

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

494H0464

## CONFERENCE COMMITTEE ENGROSSED NO. **SB** **133** - 02/23/2002

Introduced by: Senators Diedrich (Larry), Albers, Brosz, Daugaard, de Hueck, Dennert, Diedrich (Elmer), Duxbury, Greenfield, Hutmacher, Koetzle, Koskan, McCracken, McIntyre, Moore, Munson, Olson (Ed), Putnam, Sutton (Dan), Symens, and Vitter and Representatives Jaspers, Begalka, Broderick, Burg, Derby, Flowers, Frost, Fryslie, Gillespie, Glenski, Hansen (Tom), Hanson (Gary), Hargens, Holbeck, Hundstad, Hunhoff, Jensen, Juhnke, Klaudt, Kooistra, Lange, Nachtigal, Olson (Mel), Peterson (Jim), Pitts, Sebert, Sigdestad, Slaughter, Smidt, Sutton (Duane), Valandra, Van Gerpen, and Wick

1 FOR AN ACT ENTITLED, An Act to revise the distribution of revenue from the petroleum  
2 release compensation and tank inspection fee, to transfer certain funds, and to declare an  
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 34A-13-20 be amended to read as follows:

6 34A-13-20. A petroleum release compensation and tank inspection fee is imposed upon any  
7 petroleum products upon which the fuel excise tax is imposed by §§ 10-47B-5 to 10-47B-10,  
8 inclusive, and 10-47B-13. None of the exemptions from fuel excise tax allowed in § 10-47B-19  
9 shall apply to this fee. The parties required to pay the fuel excise tax under the provisions of  
10 §§ 10-47B-21 to 10-47B-26, inclusive, and 10-47B-29 and 10-47B-31 are liable for payment of



1 the petroleum release and tank inspection fee. In cases where the fuel is exempt from the fuel  
2 excise tax under the provisions of subdivisions 10-47B-19(1), (3), and (5), the supplier shall pay  
3 the fee. Responsibility for payment of the fee ceases if the petroleum product is sold and  
4 delivered by a licensed exporter outside of the state. The amount of the fee imposed is twenty  
5 dollars per one thousand gallons of petroleum. ~~Beginning on January 1, 2003, the fee is ten~~  
6 ~~dollars per one thousand gallons of petroleum. The~~ Beginning January 1, 2003, fifty percent of  
7 the revenue collected pursuant to this section shall be deposited monthly in the ethanol fuel fund  
8 and fifty percent of the revenue collected pursuant to this section shall be distributed monthly in  
9 the following manner:

- 10 (1) ~~During fiscal year 1999, forty-two percent shall be deposited in the state capital~~  
11 ~~construction fund created in § 5-27-1. Beginning in fiscal year 2000 to December 31,~~  
12 ~~2002, inclusive, fifty percent shall be deposited in the state capital construction fund~~  
13 ~~created in § 5-27-1. Beginning on January 1, 2003, seventy-eight and seven-tenths~~  
14 ~~percent shall be deposited in the state capital construction fund; and~~
- 15 (2) ~~During fiscal year 1999, fifty-eight percent shall be deposited into the petroleum~~  
16 ~~release compensation fund. Beginning in fiscal year 2000 to December 31, 2002,~~  
17 ~~inclusive, fifty percent shall be deposited in the petroleum release compensation fund.~~  
18 Beginning April 1, 2002, to December 31, 2002, inclusive, twenty-nine and one-tenth  
19 percent shall be deposited in the petroleum release compensation fund and twenty and  
20 nine-tenths percent shall be deposited in the state highway fund. Beginning on  
21 January 1, 2003, twenty-one and three-tenths percent shall be deposited in the  
22 petroleum release compensation fund.

23 Section 2. That § 10-47B-162 be amended to read as follows:

24 10-47B-162. A production incentive payment of twenty cents per gallon is available to

1 ethanol producers for ethyl alcohol which is fully distilled and produced in South Dakota. To be  
2 eligible for this payment, the ethyl alcohol shall be denatured and subsequently blended with  
3 gasoline to create ethanol blend. The ethyl alcohol shall be ninety-nine percent pure and shall be  
4 distilled from cereal grains. Annual production incentive payments for any facility may not  
5 exceed one million dollars. An ethanol production facility is eligible for a production incentive  
6 payment under this section only if the facility has produced qualifying ethyl alcohol on or before  
7 December 31, 2006. No facility may receive any production incentive payments in an amount  
8 greater than ten million dollars. The cumulative annual production incentive payments made  
9 under this section may not exceed ~~an amount which has been appropriated by the Legislature for~~  
10 ~~this purpose and has been deposited into the ethanol fuel fund in the state treasury~~ four million  
11 dollars for fiscal year 2003, five million dollars for fiscal year 2004, six million dollars for fiscal  
12 year 2005, and seven million dollars thereafter. Payments from the ethanol fuel fund shall be  
13 made on a first in time basis until the fiscal year appropriation is reached. During the month when  
14 the appropriation limit is to be reached, all claims received by month end shall be reimbursed  
15 proportionately on a pro-rata basis for each gallon claimed.

16 Section 3. That § 10-47B-164 be amended to read as follows:

17 10-47B-164. Any money in the ethanol fuel fund is continuously appropriated for purposes  
18 of providing ethanol production payments to qualified ethanol producers. The department may  
19 receive and approve ethanol production incentive payment claims and authorize the issuance of  
20 payment warrants to licensed ethanol producer claimants based on claims presented by the  
21 licensees. At the end of each fiscal year, any unobligated cash in excess of one hundred thousand  
22 dollars in the ethanol fuel fund shall be transferred to the state ~~capital construction~~ highway fund.

23 Section 4. That § 5-27-5 be amended to read as follows:

24 5-27-5. During fiscal year 1999, the Bureau of Finance and Management shall transfer each

1 month three and six-tenths percent of the monthly state capital construction fund revenues from  
2 the state capital construction fund to the public and special transportation fund. Beginning in  
3 fiscal year 2000 to December 31, 2002, inclusive, the Bureau of Finance and Management shall  
4 transfer each month three and one-half percent of the monthly state capital construction fund  
5 revenues from the state capital construction fund to the public and special transportation fund.  
6 Beginning on January 1, 2003, the Bureau of Finance and Management shall transfer each month  
7 two and six-tenths percent of the monthly state capital construction fund revenues from the state  
8 capital construction fund to the ~~public and special transportation~~ state highway fund.

9 Section 5. On or about April 1, 2002, the state treasurer shall transfer the sum of fifteen  
10 million dollars (\$15,000,000) from the petroleum release compensation fund to the state highway  
11 fund.

12 Section 6. That § 34A-13-54 be amended to read as follows:

13 34A-13-54. Except at sites determined to be high risk by the secretary of the Department of  
14 Environment and Natural Resources using risk-based corrective action criteria, the director shall  
15 suspend payments for tank pulling and corrective action at abandoned sites eligible for the  
16 abandoned tank removal program if the balance of the fund is ~~five~~ two million dollars or below.  
17 The director shall resume payments for tank pulling and corrective action at abandoned sites  
18 eligible for the abandoned tank removal program if the fund balance exceeds ~~five~~ two million  
19 dollars. Except as provided in §§ 34A-13-49 to 34A-13-54, inclusive, all other limits of  
20 coverage, conditions, and criteria in this chapter apply to tank pulling and corrective action taken  
21 at abandoned sites.

22 Section 7. Whereas, this Act is necessary for the support of the state government and its  
23 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full  
24 force and effect from and after its passage and approval.