

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2222

Introduced by

Senators Klein, Grindberg, Nichols

Representatives Kempenich, Mueller, Pollert

1 A BILL for an Act to create and enact four new sections to chapter 4-14.1 of the North Dakota  
2 Century Code, relating to ethanol production subsidies; to amend and reenact sections  
3 4-14.1-07, 39-04-39, and 57-43.1-03.1 of the North Dakota Century Code, relating to the  
4 distribution of motor vehicle registration fees and the taxation of motor vehicle fuel for  
5 agricultural purposes; to repeal section 4-14.1-07 of the North Dakota Century Code, relating to  
6 the duration and limitation of ethanol plant production incentives; to provide for a continuing  
7 appropriation; and to provide an effective date.

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

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

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

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

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

23 1. a. If the average quarterly price per bushel of corn is above one dollar and  
24 eighty cents, for each one cent by which the quarterly price is above one

1                   dollar and eighty cents, the agricultural products utilization commission shall  
2                   add to the amount payable under this section one-tenth of one cent times the  
3                   number of gallons of ethanol produced by the eligible facility during the  
4                   quarter.

5                   b. If the average quarterly price per bushel of corn is one dollar and eighty  
6                   cents, the agricultural products utilization commission shall add zero to any  
7                   amount payable under this section.

8                   c. If the average quarterly price per bushel of corn is below one dollar and eighty  
9                   cents, for each one cent by which the quarterly price is below one dollar and  
10                  eighty cents, the agricultural products utilization commission shall subtract  
11                  from the amount payable under this section one-tenth of one cent times the  
12                  number of gallons of ethanol produced by the eligible facility during the  
13                  quarter.

14                  2. a. If the average quarterly rack price per gallon of ethanol is above one dollar  
15                  and thirty cents, for each one cent by which the average quarterly rack price  
16                  is above one dollar and thirty cents, the agricultural products utilization  
17                  commission shall subtract from the amount payable under this section,  
18                  two-tenths of one cent times the number of gallons of ethanol produced by  
19                  the eligible facility during the quarter.

20                  b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty  
21                  cents, the agricultural products utilization commission shall subtract zero from  
22                  any amount payable under this section.

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

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

1           **Subsidy limitations.** No eligible facility may receive more than three million dollars  
2 annually in payments under section 2 of this Act. No eligible facility may receive state ethanol  
3 payments for more than ten years after the date on which it received its first payment under  
4 section 2 of this Act.

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

7           **Ethanol production incentive fund - Continuing appropriation.** There is created in  
8 the state treasury a special fund known as the ethanol production incentive fund. The fund  
9 consists of fifty percent of all registration fees collected on farm vehicles under subsection 5 of  
10 section 39-04-19 and deposits made in accordance with section 57-43.1-03.1. All moneys in  
11 the fund are appropriated on a continuing basis to the agricultural products utilization  
12 commission for use in paying ethanol production incentives to eligible facilities as provided in  
13 sections 2 and 3 of this Act.

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

16           **4-14.1-07. Duration and limitation of ethanol plant production incentives.**

17 ~~Notwithstanding any other provision of law, an ethanol plant may not receive production~~  
18 ~~incentives except as permitted under this section.~~

19           ~~1. An ethanol plant that was in operation before July 1, 1995, may not receive~~  
20 ~~production incentives in the form of direct payments from the state for more than~~  
21 ~~fourteen fiscal years of operation after June 30, 1995. An ethanol plant that begins~~  
22 ~~operation after June 30, 1995, may not receive production incentives in the form of~~  
23 ~~direct payments from the state for more than fourteen fiscal years of operation.~~  
24 ~~After December 31, 2009, the state may not provide production incentives in the~~  
25 ~~form of direct payments to any ethanol plant.~~

26           ~~2. An ethanol plant that was in operation before July 1, 1995, and which has a~~  
27 ~~production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol~~  
28 ~~may receive up to seven five hundred fifty thousand dollars in production~~  
29 ~~incentives from the state for production in a fiscal year. An ethanol plant that was~~  
30 ~~in operation before July 1, 1995, and which produced fifteen million [56781000~~  
31 ~~liters] or more gallons in the previous fiscal year and an ethanol plant that begins~~

1           operations after June 30, 1995, are each is eligible to receive an equal share in up  
2           to ~~five~~ two hundred fifty thousand dollars in production incentives from the state in  
3           a fiscal year.

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

6           **39-04-39. Distribution of registration fees collected.** Any moneys in the registration  
7           fund accruing from license fees or from other like sources, in excess of the amount required to  
8           pay salaries and other necessary expenses, in accordance with the legislative assembly's  
9           appropriation for such purposes, must be promptly deposited in the highway tax distribution  
10          fund which must be distributed in the manner as prescribed by law. The state treasurer shall  
11          transfer annually from the highway tax distribution fund to the ethanol production incentives  
12          fund an amount equal to fifty percent of all sums collected for the registration of farm vehicles  
13          under subsection 5 of section 39-04-19.

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

16          **57-43.1-03.1. ~~(Effective through December 31, 2003)~~ Refund of tax for fuel used**  
17          **for agricultural purposes - Reductions.** Any consumer who buys or uses any motor vehicle  
18          fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a  
19          claim with the commissioner for a refund under this chapter. The amount of the tax refund  
20          under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels  
21          used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon  
22          [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, one  
23          cent per gallon [3.79 liters] withheld from the refund must be ~~retained~~ deposited in the ~~highway~~  
24          ~~tax distribution~~ ethanol production incentive fund, and four cents per gallon [3.79 liters] withheld  
25          from the refund must be deposited in the agricultural research fund.

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

1 ~~from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon~~  
2 ~~[3.79 liters] withheld from the refund must be deposited in the agricultural research fund.~~

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

5           **SECTION 9. EFFECTIVE DATE.** Section 8 of this Act becomes effective on July 1,  
6 2005.