

SENATE BILL NO. 2019

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 provide a statement of legislative intent; to amend
4 and reenact sections 4-14.1-07 and 57-43.1-03.1 of the North Dakota Century Code, relating to
5 ethanol plant production incentives and tax refunds for fuel used for agricultural purposes; and
6 to provide an effective date.

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

8 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the
9 funds as may be necessary, are appropriated out of any moneys in the general fund in the state
10 treasury, not otherwise appropriated, and from special funds derived from federal funds and
11 other income, to the department of economic development and finance for the purpose of
12 defraying its expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as
13 follows:

14 Salaries and wages	\$3,725,220
15 Operating expenses	8,944,228
16 Equipment	296,358
17 Grants	1,673,292
18 North Dakota development fund	750,000
19 Agricultural products utilization	<u>5,022,293</u>
20 Total all funds	\$20,411,391
21 Less estimated income	<u>6,396,902</u>
22 Total general fund appropriation	\$14,014,489

23 **SECTION 2. APPROPRIATION.** All income received in excess of the amounts
24 appropriated in section 1 of this Act relating to agricultural products utilization commission

activities is appropriated to the agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 2001, and ending June 30, 2003. Any funds received require the approval of the emergency commission before they may be expended.

SECTION 3. AGRICULTURAL FUEL TAX REFUND FUND. The estimated income line item in section 1 of this Act includes \$575,000 from the agricultural fuel tax fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

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

TRANSFER. The estimated income line item in section 1 of this Act includes \$2,500,000, or so much of the amount as may be necessary, from the highway tax distribution fund for the ethanol production incentive program. Of this amount, \$2,493,000 is for the purpose of providing production incentives and \$7,000 is for audits of the use of these funds for the biennium beginning July 1, 2001, and ending June 30, 2003. Distribution from the appropriation in section 1 of this Act to the producers of agriculturally derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state which is marketed by the producing plant to a distributor or wholesaler for sale within North Dakota. For purposes of this section, "gallon of agriculturally derived fuel" means a gallon of fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added. Payment to the producing plant must be approved by the agricultural products utilization commission upon presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for which the producer's credit is being sought is to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Within ninety days after the end of each fiscal year of the ethanol plant beginning after December 31, 1992, any North Dakota ethanol plant receiving production incentives from the state shall file with the budget section of the legislative council a statement, certified by a certified public accountant, as to whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program. If, at the end of each fiscal year, funding appropriated for the ethanol incentive payments is not spent, the director of the office of management and budget shall transfer from the highway tax distribution fund the amount of

1 unspent funds deposited into the fund pursuant to provisions of section 57-43.1-03.1 to the
2 agricultural fuel tax fund for the agricultural products utilization commission for the purpose of
3 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 grants awarded but not paid during the biennium beginning July 1, 2001, and
8 ending June 30, 2003.

9 **SECTION 6. LEGISLATIVE INTENT - ETHANOL INCENTIVE PAYMENTS.** It is the
10 intent of the legislative assembly that of the appropriation of \$2,500,000 contained in section 1
11 of this Act for ethanol incentives, a maximum of \$1,246,500 may be paid annually to the
12 producers of agriculturally derived fuel during the 2001-03 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 \$750,000 transferred to the North Dakota development fund for grants must be dedicated for
17 projects as follows: forty percent businesses in rural areas, forty percent businesses in urban
18 areas, and twenty percent North Dakota American Indian businesses. Any unused funds in any
19 category may be transferred to another category during the second year of the biennium under
20 rules adopted by the director of the department of economic development and finance. The
21 director of the department of economic development and finance may reallocate up to twenty
22 percent of any region's available remaining balance of regional rural development revolving
23 loan funds to another region or regions for the biennium beginning July 1, 2001, and ending
24 June 30, 2003. Of the amount available in the North Dakota development fund, \$4,000,000 or
25 the unobligated balance on July 1, 2001, relating to the transfer of regional rural development
26 revolving loan fund moneys, must continue to be dedicated for the purpose of providing
27 financial assistance, research and development assistance, and loans or equity or debt
28 financing on a matching basis to new or expanded primary sector businesses in areas of the
29 state that are not within five miles [8.05 kilometers] of any city with a population of more than
30 eight thousand. These funds must be allocated for the benefit of each of the areas delineated
31 as regions by executive order of the governor pursuant to section 54-40.1-02.

SECTION 8. AMENDMENT. Section 4-14.1-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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 ~~twelve~~ 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 ~~twelve~~ 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~~ eight 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 ~~has a production capacity of fifteen million gallons [56781000 liters] or more of ethanol per year is not eligible for production incentives from the state~~ 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 eligible to receive an equal share in up to four hundred thousand dollars in production incentives from the state in a fiscal year.

SECTION 9. 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 until December 31, 2001 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 in the highway tax distribution fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

(Effective January 1, ~~2002~~ 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 10. EFFECTIVE DATE. Section 9 of this Act is effective for refund claims for motor vehicle fuel taxes paid after December 31, 2000.