

By: Representatives Whittington, Fleming,
Miles, Reynolds

To: Agriculture;
Appropriations

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1130

1 AN ACT TO AUTHORIZE THE COMMISSIONER OF AGRICULTURE AND
2 COMMERCE TO MAKE CERTAIN CASH PAYMENTS TO PRODUCERS OF ETHANOL,
3 ANHYDROUS ALCOHOL AND WET ALCOHOL; TO PROVIDE DEFINITIONS; TO
4 PROVIDE DATES BY WHICH EACH PRODUCER MUST FILE A CLAIM FOR
5 PAYMENT; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** It is the goal of this state that ethanol
8 production plants in the state attain a total annual production
9 level of two hundred forty million (240,000,000) gallons.

10 **SECTION 2.** For the purposes of this act, the following terms
11 shall have the meanings ascribed to them herein unless the context
12 clearly indicates otherwise:

13 (a) "Ethanol" means fermentation ethyl alcohol derived
14 from agricultural products, including potatoes, cereal, grains,
15 cheese whey and sugar beets; forest products; or other renewable
16 resources, including residue and waste generated from the
17 production, processing and marketing of agricultural products,
18 forest products and other renewable resources, that:

19 (i) Meets all of the specifications in ASTM
20 specification D 4806-88; and

21 (ii) Is denatured as specified in Code of Federal
22 Regulations, Title 27, parts 20 and 21.

23 (b) "Wet alcohol" means agriculturally derived
24 fermentation ethyl alcohol having a purity of at least fifty
25 percent (50%) but less than ninety-nine percent (99%).

26 (c) "Anhydrous alcohol" means fermentation ethyl
27 alcohol derived from agricultural products as described in



28 paragraph (a), but that does not meet ASTM specifications or is
29 not denatured and is shipped in bond for further processing.

30 (d) "Ethanol plant" means a plant at which ethanol,
31 anhydrous alcohol or wet alcohol is produced.

32 **SECTION 3.** (1) The Commissioner of Agriculture and Commerce
33 is authorized to make cash payments to producers of ethanol,
34 anhydrous alcohol and wet alcohol located in the state. These
35 payments shall apply only to ethanol, anhydrous alcohol and wet
36 alcohol fermented in the state and produced at plants that have
37 begun production by June 30, 2003. For purposes of this section,
38 an entity that holds a controlling interest in more than one (1)
39 ethanol plant is considered a single producer. The amount of the
40 payment for each producer's annual production is:

41 (a) Except as provided in subsection (2) of this
42 section, for each gallon of ethanol or anhydrous alcohol produced
43 on or before June 30, 2003, or for ten (10) years after the start
44 of production, whichever is later, Twenty Cents (20¢) per gallon;
45 and

46 (b) For each gallon produced of wet alcohol on or
47 before June 30, 2003, or for ten (10) years after the start of
48 production, whichever is later, a payment in cents per gallon
49 calculated by the formula "alcohol purity in percent divided by
50 five (5)," and rounded to the nearest cent per gallon, but not
51 less than Eleven Cents (11¢) per gallon.

52 The producer payments for anhydrous alcohol and wet alcohol
53 under this section may be paid to either the original producer of
54 anhydrous alcohol or wet alcohol or the secondary processor, at
55 the option of the original producer, but not to both.

56 No payments shall be made for production that occurs after
57 June 30, 2013.

58 (2) If the level of production at an ethanol plant increases
59 due to an increase in the production capacity of the plant, the
60 payment under subsection (1)(a) of this section applies to the



61 additional increment of production until ten (10) years after the
62 increased production began. Once a plant's production capacity
63 reaches thirty million (30,000,000) gallons per year, no
64 additional increment shall qualify for the payment.

65 (3) The commissioner is authorized to make payments to
66 producers of ethanol or wet alcohol in the amount of One and
67 One-half Cents (1-1/2¢) for each kilowatt hour of electricity
68 generated using closed-loop biomass in a cogeneration facility at
69 an ethanol plant located in the state. Payments under this
70 subsection shall be made only for electricity generated at
71 cogeneration facilities that begin operation by June 30, 2003.
72 The payments apply to electricity generated on or before the date
73 ten (10) years after the producer first qualifies for payment
74 under this subsection. Total payments under this subsection in
75 any fiscal year may not exceed Seven Hundred Fifty Thousand
76 Dollars (\$750,000.00). For the purposes of this subsection:

77 (a) "Closed-loop biomass" means any organic material
78 from a plant that is planted for the purpose of being used to
79 generate electricity or for multiple purposes that include being
80 used to generate electricity; and

81 (b) "Cogeneration" means the combined generation of:

82 (i) Electrical or mechanical power; and

83 (ii) Steam or forms of useful energy, such as
84 heat, that are used for industrial, commercial, heating or cooling
85 purposes.

86 (4) Payments under subsections (1) and (2) of this section
87 to all producers may not exceed Thirty-seven Million Dollars
88 (\$37,000,000.00) in a fiscal year. Total payments under
89 subsections (1) and (2) of this section to a producer in a fiscal
90 year may not exceed Six Million Dollars (\$6,000,000.00).

91 (5) By the last day of October, January, April and July,
92 each producer shall file a claim for payment for ethanol,
93 anhydrous alcohol and wet alcohol production during the preceding



94 three (3) calendar months. A producer with more than one (1)
95 plant shall file a separate claim for each plant. A producer that
96 files a claim under this subsection shall include a statement of
97 the producer's total ethanol, anhydrous alcohol and wet alcohol
98 production in Mississippi during the quarter covered by the claim,
99 including anhydrous alcohol and wet alcohol produced or received
100 from an outside source. A producer shall file a separate claim
101 for any amount claimed under subsection (3) of this section. For
102 each claim and statement of total ethanol, anhydrous alcohol and
103 wet alcohol production filed under this section, the volume of
104 ethanol, anhydrous alcohol and wet alcohol production or amounts
105 of electricity generated using closed-loop biomass must be
106 examined by an independent certified public accountant in
107 accordance with standards established by the American Institute of
108 Certified Public Accountants.

109 (6) Payments shall be made November 15, February 15, May 15
110 and August 15. A separate payment shall be made for each claim
111 filed. Except as provided in subsection (10) of this section, the
112 total quarterly payment to a producer under this subsection,
113 excluding amounts paid under subsection (3) of this section, may
114 not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00).

115 (7) If the total amount for which all producers are eligible
116 in a quarter under subsection (3) of this section exceeds the
117 amount available for payments, the commissioner shall make
118 payments in the order in which the plants covered by the claims
119 began generating electricity using closed-loop biomass.

120 (8) After July 1, 2002, new production capacity is eligible
121 for payment under this section only if the commissioner received:

122 (a) An application for approval of the new production
123 capacity;

124 (b) An appropriate letter of long-term financial
125 commitment for construction of the new production capacity; and



126 (c) Copies of all necessary permits for construction of
127 the new production capacity. The commissioner may approve new
128 production capacity based on the order in which the applications
129 are received.

130 (9) The commissioner may not approve any new production
131 capacity after September 30, 2002, except that a producer with an
132 approved production capacity of at least twelve million
133 (12,000,000) gallons per year but less than thirty million
134 (30,000,000) gallons per year before July 1, 2003, is approved for
135 thirty million (30,000,000) gallons of production capacity.

136 (10) Notwithstanding the quarterly payment limits of
137 subsection (6), the commissioner shall make an additional payment
138 in the eighth quarter of each fiscal biennium to ethanol producers
139 for the lesser of:

140 (a) Twenty Cents (20¢) per gallon of production in the
141 eighth quarter of the biennium that is greater than seven million
142 five hundred thousand (7,500,000) gallons; or

143 (b) The total amount of payments lost during the first
144 seven (7) quarters of the biennium due to plant outages, repair or
145 major maintenance. Total payments to an ethanol producer in a
146 fiscal biennium, including any payment under this subsection, must
147 not exceed the total amount the producer is eligible to receive
148 based on the producer's approved production capacity. The
149 provisions of this subsection apply only to production losses that
150 occur in quarters beginning after December 31, 2003.

151 (11) For the purposes of this section, "new production
152 capacity" means annual ethanol production capacity that was not
153 allowed under a permit application submitted to the pollution
154 control agency before September 30, 2002, or for which
155 construction did not begin before July 1, 2003.

156 (12) The commissioner shall adopt rules to implement this
157 act.



158 (13) A plant in production or under construction by January
159 1, 2003, shall continue to receive uninterrupted payments under
160 Section 3 of this act of at least Twenty Cents (20¢) per gallon of
161 ethanol produced until July 1, 2013.

162 (14) Promotional or educational efforts related to ethanol
163 that are financed wholly or partially with state funds and that
164 promote or identify a particular crop or commodity used to produce
165 ethanol must also include a description of the other potential
166 sources of ethanol listed in Section 2 of this act. It is the
167 intent of this legislation that corn and resource commodities
168 shall be furnished totally by Mississippi farmers insofar as the
169 supply is available at current market prices.

170 **SECTION 4.** This act shall take effect and be in force from
171 and after June 30, 2002.

