



States' Biofuels Statutes

STATE OF NEBRASKA

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).

Current through the 2013 Legislative Session of the Nebraska General Assembly.

66-1330. Act, how cited

Sections 66-1330 to 66-1348 shall be known and may be cited as the Ethanol Development Act.

Credits: Laws 1986, LB 1230, § 1; Laws 1987, LB 279, § 1; Laws 1989, LB 587, § 1; Laws 1992, LB 754, § 1; Laws 1993, LB 364, § 1; Laws 1995, LB 377, § 1; Laws 2001, LB 536, § 1; Laws 2004, LB 479, § 2.

66-1331. Legislative findings

The Legislature finds that Nebraska should continue its existing programs to encourage processing, market development, promotion, distribution, and research on products derived from grain, ethanol, or ethanol components, coproducts, or byproducts to provide for:

- (1) Expanded use of Nebraska agricultural products;
- (2) Efficient and less-polluting energy sources and reserves which will make Nebraska less energy dependent, reduce atmospheric carbon monoxide levels, and retain Nebraska dollars in the Nebraska economy to achieve a multiplier effect thereby generating additional jobs and tax income to the state rather than the export of Nebraska dollars;
- (3) Development of protein which will be more efficiently stored and marketed to foreign nations rather than the present method of simple export of unprocessed grain products;
- (4) Alternative local outlets for Nebraska agricultural products which can be particularly utilized in times of depressed grain prices so as to give Nebraskans greater control of their crop marketing procedures rather than have crop marketing procedures too dependent upon federal agencies, major grain exporters, and foreign purchasers. Local outlets may include ethanol plants, agricultural production facilities, or facilities related to the processing, marketing, or distribution of ethanol or

products derived from ethanol or ethanol components, coproducts, or byproducts;

(5) Cooperation with private industry to establish ethanol-related production facilities in Nebraska to create demand for agricultural products;

(6) Promotion and market development, in cooperation with private industry, of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts; and

(7) Sponsorship of research and development of industrial and commercial uses for agricultural ethanol and for byproducts resulting from the manufacturing of agricultural ethanol in order to enhance economic feasibility and marketing potential of such products and processes.

Credits: Laws 1993, LB 364, § 2.

66-1332. Public policy

It is hereby declared to be the public policy of the state that, in order to safeguard life, health, property, and public welfare of its citizens, the production, sale, and use of motor fuel and the pollution caused by certain components of motor fuel are matters affecting the public interest and that a statewide emphasis on the production and use of motor fuel containing agricultural ethyl alcohol as a substitute for polluting components is necessary for the reduction of pollution and will further serve as an incentive for the agricultural economy in this state. The Legislature further recognizes that a fuel crisis is pending in the nation and that the development of an additional source of fuel will provide an energy and environmental benefit to the citizens of this state and to the future economic growth of Nebraska.

Credits: Laws 1993, LB 364, § 3.

66-1333. Terms, defined

For purposes of the Ethanol Development Act, unless the context otherwise requires:

(1) Agricultural production facility or ethanol facility means a plant or facility related to the processing, marketing, or distribution of any products derived from grain components, coproducts, or byproducts;

(2) Board means the Nebraska Ethanol Board;

(3) Commercial channels means the sale of corn or grain sorghum for any use, to any commercial buyer, dealer, processor, cooperative, or person, public or private, who resells any corn or grain sorghum or product produced from corn or grain sorghum;

(4) Corn means corn as defined in section 2-3610;

(5) Delivered or delivery means receiving corn or grain sorghum for any use other than storage;

(6) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring corn or grain sorghum in Nebraska, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of the corn or grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(7) Grain means wheat, corn, and grain sorghum;

(8) Grower means any landowner personally engaged in growing corn or grain sorghum, a tenant of the landowner personally engaged in growing corn or grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement;

(9) Name plate design capacity means the original designed capacity of an agricultural production facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year;

(10) Related parties means any two or more individuals, firms, partnerships, limited liability companies, companies, agencies, associations, or corporations which are members of the same unitary group or are any persons who are considered to be related persons under the Internal Revenue Code; and

(11) Sale includes any pledge or mortgage of corn or grain sorghum after harvest to any person, public or private.

Credits: Laws 1986, LB 1230, § 3; Laws 1989, LB 587, § 3; Laws 1992, LB 754, § 2; Laws 1993, LB 364, § 4; Laws 1995, LB 377, § 6; Laws 2004, LB 479, § 4.

66-1334. Agricultural Alcohol Fuel Tax Fund; created; use; investment

(1) The Agricultural Alcohol Fuel Tax Fund is hereby created. No part of the funds deposited in the fund or of federal funds or other funds solicited in conjunction with research or demonstration programs shall lapse to the General Fund. Transfers from the Agricultural Alcohol Fuel Tax Fund to the Ethanol Production Incentive Cash Fund may be made at the direction of the Legislature. In addition to such unexpended balance appropriation, there is hereby appropriated such amounts as are deposited in the Agricultural Alcohol Fuel Tax Fund in each year. The fund shall be administered by the board. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be used for the following purposes:

(a) Establishment, with cooperation of private industry, of procedures and processes necessary to the manufacture and marketing of fuel containing agricultural ethyl alcohol;

(b) Establishment of procedures for entering blended fuel into the marketplace by private enterprise;

- (c) Analysis of the marketing process and testing of marketing procedures to assure acceptance in the private marketplace of blended fuel and byproducts resulting from the manufacturing process;
- (d) Cooperation with private industry to establish privately owned agricultural ethyl alcohol manufacturing plants in Nebraska to supply demand for blended fuel;
- (e) Sponsoring research and development of industrial and commercial uses for agricultural ethyl alcohol and for byproducts resulting from the manufacturing process;
- (f) Promotion of state and national air quality improvement programs and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives;
- (g) Promotion of the use of renewable agricultural ethyl alcohol as a partial replacement for imported oil and for the energy and economic security of the nation;
- (h) Participation in development and passage of national legislation dealing with research, development, and promotion of United States production of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and
- (i) As the board may otherwise direct to fulfill the goals set forth under the Ethanol Development Act, including monitoring contracts for existing ethanol program commitments consummated pursuant to the law in existence prior to September 1, 1993, and solicitation of federal funds.

Credits: Laws 1993, LB 364, § 5; Laws 1994, LB 1066, § 54; Laws 2004, LB 983, § 58; Laws 2009, LB 316, § 16, eff. May 20, 2009.

66-1335. Nebraska Ethanol Board; established; terms; vacancy; meetings; expenses

(1) The Nebraska Ethanol Board is hereby established. The board shall consist of seven members to be appointed by the Governor with the approval of a majority of the Legislature. The Governor shall make the initial appointments within thirty days after September 1, 1993. 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 sorghum. One member shall be actively engaged in business in this state. One member shall represent labor interests in this state. One member shall represent Nebraska petroleum marketers in this state.

(2) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the member representing labor interests and the member engaged in general farming shall expire on August 31, 1994, the terms of the member engaged in sorghum production and the member engaged in wheat production shall expire on August 31, 1995, the term of the member representing petroleum marketers shall expire on August 31, 1996, and the terms of the member engaged in business and the member engaged in corn production shall expire on August 31, 1997. A member shall serve until a

successor is appointed and qualified. Not more than four members shall be members of the same political party.

(3) A vacancy on the board shall exist in the event of 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 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.

(4) The board shall meet at least once annually.

(5) The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The members shall receive twenty-five dollars for each day while engaged in the performance of board duties.

Credits: Laws 1993, LB 364, § 6.

66-1336. Administrator; appointed; duties

The board shall retain the services of a full-time administrator to be appointed by the board. The administrator shall hold office at the pleasure of the board.

Credits: Laws 1993, LB 364, § 7; Laws 2012, LB 782, § 89, eff. July 19, 2012; Laws 2013, LB 222, § 21, eff. May 8, 2013.

66-1337. Board; administrative powers

The board may rent office space and employ such personnel as may be necessary for the performance of its duties. The board may employ the services of experts and consultants and expend funds necessary to acquire title to commodities pursuant to section 66-1340, to promote air quality improvement programs, or to otherwise carry out the board's duties under the Ethanol Development Act.

Credits: Laws 1993, LB 364, § 8; Laws 2009, LB 154, § 13, eff. Aug. 30, 2009.

66-1338. National ethanol promotion group; board; powers

The board may appropriate funds and become a member of any national ethanol promotion group.

Credits: Laws 1978, LB 424, § 20; Laws 1981, LB 80, § 6; Laws 1993, LB 364, § 9.

66-1339. Federal funds; solicitation; use

The board is encouraged to solicit and authorized to expend any federally distributed funds from the Energy Settlement Fund, account number 6071, or any other federal funds which may become available to the board for ethanol development. Funds collected pursuant to this section shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund.

Credits: Laws 1986, LB 1230, § 15; Laws 1989, LB 587, § 9; Laws 1993, LB 364, § 10.

66-1340. Board; accept property; powers

The board may accept gifts, donations, money, and services, including in-kind resources such as grain owned by the Commodity Credit Corporation and the United States Department of Agriculture. The board may take title to the Commodity Credit Corporation's inventories and use such commodities to carry out the Ethanol Development Act. The board may accept commodities in connection with section 1024 of the Food Security Act of 1985 or in connection with any other section of state or federal law.

Credits: Laws 1986, LB 1230, § 16; Laws 1993, LB 364, § 11.

66-1341. Application; information confidential

Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with an application for a grant or loan or other financial assistance shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or information as a public record shall demonstrate to the satisfaction of the board that the release would not violate this section.

Credits: Laws 1989, LB 587, § 14; Laws 1993, LB 364, § 12.

66-1342. Repayment of loan; other funds; remittance

Any repayment of a loan made pursuant to the Ethanol Authority and Development Act as it existed prior to September 1, 1993, shall be remitted to the State Treasurer and shall be credited to the Ethanol Production Incentive Cash Fund. Any return on investment and any money available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, pursuant to prior law, shall be remitted to the State Treasurer and shall be credited to the fund.

Credits: Laws 1986, LB 1230, § 27; Laws 1987, LB 279, § 10; Laws 1992, LB 754, § 7; Laws 1993, LB 364, § 13.

66-1344. Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties

(1) Beginning June 1, 2000, during such period as funds remain in the Ethanol Production Incentive Cash Fund, any ethanol facility shall receive a credit of seven and one-half cents per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six consecutive months. For purposes of this subsection, new production means production which results from the expansion of an existing facility's capacity by at least two million gallons first placed into service after June 1, 1999, as certified by the facility's design engineer to the Department of Revenue. For expansion of an existing facility's capacity, new production means production in excess of the average of the highest three months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits shall be allowed under this subsection for expansion of an existing facility's capacity until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than June 1, 2000. New production shall be approved by the Department of Revenue based on such ethanol production records as may be necessary to reasonably determine new production. This credit must be earned on or before December 31, 2003.

(2)(a) Beginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, and which has provided to the Department of Revenue written evidence substantiating that the ethanol facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced for ninety-six consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2012, if the facility is defined by subdivision (b)(i) of this subsection, and for forty-eight consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2008, if the facility is defined by subdivision (b)(ii) of this subsection. The new ethanol facility shall provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department no later than July 30, 2004, and at least annually thereafter. The analysis shall be prepared by an independent laboratory meeting the International Organization for Standardization standard ISO/IEC 17025:1999. Prior to collecting the samples, the new ethanol facility shall notify the department which may observe the sampling procedures utilized by the new ethanol facility to obtain the samples to be submitted for independent analysis. The minimum rate shall be established for a period of at least thirty days. In this regard, the new ethanol facility must produce at least eight thousand two hundred nineteen gallons of ethanol within a thirty-day period. The ethanol must be finished product which is ready for sale to customers.

(b) For purposes of this subsection, new ethanol facility means a facility for the conversion of grain or other raw feedstock into ethanol and other byproducts of ethanol production which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999. A new ethanol facility does not mean an expansion of an existing ethanol plant that does not result in the physical construction of an entire ethanol processing facility or which shares or uses in a significant manner any existing plant's systems or processes and does not include the expansion of production capacity constructed after June 30, 2004, of a plant qualifying for credits under this subsection. This definition applies to contracts entered into after April 16, 2004.

(c) Not more than fifteen million six hundred twenty-five thousand gallons of ethanol produced annually at an ethanol facility shall be eligible for credits under this subsection. Not more than one hundred twenty-five million gallons of ethanol produced at an ethanol facility by the end of the ninety-six-consecutive-month period or forty-eight-consecutive-month period set forth in this subsection shall be eligible for credits under this subsection.

(3) The credits described in this section shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of beverage alcohol. Not more than ten million gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection (1) of this section. The credits described in this section shall be in the form of a nonrefundable, transferable motor vehicle fuel tax credit certificate. No transfer of credits will be allowed between the ethanol producer and motor vehicle fuel licensees who are related parties.

(4) Ethanol production eligible for credits under this section shall be measured by a device approved by the Division of Weights and Measures of the Department of Agriculture. Confirmation of approval by the division shall be provided by the ethanol facility at the time the initial claim for credits provided under this section is submitted to the Department of Revenue and annually thereafter. Claims submitted by the ethanol producer shall be based on the total number of gallons of ethanol produced, before denaturing, during the reporting period measured in gross gallons.

(5) The Department of Revenue shall prescribe an application form and procedures for claiming credits under this section. In order for a claim for credits to be accepted, it must be filed by the ethanol producer within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first.

(6) Every producer of ethanol shall maintain records similar to those required by section 66-487. The ethanol producer must maintain invoices, meter readings, load-out sheets or documents, inventory records, including work-in-progress, finished goods, and denaturant, and other memoranda requested by the Department of Revenue relevant to the production of ethanol. On an annual basis, the ethanol producer shall also be required to furnish the department with copies of the reports filed with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The maintenance of all of this information in a provable computer format or on microfilm is acceptable in lieu of retention of the original documents. The records must be retained for a period of not less than three years after the claim for ethanol credits is filed.

(7) For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days

from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

(8) To qualify for credits under this section, an ethanol producer shall provide public notice for bids before entering into any contract for the construction of a new ethanol facility. Preference shall be given to a bidder residing in Nebraska when awarding any contract for construction of a new ethanol facility if comparable bids are submitted. For purposes of this subsection, bidder residing in Nebraska means any person, partnership, foreign or domestic limited liability company, association, or corporation authorized to engage in business in the state with employees permanently located in Nebraska. If an ethanol producer enters into a contract for the construction of a new ethanol facility with a bidder who is not a bidder residing in Nebraska, such producer shall demonstrate to the satisfaction of the Department of Revenue in its application for credits that no comparable bid was submitted by a responsible bidder residing in Nebraska. The department shall deny an application for credits if it is determined that the contract was denied to a responsible bidder residing in Nebraska without cause.

(9) The pertinent provisions of Chapter 66, article 7, relating to the administration and imposition of motor fuel taxes shall apply to the administration and imposition of assessments made by the Department of Revenue relating to excess credits claimed by ethanol producers under the Ethanol Development Act. These provisions include, but are not limited to, issuance of a deficiency following an examination of records, an assessment becoming final after sixty days absent a written protest, presumptions regarding the burden of proof, issuance of deficiency within three years of original filing, issuance of notice by registered or certified mail, issuance of penalties and waiver thereof, issuance of interest and waiver thereof, and issuance of corporate officer or employee or limited liability company manager or member assessments. For purposes of determining interest and penalties, the due date will be considered to be the date on which the credits were used by the licensees to whom the credits were transferred.

(10) If a written protest is filed by the ethanol producer with the department within the sixty-day period in subsection (9) of this section, the protest shall: (a) Identify the ethanol producer; (b) identify the proposed assessment which is being protested; (c) set forth each ground under which a redetermination of the department's position is requested together with facts sufficient to acquaint the department with the exact basis thereof; (d) demand the relief to which the ethanol producer considers itself entitled; and (e) request that an evidentiary hearing be held to determine any issues raised by the protest if the ethanol producer desires such a hearing.

(11) For applications received after April 16, 2004, an ethanol facility receiving benefits under the Ethanol Development Act shall not be eligible for benefits under the Employment and Investment Growth Act, the Invest Nebraska Act, or the Nebraska Advantage Act.

Credits: Laws 1990, LB 1124, § 1; Laws 1992, LB 754, § 8; Laws 1993, LB 364, § 15; Laws 1994, LB 961, § 1; Laws 1995, LB 377, § 7; Laws 1996, LB 1121, § 13; Laws 1999, LB 605, § 1; Laws 2001, LB 536, § 2; Laws 2004, LB 479, § 5; Laws 2004, LB 1065, § 5; Laws 2005, LB 312, § 2; Laws 2008, LB 914, § 5, eff. Jan. 1, 2009.

66-1344.01. Ethanol tax credits; agreement required; contents

The Tax Commissioner and the producer eligible to receive credits under subsection (2) of section 66-1344 shall enter into a written agreement. The producer shall agree to produce ethanol at the designated facility and any expansion thereof. The Tax Commissioner, on behalf of the State of Nebraska, shall agree to furnish the producer the tax credits as provided by and limited in section 66-1344 in effect on the date of the agreement. The agreement to produce ethanol in return for the credits shall be sufficient consideration, and the agreement shall be binding upon the state. No credit shall be given to any producer of ethanol which fails to produce ethanol in Nebraska in compliance with the agreement. The agreement shall include:

- (1) The name of the producer;
- (2) The address of the ethanol facility;
- (3) The date of the initial eligibility of the ethanol facility to receive such credits;
- (4) The name plate design capacity of the ethanol facility as of the date of its initial eligibility to receive such credits; and
- (5) The name plate design capacity which the facility is intended to have after the completion of any proposed expansion. If no expansion is contemplated at the time of the initial agreement, the agreement may be amended to include any proposed expansion.

The Tax Commissioner shall not accept any applications for new agreements on or after April 16, 2004.

Credits: Laws 2001, LB 536, § 7; Laws 2004, LB 479, § 6; Laws 2004, LB 1065, § 6.

66-1345. Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties

(1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, (e) credited to the Ethanol Production Incentive Cash Fund from the excise taxes imposed by section 66-1345.01 through December 31, 2012, (f) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519, and (g) directed to be transferred pursuant to section 84-612.

(2) The Department of Revenue shall, at the end of each calendar month, notify the State Treasurer of

the amount of motor fuel tax that was not collected in the preceding calendar month due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to such credits less the following amounts:

- (a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-6,107;
- (b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;
- (c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and
- (d) For 1998 and each year thereafter, no reduction.

For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to subsection (1) of this section are not sufficient to fund the credits provided in section 66-1344, then the credits shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund. For 1998 and each year thereafter, the credits provided in such section shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund.

If, during any month, the amount of money in the Ethanol Production Incentive Cash Fund is not sufficient to reimburse the Highway Trust Fund for credits earned pursuant to section 66-1344, the Department of Revenue shall suspend the transfer of credits by ethanol producers until such time as additional funds are available in the Ethanol Production Incentive Cash Fund for transfer to the Highway Trust Fund. Thereafter, the Department of Revenue shall, at the end of each month, allow transfer of accumulated credits earned by each ethanol producer on a prorated basis derived by dividing the amount in the fund by the aggregate amount of accumulated credits earned by all ethanol producers.

(3) The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund the amount reported under subsection (4) of section 66-1345.02 for each calendar month of the fiscal year as provided in such subsection.

(4) On December 31, 2012, the State Treasurer shall transfer one-half of the unexpended and unobligated funds, including all subsequent investment interest, from the Ethanol Production Incentive Cash Fund to the Nebraska Corn Development, Utilization, and Marketing Fund and the Grain Sorghum Development, Utilization, and Marketing Fund in the same proportion as funds were collected pursuant to section 66-1345.01 from corn and grain sorghum. The Department of Agriculture shall assist the State Treasurer in determining the amounts to be transferred to the funds. The State Treasurer shall transfer the remaining one-half of the unexpended and unobligated funds to the General Fund.

(5) Whenever the unobligated balance in the Ethanol Production Incentive Cash Fund exceeds twenty million dollars, the Department of Revenue shall notify the Department of Agriculture at which time the Department of Agriculture shall suspend collection of the excise tax levied pursuant to section 66-

1345.01. If, after suspension of the collection of such excise tax, the balance of the fund falls below ten million dollars, the Department of Revenue shall notify the Department of Agriculture which shall resume collection of the excise tax.

(6) On or before December 1, 2003, and each December 1 thereafter, the Department of Revenue and the Nebraska Ethanol Board shall jointly submit a report electronically to the Legislature which shall project the anticipated revenue and expenditures from the Ethanol Production Incentive Cash Fund through the termination of the ethanol production incentive programs pursuant to section 66-1344. The initial report shall include a projection of the amount of ethanol production for which the Department of Revenue has entered agreements to provide ethanol production credits pursuant to section 66-1344.01 and any additional ethanol production which the Department of Revenue and the Nebraska Ethanol Board reasonably anticipate may qualify for credits pursuant to section 66-1344.

Credits: Laws 1992, LB 754, § 9; Laws 1993, LB 364, § 16; Laws 1994, LB 961, § 2; Laws 1994, LB 1066, § 55; Laws 1994, LB 1160, § 114; Laws 1995, LB 182, § 62; Laws 1995, LB 377, § 8; Laws 1999, LB 605, § 2; Laws 2001, LB 329, § 13; Laws 2001, LB 536, § 3; Laws 2004, LB 479, § 7; Laws 2004, LB 983, § 59; Laws 2004, LB 1065, § 7; Laws 2007, LB 322, § 13; Laws 2007, LB 701, § 27; Laws 2010, LB 689, § 2, eff. July 15, 2010; Laws 2011, LB 379, § 1, eff. May 18, 2011; Laws 2012, LB 782, § 90, eff. July 19, 2012.

66-1345.01. Corn and grain sorghum; excise tax; procedure

An excise tax is levied upon all corn and grain sorghum sold through commercial channels in Nebraska or delivered in Nebraska. For any sale or delivery of corn or grain sorghum occurring on or after July 1, 1995, and before January 1, 2000, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after January 1, 2000, and before January 1, 2001, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2001, and before October 1, 2004, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2004, and before October 1, 2005, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2005, and before October 1, 2012, the tax is seven-eighths cent per bushel for corn and seven-eighths cent per hundredweight for grain sorghum. The tax shall be in addition to any fee imposed pursuant to sections 2-3623 and 2-4012.

The excise tax shall be imposed at the time of sale or delivery and shall be collected by the first purchaser. The tax shall be collected, administered, and enforced in conjunction with the fees imposed pursuant to sections 2-3623 and 2-4012. The tax shall be collected, administered, and enforced by the Department of Agriculture. No corn or grain sorghum shall be subject to the tax imposed by this section more than once.

In the case of a pledge or mortgage of corn or grain sorghum as security for a loan under the federal price support program, the excise tax shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty days after the collection of the excise tax for corn

or grain sorghum that is mortgaged as security for a loan under the federal price support program, the grower of the corn or grain sorghum so mortgaged decides to purchase the corn or grain sorghum and use it as feed, the grower shall be entitled to a refund of the excise tax previously paid. The refund shall be payable by the department upon the grower's written application for a refund. The application shall have attached proof of the tax deducted.

The excise tax shall be deducted whether the corn or grain sorghum is stored in this or any other state. The excise tax shall not apply to the sale of corn or grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Credits: Laws 1995, LB 377, § 2; Laws 1996, LB 1336, § 7; Laws 1999, LB 605, § 3; Laws 2001, LB 536, § 4; Laws 2004, LB 479, § 8; Laws 2004, LB 1065, § 8; Laws 2005, LB 90, § 18; Laws 2007, LB 322, § 14; Laws 2007, LB 701, § 28; Laws 2010, LB 689, § 3, eff. July 15, 2010.

66-1345.02. Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report

(1) The first purchaser, at the time of sale or delivery, shall retain the excise tax as provided in section 66-1345.01 and shall maintain the necessary records of the excise tax for each sale or delivery of corn or grain sorghum. Records maintained by the first purchaser shall provide (a) the name and address of the seller or deliverer, (b) the date of the sale or delivery, (c) the number of bushels of corn or hundredweight of grain sorghum sold or delivered, and (d) the amount of excise tax retained on each sale or delivery. The records shall be open for inspection and audit by authorized representatives of the Department of Agriculture during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the department by the last day of each January, April, July, and October on forms prescribed by the department a statement of the number of bushels of corn and hundredweight of grain sorghum sold or delivered in Nebraska. At the time the statement is filed, the first purchaser shall pay and remit to the department the excise tax.

(3) The department shall remit the excise tax collected to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund within thirty days after the end of each quarter.

(4) The department shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month.

Credits: Laws 1995, LB 377, § 3; Laws 1999, LB 605, § 4; Laws 2001, LB 536, § 5; Laws 2007, LB 322, § 15; Laws 2007, LB 701, § 29; Laws 2010, LB 689, § 4, eff. July 15, 2010.

66-1345.03. Excise tax; violation; penalty

Any person violating any of the provisions of section 66-1345.01 or 66-1345.02 shall be guilty of a Class III misdemeanor.

Credits: Laws 1995, LB 377, § 5.

66-1345.04. Transfer to Ethanol Production Incentive Cash Fund; legislative intent

(1) The State Treasurer shall transfer from the General Fund to the Ethanol Production Incentive Cash Fund, on or before the end of each of fiscal years 1995-96 and 1996-97, \$8,000,000 per fiscal year.

(2) It is the intent of the Legislature that the following General Fund amounts be appropriated to the Ethanol Production Incentive Cash Fund in each of the following years:

- (a) For each of fiscal years 1997-98 and 1998-99, \$7,000,000 per fiscal year;
- (b) For fiscal year 1999-2000, \$6,000,000;
- (c) For fiscal year 2000-01, \$5,000,000;
- (d) For fiscal year 2001-02 and for each of fiscal years 2003-04 through 2006-07, \$1,500,000;
- (e) For each of fiscal years 2005-06 and 2006-07, \$2,500,000 in addition to the amount in subdivision (2)(d) of this section;
- (f) For fiscal year 2007-08, \$5,500,000;
- (g) For each of fiscal years 2008-09 through 2011-12, \$2,500,000;
- (h) For each of fiscal years 2005-06 and 2006-07, \$5,000,000 in addition to the other amounts in this section;
- (i) For fiscal year 2007-08, \$15,500,000 in addition to the other amounts in this section;
- (j) For fiscal year 2009-10, \$8,250,000 in addition to the other amounts in this section;
- (k) For fiscal year 2010-11, \$3,000,000 in addition to the other amounts in this section; and
- (l) For fiscal years 2011-12, and 2012-13, amounts totaling up to \$1,000,000 in addition to the other amounts in this section.

Credits: Laws 1995, LB 377, § 4; Laws 1999, LB 605, § 5; Laws 2001, LB 536, § 6; Laws 2002, 2nd Sp. Sess., LB 1, § 3; Laws 2005, LB 90, § 19; Laws 2006, LB 968, § 1; Laws 2007, LB 322, § 16; Laws 2009, LB 316, § 17, eff. May 20, 2009; Laws 2011, LB 378, § 24, eff. May 18, 2011; Laws 2012, LB 969, § 7, eff. April 3, 2012.

66-1345.05. Funds received by the Department of Revenue; disposition

Any funds received by the Department of Revenue which result from an ethanol producer claiming excess credit, and any related interest and penalties thereon, shall be remitted to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund.

Credits: Laws 2004, LB 479, § 3.

66-1348. Investment agreements; act; how construed

Nothing in the Ethanol Development Act shall be construed to extend or affect the terms of any investment agreement entered into by the Ethanol Authority and Development Board prior to April 30, 1992.

Credits: Laws 1993, LB 364, § 19.

66-1349. Ethanol facility eligible for tax credits or incentives; employ residents

Any ethanol facility eligible for tax credits or incentives under the Ethanol Development Act, the Employment and Investment Growth Act, or the Nebraska Advantage Rural Development Act shall whenever possible employ workers who are residents of the State of Nebraska.

Credits: Laws 1994, LB 961, § 4; Laws 2005, LB 312, § 3.