.**

9        In addition to the definitions in G.S. 105-449.60, the following definitions shall  
10 apply as used in this Article:

- 11            (1) 'Commissioner' means the Commissioner of Agriculture.  
12            (2) 'Department' means the Department of Agriculture and Consumer  
13 Resources.  
14            (3) 'Biofuel' means a fuel that is made or derived from organic substances,  
15 that meets the American Society for Testing and Materials (ASTM)  
16 standards for use in motor vehicles, and that is sold commercially.

17 **"§ 119-47.3. Lead agency; powers and duties.**

18        (a) For purposes of this Article, biofuels are considered agricultural products. For  
19 this reason and because the Department of Agriculture and Consumer Services has  
20 historically been responsible for the inspection of gasoline and oil, the Department of  
21 Agriculture and Consumer Services is designated as the lead agency in matters  
22 pertaining to biofuel.

23        (b) The Department shall have the following powers and duties:

- 24            (1) To provide producers of biofuel with information related to and  
25 assistance in obtaining permits for the production of biofuel.  
26            (2) To promote investment in the production of biofuels and  
27 biofuel-related facilities in order to expand biofuel production and  
28 refinery capacity in the State.  
29            (3) To work cooperatively with federal and State agencies to develop and  
30 implement policies and procedures that facilitate the production of  
31 biofuel in the State.  
32            (4) To develop and implement a regulatory program for biofuel production  
33 for biofuels and biofuels components other than blends of biofuel and  
34 fuel as derived from petroleum.  
35            (5) To develop and implement a regulatory program to ensure that  
36 commercially-produced biofuel meets ASTM standards for use in  
37 motor vehicles.  
38            (6) To create and maintain an Internet site to inform the public about the  
39 permitting, tax, and other requirements associated with biofuel  
40 production and inspection.

41        (c) The Commissioner may adopt rules to implement this section.

42 **"§ 119-47.4. Regulation of ethanol and other alcohols used as motor fuels.**

43        (a) The Department of Agriculture and Consumer Services shall develop and  
44 implement a program to regulate the production and sale of ethanol and other alcohols

1 used as a motor fuel in the State. The Commissioner shall adopt rules for the registration  
2 of facilities for the production and sale of ethanol used as motor fuel. The  
3 Commissioner shall adopt rules governing manufacture, possession, transportation,  
4 purchase, and sale of ethanol and other alcohols used as a motor fuel in the State. The  
5 authority of the Commissioner and the Department under this section is limited to  
6 ethanol and other alcohols that are produced and used as a motor fuel.

7 (b) Ethanol and other alcohols that are to be used as a motor fuel are exempt  
8 from regulation by the Alcoholic Beverage Control Commission.

9 **"§ 119-47.5. Violation is a misdemeanor.**

10 A person who violates this Article or a rule adopted by the Commissioner pursuant  
11 to this Article is guilty of a Class 1 misdemeanor."

12 **SECTION 4.** Section 1 of this act becomes effective for taxes imposed for  
13 taxable years beginning on or after 1 January 2007. Section 2 becomes effective 1  
14 October 2007. The remainder of this act is effective when it becomes law, and Section  
15 3 of this act applies to offenses committed on or after that date.