

## 1 HOUSE BILL NO. 756

2 INTRODUCED BY GUTSCHE, BERGREN, WANZENRIED, WITT, LINDEEN, NOONAN, WARD,  
3 PETERSON

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ENCOURAGING THE PRODUCTION AND USE OF BIODIESEL  
6 THROUGH TAX INCENTIVES; PROVIDING A TAX CREDIT FOR INVESTMENTS IN DEPRECIABLE  
7 PROPERTY TO CRUSH OILSEED CROPS FOR PURPOSES OF BIODIESEL PRODUCTION; PROVIDING  
8 A TAX CREDIT TO A FACILITY PRODUCING BIODIESEL BASED UPON THE COST OF CONSTRUCTING  
9 AND EQUIPPING THE FACILITY; PROVIDING A TAX INCENTIVE FOR THE PRODUCTION OF BIODIESEL  
10 BASED UPON GALLONS OF PRODUCTION; PROVIDING THAT THE TAX INCENTIVE BE PAID OUT OF THE  
11 GENERAL FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND  
12 PROVIDING AN EFFECTIVE DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
16 NEW SECTION. **Section 1. Oilseed crush facility -- tax credit.** (1) An individual, corporation,  
17 partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed  
18 by Title 15, chapter 30 or 31, for investments in depreciable property IN MONTANA to crush oilseed crops for  
19 purposes of biodiesel production.

20 (2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a  
21 credit, as provided in subsection (3), for the cost of each item of property purchased to crush oilseed only in the  
22 year in which the property was purchased.

23 (3) The amount of the credit that may be claimed under this section for investments in depreciable  
24 property is ~~25%~~ 15% of the cost of the property, up to a total of \$500,000 for property invested in a facility. ~~The~~  
25 ~~credit must be claimed in quarterly installments.~~ THE CREDIT MUST BE CLAIMED IN THE TAX YEAR IN WHICH THE  
26 FACILITY BEGINS PROCESSING OILSEED OR MANUFACTURING A PRODUCT FROM OILSEED.

27 (4) The following requirements must be met to be entitled to a tax credit for investment in property to  
28 crush oilseed:

29 (a) The investment must be for depreciable property used primarily to crush oilseed or to manufacture  
30 a product from oilseed and must be operating before January 1, 2010.

1 (b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser  
2 or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that crushes  
3 oilseed or that manufactures a product from crushed oilseed.

4 (ii) If more than one person have an interest in a business with qualifying property, they may allocate  
5 all or any part of the investment cost among themselves and their successors or assigns.

6 (c) The business must be owned or leased during the tax year by the taxpayer claiming the credit,  
7 except as otherwise provided in subsection (4)(b), and must have been processing oilseed or manufacturing  
8 a product from oilseed during the tax year for which the credit is claimed.

9 (5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the  
10 investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

11 (6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year  
12 may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility in which  
13 property is installed and for which a credit is claimed ceases operations within 5 years of the claiming of a credit  
14 under this section, the credit is subject to recapture. The person claiming the credit is liable for the amount of  
15 the credit in the event of recapture.

16 (7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax  
17 credits allowed under this section.

18 (8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be  
19 computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary  
20 to crush oilseed or to manufacture a product from oilseed. In all other respects, the allowance and effect of the  
21 tax credit apply to the corporation as otherwise provided by law.

22

23 **NEW SECTION. Section 2. Biodiesel production facility tax credit.** (1) An individual, corporation,  
24 partnership, or small business corporation, as defined in 15-30-1101, may receive a credit against taxes imposed  
25 by Title 15, chapter 30 or 31, for the cost of constructing and equipping a facility IN MONTANA to be used for  
26 biodiesel production.

27 (2) Subject to subsection (4), a taxpayer qualifying for a credit under this section is entitled to claim a  
28 credit, as provided in subsection (3), for the cost of construction of the facility and for each item of property  
29 purchased to produce biodiesel only in the year in which the facility is in production.

30 (3) The amount of the credit that may be claimed under this section for investments in depreciable

1 property is ~~25%~~ 15% of the cost of the facility or the property installed in the facility. The credit must be claimed  
2 in ~~quarterly installments beginning~~ in the tax year in which the facility begins production.

3 (4) The following requirements must be met to be entitled to a tax credit for investment in property to  
4 manufacture biodiesel:

5 (a) The investment must be for depreciable property used primarily to manufacture biodiesel and must  
6 be operating before January 1, 2010.

7 (b) (i) The taxpayer claiming a credit must be a person who as an owner, including a contract purchaser  
8 or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that  
9 manufactures biodiesel.

10 (ii) If more than one person have an interest in a business with qualifying property, they may allocate  
11 all or any part of the investment cost among themselves and their successors or assigns.

12 (c) The business must be owned or leased during the tax year by the taxpayer claiming the credit,  
13 except as otherwise provided in subsection (4)(b), and must have been manufacturing biodiesel during the tax  
14 year for which the credit is claimed.

15 (5) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the  
16 investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

17 (6) A tax credit otherwise allowable under this section that is not used by the taxpayer in the tax year  
18 may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year. If a facility for which  
19 a credit is claimed ceases operations within 5 years of the claiming of a credit under this section, the credit is  
20 subject to recapture. The person claiming the credit is liable for the amount of the credit in the event of  
21 recapture.

22 (7) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax  
23 credits allowed under this section.

24 (8) If the taxpayer is a shareholder of an electing small business corporation, the credit must be  
25 computed using the shareholder's pro rata share of the corporation's cost of investing in the biodiesel production  
26 facility. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise  
27 provided by law.

28 (9) As used in this section, "biodiesel" has the meaning provided in 15-70-301.

29

30 NEW SECTION. Section 3. Biodiesel production incentive -- APPROPRIATION. (1) (a) There is a tax

1 incentive payable to biodiesel producers for increases in annual production the first 3 years of production. THE  
 2 TAX INCENTIVE UNDER THIS SECTION APPLIES TO BIODIESEL UPON WHICH THE TAX HAS BEEN PAID UNDER 15-70-343 BY  
 3 A LICENSED DISTRIBUTOR. FOR THE PURPOSES OF THIS SECTION, THE PRODUCTION YEAR IS THE PERIOD FROM JULY 1  
 4 OF THE CURRENT YEAR TO JUNE 30 OF THE SUCCEEDING YEAR.

5 (b) ~~Payment must be~~ PAYMENTS made by the department ~~out of the amount collected under 15-70-204~~  
 6 ARE STATUTORILY APPROPRIATED, AS PROVIDED IN 17-7-502, FROM THE STATE GENERAL FUND.

7 (2) Except as provided in subsection (3), the tax incentive on each gallon of increased biodiesel  
 8 production over the previous year, in accordance with subsection (1), is 10 cents a gallon for each gallon of  
 9 increased production. Beginning July 1, 2010, there is no tax incentive.

10 (3) The tax incentive in subsection (2) may be claimed for:

11 (a) the first year's total production;

12 (b) the production in the second year that exceeds production in the first year; and

13 (c) the production in the third year that exceeds production in the second year.

14 (4) After the department has verified production, the department shall begin payments of the biodiesel  
 15 tax incentives based on actual production according to the terms of subsection (3).

16 (5) AS USED IN THIS SECTION, "BIODIESEL PRODUCER" MEANS A PERSON WHO ENGAGES IN THE BUSINESS OF  
 17 PRODUCING, REFINING, OR MANUFACTURING IN MONTANA BIODIESEL FOR SALE, USE, OR DISTRIBUTION.

18 ~~(5)(6)~~ The department shall adopt rules necessary to carry out the provisions of this section.

19

20 **SECTION 4. SECTION 17-7-502, MCA, IS AMENDED TO READ:**

21 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
 22 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without  
 23 the need for a biennial legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both  
 25 of the following provisions:

26 (a) The law containing the statutory authority must be listed in subsection (3).

27 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory  
 28 appropriation is made as provided in this section.

29 (3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105;  
 30 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706;

1 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; [section 3]; 16-11-404; 17-3-106; 17-3-212;  
 2 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512;  
 3 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409;  
 4 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102;  
 5 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214;  
 6 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and  
 7 90-9-306.

8 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
 9 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
 10 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana  
 11 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state  
 12 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory  
 13 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of  
 14 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,  
 15 L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's  
 16 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates  
 17 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion  
 18 of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch.  
 19 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003,  
 20 the inclusion of 2-15-151 terminates June 30, 2005.)"

21  
 22 COORDINATION SECTION. SECTION 5. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 776 IS NOT  
 23 PASSED AND APPROVED, THE DEFINITION OF "BIODIESEL" IN 15-70-301 MUST READ AS FOLLOWS:

24 "(2) (a) "Biodiesel" means a fuel produced from monoalkyl esters of long-chain fatty acids derived from  
 25 vegetable oils, renewable lipids, animal fats, or any combination of those ingredients. The fuel must meet the  
 26 requirements of ASTM D6751, also known as the Standard Specification for Biodiesel Fuel (B100) Blend Stock  
 27 for Distillate Fuels, as adopted by the American society of testing and materials.

28 (b) Biodiesel is also known as "B-100".  
 29

30 NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be

1 codified as an integral part of Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [sections  
2 1 and 2].

3 (2) [Section 3] is intended to be codified as an integral part of Title 15, chapter 70, and the provisions  
4 of Title 15, chapter 70, apply to [section 3].

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6 **NEW SECTION. Section 7. Effective date.** [This act] is effective July 1, 2005.

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