

By: Representatives Whittington, Reynolds

To: Agriculture;  
Appropriations

HOUSE BILL NO. 1130

1 AN ACT TO REQUIRE 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 shall make  
33 cash payments to producers of ethanol, anhydrous alcohol and wet  
34 alcohol located in the state. These payments shall apply only to  
35 ethanol, anhydrous alcohol and wet alcohol fermented in the state  
36 and produced at plants that have begun production by June 30,  
37 2002. For purposes of this section, an entity that holds a  
38 controlling interest in more than one (1) ethanol plant is  
39 considered a single producer. The amount of the payment for each  
40 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, 2002, or ten (10) years after the start of  
44 production, whichever is later, Twenty Cents (20¢) per gallon; and

45 (b) For each gallon produced of wet alcohol on or  
46 before June 30, 2002, or ten (10) years after the start of  
47 production, whichever is later, a payment in cents per gallon  
48 calculated by the formula "alcohol purity in percent divided by  
49 five (5)," and rounded to the nearest cent per gallon, but not  
50 less than Eleven Cents (11¢) per gallon.

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

55 No payments shall be made for production that occurs after  
56 June 30, 2012.

57 (2) If the level of production at an ethanol plant increases  
58 due to an increase in the production capacity of the plant, the  
59 payment under subsection (1)(a) of this section applies to the  
60 additional increment of production until ten (10) years after the



61 increased production began. Once a plant's production capacity  
62 reaches fifteen million (15,000,000) gallons per year, no  
63 additional increment shall qualify for the payment.

64 (3) The commissioner shall make payments to producers of  
65 ethanol or wet alcohol in the amount of One and One-half Cents  
66 (1-1/2¢) for each kilowatt hour of electricity generated using  
67 closed-loop biomass in a cogeneration facility at an ethanol plant  
68 located in the state. Payments under this subsection shall be  
69 made only for electricity generated at cogeneration facilities  
70 that begin operation by June 30, 2002. The payments apply to  
71 electricity generated on or before the date ten (10) years after  
72 the producer first qualifies for payment under this subsection.  
73 Total payments under this subsection in any fiscal year may not  
74 exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00). For  
75 the purposes of this subsection:

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

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

81 (i) Electrical or mechanical power; and

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

85 (4) Payments under subsections (1) and (2) of this section  
86 to all producers may not exceed Thirty-seven Million Dollars  
87 (\$37,000,000.00) in a fiscal year. Total payments under  
88 subsections (1) and (2) of this section to a producer in a fiscal  
89 year may not exceed Three Million Dollars (\$3,000,000.00).

90 (5) By the last day of October, January, April and July,  
91 each producer shall file a claim for payment for ethanol,  
92 anhydrous alcohol and wet alcohol production during the preceding  
93 three (3) calendar months. A producer with more than one (1)



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

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

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

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

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

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

125 (c) Copies of all necessary permits for construction of  
126 the new production capacity. The commissioner may approve new



127 production capacity based on the order in which the applications  
128 are received.

129 (9) The commissioner may not approve any new production  
130 capacity after July 1, 2002, except that a producer with an  
131 approved production capacity of at least twelve million  
132 (12,000,000) gallons per year but less than fifteen million  
133 (15,000,000) gallons per year before July 1, 2002, is approved for  
134 fifteen million (15,000,000) gallons of production capacity.

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

139 (a) Twenty Cents (20¢) per gallon of production in the  
140 eighth quarter of the biennium that is greater than three million  
141 seven hundred fifty thousand (3,750,000) gallons; or

142 (b) The total amount of payments lost during the first  
143 seven (7) quarters of the biennium due to plant outages, repair or  
144 major maintenance. Total payments to an ethanol producer in a  
145 fiscal biennium, including any payment under this subsection, must  
146 not exceed the total amount the producer is eligible to receive  
147 based on the producer's approved production capacity. The  
148 provisions of this subsection apply only to production losses that  
149 occur in quarters beginning after December 31, 2002.

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

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

157 (13) A plant in production or under construction by January  
158 1, 2002, shall continue to receive uninterrupted payments under



159 Section 3 of this act of at least Twenty Cents (20¢) per gallon of  
160 ethanol produced until July 1, 2012.

161 (14) Promotional or educational efforts related to ethanol  
162 that are financed wholly or partially with state funds and that  
163 promote or identify a particular crop or commodity used to produce  
164 ethanol must also include a description of the other potential  
165 sources of ethanol listed in Section 2 of this act.

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

