

By: Representatives Whittington, Coleman
(29th), Espy, Fleming, Henderson, Holloway,
Huddleston, Mayo, Middleton, Perkins,
Reynolds, Straughter, Thomas, Howell

To: Agriculture

HOUSE BILL NO. 928
(As Sent to Governor)

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, BIO-DIESEL
4 AND WET ALCOHOL THAT IS PRODUCED IN MISSISSIPPI FROM
5 NON-MISSISSIPPI ORIGINATED PRODUCTS IF MISSISSIPPI ORIGINATED
6 PRODUCTS ARE NOT AVAILABLE; TO DECLARE LEGISLATIVE INTENT THAT
7 CORN, BIOMASS AND RESOURCE COMMODITIES BE FURNISHED TOTALLY BY
8 MISSISSIPPI FARMERS INSOFAR AS THE SUPPLY IS AVAILABLE; AND FOR
9 RELATED PURPOSES.

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

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

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

22 (a) Except as provided in subsection (2) of this
23 section, for each gallon of ethanol or anhydrous alcohol produced
24 in Mississippi in accordance with subsection (13) of this section
25 on or before June 30, 2005, or for ten (10) years after the start
26 of production, whichever is later, Twenty Cents (20¢) per gallon;
27 and

28 (b) For each gallon of wet alcohol produced in
29 Mississippi in accordance with subsection (13) of this section on
30 or before June 30, 2005, or for ten (10) years after the start of



31 production, whichever is later, a payment in cents per gallon
32 calculated by the formula "alcohol purity in percent divided by
33 five (5)," and rounded to the nearest cent per gallon, but not
34 less than Eleven Cents (11¢) per gallon.

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

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

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

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

58 "Cogeneration" means the combined generation of:

59 (a) Electrical or mechanical power; and

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

62 (4) Payments under subsections (1) and (2) of this section
63 to all producers may not exceed Thirty-seven Million Dollars



64 (\$37,000,000.00) in a fiscal year. * * * Total payments under
65 subsections (1) and (2) of this section to a producer in a fiscal
66 year may not exceed Six Million Dollars (\$6,000,000.00).

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

85 (6) Payments shall be made November 15, February 15, May 15
86 and August 15. A separate payment shall be made for each claim
87 filed. Except as provided in subsection (9) of this section, the
88 total quarterly payment to a producer under this subsection,
89 excluding amounts paid under subsection (3) of this section, may
90 not exceed One Million Five Hundred Thousand Dollars
91 (\$1,500,000.00). * * *

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



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

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

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

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

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

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

115 (11) A plant in production or under construction by June 30,
116 2005, shall continue to receive uninterrupted payments under this
117 section of at least Twenty Cents (20¢) per gallon of ethanol
118 produced until July 1, 2015.

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

124 (13) It is the intent of this legislation that corn, biomass
125 and resource commodities shall be furnished totally by Mississippi
126 farmers insofar as the supply is available.

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

