

By: Representative Mayo

To: Agriculture;
Appropriations

HOUSE BILL NO. 960

1 AN ACT TO AMEND SECTION 69-51-5, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT THE STATE INCENTIVE PAYMENTS MADE BY THE COMMISSIONER
3 OF AGRICULTURE AND COMMERCE FOR ETHANOL PRODUCTION IS ALSO
4 AVAILABLE FOR BIO-DIESEL PRODUCTION; AND FOR RELATED PURPOSES.

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

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

8 69-51-5. (1) The Commissioner of Agriculture and Commerce
9 is authorized to make cash payments to producers of ethanol,
10 anhydrous alcohol, bio-diesel and wet alcohol located in the
11 state. These payments shall apply only to ethanol, bio-diesel,
12 anhydrous alcohol and wet alcohol fermented and produced at plants
13 in the state. For purposes of this section, an entity that holds
14 a controlling interest in more than one (1) ethanol or bio-diesel
15 plant is considered a single producer. The amount of the payment
16 for each producer's annual production is:

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

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

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

30 The producer payments for anhydrous alcohol, bio-diesel and
31 wet alcohol under this section may be paid to the original
32 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 or bio-diesel
36 plant increases due to an increase in the production capacity of
37 the plant, the payment under subsection (1)(a) of this section
38 applies to the additional increment of production until ten (10)
39 years after the increased production began. Once a plant's
40 production capacity reaches thirty million (30,000,000) gallons
41 per year, no additional increment shall qualify for the payment.

42 (3) The commissioner is authorized to make payments to
43 producers of ethanol, bio-diesel or wet alcohol in the amount of
44 One and One-half Cents (1-1/2¢) for each kilowatt hour of
45 electricity generated using biomass in a cogeneration facility at
46 an ethanol plant located in the state. Payments under this
47 subsection shall be made only for electricity generated at
48 cogeneration facilities that begin operation by June 30, 2005.
49 The payments apply to electricity generated on or before the date
50 ten (10) years after the producer first qualifies for payment
51 under this subsection. Total payments under this subsection in
52 any fiscal year may not exceed Seven Hundred Fifty Thousand
53 Dollars (\$750,000.00). For 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 bio-diesel, anhydrous alcohol and wet alcohol production during
66 the preceding three (3) calendar months. A producer with more
67 than one (1) plant shall file a separate claim for each plant. A
68 producer that files a claim under this subsection shall include a
69 statement of the producer's total ethanol, bio-diesel, anhydrous
70 alcohol and wet alcohol production in Mississippi during the
71 quarter covered by the claim, including anhydrous alcohol and wet
72 alcohol produced or received from an outside source. A producer
73 shall file a separate claim for any amount claimed under
74 subsection (3) of this section. For each claim and statement of
75 total ethanol, bio-diesel, anhydrous alcohol and wet alcohol
76 production filed under this section, the volume of ethanol,
77 bio-diesel, anhydrous alcohol and wet alcohol production or
78 amounts of electricity generated using biomass must be examined by
79 an independent certified public accountant in accordance with
80 standards established by the American Institute of Certified
81 Public Accountants.

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

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

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

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

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

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

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

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

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

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

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

124 **SECTION 2.** This act shall take effect and be in force from
125 and after July 1, 2005.