

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 507**

Introduced by Burling, 33

Read first time January 17, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to ethanol; to amend section 66-1344,  
2 Revised Statutes Cumulative Supplement, 2006; to change a  
3 provision relating to use of tax credits; and to repeal  
4 the original section.

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

1           Section 1. Section 66-1344, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           66-1344 (1) Beginning June 1, 2000, during such period  
4 as funds remain in the Ethanol Production Incentive Cash Fund,  
5 any ethanol facility shall receive a credit of seven and one-half  
6 cents per gallon of ethanol, before denaturing, for new production  
7 for a period not to exceed thirty-six consecutive months. For  
8 purposes of this subsection, new production means production which  
9 results from the expansion of an existing facility's capacity by  
10 at least two million gallons first placed into service after June  
11 1, 1999, as certified by the facility's design engineer to the  
12 Department of Revenue. For expansion of an existing facility's  
13 capacity, new production means production in excess of the average  
14 of the highest three months of ethanol production at an ethanol  
15 facility during the twenty-four-month period immediately preceding  
16 certification of the facility by the design engineer. No credits  
17 shall be allowed under this subsection for expansion of an existing  
18 facility's capacity until production is in excess of twelve times  
19 the three-month average amount determined under this subsection  
20 during any twelve-consecutive-month period beginning no sooner than  
21 June 1, 2000. New production shall be approved by the Department  
22 of Revenue based on such ethanol production records as may be  
23 necessary to reasonably determine new production. This credit must  
24 be earned on or before December 31, 2003.

25           (2)(a) Beginning January 1, 2002, any new ethanol

1 facility which is in production at the minimum rate of one  
2 hundred thousand gallons annually for the production of ethanol,  
3 before denaturing, and which has provided to the Department of  
4 Revenue written evidence substantiating that the ethanol facility  
5 has received the requisite authority from the Department of  
6 Environmental Quality and from the United States Department of  
7 Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,  
8 on or before June 30, 2004, shall receive a credit of eighteen  
9 cents per gallon of ethanol produced for ninety-six consecutive  
10 months beginning with the first calendar month for which it is  
11 eligible to receive such credit and ending not later than June 30,  
12 2012, if the facility is defined by subdivision (b)(i) of this  
13 subsection, and for forty-eight consecutive months beginning with  
14 the first calendar month for which it is eligible to receive such  
15 credit and ending not later than June 30, 2008, if the facility  
16 is defined by subdivision (b)(ii) of this subsection. The new  
17 ethanol facility shall provide an analysis to the Department of  
18 Revenue of samples of the product collected according to procedures  
19 specified by the department no later than July 30, 2004, and at  
20 least annually thereafter. The analysis shall be prepared by an  
21 independent laboratory meeting the International Organization for  
22 Standardization standard ISO/IEC 17025:1999. Prior to collecting  
23 the samples, the new ethanol facility shall notify the department  
24 which may observe the sampling procedures utilized by the new  
25 ethanol facility to obtain the samples to be submitted for

1 independent analysis. The minimum rate shall be established for a  
2 period of at least thirty days. In this regard, the new ethanol  
3 facility must produce at least eight thousand two hundred nineteen  
4 gallons of ethanol within a thirty-day period. The ethanol must be  
5 finished product which is ready for sale to customers.

6 (b) For purposes of this subsection, new ethanol facility  
7 means a facility for the conversion of grain or other raw feedstock  
8 into ethanol and other byproducts of ethanol production which (i)  
9 is not in production on or before September 1, 2001, or (ii) has  
10 not received credits prior to June 1, 1999. A new ethanol facility  
11 does not mean an expansion of an existing ethanol plant that  
12 does not result in the physical construction of an entire ethanol  
13 processing facility or which shares or uses in a significant manner  
14 any existing plant's systems or processes and does not include  
15 the expansion of production capacity constructed after June 30,  
16 2004, of a plant qualifying for credits under this subsection. This  
17 definition applies to contracts entered into after April 16, 2004.

18 (c) Not more than fifteen million six hundred  
19 twenty-five thousand gallons of ethanol produced annually  
20 at an ethanol facility shall be eligible for credits under  
21 this subsection. Not more than one hundred twenty-five  
22 million gallons of ethanol produced at an ethanol facility  
23 by the end of the ninety-six-consecutive-month period or  
24 forty-eight-consecutive-month period set forth in this subsection  
25 shall be eligible for credits under this subsection.

1           (3) The credits described in this section shall be given  
2 only for ethanol produced at a plant in Nebraska at which all  
3 fermentation, distillation, and dehydration takes place. No credit  
4 shall be given on ethanol produced for or sold for use in the  
5 production of beverage alcohol. Not more than ten million gallons  
6 of ethanol produced during any twelve-consecutive-month period at  
7 an ethanol facility shall be eligible for the credit described  
8 in subsection (1) of this section. The credits described in this  
9 section shall be in the form of a nonrefundable, transferable motor  
10 vehicle fuel or diesel fuel tax credit certificate. No transfer  
11 of credits will be allowed between the ethanol producer and motor  
12 vehicle fuel or diesel fuel licensees who are related parties.

13           (4) Ethanol production eligible for credits under this  
14 section shall be measured by a device approved by the Division of  
15 Weights and Measures of the Department of Agriculture. Confirmation  
16 of approval by the division shall be provided by the ethanol  
17 facility at the time the initial claim for credits provided under  
18 this section is submitted to the Department of Revenue and annually  
19 thereafter. Claims submitted by the ethanol producer shall be  
20 based on the total number of gallons of ethanol produced, before  
21 denaturing, during the reporting period measured in gross gallons.

22           (5) The Department of Revenue shall prescribe an  
23 application form and procedures for claiming credits under this  
24 section. In order for a claim for credits to be accepted, it must  
25 be filed by the ethanol producer within three years of the date

1 the ethanol was produced or by September 30, 2012, whichever occurs  
2 first.

3 (6) Every producer of ethanol shall maintain records  
4 similar to those required by section 66-487. The ethanol producer  
5 must maintain invoices, meter readings, load-out sheets or  
6 documents, inventory records, including work-in-progress, finished  
7 goods, and denaturant, and other memoranda requested by the  
8 Department of Revenue relevant to the production of ethanol. On  
9 an annual basis, the ethanol producer shall also be required to  
10 furnish the department with copies of the reports filed with the  
11 United States Department of Justice, Bureau of Alcohol, Tobacco,  
12 Firearms and Explosives. The maintenance of all of this information  
13 in a provable computer format or on microfilm is acceptable in  
14 lieu of retention of the original documents. The records must be  
15 retained for a period of not less than three years after the claim  
16 for ethanol credits is filed.

17 (7) For purposes of ascertaining the correctness of any  
18 application for claiming a credit provided in this section, the  
19 Tax Commissioner (a) may examine or cause to have examined, by  
20 any agent or representative designated by him or her for that  
21 purpose, any books, papers, records, or memoranda bearing upon such  
22 matters, (b) may by summons require the attendance of the person  
23 responsible for rendering the application or other document or  
24 any officer or employee of such person or the attendance of any  
25 other person having knowledge in the premises, and (c) may take

1 testimony and require proof material for his or her information,  
2 with power to administer oaths or affirmations to such person  
3 or persons. The time and place of examination pursuant to this  
4 subsection shall be such time and place as may be fixed by the  
5 Tax Commissioner and as are reasonable under the circumstances.  
6 In the case of a summons, the date fixed for appearance before  
7 the Tax Commissioner shall not be less than twenty days from the  
8 time of service of the summons. No taxpayer shall be subjected  
9 to unreasonable or unnecessary examinations or investigations. All  
10 records obtained pursuant to this subsection shall be subject to  
11 the confidentiality requirements and exceptions thereto as provided  
12 in section 77-27,119.

13 (8) To qualify for credits under this section, an ethanol  
14 producer shall provide public notice for bids before entering  
15 into any contract for the construction of a new ethanol facility.  
16 Preference shall be given to a bidder residing in Nebraska when  
17 awarding any contract for construction of a new ethanol facility  
18 if comparable bids are submitted. For purposes of this subsection,  
19 bidder residing in Nebraska means any person, partnership, foreign  
20 or domestic limited liability company, association, or corporation  
21 authorized to engage in business in the state with employees  
22 permanently located in Nebraska. If an ethanol producer enters into  
23 a contract for the construction of a new ethanol facility with  
24 a bidder who is not a bidder residing in Nebraska, such producer  
25 shall demonstrate to the satisfaction of the Department of Revenue

1 in its application for credits that no comparable bid was submitted  
2 by a responsible bidder residing in Nebraska. The department shall  
3 deny an application for credits if it is determined that the  
4 contract was denied to a responsible bidder residing in Nebraska  
5 without cause.

6 (9) The pertinent provisions of Chapter 66, article 7,  
7 relating to the administration and imposition of motor fuel taxes  
8 shall apply to the administration and imposition of assessments  
9 made by the Department of Revenue relating to excess credits  
10 claimed by ethanol producers under the Ethanol Development Act.  
11 These provisions include, but are not limited to, issuance of  
12 a deficiency following an examination of records, an assessment  
13 becoming final after thirty days absent a written protest,  
14 presumptions regarding the burden of proof, issuance of deficiency  
15 within three years of original filing, issuance of notice by  
16 registered or certified mail, issuance of penalties and waiver  
17 thereof, issuance of interest and waiver thereof, and issuance of  
18 corporate officer or employee or limited liability company manager  
19 or member assessments. For purposes of determining interest and  
20 penalties, the due date will be considered to be the date on which  
21 the credits were used by the licensees to whom the credits were  
22 transferred.

23 (10) If a written protest is filed by the ethanol  
24 producer with the department within the thirty-day period in  
25 subsection (9) of this section, the protest shall: (a) Identify

1 the ethanol producer; (b) identify the proposed assessment which  
2 is being protested; (c) set forth each ground under which a  
3 redetermination of the department's position is requested together  
4 with facts sufficient to acquaint the department with the exact  
5 basis thereof; (d) demand the relief to which the ethanol producer  
6 considers itself entitled; and (e) request that an evidentiary  
7 hearing be held to determine any issues raised by the protest if  
8 the ethanol producer desires such a hearing.

9 (11) For applications received after April 16, 2004, an  
10 ethanol facility receiving benefits under the Ethanol Development  
11 Act shall not be eligible for benefits under the Employment and  
12 Investment Growth Act, the Invest Nebraska Act, or the Nebraska  
13 Advantage Act.

14 Sec. 2. Original section 66-1344, Revised Statutes  
15 Cumulative Supplement, 2006, is repealed.