

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 685

Introduced by Wehrbein, 2

Read first time January 20, 1999

Committee: Appropriations

A BILL

1 FOR AN ACT relating to ethanol; to amend sections 66-1345 to
2 66-1345.02, Reissue Revised Statutes of Nebraska; to
3 change provisions relating to funding of production
4 credits; to harmonize provisions; and to repeal the
5 original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1345, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 66-1345. (1) There is hereby created the Ethanol
4 Production Incentive Cash Fund which shall be used by the board to
5 pay the credits created in section 66-1344 to the extent provided
6 in this section. Any money in the fund available for investment
7 shall be invested by the state investment officer pursuant to the
8 Nebraska Capital Expansion Act and the Nebraska State Funds
9 Investment Act. The State Treasurer shall transfer to the Ethanol
10 Production Incentive Cash Fund such money as shall be (a)
11 appropriated to the Ethanol Production Incentive Cash Fund by the
12 Legislature, (b) given as gifts, bequests, grants, or other
13 contributions to the Ethanol Production Incentive Cash Fund from
14 public or private sources, (c) made available due to failure to
15 fulfill conditional requirements pursuant to investment agreements
16 entered into prior to April 30, 1992, (d) received as return on
17 investment of the Ethanol Authority and Development Cash Fund, (e)
18 credited to the Ethanol Production Incentive Cash Fund from the
19 fertilizer fee pursuant to section 77-4401, (f) credited to the
20 Ethanol Production Incentive Cash Fund from the excise taxes
21 imposed by section 66-1345.01, and (g) credited to the Ethanol
22 Production Incentive Cash Fund pursuant to section 66-1345.04.

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

1 the following amounts:

2 (a) For 1993, 1994, and 1995, the amount generated during
3 the calendar quarter by a one-cent tax on motor fuel pursuant to
4 sections 66-489, 66-668, and 66-6,107;

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

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

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

12 The amounts shall be transferred through December 31,
13 2000. For 1993 through 1997, if the amount generated pursuant to
14 subdivisions (a), (b), and (c) of this subsection and the amount
15 transferred pursuant to subsection (1) of this section are not
16 sufficient to fund the credits provided in section 66-1344, then
17 the credits shall be funded through the Ethanol Production
18 Incentive Cash Fund but shall not be funded through either the
19 Highway Cash Fund or the Highway Trust Fund. For 1998, 1999, and
20 2000, the credits provided in such section shall be funded through
21 the Ethanol Production Incentive Cash Fund but shall not be funded
22 through either the Highway Cash Fund or the Highway Trust Fund.

23 (3) The State Treasurer shall transfer from the Ethanol
24 Production Incentive Cash Fund to the Management Services Expense
25 Revolving Fund the amount reported under subsection (4) of section
26 66-1345.02 for each calendar quarter of the fiscal year as provided
27 in such subsection.

28 (4) The Appropriations Committee of the Legislature shall

1 examine the level of unexpended and unobligated funds remaining in
2 the Ethanol Production Incentive Cash Fund after all transfers from
3 the Ethanol Production Incentive Cash Fund to the Highway Trust
4 Fund are completed. The Appropriations Committee shall prepare
5 recommendations regarding the disposition of any balance remaining
6 in the Ethanol Production Incentive Cash Fund and report its
7 findings to the Legislature no later than December 1, 2001. On
8 February 15, 2001, the State Treasurer shall transfer any
9 unexpended and unobligated funds from the Ethanol Production
10 Incentive Cash Fund to the Nebraska Corn Development, Utilization,
11 and Marketing Fund and Grain Sorghum Development, Utilization, and
12 Marketing Fund in the same proportion as funds were collected
13 pursuant to section 66-1345.01 from corn and grain sorghum.

14 Sec. 2. Section 66-1345.01, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 66-1345.01. An excise tax is levied upon all corn and
17 grain sorghum sold through commercial channels in Nebraska or
18 delivered in Nebraska. The tax is three-fourths cent per bushel
19 for corn and three-fourths cent per hundredweight for grain
20 sorghum. The tax shall be in addition to any fee imposed pursuant
21 to sections 2-3623 and 2-4012. The excise tax shall be imposed on
22 any sale or delivery occurring on or after July 1, 1995, and before
23 January 1, ~~2001~~ 2000. The Legislature finds and declares that
24 those in production agriculture have contributed sufficiently to
25 support the Ethanol Production Incentive Cash Fund by the
26 imposition of the excise tax. If additional funds are needed in
27 the future to meet the Legislature's obligation to fully fund the
28 Ethanol Production Incentive Cash Fund, those funds should come

1 from sources other than production agriculture.

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

9 In the case of a pledge or mortgage of corn or grain
10 sorghum as security for a loan under the federal price support
11 program, the excise tax shall be deducted from the proceeds of such
12 loan at the time the loan is made. If, within the life of the loan
13 plus thirty days after the collection of the excise tax for corn or
14 grain sorghum that is mortgaged as security for a loan under the
15 federal price support program, the grower of the corn or grain
16 sorghum so mortgaged decides to purchase the corn or grain sorghum
17 and use it as feed, the grower shall be entitled to a refund of the
18 excise tax previously paid. The refund shall be payable by the
19 department upon the grower's written application for a refund. The
20 application shall have attached proof of the tax deducted.

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

28 Sec. 3. Section 66-1345.02, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 66-1345.02. (1) The first purchaser, at the time of sale
3 or delivery, shall retain the excise tax as provided in section
4 66-1345.01 and shall maintain the necessary records of the excise
5 tax for each sale or delivery of corn or grain sorghum. Records
6 maintained by the first purchaser shall provide (a) the name and
7 address of the seller or deliverer, (b) the date of the sale or
8 delivery, (c) the number of bushels of corn or hundredweight of
9 grain sorghum sold or delivered, and (d) the amount of excise tax
10 retained on each sale or delivery. The records shall be open for
11 inspection and audit by authorized representatives of the
12 Department of Agriculture during normal business hours observed by
13 the first purchaser.

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

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

25 (4) For each fiscal year beginning with fiscal year
26 1995-96 through fiscal year ~~2000-01~~ 1999-2000, the department shall
27 calculate its costs in collecting and enforcing the excise tax
28 imposed by section 66-1345.01 and shall report such costs to the

1 Department of Administrative Services within thirty days after the
2 end of the fiscal year. Sufficient funds to cover such costs shall
3 be transferred from the Ethanol Production Incentive Cash Fund to
4 the Management Services Expense Revolving Fund at the end of each
5 calendar quarter. Funds shall be transferred upon the receipt of a
6 report of costs incurred by the Department of Agriculture for the
7 previous calendar quarter by the Department of Administrative
8 Services.

9 Sec. 4. Original sections 66-1345 to 66-1345.02, Reissue
10 Revised Statutes of Nebraska, are repealed.