

## LEGISLATIVE BILL 1124

Approved by the Governor April 14, 1990

Introduced by Schmit, 23; Smith, 33

AN ACT relating to fuels; to amend sections 66-468 and 66-474, Reissue Revised Statutes of Nebraska, 1943, sections 66-410 and 66-428, Revised Statutes Supplement, 1988, and sections 66-605, 66-1304, 66-1307, and 66-1307.01, Revised Statutes Supplement, 1989; to create a tax credit for ethanol production as prescribed; to change the rates of taxes on certain gasoline and motor vehicle fuels; to change a provision relating to membership on the Nebraska Gasohol Committee; to provide duties for the Department of Revenue; to provide for adjustments to the rates of taxes on motor vehicle and special fuels; to provide requirements for reformulated gasoline; to change a provision relating to membership on the Ethanol Authority and Development Board; to provide for additional uses of the Ethanol Authority and Development Cash Fund; to require transfers from the fund as prescribed; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Through December 31, 1997, each producer of ethanol shall receive a credit of twenty cents per gallon of ethanol produced in Nebraska, which credit shall be in the form of a transferable motor fuel tax credit certificate. The credit shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. Not less than two million gallons and not more than twenty-five million gallons of ethanol produced annually at a plant shall be eligible for the credit, and the credit may only be claimed by a producer for an eighty-four-month period after the first credit certificate is received. The Department of Revenue shall prescribe an application form and procedures for claiming the credit and shall adopt and promulgate rules and regulations to carry out this section.

Sec. 2. That section 66-410, Revised Statutes

Supplement, 1988, be amended to read as follows:

66-410. At the time of filing the statement required by section 66-409, such dealer shall, in addition to the tax imposed pursuant to sections 66-473, 66-477, and 66-478 and section 5 of this act and in addition to the other taxes provided for by law, pay a tax of ten and one-half cents per gallon upon all motor vehicle fuels as shown by such statement, except that there shall be no tax on the motor vehicle fuel so reported if the required taxes on the motor vehicle fuel have been paid or if the motor vehicle fuel has been sold to a licensed dealer and the seller was a licensed dealer as described in subdivision (3)(a) or (3)(b) of section 66-401 and was the importer or first receiver of such fuel in this state. Effective July 1, 1985, Through December 31, 1992, gasoline sold in Nebraska which contains a minimum of ten percent blend of an agricultural ethyl alcohol whose purity shall be at least ninety-nine percent alcohol, excluding denaturant, produced from cereal grains or domestic agricultural commodities shall be subject to a state motor fuel tax which is three cents two cents per gallon less than gasoline which does not contain such a blend. Effective January 1, 1993, gasoline which contains such a blend shall be subject to the same state motor fuel tax rate as gasoline which does not contain such a blend. Such dealers shall remit such tax to the Tax Commissioner.

Sec. 3. That section 66-428, Revised Statutes Supplement, 1988, be amended to read as follows:

66-428. There is hereby levied and imposed an excise tax of ten and one-half cents per gallon, increased by the amounts imposed or determined under sections 66-473, 66-477, and 66-478 and section 5 of this act, upon the use of all motor vehicle fuels, as defined by section 66-401, used in this state, and due the State of Nebraska under section 66-410 or Chapter 66, article 6, except that through December 31, 1992, such excise tax after July 1, 1985, shall be two cents three cents per gallon less on motor vehicle fuel containing a minimum of ten percent blend of agricultural ethyl alcohol produced from cereal grains or domestic agricultural commodities whose purity shall be at least ninety-nine percent alcohol, excluding denaturant, than on motor vehicle fuel which does not contain such a blend. Effective January 1, 1993, the excise tax on such motor vehicle fuel containing such a blend shall be the same as that on such motor vehicle fuel which does not contain such a blend. Users of motor vehicle fuels subject to taxation under this

section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by sections 66-413 and 66-414. For purposes of this section and section 66-429, use shall mean the purchase or consumption of motor vehicle fuels in this state.

Sec. 4. That section 66-468, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-468. The fund shall be administered by the Nebraska Gasohol Committee which is hereby established. The committee shall consist of seven members to be appointed by the Governor, ~~subject to confirmation by with the approval of a majority of the Legislature,~~ for terms of two years each. Four members shall be actually engaged in farming in this state, one in general farming, and one each in the production of corn, wheat, and milo. One member shall be actively engaged in the petroleum industry, and two members shall be actively engaged in business in this state. Upon the expiration of the terms of members serving on March 21, 1972, four members shall be appointed for terms of four years, and three members shall be appointed for two years, and upon expiration of those terms members shall be appointed for terms of four years. Not more than four members shall be members of the same political party, but this restriction shall not apply until the expiration of the terms of members serving on March 21, 1972. The Nebraska Gasohol Committee shall retain the services of a full-time administrator and such administrator shall be appointed by the committee. The administrator shall hold office at the pleasure of the committee, and shall be entitled to all the benefits afforded an employee of the state. The administrator shall compile for the committee a biennial report to be submitted to the committee and the Clerk of the Legislature, and such report shall set forth the activities, contracts, and projects of the committee for the previous biennium and the sums expended. Each member of the Legislature shall receive a copy of such report by making a request for it to the administrator.

Sec. 5. The Department of Revenue shall at the end of each calendar quarter determine (1)(a) through December 31, 1992, one-half of and after such date the total amount of motor fuel tax that was not collected in the preceding calendar quarter due to the credit provided in section 1 of this act plus (b) the total amount of motor fuel tax that was not collected in the preceding calendar quarter due to the exemption

provided in sections 66-410 and 66-428, (2) the amount of motor fuel tax that would not have been collected in the preceding calendar quarter if the exemption provided in sections 66-410 and 66-428 were in the amount of three cents per gallon effective through December 31, 1992, and (3) the amount by which the amount determined in subdivision (1) of this section exceeds the amount determined in subdivision (2) of this section. If the amount determined in subdivision (3) of this section is at least equal to the amount of revenue raised in the same period by one-tenth of one cent of the fuel tax imposed by sections 66-410, 66-428, and 66-605, the Tax Commissioner shall for the next succeeding calendar quarter adjust the rate of the fuel tax imposed by such sections in an amount which the Tax Commissioner estimates, based on the estimates provided to the State Board of Equalization and Assessment pursuant to section 66-476, will raise sufficient revenue to meet and not exceed the amount determined in subdivision (3) of this section, except that all such adjustments shall be in increments of one-tenth of one cent per gallon.

Sec. 6. That section 66-474, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-474. (1) The Department of Revenue shall implement, administer, collect, and audit the tax imposed by sections 66-473, 66-477, 66-478, 66-605.02, and 66-605.03 and section 5 of this act in an efficient and effective manner. Upon receipt of the cost figures required by section 66-475, the department shall determine the statewide average cost by dividing the total amount paid for motor vehicle fuels and special fuels by the State of Nebraska, excluding any state and federal taxes, by the total number of gallons of motor vehicle fuels and special fuels purchased during the reporting period.

(2) After computing the statewide average cost as required in subsection (1) of this section, the department shall multiply such statewide average cost by the tax rate established pursuant to section 66-476.

(3) In making the computations required by subsections (1) and (2) of this section, gallonage reported shall be rounded to the nearest gallon and total costs shall be rounded to the nearest dollar. All other computations shall be made with three decimal places, except that after all computations have been made the tax per gallon shall be rounded to the nearest one-tenth of one cent.

(4) The tax rate per gallon computed pursuant

to this section shall be distributed to all licensed motor vehicle fuel dealers, special fuel dealers, and interstate motor vehicle operators who choose to be subject to sections 66-410.01 to 66-410.05 at least five days prior to the first day of any calendar quarter during which the tax is to be adjusted. Such tax rate shall be utilized in computing the tax due for the period specified by the Tax Commissioner.

Sec. 7. That section 66-605, Revised Statutes Supplement, 1989, be amended to read as follows:

66-605. In addition to the tax imposed pursuant to sections 66-605.02 and 66-605.03 and section 5 of this act, there is hereby levied and imposed an excise tax of ten and one-half cents per gallon on the use, within the meaning of the word use as defined in subdivision (5) of section 66-602, of special fuel in any motor vehicle as defined in subdivision (8) of section 66-602. The tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such dealer and be paid over to the Tax Commissioner as provided by sections 66-601 to 66-649. The tax, with respect to all special fuel delivered by a special fuel dealer into special fuel storage facilities designed or equipped to fuel motor vehicles, shall attach at the time of such delivery unless the recipient of the special fuel provides a certificate of exemption. Such tax shall be collected by the dealer and be paid over to the Tax Commissioner as provided in sections 66-601 to 66-649.

All sums of money received by the State Treasurer under this section shall be ~~placed in~~ credited to the Highway Trust Fund. Credits and refunds of such tax allowed to special fuel dealers shall be paid from the Highway Trust Fund.

Sec. 8. Reformulated gasoline which is sold in Nebraska after January 1, 1992, shall contain an oxygen content equal to or greater than three and one-tenth percent and shall contain a maximum aromatic content of not greater than twenty percent.

Sec. 9. That section 66-1304, Revised Statutes Supplement, 1989, be amended to read as follows:

66-1304. (1) There is hereby established an independent board to be known as the Ethanol Authority and Development Board. The board shall consist of:

- (a) The Nebraska Gasohol Committee; and
- (b) The following members to be appointed by



the Governor with the approval of a majority of the Legislature: A representative of wheat growers, a representative of corn growers, a representative of grain sorghum growers, and a representative of the public power industry.

The members of the board initially appointed by the Governor who are not members of the Nebraska Gasohol Committee shall serve until January 1, 1990, or until their successors are appointed and qualified. Upon the expiration of the terms of such members of the board initially appointed by the Governor, the representative of wheat growers and the representative of the public power industry shall be appointed for terms of two years and the representative of corn growers and the representative of grain sorghum growers shall be appointed for terms of four years. Upon expiration of those terms, such members shall be appointed for terms of four years. Each member of the board shall serve until his or her successor is appointed and qualified. Any such member appointed by the Governor who represents wheat growers, corn growers, or grain sorghum growers and who ceases to be such a grower may continue to serve as a member of the board until the expiration of the term of office for which such member was appointed.

(2) A vacancy on the board shall exist in the event of the death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made in the same manner as the original appointment by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds. Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, and shall be reimbursed for his or her actual and necessary expenses while so engaged as provided in sections 81-1174 to 81-1177.

(3) For purposes of this section:

(a) Corn growers shall mean citizens of Nebraska who are at least twenty-one years of age, who have been actually engaged in growing corn in this state for at least five years, and who derive a substantial portion of their income from growing corn;

(b) Grain sorghum growers shall mean citizens

of Nebraska who are at least twenty-one years of age, who have been actually engaged in growing grain sorghum in this state for at least five years, and who derive a substantial portion of their income from growing grain sorghum; and

(c) Wheat growers shall mean citizens of Nebraska who are at least twenty-one years of age, who have been actually engaged in growing wheat in this state for at least five years, and who derive a substantial portion of their income from growing wheat.

(4) Candidates for appointment to the board seeking to represent wheat growers, corn growers, or grain sorghum growers may place their names on a candidacy list for their respective group by filing a petition signed by at least fifty growers with the Governor.

Sec. 10. That section 66-1307, Revised Statutes Supplement, 1989, be amended to read as follows:

66-1307. (1) There is hereby created the Ethanol Authority and Development Cash Fund which shall be used by the board to carry out its responsibilities under the Ethanol Authority and Development Act. The fund may be used:

(a) To defray the expenses of the board;

(b) To secure bonds;

(c) To purchase shares of stock or otherwise make an investment in acquire an ethanol or agricultural production facility or a facility related to the processing, marketing, or distribution of ethanol or any products derived from ethanol components, coproducts, or byproducts or to purchase shares of stock or otherwise make an investment in such a facility pursuant to sections 66-1307.01 and 66-1307.02;

(d) To make grants or loans pursuant to sections 66-1317 to 66-1325;

(e) To make grants or loans to facilitate the development or marketing of new, nonfood products derived from ethanol or ethanol components, coproducts, or byproducts;

(f) To provide equity financing for construction of ethanol production and distribution facilities pursuant to Chapter 70; and

(g) As the board may otherwise direct, including the acquisition of equipment or construction, acquisition, or expansion of ethanol or agricultural production facilities, except that not more than three million dollars shall be used to fund ethanol research and development projects.

The fund shall not be used to pay operating expenses of an applicant but shall only be used for capital investment purposes.

(2) When determining whether to recommend construction of a project for the production and distribution of ethanol or other agricultural byproducts or how funds should be distributed pursuant to the act and sections 70-301, 70-601, 70-601.01, 70-604, 70-604.02, 70-626, 70-628.01 to 70-628.04, 70-631, 70-632, 70-636, 70-637, 70-646, 70-655, 70-657, 70-667, 70-802, 70-1402 to 70-1404, 70-1409, 70-1413, 70-1416, and 70-1417, the board's considerations shall include, but not be limited to, job creation, economic return to the state, size of the plant, byproducts or coproducts, if any, date construction would be commenced and completed, the financial stability of the applicant, and the amount of funds needed to commence construction of the plant or facility.

(3) When awarding grants or loans pursuant to subdivision (1)(e) of this section, the board's considerations shall include, but not be limited to, the jobs to be created by the applicant, the potential commercial success of the product to be developed, the financial stability of the applicant, and the amount of funds requested.

(4) The State Treasurer shall credit to the fund such money as shall be (a) appropriated to the fund by the Legislature, (b) received from the tax levied pursuant to section 66-1308, (c) donated as gifts, bequests, grants, or other contributions to the fund from public or private sources, (d) repaid by cities, counties, villages, or postsecondary educational institutions pursuant to section 66-1324, and (e) received as a return on investment pursuant to sections 66-1307.01 and 66-1307.02. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by the board. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276. The Department of Revenue shall, at the end of each calendar quarter, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar quarter due to the credit provided in section 1 of this act. The State Treasurer shall transfer from the Ethanol Authority and Development Cash Fund to the Highway Trust Fund an amount equal to one-half of such credit. The amounts shall be transferred through December 31, 1992.

Sec. 11. That section 66-1307.01, Revised



Statutes Supplement, 1989, be amended to read as follows:

66-1307.01. (1) The board may use the fund (a) to purchase shares of stock or otherwise make an investment to facilitate the construction, acquisition, or expansion of acquire an ethanol or agricultural production facility or a facility related to the processing, marketing, or distribution of ethanol or any products derived from ethanol components, coproducts, or byproducts or (b) to purchase shares of stock or otherwise make an investment to facilitate the construction, acquisition, or expansion of such a facility. The board shall establish the necessary criteria or guidelines for determining when the fund will be invested in such facilities. The investment shall be for capital investment purposes only and shall not be used to pay operating expenses of the applicant. Application for ~~such~~ an investment shall be made pursuant to procedures publicly announced by the board. The board shall establish application review procedures which recognize priority considerations similar to those enumerated in section 66-1323.

(2)(a) The board may make an investment pursuant to subsection (1) of this section only after receipt of an application which contains:

(i) A business plan, including a description of the applicant and its management, product, and market and the proposed project;

(ii) A statement of the amount, timing, and projected use of the capital required;

(iii) A statement of the potential economic impact of the project, including the number, location, and types of jobs expected to be created; and

(iv) Such other information as the board shall request.

(b) Approval of the investment by the board may be made after the board finds, based upon the application submitted by the applicant and such additional investigation as the staff of the board shall make and incorporate in its minutes, that:

(i) The proceeds of the investment will be used only to facilitate the construction, acquisition, or expansion of facilities of the applicant;

(ii) The project has a reasonable chance of success;

(iii) The board's participation is necessary to the success of the project or its retention in the state;

(iv) The project has the reasonable potential

to create employment within the state;

(v) The applicant has already made or is contractually committed to make a substantial financial and time commitment to the project;

(vi) There is a reasonable possibility that the board will recoup at least its initial investment; and

(vii) Binding commitments have been made to the board by the applicant for adequate reporting of financial data to the board which shall include a requirement for an annual report or, if required by the board, an annual audit of the financial and operational records of the applicant and for such control on the part of the board as shall be considered prudent over the management of the project so as to protect the investment of the board, including, in the discretion of the board and without limitation, the right of access to financial and other records of the applicant relating to the project.

(3) Before an investment is made pursuant to subsection (1) of this section, the applicant shall sign an agreement with the board stating that the funds invested are for capital investment purposes and not for operating expenses.

(4) In carrying out its functions under this section, the board is encouraged to create an investment committee to assist in evaluating potential investments. The membership of this investment committee may include both members and staff of the board and other persons drawn from sources other than the board who are recognized by their peers for outstanding knowledge and leadership in their fields, all of whom shall serve at the pleasure of the board. Members of the investment committee shall be reimbursed for any reasonable expenses incurred by them in the performance of duties assigned by the board pursuant to sections 81-1174 to 81-1177.

(5) The board shall not make an initial investment in any project in excess of the amount necessary to own more than forty-nine percent of such project except when the board acquires the facility. Such investment shall be matched dollar for dollar by any other investors in the project. If in the judgment of the board the project is experiencing financial difficulty, a greater percentage of such investment may be acquired by the board.

(6) The board shall adopt procedures to carry out this section and shall provide necessary assistance to applicants to properly and rapidly process investment

requests.

(7) On January 1, 1990, and each year thereafter, the board shall submit a report to the Legislature detailing investments made pursuant to subsection (1) of this section. The report shall include a statement of (a) the current amount invested in each company, (b) the current market value of assets of such company, and (c) the market value of the assets of such company at the time of the initial investment by the board.

Sec. 12. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 13. That original sections 66-468 and 66-474, Reissue Revised Statutes of Nebraska, 1943, sections 66-410 and 66-428, Revised Statutes Supplement, 1988, and sections 66-605, 66-1304, 66-1307, and 66-1307.01, Revised Statutes Supplement, 1989, are repealed.