

HOUSE BILL NO. 175

INTRODUCED BY B. BERGREN

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT ENCOURAGING THE MONTANA PRODUCTION OF GASOHOL
6 AND DENATURED ETHANOL; CLARIFYING THE LICENSE TAX RATE FOR GASOHOL OR GASOLINE
7 BLENDED WITH AT LEAST 10 PERCENT DENATURED ETHANOL; REPLACING TAX INCENTIVES FOR THE
8 PRODUCTION OF DENATURED ETHANOL WITH INCENTIVE PAYMENTS; PROVIDING FOR A
9 PRODUCTION EXCEPTION FOR CERTAIN DISASTER DECLARATIONS; REMOVING CERTAIN PROVISIONS
10 REQUIRING THE USE OF GASOLINE BLENDED WITH ETHANOL; AMENDING SECTIONS 15-70-201,
11 15-70-204, 15-70-221, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514,
12 15-70-521, 15-70-522, 15-70-523, 15-70-527, 17-6-317, 75-11-314, 82-15-103, ~~82-15-121, 82-15-122~~; AND
13 90-4-302, MCA; REPEALING SECTIONS 82-15-121 AND 82-15-122, MCA; AND PROVIDING AN EFFECTIVE
14 DATE ~~AND TERMINATION DATES~~."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 15-70-201, MCA, is amended to read:

19 **"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following
20 definitions apply:

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

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

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

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

3 (5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal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

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

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

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

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

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

13 (6) "Distributor" means:

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

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

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

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

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

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

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

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

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

1 (10) (a) "Gasoline" includes:

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

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

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

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

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

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

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

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

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

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

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

25

26 **Section 2.** Section 15-70-204, MCA, is amended to read:

27 **"15-70-204. (Temporary) Gasoline license tax -- rate.** (1) Each distributor shall pay to the department
28 a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

29 (a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center,
30 which is allocated to the department as provided by 67-1-301; and

1 (b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon
2 which the gasoline license tax has not been paid by any other distributor.

3 (2) Gasoline exported may not be included in the measure of the distributor's license tax unless the
4 distributor is not licensed and is not paying the tax to the state the fuel is destined for.

5 (3) Gasohol, as defined in 15-70-201, or gasoline blended with at least 10% denatured ethanol is subject
6 to 85% of the tax imposed in subsection (1)(b) on the first 50 million gallons sold in Montana each calendar year.

7 ~~———— (4) Beginning on the date that the requirement for use of gasohol or gasoline blended with at least 10%~~
8 ~~denatured ethanol contained in 82-15-121 occurs, gasohol and gasoline blended with at least 10% denatured~~
9 ~~ethanol is are subject to the tax imposed in subsection (1)(b) and the tax may not be reduced regardless of the~~
10 ~~future production rate of denatured ethanol by a Montana plant or plants.~~ (Terminates on occurrence of
11 contingency--sec. 21, Ch. 452, L. 2005.)

12 **15-70-204. (Effective on occurrence of contingency) Gasoline license tax -- rate.** (1) Each distributor
13 shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state
14 in an amount equal to:

15 (a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center,
16 which is allocated to the department as provided by 67-1-301; and

17 (b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon
18 which the gasoline license tax has not been paid by any other distributor.

19 (2) Gasoline exported may not be included in the measure of the distributor's license tax unless the
20 distributor is not licensed and is not paying the tax to the state the fuel is destined for.

21 (3) Gasohol, as defined in 15-70-201, and gasoline blended with at least 10% denatured ethanol ~~is are~~
22 subject to 85% of the tax imposed in subsection (1)(b)."

23

24 **Section 3.** Section 15-70-221, MCA, is amended to read:

25 **"15-70-221. Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which
26 the Montana gasoline license tax has been paid for denaturing ~~alcohol~~ ethanol to be used in gasohol, for
27 operating stationary gasoline engines used off the public highways and streets, or for any commercial use other
28 than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount
29 of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state.
30 Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated

1 to the department of transportation by 67-1-301.

2 (2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund
3 of the amount of tax paid erroneously.

4 (3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with
5 a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the
6 purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the
7 accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have
8 claimed those accounts as bad debts for federal or state income tax purposes.

9 (b) If a credit has been granted under this subsection (3), any amount collected on the accounts that
10 were declared worthless must be reported to the department and the tax due must be prorated on the collected
11 amount and must be paid to the department.

12 (c) The department may require a distributor to submit periodic reports listing accounts that are
13 delinquent for 90 days or more.

14 (4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on
15 which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless
16 the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must
17 be made upon completion of the information reports required under 15-70-209 and presentation to the department
18 of proof of delivery outside Montana as it may by rule require.

19 (5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2
20 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has
21 been paid."

22

23 **Section 4.** Section 15-70-501, MCA, is amended to read:

24 "**15-70-501. Short title.** This part may be cited as the "~~Alcohol Tax~~ Denatured Ethanol Incentive and
25 Administration Act of 1983".

26

27 **Section 5.** Section 15-70-502, MCA, is amended to read:

28 "**15-70-502. Purpose.** The purpose of this part is to establish schedules for the ~~tax~~ incentive payments
29 for the production of ~~alcohol~~ denatured ethanol to be blended for gasohol and to provide for the proper
30 administration and enforcement of the ~~tax~~ incentive payments. The schedules for the ~~tax~~ incentive payments are

1 designed to stimulate the development of ~~alcohol fuel~~ the production of gasohol and gasoline blended with
 2 denatured ethanol in Montana while limiting the cost to the state of the ~~tax~~ incentive payments to amounts that
 3 are reasonable in relation to the highway revenue needs of Montana."
 4

5 **Section 6.** Section 15-70-503, MCA, is amended to read:

6 **"15-70-503. Definitions.** As used in this part, the definitions in 15-70-201 and the following definitions
 7 apply:

8 (1) ~~"Alcohol distributor"~~ "Denatured ethanol distributor" means any person who, for the purpose of
 9 making gasohol or gasoline blended with denatured ethanol, engages in the business of producing ~~alcohol~~
 10 denatured ethanol for sale, use, or distribution.

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

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

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

18 (5) "Gasohol dealer" means any person who blends ~~alcohol~~ denatured ethanol with gasoline to produce
 19 gasohol for sale, use, or distribution in this state."
 20

21 **Section 7.** Section 15-70-511, MCA, is amended to read:

22 **"15-70-511. Licensing of ~~alcohol~~ denatured ethanol distributors.** ~~Every alcohol~~ Each denatured
 23 ethanol distributor, prior to doing business, shall file with the department an application for a license, using forms
 24 prescribed and furnished by the department and setting forth ~~such~~ information as that may be requested by the
 25 department. Upon approval of the application, the department shall issue the distributor a nonassignable license
 26 that continues in force until surrendered or canceled."
 27

28 **Section 8.** Section 15-70-512, MCA, is amended to read:

29 **"15-70-512. Distributor's statement.** Each ~~alcohol~~ denatured ethanol distributor shall, not later than
 30 the 25th day of each calendar month, ~~render~~ submit to the department a statement, signed by ~~him~~ the distributor,

1 that includes the following:

2 (1) the number of gallons of ~~alcohol~~ denatured ethanol manufactured or imported by the distributor during
3 the preceding calendar month;

4 (2) the name of each gasohol dealer to whom ~~he~~ the distributor sold ~~alcohol~~ denatured ethanol and the
5 number of gallons sold to each dealer; and

6 (3) ~~such~~ other information ~~as that~~ that the department may reasonably require to administer ~~the tax laws of~~
7 ~~this state~~ this part."

8

9 **Section 9.** Section 15-70-513, MCA, is amended to read:

10 "**15-70-513. Recordkeeping requirements.** The records of each ~~alcohol~~ denatured ethanol distributor
11 and gasohol dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and
12 ~~such~~ other information ~~as that~~ that the department may require."

13

14 **Section 10.** Section 15-70-514, MCA, is amended to read:

15 "**15-70-514. Examination of records.** The department or its authorized representative may examine
16 the books, papers, records, and equipment of any ~~alcohol~~ denatured ethanol distributor or gasohol dealer."

17

18 **Section 11.** Section 15-70-521, MCA, is amended to read:

19 "**15-70-521. Denaturing ~~alcohol~~ ethanol -- refund authorized.** Any ~~alcohol~~ denatured ethanol
20 distributor who, for the purpose of denaturing ~~alcohol~~ ethanol distilled in Montana, purchases gasoline on which
21 the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid
22 on the gasoline used."

23

24 **Section 12.** Section 15-70-522, MCA, is amended to read:

25 "**15-70-522. ~~Tax incentive~~ Incentive payment for production of ~~alcohol~~ denatured ethanol -- rules.**

26 (1) (a) If the ~~alcohol~~ denatured ethanol was produced in Montana from Montana agricultural products, including
27 Montana wood or wood products, or if the ~~alcohol~~ denatured ethanol was produced from non-Montana agricultural
28 products when Montana products are not available, there is ~~a tax an~~ an incentive payable to ~~alcohol~~ denatured
29 ethanol distributors for distilling ~~alcohol~~ and producing denatured ethanol that:

30 (i) is to be blended with gasoline for sale as gasohol or gasoline blended with denatured ethanol in

1 Montana;

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

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

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

6 (2) Except as provided in subsections (3) ~~and (4)~~ through (5), the ~~tax~~ incentive payment on each gallon
7 of ~~alcohol~~ denatured ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that
8 is 100% produced from Montana products, with the amount of the ~~tax~~ incentive payment for each gallon reduced
9 proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used
10 in the production of the ~~alcohol~~ denatured ethanol. The ~~tax~~ incentive is available to a Montana facility for the first
11 6 years from the date that the facility begins production. The facility shall file a business plan with the department
12 at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the
13 facility shall provide the department with quarterly updates regarding any changes to the business plan.

14 (3) Regardless of the ~~alcohol~~ ~~tax~~ incentive provided in subsection (2):

15 (a) the total payments made for the incentive under this part may not exceed \$6 million in any
16 consecutive 12-month period; and

17 (b) a plant or facility is not eligible to receive the ~~tax~~ incentive payment unless the facility paid the
18 standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction
19 phase; and

20 ~~_____ (c) an alcohol distributor is not eligible to receive the tax incentive unless at least:~~

21 ~~_____ (i) 20% Montana product is used to produce alcohol at the facility in the first year of production;~~

22 ~~_____ (ii) 25% Montana product is used to produce alcohol at the facility in the second year of production;~~

23 ~~_____ (iii) 35% Montana product is used to produce alcohol at the facility in the third year of production;~~

24 ~~_____ (iv) 45% Montana product is used to produce alcohol at the facility in the fourth year of production;~~

25 ~~_____ (v) 55% Montana product is used to produce alcohol at the facility in the fifth year of production; and~~

26 ~~_____ (vi) 65% Montana product is used to produce alcohol at the facility in the sixth year of production.~~

27 (4) The provisions of subsection (2) do not apply in any year in which the United States secretary of
28 agriculture has declared any county in Montana a disaster area.

29 ~~(4)(5)~~ (a) ~~An alcohol~~ A denatured ethanol distributor may not receive ~~tax~~ incentive payments under
30 subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections ~~(5)~~ (6) and ~~(6)~~

1 ~~(7), an alcohol~~ a denatured ethanol distributor may receive tax incentive payments commencing the first quarter
 2 after a facility begins production. The distributor shall report its production to the department pursuant to
 3 15-70-205.

4 (b) The distributor's report must include:

- 5 (i) the total number of gallons of denatured ethanol produced for the month;
- 6 (ii) the total amount of products purchased for the production of ~~alcohol~~ denatured ethanol;
- 7 (iii) the percentage of the total amount of products purchased that are Montana products; and
- 8 (iv) other information that the department determines is necessary.

9 ~~(5)(6)~~ (a) A plant shall apply for the incentive payment by submitting an application to the department
 10 when the plant has proof of commitment from lenders to finance the plant. Subject to subsection ~~(5)(b)~~ (6)(b), the
 11 department shall respond to the applicant with approval of the application within 45 days of receipt of the
 12 application, after confirming the lending commitment. Upon approval of the application, the department shall enter
 13 into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol
 14 plants.

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

17 ~~(6)(7)~~ After the department has verified production, the application provisions of subsection ~~(5)~~ (6) are
 18 met, and the plant owner presents proof of financing, the department shall begin payments of the ~~alcohol tax~~
 19 ~~incentives~~ denatured ethanol incentive payment based on actual production according to the terms of subsections
 20 (2) and ~~(4)~~ (5).

21 ~~(7)(8)~~ The department shall prescribe rules necessary to carry out the provisions of this section ~~within~~
 22 ~~1 year of April 28, 2005~~. The department shall coordinate and request information and input from the ~~alcohol~~
 23 denatured ethanol production industry as a part of the rulemaking process and shall follow the procedures
 24 provided in Title 2, chapter 4."

25

26 **Section 13.** Section 15-70-523, MCA, is amended to read:

27 **"15-70-523. Application for payment of tax incentive.** (1) The claimant shall apply for payment of tax
 28 an incentive by signed statement, on a form furnished by the department. The form must be accompanied by:

- 29 (a) the original production records and invoices issued to the gasohol dealer at the time of sale and
- 30 delivery, showing total gallons of ~~alcohol~~ denatured ethanol sold; and

1 (b) a certificate of blending issued by the ~~alcohol~~ denatured ethanol purchaser showing the total gallons
2 of ~~alcohol~~ denatured ethanol blended and the date of blending.

3 (2) Application for the payment of the ~~tax~~ incentives must be filed with the department not later than the
4 25th day of the calendar month following the month for which the claim is being made."
5

6 **Section 14.** Section 15-70-527, MCA, is amended to read:

7 "**15-70-527. Penalty for failure to file.** Any ~~alcohol~~ denatured ethanol distributor who knowingly fails
8 to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the
9 time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction
10 must be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both."
11

12 **Section 15.** Section 17-6-317, MCA, is amended to read:

13 "**17-6-317. Participation by private financial institutions -- rulemaking.** (1) (a) The board may jointly
14 participate with private financial institutions in making loans to a business enterprise if the loan will:

15 (i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent,
16 full-time basis;

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

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

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

23 (c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under
24 17-6-318.

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

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

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

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

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

5 (c) The term of the loan may not exceed 15 years.

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

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

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

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

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

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

15 (ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination
16 of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and
17 interest rate will in fact prevent the elimination of jobs.

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

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

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

1 than 12%.

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

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

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

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

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

12 (4) A private financial institution shall participate in a loan made pursuant to this section to the extent of
13 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must
14 be 75% of the loan amount.

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

18 (b) A business enterprise for the production of ~~alcohol~~ denatured ethanol to be used as provided in Title
19 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is
20 current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance
21 of the loan.

22 (6) The board may adopt rules that it considers necessary to implement this section."
23

24 **Section 16.** Section 75-11-314, MCA, is amended to read:

25 **"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint**
26 **-- statute of limitations.** (1) Except as provided in subsection (4), each distributor shall pay to the department
27 of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel,
28 or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other
29 distributor. The fee must equal:

30 (a) ~~1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;~~

- 1 ~~(b)~~(a) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;
 2 ~~(c)~~(b) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;
 3 ~~(d)~~(c) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and
 4 ~~(e)~~(d) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

5 (2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state
 6 must be included in the measure of a distributor's fee.

7 (3) ~~Alcohol~~ Denatured ethanol that is blended with gasoline to be sold as gasohol is subject to the fee
 8 provided in subsection (1).

9 (4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar
 10 quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund
 11 balance, less claims anticipated for board approval within the next 90 days, is less than \$4 million, the department
 12 of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first
 13 day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must
 14 be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.

15 (5) The department of transportation shall collect the fee in the same manner as the basic gasoline
 16 license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205,
 17 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of
 18 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

19

20 **Section 17.** Section 82-15-103, MCA, is amended to read:

21 **"82-15-103. Standards and specifications for petroleum products.** The standards and specifications
 22 for petroleum products, including but not limited to gasoline, ethanol-blended gasoline, fuel oils, diesel fuel,
 23 kerosene, and liquefied petroleum gases, must be determined by the department and, ~~subject to the provisions~~
 24 ~~of 82-15-121(1)~~, must be based upon nationally recognized standards and specifications such as the standards
 25 and specifications that are published by the American society for testing and materials. The standards and
 26 specifications adopted by rule by the department are the standards and specifications for products sold in this
 27 state, and official tests of the products must be based upon the adopted standards and specifications."

28

29 ~~**Section 18.** Section 82-15-121, MCA, is amended to read:~~

30 ~~**"82-15-121. (Temporary) Required use of gasoline blended with ethanol.** (1) Except as provided~~

1 in 82-15-122 and subsection (5) of this section, within 12 months after the department of transportation has
 2 certified that a plant or plants in the state of Montana has have produced 40 million gallons of denatured ethanol
 3 on an annualized basis and has have maintained that level of production on an annualized basis for at least 3
 4 months, the department shall adopt standards and specifications pursuant to 82-15-103 that ensure that all
 5 gasoline sold to consumers for use in motor vehicles to be operated on the public highways, roads, and streets
 6 of this state must be blended with at least 10%, by volume, of agriculturally derived, denatured ethanol and may
 7 not contain more than trace amounts of the additive methyl tertiary butyl ether.

8 ~~———— (2) Except as provided in 82-15-122 and subsection (5) of this section, 12 months after the department~~
 9 ~~of transportation has certified that a plant or plants in the state of Montana has have produced 40 million gallons~~
 10 ~~of denatured ethanol and has maintained that level of production on an annualized basis for at least 3 months~~
 11 ~~as provided in subsection (1), a fuel retailer who sells gasoline to consumers to be used in their vehicles on the~~
 12 ~~public highways, roads, and streets of this state may not accept gasoline for sale to consumers or for a 5-year~~
 13 ~~period of time from the date the requirement goes into effect sell gasoline to consumers that is not~~
 14 ~~ethanol-blended as provided in subsection (1) or that contains the additive methyl tertiary butyl ether.~~

15 ~~———— (3) Agriculturally denatured ethanol referred to in subsection (1) may be denatured only as specified in~~
 16 ~~Title 27, parts 20 and 21, of the Code of Federal Regulations.~~

17 ~~———— (4) The department of transportation shall compile a quarterly report certifying the amount of denatured~~
 18 ~~ethanol that is produced in Montana.~~

19 ~~———— (5) Once the production of 40 million gallons of denatured ethanol has been certified and the provisions~~
 20 ~~of subsections (1) and (2) apply, if One year after the department of transportation certifies that the production~~
 21 ~~level required in subsection (2) has been met and each year after the initial certification, the department of~~
 22 ~~transportation shall determine the annual production level for the preceding year. If the department of~~
 23 ~~transportation certifies that the production of denatured ethanol by a Montana plant or plants drops below 20~~
 24 ~~million gallons on an annualized basis for 3 months, the provisions of this section do subsection (2) requiring~~
 25 ~~retailers to offer only ethanol-blended gasoline for sale to consumers do not apply. (Terminates on occurrence~~
 26 ~~of contingency--sec. 21, Ch. 452, L. 2005.)"~~

27
 28 ~~———— **Section 19.** Section 82-15-122, MCA, is amended to read:~~
 29 ~~———— "**82-15-122. (Temporary) Exemptions from use of ethanol-blended gasoline.** (1) Gasoline that is not~~
 30 ~~ethanol-blended as required in 82-15-121 may be sold or dispensed at a public or private racecourse if the~~

1 gasoline is intended to be used exclusively as a fuel for off-highway motor sports racing events.

2 ~~———(2) Gasoline retailers and wholesale bulk distributors shall may hold, store, import, transfer, and offer~~
 3 ~~for sale or use nonethanol-blended unleaded premium grade gasoline with an antiknock index number of 91 or~~
 4 ~~greater.~~

5 ~~———(3) Aviation fuel, boat fuel, and motorcycle fuel is are not subject to an ethanol blending requirement.~~
 6 ~~(Terminates on occurrence of contingency--sec. 21, Ch. 452, L. 2005.)"~~

7

8 **Section 18.** Section 90-4-302, MCA, is amended to read:

9 **"90-4-302. Definitions.** As used in this part, the following definitions apply:

10 (1) "Bulk pipeline terminal" means a facility that is primarily used for storage for the marketing of
 11 petroleum products and that has a total bulk storage capacity of 50,000 gallons or more.

12 (2) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship,
 13 public utility, joint operating agency, or cooperative that engages in or is authorized to engage in the activity of
 14 generating, producing, transmitting, or distributing energy in this state.

15 (3) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

16 (4) "Energy emergency" means an existing or imminent domestic, regional, or national shortage of
 17 energy or a price of energy that will result in curtailment of essential services or production of essential goods
 18 or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the
 19 energy form involved and the allocation of available energy supplies among users or to increase the available
 20 supply of energy.

21 (5) "Energy facility" means a facility that produces, extracts, converts, transports, or stores energy.

22 (6) "Energy supply alert" means a condition of energy supply on a national, regional, state, or local basis
 23 that foreseeably will affect significantly the availability of essential energy supplies or the price of energy within
 24 the ensuing 90-day period unless action is taken under 90-4-309 to reduce energy usage by state agencies and
 25 political subdivisions or action is taken to increase the supply of energy.

26 (7) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative,
 27 association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating
 28 agency, or any other entity, public or private, however organized.

29 (8) "Petroleum pipeline company" means a person who owns or operates in Montana any pipeline used
 30 for the transportation of petroleum products or their derivatives. This definition does not include pipelines used

1 to transport crude petroleum from producing wells to refineries.

2 (9) "Petroleum products" means propane, butane, propane/butane mix, motor gasoline, kerosene and
3 other middle distillates, aviation gasoline, jet fuel, number 4 fuel oil, residual fuel oil, and ~~alcohol~~ denatured
4 ethanol fuels, whether in natural or synthetic form.

5 (10) "Prime petroleum supplier" means the person who makes the first sale of a petroleum product into
6 the state distribution system. Any person who is considered to be a Montana prime supplier by the U.S.
7 department of energy is included in this definition.

8 (11) "Refiner" means a person that owns, operates, or controls the operations of one or more refineries
9 located in Montana.

10 (12) "Refinery" means an industrial plant, regardless of capacity, that processes fossil or renewable
11 feedstock or manufactures refined petroleum products, except when the plant exclusively produces
12 petrochemicals."

13

14 NEW SECTION. SECTION 19. REPEALER. SECTIONS 82-15-121 AND 82-15-122, MCA, ARE REPEALED.

15

16 NEW SECTION. Section 20. Effective date. [This act] is effective July 1, 2007.

17

18 ~~NEW SECTION. Section 22. Contingent termination. (1) Subject to subsection (2), [sections 2, 18,~~
19 ~~and 19] terminate 5 years after the production level provided for in 82-15-121 is met.~~

20 ~~(2) If, after the 40-million-gallon production requirement of 82-15-121 is met, the production of denatured~~
21 ~~ethanol in Montana falls below 20 million gallons on an annualized basis, [sections 2, 18, and 19] are terminated.~~

22 ~~(3) The department of transportation shall inform the code commissioner of the date that the production~~
23 ~~level provided for in 82-15-121 is met.~~

24 ~~(4) The department of transportation shall inform the code commissioner if production of denatured~~
25 ~~ethanol in Montana falls below 20 million gallons on an annualized basis once the production requirement of 40~~
26 ~~million gallons provided for in 82-15-121 has been met.~~

27

- END -