HOUSE BILL NO. 1130
(As Sent to Governor)

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

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

SECTION 1. It is the goal of this state to encourage ethanol production plants in the state to utilize Mississippi-produced corn and other agriculture and forest resource commodities.

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

(a) "Anhydrous alcohol" means fermentation ethyl alcohol derived from biomass, but that does not meet ASTM specifications or is not denatured and is shipped in bond for further processing.

(b) "Biomass" means any organic matter which is available on a renewable basis including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, and animal wastes.

(c) "Ethanol" means fermentation ethyl alcohol which is produced from biomass and, that:

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


(d) "Ethanol plant" means a plant at which ethanol, anhydrous alcohol or wet alcohol is produced.
(e) "Wet alcohol" means agriculturally derived fermentation ethyl alcohol having a purity of at least fifty percent (50%) but less than ninety-nine percent (99%).

SECTION 3. (1) The Commissioner of Agriculture and Commerce is authorized to make cash payments to producers of ethanol, anhydrous alcohol and wet alcohol located in the state. These payments shall apply only to ethanol, anhydrous alcohol and wet alcohol fermented and produced at plants in the state. For purposes of this section, an entity that holds a controlling interest in more than one (1) ethanol plant is considered a single producer. The amount of the payment for each producer’s annual production is:

(a) Except as provided in subsection (2) of this section, for each gallon of ethanol or anhydrous alcohol from Mississippi-produced corn or other agriculture and forest resource commodities on or before June 30, 2005, or for ten (10) years after the start of production, whichever is later, Twenty Cents (20¢) per gallon; and

(b) For each gallon of wet alcohol from Mississippi-produced corn or other agriculture and forest resource commodities on or before June 30, 2005, or for ten (10) years after the start of production, whichever is later, a payment in cents per gallon calculated by the formula "alcohol purity in percent divided by five (5)," and rounded to the nearest cent per gallon, but not less than Eleven Cents (11¢) per gallon.

The producer payments for anhydrous alcohol and wet alcohol under this section may be paid to the original producer.

No payments shall be made for production that occurs after June 30, 2015.

(2) If the level of production at an ethanol plant increases due to an increase in the production capacity of the plant, the payment under subsection (1)(a) of this section applies to the additional increment of production until ten (10) years after the
increased production began. Once a plant's production capacity reaches thirty million (30,000,000) gallons per year, no additional increment shall qualify for the payment.

(3) The commissioner is authorized to make payments to producers of ethanol or wet alcohol in the amount of One and One-half Cents (1-1/2¢) for each kilowatt hour of electricity generated using biomass in a cogeneration facility at an ethanol plant located in the state. Payments under this subsection shall be made only for electricity generated at cogeneration facilities that begin operation by June 30, 2005. The payments apply to electricity generated on or before the date ten (10) years after the producer first qualifies for payment under this subsection. Total payments under this subsection in any fiscal year may not exceed Seven Hundred Fifty Thousand Dollars ($750,000.00). For the purposes of this subsection:

"Cogeneration" means the combined generation of:

(a) Electrical or mechanical power; and

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

(4) Payments under subsections (1) and (2) of this section to all producers may not exceed Thirty-seven Million Dollars ($37,000,000.00) in a fiscal year. If the total amount for which all producers are eligible in a quarter exceeds the amount available for payments, the commissioner shall make payments pro rata. Total payments under subsections (1) and (2) of this section to a producer in a fiscal year may not exceed Six Million Dollars ($6,000,000.00).

(5) By the last day of October, January, April and July, each producer shall file a claim for payment for ethanol, anhydrous alcohol and wet alcohol production during the preceding three (3) calendar months. A producer with more than one (1) plant shall file a separate claim for each plant. A producer that files a claim under this subsection shall include a statement of
the producer's total ethanol, anhydrous alcohol and wet alcohol production in Mississippi during the quarter covered by the claim, including anhydrous alcohol and wet alcohol produced or received from an outside source. A producer shall file a separate claim for any amount claimed under subsection (3) of this section. For each claim and statement of total ethanol, anhydrous alcohol and wet alcohol production filed under this section, the volume of ethanol, anhydrous alcohol and wet alcohol production or amounts of electricity generated using biomass must be examined by an independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants.

(6) Payments shall be made November 15, February 15, May 15 and August 15. A separate payment shall be made for each claim filed. Except as provided in subsection (10) of this section, the total quarterly payment to a producer under this subsection, excluding amounts paid under subsection (3) of this section, may not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00). Payments shall be limited to amounts not to exceed funds appropriated for this purpose by the Mississippi Legislature.

(7) If the total amount for which all producers are eligible in a quarter under subsection (3) of this section exceeds the amount available for payments, the commissioner shall make payments pro rata.

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

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

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

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

(9) Notwithstanding the quarterly payment limits of subsection (6), the commissioner shall make an additional payment in the eighth quarter of each fiscal biennium to ethanol producers for Twenty Cents (20¢) per gallon of production in the eighth quarter of the biennium that is greater than seven million five hundred thousand (7,500,000) gallons.

(10) The commissioner shall adopt rules to implement this act and objective criteria by rule for who is eligible or not eligible for payment in compliance with this act.

(11) A plant in production or under construction by June 30, 2005, shall continue to receive uninterrupted payments under Section 3 of this act of at least Twenty Cents (20¢) per gallon of ethanol produced until July 1, 2015.

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

(13) It is the intent of this legislation that the biomass originates from Mississippi farms. The Commissioner of Agriculture shall verify such origin of this biomass to be Mississippi produced.

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