

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.