

**SECOND ENGROSSMENT
with House Amendments**Fifty-eighth
Legislative Assembly
of North Dakota**REENGROSSED 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.** The agricultural products utilization commission may not
2 distribute more than three million dollars annually in payments under section 2 of this Act. No
3 eligible facility may receive state ethanol payments for more than ten years after the date on
4 which it received its first payment under 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 forty 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 - Report**
17 **to budget section.** ~~Notwithstanding any other provision of law, an ethanol plant may not~~
18 ~~receive production 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~~ six hundred ~~fifty~~ thousand dollars in production incentives
29 from the state for production in a fiscal year. An ethanol plant that was in
30 operation before July 1, 1995, and which produced fifteen million [56781000 liters]
31 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~~ three hundred thousand dollars in production incentives from the state in a
3 fiscal year.

4 2. The agricultural products utilization commission shall determine the amount of
5 production incentives to which a plant is entitled under this section by multiplying
6 the number of gallons of ethanol produced by the plant and marketed to a
7 distributor or wholesaler by forty cents. The commission shall forward the
8 production incentives to the plant upon receipt of an affidavit by the plant indicating
9 that the ethanol is to be sold at retail to consumers. The affidavit must be
10 accompanied by an affidavit from a wholesaler or retailer indicating that the
11 ethanol is to be sold at retail to consumers. Within ninety days after the conclusion
12 of the plant's fiscal year, the plant shall submit to the budget section of the
13 legislative council a statement by a certified public accountant indicating whether
14 the plant produced a profit from its operation in the preceding fiscal year, after
15 deducting the payments received under this section.

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

18 **39-04-39. Distribution of registration fees collected.** Any moneys in the registration
19 fund accruing from license fees or from other like sources, in excess of the amount required to
20 pay salaries and other necessary expenses, in accordance with the legislative assembly's
21 appropriation for such purposes, must be promptly deposited in the highway tax distribution
22 fund which must be distributed in the manner as prescribed by law. The state treasurer shall
23 transfer annually from the highway tax distribution fund to the ethanol production incentives
24 fund an amount equal to forty percent of all sums collected for the registration of farm vehicles
25 under subsection 5 of section 39-04-19.

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

28 **57-43.1-03.1. ~~(Effective through December 31, 2003)~~ Refund of tax for fuel used**
29 **for agricultural purposes - Reductions.** Any consumer who buys or uses any motor vehicle
30 fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a
31 claim with the commissioner for a refund under this chapter. The amount of the tax refund

1 under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels
2 used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon
3 [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, one
4 cent per gallon [3.79 liters] withheld from the refund must be ~~retained~~ deposited in the ~~highway~~
5 ~~tax distribution~~ ethanol production incentive fund, and four cents per gallon [3.79 liters] withheld
6 from the refund must be deposited in the agricultural research fund.

7 ~~**(Effective January 1, 2004) Refund of tax for fuel used for agricultural purposes—**~~
8 ~~**Reductions.**~~ Any consumer who buys or uses any motor vehicle fuel for an agricultural
9 purpose on which the motor vehicle fuel tax has been paid may file a claim with the
10 commissioner for a refund under this chapter. ~~The amount of the tax refund under this section~~
11 ~~must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or~~
12 ~~with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld~~
13 ~~from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon~~
14 ~~[3.79 liters] withheld from the refund must be deposited in the agricultural research fund.~~

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

17 **SECTION 9. EFFECTIVE DATE.** Section 8 of this Act becomes effective on July 1,
18 2005.