

# Ethanol Production Incentive

This Act establishes a countercyclical financial incentive for the production of ethanol in any newly constructed ethanol production plants. This Act is based upon a North Dakota law that implemented the first program in the nation to create a market-based support system for the growing ethanol industry.

Submitted as:

North Dakota

SB 2222

Status: Enacted as Chapter 57 in 2003.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Establish Ethanol  
2 Production Incentives.”

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4           Section 2. [*Definition.*] In this Act, "eligible facility" means an ethanol production plant  
5 constructed in this state after [July 31, 2003].

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7           Section 3. [*Ethanol Production Incentive - Calculation and Payment.*] The [agricultural  
8 products utilization commission] shall provide [quarterly] to each eligible facility a production  
9 incentive based on the average [state] price per bushel of corn received by farmers during the  
10 quarter, as established by the state [agricultural statistics service] and the average [state] rack  
11 price per gallon [3.79 liters] of ethanol during the quarter, as compiled by the American  
12 Coalition for Ethanol. The amount payable as a production incentive must be calculated by  
13 including the sum arrived at under subsection 1 of this section with the sum arrived at under  
14 subsection 2.

15           1.     a. If the average quarterly price per bushel of corn is above [one dollar and eighty  
16 cents], for each [one cent] by which the quarterly price is above [one dollar and eighty cents],  
17 the [agricultural products utilization commission] shall add to the amount payable under this  
18 section [one-tenth of one cent] times the number of gallons of ethanol produced by the eligible  
19 facility during the quarter.

20                 b. If the average quarterly price per bushel of corn is [one dollar and eighty  
21 cents], the [agricultural products utilization commission] shall add [zero] to any amount payable  
22 under this section.

23                 c. If the average quarterly price per bushel of corn is below [one dollar and  
24 eighty cents], for each [one cent] by which the quarterly price is below [one dollar and eighty  
25 cents], the [agricultural products utilization commission] shall subtract from the amount payable  
26 under this section [one-tenth of one cent] times the number of gallons of ethanol produced by  
27 the eligible facility during the quarter.

28           2.     a. If the average quarterly rack price per gallon of ethanol is above [one dollar  
29 and thirty cents], for each [one cent] by which the average quarterly rack price is above [one  
30 dollar and thirty cents], the [agricultural products utilization commission] shall subtract from the  
31 amount payable under this section, [two-tenths of one cent] times the number of gallons of  
32 ethanol produced by the eligible facility during the quarter.

33                   b. If the average quarterly rack price per gallon of ethanol is [one dollar and  
34 thirty cents], the [agricultural products utilization commission] shall subtract [zero] from any  
35 amount payable under this section.

36                   c. If the average quarterly rack price per gallon of ethanol is below [one dollar  
37 and thirty cents], for each [one cent] by which the average quarterly rack price is below [one  
38 dollar and thirty cents], the [agricultural products utilization commission] shall add to the  
39 amount payable under this section [two-tenths of one cent] times the number of gallons of  
40 ethanol produced by the eligible facility during the quarter.

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42                   Section 4. [*Subsidy Limitations.*] The [agricultural products utilization commission] may  
43 not distribute more than [one million six hundred thousand dollars] annually in payments under  
44 section 3 of this Act. No eligible facility may receive state ethanol payments that exceed a  
45 cumulative total of [ten million dollars]. Change in ownership of an eligible facility does not  
46 affect the [ten million dollar cumulative total] allowed to be paid to that eligible facility under  
47 this section.

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49                   Section 5. [*Ethanol Production Incentive Fund - Continuing Appropriation.*] There is  
50 created in the [State Treasury] a special fund known as the [Ethanol Production Incentive Fund].  
51 The [Fund] consists of transfers made in accordance with section 7 of this Act and deposits  
52 made in accordance with section 8 of this Act. All money in the [Fund] is appropriated on a  
53 continuing basis to the [agricultural products utilization commission] for use in paying ethanol  
54 production incentives under sections 3 and 4 of this Act and section 6 of this Act.

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56                   Section 6. [*Duration and Limitation of Ethanol Plant Production Incentives.*]

57                   1. An ethanol plant that was in operation before [July 1, 1995], and which has a  
58 production capacity of fewer than [fifteen million gallons (56781000 liters)] of ethanol may  
59 receive up to [six hundred thousand dollars] in production incentives from the state for  
60 production in a fiscal year. An ethanol plant that was in operation before [July 1, 1995], and  
61 which produced [fifteen million (56781000 liters) or more gallons] in the previous fiscal year is  
62 eligible to receive an equal share in up to [three hundred thousand dollars] in production  
63 incentives from the state in a fiscal year.

64                   2. The [agricultural products utilization commission] shall determine the amount of  
65 production incentives to which a plant is entitled under this section by multiplying the number  
66 of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by [forty  
67 cents]. The [commission] shall forward the production incentives to the plant upon receipt of an  
68 affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit  
69 must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is  
70 to be sold at retail to consumers. Within [ninety days] after the conclusion of the plant's fiscal  
71 year, the plant shall submit to the [budget section of the legislative council] a statement by a  
72 certified public accountant indicating whether the plant produced a profit from its operation in  
73 the preceding fiscal year, after deducting the payments received under this section.

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75                   Section 7. [*Distribution of Registration Fees Collected.*] Any money in the [Registration  
76 Fund] accruing from license fees or from other like sources, in excess of the amount required to  
77 pay salaries and other necessary expenses, in accordance with the [legislature's] appropriation  
78 for such purposes, must be promptly deposited in the [Highway Tax Distribution Fund] which  
79 must be distributed in the manner as prescribed by law. The [state treasurer] shall transfer  
80 annually from the [Highway Tax Distribution Fund] to the [Ethanol Production Incentive Fund]  
81 an amount equal to [forty percent] of all sums collected for the registration of farm vehicles

82 under [insert citation] that no transfer may be made in an amount that would result in the  
83 balance of the [Ethanol Production Incentive Fund] exceeding [five million dollars].

84

85 Section 8. [*Refund of Tax for Fuel Used for Agricultural Purposes - Reductions.*] Any  
86 consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the  
87 motor vehicle fuel tax has been paid may file a claim with the [commissioner] for a refund  
88 under [insert citation]. The amount of the tax refund under this section must be reduced by  
89 [seven cents] per gallon [3.79 liters] except for those fuels used in aircraft or with respect to  
90 refunds claimed by aircraft fuel users. [One cent] per gallon [3.79 liters] withheld from the  
91 refund must be deposited in the [Ethanol Production Incentive Fund].

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93 Section 9. [*Severability.*] [Insert severability clause.]

94

95 Section 10. [*Repealer.*] [Insert repealer clause.]

96

97 Section 11. [*Effective Date.*] [Insert effective date.]