

Fifty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1019

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 economic development and finance and to the agricultural products utilization commission for
3 grants; to provide for transfers of funds; to amend and reenact sections 4-14.1-07 and
4 57-43.1-03.1 of the North Dakota Century Code, relating to ethanol plant production incentives
5 for fuel used for agricultural purposes; and to provide an effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the
8 funds as may be necessary, are hereby appropriated out of any moneys in the general fund in
9 the state treasury, not otherwise appropriated, and from special funds derived from federal
10 funds and other income, to the department of economic development and finance for the
11 purpose of defraying its expenses, for the biennium beginning July 1, 1999, and ending
12 June 30, 2001, as follows:

13 Salaries and wages	\$3,041,771
14 Operating expenses	2,158,447
15 Equipment	96,358
16 Grants	1,518,061
17 General allocation grants	750,000
18 North Dakota development fund	1,000,000
19 Agricultural products utilization	<u>4,085,911</u>
20 Total all funds	\$12,650,548
21 Less estimated income	<u>3,695,701</u>
22 Total general fund appropriation	\$8,954,847

23 **SECTION 2. APPROPRIATION - EMERGENCY COMMISSION APPROVAL.** All
24 income received in excess of the amounts appropriated in section 1 of this Act relating to

1 agricultural products utilization commission activities is hereby appropriated to the agricultural
2 products utilization commission for research, marketing, and utilization grants for the biennium
3 beginning July 1, 1999, and ending June 30, 2001. Any funds received require the approval of
4 the emergency commission before they may be expended.

5 **SECTION 3. AGRICULTURAL FUEL TAX FUND.** The estimated income line item in
6 section 1 of this Act includes \$995,046 from the agricultural fuel tax fund for the biennium
7 beginning July 1, 1999, and ending June 30, 2001.

8 **SECTION 4. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION**
9 **INCENTIVES - INFORMATION FILED WITH BUDGET SECTION - CONTINGENT**

10 **TRANSFER.** The estimated income line item in section 1 of this Act includes \$1,507,000, or so
11 much of the amount as may be necessary, from the highway tax distribution fund for the ethanol
12 production incentive program. Of this amount, \$1,500,000 is for the purpose of providing
13 production incentives and \$7,000 is for audits of the use of these funds for the biennium
14 beginning July 1, 1999, and ending June 30, 2001. Distribution from the appropriation in
15 section 1 of this Act to the producers of agriculturally-derived fuel must be at the rate of forty
16 cents for each gallon of agriculturally-derived fuel produced in the state which is marketed by
17 the producing plant to a distributor or wholesaler for sale within North Dakota. For purposes of
18 this section, "gallon of agriculturally-derived fuel" means a gallon [3.79 liters] of fuel that
19 qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a
20 denaturant has been added. Payment to the producing plant must be approved by the
21 agricultural products utilization commission upon presentation by the plant of an affidavit to the
22 effect that the ethanol sold from the plant and for which the producer's credit is being sought is
23 to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol
24 must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Within
25 ninety days after the end of each fiscal year of the ethanol plant beginning after December 31,
26 1992, any North Dakota ethanol plant receiving production incentives from the state shall file
27 with the budget section of the legislative council a statement, certified by a certified public
28 accountant, as to whether the plant produced a profit from its operation in the preceding fiscal
29 year, after deducting the payments received from this incentive program. If, at the end of each
30 fiscal year, funding appropriated for the ethanol incentive payments is not spent, the director of
31 the office of management and budget shall transfer from the highway tax distribution fund the

1 amount of unspent funds deposited into the fund pursuant to provisions of section 57-43.1-03.1
2 to the agricultural fuel tax fund for the agricultural products utilization commission for the
3 purpose of providing grants as provided by law.

4 **SECTION 5. EXEMPTION.** The funds appropriated in the agricultural products
5 utilization line item in section 1 of this Act are not subject to section 54-44.1-11 and any
6 unexpended funds from this line item relating to grants awarded may be available for continued
7 payment of grant awarded but not paid during the biennium beginning July 1, 1999, and ending
8 June 30, 2001.

9 **SECTION 6. LEGISLATIVE INTENT - ETHANOL INCENTIVE PAYMENTS.** It is the
10 intent of the legislative assembly that of the appropriation of \$1,500,000 contained in section 1
11 of this Act for ethanol incentives, a maximum of \$750,000 may be paid annually to the
12 producers of agriculturally-derived fuel during the 1999-2001 biennium. For purposes of this
13 section "agriculturally-derived fuel" means fuel that qualifies for the alcohol credit under
14 26 U.S.C. 40, specifically including fuel to which a denaturant has been added.

15 **SECTION 7. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS.** The
16 \$1,000,000 transferred to the North Dakota development fund must be dedicated for projects as
17 follows: forty percent businesses in rural areas, forty percent businesses in urban areas, and
18 twenty percent North Dakota American Indian businesses. Any unused funds in any category
19 may be transferred to another category during the second year of the biennium under rules
20 adopted by the director of the department of economic development and finance. The director
21 of the department of economic development and finance may reallocate up to twenty percent of
22 any region's available remaining balance of regional rural development revolving loan funds to
23 another region or regions for the biennium beginning July 1, 1999, and ending June 30, 2001.
24 Of the amount available in the North Dakota development fund, \$4,000,000 or the unobligated
25 balance on July 1, 1999, relating to the transfer of regional rural development revolving loan
26 fund moneys, must continue to be dedicated for the purpose of providing financial assistance,
27 research and development assistance, and loans or equity or debt financing on a matching
28 basis to new or expanded primary sector businesses in areas of the state that are not within five
29 miles [8.05 kilometers] of any city with a population of more than eight thousand. These funds
30 must be allocated for the benefit of each of the areas delineated as regions by executive order
31 of the governor pursuant to section 54-40.1-02.

1 **SECTION 8. ECONOMIC DEVELOPMENT FUNDS - WAGE REQUIREMENTS.** Any
2 political subdivision or economic development authority may adopt a minimum wage
3 requirement for any new business or business expansion in which a majority of the capital is
4 provided by the North Dakota development fund and its own local development funds. These
5 wage requirements may be imposed on all or any portion of the employees and may exceed
6 federal minimum wage requirements.

7 **SECTION 9. AMENDMENT.** Section 4-14.1-07 of the 1997 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **4-14.1-07. Duration and limitation of ethanol plant production incentives.**
10 Notwithstanding any other provision of law, an ethanol plant may not receive production
11 incentives except as permitted under this section.

- 12 1. An ethanol plant that was in operation before July 1, 1995, may not receive
13 production incentives in the form of direct payments from the state for more than
14 ~~five~~ seven fiscal years of operation after June 30, 1995. An ethanol plant that
15 begins operation after June 30, 1995, may not receive production incentives in the
16 form of direct payments from the state for more than ~~ten~~ twelve fiscal years of
17 operation. After December 31, ~~2007~~ 2009, the state may not provide production
18 incentives in the form of direct payments to any ethanol plant.
- 19 2. An ethanol plant that was in operation before July 1, 1995, and which produced
20 fewer than fifteen million gallons [56781000 liters] of ethanol in the previous fiscal
21 year may receive up to one million dollars in production incentives from the state
22 for production in a fiscal year. An ethanol plant that was in operation before July 1,
23 1995, and which produced fifteen million gallons [56781000 liters] or more of
24 ethanol in the previous fiscal year and an ethanol plant that begins operation after
25 June 30, 1995, are each eligible to receive an equal share in up to five hundred
26 thousand dollars in production incentives from the state for production in a fiscal
27 year.

28 **SECTION 10. AMENDMENT.** Section 57-43.1-03.1 of the 1997 Supplement to the
29 North Dakota Century Code is amended and reenacted as follows:

30 **57-43.1-03.1. (Effective until December 31, 1999 2001) Refund of tax for fuel used**
31 **for agricultural purposes - Reductions.** Any consumer who buys or uses any motor vehicle

1 fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a
2 claim with the commissioner for a refund under this chapter. The amount of the tax refund
3 under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels
4 used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon
5 [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, one cent
6 per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution
7 fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the
8 agricultural research fund.

9 **(Effective January 1, ~~2000~~ 2002) Refund of tax for fuel used for agricultural**
10 **purposes - Reductions.** Any consumer who buys or uses any motor vehicle fuel for an
11 agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the
12 commissioner for a refund under this chapter. The amount of the tax refund under this section
13 must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or
14 with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld
15 from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon
16 [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

17 **SECTION 11. EFFECTIVE DATE.** Section 10 of this Act is effective for refund claims
18 for motor vehicle fuel taxes paid after December 31, 1998.