ENGROSSED HOUSE
BILL NO. 1398

By: Covey of the House

and

Laughlin of the Senate

(revenue and taxation – biodiesel facilities – amending 74 O.S., Sections 130.2 and 130.8 – alternative fuels – codification – effective date – emergency)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.67 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning after December 31, 2004, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes for any biodiesel facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, 2007. The completion of the construction of such facilities must be after the date of this act. The credit shall be in the amount of twenty cents ($0.20) per gallon of biodiesel produced and shall be allowed for sixty (60) months beginning with the first month for which the facility is eligible to receive such credit and ending not later than December 31, 2011. The credit may only be claimed if the biodiesel facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit.

B. As used in this section:

1. “Biodiesel facility” means a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts; and

2. “Name plate design capacity” means the original designed capacity of a biodiesel facility. Capacity may be specified as gallons of biodiesel produced per year.

C. Any biodiesel facility eligible for a tax credit under subsection A of this section shall also receive a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes in the amount of twenty cents ($0.20) per gallon of biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after the effective date of this act and before December 31, 2007. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2011.

D. 1. Beginning January 1, 2012, a biodiesel facility shall receive a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes in the amount of seven and one-half cents ($0.075) per gallon of biodiesel, for new production for a period not to exceed thirty-six (36) consecutive months.

2. For purposes of this subsection, “new production” means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission.

3. For expansion of the capacity of an existing facility, “new production” means annual production in excess of twelve times the monthly average of the highest three (3) months of biodiesel

production at a biodiesel facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer.

4. No credits shall be allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2012.

5. The amount of a credit granted pursuant to this section based on new production shall be approved by the Tax Commission based on such biodiesel production records as may be necessary to reasonably determine the level of new production.

E. 1. The credits described in this section shall be given only for biodiesel produced at a plant in this state at which all biodiesel esterification takes place.

2. Not more than twenty-five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the credits in subsections A and C of this section, and the credits may only be claimed by a producer for the periods specified in subsections A and C of this section.

3. Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve-consecutive-month period at a biodiesel facility shall be eligible for the credit described in subsection D of this section, and the credit may only be claimed by a producer for the periods specified in subsection D of this section.

4. Not more than one hundred twenty-five million (125,000,000) gallons of biodiesel produced at a biodiesel facility by the end of the sixty-month period set forth in subsection A or C of this section shall be eligible for the credit under such subsection. A biodiesel facility which receives a credit for biodiesel produced under subsection A or C of this section shall not receive a credit

under subsection D of this section until its eligibility to receive a credit under subsection A or C of this section has been completed.

F. The Tax Commission shall prescribe an application form and promulgate rules for claiming credits under this section.

G. For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 130.2, is amended to read as follows:

Section 130.2 As used in the Oklahoma Alternative Fuels Conversion Act:

1. "Alternative fuels" means fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates or any combination thereof and includes compressed natural gas, liquefied petroleum gas, liquefied natural gas, ethanol, methanol, "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, ~~and~~ electricity, biodiesel, and "B20" which is a mixture of biodiesel and diesel fuel containing at least twenty percent (20%) biodiesel;

2. "Charge station" means the physical device that provides a connection from a power source to an electric vehicle as defined by the Electric Vehicle Association of America, the Electric Power Research Institute, and the Society of Automotive Engineers. All charge stations shall comply with the National Electric Code. Inductive connectors and conductive connectors shall comply with the guidelines of the Society of Automotive Engineers;

3. "CNG" means compressed natural gas;

4. "CNG conversion kit" means the equipment installed to modify a motor vehicle which is propelled by gasoline or diesel fuel so that the vehicle may be propelled by compressed natural gas;

5. "Diesel fuel" means diesel engine fuel, and all other liquids suitable for the generation of power for the propulsion of motor vehicles except gasoline;

6. "Fill station" means the property which is directly related to the delivery of compressed natural gas, liquefied natural gas, liquefied petroleum gas, methanol, ~~or~~ "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol, biodiesel, or "B20" which is a mixture of biodiesel and diesel fuel containing at least twenty percent (20%) biodiesel into the fuel tank of a motor vehicle propelled by such fuel including the compression equipment and storage vessels for such fuel at the point where such fuel is delivered;

7. "Gallon" means the quantity of fluid or liquid at a temperature of sixty degrees (60°) Fahrenheit necessary to completely fill a United States standard gallon liquid measure;

8. "Gasoline" means the same as motor fuel and means every liquid petroleum product, or any combination thereof, other than solvents as herein defined, having an A.P.I. gravity of forty-six degrees (46°) or above at a temperature of sixty degrees (60°) Fahrenheit and at atmospheric pressure, and includes drip, casinghead or natural gasoline. The term gasoline also includes any liquid of less than forty-six degrees (46°) A.P.I. gravity at a temperature of sixty degrees (60°) Fahrenheit compounded, blended, manufactured or otherwise produced by mixing or blending gasoline or solvents with any blending materials, as hereinafter defined, when the blended product can be used for generating power in internal combustion engines, regardless of how such liquid is made, compounded, manufactured or recovered and regardless of the name by which such liquid may be known or sold;

9. "Government vehicle" means all motor vehicles, including, but not limited to, transit vehicles operated by any entity pursuant to Section 4031 et seq. of Title 69 of the Oklahoma Statutes or designated as public transit by the Oklahoma Department of Transportation, buses, trucks, law enforcement vehicles and emergency vehicles, owned and operated by the State of Oklahoma, any public trust authority, county, municipality, town or city within this state;

10. "Sale" means sales, barters, exchanges, and every other manner, method, and form of transferring the ownership of personal property from one person to another, and also includes the use or consumption in this state in the first instance of gasoline received from without the state or of any other gasoline upon which the surcharge has not been paid;

11. "School vehicle" means all buses and multi-passenger motor vehicles owned and approved to operate by the State Department of Education or any school district within this state; and

12. "Solvents" means especially prepared commercial and industrial solvents, cleaners' and painters' naphthas, and raw petroleum materials or petrochemical intermediates when used as or sold for use in production or manufacture of plastics, detergents, synthetic rubber, herbicides, insecticides and other chemicals or products which are not prepared, advertised, offered for sale, or sold for use or suitable for use as fuel for generating power in internal combustion engines.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 130.8, is amended to read as follows:

Section 130.8 The price and sale of natural gas, methanol, electricity, ~~and~~ "M-85", and biodiesel utilized as a transportation fuel in a motor vehicle shall not be regulated by any governmental entity within this state.

SECTION 4. This act shall become effective July 1, 2005.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 16th day of March, 2005.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2005.

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Presiding Officer of the Senate