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.)

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. [Distribution of Registration Fees Collected.] Any money in the [Registration Fund] accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the [legislature’s] appropriation for such purposes, must be promptly deposited in the [Highway Tax Distribution Fund] which must be distributed in the manner as prescribed by law. The [state treasurer] shall transfer annually from the [Highway Tax Distribution Fund] to the [Ethanol Production Incentive Fund] an amount equal to [forty percent] of all sums collected for the registration of farm vehicles.
under [insert citation] that no transfer may be made in an amount that would result in the
balance of the [Ethanol Production Incentive Fund] exceeding [five million dollars].

Section 8. [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 [insert citation]. 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. [One cent] per gallon [3.79 liters] withheld from the refund must be deposited in the [Ethanol Production Incentive Fund].

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

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

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