

SENATE BILL NO. 207
INTRODUCED BY S. KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A LIMITED TAX INCENTIVE OF 5 CENTS A GALLON FOR A FUEL RETAILER TO INSTALL OR MODIFY FUEL PUMPS TO DISPENSE ETHANOL-BLENDED FUEL; REQUIRING A FUEL RETAILER TO SELL GASOHOL MADE WITH MONTANA AGRICULTURAL PRODUCTS TO THE EXTENT THAT IT IS AVAILABLE; AND AMENDING SECTIONS 15-70-502, 15-70-503, AND 15-70-522, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-70-502, MCA, is amended to read:

"15-70-502. Purpose. The purpose of this part is to establish schedules for the tax incentive for the production of alcohol to be blended for gasohol, for the sale of gasohol, and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of alcohol fuel production and the use of gasohol fuel in Montana, while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana."

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) "Fuel retailer" means a person who sells liquid petroleum gas or diesel fuel to members of the public for use in motor vehicles operating on the public roads and highways of this state.

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

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) was blended with gasoline for sale as gasohol in Montana;
 - (ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or
 - (iii) was 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 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.

(3) Regardless of the alcohol tax incentive provided in [section 4] and subsection (2) of this section, the total payments made for the incentive under [section 4] and this ~~part~~ section may not exceed \$6 million in any consecutive 12-month period.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed \$3 million in any consecutive 12-month period.

(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives. 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 gasohol;
- (b) the anticipated source of agricultural products used in the production of gasohol; and
- (c) the anticipated time, quantity, and duration of production of gasohol.

(6) (a) Except as provided in subsection (6)(b), 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. Payment of the alcohol tax incentives must be based on actual production.

(b) ~~No~~ Not later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection (6) if the department determines that the alcohol distributor has not materially complied with the written plan.

(7) 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 (6)(a).

(8) The department shall prescribe rules necessary to carry out the provisions of this section."

NEW SECTION. Section 4. Tax incentive for fuel retailers to sell gasohol -- rulemaking. (1) (a) A fuel retailer that installs or modifies fuel pumps on its premises to dispense ethanol-blended fuel to members of the public after December 31, 2003, is entitled to a tax incentive of 5 cents a gallon for each gallon of gasohol sold to the public until the fuel retailer receives an amount back from the tax incentive that is the lesser of \$500 or the fuel retailer's cost of installing or modifying fuel pumps to dispense ethanol-blended fuel.

(b) A fuel retailer may not receive the tax incentive payments under this section unless the fuel retailer submits proof to the department of the cost of installing or modifying fuel pumps for dispensing ethanol-blended fuel and proof of the number of gallons of gasohol sold for which tax incentive payments are claimed.

(2) A fuel retailer may receive the tax incentive payment provided for in subsection (1) even if the gasohol sold by the fuel retailer is not produced in Montana using Montana agricultural products, including Montana wood or wood products, when gasohol produced in Montana using Montana agricultural products is not available. However, a fuel retailer shall sell gasohol produced in Montana using Montana agricultural products to the extent that they are available.

(3) The department shall adopt rules necessary to carry out the provisions of this section.

NEW SECTION. Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 15, chapter 70, part 5, and the provisions of Title 15, chapter 70, part 5, apply to [section 4].

NEW SECTION. Section 6. Three-fifths vote required. Because [section 4] diverts money from the gasoline dealers' license tax, Article VIII, section 6, of the Montana constitution requires a vote of three-fifths of the members of each house of the legislature for passage.

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