

**FIRST ENGROSSMENT
with Conference Committee Amendments****ENGROSSED SENATE BILL NO. 2288**

Introduced by

Senators Nething, Erbele, Heitkamp

Representatives DeKrey, Gulleson, Nelson

1 A BILL for an Act to provide for a biomass energy center; to create and enact a new chapter to
2 title 54 of the North Dakota Century Code, relating to a renewable energy council and
3 development fund; to amend and reenact sections 4-14.1-09 and 39-04-39 of the North Dakota
4 Century Code, relating to ethanol and renewable fuels incentives and distribution of motor
5 vehicle registration fees; to provide an appropriation; and to provide a continuing appropriation.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1. AMENDMENT.** Section 4-14.1-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-14.1-09. Subsidy limitations.** The office of renewable energy and energy efficiency
10 may not distribute more than one million six hundred thousand dollars per eligible facility
11 annually in payments under section 4-14.1-08 and may not distribute any payment that would
12 create a negative ethanol production incentive fund balance. If the incentive fund balance is
13 insufficient to pay all valid incentive requests received in any quarter, the funds available must
14 be paid out on a pro rata basis and obligations may not be carried forward. No eligible facility
15 may receive state ~~ethanol~~ payments that exceed a cumulative total of ten million dollars or for
16 longer than ten years. Change in ownership of an eligible facility does not affect the ten million
17 dollar cumulative total allowed to be paid to that eligible facility under this section or the
18 ten-year limitation contained in this section.

19 **SECTION 2. State board of higher education - Biomass energy center.** The state
20 board of higher education is encouraged to establish or name a biomass energy center or
21 centers at an institution or institutions under the control of the board to conduct research and
22 provide education and technical assistance related to biomass production, harvesting,
23 transportation, and conversion.

1 **SECTION 3. Biomass research responsibilities.** If established or named by the
2 state board of higher education, the biomass energy center or centers shall:

- 3 1. Complete agronomic research to determine the most efficient perennial grasses or
4 other plants for cellulose production and the amount of fertilization required.
- 5 2. Conduct research to determine the most efficient method of harvesting biomass.
- 6 3. Determine the benefits of biomass densification or preprocessing.
- 7 4. Complete an economic evaluation of all steps in the utilization of biomass for
8 energy.

9 **SECTION 4. Ethanol and biomass incentives.** If established or named by the state
10 board of higher education, the biomass energy center or centers shall work to identify and
11 evaluate incentives for cellulosic ethanol production and biomass energy through the legislative
12 assembly or at the federal level. The center or centers shall identify and evaluate incentives for
13 producers, such as providing payment for producers to grow a dedicated bio-energy crop or
14 support equipment, harvesting, and transportation costs.

15 **SECTION 5. Funding.** The biomass energy center or centers shall seek funding to
16 continue perennial biomass production research and education.

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

19 **39-04-39. Distribution of registration fees collected.** Any moneys in the registration
20 fund accruing from license fees or from other like sources, in excess of the amount required to
21 pay salaries and other necessary expenses, in accordance with the legislative assembly's
22 appropriation for such purposes, must be promptly deposited in the highway tax distribution
23 fund which must be distributed in the manner as prescribed by law. The state treasurer shall
24 transfer annually from the highway tax distribution fund to the ethanol production incentive fund
25 an amount equal to forty percent of all sums collected for the registration of farm vehicles under
26 subsection 5 of section 39-04-19 except that no transfer may be made in an amount that would
27 result in the balance of the ethanol production incentive fund exceeding ~~five~~ seven million five
28 hundred thousand dollars.

29 **SECTION 7.** A new chapter to title 54 of the North Dakota Century Code is created and
30 enacted as follows:

1 **Renewable energy council - Composition.** The industrial commission shall consult
2 with the renewable energy council in matters of policy affecting the administration of the
3 renewable energy development fund.

- 4 1. The renewable energy council consists of:
- 5 a. The commissioner of commerce or the commissioner's designee.
- 6 b. A member with a substantial interest in the agriculture industry appointed by
7 the governor.
- 8 c. A member with a substantial interest in the biodiesel industry appointed by
9 the governor representing biodiesel interests.
- 10 d. A member with a substantial interest in the biomass industry appointed by the
11 governor representing biomass interests.
- 12 e. A member with a substantial interest in the wind industry appointed by the
13 governor representing wind interests.
- 14 f. A member with a substantial interest in the ethanol industry appointed by the
15 governor representing ethanol interests.
- 16 2. Subject to subsection 6, the terms of office for members of the council are three
17 years but of those first appointed, two serve for one year, two serve for two years,
18 and three serve for three years.
- 19 3. The commissioner of commerce shall serve as chairman.
- 20 4. The council shall have at least one regular meeting each year and such additional
21 meetings as the chairman determines necessary at a time and place to be fixed by
22 the chairman. Special meetings must be called by the chairman on written request
23 of any three members. Four members constitute a quorum.
- 24 5. The council shall recommend to the industrial commission the approval of grants,
25 loans, or other financial assistance necessary or appropriate for funding, research,
26 development, marketing, and educational projects or activities and any other
27 matters related to this chapter. Any grants, loans, or other financial assistance
28 must be matched on a dollar-for-dollar basis.
- 29 6. Members of the council serve at the pleasure of the governor.

30 **Access to council records.**

- 1 1. Materials and data submitted to, or made or received by, the council or industrial
2 commission, to the extent that the council or industrial commission determines the
3 materials or data consist of trade secrets or commercial, financial, or proprietary
4 information of individuals or entities applying to or contracting with the commission
5 or receiving council or industrial commission services under this chapter, are
6 subject to section 44-04-18.4.
- 7 2. a. A person or entity must file a request with the council or industrial commission
8 to have material designated as confidential under subsection 1. The request
9 must contain any information required by the council or industrial commission
10 and must include at least:
- 11 (1) A general description of the nature of the information sought to be
12 protected.
- 13 (2) An explanation of why the information derives independent economic
14 value, actual or potential, from not being generally known to other
15 persons.
- 16 (3) An explanation of why the information is not readily ascertainable by
17 proper means by other persons.
- 18 (4) A general description of a person or entity that may obtain economic
19 value from disclosure or use of the information, and how the person or
20 entity may obtain this value.
- 21 (5) A description of the efforts used to maintain the secrecy of the
22 information.
- 23 b. The fact that a request has been made is exempt.
- 24 3. The information submitted pursuant to subsection 2 is confidential. The council or
25 industrial commission shall examine the request and determine whether the
26 information is relevant to the matter at hand and is a trade secret under the
27 definition in section 47-25.1-01 or 44-04-18.4. If the council or industrial
28 commission determines the information is either not relevant or not a trade secret,
29 the council or industrial commission shall notify the requester and the requester
30 may ask for the return of the information and request within ten days of the notice.
31 If no return is sought, the information and request are a public record.

1 4. The names or identities of independent technical reviewers on a project or
2 program and the names of council members making recommendations are
3 confidential, may not be disclosed by the council, and are not public records
4 subject to section 44-04-18 or section 6 of article XI of the Constitution of North
5 Dakota.

6 **Industrial commission powers.**

- 7 1. The industrial commission may:
- 8 a. Make grants or loans, and provide other forms of financial assistance as
9 necessary or appropriate, to qualified persons for feasibility studies, applied
10 research and demonstrations, venture capital investments, grants and
11 matching grants, and low-interest loans and loan buydowns to foster the
12 development of renewable energy, including wind, biofuels, biomass, solar,
13 hydroelectric, geothermal, and hydrogen, that is produced from the foregoing
14 renewable energy sources.
 - 15 b. Provide incentives for multifeed facilities to process corn ethanol, cellulosic
16 ethanol, canola biodiesel, and soy biodiesel.
 - 17 c. Provide incentives for scaleable technologies.
 - 18 d. Provide incentives to increase efficiencies such as coproduct utilization
19 technologies.
 - 20 e. Execute contracts and all other instruments necessary or convenient for the
21 performance of its powers and functions under this chapter.
 - 22 f. Accept aid, grants, or contributions of money or other things of value from any
23 source, to be held, used, and applied to carry out this chapter, subject to the
24 conditions upon which the aid, grants, or contributions are made, including
25 aid, grants, or contributions from any department, agency, or instrumentality
26 of the United States for any purpose consistent with this chapter.
 - 27 g. Establish interest buydown programs for equipment needed for production,
28 harvest, storage, and transport under the special private lands open to
29 sportsmen pilot program for native grass stands.
 - 30 h. Fund technical assistance from the university system and private entities to
31 producers.

1 2. The industrial commission shall contract with the department of commerce to
2 provide technical assistance to the renewable energy council and the industrial
3 commission to carry out and effectuate the purposes of this chapter, including
4 pursuit of aid, grants, or contributions of money or other things of value from any
5 source for any purpose consistent with this chapter. The department may contract
6 with a public or private third party to provide any or all of the technical assistance
7 necessary to implement the purposes of this chapter.

8 **Renewable energy development fund - Continuing appropriation.** The renewable
9 energy development fund is a special fund in the state treasury. All funds in the renewable
10 energy development fund are appropriated to the industrial commission on a continuing basis
11 for the purpose of carrying out and effectuating this chapter. Interest earned by the fund must
12 be credited to the fund.

13 **SECTION 8. APPROPRIATION.** There is appropriated out of any moneys in the
14 general fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so
15 much of the sum as may be necessary, and \$17,000,000 in special funds, or so much of the
16 sum as may be necessary, to the industrial commission for the purpose of carrying out the
17 renewable energy development functions under section 7 of this Act, for the biennium
18 beginning July 1, 2007, and ending June 30, 2009.