

By: Representatives Whittington, Fleming,
Miles, Reynolds

To: Agriculture;
Appropriations

HOUSE BILL NO. 1130
(As Sent to Governor)

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 to encourage ethanol
8 production plants in the state to utilize Mississippi-produced
9 corn and other agriculture and forest resource commodities.

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

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

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

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

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

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



29 (e) "Wet alcohol" means agriculturally derived
30 fermentation ethyl alcohol having a purity of at least fifty
31 percent (50%) but less than ninety-nine percent (99%).

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 and produced at plants in the state. For
37 purposes of this section, an entity that holds a controlling
38 interest in more than one (1) ethanol plant is considered a single
39 producer. The amount of the payment for each producer's annual
40 production is:

41 (a) Except as provided in subsection (2) of this
42 section, for each gallon of ethanol or anhydrous alcohol from
43 Mississippi-produced corn or other agriculture and forest resource
44 commodities on or before June 30, 2005, or for ten (10) years
45 after the start of production, whichever is later, Twenty Cents
46 (20¢) per gallon; and

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

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

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

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 biomass in a cogeneration facility at an ethanol
69 plant located in the state. Payments under this subsection shall
70 be made only for electricity generated at cogeneration facilities
71 that begin operation by June 30, 2005. The payments apply to
72 electricity generated on or before the date ten (10) years after
73 the producer first qualifies for payment under this subsection.
74 Total payments under this subsection in any fiscal year may not
75 exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00). For
76 the purposes of this subsection:

77 "Cogeneration" means the combined generation of:

78 (a) Electrical or mechanical power; and

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

81 (4) Payments under subsections (1) and (2) of this section
82 to all producers may not exceed Thirty-seven Million Dollars
83 (\$37,000,000.00) in a fiscal year. If the total amount for which
84 all producers are eligible in a quarter exceeds the amount
85 available for payments, the commissioner shall make payments pro
86 rata. Total payments under subsections (1) and (2) of this
87 section to a producer in a fiscal year may not exceed Six Million
88 Dollars (\$6,000,000.00).

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



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

107 (6) Payments shall be made November 15, February 15, May 15
108 and August 15. A separate payment shall be made for each claim
109 filed. Except as provided in subsection (10) of this section, the
110 total quarterly payment to a producer under this subsection,
111 excluding amounts paid under subsection (3) of this section, may
112 not exceed One Million Five Hundred Thousand Dollars
113 (\$1,500,000.00). Payments shall be limited to amounts not to
114 exceed funds appropriated for this purpose by the Mississippi
115 Legislature.

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

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 permit applications for
127 construction of the new production capacity. The commissioner may



128 approve new production capacity based on the order in which the
129 applications are received.

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

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

139 (11) A plant in production or under construction by June 30,
140 2005, shall continue to receive uninterrupted payments under
141 Section 3 of this act of at least Twenty Cents (20¢) per gallon of
142 ethanol produced until July 1, 2015.

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

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

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

