

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1019

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 economic development and finance and to the agricultural products utilization commission for
3 grants; to provide for transfers of funds; to authorize a mutual fund capital pool; to amend and
4 reenact sections 4-14.1-03.1, 4-14.1-07, and 57-43.1-03.1 of the North Dakota Century Code,
5 relating to grant repayments and ethanol plant production incentives for fuel used for
6 agricultural purposes; to provide for a legislative council study; to provide legislative intent; and
7 to provide an effective date.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the
10 funds as may be necessary, are hereby appropriated out of any moneys in the general fund in
11 the state treasury, not otherwise appropriated, and from special funds derived from federal
12 funds and other income, to the department of economic development and finance for the
13 purpose of defraying its expenses, for the biennium beginning July 1, 1999, and ending
14 June 30, 2001, as follows:

15 Salaries and wages	\$2,798,086
16 Operating expenses	2,158,447
17 Equipment	96,358
18 Grants	2,308,061
19 North Dakota development fund	550,000
20 Agricultural products utilization	<u>4,535,911</u>
21 Total all funds	\$12,446,863
22 Less estimated income	<u>4,293,075</u>
23 Total general fund appropriation	\$8,153,788

1 **SECTION 2. APPROPRIATION.** There is hereby appropriated out of any moneys in
2 the agricultural fuel tax fund in the state treasury, not otherwise appropriated, the sum of
3 \$100,000, or so much of the sum as may be necessary, to the agricultural products utilization
4 commission for the purpose of obtaining assistance in resolving beef industry trade issues, for
5 the biennium beginning July 1, 1999, and ending June 30, 2001. Notwithstanding any other
6 provisions of law, the agricultural products utilization commission may use these funds to obtain
7 the assistance of the ranchers and cattlemen action legal foundation.

8 **SECTION 3. APPROPRIATION - EMERGENCY COMMISSION APPROVAL.** All
9 income received in excess of the amounts appropriated in section 1 of this Act relating to
10 agricultural products utilization commission activities is hereby appropriated to the agricultural
11 products utilization commission for research, marketing, and utilization grants for the biennium
12 beginning July 1, 1999, and ending June 30, 2001. Any funds received require the approval of
13 the emergency commission before they may be expended.

14 **SECTION 4. AGRICULTURAL FUEL TAX FUND.** The estimated income line item in
15 section 1 of this Act includes \$995,046 from the agricultural fuel tax fund for the biennium
16 beginning July 1, 1999, and ending June 30, 2001.

17 **SECTION 5. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION**
18 **INCENTIVES - INFORMATION FILED WITH BUDGET SECTION - CONTINGENT**
19 **TRANSFER.** The estimated income line item in section 1 of this Act includes \$2,207,000, or so
20 much of the amount as may be necessary, from the highway tax distribution fund for the
21 ethanol production incentive program. Of this amount, \$2,200,000 is for the purpose of
22 providing production incentives and \$7,000 is for audits of the use of these funds for the
23 biennium beginning July 1, 1999, and ending June 30, 2001. Distribution from the
24 appropriation in section 1 of this Act to the producers of agriculturally-derived fuel must be at
25 the rate of ten cents for each gallon of up to 5,000,000 gallons, seven cents for each gallon
26 from 5,000,001 to 10,000,000 gallons, and five cents for each gallon from 10,000,001 to
27 15,000,000 gallons of agriculturally-derived fuel produced each fiscal year in the state which is
28 marketed by the producing plant to a distributor or wholesaler for sale within North Dakota. For
29 purposes of this section, "gallon of agriculturally-derived fuel" means a gallon [3.79 liters] of fuel
30 that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a
31 denaturant has been added. Payment to the producing plant must be approved by the

1 agricultural products utilization commission upon presentation by the plant of an affidavit to the
2 effect that the ethanol sold from the plant and for which the producer's credit is being sought is
3 to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol
4 must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Within
5 ninety days after the end of each fiscal year of the ethanol plant beginning after December 31,
6 1992, any North Dakota ethanol plant receiving production incentives from the state shall file
7 with the budget section of the legislative council a statement, certified by a certified public
8 accountant, as to whether the plant produced a profit from its operation in the preceding fiscal
9 year, after deducting the payments received from this incentive program. If, at the end of each
10 fiscal year, funding appropriated for the ethanol incentive payments is not spent, the director of
11 the office of management and budget shall transfer from the highway tax distribution fund the
12 amount of unspent funds deposited into the fund pursuant to provisions of section 57-43.1-03.1
13 to the agricultural fuel tax fund for the agricultural products utilization commission for the
14 purpose of providing grants as provided by law.

15 **SECTION 6. EXEMPTION.** The funds appropriated in the agricultural products
16 utilization line item in section 1 of this Act are not subject to section 54-44.1-11 and any
17 unexpended funds from this line item relating to grants awarded may be available for continued
18 payment of grant awarded but not paid during the biennium beginning July 1, 1999, and ending
19 June 30, 2001.

20 **SECTION 7. LEGISLATIVE INTENT - ETHANOL INCENTIVE PAYMENTS.** It is the
21 intent of the legislative assembly that of the appropriation of \$2,200,000 contained in section 1
22 of this Act for ethanol incentives, a maximum of \$1,100,000 may be paid annually to the
23 producers of agriculturally-derived fuel during the 1999-2001 biennium. For purposes of this
24 section "agriculturally-derived fuel" means fuel that qualifies for the alcohol credit under
25 26 U.S.C. 40, specifically including fuel to which a denaturant has been added.

26 **SECTION 8. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS.** The
27 \$550,000 transferred to the North Dakota development fund must be dedicated for projects as
28 follows: forty percent businesses in rural areas, forty percent businesses in urban areas, and
29 twenty percent North Dakota American Indian businesses. Any unused funds in any category
30 may be transferred to another category during the second year of the biennium under rules
31 adopted by the director of the department of economic development and finance. The director

1 of the department of economic development and finance may reallocate up to twenty percent of
2 any region's available remaining balance of regional rural development revolving loan funds to
3 another region or regions for the biennium beginning July 1, 1999, and ending June 30, 2001.
4 Of the amount available in the North Dakota development fund, \$4,000,000 or the unobligated
5 balance on July 1, 1999, relating to the transfer of regional rural development revolving loan
6 fund moneys, must continue to be dedicated for the purpose of providing financial assistance,
7 research and development assistance, and loans or equity or debt financing on a matching
8 basis to new or expanded primary sector businesses in areas of the state that are not within
9 five miles [8.05 kilometers] of any city with a population of more than eight thousand. These
10 funds must be allocated for the benefit of each of the areas delineated as regions by executive
11 order of the governor pursuant to section 54-40.1-02.

12 **SECTION 9. ECONOMIC DEVELOPMENT FUNDS - WAGE REQUIREMENTS.** Any
13 political subdivision or economic development authority may adopt a minimum wage
14 requirement for any new business or business expansion in which a majority of the capital is
15 provided by the North Dakota development fund and its own local development funds. These
16 wage requirements may be imposed on all or any portion of the employees and may exceed
17 federal minimum wage requirements.

18 **SECTION 10. AMENDMENT.** Section 4-14.1-03.1 of the 1997 Supplement to the
19 North Dakota Century Code is amended and reenacted as follows:

20 **4-14.1-03.1. Agricultural products utilization commission - Authority.** The North
21 Dakota agricultural products utilization commission may apply for, accept, and expend any
22 appropriation, grant, gift, or service made available from public or private sources consistent
23 with the purpose of this chapter. The commission may administer grant programs consistent
24 with the purpose of this chapter including a basic and applied research grant program,
25 utilization and marketing grant program, cooperative marketing grant program, farm
26 diversification grant program, agricultural prototype development grant program, and a North
27 American marketing grant program. The commission may require, by contract, repayment of a
28 grant, in whole or in part, if the grant recipient does not fulfill the conditions under which the
29 grant was awarded.

30 **SECTION 11. AMENDMENT.** Section 4-14.1-07 of the 1997 Supplement to the North
31 Dakota Century Code is amended and reenacted as follows:

1 **4-14.1-07. Duration and limitation of ethanol plant production incentives.**

2 Notwithstanding any other provision of law, an ethanol plant may not receive production
3 incentives except as permitted under this section.

4 4- An ethanol plant that was in operation before July 1, 1995, may not receive
5 production incentives in the form of direct payments from the state for more than
6 five ~~twelve~~ fiscal years of operation after June 30, 1995. An ethanol plant that
7 begins operation after June 30, 1995, may not receive production incentives in the
8 form of direct payments from the state for more than ~~ten~~ twelve fiscal years of
9 operation. After December 31, ~~2007~~ 2009, the state may not provide production
10 incentives in the form of direct payments to any ethanol plant.

11 ~~2- An ethanol plant that was in operation before July 1, 1995, and which produced~~
12 ~~fewer than fifteen million gallons [56784000 liters] of ethanol in the previous fiscal~~
13 ~~year may receive up to one million dollars in production incentives from the state~~
14 ~~for production in a fiscal year. An ethanol plant that was in operation before July 1,~~
15 ~~1995, and which produced fifteen million gallons [56784000 liters] or more of~~
16 ~~ethanol in the previous fiscal year and an ethanol plant that begins operation after~~
17 ~~June 30, 1995, are each eligible to receive an equal share in up to five hundred~~
18 ~~thousand dollars in production incentives from the state for production in a fiscal~~
19 ~~year.~~

20 **SECTION 12. MUTUAL FUND CAPITAL POOL - AUTHORIZATION.** The department
21 of economic development and finance, in conjunction with the agricultural products utilization
22 commission, may establish a mutual fund capital pool to attract farm and nonfarm investments
23 in value-added processing projects.

24 **SECTION 13. AMENDMENT.** Section 57-43.1-03.1 of the 1997 Supplement to the
25 North Dakota Century Code is amended and reenacted as follows:

26 **57-43.1-03.1. (Effective until December 31, 1999 2001) Refund of tax for fuel used**
27 **for agricultural purposes - Reductions.** Any consumer who buys or uses any motor vehicle
28 fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a
29 claim with the commissioner for a refund under this chapter. The amount of the tax refund
30 under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels
31 used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon

1 [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, one
2 cent per gallon [3.79 liters] withheld from the refund must be retained in the highway tax
3 distribution fund, and four cents per gallon [3.79 liters] withheld from the refund must be
4 deposited in the agricultural research fund.

5 **(Effective January 1, ~~2000~~ 2002) Refund of tax for fuel used for agricultural**
6 **purposes - Reductions.** Any consumer who buys or uses any motor vehicle fuel for an
7 agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the
8 commissioner for a refund under this chapter. The amount of the tax refund under this section
9 must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or
10 with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld
11 from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon
12 [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

13 **SECTION 14. CONTINGENT ETHANOL INCENTIVE PAYMENTS.** In addition to the
14 ethanol incentive payments provided in section 1 of this Act and notwithstanding any other
15 sections of law, there is hereby appropriated \$300,000, or so much of the sum as may be
16 necessary, from the highway tax distribution fund for the biennium beginning July 1, 1999, and
17 ending June 30, 2001, for the purpose of providing production incentives to any ethanol plant
18 that becomes operational after July 1, 1999. An eligible plant shall receive ten cents for each
19 gallon of agriculturally derived fuel as defined in this Act produced in the state which is
20 marketed by the producing plant to a distributor or wholesaler for sale within North Dakota.

21 **SECTION 15. LEGISLATIVE COUNCIL STUDY - ECONOMIC DEVELOPMENT AND**
22 **FINANCE EFFORTS.** The legislative council shall consider studying during the 1999-2000
23 interim the economic development efforts in the state, including the provision of economic
24 development services statewide and the related effectiveness, the potential for the privatization
25 of the department of economic development and finance, and the appropriate location of the
26 North Dakota development fund, including the potential transfer of the fund to the Bank of North
27 Dakota.

28 **SECTION 16. LEGISLATIVE INTENT - GRANTS LINE ITEM.** It is the intent of the
29 legislative assembly that \$150,000 of the grants line item in section 1 of this Act be available for
30 the manufacturing technology partnership.

1 **SECTION 17. LEGISLATIVE INTENT - GRANT ALLOCATION - UNITED STATES**

2 **DEPARTMENT OF AGRICULTURE DESIGNATED CHAMPION COMMUNITIES.** It is the
3 intent of the legislative assembly that \$50,000 of the grants line item in section 1 of this Act be
4 allocated to provide matching funds on a dollar-for-dollar basis to United States department of
5 agriculture designated champion communities for the funding of an economic development
6 coordinator employed by the champion communities to assist in economic development. Local
7 matching funds may be in cash or in-kind contributions.

8 **SECTION 18. EFFECTIVE DATE.** Section 13 of this Act is effective for refund claims
9 for motor vehicle fuel taxes paid after December 31, 1998.