

LEGISLATIVE BILL 377

Approved by the Governor June 1, 1995

Introduced by McKenzie, 34

AN ACT relating to ethanol; to amend sections 66-1330, 66-1333, 66-1344, and 66-1345, Revised Statutes Supplement, 1994; to impose an excise tax on corn and grain sorghum; to provide for transfers of funds; to provide a penalty; to define terms; to change provisions relating to ethanol production credits; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 66-1330, Revised Statutes Supplement, 1994, is amended to read:

66-1330. Sections 66-1330 to 66-1348 and sections 2 to 5 of this act shall be known and may be cited as the Ethanol Development Act.

Sec. 2. An excise tax is levied upon all corn and grain sorghum sold through commercial channels in Nebraska or delivered in Nebraska. The tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. The tax shall be in addition to any fee imposed pursuant to sections 2-3623 and 2-4012. The excise tax shall be imposed on any sale or delivery occurring on or after July 1, 1995, and before January 1, 2001. The Legislature finds and declares that those in production agriculture have contributed sufficiently to support the Ethanol Production Incentive Cash Fund by the imposition of the excise tax. If additional funds are needed in the future to meet the Legislature's obligation to fully fund the Ethanol Production Incentive Cash Fund, those funds should come from sources other than production agriculture.

The excise tax shall be imposed at the time of sale or delivery and shall be collected by the first purchaser. The tax shall be collected, administered, and enforced in conjunction with the fees imposed pursuant to sections 2-3623 and 2-4012. The tax shall be collected, administered, and enforced by the Department of Agriculture. No corn or grain sorghum shall be subject to the tax imposed by this section more than once.

In the case of a pledge or mortgage of corn or grain sorghum as security for a loan under the federal price support program, the excise tax shall be deducted from the proceeds of such loan at the time the loan is made. If, within six months of the collection of the excise tax for corn or grain sorghum that is mortgaged as security for a loan under the federal price support program, the grower of the corn or grain sorghum so mortgaged decides to purchase the corn or grain sorghum and use it as feed, the grower shall be entitled to a refund of the excise tax previously paid. The refund shall be payable by the department upon the grower's written application for a refund. The application shall have attached proof of the tax deducted.

The excise tax shall be deducted whether the corn or grain sorghum is stored in this or any other state. The excise tax shall not apply to the sale of corn or grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Sec. 3. (1) The first purchaser, at the time of sale or delivery, shall retain the excise tax as provided in section 2 of this act and shall maintain the necessary records of the excise tax for each sale or delivery of corn or grain sorghum. Records maintained by the first purchaser shall provide (a) the name and address of the seller or deliverer, (b) the date of the sale or delivery, (c) the number of bushels of corn or hundredweight of grain sorghum sold or delivered, and (d) the amount of excise tax retained on each sale or delivery. The records shall be open for inspection and audit by authorized representatives of the Department of Agriculture during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the department by the last day of each January, April, July, and October on forms prescribed by the department a statement of the number of bushels of corn and hundredweight of grain sorghum sold or delivered in Nebraska. At the time the statement is filed, the first purchaser shall pay and remit to the department the excise tax.

(3) The department shall remit the excise tax collected to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund within thirty days after the end of each quarter.

(4) For each fiscal year beginning with fiscal year 1995-96 through fiscal year 2000-01, the department shall calculate its costs in collecting and enforcing the excise tax imposed by section 2 of this act and shall report such costs to the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar quarter. Funds shall be transferred upon the receipt of a report of costs incurred by the Department of Agriculture for the previous calendar quarter by the Department of Administrative Services.

Sec. 4. (1) The State Treasurer shall transfer from the General Fund to the Ethanol Production Incentive Cash Fund, on or before the end of each of fiscal years 1995-96 and 1996-97, \$8,000,000 per fiscal year.

(2) It is the intent of the Legislature that the following General Fund amounts be appropriated to the Ethanol Production Incentive Cash Fund in each of the following years:

(a) For each of fiscal years 1997-98 and 1998-99, \$7,000,000 per fiscal year;

(b) For fiscal year 1999-2000, \$6,000,000; and

(c) For fiscal year 2000-01, \$6,000,000.

Sec. 5. Any person violating any of the provisions of section 2 or 3 of this act shall be guilty of a Class III misdemeanor.

Sec. 6. Section 66-1333, Revised Statutes Supplement, 1994, is amended to read:

66-1333. For purposes of the Ethanol Development Act, unless the context otherwise requires:

(1) Agricultural production facility or ethanol facility shall mean means a plant or facility related to the processing, marketing, or distribution of any products derived from grain components, coproducts, or byproducts;

(2) Board shall mean means the Nebraska Ethanol Board;

(3) Commercial channels means the sale of corn or grain sorghum for any use, to any commercial buyer, dealer, processor, cooperative, or person, public or private, who resells any corn or grain sorghum or product produced from corn or grain sorghum;

(4) Corn means corn as defined in section 2-3610.

(5) Delivered or delivery means receiving corn or grain sorghum for any use other than storage;

(6) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring corn or grain sorghum in Nebraska, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of the corn or grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(7) Grain shall mean means wheat, corn, and grain sorghum; and

~~(8) Grower means any landowner personally engaged in growing corn or grain sorghum, a tenant of the landowner personally engaged in growing corn or grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement;~~

(9) Name plate design capacity shall mean means the original designed capacity of an agricultural production facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year; and

(10) Sale includes any pledge or mortgage of corn or grain sorghum after harvest to any person, public or private.

Sec. 7. Section 66-1344, Revised Statutes Supplement, 1994, is amended to read:

66-1344. (1) Each producer of ethanol shall receive a credit pursuant to this section of twenty cents per gallon of ethanol produced in Nebraska, which credit shall be in the form of a nonrefundable transferable motor fuel tax credit certificate. After July 1, 1994, no such credit shall be given for ethanol produced at an ethanol facility which was in production on or before January 1, 1992, unless on or before July 1, 1994, the name plate design capacity for the production of ethanol, before denaturing, at the facility has been expanded to equal at least two times the name plate design capacity for production of ethanol, before denaturing, existing at the facility as of January 1, 1992.

(2) Any ethanol facility which is in production at the rate of at least twenty-five percent of its name plate design capacity for the production

of ethanol, before denaturing, on or before December 31, 1992, shall receive a credit of twenty cents per gallon of ethanol produced beginning with the first month for which it is eligible to receive such credit and ending not later than December 31, 1997.

(3) Any ethanol facility which is not in production on or before December 31, 1992, but which is in production at the rate of at least twenty-five percent of its name plate design capacity for the production of ethanol, before denaturing, on or before December 31, 1995, shall receive a credit of twenty cents per gallon of ethanol produced for sixty months beginning with the first month for which it is eligible to receive such credit and ending not later than December 31, 2000, if the ethanol facility maintains an average production rate of at least twenty-five percent of its name plate design capacity for at least six months after the first month for which it is eligible to receive such credit.

(4) Any ethanol facility eligible for a credit under subsection (1), (2), or (3) of this section shall also receive a credit of twenty cents per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or before December 31, 1995. Such credit shall be for sixty months beginning with the first month for which production from the expanded facility is eligible to receive such credit and ending not later than December 31, 2000.

(5) The credit shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. Not less than two million gallons and not more than twenty-five million gallons of ethanol produced annually at an ethanol facility shall be eligible for the credit, and the credit may only be claimed by a producer for the period specified in subsection (2), (3), or (4) of this section.

(6) The Department of Revenue shall prescribe an application form and procedures for claiming the credit and shall adopt and promulgate rules and regulations to carry out this section.

(7) For purposes of ascertaining the correctness of any application for claiming the credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

Sec. 8. Section 66-1345, Revised Statutes Supplement, 1994, is amended to read:

66-1345. (1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, and (e) credited to the Ethanol Production Incentive Cash Fund from the fertilizer fee pursuant to section 77-4401, (f) credited to the Ethanol Production Incentive Cash Fund from the excise taxes imposed by section 2 of this act, and (g) credited to the Ethanol Production Incentive Cash Fund pursuant to section 4 of this act.

(2) The Department of Revenue shall, at the end of each calendar quarter, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar quarter due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to

such credits less the following amounts:

(a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-668;

(b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;

(c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and

(d) For 1998, 1999, and 2000, no reduction.

The amounts shall be transferred through December 31, 2000. For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to subsection (1) of this section are not sufficient to fund the credits provided in section 66-1344, then the credits shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund. For 1998, 1999, and 2000, the credits provided in such section shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund.

(3) The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund the amount reported under subsection (4) of section 3 of this act for each calendar quarter of the fiscal year as provided in such subsection.

(4) On February 15, 2001, the State Treasurer shall transfer any unexpended and unobligated funds from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund Nebraska Corn Development, Utilization, and Marketing Fund and Grain Sorghum Development, Utilization, and Marketing Fund in the same proportion as funds were collected pursuant to section 2 of this act from corn and grain sorghum.

Sec. 9. Original sections 66-1330, 66-1333, 66-1344, and 66-1345, Revised Statutes Supplement, 1994, are repealed.

Sec. 10. Since an emergency exists, this act takes effect when passed and approved according to law.