

Sixtieth
Legislative Assembly
of North Dakota

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 an energy independence research council
3 and development fund; to amend and reenact sections 4-14.1-09 and 39-04-39 of the North
4 Dakota Century Code, relating to ethanol and renewable fuels incentives and distribution of
5 motor vehicle registration fees; to provide an appropriation; and to provide a continuing
6 appropriation.

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

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

10 **4-14.1-09. Subsidy limitations.** The office of renewable energy and energy efficiency
11 may not distribute more than one million six hundred thousand dollars per eligible facility
12 annually in payments under section 4-14.1-08. No eligible facility may receive state ~~ethanol~~
13 payments that exceed a cumulative total of ten million dollars or for longer than ten years.
14 Change in ownership of an eligible facility does not affect the ten million dollar cumulative total
15 allowed to be paid to that eligible facility under this section or the ten-year limitation contained
16 in this section.

17 **SECTION 2. Biomass energy center.** The biomass energy center consists of a
18 multidisciplinary group led by North Dakota agricultural experiment station and North Dakota
19 state university extension service faculty to conduct research and provide education and
20 technical assistance related to biomass production, harvesting, transportation, and conversion.

21 **SECTION 3. Biomass research responsibilities.**

22 1. The North Dakota agricultural experiment station shall complete agronomic
23 research to determine the most efficient perennial grasses or other plants for
24 cellulose production and the amount of fertilization required.

- 1 2. The North Dakota agricultural experiment station shall conduct research to
2 determine the most efficient method of harvesting biomass.
- 3 3. The North Dakota agricultural experiment station shall determine the benefits of
4 biomass densification or preprocessing.
- 5 4. The North Dakota agricultural experiment station and North Dakota state university
6 extension service shall complete an economic evaluation of all steps in the
7 utilization of biomass for energy.

8 **SECTION 4. Ethanol and biomass incentives.** The biomass energy center shall
9 work to identify and evaluate incentives for cellulosic ethanol production and biomass energy
10 through the legislative assembly or at the federal level. The center shall identify and evaluate
11 incentives for producers, such as providing payment for producers to grow a dedicated
12 bio-energy crop or support equipment, harvesting, and transportation costs.

13 **SECTION 5. Funding.** The North Dakota agricultural experiment station and North
14 Dakota state university extension service shall seek funding to continue perennial biomass
15 production research and education. House Bill No. 1020 (2007) includes four hundred
16 thousand dollars for the agricultural experiment station and three hundred thousand dollars for
17 the extension service to support the activities of the perennial biomass production initiative at
18 the biomass energy center.

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

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

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

1 **Renewable energy policy.** It is the public policy of this state to stimulate the
2 development of renewable and traditional fossil-based energy within the state for the goal of
3 providing secure, diverse, sustainable, and competitive energy supplies that can be produced
4 and secured within the state to assist the nation in reducing its dependence on foreign energy
5 sources. It is also the public policy of this state to promote the development of new
6 technologies, provide innovative opportunities, create additional employment and wealth that
7 contributes to economic development, and decreases dependence of foreign energy supplies.
8 Growth of the renewable energy industry in this state improves the environment and
9 encourages the state's competitiveness for both domestic and export markets. In furtherance
10 of these public policies, this state provides assistance in research, development, and marketing
11 of North Dakota-produced energy sources, including biodiesel, biomass, coal, ethanol,
12 geothermal, hydroelectric, hydrogen, natural gas, oil, solar, and wind, necessary to meet these
13 goals.

14 **Energy independence research council - Composition.** The industrial commission
15 shall consult with the energy independence research council in matters of policy affecting the
16 administration of the energy independence development fund.

- 17 1. The energy independence research council consists of:
- 18 a. The commissioner of commerce or the commissioner's designee.
 - 19 b. A member appointed by the agriculture commissioner.
 - 20 c. A member with a substantial interest in the biodiesel industry appointed by
21 the governor representing biodiesel interests.
 - 22 d. A member with a substantial interest in the biomass industry appointed by the
23 governor representing biomass interests.
 - 24 e. A member with a substantial interest in the wind industry appointed by the
25 governor representing wind interests.
 - 26 f. A member with a substantial interest in the ethanol industry appointed by the
27 governor representing ethanol interests.
 - 28 g. A member with a substantial interest in the lignite industry recommended by
29 the lignite energy council and appointed by the governor representing lignite
30 interests.

- 1 h. A member with a substantial interest in the petroleum industry recommended
2 by the North Dakota petroleum council and appointed by the governor
3 representing petroleum interests.
- 4 i. One additional member appointed by the governor.
- 5 2. Subject to subsection 6, the terms of office for members of the council are three
6 years but of those first appointed, two serve for one year, two serve for two years,
7 and three serve for three years.
- 8 3. The commissioner of commerce shall serve as chairman.
- 9 4. The council shall have at least one regular meeting each year and such additional
10 meetings as the chairman determines necessary at a time and place to be fixed by
11 the chairman. Special meetings must be called by the chairman on written request
12 of any three members. Five members constitute a quorum.
- 13 5. The council shall recommend to the industrial commission the approval of grants,
14 loans, or other financial assistance necessary or appropriate for funding, research,
15 development, marketing, and educational projects or activities and any other
16 matters related to this chapter.
- 17 6. Members of the council appointed by the governor serve at the pleasure of the
18 governor.

19 **Access to council records.**

- 20 1. Materials and data submitted to, or made or received by, the council or industrial
21 commission, to the extent that the council determines the materials or data consist
22 of trade secrets or commercial, financial, or proprietary information of individuals or
23 entities applying to or contracting with the council or receiving council services
24 under this chapter, are not public records subject to section 44-04-18 and section 6
25 of article XI of the Constitution of North Dakota, and are subject to section
26 44-04-18.4.
- 27 2. A person or entity must file a request with the council or industrial commission to
28 have material designated as confidential under subsection 1. The request must
29 contain information required by the council and must include at least the following:
30 a. A general description of the nature of the information sought to be protected.

- 1 b. An explanation of why the information derives independent economic value,
2 actual or potential, from not being generally known to other persons.
- 3 c. An explanation of why the information is not readily ascertainable by proper
4 means by other persons.
- 5 d. A general description of a person or entity that may obtain economic value
6 from disclosure or use of the information, and how the person or entity may
7 obtain this value.
- 8 e. A description of the efforts used to maintain the secrecy of the information.
- 9 3. A request under subsection 2 is confidential. The council shall examine the
10 request and determine whether the information is relevant to the matter at hand
11 and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If
12 the council determines the information is either not relevant or not a trade secret,
13 the council shall notify the requester and the requester may ask for the return of
14 the information and request within ten days of the notice. If no return is sought, the
15 information and request are a public record.
- 16 4. The names or identities of independent technical reviewers on a project or
17 program and the names of council members making recommendations are
18 confidential, may not be disclosed by the council, and are not public records
19 subject to section 44-04-18 or section 6 of article XI of the Constitution of North
20 Dakota.

21 **Industrial commission powers.** The industrial commission may:

- 22 1. Make grants or loans, and provide other forms of financial assistance as necessary
23 or appropriate, to qualified persons for feasibility studies, applied research and
24 demonstrations, venture capital investments, grants and matching grants, and
25 low-interest loans and loan buydowns to foster the development of renewable
26 energy, including wind, biofuels, biomass, solar, hydroelectric, geothermal, and
27 hydrogen, that is produced from the foregoing renewable energy sources.
- 28 2. Provide incentives for multifeed facilities to process corn ethanol, cellulosic
29 ethanol, canola biodiesel, and soy biodiesel.
- 30 3. Provide incentives for scaleable technologies.

- 1 4. Provide incentives to increase efficiencies such as coproduct utilization
2 technologies.
- 3 5. Execute contracts and all other instruments necessary or convenient for the
4 performance of its powers and functions under this chapter.
- 5 6. Accept aid, grants, or contributions of money or other things of value from any
6 source, to be held, used, and applied to carry out this chapter, subject to the
7 conditions upon which the aid, grants, or contributions are made, including aid,
8 grants, or contributions from any department, agency, or instrumentality of the
9 United States for any purpose consistent with this chapter.
- 10 7. Establish interest buydown programs for equipment needed for production,
11 harvest, storage, and transport under the special private lands open to sportsmen
12 pilot program for native grass stands.
- 13 8. Fund technical assistance from the university system and private entities to
14 producers.

15 **Energy independence development fund - Continuing appropriation.** The energy
16 independence development fund is a special fund in the state treasury. All funds in the energy
17 independence development fund are appropriated to the industrial commission on a continuing
18 basis for the purpose of carrying out and effectuating this chapter. Interest earned by the fund
19 must be credited to the fund.

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