

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2222
(Senators Klein, Grindberg, Nichols)
(Representatives Kempenich, Mueller, Pollert)

AN ACT to create and enact four new sections to chapter 4-14.1 of the North Dakota Century Code, relating to ethanol production subsidies; to amend and reenact sections 4-14.1-07, 39-04-39, and 57-43.1-03.1 of the North Dakota Century Code, relating to the distribution of motor vehicle registration fees and the taxation of motor vehicle fuel for agricultural purposes; to repeal section 4-14.1-07 of the North Dakota Century Code, relating to the duration and limitation of ethanol plant production incentives; to provide for a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Definition. In this chapter, unless the context otherwise requires, "eligible facility" means an ethanol production plant constructed in this state after July 31, 2003.

SECTION 2. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Ethanol production incentive - Calculation - Payment. The agricultural products utilization commission shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by the American coalition for ethanol. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1.
 - a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the agricultural products utilization commission shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the agricultural products utilization commission shall add zero to any amount payable under this section.
 - c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the agricultural products utilization commission shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
2.
 - a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the agricultural products utilization commission shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

- b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the agricultural products utilization commission shall subtract zero from any amount payable under this section.
- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the agricultural products utilization commission shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

SECTION 3. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Subsidy limitations. The agricultural products utilization commission may not distribute more than one million six hundred thousand dollars annually in payments under section 2 of this Act. No eligible facility may receive state ethanol payments that exceed a cumulative total of ten million dollars. Change in ownership of an eligible facility does not affect the ten million dollar cumulative total allowed to be paid to that eligible facility under this section.

SECTION 4. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Ethanol production incentive fund - Continuing appropriation. There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the agricultural products utilization commission for use in paying ethanol production incentives under sections 2 and 3 of this Act and section 4-14.1-07.

SECTION 5. AMENDMENT. Section 4-14.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-07. Duration and limitation of ethanol plant production incentives - Report to budget section. ~~Notwithstanding any other provision of law, an ethanol plant may not receive production incentives except as permitted under this section.~~

- ~~1. An ethanol plant that was in operation before July 1, 1995, may not receive production incentives in the form of direct payments from the state for more than fourteen fiscal years of operation after June 30, 1995. An ethanol plant that begins operation after June 30, 1995, may not receive production incentives in the form of direct payments from the state for more than fourteen fiscal years of operation. After December 31, 2009, the state may not provide production incentives in the form of direct payments to any ethanol plant.~~
- ~~2. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to ~~seven~~ six hundred ~~fifty~~ thousand dollars in production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million [56781000 liters] or more gallons in the previous fiscal year and an ethanol plant that begins operations after June 30, 1995, are each is eligible to receive an equal share in up to five ~~three~~ hundred thousand dollars in production incentives from the state in a fiscal year.~~
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or

retailer indicating that the ethanol is to be sold at retail to consumers. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

SECTION 6. AMENDMENT. Section 39-04-39 of the North Dakota Century Code is amended and reenacted as follows:

39-04-39. Distribution of registration fees collected. Any moneys in the registration fund accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes, must be promptly deposited in the highway tax distribution fund which must be distributed in the manner as prescribed by law. The state treasurer shall transfer annually from the highway tax distribution fund to the ethanol production incentive fund an amount equal to forty percent of all sums collected for the registration of farm vehicles under subsection 5 of section 39-04-19 except that no transfer may be made in an amount that would result in the balance of the ethanol production incentive fund exceeding five million dollars.

SECTION 7. AMENDMENT. Section 57-43.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. ~~(Effective through December 31, 2003)~~ Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, one cent per gallon [3.79 liters] withheld from the refund must be ~~retained~~ deposited in the ~~highway tax distribution~~ ethanol production incentive fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

~~**(Effective January 1, 2004) Refund of tax for fuel used for agricultural purposes - Reductions.** Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.~~

SECTION 8. REPEAL. Section 4-14.1-07 of the North Dakota Century Code is repealed.

SECTION 9. EFFECTIVE DATE. Section 8 of this Act becomes effective on July 1, 2005.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2222.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 78 Nays 14 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State