

By: Representatives Whittington, Coleman
(29th), Espy, Fleming, Henderson, Holloway,
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To: Agriculture

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 928

1 AN ACT TO AMEND SECTION 69-51-5, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE COMMISSIONER OF AGRICULTURE MAY MAKE CERTAIN CASH
3 PAYMENTS TO PRODUCERS OF ETHANOL, ANHYDROUS ALCOHOL AND WET
4 ALCOHOL THAT IS PRODUCED IN MISSISSIPPI FROM NON-MISSISSIPPI
5 ORIGINATED PRODUCTS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 69-51-5, Mississippi Code of 1972, is
8 amended as follows:

9 69-51-5. (1) The Commissioner of Agriculture and Commerce
10 is authorized to make cash payments to producers of ethanol,
11 anhydrous alcohol and wet alcohol located in the state. These
12 payments shall apply only to ethanol, anhydrous alcohol and wet
13 alcohol fermented and produced at plants in the state. For
14 purposes of this section, an entity that holds a controlling
15 interest in more than one (1) ethanol plant is considered a single
16 producer. The amount of the payment for each producer's annual
17 production is:

18 (a) Except as provided in subsection (2) of this
19 section, for each gallon of ethanol or anhydrous alcohol
20 produced in Mississippi on or before June 30, 2005, or for ten
21 (10) years after the start of production, whichever is later,
22 Twenty Cents (20¢) per gallon; and

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



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

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

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

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

52 "Cogeneration" means the combined generation of:

53 (a) Electrical or mechanical power; and

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

56 (4) Payments under subsections (1) and (2) of this section
57 to all producers may not exceed Thirty-seven Million Dollars
58 (\$37,000,000.00) in a fiscal year. * * * Total payments under
59 subsections (1) and (2) of this section to a producer in a fiscal
60 year may not exceed Six Million Dollars (\$6,000,000.00).



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

79 (6) Payments shall be made November 15, February 15, May 15
80 and August 15. A separate payment shall be made for each claim
81 filed. Except as provided in subsection (9) of this section, the
82 total quarterly payment to a producer under this subsection,
83 excluding amounts paid under subsection (3) of this section, may
84 not exceed One Million Five Hundred Thousand Dollars
85 (\$1,500,000.00). * * *

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

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

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



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

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

100 (9) Notwithstanding the quarterly payment limits of
101 subsections (4) and (6), the commissioner shall make an additional
102 payment in the eighth quarter of each fiscal biennium to ethanol
103 producers for Twenty Cents (20¢) per gallon of production in the
104 eighth quarter of the biennium that is greater than seven million
105 five hundred thousand (7,500,000) gallons.

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

109 (11) A plant in production or under construction by June 30,
110 2005, shall continue to receive uninterrupted payments under this
111 section of at least Twenty Cents (20¢) per gallon of ethanol
112 produced until July 1, 2015.

113 (12) Promotional or educational efforts related to ethanol
114 that are financed wholly or partially with state funds and that
115 promote or identify a particular crop or commodity used to produce
116 ethanol must also include a description of the other potential
117 sources of ethanol listed in Section 69-51-3.

118 (13) It is the intent of this legislation that corn and
119 resource commodities shall be furnished totally by Mississippi
120 farmers insofar as the supply is available.

121 (14) It is the policy of the State of Mississippi to
122 discourage the use of Methyl Tert-Butyl Ether (MTBE) as a fuel
123 additive as ethanol is produced and marketed. To that end, the
124 Mississippi Department of Agriculture and Commerce shall present
125 findings and recommendations to the Legislature in 2004 regarding



126 the feasibility of banning the sale of certain fuels containing
127 MTBE as a fuel additive.

128 **SECTION 2.** This act shall take effect and be in force from
129 and after July 1, 2003.

