

LEGISLATIVE BILL 587

Approved by the Governor April 10, 1989

Introduced by Schmit, 23; Baack, 47; Weihing, 48;
Robak, 22; Wehrbein, 2; Morrissey, 1

AN ACT relating to the Ethanol Authority and Development Act; to amend sections 66-1303, 66-1304, 66-1306, and 66-1315, Reissue Revised Statutes of Nebraska, 1943, and sections 66-1301, 66-1302, 66-1307, 66-1307.01, 66-1307.02, 66-1317, 66-1321, 66-1322, and 66-1323, Revised Statutes Supplement, 1988; to restate intent; to define and redefine terms; to change provisions relating to membership on the Ethanol Authority and Development Board and to provide for appointment of members as prescribed; to change provisions relating to the use and receipt of funds; to change a provision relating to grants and loans; to provide for the treatment of certain information contained in applications; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 66-1301, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1301. Sections 66-1301 to 66-1325 and section 14 of this act shall be known and may be cited as the Ethanol Authority and Development Act.

Sec. 2. That section 66-1302, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1302. The Legislature finds that Nebraska should immediately develop an ethanol development a program to process, promote, market, and distribute products derived from grain or from 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 more independent energy-wise and which will retain Nebraska dollars in the Nebraska economy to achieve a pyramid 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; and

(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, and other agricultural byproduct production and distribution plants and facilities, or facilities related to the processing, marketing, or distribution of ethanol or any products derived from ethanol components, coproducts, or byproducts; and

(5) Promotion and market development of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts.

Sec. 3. That section 66-1303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1303. As used in For purposes of the Ethanol Authority and Development Act, unless the context otherwise requires:

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

{1} (2) Board shall mean the Ethanol Authority and Development Board;

{2} (3) Capital cost shall mean expenditures which include, but are not limited to, expenditures incurred for design and engineering, for land acquisition and related costs, financing fees, plant construction, and such other appropriate costs incurred prior to the commencement of the operation of 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;

{3} (4) Electric supplier shall mean any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail; and

{4} (5) Fund shall mean the Ethanol Authority and Development Cash Fund; and

{5} (6) Grain shall mean wheat, corn, and grain sorghum.

Sec. 4. That section 66-1304, Reissue Revised Statutes of Nebraska, 1943, 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 7 the board shall consist of: the

(a) The Nebraska Gasohol Committee; 7 and the

(b) The following members to be appointed by the Governor: A 7 a representative of the Nebraska Wheat Development, Utilization, and Marketing Board; a representative of the Corn Development, Utilization, and Marketing Board; a representative of the Grain Sorghum Development, Utilization, and Marketing Board 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 Members of the board initially appointed by the Governor who are not members of the Nebraska Gasohol Committee shall be appointed within thirty days of April 23, 1986, and 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 by the Governor subject to the approval of the Legislature in the same manner as the original appointment, 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. ~~for state employees-~~

(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. 5. That section 66-1306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1306. The administrator of the Nebraska Gasohol Committee shall provide technical assistance to the board and shall perform all other duties as shall be delegated or assigned to him or her by the board. The board may employ the services of experts and consultants and expend funds necessary to secure funds pursuant to section 66-1307, to acquire title to commodities pursuant to section 66-1316, to promote air quality improvement programs, or to otherwise carry out the board's duties under the Ethanol Authority and Development Act.

Sec. 6. That section 66-1307, Revised Statutes Supplement, 1988, 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 an ethanol or ~~other~~ agricultural ~~byproduct~~ production facility or a facility related to the processing, marketing, or distribution of ethanol or any products derived from ethanol components, coproducts, or byproducts 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, or acquisition, or expansion of ethanol or other agricultural ~~byproduct~~ 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 Ethanol Authority and Development Act ~~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, ~~or~~ 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 ~~72-1269~~ 72-1276.

Sec. 7. That section 66-1307.01, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1307.01. (1) The board may use the fund to purchase shares of stock or otherwise make an investment in to facilitate the construction, acquisition, or expansion of an ethanol or other agricultural byproduct production and distribution facility or a facility related to the processing, marketing, or distribution of ethanol or any products derived from ethanol components, coproducts, or byproducts. The board shall establish the necessary criteria or guidelines for determining when the fund will be invested in such a facility 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 utilize resource statements similar in content to those filed under section 66-1321 and which recognize priority considerations similar to those enumerated in section 66-1323.

(2) The board shall adopt procedures to carry out subsection (1) of this section and shall provide necessary assistance to applicants to properly and rapidly process investment requests.

(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. 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. 8. That section 66-1307.02, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1307.02. Notwithstanding the investment standards and fiduciary obligations of the state prescribed in sections 72-1246 and 72-1247, the state investment officer shall purchase shares of stock or otherwise make an investment in a corporation utilizing the fund when so directed by the board. The board shall not direct the state investment officer to purchase shares of stock or otherwise make an investment which utilizes all or part of the fund unless the board finds that any amounts of the fund so utilized will provide a reasonable return on investment to the state. All management, custodial, and service costs, as defined in section 72-1249.02, incurred by the state investment officer in purchasing shares of stock or otherwise making an investment pursuant to section 66-1307.01 shall be charged to the fund. Such costs shall be

approved by the Nebraska Investment Council. Any return on investment received pursuant to section 66-1307.01 and this section shall be remitted to the State Treasurer and shall be placed in the fund.

For the purposes of this section, reasonable return on investment shall not be construed to mean those returns realized pursuant to the standards and fiduciary obligations prescribed in sections 72-1246 and 72-1247 but shall be based on the expectation of a viable ethanol or ~~other~~ agricultural ~~byproduct~~ production facility or facility related to the processing, marketing, or distribution of ethanol or any products derived from ethanol components, coproducts, or byproducts being constructed which will create jobs, generate economic return to the state, produce byproducts or coproducts, provide a market for grain, and otherwise provide an opportunity to receive interest and dividends and recover any principal invested or loaned for redistribution for additional new or expanded facilities.

Sec. 9. That section 66-1315, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1315. 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. Not more than twenty-five percent of the amount of any such federal funds available, if any, to the board shall be used to fund ethanol research and development programs, and the remaining amount, if any, shall be used as provided in section 66-1307.

Sec. 10. That section 66-1317, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1317. (1) Any city, county, or village may apply for a grant or loan from the board to facilitate the construction, ~~or~~ acquisition, ~~or~~ expansion of an ethanol plant or agricultural production facility or a facility related to the processing, marketing, or distribution ~~or~~ storage of ethanol or any products derived from ethanol components, coproducts, or byproducts, ~~from an ethanol plant.~~ The grant or loan shall be in an amount up to but not more than five million dollars or ten percent of the total capital cost of the plant ~~or~~ facility, whichever is less.

(2) Any city, county, village, or postsecondary educational institution may apply for a

grant or loan to facilitate the development or marketing of new, nonfood products derived from ethanol or ethanol components, coproducts, or byproducts or from grain components, coproducts, or byproducts.

Sec. 11. That section 66-1321, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1321. A resource statement shall be filed with every application.

The resource statement for a grant or loan under subsection (1) of section 66-1317, as prescribed by the board, shall show in summary form plans, working drawings, and specifications prepared for the construction and equipping of the ethanol plant or agricultural production facility or a facility related to the processing, marketing, or distribution or storage of ethanol or any coproduct or byproduct products derived from ethanol components, coproducts, or byproducts. Such resource statement shall provide the total project cost, the amount and source of any local funds, the ability to repay any debts incurred in the construction of the plant or a facility related to the processing or storage of ethanol or any coproduct or byproduct, and the financing available from other sources.

The resource statement for a grant or loan under subsection (2) of section 66-1317 shall contain such information as is prescribed by the board.

All resource statements shall also include projections 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. 12. That section 66-1322, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1322. In determining which applicants shall receive grants or loans under subsection (1) of section 66-1317, the board shall examine the proposed plans for the plant or a ethanol or agricultural production facility or a facility related to the processing, marketing, or distribution or storage of ethanol or any coproduct or byproduct products derived from ethanol components, byproducts, or coproducts. The plans shall show an ability to complete construction and be in operation within twenty-four months from the date of approval.

In determining which applicants shall receive

grants or loans under subsection (2) of section 66-1317, the board shall examine the proposed plans and the estimated dates of completion.

Sec. 13. That section 66-1323, Revised Statutes Supplement, 1988, be amended to read as follows:

66-1323. Upon receipt of an application, the board shall determine whether a city, county, village, or postsecondary educational institution shall receive a grant or loan. If there are more qualified applicants than grants or loans available, priority shall be given to those applicants which the board deems to be most qualified. When determining qualified applicants, the board's considerations shall include, but not be limited to, job creation, economic return to the state, size of the plant facility, byproducts or coproducts, if any, dates construction would be commenced and completed, financial stability of the applicant, and size of the grant or loan needed to commence construction of the plant or 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 commence marketing or development of the product. For purposes of sections 66-1317 to 66-1325, preference shall be given to those applicants which show the ability to repay all or any portion of a loan.

Sec. 14. 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.

Sec. 15. That original sections 66-1303, 66-1304, 66-1306, and 66-1315, Reissue Revised Statutes of Nebraska, 1943, and sections 66-1301, 66-1302, 66-1307, 66-1307.01, 66-1307.02, 66-1317, 66-1321, 66-1322, and 66-1323, Revised Statutes Supplement, 1988, are repealed.

Sec. 16. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.