

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2270
(Senators Trenbeath, Espegard, Nething)
(Representatives Kingsbury, Nelson)

AN ACT to create and enact sections 4-14.1-07.1 and 4-14.1-07.2 of the North Dakota Century Code, relating to ethanol plant production incentives; to amend and reenact sections 4-14.1-08 and 4-14.1-10 of the North Dakota Century Code, relating to the ethanol production incentive fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 4-14.1-07.1 of the North Dakota Century Code is created and enacted as follows:

4-14.1-07.1. Ethanol plant production incentives - Report to budget section.

1. a. 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 nine hundred thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
- b. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more in the previous fiscal year is eligible to receive up to four hundred fifty thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers.
3. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

SECTION 2. Section 4-14.1-07.2 of the North Dakota Century Code is created and enacted as follows:

4-14.1-07.2. Ethanol production incentives - Payments for increased production. If an ethanol plant that was in operation in this state before July 1, 1995, increases its production by the lesser of ten million gallons [37854000 liters] or fifty percent of its production capacity during any twelve-month period beginning on or after the effective date of this Act, that plant is eligible to receive ethanol production incentive payments under section 4-14.1-08 on its increased production.

SECTION 3. AMENDMENT. Section 4-14.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-08. Ethanol production incentive - Calculation - Payment. The agricultural products utilization commission shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by ~~the American coalition for ethanol~~ AXXIS petroleum. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1. a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the agricultural products utilization commission shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the agricultural products utilization commission shall add zero to any amount payable under this section.
 - c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the agricultural products utilization commission shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the agricultural products utilization commission shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the agricultural products utilization commission shall subtract zero from any amount payable under this section.
 - c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the agricultural products utilization commission shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

SECTION 4. AMENDMENT. Section 4-14.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-10. Ethanol production incentive fund - Continuing appropriation. There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the agricultural products utilization commission for use in paying ethanol production incentives under sections ~~4-14.1-07~~ 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, and 4-14.1-09.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2270.

Senate Vote: Yeas 28 Nays 16 Absent 3

House Vote: Yeas 85 Nays 6 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State