

## LEGISLATIVE BILL 571

Approved by the Governor May 23, 1979

Introduced by Agriculture and Environment Committee,  
Schmit, 23, Chmn.; DeCamp, 40; Nichol, 48; R.  
Maresh, 32; Lamb, 43; Kahle, 37; Burrows, 30

AN ACT relating to alcohol plants or facilities; to provide for construction of alcohol plants or facilities as prescribed; to provide for contracts with certain political subdivisions; to create a fund; to increase the tax on motor vehicle fuels; to change provisions relating to the reduced tax on agricultural ethyl alcohol; to amend section 39-2215, Reissue Revised Statutes of Nebraska, 1943, and sections 66-410, 66-428, and 66-605, Revised Statutes Supplement, 1978; to provide for severability; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. In order to facilitate the production of alcohol, this act authorizes the State of Nebraska to enter into agreements with municipalities or counties to build, develop, maintain, lease, and operate an alcohol plant or plants or facilities related to the production, storage, or distribution of alcohol.

Sec. 2. That section 39-2215, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-2215. There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund. All motor fuel taxes and special fuel taxes related to highway use retained by the state, all motor vehicle registration fees retained by the state, and such other highway user taxes which may be imposed by state law and allocated to the fund are hereby irrevocably pledged for the terms of the bonds to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption, and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose. The Of the money in the fund not required for such use, (1) an amount not to exceed the equivalent of one cent per gallon of the money collected pursuant to sections 66-410, 66-428, and 66-605 shall be placed in the Alcohol Plant Fund only when calls

or demands are made on such fund pursuant to lease agreements entered into under this act, and (2) the remaining money in the Highway Trust Fund may be used for the purchase for retirement of the bonds in the open market or for any other lawful purpose and the balance shall be transferred monthly to the Highway Allocation Fund, established by section 39-2401, for such use as may be provided by law. Any amounts in the Alcohol Plant Fund not utilized for purposes stated in section 8 of this act may, in the discretion of the Governor, be used for the purchase for retirement of bonds authorized in this section or by section 9 of this act in the open market or for any other lawful purpose, including transfer to the Highway Allocation Fund established by section 39-2401. The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. The money deposited in the Highway Trust Fund shall be invested in the manner provided by law. The earnings therefrom, if any, shall be credited to the fund. All disbursements for the fund Highway Trust Fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the Highway Trust Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

Sec. 3. That section 66-410, Revised Statutes Supplement, 1978, 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 other taxes provided for by law, pay a tax of nine ten and one half cents per gallon upon all motor vehicle fuels as shown by such statement. ; ~~Provided,--that--effective~~ Effective January 1, 1978, gasoline sold in Nebraska which contains a minimum of ten per cent blend of an agricultural ethyl alcohol whose purity shall be at least ninety-nine per cent alcohol shall be subject to a state motor fuel tax which is five cents per gallon less than gasoline which does not contain such a blend, except that commencing July 1, 1982, such five cent per gallon reduction shall apply only to such a blend which contains agricultural ethyl alcohol produced in the State of Nebraska by an alcohol plant in operation or under construction prior to July 1, 1982. When the sale in Nebraska of gasoline containing such a blend exceeds twenty million gallons per year, an adjustment in the tax may be considered by the Legislature. Such dealers shall remit such tax to the Tax Commissioner.

Sec. 4. That section 66-428, Revised Statutes Supplement, 1978, be amended to read as follows:



66-428. There is hereby levied and imposed an excise tax of nine ten and one half cents per gallon 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 the provisions of section 66-410 or Chapter 66, article 6; Provided, that such excise tax after ~~August 7, 1977~~, the effective date of this act shall be four five and one half cents per gallon on motor fuel containing a minimum of ten per cent blend of agricultural ethyl alcohol whose purity shall be at least ninety-nine per cent alcohol, and nine ten and one half cents per gallon on gasoline 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. 5. That section 66-605, Revised Statutes Supplement, 1978, be amended to read as follows:

66-605. There is hereby levied and imposed an excise tax of nine 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 (7) 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 motor fuel tax administrator as provided by sections 66-601 to 66-640.

Sec. 6. Any municipality or county or any combination thereof is hereby empowered to enter into an agreement with the State of Nebraska to build or otherwise provide an alcohol plant or facility for the State of Nebraska, which agreement shall lease, for a term not to exceed fifty years, the plant to the state for rental periods of twelve months or less. All such leases shall be subject to the condition that there is in effect a yearly appropriation for the payment of any rentals and other sums due and payable on the first day of each rental period, and in the event that there is no yearly appropriation the lease terminates. Any agreement entered into pursuant to this section may contain provisions similar to those customarily found in a lease between private parties or customarily found in a lease between parties for buildings or facilities similar to the type of building or facility to which the agreement between the state and municipality or county or

combination thereof shall pertain.

Sec. 7. Each lease entered into pursuant to section 6 of this act shall require that the profits of such alcohol plant be paid to the Alcohol Plant Fund. For the purposes of this section profits shall mean the gain made after deducting the value of the labor, materials, rents, and all expenses.

Sec. 8. There is hereby created a fund to be known as the Alcohol Plant Fund, to consist of funds received pursuant to section 7 of this act, such funds as may be transferred from the Highway Trust Fund pursuant to section 39-2215, and such funds as may be appropriated by the Legislature. The Alcohol Plant Fund shall be used to make lease payments, if necessary, in an amount sufficient to pay the principal of, interest on, and premium, if any, on the bonds issued pursuant to this act to finance alcohol plants and to maintain amounts in any bond and bond reserve funds.

Sec. 9. Any municipality or county or any combination thereof which enters into an agreement pursuant to section 6 of this act may issue bonds pledging revenue of any such municipality or county to finance alcohol plants and to provide working capital for the operation of such plants. The powers granted to municipalities in section 72-1403 are hereby granted to municipalities and counties as though such powers concerned and were used in carrying out the purposes of this act. At such time as all payments have been made pursuant to any agreement, the plant or facility may become the property of the State of Nebraska upon the exercise by the state of any option to purchase.

Sec. 10. If the state shall be the sole lessee of any plant furnished pursuant to section 6 of this act, the municipality or county or combination thereof shall not be liable in tort, contract, or otherwise for actions by the state solely by reason of the fact that legal ownership, or title, to such building or facility may be in such municipality or county or combination thereof. Provided, that the provisions of this section shall not be deemed or construed in any way to affect any rights of holders of bonds of a municipality or county or combination thereof issued to finance such plant or the obligations of the municipality or county or combination thereof to the holders of such bonds.

Sec. 11. The State of Nebraska is hereby empowered to enter into a lease or sublease, as lessor, lessee, or sublessor, with any public body corporate or any political subdivision of the State of Nebraska and to



enter into a management services, operating, or other contract or agreement with any person to the extent permitted by law relating to any plant, building, or other facility which is or has been the subject of an agreement pursuant to the provisions of section 6 of this act.

Sec. 12. Any municipality or county or any combination thereof may apply to construct, maintain, and operate or otherwise provide an alcohol plant or a facility related to the production, storage, or distribution of alcohol for lease to the State of Nebraska.

Sec. 13. The Governor shall establish the criteria or guidelines for the applications to be submitted for the contracts available under this act within thirty days after the operative date of this act. Applications for such contracts shall be submitted within sixty days after announcement by the Governor that applications are being accepted, but only after the guidelines or criteria governing such submissions have been publicly announced. The Governor may announce successive periods during which applications will be accepted for consideration if, in his discretion, it will further the purposes of this act.

Sec. 14. Any application made under section 12 of this act shall be filed with the Governor. The Governor shall establish application review procedures which may include the Legislative Fiscal Analyst and other agencies as may be necessary.

Sec. 15. A resource statement shall be filed with the application. The resource statement, as prescribed by the Governor, shall show in summary form plans, working drawings, and specifications prepared for the construction and equipping of the alcohol plant or a facility related to the production, storage, or distribution of alcohol. The resource statement shall provide the total project cost and financing available from any source. The resource statement shall also include a projection of costs and profits, the manner in which the project will be accomplished, and a proposed marketing program for the finished product. In projecting profits, the applicant may take into account any available subsidies.

Sec. 16. In determining which applicants shall receive contracts, the Governor shall examine the proposed plans for the plant or a facility related to the production, storage, or distribution of alcohol. The plans shall show an ability to complete construction and

be in operation within twenty-four months from the date of approval.

Sec. 17. Within sixty days after the last day upon which an application may be submitted under section 13 of this act, the Governor shall determine whether a municipality or county, or any combination thereof, shall receive a contract. The Governor shall provide to each applicant, whose application was denied, a report in writing setting forth the findings and conclusions upon which such denial was based.

Sec. 18. The Department of Economic Development shall serve in an advisory capacity to the Governor for the purposes of carrying out the Governor's duties under this act. The department shall consult with the Governor regarding guidelines for applications, requirements relative to resource statements, and the criteria and findings upon which contracts are awarded.

Sec. 19. Bonds issued pursuant to section 9 of this act may be sold in such manner and for such price as the municipality or county or combination thereof may determine, at par, below par, or above par, at private sale or at public sale after notice published prior to such public sale in a newspaper having general circulation in the municipality or county or combination thereof, or in such other medium of publication as may be deemed appropriate.

Sec. 20. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law and shall be independent of and in addition to any other provision of the laws of the State of Nebraska with reference to the matters covered by this act. The provisions of this act and all grants of power, authority, rights, or discretion made in this act to the state or a municipality or county or combination thereof shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon the state or a municipality or county or combination thereof.

Sec. 21. The State of Nebraska and any municipality or county or combination thereof which agrees to lease, construct, maintain, and operate or otherwise provide an alcohol plant or facility related to the production, storage, or distribution of alcohol shall not be subject to any requirements relating to public buildings, structures, grounds, works, or improvements imposed by the statutes of Nebraska or any other similar requirements which may be lawfully waived by this section and any requirement of competitive bidding or restriction



imposed on the procedure for award of contracts for such purpose or the lease, sale, or other disposition of property of any municipality or county is not applicable to any action taken under authority of this act.

Sec. 22. 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. 23. This act shall become operative on the first day of the month following the effective date of this act.

Sec. 24. That original section 39-2215, Reissue Revised Statutes of Nebraska, 1943, and sections 66-410, 66-428, and 66-605, Revised Statutes Supplement, 1978, are repealed.

Sec. 25. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.