

**FIRST ENGROSSMENT
with House Amendments**

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED 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 commerce; to provide for transfers of funds; to provide a statement of legislative intent; to direct
3 the state tax commissioner to audit the ethanol incentive program; to provide for a report to the
4 budget section; to create and enact a new section to chapter 54-34.4 of the North Dakota
5 Century Code, relating to tourism copyrights and trademarks; to amend and reenact sections
6 4-14.1-07, 54-34.4-04, and 57-43.1-03.1 of the North Dakota Century Code, relating to ethanol
7 plant production incentives, the motion picture development office advisory board, and tax
8 refunds for fuel used for agricultural purposes; to provide an effective date; and to declare an
9 emergency.

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

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

17	Salaries and wages	\$6,028,893
18	Operating expenses	10,480,832
19	Equipment	199,936
20	Grants	36,080,226
21	North Dakota development fund	2,250,000
22	Agricultural products utilization	5,007,270
23	Lewis and Clark bicentennial	805,751
24	Transitional expenses	<u>162,209</u>

1	Total all funds	\$61,015,117
2	Less estimated income	<u>43,590,891</u>
3	Total general fund appropriation	\$17,424,226

4 **SECTION 2. APPROPRIATION.** All income received in excess of the amounts
5 appropriated in section 1 of this Act relating to agricultural products utilization commission
6 activities is appropriated to the agricultural products utilization commission for research,
7 marketing, and utilization grants for the biennium beginning July 1, 2001, and ending June 30,
8 2003. Any funds received require the approval of the emergency commission before they may
9 be expended.

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

13 **SECTION 4. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION**
14 **INCENTIVES - INFORMATION FILED WITH BUDGET SECTION - CONTINGENT**
15 **TRANSFER.** The estimated income line item in section 1 of this Act includes \$2,500,000, or so
16 much of the amount as may be necessary, from the highway tax distribution fund for the
17 ethanol production incentive program. Distribution from the appropriation in subdivision 2 of
18 section 1 of this Act to the producers of agriculturally derived fuel must be at the rate of forty
19 cents for each gallon of agriculturally derived fuel produced in the state which is marketed by
20 the producing plant to a distributor or wholesaler for sale. For purposes of this section, "gallon
21 of agriculturally derived fuel" means a gallon of fuel that qualifies for the alcohol credit under 26
22 U.S.C. 40, specifically including fuel to which a denaturant has been added. Payment to the
23 producing plant must be approved by the agricultural products utilization commission upon
24 presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for
25 which the producer's credit is being sought is to be sold at retail to consumers. The affidavit of
26 the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer
27 to the same effect. Within ninety days after the end of each fiscal year of the ethanol plant
28 beginning after December 31, 1992, any North Dakota ethanol plant receiving production
29 incentives from the state shall file with the budget section of the legislative council a statement,
30 certified by a certified public accountant, as to whether the plant produced a profit from its
31 operation in the preceding fiscal year, after deducting the payments received from this incentive

1 program. If, at the end of each fiscal year, funding appropriated for the ethanol incentive
2 payments is not spent, the director of the office of management and budget shall transfer from
3 the highway tax distribution fund the amount of unspent funds deposited into the fund pursuant
4 to provisions of section 57-43.1-03.1 to the agricultural fuel tax fund for the agricultural products
5 utilization commission for the purpose of providing grants as provided by law.

6 **SECTION 5. EXEMPTION.** The funds appropriated in the agricultural products
7 utilization line item in section 1 of this Act are not subject to section 54-44.1-11 and any
8 unexpended funds from this line item relating to grants awarded may be available for continued
9 payment of grants awarded but not paid during the biennium beginning July 1, 2001, and
10 ending June 30, 2003.

11 **SECTION 6. LEGISLATIVE INTENT - TOURISM OPERATING EXPENSES.** It is the
12 intent of the legislative assembly that the sum of \$3,300,437 included in the operating
13 expenses line item in section 1 of this Act be allocated for tourism-related activities, including
14 tourism-related administrative costs as approved by the tourism division director for the
15 biennium beginning July 1, 2001, and ending June 30, 2003.

16 **SECTION 7. DEPARTMENT OF COMMERCE - PERFORMANCE REPORT -**
17 **BUDGET SECTION.** The director of the department of commerce shall establish performance
18 measures and report to the budget section at the budget section's first meeting after June 30,
19 2002, on the department's progress in achieving its performance measures for the biennium
20 beginning July 1, 2001, and ending June 30, 2003.

21 **SECTION 8. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS.** The
22 \$2,250,000 transferred to the North Dakota development fund for grants must be dedicated for
23 projects as follows: forty percent businesses in rural areas, forty percent businesses in urban
24 areas, and twenty percent North Dakota American Indian businesses. Any unused funds in any
25 category may be transferred to another category during the second year of the biennium under
26 rules adopted by the director of the department of economic development and finance. The
27 director of the department of economic development and finance may reallocate up to twenty
28 percent of any region's available remaining balance of regional rural development revolving
29 loan funds to another region or regions for the biennium beginning July 1, 2001, and ending
30 June 30, 2003. Of the amount available in the North Dakota development fund, \$4,000,000 or
31 the unobligated balance on July 1, 2001, relating to the transfer of regional rural development

1 revolving loan fund moneys, must continue to be dedicated for the purpose of providing
2 financial assistance, research and development assistance, and loans or equity or debt
3 financing on a matching basis to new or expanded primary sector businesses in areas of the
4 state that are not within five miles [8.05 kilometers] of any city with a population of more than
5 eight thousand. These funds must be allocated for the benefit of each of the areas delineated
6 as regions by executive order of the governor pursuant to section 54-40.1-02.

7 **SECTION 9. STATE TAX COMMISSIONER - AUDIT OF ETHANOL PRODUCTION**
8 **INCENTIVE PROGRAM.** The state tax commissioner shall conduct an audit of the ethanol
9 production incentive program during the biennium beginning July 1, 2001, and ending June 30,
10 2003.

11 **SECTION 10. AMENDMENT.** Section 4-14.1-07 of the 1999 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **4-14.1-07. Duration and limitation of ethanol plant production incentives.**

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

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

23 2. An ethanol plant that was in operation before July 1, 1995, and which has a
24 production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol
25 may receive up to seven hundred fifty thousand dollars in production incentives
26 from the state for production in a fiscal year. An ethanol plant that was in
27 operation before July 1, 1995, and which ~~has a production capacity of fifteen~~
28 ~~million gallons [56781000 liters] or more of ethanol per year is not eligible for~~
29 ~~production incentives from the state~~ produced fifteen million [56781000 liters] or
30 more gallons in the previous fiscal year and an ethanol plant that begins
31 operations after June 30, 1995, are each eligible to receive an equal share in up to

1 five hundred thousand dollars in production incentives from the state in a fiscal
2 year.

3 **SECTION 11. AMENDMENT.** Section 54-34.4-04 of the 1999 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **54-34.4-04. North Dakota motion picture development office - Advisory board.**

6 The North Dakota motion picture development office is a part of the tourism department. The
7 office shall promote North Dakota as a location for shooting films, television shows,
8 documentaries, and commercials, and shall provide technical expertise to persons desiring to
9 use the state as a filming location. The director of the tourism department shall appoint staff
10 necessary to fulfill the functions and duties of the office and ~~shall~~ may appoint an advisory
11 board of no more than ten members to assist in advising the office and to provide technical
12 expertise to offer prospective film companies seeking locations and advice. The board shall
13 serve without compensation, except reimbursement for actual and necessary expenses at the
14 same rate as allowed other state officers to be paid from funds available to the office within the
15 limits of legislative appropriations.

16 **SECTION 12.** A new section to chapter 54-34.4 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Copyright and trademark.** The director of the tourism department may obtain
19 copyright or trademark protection for anything that may be used to promote the policies listed in
20 section 54-34.4-03. The director may license and charge a fee for photographs and logos and
21 anything with copyright or trademark protection.

22 **SECTION 13. AMENDMENT.** Section 57-43.1-03.1 of the North Dakota Century Code
23 is amended and reenacted as follows:

24 **57-43.1-03.1. (Effective until December 31, ~~2004~~ 2003) Refund of tax for fuel used**
25 **for agricultural purposes - Reductions.** Any consumer who buys or uses any motor vehicle
26 fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a
27 claim with the commissioner for a refund under this chapter. The amount of the tax refund
28 under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels
29 used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon
30 [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, one
31 cent per gallon [3.79 liters] withheld from the refund must be retained in the highway tax

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

3 **(Effective January 1, ~~2002~~ 2004) Refund of tax for fuel used for agricultural**
4 **purposes - Reductions.** Any consumer who buys or uses any motor vehicle fuel for an
5 agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the
6 commissioner for a refund under this chapter. The amount of the tax refund under this section
7 must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or
8 with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld
9 from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon
10 [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

11 **SECTION 14. EFFECTIVE DATE.** Section 13 of this Act is effective for refund claims
12 for motor vehicle fuel taxes paid after December 31, 2000.

13 **SECTION 15. EMERGENCY.** Section 12 of this Act is declared to be an emergency
14 measure.