

**SECOND ENGROSSMENT  
with House Amendments**

Fifty-ninth  
Legislative Assembly  
of North Dakota

**REENGROSSED SENATE BILL NO. 2270**

Introduced by

Senators Trenbeath, Espegard, Nething

Representatives Kingsbury, Nelson

1 A BILL for an Act to create and enact sections 4-14.1-07.1 and 4-14.1-07.2 of the North Dakota  
2 Century Code, relating to ethanol plant production incentives; to amend and reenact sections  
3 4-14.1-08 and 4-14.1-10 of the North Dakota Century Code, relating to the ethanol production  
4 incentive fund; and to provide a continuing appropriation.

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

6 **SECTION 1.** Section 4-14.1-07.1 of the North Dakota Century Code is created and  
7 enacted as follows:

8 **4-14.1-07.1. Ethanol plant production incentives - Report to budget section.**

9 1. a. An ethanol plant that was in operation before July 1, 1995, and which has a  
10 production capacity of fewer than fifteen million gallons [56781000 liters] of  
11 ethanol may receive up to nine hundred thousand dollars in production  
12 incentives from the state during the 2005-07 biennium and may receive no  
13 production incentives under this section after the 2005-07 biennium.

14 b. An ethanol plant that was in operation before July 1, 1995, and which  
15 produced fifteen million gallons [56781000 liters] or more in the previous fiscal  
16 year is eligible to receive up to four hundred fifty thousand dollars in  
17 production incentives from the state during the 2005-07 biennium and may  
18 receive no production incentives under this section after the 2005-07  
19 biennium.

20 2. The agricultural products utilization commission shall determine the amount of  
21 production incentives to which a plant is entitled under this section by multiplying  
22 the number of gallons of ethanol produced by the plant and marketed to a  
23 distributor or wholesaler by forty cents. The commission shall forward the  
24 production incentives to the plant upon receipt of an affidavit by the plant indicating

1           that the ethanol is to be sold at retail to consumers. The affidavit must be  
2           accompanied by an affidavit from a wholesaler or retailer indicating that the  
3           ethanol is to be sold at retail to consumers.

4           3. Within ninety days after the conclusion of the plant's fiscal year, the plant shall  
5           submit to the budget section of the legislative council a statement by a certified  
6           public accountant indicating whether the plant produced a profit from its operation  
7           in the preceding fiscal year, after deducting the payments received under this  
8           section.

9           **SECTION 2.** Section 4-14.1-07.2 of the North Dakota Century Code is created and  
10 enacted as follows:

11           **4-14.1-07.2. Ethanol production incentives - Payments for increased production.**

12 If an ethanol plant that was in operation in this state before July 1, 1995, increases its  
13 production by the lesser of ten million gallons [37854000 liters] or fifty percent of its production  
14 capacity during any twelve-month period beginning on or after the effective date of this Act, that  
15 plant is eligible to receive ethanol production incentive payments under section 4-14.1-08 on its  
16 increased production.

17           **SECTION 3. AMENDMENT.** Section 4-14.1-08 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **4-14.1-08. Ethanol production incentive - Calculation - Payment.** The agricultural  
20 products utilization commission shall provide quarterly to each eligible facility a production  
21 incentive based on the average North Dakota price per bushel of corn received by farmers  
22 during the quarter, as established by the North Dakota agricultural statistics service and the  
23 average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as  
24 compiled by ~~the American coalition for ethanol~~ AXXIS petroleum. The amount payable as a  
25 production incentive must be calculated by including the sum arrived at under subsection 1 with  
26 the sum arrived at under subsection 2.

27           1. a. If the average quarterly price per bushel of corn is above one dollar and  
28                   eighty cents, for each one cent by which the quarterly price is above one  
29                   dollar and eighty cents, the agricultural products utilization commission shall  
30                   add to the amount payable under this section one-tenth of one cent times the

- 1                    number of gallons of ethanol produced by the eligible facility during the  
2                    quarter.
- 3                    b. If the average quarterly price per bushel of corn is one dollar and eighty  
4                    cents, the agricultural products utilization commission shall add zero to any  
5                    amount payable under this section.
- 6                    c. If the average quarterly price per bushel of corn is below one dollar and eighty  
7                    cents, for each one cent by which the quarterly price is below one dollar and  
8                    eighty cents, the agricultural products utilization commission shall subtract  
9                    from the amount payable under this section one-tenth of one cent times the  
10                    number of gallons of ethanol produced by the eligible facility during the  
11                    quarter.
- 12                  2. a. If the average quarterly rack price per gallon of ethanol is above one dollar  
13                    and thirty cents, for each one cent by which the average quarterly rack price  
14                    is above one dollar and thirty cents, the agricultural products utilization  
15                    commission shall subtract from the amount payable under this section,  
16                    two-tenths of one cent times the number of gallons of ethanol produced by  
17                    the eligible facility during the quarter.
- 18                    b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty  
19                    cents, the agricultural products utilization commission shall subtract zero from  
20                    any amount payable under this section.
- 21                    c. If the average quarterly rack price per gallon of ethanol is below one dollar  
22                    and thirty cents, for each one cent by which the average quarterly rack price  
23                    is below one dollar and thirty cents, the agricultural products utilization  
24                    commission shall add to the amount payable under this section two-tenths of  
25                    one cent times the number of gallons of ethanol produced by the eligible  
26                    facility during the quarter.

27                  **SECTION 4. AMENDMENT.** Section 4-14.1-10 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29                  **4-14.1-10. Ethanol production incentive fund - Continuing appropriation.** There is  
30 created in the state treasury a special fund known as the ethanol production incentive fund.  
31 The fund consists of transfers made in accordance with section 39-04-39 and deposits made in

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- 1 accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing
- 2 basis to the agricultural products utilization commission for use in paying ethanol production
- 3 incentives under sections ~~4-14.1-07~~ 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, and 4-14.1-09.