

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
FIRST SPECIAL SESSION

LEGISLATIVE BILL 9

Introduced by Langemeier, 23.

Read first time November 05, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Water Resources Cash Fund;
2 to amend sections 61-218, 66-1345, and 66-1345.02,
3 Revised Statutes Cumulative Supplement, 2008; to change
4 provisions relating to remittance of excise tax;
5 to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 61-218, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 61-218 (1) The Water Resources Cash Fund is created. The
4 fund shall be administered by the Department of Natural Resources.
5 Any money in the fund available for investment shall be invested
6 by the state investment officer pursuant to the Nebraska Capital
7 Expansion Act and the Nebraska State Funds Investment Act.

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

17 (3) The fund shall be expended by the department (a)
18 to aid management actions taken to reduce consumptive uses of
19 water in river basins, subbasins, or reaches which are deemed
20 by the department overappropriated pursuant to section 46-713 or
21 fully appropriated pursuant to section 46-714 or are bound by
22 an interstate compact or decree or a formal state contract or
23 agreement and (b) to the extent funds are not expended pursuant to
24 subdivision (a) of this subsection, the department may conduct a
25 statewide assessment of short-term and long-term water management

1 activities and funding needs to meet statutory requirements in
2 sections 46-713 to 46-718 and 46-739 and any requirements of an
3 interstate compact or decree or formal state contract or agreement.
4 The fund shall not be used to pay for administrative expenses or
5 any salaries for the department or any political subdivision.

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

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

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

6 (ii) A schedule of implementation of the activity or its
7 components.

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

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

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

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

24 Sec. 2. Section 66-1345, Revised Statutes Cumulative
25 Supplement, 2008, is amended to read:

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

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

1 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 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 and each year thereafter, no reduction.

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

23 If, during any month, the amount of money in the Ethanol
24 Production Incentive Cash Fund is not sufficient to reimburse the
25 Highway Trust Fund for credits earned pursuant to section 66-1344,

1 the Department of Revenue shall suspend the transfer of credits by
2 ethanol producers until such time as additional funds are available
3 in the Ethanol Production Incentive Cash Fund for transfer to the
4 Highway Trust Fund. Thereafter, the Department of Revenue shall, at
5 the end of each month, allow transfer of accumulated credits earned
6 by each ethanol producer on a prorated basis derived by dividing
7 the amount in the fund by the aggregate amount of accumulated
8 credits earned by all ethanol producers.

9 (3) The State Treasurer shall transfer from the Ethanol
10 Production Incentive Cash Fund to the Management Services Expense
11 Revolving Fund the amount reported under subsection (4) of section
12 66-1345.02 for each calendar month of the fiscal year as provided
13 in such subsection.

14 ~~(4) On December 31, 2012, the State Treasurer shall~~
15 ~~transfer the unexpended and unobligated funds, including all~~
16 ~~subsequent investment interest, from the Ethanol Production~~
17 ~~Incentive Cash Fund to the Water Resources Cash Fund.~~

18 ~~(5)~~ (4) Whenever the unobligated balance in the Ethanol
19 Production Incentive Cash Fund exceeds twenty million dollars, the
20 Department of Revenue shall notify the Department of Agriculture at
21 which time the Department of Agriculture shall suspend collection
22 of the excise tax levied pursuant to section 66-1345.01. If, after
23 suspension of the collection of such excise tax, the balance of
24 the fund falls below ten million dollars, the Department of Revenue
25 shall notify the Department of Agriculture which shall resume

1 collection of the excise tax.

2 ~~(6)~~ (5) On or before December 1, 2003, and each December
3 1 thereafter, the Department of Revenue and the Nebraska Ethanol
4 Board shall jointly submit a report to the Legislature which shall
5 project the anticipated revenue and expenditures from the Ethanol
6 Production Incentive Cash Fund through the termination of the
7 ethanol production incentive programs pursuant to section 66-1344.
8 The initial report shall include a projection of the amount
9 of ethanol production for which the Department of Revenue has
10 entered agreements to provide ethanol production credits pursuant
11 to section 66-1344.01 and any additional ethanol production which
12 the Department of Revenue and the Nebraska Ethanol Board reasonably
13 anticipate may qualify for credits pursuant to section 66-1344.

14 Sec. 3. Section 66-1345.02, Revised Statutes Cumulative
15 Supplement, 2008, is amended to read:

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

1 Department of Agriculture during normal business hours observed by
2 the first purchaser.

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

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

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

1 shall calculate its costs in collecting and enforcing the excise
2 tax imposed by section 66-1345.01 and shall report such costs to
3 the budget division of the Department of Administrative Services
4 within thirty days after the end of the fiscal year. Sufficient
5 funds to cover such costs shall be transferred from the Water
6 Resources Cash Fund to the Management Services Expense Revolving
7 Fund at the end of each calendar month. Funds shall be transferred
8 upon the receipt of a report of costs incurred by the Department of
9 Agriculture for the previous calendar month by the budget division
10 of the Department of Administrative Services.

11 Sec. 4. Original sections 61-218, 66-1345, and
12 66-1345.02, Revised Statutes Cumulative Supplement, 2008, are
13 repealed.