

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2350  
(Senators Wanzek, Miller, Triplett)  
(Representatives Brandenburg, Mueller, Vigesaa)

AN ACT to provide for the creation of an ethanol council; to amend and reenact sections 4-24-09 and 4-24-10 of the North Dakota Century Code, relating to the agricultural commodity assessments funds and a report to the legislative assembly; to provide a penalty; and to provide a continuing appropriation.

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

**SECTION 1. Definitions.** As used in sections 1 through 13 of this Act:

1. "Council" means the North Dakota ethanol council.
2. "Producer" means the owner of a facility that is located in this state and which produces annually more than one million gallons of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines.

**SECTION 2. Council - Membership - Election - Term.**

1. The council consists of one individual appointed by each producer.
2. Each member of the council must be a resident of this state and employed by a producer.
3. The term of each member is four years and begins on April first following the members' appointment. The terms must be staggered by the council to ensure that an approximately equal number of appointments expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided by this section, the member's office is deemed vacant and the producer who appointed that member shall appoint another qualified individual for the remainder of the term.
5. A member may not serve more than two consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

**SECTION 3. Election of chairman - Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

**SECTION 4. Council members - Compensation.** Each member of the council is entitled to receive compensation in the amount established by the council, but not exceeding one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

**SECTION 5. Council - Powers.**

1. The council may:

- a. Expend moneys collected pursuant to sections 1 through 13 of this Act for its administration;
  - b. Employ, bond, and compensate necessary personnel;
  - c. Accept gifts, grants, and donations of money, property, and services to carry out sections 1 through 13 of this Act;
  - d. Contract with any person for any purpose permitted under sections 1 through 13 of this Act;
  - e. Sue and be sued; and
  - f. Do all things necessary and proper to enforce and administer sections 1 through 13 of this Act.
2. The council may not engage in a commercial business enterprise.

**SECTION 6. Council - Duties.**

1. The council shall determine the uses to which any moneys raised under sections 1 through 13 of this Act may be expended. The uses may include:
  - a. The funding of research, education programs, promotion, and market development efforts; and
  - b. The support of state, regional, national, and international entities that promote ethanol utilization.
2. The council shall develop and disseminate information regarding the purpose of the ethanol assessment and ways in which the assessment benefits producers.

**SECTION 7. Assessment.** An assessment at the rate of three one-hundredths of one cent per gallon is imposed upon all ethanol produced and sold in this state.

**SECTION 8. Calculation of assessment - Records.**

1. Each producer shall calculate the assessment imposed by section 7 of this Act at the time of sale.
2. Each producer shall keep documents regarding its ethanol production and sales for a period of three years. The producer shall make these records available to the council for examination upon request.
3. No later than thirty days after the conclusion of each calendar quarter, each producer shall file with the council a report stating the quantity of ethanol produced and the quantity sold during the preceding quarter.

**SECTION 9. Submission of assessments - Civil penalty.**

1. Each producer shall forward to the council all assessments imposed by section 7 of this Act within thirty days after the conclusion of each calendar quarter.
2. If a producer fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of twelve percent per annum from the due date.

**SECTION 10. Refund of assessment.**

1. To receive a refund of any assessment paid in accordance with sections 1 through 13 of this Act, a producer shall submit to the council a written request for a refund application within sixty days after the conclusion of each calendar quarter.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the conclusion of each calendar quarter. The council shall then refund the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.

**SECTION 11. Expenditure of funds.** The council shall approve all expenditures made pursuant to sections 1 through 13 of this Act. The expenditures must be recorded as directed by the office of management and budget.

**SECTION 12. Continuing appropriation.** The council shall forward all moneys received under sections 1 through 13 of this Act to the state treasurer for deposit in the ethanol fund. All moneys in the ethanol fund are appropriated on a continuing basis to the council to carry out sections 1 through 13 of this Act.

**SECTION 13. Penalty.** Any person willfully violating sections 1 through 13 of this Act is guilty of a class B misdemeanor.

**SECTION 14. AMENDMENT.** Section 4-24-09 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-09. Agricultural commodity assessments funds - Investment income allocation.** The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, ethanol fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

**SECTION 15. AMENDMENT.** Section 4-24-10 of the North Dakota Century Code is amended and reenacted as follows:

**4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents.** Between the first and tenth legislative day of each regular legislative session, the North Dakota ethanol council, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry bean council, the North Dakota dry pea and lentil council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey

federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2350.

Senate Vote:    Yeas    47        Nays    0        Absent    0

House Vote:    Yeas    86        Nays    2        Absent    6

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State