

EHB 1398

THE STATE SENATE
Tuesday, April 12, 2005

ENGROSSED

House Bill No. 1398

As Amended

ENGROSSED HOUSE BILL NO. 1398 - By: COVEY and McMULLEN of the House
and LAUGHLIN, ANDERSON and MYERS of the Senate.

[revenue and taxation - biodiesel facilities - amending 74
O.S., Sections 130.2 and 130.8 - alternative fuels -
codification - effective date -
emergency]

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

1 than December 31, 2011. The credit may only be claimed if the
2 biodiesel facility maintains an average production rate of at least
3 twenty-five percent (25%) of its name plate design capacity for at
4 least six (6) months after the first month for which it is eligible
5 to receive such credit.

6 B. As used in this section:

7 1. "Biodiesel facility" means a plant or facility **located**
8 **within the State of Oklahoma and** primarily engaged in the production
9 of biodiesel derived from animal fats, grain components, coproducts,
10 or byproducts; and

11 2. "Name plate design capacity" means the original designed
12 capacity of a biodiesel facility. Capacity may be specified as
13 gallons of biodiesel produced per year.

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

1 D. 1. Beginning January 1, 2012, a biodiesel facility shall
2 receive a credit against the tax imposed by Section 2355 of Title 68
3 of the Oklahoma Statutes in the amount of seven and one-half cents
4 (\$0.075) per gallon of biodiesel, for new production for a period
5 not to exceed thirty-six (36) consecutive months.

6 2. For purposes of this subsection, "new production" means
7 production which results from a new facility, a facility which has
8 not received credits prior to January 1, 2012, or the expansion of
9 the capacity of an existing facility by at least two million
10 (2,000,000) gallons first placed into service after January 1, 2012,
11 as certified by the design engineer of the facility to the Oklahoma
12 Tax Commission.

13 3. For expansion of the capacity of an existing facility, "new
14 production" means annual production in excess of twelve times the
15 monthly average of the highest three (3) months of biodiesel
16 production at a biodiesel facility during the twenty-four-month
17 period immediately preceding certification of the facility by the
18 design engineer.

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

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

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

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

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

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

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

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

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

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

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

14 1. "Alternative fuels" means fuels which result in comparably
15 lower emissions of oxides of nitrogen, volatile organic compounds,
16 carbon monoxide, or particulates or any combination thereof and
17 includes compressed natural gas, liquefied petroleum gas, liquefied
18 natural gas, ethanol, methanol, "M-85" which is a mixture of
19 methanol and gasoline containing at least eighty-five percent (85%)
20 methanol, ~~and~~ electricity, biodiesel, and "B20" which is a mixture
21 of biodiesel and diesel fuel containing at least twenty percent
22 (20%) biodiesel;

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

8 3. "CNG" means compressed natural gas;

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

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

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

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

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

18 9. "Government vehicle" means all motor vehicles, including,
19 but not limited to, transit vehicles operated by any entity pursuant
20 to Section 4031 et seq. of Title 69 of the Oklahoma Statutes or
21 designated as public transit by the Oklahoma Department of
22 Transportation, buses, trucks, law enforcement vehicles and
23 emergency vehicles, owned and operated by the State of Oklahoma, any

1 public trust authority, county, municipality, town or city within
2 this state;

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

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

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

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

22 Section 130.8 The price and sale of natural gas, methanol,
23 electricity, ~~and~~ "M-85", and biodiesel utilized as a transportation

1 fuel in a motor vehicle shall not be regulated by any governmental
2 entity within this state.

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-5-05 - DO PASS,
9 As Amended and Coauthored.