

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 946

Introduced by Burling, 33.

Read first time January 14, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to ethanol; to amend sections 61-218, 66-1345,
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 July 1, 2009, an excise tax is
2 imposed on the production of ethanol in this state. The tax shall
3 be paid by the owner of the ethanol production facility. The tax
4 rate shall be two cents per gallon of ethanol.

5 (2) The tax shall be remitted to the Department of
6 Revenue for credit to the Ethanol Production Incentive Cash Fund
7 through December 31, 2012, and to the Water Resources Cash Fund
8 beginning January 1, 2013. Payment of the tax shall be accompanied
9 by a report setting forth the number of gallons of ethanol produced
10 at the facility during the reporting period. The report shall be on
11 a form prescribed by the department and shall include such other
12 information as the Tax Commissioner deems necessary. The tax and
13 report shall be remitted within thirty days after the end of each
14 calendar quarter.

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

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

19 Sec. 2. Section 61-218, Revised Statutes Supplement,
20 2007, is amended to read:

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

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

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

24 (4) It is the intent of the Legislature that two million
25 seven hundred thousand dollars be transferred each fiscal year from

1 the General Fund to the Water Resources Cash Fund for FY2009-10
2 through FY2018-19.

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

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

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

1 (b) Any natural resources district that fails to
2 implement and enforce its controls, rules, and regulations as
3 required by section 46-715 shall not be eligible for funding
4 from the Water Resources Cash Fund until it is determined by the
5 department that compliance with the provisions required by section
6 46-715 has been established.

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

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

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

17 Sec. 3. Section 66-1345, Revised Statutes Supplement,
18 2007, is amended to read:

19 66-1345 (1) There is hereby created the Ethanol
20 Production Incentive Cash Fund which shall be used by the board
21 to pay the credits created in section 66-1344 to the extent
22 provided in this section. Any money in the fund available for
23 investment shall be invested by the state investment officer
24 pursuant to the Nebraska Capital Expansion Act and the Nebraska
25 State Funds Investment Act. The State Treasurer shall transfer to

1 the Ethanol Production Incentive Cash Fund such money as shall
2 be (a) appropriated to the Ethanol Production Incentive Cash
3 Fund by the Legislature, (b) given as gifts, bequests, grants,
4 or other contributions to the Ethanol Production Incentive Cash
5 Fund from public or private sources, (c) made available due to
6 failure to fulfill conditional requirements pursuant to investment
7 agreements entered into prior to April 30, 1992, (d) received
8 as return on investment of the Ethanol Authority and Development
9 Cash Fund, (e) credited to the Ethanol Production Incentive Cash
10 Fund from the excise taxes imposed by section 66-1345.01 through
11 ~~December 31, 2012,~~ June 30, 2009, and (f) credited to the Ethanol
12 Production Incentive Cash Fund pursuant to sections 66-489, 66-726,
13 66-1345.04, and 66-1519 and section 1 of this act.

14 (2) The Department of Revenue shall, at the end of each
15 calendar month, notify the State Treasurer of the amount of motor
16 fuel tax that was not collected in the preceding calendar month
17 due to the credits provided in section 66-1344. The State Treasurer
18 shall transfer from the Ethanol Production Incentive Cash Fund to
19 the Highway Trust Fund an amount equal to such credits less the
20 following amounts:

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

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

1 sections;

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

5 (d) For 1998 and each year thereafter, no reduction.

6 For 1993 through 1997, if the amount generated pursuant
7 to subdivisions (a), (b), and (c) of this subsection and the
8 amount transferred pursuant to subsection (1) of this section are
9 not sufficient to fund the credits provided in section 66-1344,
10 then the credits shall be funded through the Ethanol Production
11 Incentive Cash Fund but shall not be funded through either the
12 Highway Cash Fund or the Highway Trust Fund. For 1998 and each year
13 thereafter, the credits provided in such section shall be funded
14 through the Ethanol Production Incentive Cash Fund but shall not be
15 funded through either the Highway Cash Fund or the Highway Trust
16 Fund.

17 If, during any month, the amount of money in the Ethanol
18 Production Incentive Cash Fund is not sufficient to reimburse the
19 Highway Trust Fund for credits earned pursuant to section 66-1344,
20 the Department of Revenue shall suspend the transfer of credits by
21 ethanol producers until such time as additional funds are available
22 in the Ethanol Production Incentive Cash Fund for transfer to the
23 Highway Trust Fund. Thereafter, the Department of Revenue shall, at
24 the end of each month, allow transfer of accumulated credits earned
25 by each ethanol producer on a prorated basis derived by dividing

1 the amount in the fund by the aggregate amount of accumulated
2 credits earned by all ethanol producers.

3 (3) The State Treasurer shall transfer from the Ethanol
4 Production Incentive Cash Fund to the Management Services Expense
5 Revolving Fund the amount reported under subsection (4) of section
6 66-1345.02 for each calendar month of the fiscal year as provided
7 in such subsection.

8 (4) On December 31, 2012, the State Treasurer shall
9 transfer the unexpended and unobligated funds, including all
10 subsequent investment interest, from the Ethanol Production
11 Incentive Cash Fund to the Water Resources Cash Fund.

12 (5) Whenever the unobligated balance in the Ethanol
13 Production Incentive Cash Fund exceeds twenty million dollars, the
14 Department of Revenue shall notify the Department of Agriculture at
15 which time the Department of Agriculture shall suspend collection
16 of the excise tax levied pursuant to section 66-1345.01. If, after
17 suspension of the collection of such excise tax, the balance of
18 the fund falls below ten million dollars, the Department of Revenue
19 shall notify the Department of Agriculture which shall resume
20 collection of the excise tax.

21 (6) On or before December 1, 2003, and each December
22 1 thereafter, the Department of Revenue and the Nebraska Ethanol
23 Board shall jointly submit a report to the Legislature which shall
24 project the anticipated revenue and expenditures from the Ethanol
25 Production Incentive Cash Fund through the termination of the

1 ethanol production incentive programs pursuant to section 66-1344.
2 The initial report shall include a projection of the amount
3 of ethanol production for which the Department of Revenue has
4 entered agreements to provide ethanol production credits pursuant
5 to section 66-1344.01 and any additional ethanol production which
6 the Department of Revenue and the Nebraska Ethanol Board reasonably
7 anticipate may qualify for credits pursuant to section 66-1344.

8 Sec. 4. Section 66-1345.01, Revised Statutes Supplement,
9 2007, is amended to read:

10 66-1345.01 An excise tax is levied upon all corn and
11 grain sorghum sold through commercial channels in Nebraska or
12 delivered in Nebraska. For any sale or delivery of corn or grain
13 sorghum occurring on or after July 1, 1995, and before January
14 1, 2000, the tax is three-fourths cent per bushel for corn and
15 three-fourths cent per hundredweight for grain sorghum. For any
16 sale or delivery of corn or grain sorghum occurring on or after
17 January 1, 2000, and before January 1, 2001, the tax is one-half
18 cent per bushel for corn and one-half cent per hundredweight for
19 grain sorghum. For any sale or delivery of corn or grain sorghum
20 occurring on or after October 1, 2001, and before October 1, 2004,
21 the tax is one-half cent per bushel for corn and one-half cent per
22 hundredweight for grain sorghum. For any sale or delivery of corn
23 or grain sorghum occurring on or after October 1, 2004, and before
24 October 1, 2005, the tax is three-fourths cent per bushel for corn
25 and three-fourths cent per hundredweight for grain sorghum. For any

1 sale or delivery of corn or grain sorghum occurring on or after
2 October 1, 2005, and before ~~October 1, 2012,~~ July 1, 2009, the tax
3 is seven-eighths cent per bushel for corn and seven-eighths cent
4 per hundredweight for grain sorghum. ~~For any sale or delivery of~~
5 ~~corn or grain sorghum occurring on or after October 1, 2012,~~ and
6 ~~before October 1, 2019,~~ the tax is three-fifths cent per bushel for
7 ~~corn and three-fifths cent per hundredweight for grain sorghum.~~ The
8 tax shall be in addition to any fee imposed pursuant to sections
9 2-3623 and 2-4012.

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

17 In the case of a pledge or mortgage of corn or grain
18 sorghum as security for a loan under the federal price support
19 program, the excise tax shall be deducted from the proceeds of such
20 loan at the time the loan is made. If, within the life of the loan
21 plus thirty days after the collection of the excise tax for corn
22 or grain sorghum that is mortgaged as security for a loan under
23 the federal price support program, the grower of the corn or grain
24 sorghum so mortgaged decides to purchase the corn or grain sorghum
25 and use it as feed, the grower shall be entitled to a refund of

1 the excise tax previously paid. The refund shall be payable by the
2 department upon the grower's written application for a refund. The
3 application shall have attached proof of the tax deducted.

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

11 Sec. 5. Section 66-1345.02, Revised Statutes Supplement,
12 2007, is amended to read:

13 66-1345.02 (1) The first purchaser, at the time of sale
14 or delivery, shall retain the excise tax as provided in section
15 66-1345.01 and shall maintain the necessary records of the excise
16 tax for each sale or delivery of corn or grain sorghum. Records
17 maintained by the first purchaser shall provide (a) the name and
18 address of the seller or deliverer, (b) the date of the sale or
19 delivery, (c) the number of bushels of corn or hundredweight of
20 grain sorghum sold or delivered, and (d) the amount of excise
21 tax retained on each sale or delivery. The records shall be open
22 for inspection and audit by authorized representatives of the
23 Department of Agriculture during normal business hours observed by
24 the first purchaser.

25 (2) The first purchaser shall render and have on file

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

7 (3) The department shall remit the excise tax collected
8 to the State Treasurer for credit to the Ethanol Production
9 Incentive Cash Fund within thirty days after the end of each
10 quarter through ~~December 31, 2012. Beginning January 1, 2013,~~
11 ~~the department shall remit the excise tax collected to the State~~
12 ~~Treasurer for credit to the Water Resources Cash Fund within thirty~~
13 ~~days after the end of each quarter. June 30, 2009.~~

14 (4) The department shall calculate its costs in
15 collecting and enforcing the excise tax imposed by section
16 66-1345.01 and shall report such costs to the budget division of
17 the Department of Administrative Services within thirty days after
18 the end of the fiscal year. Sufficient funds to cover such costs
19 shall be transferred from the Ethanol Production Incentive Cash
20 Fund to the Management Services Expense Revolving Fund at the end
21 of each calendar month, with such transfers ending June 30, 2009.
22 ~~December 31, 2012. Beginning January 1, 2013, the Department of~~
23 ~~Agriculture shall calculate its costs in collecting and enforcing~~
24 ~~the excise tax imposed by section 66-1345.01 and shall report such~~
25 ~~costs to the budget division of the Department of Administrative~~

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

8 Sec. 6. Original sections 61-218, 66-1345, 66-1345.01,
9 and 66-1345.02, Revised Statutes Supplement, 2007, are repealed.