

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

To: Agriculture

HOUSE BILL NO. 928
(As Passed the House)

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 in accordance with subsection (13) of this
21 section on or before June 30, 2005, or for ten (10) years after
22 the start of production, whichever is later, Twenty Cents (20¢)
23 per gallon; and

24 (b) For each gallon of wet alcohol produced in
25 Mississippi in accordance with subsection (13) of this section on
26 or before June 30, 2005, or for ten (10) years after the start of
27 production, whichever is later, a payment in cents per gallon
28 calculated by the formula "alcohol purity in percent divided by



29 five (5)," and rounded to the nearest cent per gallon, but not
30 less than Eleven Cents (11¢) per gallon.

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

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

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

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

54 "Cogeneration" means the combined generation of:

55 (a) Electrical or mechanical power; and

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

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



61 subsections (1) and (2) of this section to a producer in a fiscal
62 year may not exceed Six Million Dollars (\$6,000,000.00).

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

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

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

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



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

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

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

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

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

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

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

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

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



127 findings and recommendations to the Legislature in 2004 regarding
128 the feasibility of banning the sale of certain fuels containing
129 MTBE as a fuel additive.

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

