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# North Dakota Industrial Commission
# Biomass Incentive and Research Program Policies

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## BIR – 01 GENERAL PROVISIONS

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**BIR – 1.01 History – Administration.** Beginning July 1, 2007, the North Dakota Industrial Commission has been authorized to make funds from the Biomass Incentive and Research Fund available to provide financial assistance for contracts for biomass energy research and development. The Renewable Energy Council, established by NDCC 54-63 (Senate Bill 2288, 2007 Legislative Session), will review and make recommendations to the Commission on all applications for financial assistance under this Program.

**BIR – 1.02 Definitions.** As used in these policies:

1. "Applicant" means any person or entity applying to the Commission for a grant from the Biomass Incentive and Research Fund.
2. "Application" means the written document that is submitted to the Commission by an applicant seeking a grant from the Fund.
3. "Commission" means the North Dakota Industrial Commission or its representative.
4. "Contract" means the signed agreement between the Commission and Grantee which describes the rights and duties of the Commission and Grantee with regard to the program.
5. "Council" means the Renewable Energy Council as appointed by the Governor.
6. "Fund" means the Biomass Incentive and Research Fund available to the Commission to provide funding for the Program and as authorized in NDCC 54-63.
7. "Grant" means the monetary award made by the Commission under the Program.
8. "Grantee" means a successful applicant for a grant from the Fund.
9. "Program" means the Program administered by the Commission to promote and demonstrate the opportunities to develop the state's biomass energy resources, and to support research and development activities concerning the biomass energy industry.
10. "Technical Reviewers" mean independent technical reviewers selected by the Commission to review the merits of applications and to otherwise assist the Commission in administering the Program.

**BIR – 1.03 Costs of application preparation.** The Commission is not liable for any cost, including costs of preparation of applications, incurred by applicants prior to issuance of a contract. The Commission will be liable only for those costs and expenses expressly identified by contract.

**BIR – 1.04 Acceptance and rejection of applications**. These policies do not commit the Commission to award funds. The Commission reserves the right to accept or reject any or all applications received as a result of the Program and to negotiate with any and all qualified applicants. An application must have received a favorable Renewable Energy Council recommendation prior to consideration by the Industrial Commission.

**BIR – 1.05 Reservation of funds.** The Commission is not obligated to award the total amount of funds made available under this Program. Funds not awarded will be reserved for future grants under the Program.

## BIR – 02 ELIGIBILITY

BIR – 2.01 Eligible Applicants
BIR – 2.02 Eligible and Ineligible Projects

**BIR – 2.01 Eligible applicants.** Any person, corporation, partnership, cooperative, association, cooperating agricultural producers organized through a limited liability corporation or cooperative, or other appropriate ownership structure, or consortium of such parties, may apply for funds under this Program. With regard to site-specific feasibility studies, only owners of facilities, sponsors of projects or operators having effective control of a facility or project may apply. Applicants who do not own or control or have the clear and firm commitment of ownership or control are ineligible for feasibility study assistance. Any interested person in doubt as to eligibility should contact the Commission.

**BIR – 2.02 Eligible and ineligible projects.** Any project proposing research or development of biomass energy resources is eligible for a contract under this Program. The following are examples, in no particular order, of eligible projects.

- Promote efficient, economic and environmentally sound development and use of North Dakota's biomass resources.
- Provide funding for a front-end engineering and design study for a cellulosic ethanol and nanowhiskers project.
- Create jobs related to the production and utilization of North Dakota's biomass resources.
- Ensure economic stability, growth and opportunity in the biomass energy industry.
- Establish an incentive program to assist the agricultural community to demonstrate the production, harvest, storage, and delivery of a biomass feedstock on a commercial scale to a private sector end user which may include qualifying for the agriculture partnership in assisting community expansion program.
- Add wealth for landowners and agriculture producers to build and maintain a robust rural economy, which may include the providing of funds for incentives, including producer payments to provide income support during the critical biomass stand establishment period of two years without harvest, in the case of native grasses, or other perennial biomass crops.

- Establish a project on a scale sufficient to enable at least one group of cooperating agricultural producers, and preferably two groups in different regions of the state, to produce, harvest, store, and deliver biomass feedstock to an end user at commercial scale.

The following activities or uses are ineligible for funding under this Program:

a. Business startup capital.
b. Business working capital.
c. Business advertising or promotional expenses pertaining to a specific company or entity.

## BIR – 3 MAXIMUM GRANT AMOUNT AND MATCHING FUND REQUIREMENT

BIR – 3.01 Maximum Grant Amount
BIR – 3.02 Matching Funds

**BIR – 3.01 Maximum grant amount.** Grants may be of any amount within the limits of legislative appropriation.

**BIR – 3.02 Matching funds.** Projects with matching funds will be given higher priority and industry matching funds are preferred. Documentation demonstrating the matching funds, including letters of commitment from other funding sources, must be submitted to the Commission within sixty days of the approval of an application by the Commission, or within any additional time granted by the Commission. The Commission's approval is contingent upon receiving this documentation. If it is not received, the approval lapses and no grant may be made.

## BIR – 4 APPLICATION REQUIREMENTS

BIR – 4.01 Application Format
BIR – 4.02 Application Deadline
BIR – 4.03 Application Contribution

**BIR – 4.01 Application format.** An application must be direct, concise, and informative. It must be accompanied with the application contribution of $100. It must be typed and double spaced on eight and one-half-inch by eleven-inch paper. Each page shall be numbered and the application shall not exceed 15 pages in length (including the transmittal letter). A copy of the application should be submitted electronically to kfine@nd.gov and two paper copies of the application are to be submitted to the following address.

North Dakota Industrial Commission
ATTN: Biomass Energy Development Program
State Capitol – Fourteenth Floor
600 East Boulevard
Bismarck, North Dakota 58505

The application must contain the following:

1. Transmittal letter. A transmittal letter setting forth a binding commitment on behalf of the applicant to complete the project as described in the application if the Commission makes the grant requested. The letter must be signed by someone authorized to contract on behalf of the applicant.

2. Title Page. A title page setting forth the project title, applicant, principal investigator, date of application, and amount of the request.
3. Table of contents.
4. Abstract. A one-page abstract of the project stating its objective, expected results, duration, total project cost, and participants.
5. Project description. A detailed description of the project, including its objectives; its methodology; its anticipated results; the facilities, resources, and techniques to be used and their availability and capability; the environmental and economic impacts of the project while it is underway; its ultimate technological and economic impacts; and why the project is needed.
6. Standards of success. The standards by which the success of the project is to be measured. This should include the value to North Dakota. An explanation of what parts of the public and private sector will likely make use of the project's results, and when and in what way; of the potential that commercial use will be made of the project's results; how the project will enhance the research and development of North Dakota's biomass energy resources; how it will preserve existing jobs and create new ones; and how it will otherwise satisfy the purposes established in the mission of the Program.
7. Background/Qualifications. A summary of prior work related to the project conducted by the applicant and other participants as well as by other organizations. This should also include summary of the experience and qualifications pertinent to the project of the applicant, principal investigator, and other participants in the project.
8. Management. A description of how the applicant will manage and oversee the project to ensure it is being carried out on schedule and in a manner that best ensures its objectives will be met, and a description of the evaluation points to be used during the course of the project.
9. Timetable. A project schedule setting forth the starting and completion dates, dates for completing major project activities, and proposed dates upon which the interim reports will be submitted.
10. Budget. An itemized list of the project's capital costs; direct operating costs, including salaries; and indirect costs; and an explanation of which of these costs will be supported by the grant and in what amount. An explanation why the funding requested is necessary to achieve the project's objectives and, if less funding is available than that requested, whether the project's objectives will be unattainable or delayed. The budget should identify all other committed and prospective funding sources and the amount of funding from each source. Higher priority will be given to those projects have matching private industry investment.
11. Tax liability. An affidavit stating that the applicant does not have an outstanding tax liability owed to the State of North Dakota or any of its political subdivisions.
12. Patents and Rights to Technical Data. Any patents or rights that the applicant wishes to reserve must be identified in the application.
13. Appendices. Any necessary supporting documentation.

**BIR – 4.02 Application deadline.** Applications for the first round must be delivered to the Industrial Commission or postmarked on or before February 1. Applications for the first review and award process in subsequent calendar years must be delivered to the Industrial Commission or postmarked on or before May first, and applications for the second review

and award process must be delivered to the Industrial Commission or postmarked on or before November first. In addition to these two grant rounds, the Commission may establish additional grant rounds and set application deadlines for those rounds. The applicant may amend its application at any time before the application deadline. After the application deadline, the applicant may amend its application only upon the approval of the Commission.

**BIR – 4.03 Application contribution.** All applications must be accompanied by a one hundred dollars nonrefundable application contribution. Checks or money orders should be made payable to the "North Dakota Industrial Commission".

## BIR – 05 REVIEW AND AWARD PROCESS

BIR – 5.01 Application Evaluation – Criteria
BIR – 5.02 Application Review – Initial Review
BIR – 5.03 Application Review – Technical Reviewer
BIR – 5.04 Application Review – Council Recommendation and Commission Decision
BIR – 5.05 Contracts
BIR – 5.06 Disbursement of Funds
BIR – 5.07 Project Duration
BIR – 5.08 Allocations
BIR – 5.09 Partially Funded or Delayed Projects
BIR – 5.10 Contract Modifications
BIR – 5.11 Reporting Requirements

**BIR – 5.01 Application evaluation – Criteria.** All applications will be evaluated according to the criteria set forth in North Dakota Century Code54-17-38, and the eligibility criteria established by the Commission as stated in these policies under 2.02.

General Criteria. Priority areas of the Program include, in no particular order, but are not limited to the following:

- Generate information and knowledge that will have the highest probability of bringing biomass energy companies and industry investment to North Dakota.
- Have the highest potential for creating new biomass energy jobs, wealth, and tax revenues for North Dakota.
- Provide technical assistance to participating biomass producers.
- Give priority on a perennial grass feedstock due to the state's resource potential, although residual feedstocks are eligible for consideration.
- Identify and develop biomass energy technologies presently not used in North Dakota.
- Maximize the market potential for biomass energy resources and the associated byproducts produced therewith.
- Promotes the dual roles of enhancing wildlife production and biomass energy resources
- Develop baseline information that will lead to other projects, processes, ideas, and activities.

The project's compatibility with the objectives of the Program will be considered, in particular, the following will be evaluated:

(1) The need for the project;

(2) The potential value to the biomass energy industry of the results to be achieved by the project;
(3) The timeliness of the project;
(4) The impact on the biomass energy industry;
(5) The level of funding requested;
(6) The level of matching funds, with higher priority given to those projects with private industry investment;
(7) The short-term and long-term benefits to the applicant, biomass energy industry, biomass energy developers, landowners and agricultural producers, and the counties and state of North Dakota;
(8) The likelihood that the project will achieve its technical and market goals;
(9) The scientific soundness and innovation of any proposed technology;
(10) The financial feasibility of the proposed project; and
(11) The technical qualifications and expertise of the applicant, the investigators, and the sponsors.

**BIR – 5.02 Application review – Initial review.** Upon receipt of an application, the Commission will determine if the application meets eligibility requirements and is complete. The Commission shall complete this review within thirty days of the application deadline date, though the Commission may extend this time if needed to properly review an application. If the Commission determines that the application meets eligibility requirements and is complete, the application will be referred to technical reviewers selected by the Commission. The Commission may also refer any question it has about completeness and eligibility to the Technical Reviewers and such question may then be a consideration throughout the review process. The Commission may waive the independent technical review process if it determines that funding is not available for the Technical Reviewers or a project is time sensitive.

**BIR – 5.03 Application review – Technical Reviewer.**

(1) Technical Reviewers are selected by the Commission. Technical Reviewers should possess the expertise and experience necessary to adequately review the application.
(2) No individual with a direct financial interest in a proposed project may be involved in any way in reviewing the application. If asked to review the application, the individual with the conflict of interest shall immediately inform the Commission of the conflict. Failure to so notify the Commission disqualifies the individual from serving as a Technical Reviewer unless reinstated by the Commission, and the Commission may disqualify the application from being approved during the round of grants within which the conflict occurred.
(3) The Technical Reviewers shall assess the technical and fiscal merits of the application. Upon completion of the application review, the Technical Reviewers shall make their recommendation to the Council. The Technical Reviewers shall submit their recommendation within sixty days, though the Commission may extend this time if the Technical Reviewers need more time to properly review the application.
(4) Notification to applicant. The Commission shall promptly notify the applicant of the recommendations made by the Technical Reviewers to the Council.

**BIR – 5.04 Application review – Council recommendation and Commission decision.** The Council shall consider, but is not bound by, a recommendation of the Technical Reviewers. The Council shall make a recommendation on each application to the Commission. The Council shall make its recommendation to the Commission within sixty days of its receipt of the Technical Reviewers' recommendations, though the Commission may extend this time if the Council needs to more properly review the application. The Commission shall consider, but is not bound by, a recommendation of the Council.

**BIR – 5.05 Contracts.** A grantee must enter into a contract with the Commission and submit any supporting documentation required by the Commission. The application will form an integral part of the contract. The Commission shall provide a proposed contract to grantees within sixty days of Commission approval of the project. The grantee will then have sixty days to execute a contract. If a contract is not executed by the grantee within the sixty days, the award will be canceled unless an extension of time is granted by the Commission. Work carried out under a contract is the work of the grantee and not the Commission.

**BIR – 5.06 Disbursements of funds.** Funds will be disbursed only after a contract has been executed. All disbursements will be made according to the schedule in the contact. Disbursements may be withheld if the Commission deems the grantee has not complied with these policies or the contract.

**BIR – 5.07 Project duration.** The project must be completed within the time specified in the contract. If the project cannot be completed within the time specified in the contract, the grantee may make a written request to the Commission for an extension of up to one year. The request must set forth the specific additional time requested and the reasons why an extension is needed. Upon receipt of the request, the Commission may convey it to the Council. The Council may make use of technical reviewer(s) to analyze the request. The Council may review the request and make a recommendation to the Commission. The Commission, after reviewing the recommendation, shall decide whether or not to grant the request. Additional extensions may be sought under the same procedure described above, but may only be granted if the grantee proves that factors beyond the grantee's control are the cause of its inability to complete the project on time and that since receiving the first extension the grantee has been diligent in all respects in trying to complete the project on time.

**BIR – 5.08 Allocations.** If the work under a contract extends beyond the State's fiscal biennium in which the contract is made, any further disbursements of the grant by the Commission to the grantee cannot be guaranteed and will be made only if sufficient funds are appropriated in the new biennium to satisfy the contract.

**BIR – 5.09 Partially funded or delayed projects.** If the Commission grant is less than the amount requested, the applicant may decline the award or proceed with the project as proposed, notwithstanding the reduced award. Failure of a grantee to proceed with the project in a timely manner or comply with contract terms or these rules entitles the Commission to cancel the grant and contract and to receive from the grantee full reimbursement of all funds the Commission disbursed under the contract.

**BIR – 5.10 Contract modifications.** If at any time after entering a contract the grantee desires to change any term of the contract, the grantee shall make a written request to the Commission. The request must set forth the specific change desired and the reasons why the change is needed. Upon receipt of the request, the Commission may convey the request to the Council and the Council shall review it and make a recommendation to the Commission. The Council may use Technical Reviewer(s) to analyze the request. If the requested change is not substantive, the Commission shall decide whether or not to grant the request.

**BIR – 5.11 Reporting requirements.** A grantee has the following reporting obligations:

(1) Interim reports. A grantee shall submit to the Commission reports summarizing the project's accomplishments and expenditures to date. The timing of the reports will be specified in the contract.

(2) Special reports. If substantial progress on a project occurs earlier than anticipated, the grantee shall immediately submit to the Commission a report explaining the accomplishment.

(3) Final report. A comprehensive final report must be submitted to the Commission by all grantees within the time specified in the contract. This report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and the potential applications of the project. The rest of the report must explain these subjects in detail as well as the total costs of the project, a summary fiscal accounting of the entire project, any plans for developing or putting to commercial use the results of the project, and whether and in what manner the project met or failed to meet the standards referred to in these policies.

## BIR – 6 PUBLIC INFORMATION – PATENT AND NEW TECHNOLOGIES POLICIES

BIR – 6.01 Application Ownership
BIR – 6.02 Rights to Technical Data
BIR – 6-03 Use for Governmental Purposes
BIR – 6.04 Patent Rights – Manufacturing in North Dakota
BIR – 6.05 Patent Fees – No Charges in North Dakota

**BIR – 6.01 Application ownership.** Information contained in unsuccessful applications will remain the property of the applicant, but the Commission will retain file copies of all applications, findings, and reports. Applications are public information and are available to the public upon request and payment of copying charges.

**BIR – 6.02 Rights to technical data.** Rights to technical data, including software developed under the terms of a grant, shall remain with the grantee.

**BIR – 6.03 Use for governmental purposes.** If a grantee copyrights and publishes material developed with Commission funding the State of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the state, shall have an irrevocable royalty-free right to practice under any patents, patent applications, or other new technology developed under this Program. The intent of this section is to enable state agencies to purchase or use, or both, new technology products or processes for governmental purposes without having to pay the imputed development costs of the products or processes twice; first in the research and development state under Commission funding

and then later in the purchase of the processes or products. The State may not use this provision to enter into the private marketplace through direct manufacture or production of goods and services. The Commission may waive the State's royalty-free right if any other governmental entity, state, federal, or foreign, provides matching funds and imposes conditions that do or may conflict with the right provided for by this section. A waiver may be given only if the following are met:

(1) The grantee has requested from the other funding source a waiver of its requirements that conflict or may conflict with this section;
(2) The other funding source provides at least twenty percent of the project's funding; and
(3) It is unlikely the State would ever seek to use the right given the State under this section.

**BIR 6.04 Patent rights – Manufacturing in North Dakota.** Applicants may retain the principal worldwide patent rights to any invention made with financial support under this program, except the patent holder agrees directly, or through licensing of patents, to assure that any manufacturing thereof shall substantially occur in North Dakota. Similarly, use of any new technology or other technical information derived in part from funding under this program requires that any manufacturing thereof shall substantially occur in North Dakota. For the purposes of this section, the words "substantial" or "substantially" shall mean not that the primary manufacturing must occur in North Dakota, but rather that more than incidental manufacturing must occur in North Dakota. The grantee or licensee or assignee, as determined by the Commission, must reimburse the entire grant amount received through the Commission should such licensees or assignees relocate or be established out of the State and not continue substantial manufacturing in North Dakota. The Commission may choose not to enforce the "substantial manufacturing" requirement of this section if there is no person or entity in North Dakota capable of fulfilling the requirement and it is unlikely that in the near future a person or entity would be capable of satisfying the requirement.

**BIR – 6.05 Patent fees – No charges in North Dakota.** Applicants, or anyone that may purchase patent rights from the applicant, cannot charge a patent fee or royalty fee to any citizen, company or corporation in North Dakota for a patent that was developed utilizing financial support from this program.

Approval dates:
Renewable Energy Council -
Industrial Commission of North Dakota -