

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1040

Introduced by Louden, 49; Adams, 24; Carlson, 38; Hansen, 42;
Hudkins, 21; Karpisek, 32; Pankonin, 2; Wallman, 30.

Read first time January 17, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to ethanol; to amend sections 61-218,
2 66-1345.01, and 66-1345.02, Revised Statutes Supplement,
3 2007; to impose a tax on ethanol production and
4 provide for its use; to provide a penalty; to harmonize
5 provisions; and to repeal the original sections.

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

1 Section 1. (1) Beginning October 1, 2012, through
2 September 30, 2019, an excise tax is imposed on the production of
3 ethanol in this state. The tax shall be paid by the owner of the
4 ethanol production facility. The tax rate shall be one cent per
5 gallon of ethanol.

6 (2) The tax shall be remitted to the Department of
7 Revenue for credit to the Water Resources Cash Fund. Payment of the
8 tax shall be accompanied by a report setting forth the number of
9 gallons of ethanol produced at the facility during the reporting
10 period. The report shall be on a form prescribed by the department
11 and shall include such other information as the Tax Commissioner
12 deems necessary. The tax and report shall be remitted within thirty
13 days after the end of each calendar quarter.

14 (3) Any person violating this section shall be guilty of
15 a Class III misdemeanor.

16 (4) The Tax Commissioner shall adopt and promulgate rules
17 and regulations to carry out this section.

18 Sec. 2. Section 61-218, Revised Statutes Supplement,
19 2007, is amended to read:

20 61-218 (1) The Water Resources Cash Fund is created. The
21 fund shall be administered by the Department of Natural Resources.
22 Any money in the fund available for investment shall be invested
23 by the state investment officer pursuant to the Nebraska Capital
24 Expansion Act and the Nebraska State Funds Investment Act.

25 (2) The State Treasurer shall credit to the fund such

1 money as is (a) transferred to the fund by the Legislature, (b)
2 paid to the state as fees, deposits, payments, and repayments
3 relating to the fund, both principal and interest, (c) donated as
4 gifts, bequests, or other contributions to such fund from public or
5 private entities, (d) made available by any department or agency
6 of the United States if so directed by such department or agency,
7 and (e) credited to the fund from the excise ~~taxes~~ tax imposed by
8 section ~~66-1345.01~~ beginning January 1, 2013, 1 of this act.

9 (3) The fund shall be expended by the department (a)
10 to aid management actions taken to reduce consumptive uses of
11 water in river basins, subbasins, or reaches which are deemed
12 by the department overappropriated pursuant to section 46-713 or
13 fully appropriated pursuant to section 46-714 or are bound by
14 an interstate compact or decree or a formal state contract or
15 agreement and (b) to the extent funds are not expended pursuant to
16 subdivision (a) of this subsection, the department may conduct a
17 statewide assessment of short-term and long-term water management
18 activities and funding needs to meet statutory requirements in
19 sections 46-713 to 46-718 and 46-739 and any requirements of an
20 interstate compact or decree or formal state contract or agreement.
21 The fund shall not be used to pay for administrative expenses or
22 any salaries for the department or any political subdivision.

23 (4) It is the intent of the Legislature that two million
24 seven hundred thousand dollars be transferred each fiscal year from
25 the General Fund to the Water Resources Cash Fund for FY2009-10

1 through FY2018-19.

2 (5) (a) Expenditures from the Water Resources Cash
3 Fund may be made to natural resources districts eligible under
4 subsection (3) of this section for activities to either achieve a
5 sustainable balance of consumptive water uses or assure compliance
6 with an interstate compact or decree or a formal state contract
7 or agreement and shall require a match of local funding in an
8 amount equal to or greater than forty percent of the total cost
9 of carrying out the eligible activity. The department shall, no
10 later than August 1 of each year, beginning in 2007, determine the
11 amount of funding that will be made available to natural resources
12 districts from the Water Resources Cash Fund and notify natural
13 resources districts of this determination. The department shall
14 adopt and promulgate rules and regulations governing application
15 for and use of the Water Resources Cash Fund by natural resources
16 districts. Such rules and regulations shall, at a minimum, include
17 the following components:

18 (i) Require an explanation of how the planned activity
19 will assure compliance with an interstate compact or decree or a
20 formal state contract or agreement as required by section 46-715
21 and the controls, rules, and regulations designed to carry out the
22 activity; and

23 (ii) A schedule of implementation of the activity or its
24 components.

25 (b) Any natural resources district that fails to

1 implement and enforce its controls, rules, and regulations as
2 required by section 46-715 shall not be eligible for funding
3 from the Water Resources Cash Fund until it is determined by the
4 department that compliance with the provisions required by section
5 46-715 has been established.

6 (6) The Department of Natural Resources shall submit an
7 annual report to the Legislature no later than October 1 of each
8 year, beginning in the year 2007, that shall detail the use of the
9 Water Resources Cash Fund in the previous year. The report shall
10 provide:

11 (a) Details regarding the use and cost of activities
12 carried out by the department; and

13 (b) Details regarding the use and cost of activities
14 carried out by each natural resources district that received funds
15 from the Water Resources Cash Fund.

16 Sec. 3. Section 66-1345.01, Revised Statutes Supplement,
17 2007, is amended to read:

18 66-1345.01 An excise tax is levied upon all corn and
19 grain sorghum sold through commercial channels in Nebraska or
20 delivered in Nebraska. For any sale or delivery of corn or grain
21 sorghum occurring on or after July 1, 1995, and before January
22 1, 2000, the tax is three-fourths cent per bushel for corn and
23 three-fourths cent per hundredweight for grain sorghum. For any
24 sale or delivery of corn or grain sorghum occurring on or after
25 January 1, 2000, and before January 1, 2001, the tax is one-half

1 cent per bushel for corn and one-half cent per hundredweight for
2 grain sorghum. For any sale or delivery of corn or grain sorghum
3 occurring on or after October 1, 2001, and before October 1, 2004,
4 the tax is one-half cent per bushel for corn and one-half cent per
5 hundredweight for grain sorghum. For any sale or delivery of corn
6 or grain sorghum occurring on or after October 1, 2004, and before
7 October 1, 2005, the tax is three-fourths cent per bushel for
8 corn and three-fourths cent per hundredweight for grain sorghum.
9 For any sale or delivery of corn or grain sorghum occurring on
10 or after October 1, 2005, and before October 1, 2012, the tax is
11 seven-eighths cent per bushel for corn and seven-eighths cent per
12 hundredweight for grain sorghum. ~~For any sale or delivery of corn~~
13 ~~or grain sorghum occurring on or after October 1, 2012, and before~~
14 ~~October 1, 2019, the tax is three-fifths cent per bushel for corn~~
15 ~~and three-fifths cent per hundredweight for grain sorghum.~~ The tax
16 shall be in addition to any fee imposed pursuant to sections 2-3623
17 and 2-4012.

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

25 In the case of a pledge or mortgage of corn or grain

1 sorghum as security for a loan under the federal price support
2 program, the excise tax shall be deducted from the proceeds of such
3 loan at the time the loan is made. If, within the life of the loan
4 plus thirty days after the collection of the excise tax for corn
5 or grain sorghum that is mortgaged as security for a loan under
6 the federal price support program, the grower of the corn or grain
7 sorghum so mortgaged decides to purchase the corn or grain sorghum
8 and use it as feed, the grower shall be entitled to a refund of
9 the excise tax previously paid. The refund shall be payable by the
10 department upon the grower's written application for a refund. The
11 application shall have attached proof of the tax deducted.

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

19 Sec. 4. Section 66-1345.02, Revised Statutes Supplement,
20 2007, is amended to read:

21 66-1345.02 (1) The first purchaser, at the time of sale
22 or delivery, shall retain the excise tax as provided in section
23 66-1345.01 and shall maintain the necessary records of the excise
24 tax for each sale or delivery of corn or grain sorghum. Records
25 maintained by the first purchaser shall provide (a) the name and

1 address of the seller or deliverer, (b) the date of the sale or
2 delivery, (c) the number of bushels of corn or hundredweight of
3 grain sorghum sold or delivered, and (d) the amount of excise
4 tax retained on each sale or delivery. The records shall be open
5 for inspection and audit by authorized representatives of the
6 Department of Agriculture during normal business hours observed by
7 the first purchaser.

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

15 (3) The department shall remit the excise tax collected
16 to the State Treasurer for credit to the Ethanol Production
17 Incentive Cash Fund within thirty days after the end of each
18 quarter through December 31, 2012. ~~Beginning January 1, 2013,~~
19 ~~the department shall remit the excise tax collected to the State~~
20 ~~Treasurer for credit to the Water Resources Cash Fund within thirty~~
21 ~~days after the end of each quarter.~~

22 (4) The department shall calculate its costs in
23 collecting and enforcing the excise tax imposed by section
24 66-1345.01 and shall report such costs to the budget division of
25 the Department of Administrative Services within thirty days after

1 the end of the fiscal year. Sufficient funds to cover such costs
2 shall be transferred from the Ethanol Production Incentive Cash
3 Fund to the Management Services Expense Revolving Fund at the end
4 of each calendar month, with such transfers ending December 31,
5 2012. ~~Beginning January 1, 2013, the Department of Agriculture~~
6 ~~shall calculate its costs in collecting and enforcing the excise~~
7 ~~tax imposed by section 66-1345.01 and shall report such costs to~~
8 ~~the budget division of the Department of Administrative Services~~
9 ~~within thirty days after the end of the fiscal year. Sufficient~~
10 ~~funds to cover such costs shall be transferred from the Water~~
11 ~~Resources Cash Fund to the Management Services Expense Revolving~~
12 ~~Fund at the end of each calendar month. Funds shall be transferred~~
13 ~~upon the receipt of a report of costs incurred by the Department of~~
14 ~~Agriculture for the previous calendar month by the budget division~~
15 ~~of the Department of Administrative Services.~~

16 Sec. 5. Original sections 61-218, 66-1345.01, and
17 66-1345.02, Revised Statutes Supplement, 2007, are repealed.