

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2391

2007 SENATE AGRICULTURE

SB 2391

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2391

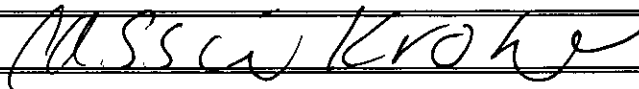
Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 1, 2007

Recorder Job Number: 2635

Committee Clerk Signature



Minutes:

Sen. Flakoll opened the hearing on SB 2391, a bill relating to a ethanol sales incentive refund to motor vehicle fuel retailers. All members (7) were present.

Sen. Flakoll, district 44, testified in favor of the bill. See attached testimony.

Sen. Klein- can you give me an easy example of how this would work, how are you going to ask for the rebate, how do you get to level if you are already selling a certain amount of ethanol gallons, where do you find your percentages to go about it. Do you want to give me an example of how this would work.

Sen. Flakoll- what happens is each site is independent as far as availability, so that they can prove to the tax department of what was sold and to show the goals that they achieved. Each one has a responsibility that by April 15 that they supply that to the tax department.

Sen. Klein- so what do you hope to do here, what is the retailer going to do to make this happen?

Sen. Flakoll- I think the retailers have a lot of creative ways like a cash discount card and such.

Sen. Behm- is the retailer obligated to pass the 3 cents on to the consumer?

Sen. Flakoll- no they are not obligated.

Sen. Taylor- the 3 cents is on E100 gallon?

Sen. Flakoll- yes.

Sen. Taylor- can you walk me through the fiscal note.

Sen. Flakoll- someone else would be better qualified to answer that than me.

Sen. Klein- it is about marketing correct, and that is what we are trying to develop here with the money?

Sen. Flakoll- yes.

Roger Johnson, Agriculture Commissioner, testified in favor of the bill. See attached testimony.

Randy Schneider, president of the ND Ethanol Producers Association, testified in favor of the bill.

Randy Schneider- I am here in support of this bill. What we feel now that needs to be looked at is the rest of the supply chain, the working with retail marketers and the consumers of ND. We feel this is a very simple plan. We feel that 50% of all the fuel consumed in the state has ethanol in it, we would like to take that to 100%. We feel that this particular bill plus an educational system will rapidly achieve that 100% use of renewable fuels or ethanol in the state of ND.

Sen. Taylor- the numbers currently show 5.14% in the state, are you confident that we will get to 8% in 2008 with this incentive.

Randy Schneider- that is why the educational part of it is so important and I think that if we take that approach it will just help our success that much more.

Joel Gilbertson, representing the Ethanol Producers Association and on behalf of the ND Corn Growers, testified in favor of the bill.

Joel Gilbertson- Just wanted to say that we support the bill and on behalf of the ND Corn Growers they do as well.

Woody Barth, representing ND Farmers Union, testified in favor of the bill.

Woody Barth- We stand in support of SB 2391.

Harlan Fuglesten representing NDAREC also was present and in support of the bill.

Mike Rud, representing NDPMA, testified in opposition to the bill.

Mike Rud- We are not against the research and development of alternative fuels. We have issues with this bill because of the public perception that it might create, when the public sees a bill like this they are going to see three cents and their reaction will be that the reaction is going to stick that three cents in their pocket. It is a 3/10 th of a cent per gallon rebate. We will have some marketers I am sure who will get involved in this process. We are asking that instead of the money going to the retailer we would like an education fund or marketing fund set up so we can educate the public and continue to let them decide this issue. We feel we can design a marketing program we feel we can educate the public without going through the whole percentage process.

Sen. Wanzek- what if you took the 3 cents and it went into a marketing fund to help market ethanol?

Mike Rud- we have no problem with that.

Sen. Klein- you said that we have increased our ethanol consumption from 10% to nearly 50%, how much money on marketing did you spend to get to that level?

Mike Rud- there was an incentive at the national level of a 5 cent tax credit.

Sen. Klein- is it not true that it has happened because of the fact that we are building new plants, everyone is talking about it, its not like it is brand new. I am struggling with why we have to tell people that it is good cause we all know it.

Mike Rud- we agree with you public usage is the best PR side there is, price of gas is the best PR there is to. The people that liked it stayed with and some tried it and didn't and now we have more educating to do.

Sen. Klein- why was it 5 cents less at the pump?

Mike Rud- it was because of the credit at that time.

Sen. Klein- so currently a gallon of ethanol and a gallon of gasoline are close?

Mike Rud- I believe that they are close that ethanol may be a couple cents higher.

Sen. Behm- overall do you think this is the best decision for our state?

Mike Rud- whatever is the best thing for the consumer from our stand point is the best thing for the state.

No opposition to the bill.

Sen. Flakoll closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2391

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2742

Committee Clerk Signature

CASSIA KROL

Minutes:

Sen. Flakoll opened discussion on SB 2391.

Sen. Klein- I sense the concerns of the petroleum marketers and how they would be perceived as using that 3 quarters of a cent, we also need to have promotions and such and on that I would move for a do pass.

Sen. Klein motioned for a do pass and to be rereferred to appropriations and was seconded on

Sen. Wanzek, roll call vote 1: 6 yeas, 1 nay, 0 absent. **Sen. Flakoll** was designated to carry the bill to the floor.

Date: Feb 2, 2007
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2391

Senate Agriculture

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass and rerefered to Appropriations

Motion Made By Klein Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur H. Behm	X	
Terry M. Wanzek-Vice Chairman	X		Joan Heckaman	X	
Robert S. Erbele		X	Ryan M. Taylor	X	
Jerry Klein	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Sen. Flakoll

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 2, 2007 3:31 p.m.

Module No: SR-23-2042

Carrier: Flakoll

Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2391: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2391 was rereferred to the Appropriations Committee.

2007 SENATE APPROPRIATIONS

SB 2391

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2391

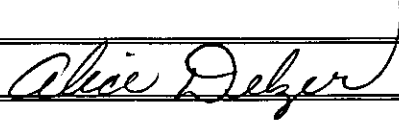
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-09-07

Recorder Job Number: 3333

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2391 on February 9, 2007 regarding Ethanol Sales.

Senator Tim J. Flakoll, District 44, Fargo gave oral testimony in support of SB 2391.

Chairman Holmberg referred to SB 2282 which will be heard later this week.

Senator Bowman had questions regarding gas stations and their ability to sell this gas and had questions regarding a balance between Ethanol and oil production.

Joel Gilbertson of the North Dakota Ethanol Producers Association (NDEPA) presented written testimony on behalf of Randy Schneider, President of NDEPA, (1) and gave oral testimony in support of SB 2391. He also presented a chart (2) showing percentage of Ethanol used.

Senator Grindberg had questions regarding capital investments and the price of investments. He also had questions regarding the fiscal note.

Senator Christmann had questions regarding the oil industry and the future of biofuels.

Mike Rud, President of North Dakota Petroleum Marketers Association presented written testimony (3) and gave oral testimony in OPPOSITION to SB 2391.

Senator Holmberg stated there will be further discussion later. The hearing on SB 2391 closed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2391

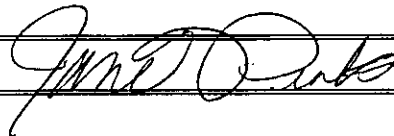
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02/13/07

Recorder Job Number: 3474

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on SB 2391, describing what the bill was about.

Senator Grindberg moved a **DO NOT PASS**, **Senator Christmann** seconded. A roll call vote was taken resulting in 8 yes, 6 no, 0 absent. The motion carried. **Senator Holmberg** will carry the bill.

Chairman Holmberg closed the hearing on SB 2391.

Date: 2/13/07
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2391

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DNP

Motion Made By

Grindberg

Seconded By

Christmann

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓	✓	Senator Aaron Krauter		✓
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas		✓
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern		✓
Senator Randel Christmann	✓		Senator Larry J. Robinson		✓
Senator Tom Fischer	✓		Senator Tom Seymour		✓
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		✓
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 8 No 6

Absent

DNP

Floor Assignment

Krebsbach

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 14, 2007 8:20 a.m.

Module No: SR-31-3172
Carrier: Krebsbach
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2391: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO NOT PASS (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). SB 2391 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SB 2391

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Agriculture Commissioner
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**Testimony of Roger Johnson
Agriculture Commissioner
SB 2391
Senate Agriculture Committee
Roosevelt Park Room
February 1, 2007
2:45 pm**

Chairman Flakoll and members of the Senate Agriculture Committee, I am Agriculture Commissioner Roger Johnson. I'm here today to offer testimony in favor of SB 2391, which would provide a refund incentive to retailers who meet a certain retail ethanol sales percentages each year.

I have long supported a straightforward 10 percent ethanol requirement in all gasoline sold in this state. Efforts to pass a 10 percent requirement have failed each time they've been brought before the legislature. As legislators, you really have two options when it comes to passing laws. Either you require someone to do something or you put incentives in place to accomplish the same thing. Requirements, or mandates as many like to call them, are the less expensive route to take.

North Dakota stands to reap great economic benefits from development of renewable energy production and consumption. North Dakota is currently home to three operating ethanol

facilities – Alchem, Grafton; ADM, Walhalla; and Red Trail Energy, Richardton - with a combined annual production capacity of 83.5 million gallons. Blue Flint Ethanol, Underwood, with a production capacity of 50 million gallons per year, is scheduled to come online early this year. Additional projects totaling 200 million gallons of ethanol production capacity have been announced or are under construction. Currently, North Dakota is turning approximately 20 percent of our annual corn production into ethanol. 80 percent of our corn production will be consumed by ethanol production once the projects that have been announced or are under construction come on line. (Attachment 1)

ADM is also constructing a new canola-based biodiesel facility at Velva with a production capacity of 85 million gallons per year. Several additional projects – corn and cellulose ethanol projects, canola and soy biodiesel projects and oilseed crushing facilities – are also being contemplated across the state. The establishment of these production facilities is a positive step forward in the development of renewable energy industries, but much more remains to be done.

We must also do more to encourage the consumption of the ethanol and biodiesel that will be produced in the state. Ethanol accounted for 5.14 percent of gasoline sales by volume from May 2005 through May 2006. Ethanol was blended into approximately 48 percent of all the gallons sold during that same time period. The total number of taxable gasoline gallons sold in North Dakota from May 2005 through April 2006 was nearly 360 million gallons.

North Dakotans agree that renewable energy development needs to be a priority for North Dakota. The North Dakota Renewable Energy Partnership, in cooperation with the Office of

Renewable Energy & Energy Efficiency, commissioned the University of North Dakota Bureau of Governmental Affairs to conduct a public opinion survey on renewable energy issues in North Dakota. More than 600 North Dakotans, equally split male and female, were surveyed from June 13th to July 12th of 2006.

The survey showed that overwhelmingly, North Dakotans support renewables. Of those surveyed:

- 93 percent believe that renewable energy should be a priority in our state legislature.
- Nearly 80 percent support a 10 percent ethanol blend requirement in gasoline sold in North Dakota.
- 87 percent support a tax advantage for ethanol that makes ethanol cheaper than regular gasoline.
- 83 percent support a 2 percent biodiesel blend requirement in North Dakota's diesel fuel supply.
- 83 percent believe the state legislature should provide incentives that encourage the production and use of biodiesel.

The production and use of renewable fuels is of paramount importance not only to our state, but as part of our country's national energy security strategy. Retired Air Force General Charles "Chuck Wald – a North Dakota native – addressed the attendees of Marketplace for Entrepreneurs in Fargo just last week. General Wald described a sobering picture of US and world energy production and consumption. Wald said that the United States currently spends

approximately \$50 billion annually to ensure the free flow of oil throughout the world. When amortized to the price of gasoline, Wald estimated that US citizens are currently paying approximately \$6.50 per gallon of gasoline consumed.

President Bush in his State of the Union address earlier this week also spoke about our energy situation, saying, "...it's in our vital interest to diversify America's energy supply...we need to...expand the use of...biodiesel fuel...we must continue investing in new methods of producing ethanol...using everything from wood chips to grasses to agricultural wastes...let us build on the work we've done and reduce gasoline usage in the United States by 20 percent in the next ten years."

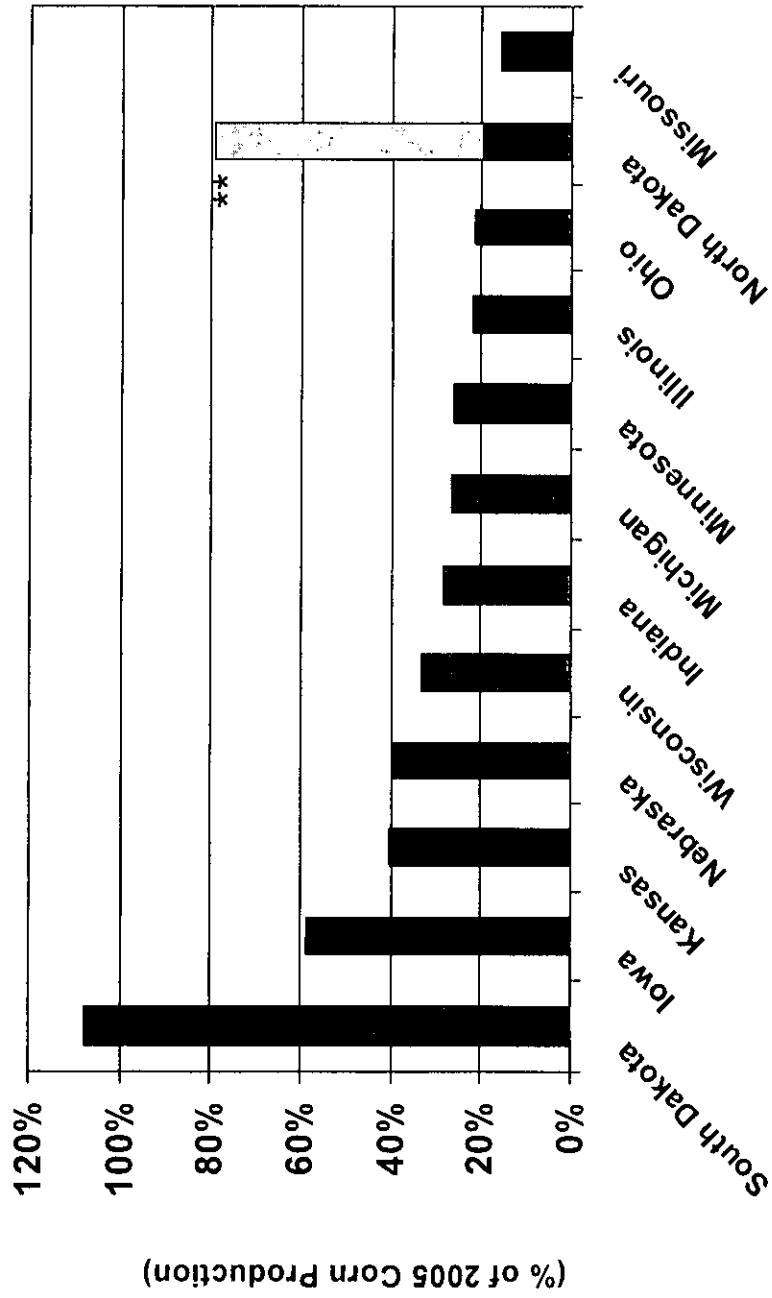
The federal renewable fuels standard sets a base for the ethanol market in this country. I supported the establishment of the federal standard and I will support a substantial increase to that standard during the 2007 farm bill debate. Setting a state standard is important, as well; it provides a local market for the 300+ million gallons of ethanol we are going to be producing in this state. North Dakota should consume as much of the ethanol, biodiesel and related products as we can so that we can support local businesses and farmers and decrease our dependence on foreign source of oil. Perhaps even more importantly, such a state standard would send a strong message to consumers around the country who we want to buy and use our ethanol that we in North Dakota are practicing what we preach. A state standard also sends a welcoming message to the renewable energy industry that we not only want the economic development that the industry brings to our state, but that we will do what we can to build a market; these signals are important.

SB 2391 will provide a meaningful incentive to retailers to increase retail sales of ethanol.

Chairman Flakoll and committee members, I would like to recommend a "do pass" on SB 2391.

Thank you for this opportunity to offer testimony. I would be happy to answer any questions you may have.

Corn Crop to Ethanol by State



**corn crop to ethanol including production that is announced or under construction

Sources: Renewable Fuels Association, National Agricultural Statistics Service

**North Dakota Ethanol Incentive Plan
SB 2391**

Background:

This Bill creates an incentive to increase the use of biofuels in the State of North Dakota in the future and recognizes the policy of encouraging the development of renewable agricultural resources and lessening our dependence on foreign oil. This Bill creates and encourages increased choice at the pump by enhancing incentives for retailers. ***It does not create a mandate and it does not impose penalties on retailers that fall short of the ethanol goal. It does not limit choice by preventing retailers from selling non-renewable blended gasoline.***

Bill Provisions:

The program implemented by this bill would create ethanol goals for retail sales in North Dakota and reward retailers who meet those goals while still leaving the choice to the consumer.

- Achievement of the threshold is computed by calculating the sum of the retail dealer's total ethanol gallonage as a percentage of the retail dealer's total gasoline gallonage.
- A retailer of gasoline would be incentivized through a yearly rebate of fuel taxes paid by meeting the following threshold percentages in the following calendar years:
 - 8% for 2008
 - 9% for 2009
 - 10% for 2010
 - 11% for 2011
 - 12% for 2012
 - 13% for 2013
 - 14% for 2014
 - 15% for 2015
- For those retail locations that reach the threshold, the tax rebate amount is calculated at the rate of 3.0 cents per gallon of ethanol sold.
- The tax rebate will be calculated separately for each retail motor fuel site from which the retail dealer sells or dispenses ethanol blended gasoline.
- The credit for reaching the threshold is calculated each calendar year, so that a retailer who does not reach the threshold in one year is eligible to reach the applicable threshold for the following calendar year.

(1)

**Randy Schneider, President
North Dakota Ethanol Producers Association
Testimony on SB 2391**

Good afternoon, Mr. Chairman and members of the Appropriations Committee. My name is Randy Schneider and I'm president of the North Dakota Ethanol Producers Association. I'm here today in support of SB 2391.

As you all know, the state of North Dakota and legislative leaders like you have been aggressive in developing initiatives to encourage the production of ethanol and other renewable energy sources in our state. These incentives have been very effective resulting in more than \$1 billion in new capital investments in renewable energy projects in the state in the last two years. Overall, the projects underway include five new ethanol plants, three biodiesel plants, and five wind farms. They have the potential to produce 350 million gallons of ethanol, 135 million gallons of biodiesel, and over 320 megawatts of wind power.

SB 2391 approaches the renewable energy issue from the other side – consumption. This is one of the only initiatives this session that will encourage North Dakota consumers to use more renewable energy, thereby creating more demand in North Dakota for some of the millions of gallons of ethanol that are and will be produced here.

The North Dakota Ethanol Incentive Plan provides incentives for retailers to sell ethanol, thereby making ethanol more attractive for consumers to purchase at the pump. Here's how it works:

On a yearly basis, retailers will receive a refund of 3.0 cents per gallon of ethanol sold IF they have met the annual threshold established in this bill for the percent of ethanol sold in relation to their total fuel sales.

For example, in 2008, any gasoline retailer will be eligible for the 3.0 cents/gallon refund on their ethanol sales if, at the end of the year, they can prove their sales of ethanol accounted for 8 percent of their total fuel sales.

In 2009, the threshold increases to 9 percent, and continues to go up 1 percent each year until reaching 15 percent in 2015.

This graduated scale ensures that retailers continue to be aggressive in pricing and marketing ethanol so that consumers ultimately chose to buy it at the pump.

Experience tells us that price is the major factor determining ethanol purchases. Consumers will choose an ethanol blend when it is less expensive than regular gasoline. However, when it is even 1.0 cent more than regular, purchases drop off.

This plan creates a win for everyone:

- 1.. Consumers will pay lower prices for ethanol.
2. Fuel sellers will receive an incentive to market ethanol and help consumers become accustomed to purchasing and using this renewable fuel.
3. The state will increase consumption and demand for this important commodity, which is a necessary part of our nation's long-term energy plan and is being produced in large quantities in our state.

SB 2391 is a valuable initiative North Dakota consumers and for the state's growing ethanol industry. We support the bill and urge your favorable vote as well.

Thank you.

<u>Year</u>	<u>% Ethanol used in Gasoline</u>	<u>Annual Ethanol Gallons</u>	<u>3 Cents / gallon of ethanol</u>	<u>5 Cents / gallon of Ethanol</u>
2007	7%	25,900,000	\$ 777,000.00	\$ 1,295,000.00
2008	8%	29,600,000	\$ 888,000.00	\$ 1,480,000.00
2009	9%	33,300,000	\$ 999,000.00	\$ 1,665,000.00
2010	10%	37,000,000	\$ 1,110,000.00	\$ 1,850,000.00
2011	11%	40,700,000	\$ 1,221,000.00	\$ 2,035,000.00
2012	12%	44,400,000	\$ 1,332,000.00	\$ 2,220,000.00
2013	13%	48,100,000	\$ 1,443,000.00	\$ 2,405,000.00
2014	14%	51,800,000	\$ 1,554,000.00	\$ 2,590,000.00
2015	15%	55,500,000	\$ 1,665,000.00	\$ 2,775,000.00

Related to SB2391

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Senate Appropriations Committee Members:

Just a few brief notes on the various renewable fuels bills which have been referred back to appropriations and the position NDPMA is taking regarding these pieces of legislation:

SB 2288: This is the renewable fuels partnership bill. NDPMA stands behind the amended version. All energy industries, including the fossil fuels must work together and have access to research and development funds.

SB 2282: This bill gives ND gas retailers an incentive in the form of a tax credit to reach certain percentages of ethanol blended gasoline sales. NDPMA opposes this bill for several reasons. First, judging from the chart below, E-10 sales have increased by over 300% in the last six years. Secondly, the incentive being offered creates a public relations dilemma for the ND gas retailer. The consumers will likely view this tax credit as a 6.5 cent a gallon decrease to the retailer and expect to see it in the form of lower prices at the pumps. Finally, once the average marketer reaches the 10-11% goal, it would mean every gallon of gas sold would have to contain an ethanol blend. The ND gas retailer would rather see the money designated for a tax credit be used as funding for a marketing program to enhance consumer knowledge of ethanol blended gas. **LET THE FREE MARKET WORK!**

SB 2391: Another E-10 incentive bill designed to reward marketers 3 cents a gallon for every gallon of ethanol they sell. This refund would come from the tax commissioner. Again, NDPMA opposes this bill. ND gas retailers believe this would paint our industry in a poor light if this 3 cents weren't reflected in pump prices. The reality is both the kickbacks in SB 2282 and SB 2391 would be six and half tenths per gallon and three-tenths per gallon since each gallon would contain just 10 % ethanol. Again, our marketers would prefer to see some money used for consumer education or an ethanol coupon program. **LET THE FREE MARKET WORK!**

Motor Vehicle Fuel Taxable Gallons							
Year	2000	2001	2002	2003	2004	2005	2006
\$21 Gasoline	319,441,876	299,334,460	287,253,545	267,865,489	262,108,957	242,567,191	166,390,066
\$21 Gasohol	46,581,496	63,277,422	71,923,119	101,107,576	108,814,866	123,563,091	153,077,375
\$01 E-85							1,369,032
Total Taxable Gallons	366,023,371	362,611,882	359,176,664	368,973,065	370,923,822	366,130,282	320,836,473
Gasohol Sales Percentage	12.73%	17.45%	20.02%	27.40%	29.34%	33.75%	47.71%

Motor Vehicle Fuel Taxable Gallons

