

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1019
(Appropriations Committee)
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of economic development and finance and to the agricultural products utilization commission for grants; to provide for transfers of funds; to authorize a mutual fund capital pool; to create and enact a new subsection to section 54-44.3-20 of the North Dakota Century Code, relating to excepting officers and employees of the department of economic development and finance from the state classified service; to amend and reenact sections 4-14.1-03.1, 4-14.1-07, and 57-43.1-03.1 of the North Dakota Century Code, relating to grant repayments and ethanol plant production incentives for fuel used for agricultural purposes; to provide for a legislative council study; to provide legislative intent; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Salaries and wages	\$2,548,086
Operating expenses	2,158,447
Equipment	96,358
Grants	1,968,061
North Dakota development fund	750,000
Agricultural products utilization	<u>3,985,911</u>
Total all funds	\$11,506,863
Less estimated income	<u>3,693,075</u>
Total general fund appropriation	\$7,813,788

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

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

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

SECTION 5. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION INCENTIVES - INFORMATION FILED WITH BUDGET SECTION - CONTINGENT TRANSFER. The

estimated income line item in section 1 of this Act includes \$1,507,000, or so much of the amount as may be necessary, from the highway tax distribution fund for the ethanol production incentive program. Of this amount, \$1,500,000 is for the purpose of providing production incentives and \$7,000 is for audits of the use of these funds for the biennium beginning July 1, 1999, and ending June 30, 2001. Distribution from the appropriation in section 1 of this Act to the producers of agriculturally-derived fuel must be at the rate of forty cents for each gallon of agriculturally-derived fuel produced in the state which is marketed by the producing plant to a distributor or wholesaler for sale within North Dakota. For purposes of this section, "gallon of agriculturally-derived fuel" means a gallon [3.79 liters] of fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added. Payment to the producing plant must be approved by the agricultural products utilization commission upon presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for which the producer's credit is being sought is to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Within ninety days after the end of each fiscal year of the ethanol plant beginning after December 31, 1992, any North Dakota ethanol plant receiving production incentives from the state shall file with the budget section of the legislative council a statement, certified by a certified public accountant, as to whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program. If, at the end of each fiscal year, funding appropriated for the ethanol incentive payments is not spent, the director of the office of management and budget shall transfer from the highway tax distribution fund the amount of unspent funds deposited into the fund pursuant to provisions of section 57-43.1-03.1 to the agricultural fuel tax fund for the agricultural products utilization commission for the purpose of providing grants as provided by law.

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

SECTION 7. LEGISLATIVE INTENT - ETHANOL INCENTIVE PAYMENTS. It is the intent of the legislative assembly that of the appropriation of \$1,500,000 contained in section 1 of this Act for ethanol incentives, a maximum of \$750,000 may be paid annually to the producers of agriculturally-derived fuel during the 1999-2001 biennium. For purposes of this section "agriculturally-derived fuel" means fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added.

SECTION 8. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS. The \$750,000 transferred to the North Dakota development fund must be dedicated for projects as follows: forty percent businesses in rural areas, forty percent businesses in urban areas, and twenty percent North Dakota American Indian businesses. Any unused funds in any category may be transferred to another category during the second year of the biennium under rules adopted by the director of the department of economic development and finance. The director of the department of economic development and finance may reallocate up to twenty percent of any region's available remaining balance of regional rural development revolving loan funds to another region or regions for the biennium beginning July 1, 1999, and ending June 30, 2001. Of the amount available in the North Dakota development fund, \$4,000,000 or the unobligated balance on July 1, 1999, relating to the transfer of regional rural development revolving loan fund moneys, must continue to be dedicated for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanded primary sector businesses in areas of the state that are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. These funds must be allocated for the benefit of each of the areas delineated as regions by executive order of the governor pursuant to section 54-40.1-02.

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

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

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

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

4-14.1-07. Duration and limitation of ethanol plant production incentives. Notwithstanding any other provision of law, an ethanol plant may not receive production incentives except as permitted under this section.

1. An ethanol plant that was in operation before July 1, 1995, may not receive production incentives in the form of direct payments from the state for more than ~~five~~ twelve fiscal years of operation after June 30, 1995. An ethanol plant that begins operation after June 30, 1995, may not receive production incentives in the form of direct payments from the state for more than ~~ten~~ twelve fiscal years of operation. After December 31, ~~2007~~ 2009, the state may not provide production incentives in the form of direct payments to any ethanol plant.
2. An ethanol plant that was in operation before July 1, 1995, and which produced fewer than fifteen million gallons [56781000 liters] of ethanol in the previous fiscal year may receive up to ~~one million seven hundred fifty thousand~~ one million dollars in production incentives from the state for production in a fiscal year. ~~An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more of ethanol in the previous fiscal year and an ethanol plant that begins operation after June 30, 1995, are each eligible to receive an equal share in up to five hundred thousand dollars in production incentives from the state for production in a fiscal year.~~

SECTION 12. A new subsection to section 54-44.3-20 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Officers and employees of the department of economic development and finance.

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

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

(Effective January 1, ~~2000~~ 2002) Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft

fuel users. Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

SECTION 14. MUTUAL FUND CAPITAL POOL - AUTHORIZATION. The department of economic development and finance, in conjunction with the agricultural products utilization commission, may establish a mutual fund capital pool to attract farm and nonfarm investments in value-added processing projects.

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

SECTION 16. LEGISLATIVE COUNCIL STUDY - ECONOMIC DEVELOPMENT AND FINANCE EFFORTS. The legislative council shall consider studying during the 1999-2000 interim the economic development efforts in the state, including the provision of economic development services statewide and the related effectiveness, the potential for the privatization of the department of economic development and finance, and the appropriate location of the North Dakota development fund, including the potential transfer of the fund to the Bank of North Dakota.

SECTION 17. LEGISLATIVE INTENT - GRANT ALLOCATION - UNITED STATES DEPARTMENT OF AGRICULTURE DESIGNATED CHAMPION COMMUNITIES. It is the intent of the legislative assembly that \$50,000 of the grants line item in section 1 of this Act be allocated to provide matching funds on a dollar-for-dollar basis to United States department of agriculture designated champion communities for the funding of an economic development coordinator employed by the champion communities to assist in economic development. Local matching funds may be in cash or in-kind contributions.

SECTION 18. LEGISLATIVE INTENT - GRANTS LINE ITEM. It is the intent of the legislative assembly that \$150,000 of the grants line item in section 1 of this Act be available for the manufacturing technology partnership.

SECTION 19. EFFECTIVE DATE. Section 13 of this Act is effective for refund claims for motor vehicle fuel taxes paid after December 31, 1998.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1019.

House Vote: Yeas 85 Nays 9 Absent 4

Senate Vote: Yeas 44 Nays 4 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State