

Amendments to Senate Bill No. 293  
3rd Reading Copy

Requested by Representative Jim Peterson

For the House Agriculture Committee

Prepared by Krista Lee Evans  
March 31, 2005 (7:32am)

1. Title, line 7 through line 9.

**Strike:** "REQUIRING" on line 7 through "ETHANOL AND" on line 9

2. Title, page 1, lines 10 through 13.

**Following:** "PROVIDING THAT"

**Strike:** "THE"

**Strike:** "AMOUNTS"

**Insert:** "LEVELS"

**Strike:** "MTBE;" on line 10 through "TAX RATES;" on line 13

**Insert:** "METHYL TERTIARY BUTYL ETHER; REDUCING THE TAX INCENTIVE FROM 30 CENTS TO 20 CENTS PER GALLON; REVISING THE TIME IN WHICH TAX CREDITS MAY BE PAID; REDUCING THE AMOUNT OF PAYMENTS THAT MAY BE MADE TO AN ALCOHOL DISTRIBUTOR IN A CALENDAR YEAR FROM \$3 MILLION TO \$2 MILLION; PROVIDING FOR CONTRACTS FOR ETHANOL PRODUCERS ELIGIBLE FOR TAX INCENTIVES; REVISING REQUIREMENTS FOR BUSINESS PLANS; REMOVING THE REQUIREMENT FOR LOSS OF PRIORITY; REVISING THE CONDITIONS FOR AN IN-STATE INVESTMENT FOR ALCOHOL PRODUCTION TO BE USED FOR FUEL; EXTENDING THE PERMISSIBLE PERIOD FOR LOANS; ALLOWING THE PAYMENT OF DIVIDENDS AND BONUSES UNDER CERTAIN CONDITIONS;"

3. Page 1, line 17.

**Following:** "SECTIONS"

**Strike:** "15-70-204"

**Insert:** "15-70-201, 15-70-503, 15-70-522, 17-6-317,"

4. Page 1, line 18.

**Following:** "82-15-106,"

**Strike:** "AND"

**Following:** "82-15-110,"

**Insert:** "AND 82-15-111,"

**Following:** "MCA"

**Insert:** ", AND SECTIONS 12 AND 13, CHAPTER 568, LAWS OF 2001"

**Following:** "MCA;"

**Strike:** "REPEALING" through "2001;"

5. Page 1, line 23 through page 3, line 23.  
**Strike:** sections 1 through 3 in their entirety

6. Page 3.

**Following:** line 23

**Insert:** "Section 1. Section 15-70-201, MCA, is amended to read:

~~"15-70-201. (Temporary) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:~~

~~(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.~~

~~(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.~~

~~(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.~~

~~(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.~~

~~(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:~~

~~(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;~~

~~(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or~~

~~(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.~~

~~(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.~~

~~(6) "Distributor" means:~~

~~(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;~~

~~(b) a person who imports gasoline for sale, use, or distribution;~~

~~(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;~~

~~(d) an exporter as defined in subsection (8);~~

~~(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or~~

~~(f) a person in Montana who blends alcohol with gasoline.~~

~~(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.~~

~~(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.~~

~~(9) (a) "Gasoline" includes:~~

~~(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and~~

~~(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.~~

~~(b) Gasoline does not include special fuels as defined in 15-70-301.~~

~~(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.~~

~~(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.~~

~~(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:~~

~~(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or~~

~~(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.~~

~~(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.~~

~~(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.~~

~~(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.~~

15-70-201. ~~(Effective on occurrence of contingency)~~

**Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

- (d) an exporter as defined in subsection (8);
  - (e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or
  - (f) a person in Montana who blends alcohol with gasoline.
- (7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) ~~"Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10" a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

(10) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(11) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(13) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (10) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(14) "Motor vehicle" means all vehicles operated or

propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(15) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(16) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state. (Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)

**15-70-201. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

(i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;

(ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or

(iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of

producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

{Internal References to 15-70-201:

7-14-301X	15-70-121X	15-70-202X	15-70-202X
15-70-202X	15-70-204X	15-70-225X	15-70-503X
75-11-302X	75-11-302X		

**Insert: "Section 2.** Section 15-70-503, MCA, is amended to read:

**"15-70-503. Definitions.** As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.

(2) "Department" means the department of transportation.

(3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

(4) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.

~~(4)~~(5) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state."

{Internal References to 15-70-503: None.}"

**Insert: "Section 3.** Section 15-70-522, MCA, is amended to read:

**"15-70-522. Tax incentive for production of alcohol -- ~~written plan required -- reservation of incentives -- rules.~~**

(1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) is to be blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana to be blended with gasoline for sale as gasohol; or

(iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is ~~30~~ 20 cents a gallon for each gallon that is

100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol. ~~Beginning July 1, 2010, there is no tax incentive. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.~~

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period.

(4) (a) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an alcohol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;  
(ii) the total amount of products purchased for the production of alcohol;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

~~(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written business plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives and has complied with the schedule provided for in subsection (6). The plan must contain the following information:~~

~~(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol for use in gasohol;~~

~~(b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol; and~~

~~(c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.~~

~~(6) An applicant that has provided the department with a written business plan shall meet the following schedule to be able to receive alcohol tax incentive payments:~~

~~(a) start building construction or remodeling within 24 months of the date on which the department received the business plan;~~

~~(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the business plan was received; and~~

~~(c) complete 100% of construction or remodeling of a production facility and be in production of alcohol for use in gasohol for distribution within 48 months of the date on which the business plan was received.~~

~~(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority for receiving incentive payments.~~

(8)(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the alcohol tax incentives based on actual production according to the terms of subsection subsections (2) and (4).

~~(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production.~~

~~(10) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9).~~

~~(11)(7) The department shall prescribe rules necessary to carry out the provisions of this section within 1 year of [the effective date of this act]. The department shall coordinate and request information and input from the alcohol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."~~

~~{ Internal References to 15-70-522: None. }~~

**Insert: "Section 4. Section 17-6-317, MCA, is amended to read:**

**"17-6-317. Participation by private financial institutions -- rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:**

**(i) result in the creation of a business estimated to**

employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years unless the loan is for the production of alcohol to be used as provided in Title 15, chapter 70, part 5. The term of a loan for the production of alcohol may not exceed 30 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that

allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the average weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the average weekly salary, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) Except as provided in subsection (5)(b), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(b) A business enterprise for the production of alcohol to

be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(6) The board may adopt rules that it considers necessary to implement this section."

{Internal References to 17-6-317:

17-6-311x      17-6-311x      17-6-311x      17-6-312x  
17-6-314x      17-6-324x      17-6-324x}"

Renumber: subsequent sections

7. Page 5, line 27.

Insert: "NEW SECTION. Section 10. Department of environmental quality to enforce prohibition on methyl tertiary butyl ether -- notice requirements -- hearing -- penalties. (1)

(a) Whenever the department of environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3) has occurred, it may serve written notice of the violation on the alleged violator or an agent of the alleged violator.

(b) The notice must specify the facts alleged to constitute a violation and may include an order assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action within a reasonable period of time stated in the order, or both.

(c) The order becomes final unless, within 30 days after the notice is served, the person named in the order requests in writing a hearing before the board of environmental review. Service by mail is complete on the date of mailing.

(d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

(2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation has occurred, it shall either affirm or modify the order of the department of environmental quality. An order issued by the department of environmental quality or by the board of environmental review may prescribe the date by which the violation must cease and may prescribe time limits for a particular action. If, after hearing, the board of environmental review finds no violation has occurred, it shall rescind the order of the department of environmental quality.

(3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

(4) Any person who violates 82-15-110(8), a rule adopted

pursuant to 82-15-102(3), or an order issued under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation constitutes a separate violation.

(5) The department of environmental quality is authorized to commence a civil action seeking appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark County, or in the district court of the county in which the violation occurred."

**Insert:** "Section 11. Section 82-15-111, MCA, is amended to read:

"82-15-111. **Penalty for violations.** A person who purposely, knowingly, or negligently violates any of the provisions of this part, except 82-15-110(8), or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment."

{Internal References to 82-15-111: None.}

**Insert:** "Section 12. Section 12, Chapter 568, Laws of 2001, is amended to read:

"Section 12. Contingent effective date. ~~{This act} is~~ [Sections 5 through 10] are effective 30 days after the director of the department of transportation certifies to the governor, sending a copy of the certification to the secretary of state and the code commissioner, that:

(1) an ethanol plant is operational and producing fuel in Montana; and

(2) the net working capital in the restricted highway state special revenue account, excluding any proceeds obtained through debt financing, is at least \$20 million on June 30 following the date on which the condition in subsection (1) is complied with."

**Insert:** "Section 13. Section 13, Chapter 568, Laws of 2001, is amended to read:

"Section 13. Contingent termination. ~~{This act} terminates~~ [Sections 5 through 10] terminate June 30 of the fourth year following [the effective date of this act]."

**Renumber:** subsequent sections

8. Page 5, line 28.

**Strike:** "[Sections 1 and 2] are"

**Insert:** "[Section 10] is"

9. Page 5, line 30.

**Strike:** "[sections 1 and 2]"

**Insert:** "[section 10]"

10. Page 6, line 2.

**Strike:** section 10 in its entirety

**Renumber:** subsequent section

- END -

