

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1053**

Introduced by Erdman, 47; Dierks, 40; Dubas, 34.

Read first time January 18, 2008

Committee: Agriculture

A BILL

- 1 FOR AN ACT relating to agriculture; to create a production
- 2 incentive for biodiesel; and to create a fund.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Legislature finds it to be in the public  
2 interest to encourage research and demonstration, technology  
3 transfer, and commercial utilization of innovative means of  
4 biodiesel production. It is the intent of the Legislature to  
5 provide incentives to the biodiesel industry that advance this  
6 public interest, including encouragement of investigation of  
7 promising production technologies and systems in the production of  
8 biodiesel and the utilization of feedstocks in the production of  
9 biodiesel that offer renewable energy solutions for communities,  
10 the state, and the nation.

11           Sec. 2. For purposes of sections 1 to 4 of this act:

12           (1) Biodiesel facility means a plant or facility related  
13 to the processing, marketing, and distribution of biodiesel in  
14 Nebraska where all biodiesel processing takes place; and

15           (2) Biodiesel means a renewable, combustible liquid fuel  
16 that meets American Society for Testing and Materials specification  
17 D6751-02 for biodiesel fuel (B100) or any other recognized industry  
18 standard fuel specification for biodiesel derived from renewable,  
19 nonpetroleum sources if sold commercially.

20           Sec. 3. (1) Subject to the limitations specified in  
21 subsection (2) of this section and the requirements of subsection  
22 (3) of this section and during such periods as funds remain  
23 available in the Advanced Biodiesel Technology Transfer and  
24 Commercialization Incentive Fund, an advanced biodiesel technology  
25 transfer and commercialization incentive payment of thirty cents

1 per gallon shall be paid to a biodiesel producer for:

2 (a) Biodiesel produced utilizing innovative technology  
3 and systems for the conversion of vegetable oils or animal  
4 fats that increase feedstock conversion efficiency and net energy  
5 balance beyond that achieved by conversion technologies and systems  
6 commonly utilized commercially; or

7 (b) Biodiesel produced utilizing technology and systems  
8 enabling the conversion of biomass feedstocks not convertible by  
9 technology and systems commonly utilized commercially, including:

10 (i) Biodiesel converted from biomass from environmentally  
11 available materials from lands not converted for crop production;

12 (ii) Biodiesel converted from biomass derived from crop  
13 residues;

14 (iii) Biodiesel converted from biomass which may be  
15 harvested from land of marginal production capacity or otherwise  
16 retired or idled for food and feed production and managed for  
17 provision of conservation or other environmental services if the  
18 harvest of the biomass does not diminish or conflict with the  
19 conservation or environmental services management objectives of the  
20 land; and

21 (iv) Biodiesel converted from any other feedstock which  
22 utilization in biodiesel production avoids or reduces the necessity  
23 for conversion of agricultural lands from food or feed production  
24 or which utilization does not diminish availability of, or compete  
25 with, the utilization of the feedstock as a food or feed source.

1           (2) Advanced biodiesel technology transfer and  
2 commercialization incentive payments for no more than one million  
3 gallons per calendar year of qualified biodiesel may be paid to a  
4 single biodiesel producer. The incentive shall be available to a  
5 biodiesel producer for production occurring over any consecutive  
6 twenty-four-month period commencing with the first month for which  
7 the producer claims the incentive. No more than two million gallons  
8 of incentives may be paid in the aggregate to all qualified  
9 biodiesel producers claiming incentives in any calendar year. If,  
10 during any month, the Department of Agriculture determines that  
11 the amount of qualified biodiesel production for which incentives  
12 have been paid during the calendar year to date added to incentives  
13 likely to be claimed during the remainder of the calendar year will  
14 exceed two million gallons, the department shall, beginning in such  
15 month and each month thereafter:

16           (a) Calculate the average aggregate gallons of biodiesel  
17 production for which the incentive may be paid in each of the  
18 remaining months through the remainder of the calendar year by  
19 subtracting from two million gallons the amount of qualified  
20 biodiesel production for which incentives have been paid during the  
21 calendar year to date and dividing the result by the number of  
22 months remaining in the calendar year; and

23           (b) Prorate the number of gallons of biodiesel production  
24 for which an incentive payment may be claimed by each qualified  
25 biodiesel producer during the month by a proportion equal to the

1 average number of gallons for which the incentive may be paid  
2 in the aggregate during the month as calculated under subdivision  
3 (2) (a) of this section.

4 (3) (a) Claims for incentive payments shall be submitted  
5 to the department on forms prescribed by the Director of  
6 Agriculture. To be eligible to claim incentive payments, a  
7 biodiesel producer shall first provide to the director such  
8 materials as the director deems sufficient to evaluate the  
9 qualification of the biodiesel production for the incentive  
10 payment pursuant to this section. Such materials shall provide  
11 a description of the biodiesel facility at which the production  
12 of biodiesel for which the incentive payment to be claimed will  
13 occur, a description of the feedstock and its source, and the  
14 method of processing to be utilized. The director shall submit  
15 such materials to the Industrial Agricultural Products Center  
16 of the University of Nebraska-Lincoln for an evaluation of the  
17 conformity of the proposed biodiesel production system and the  
18 feedstock to be utilized with the purposes for which the incentive  
19 payment is provided under this section. To cover the costs of such  
20 evaluation, the Industrial Agricultural Products Center may charge  
21 an evaluation fee, which shall not exceed one thousand dollars. The  
22 director shall collect the fee from the biodiesel producer at the  
23 time the director deems the materials submitted by the biodiesel  
24 producer sufficient for evaluation pursuant to this section.

25 (b) If the director determines that the biodiesel

1 production will qualify for incentive payments provided under this  
2 section, the director shall so notify the biodiesel producer. A  
3 biodiesel producer shall begin to claim incentive payments within  
4 one year after such notification unless the director grants an  
5 extension. A qualified biodiesel producer shall file for the  
6 incentive payment on a quarterly basis on a form furnished by  
7 the director. The form shall require the producer to file such  
8 information as the department may prescribe, but shall include  
9 information relating to the original production records and  
10 invoices issued at the time of delivery, showing the total number  
11 of gallons of biodiesel produced for the previous three months.

12 (c) If the director determines that the biodiesel  
13 production does not qualify for incentive payments, the biodiesel  
14 producer may appeal the decision pursuant to the Administrative  
15 Procedure Act.

16 (d) Trade secrets, academic and scientific research work,  
17 and other proprietary or commercial information which may be  
18 submitted to the director shall not be considered to be public  
19 records as defined in section 84-712.01 if the release of such  
20 trade secrets, work, or information would give advantage to  
21 business competitors and serve no public purpose. Any person  
22 seeking release of the trade secrets, work, or information as a  
23 public record shall demonstrate that the release would not violate  
24 this section.

25 Sec. 4. The Advanced Biodiesel Technology Transfer and

1 Commercialization Cash Fund is created. The fund shall consist of  
2 any money appropriated by the Legislature and any money received  
3 as gifts, grants, bequests, or other contributions, public or  
4 private, for purposes of sections 1 to 4 of this act and any funds  
5 collected as an evaluation fee pursuant to section 3 of this act.  
6 The fund shall be expended only for the payment of the incentive  
7 payments provided for in section 3 of this act and the receipt and  
8 expenditure of the evaluation fee. Any money in the fund available  
9 for investment shall be invested by the state investment officer  
10 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
11 State Funds Investment Act.