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S.M. 2007, c. 17
Bill 15, 1st Session, 39th Legislature

The Biofuels Amendment Act

(Assented to November 8, 2007)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

C.C.S.M. c. B40 amended

1 *The Biofuels Act is amended by this Act.*

2(1) *Section 1 is amended by adding the following definitions:*

"biodiesel" means

- (a) an ester-based oxygenated fuel that is derived from vegetable oils, animal fats or other biomass material; or
- (b) a prescribed renewable fuel that may be used to power a diesel engine or for heating. (« biodiesel »)

"biodiesel sales mandate" means, for a prescribed motive fuel or class of motive fuel, the prescribed proportion of the total volume of that type of fuel sold by a fuel supplier that must be biodiesel in order for the fuel supplier to avoid a penalty under section 7. (« quota des ventes de biodiesel »)

"biofuel" means denatured ethanol, biodiesel and any other prescribed fuel derived from biomass material. (« biocarburant »)

"blended biodiesel" means a blend of biodiesel and a prescribed motive fuel or class of motive fuel. (« biodiesel mélangé »)

"blended biofuel" means gasohol, blended biodiesel or any other blend of biofuel and one or more of the following:

- (a) gasoline;
- (b) a prescribed motive fuel or class of motive fuel. (« biocarburant mélangé »)

"denatured ethanol sales mandate" means the prescribed proportion of the total volume of gasoline and gasoline-based fuels sold by a fuel supplier that must be denatured ethanol in order for the fuel supplier to avoid a penalty under section 7. (« quota des ventes d'éthanol dénaturé »)

"director" means the Deputy Minister of Finance or any Assistant Deputy Minister of Finance. (« directeur »)

"Ethanol Fund" means the Ethanol Fund established in section 6.4. (« Fonds d'aide à la production d'éthanol » ou « Fonds »)

"motive fuel" means a motive fuel as defined in section 1 of *The Motive Fuel Tax Act*. (« carburant »)

2(2) *Section 1 is amended by replacing the definitions "denatured ethanol", "fuel supplier", "gasohol" and "licence" with the following:*

"denatured ethanol" means a blend of

- (a) ethyl alcohol derived from renewable or recurring sources such as grain or biomass material; and
- (b) up to 5% gasoline or other prescribed denaturant. (« éthanol dénaturé »)

"fuel supplier" means

- (a) in respect of the sale of biodiesel,

- (i) a collector under *The Motive Fuel Tax Act*, and
 - (ii) a deputy collector under that Act who purchases a prescribed motive fuel or class of motive fuel for resale from a person other than a collector; and
- (b) in respect of the sale of denatured ethanol,
- (i) a collector under *The Gasoline Tax Act*, and
 - (ii) a deputy collector under that Act who purchases gasoline for resale from a person other than a collector. (« fournisseur de carburant »)

"gasohol" means a blend of

- (a) gasoline; and
- (b) denatured ethanol;

that meets prescribed specifications. (« gazohol »)

"licence" means a licence issued under this Act to manufacture a biofuel. (« licence »)

2(3) *The definition "gasohol sales mandate" in section 1 is repealed.*

3 *Subsection 4(2) is amended*

(a) in the part before clause (a), by striking out "authorizing a person to manufacture denatured ethanol" and substituting ", or a prescribed class of licence, authorizing a person to manufacture a biofuel"; and

(b) in clause (b), by striking out "denatured ethanol" and substituting "the biofuel".

4 *Clause 19(1)(b) is amended by adding ", and for the manner in which denatured ethanol may be blended with gasoline" after "gasohol";*

Amendments to unproclaimed provisions

5(1) *This section amends provisions of **The Biofuels Act**, as enacted by S.M. 2003, c. 5, that are not yet in force.*

5(2) *The heading for Part 2 is replaced with "BIOFUEL PROGRAM".*

5(3) *Section 2 is replaced with the following:*

Purpose

2 The purposes of this Act are

- (a) to encourage and support the production and consumption of biofuels in Manitoba; and
- (b) to ensure that biofuels and blended biofuels sold in Manitoba meet prescribed quality specifications.

5(4) *The centred heading before section 3 is replaced with "MANUFACTURE OF BIOFUELS".*

5(5) *Section 3 is renumbered as section 6.6.*

5(6) *Subsection 4(1) is amended by striking out "denatured ethanol" in the section heading and in the subsection and substituting "a biofuel".*

5(7) *The centred heading after section 6 is repealed.*

5(8) *The following is added before section 7:*

GRANTS

Grant program to be established by regulation

6.1(1) The Lieutenant Governor in Council may by regulation establish a grant program, to be funded by the Ethanol Fund, to support ethanol production in Manitoba.

Regulations re grant program

6.1(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations

- (a) respecting applications for grants;
- (b) respecting eligibility for grants;

- (c) respecting terms or conditions to be imposed on grants;
- (d) establishing reporting requirements for grant recipients;
- (e) establishing criteria for assessing the need for a grant, and the amount of a grant;
- (f) respecting the maximum amount that may be paid in grants in a 12-month period.

Minister may approve or deny grant

6.2 Upon receiving a grant application, the minister may

- (a) approve the grant in accordance with the criteria established by regulation, and enter into an agreement with the applicant that sets out
 - (i) the amount or maximum amount of the grant, and the manner in which it will be paid,
 - (ii) any circumstances under which the amount of the grant may be reduced or any part of it must be repaid, and
 - (iii) any other terms or conditions that the minister considers appropriate for the payment and administration of the grant; or
- (b) deny the grant.

Continuing eligibility

6.3 To continue to be eligible to receive payments under a grant approved by the minister, the grant recipient must comply with

- (a) the terms and conditions of the agreement governing the grant; and
- (b) the applicable provisions of this Act and the regulations.

ETHANOL FUND

Ethanol Fund

6.4(1) A fund to be known as the "Ethanol Fund" is hereby established, within the Consolidated Fund, to support the production of denatured ethanol in Manitoba.

Credits to Ethanol Fund

6.4(2) The following amounts are to be paid or credited to the Ethanol Fund:

- (a) for each of the first eight 12-month periods to which the denatured ethanol sales mandate applies, the amount determined by the following formula is to be paid or credited to the Ethanol Fund from the taxes collected under *The Gasoline Tax Act* for that period:

$$\text{Credit} = R \times L$$

In this formula,

R is the applicable rate, determined as follows:

- (i) for the first two 12-month periods, \$0.20 per litre,
- (ii) for the next three 12-month periods, \$0.15 per litre,
- (iii) for the last three 12-month periods, \$0.10 per litre;

L is the least of

- (i) the number of litres of denatured ethanol that were manufactured in Manitoba during the period,
- (ii) the number of litres of denatured ethanol included in gasohol that was sold during the period and on which tax under *The Gasoline Tax Act* was collected and not refunded, and
- (iii) the number of litres of gasoline and gasoline-based fuels that were sold by fuel suppliers during the period and on which tax under clause 2(1)(d) of *The Gasoline Tax Act* was collected and not refunded, multiplied by the prescribed percentage that applies in determining the denatured ethanol sales mandate for that period, or, if another percentage is prescribed, by that other percentage;

- (b) any portion of a grant repaid to or recovered by the minister;
- (c) interest earned on amounts credited to the Ethanol Fund.

Additional credit — before mandate begins

6.4(3) For December, 2007, and for each month after that until the denatured ethanol sales mandate begins to apply, there is to be paid or credited to the Ethanol Fund, from the taxes collected under *The Gasoline Tax Act* for that month, the amount determined by the Minister of Finance to be the equivalent of \$0.025 per litre of gasoline to which the rate reduction under subsection 2(2) of that Act applied in the same month one year earlier.

Additional credit

6.4(4) The Minister of Finance may pay or credit to the Ethanol Fund any additional amount authorized by an Act of the Legislature to be so paid and applied out of the Consolidated Fund.

Payment of grant out of the Ethanol Fund

6.4(5) On the requisition of the minister for a grant of money to be paid under this Act, the Minister of Finance must pay it out of the Ethanol Fund.

Transfer for general purposes

6.4(6) The Minister of Finance may, with the approval of the Lieutenant Governor in Council, transfer out of the Ethanol Fund and treat as general revenue of the government all or any part of the amount standing to the credit of the Ethanol Fund that is not required to pay the grants approved by the minister responsible for the grants.

Winding-up of Ethanol Fund

6.4(7) On or after March 31, 2017, the Lieutenant Governor in Council may require the Ethanol Fund to be wound up and the balance, if any, to be transferred out of the Ethanol Fund and treated as general revenue of the government.

Fiscal year

6.4(8) The fiscal year of the Ethanol Fund ends on March 31 of each year.

SALE OF BIOFUEL AND BIOFUEL SALES MANDATES

Biofuels and blended biofuels must meet prescribed specifications

6.5 No person shall sell

- (a) biodiesel for use as a fuel or for another prescribed use;
- (b) denatured ethanol for blending with gasoline in Manitoba;
- (c) a biofuel other than biodiesel or denatured ethanol; or
- (d) a blended biofuel;

unless the biodiesel, denatured ethanol, other biofuel or blended biofuel meets the prescribed specifications.

5(9) *Subsection 7(1) is replaced with the following:*

Penalty for shortfall in denatured ethanol sales

7(1) A fuel supplier whose sales of gasoline and gasoline based fuels for a reporting period do not include the prescribed proportion of denatured ethanol must pay a penalty to the Minister of Finance on the shortfall.

Penalty for shortfall in biodiesel sales

7(1.1) A fuel supplier whose sales of a prescribed motive fuel or class of motive fuel for a reporting period do not include the prescribed proportion of biodiesel must pay a penalty to the Minister of Finance on the shortfall.

5(10) *Subsection 7(2) is amended by striking out "The shortfall and penalty are" and substituting "A shortfall and penalty under this section is".*

5(11) *Subsection 9(1) is replaced with the following:*

Unreported shortfall in sales

9(1) If after an audit or inspection it appears to the director that a fuel supplier

(a) has an unreported shortfall in respect of denatured ethanol or biodiesel; or

(b) has failed to remit a penalty under section 7;

the director must notify the minister of the shortfall or failure to remit.

5(12) *Clause 10(1)(c) is amended by striking out "in respect of a shortfall in gasohol sales".*

5(13) *Section 11 is replaced with the following:*

Audit

11 The Minister of Finance or the minister may audit or inspect or may cause an audit or inspection to be made of the records of a fuel supplier, a manufacturer of a biofuel or a producer of a blended biofuel.

5(14) *Subsection 13(1) is replaced with the following:*

Power of entry

13(1) For the purposes stated in subsection (2), an inspector may at any reasonable time enter

(a) business premises occupied by a person involved in

(i) manufacturing, buying or selling a biofuel or blending it with other fuel, or

(ii) storing, transporting or selling gasoline, blended biofuel or any motive fuel that is prescribed for the purposes of the biodiesel sales mandate, in Manitoba; or

(b) other premises where the business records of a person described in clause (a) are kept.

5(15) *Subsection 13(2) is amended*

(a) in clause (c), by striking out "denatured ethanol" and substituting "of any type of biofuel"; and

(b) in clause (d), by striking out "gasoline-based" and substituting "petroleum-based".

5(16) *Clauses 18(1)(e) and (f) are replaced with the following:*

(e) manufactures or sells a biofuel or a blended biofuel in contravention of this Act;

(f) falsely represents

(i) a product as being a biofuel or blended biofuel, or

(ii) the proportion of biofuel in a blended biofuel;

5(17) *Subsection 19(1) is amended*

(a) by adding the following after clause (a):

(a.1) prescribing

(i) fuels derived from biomass, for the purpose of the definition "biofuel" in section 1,

(ii) motive fuels or classes of motive fuels, for the purpose of subclause (a)(ii) of the definition "fuel supplier" in section 1,

(iii) motive fuels or classes of motive fuels that may be blended with biodiesel or another biofuel to form blended biodiesel or another blended biofuel, and

(iv) a renewable fuel, for the purposes of the definition "biodiesel" in section 1;

(b) by adding the following after clause (b):

(b.1) prescribing specifications for biodiesel and blended biodiesel, and for the manner in which biodiesel may be blended with a motive fuel or a class of motive fuel;

(b.2) prescribing specifications for biofuels other than biodiesel and denatured ethanol;

(b.3) prescribing specifications for blended biofuels other than blended biodiesel and gasohol, and for the manner in which a biofuel may be blended with other prescribed fuels;

(b.4) prescribing classes of licences for the manufacturing of biofuels, the requirements to obtain each class of licence and the terms and conditions for each class of licence, which may be different for the different classes;

(b.5) respecting the Ethanol Fund and its administration;

(b.6) prescribing a percentage for the purpose of subclause (iii) of "L" in the formula in

subsection 6.4(2);

(c) by replacing clause (d) with the following:

(d) prescribing reporting and recordkeeping requirements for fuel suppliers and manufacturers of biofuels, which may be different for the different types of biofuel;

(d) by replacing clause (e) with the following:

(e) prescribing the proportion of the total volume of gasoline and gasoline-based fuels sold by a fuel supplier in a reporting period that must be denatured ethanol in order for the fuel supplier to avoid a penalty under section 7;

(e) by replacing clause (f) with the following:

(f) for the purposes of the denatured ethanol sales mandate,

(i) prescribing the reporting period,

(ii) prescribing the method of calculating a shortfall in denatured ethanol sales and the penalty payable in respect of a shortfall, and

(iii) respecting the remittance of the penalty;

(f) by adding the following after clause (f):

(f.1) for any prescribed motive fuel or class of motive fuel, prescribing the proportion of the total volume of that type of fuel sold by a fuel supplier in a reporting period that must be biodiesel in order for the supplier to avoid a penalty under section 7;

(f.2) for the purposes of the biodiesel sales mandate,

(i) prescribing motive fuels or classes of motive fuels,

(ii) prescribing the reporting period and the start date of the first reporting period,

(iii) prescribing the method of calculating a shortfall in biodiesel sales and the penalty payable in respect of a shortfall, and

(iv) respecting the remittance of the penalty;

5(18) *Subsection 19(2) is repealed.*

5(19) *The following is added after subsection 19(2):*

Incorporation by reference

19(3) A regulation under subsection (1) may adopt by reference, with any changes the Lieutenant Governor in Council considers appropriate, all or part of a code, rule or standard made by a governmental authority or any other body, and the code, rule or standard may be adopted as amended from time to time.

Information sharing

19(4) A regulation under clause (1)(d) may require reports to be provided to a director under *The Tax Administration and Miscellaneous Taxes Act*, and may require the director to provide information contained in those reports to the minister.

Start of biodiesel reporting period

19(5) A regulation under clause (1)(f.2) cannot be made until the aggregate annual biodiesel production capacity in Manitoba exceeds 20 million litres.

5(20) *Clause 20(2)(d) is amended by repealing the definition "Manitoba gasohol".*

5(21) *Subsection 20(10) is repealed.*

Consequential amendments, C.C.S.M. c. G40

6(1) *The Gasoline Tax Act is amended by this section.*

6(2) *Subsection 2(2) is repealed.*

6(3) *Subsection 37(1) is amended by striking out "All moneys" and substituting "Except for amounts to be paid to the Ethanol Fund under The Biofuels Act, all moneys".*

Consequential amendment, C.C.S.M. c. T2

*7 Clause 77(1)(g) of **The Tax Administration and Miscellaneous Taxes Act** is amended by striking out "denatured alcohol, or with".*

Coming into force

8 This Act comes into force on a day to be fixed by proclamation.