

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 689

FINAL READING

Introduced by Langemeier, 23; Dubas, 34; Sullivan, 41.

Read first time January 06, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the ethanol excise tax; to amend
2 sections 66-1345, 66-1345.01, and 66-1345.02, Reissue
3 Revised Statutes of Nebraska, and section 61-218, Revised
4 Statutes Cumulative Supplement, 2008, as amended by
5 section 39, Legislative Bill 3, One Hundred First
6 Legislature, First Special Session, 2009; to change
7 provisions relating to the collection and remittance
8 of the excise tax; to harmonize provisions; and to repeal
9 the original sections.

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

1 Section 1. Section 61-218, Revised Statutes Cumulative
2 Supplement, 2008, as amended by section 39, Legislative Bill 3, One
3 Hundred First Legislature, First Special Session, 2009, is amended
4 to read:

5 61-218 (1) The Water Resources Cash Fund is created. The
6 fund shall be administered by the Department of Natural Resources.
7 Transfers may be made from the fund to the General Fund at the
8 direction of the Legislature. Any money in the Water Resources
9 Cash Fund available for investment shall be invested by the state
10 investment officer pursuant to the Nebraska Capital Expansion Act
11 and the Nebraska State Funds Investment Act.

12 (2) The State Treasurer shall credit to the fund such
13 money as is (a) transferred to the fund by the Legislature, (b)
14 paid to the state as fees, deposits, payments, and repayments
15 relating to the fund, both principal and interest, (c) donated as
16 gifts, bequests, or other contributions to such fund from public
17 or private entities, and (d) made available by any department or
18 agency of the United States if so directed by such department or
19 agency, ~~and (e) credited to the fund from the excise taxes imposed~~
20 ~~by section 66-1345.01 beginning January 1, 2013.~~

21 (3) The fund shall be expended by the department (a)
22 to aid management actions taken to reduce consumptive uses of
23 water in river basins, subbasins, or reaches which are deemed
24 by the department overappropriated pursuant to section 46-713 or
25 fully appropriated pursuant to section 46-714 or are bound by

1 an interstate compact or decree or a formal state contract or
2 agreement and (b) to the extent funds are not expended pursuant to
3 subdivision (a) of this subsection, the department may conduct a
4 statewide assessment of short-term and long-term water management
5 activities and funding needs to meet statutory requirements in
6 sections 46-713 to 46-718 and 46-739 and any requirements of an
7 interstate compact or decree or formal state contract or agreement.
8 The fund shall not be used to pay for administrative expenses or
9 any salaries for the department or any political subdivision.

10 (4) It is the intent of the Legislature that two million
11 seven hundred thousand dollars be transferred each fiscal year from
12 the General Fund to the Water Resources Cash Fund for FY2009-10
13 through FY2018-19.

14 (5) (a) Expenditures from the Water Resources Cash
15 Fund may be made to natural resources districts eligible under
16 subsection (3) of this section for activities to either achieve a
17 sustainable balance of consumptive water uses or assure compliance
18 with an interstate compact or decree or a formal state contract
19 or agreement and shall require a match of local funding in an
20 amount equal to or greater than forty percent of the total cost
21 of carrying out the eligible activity. The department shall, no
22 later than August 1 of each year, beginning in 2007, determine the
23 amount of funding that will be made available to natural resources
24 districts from the Water Resources Cash Fund and notify natural
25 resources districts of this determination. The department shall

1 adopt and promulgate rules and regulations governing application
2 for and use of the Water Resources Cash Fund by natural resources
3 districts. Such rules and regulations shall, at a minimum, include
4 the following components:

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

10 (ii) A schedule of implementation of the activity or its
11 components.

12 (b) Any natural resources district that fails to
13 implement and enforce its controls, rules, and regulations as
14 required by section 46-715 shall not be eligible for funding
15 from the Water Resources Cash Fund until it is determined by the
16 department that compliance with the provisions required by section
17 46-715 has been established.

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

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

25 (b) Details regarding the use and cost of activities

1 carried out by each natural resources district that received funds
2 from the Water Resources Cash Fund.

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

5 66-1345 (1) There is hereby created the Ethanol
6 Production Incentive Cash Fund which shall be used by the board
7 to pay the credits created in section 66-1344 to the extent
8 provided in this section. Any money in the fund available for
9 investment shall be invested by the state investment officer
10 pursuant to the Nebraska Capital Expansion Act and the Nebraska
11 State Funds Investment Act. The State Treasurer shall transfer to
12 the Ethanol Production Incentive Cash Fund such money as shall be
13 (a) appropriated to the Ethanol Production Incentive Cash Fund by
14 the Legislature, (b) given as gifts, bequests, grants, or other
15 contributions to the Ethanol Production Incentive Cash Fund from
16 public or private sources, (c) made available due to failure to
17 fulfill conditional requirements pursuant to investment agreements
18 entered into prior to April 30, 1992, (d) received as return on
19 investment of the Ethanol Authority and Development Cash Fund, (e)
20 credited to the Ethanol Production Incentive Cash Fund from the
21 excise taxes imposed by section 66-1345.01 through December 31,
22 2012, and (f) credited to the Ethanol Production Incentive Cash
23 Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519.

24 (2) The Department of Revenue shall, at the end of each
25 calendar month, notify the State Treasurer of the amount of motor

1 fuel tax that was not collected in the preceding calendar month
2 due to the credits provided in section 66-1344. The State Treasurer
3 shall transfer from the Ethanol Production Incentive Cash Fund to
4 the Highway Trust Fund an amount equal to such credits less the
5 following amounts:

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

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

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

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

16 For 1993 through 1997, if the amount generated pursuant
17 to subdivisions (a), (b), and (c) of this subsection and the
18 amount transferred pursuant to subsection (1) of this section are
19 not sufficient to fund the credits provided in section 66-1344,
20 then the credits shall be funded through the Ethanol Production
21 Incentive Cash Fund but shall not be funded through either the
22 Highway Cash Fund or the Highway Trust Fund. For 1998 and each year
23 thereafter, the credits provided in such section shall be funded
24 through the Ethanol Production Incentive Cash Fund but shall not be
25 funded through either the Highway Cash Fund or the Highway Trust

1 Fund.

2 If, during any month, the amount of money in the Ethanol
3 Production Incentive Cash Fund is not sufficient to reimburse the
4 Highway Trust Fund for credits earned pursuant to section 66-1344,
5 the Department of Revenue shall suspend the transfer of credits by
6 ethanol producers until such time as additional funds are available
7 in the Ethanol Production Incentive Cash Fund for transfer to the
8 Highway Trust Fund. Thereafter, the Department of Revenue shall, at
9 the end of each month, allow transfer of accumulated credits earned
10 by each ethanol producer on a prorated basis derived by dividing
11 the amount in the fund by the aggregate amount of accumulated
12 credits earned by all ethanol producers.

13 (3) The State Treasurer shall transfer from the Ethanol
14 Production Incentive Cash Fund to the Management Services Expense
15 Revolving Fund the amount reported under subsection (4) of section
16 66-1345.02 for each calendar month of the fiscal year as provided
17 in such subsection.

18 (4) On December 31, 2012, the State Treasurer shall
19 transfer one-half of the unexpended and unobligated funds,
20 including all subsequent investment interest, from the Ethanol
21 Production Incentive Cash Fund to the ~~Water Resources Cash Fund.~~
22 Nebraska Corn Development, Utilization, and Marketing Fund and
23 the Grain Sorghum Development, Utilization, and Marketing Fund
24 in the same proportion as funds were collected pursuant to
25 section 66-1345.01 from corn and grain sorghum. The Department of

1 Agriculture shall assist the State Treasurer in determining the
2 amounts to be transferred to the funds. The State Treasurer shall
3 transfer the remaining one-half of the unexpended and unobligated
4 funds to the General Fund.

5 (5) Whenever the unobligated balance in the Ethanol
6 Production Incentive Cash Fund exceeds twenty million dollars, the
7 Department of Revenue shall notify the Department of Agriculture at
8 which time the Department of Agriculture shall suspend collection
9 of the excise tax levied pursuant to section 66-1345.01. If, after
10 suspension of the collection of such excise tax, the balance of
11 the fund falls below ten million dollars, the Department of Revenue
12 shall notify the Department of Agriculture which shall resume
13 collection of the excise tax.

14 (6) On or before December 1, 2003, and each December
15 1 thereafter, the Department of Revenue and the Nebraska Ethanol
16 Board shall jointly submit a report to the Legislature which shall
17 project the anticipated revenue and expenditures from the Ethanol
18 Production Incentive Cash Fund through the termination of the
19 ethanol production incentive programs pursuant to section 66-1344.
20 The initial report shall include a projection of the amount
21 of ethanol production for which the Department of Revenue has
22 entered agreements to provide ethanol production credits pursuant
23 to section 66-1344.01 and any additional ethanol production which
24 the Department of Revenue and the Nebraska Ethanol Board reasonably
25 anticipate may qualify for credits pursuant to section 66-1344.

1 Sec. 3. Section 66-1345.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 66-1345.01 An excise tax is levied upon all corn and
4 grain sorghum sold through commercial channels in Nebraska or
5 delivered in Nebraska. For any sale or delivery of corn or grain
6 sorghum occurring on or after July 1, 1995, and before January
7 1, 2000, the tax is three-fourths cent per bushel for corn and
8 three-fourths cent per hundredweight for grain sorghum. For any
9 sale or delivery of corn or grain sorghum occurring on or after
10 January 1, 2000, and before January 1, 2001, the tax is one-half
11 cent per bushel for corn and one-half cent per hundredweight for
12 grain sorghum. For any sale or delivery of corn or grain sorghum
13 occurring on or after October 1, 2001, and before October 1, 2004,
14 the tax is one-half cent per bushel for corn and one-half cent per
15 hundredweight for grain sorghum. For any sale or delivery of corn
16 or grain sorghum occurring on or after October 1, 2004, and before
17 October 1, 2005, the tax is three-fourths cent per bushel for
18 corn and three-fourths cent per hundredweight for grain sorghum.
19 For any sale or delivery of corn or grain sorghum occurring on
20 or after October 1, 2005, and before October 1, 2012, the tax is
21 seven-eighths cent per bushel for corn and seven-eighths cent per
22 hundredweight for grain sorghum. ~~For any sale or delivery of corn~~
23 ~~or grain sorghum occurring on or after October 1, 2012, and before~~
24 ~~October 1, 2019, the tax is three-fifths cent per bushel for corn~~
25 ~~and three-fifths cent per hundredweight for grain sorghum.~~ The tax

1 shall be in addition to any fee imposed pursuant to sections 2-3623
2 and 2-4012.

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

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

22 The excise tax shall be deducted whether the corn or
23 grain sorghum is stored in this or any other state. The excise
24 tax shall not apply to the sale of corn or grain sorghum to the
25 federal government for ultimate use or consumption by the people

1 of the United States when the State of Nebraska is prohibited from
2 imposing such tax by the Constitution of the United States and laws
3 enacted pursuant thereto.

4 Sec. 4. Section 66-1345.02, Reissue Revised Statutes of
5 Nebraska, is amended to read:

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

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

25 (3) The department shall remit the excise tax collected

1 to the State Treasurer for credit to the Ethanol Production
2 Incentive Cash Fund within thirty days after the end of each
3 quarter, through December 31, 2012. Beginning January 1, 2013,
4 the department shall remit the excise tax collected to the State
5 Treasurer for credit to the Water Resources Cash Fund within thirty
6 days after the end of each quarter.

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

1 Sec. 5. Original sections 66-1345, 66-1345.01, and
2 66-1345.02, Reissue Revised Statutes of Nebraska, and section
3 61-218, Revised Statutes Cumulative Supplement, 2008, as amended
4 by section 39, Legislative Bill 3, One Hundred First Legislature,
5 First Special Session, 2009, are repealed.