

LEGISLATIVE BILL 1

Approved by the Governor March 07, 2017

Introduced by Executive Board: Watermeier, 1, Chairperson.

A BILL FOR AN ACT relating to ethanol; to amend section 66-1333, Reissue Revised Statutes of Nebraska, and section 66-1345, Revised Statutes Cumulative Supplement, 2016; to eliminate defined terms; to repeal obsolete provisions relating to the Ethanol Production Incentive Cash Fund and a corn and grain sorghum excise tax; to eliminate a penalty; to repeal the original sections; and to outright repeal section 66-1345.03, Reissue Revised Statutes of Nebraska, and sections 66-1345.01, 66-1345.02, and 66-1345.04, Revised Statutes Cumulative Supplement, 2016.

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

Section 1. Section 66-1333, Reissue Revised Statutes of Nebraska, is amended to read:

66-1333 For purposes of the Ethanol Development Act, unless the context otherwise requires:

(1) Agricultural production facility or ethanol facility means a plant or facility related to the processing, marketing, or distribution of any products derived from grain components, coproducts, or byproducts;

(2) Board means the Nebraska Ethanol Board;

~~(3) Commercial channels means the sale of corn or grain sorghum for any use, to any commercial buyer, dealer, processor, cooperative, or person, public or private, who resells any corn or grain sorghum or product produced from corn or grain sorghum;~~

~~(4) Corn means corn as defined in section 2-3610;~~

~~(5) Delivered or delivery means receiving corn or grain sorghum for any use other than storage;~~

~~(6) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring corn or grain sorghum in Nebraska, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of the corn or grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;~~

~~(3 7) Grain means wheat, corn, and grain sorghum;~~

~~(8) Grower means any landowner personally engaged in growing corn or grain sorghum, a tenant of the landowner personally engaged in growing corn or grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement;~~

~~(4 9) Name plate design capacity means the original designed capacity of an agricultural production facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year; and~~

~~(5 10) Related parties means any two or more individuals, firms, partnerships, limited liability companies, companies, agencies, associations, or corporations which are members of the same unitary group or are any persons who are considered to be related persons under the Internal Revenue Code; and~~

~~(11) Sale includes any pledge or mortgage of corn or grain sorghum after harvest to any person, public or private.~~

Sec. 2. Section 66-1345, Revised Statutes Cumulative Supplement, 2016, is amended to read:

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

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

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

66-6,107;

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

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

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

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

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

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

~~(4) On December 31, 2012, the State Treasurer shall transfer one-half of the unexpended and unobligated funds, including all subsequent investment interest, from the Ethanol Production Incentive Cash Fund to the Nebraska Corn Development, Utilization, and Marketing Fund and the Grain Sorghum Development, Utilization, and Marketing Fund in the same proportion as funds were collected pursuant to section 66-1345.01 from corn and grain sorghum. The Department of Agriculture shall assist the State Treasurer in determining the amounts to be transferred to the funds. The State Treasurer shall transfer the remaining one-half of the unexpended and unobligated funds to the General Fund.~~

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

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

Sec. 3. Original section 66-1333, Reissue Revised Statutes of Nebraska, and section 66-1345, Revised Statutes Cumulative Supplement, 2016, are repealed.

Sec. 4. The following sections are outright repealed: Section 66-1345.03, Reissue Revised Statutes of Nebraska, and sections 66-1345.01, 66-1345.02, and 66-1345.04, Revised Statutes Cumulative Supplement, 2016.