

SENATE BILL NO. 122
INTRODUCED BY S. KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING AN ETHANOL AND BIOBASED RENEWABLE FUELS EDUCATION BOARD; ATTACHING THE BOARD TO THE DEPARTMENT OF TRANSPORTATION FOR ADMINISTRATIVE PURPOSES; PRESCRIBING DUTIES; PROVIDING FUNDING FOR THE EDUCATION PROGRAM FROM THE TAX INCENTIVE FOR THE PRODUCTION OF ALCOHOL; AMENDING SECTION 15-70-522, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Ethanol and biobased renewable fuels education board -- duties.** (1)

There is an ethanol and biobased renewable fuels education board. The board consists of seven members appointed by the governor. The board members shall represent agriculture, agricultural organizations, fuel distributors, energy consultants, labor, and the ethanol industry. The board is attached to the department of transportation for administrative purposes only as provided in 2-15-121. Board members shall serve 4-year terms except for the initial appointments. Of the initial appointments, one member must be appointed for a 1-year term, two members must be appointed for a 2-year term, two members must be appointed for a 3-year term, and two members must be appointed for a 4-year term. Members may be reappointed. Members serve for no compensation but are entitled to expenses as provided in 2-18-501 through 2-18-503.

(2) (a) The board or the board's designee shall educate Montanans regarding the benefits, effects, and uses of ethanol and other biofuels as renewable alternative fuels to replace traditional fossil fuels. The board's education efforts must include:

- (i) benefits to the environment, including improved air quality;
- (ii) economic development, including the establishment of Montana-based industry; and
- (iii) reductions in dependency on domestic and foreign crude oil.

(b) The board shall hold an annual conference to notify, explain, and educate Montanans concerning the progress, benefits, and status of the production and use of ethanol and other biofuels. The conference must include:

- (i) workshops to educate fleet managers at all levels of government and in the private sector regarding the benefits of ethanol and biobased renewable fuel use;

- (ii) a forum to educate state, county, and municipal agencies about renewable fuels; and
- (iii) the promotion of ethanol and biodiesel.

(3) The board shall develop lesson plans that may be incorporated into a curriculum at appropriate grade levels and make them available through the office of public instruction.

Section 2. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of alcohol -- 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 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. 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) ~~(a) Regardless of the alcohol tax incentive provided in subsection (2):~~

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

~~(b) From July 1, 2007, through June 30, 2011, there is deducted from the \$6 million available under subsection (3)(a) up to \$250,000 each fiscal year to be used by the ethanol and biobased renewable fuels education board as provided in [section 1].~~

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

and,

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

- (i) 20% Montana product is used to produce alcohol at the facility in the first year of production;
- (ii) 25% Montana product is used to produce alcohol at the facility in the second year of production;
- (iii) 35% Montana product is used to produce alcohol at the facility in the third year of production;
- (iv) 45% Montana product is used to produce alcohol at the facility in the fourth year of production;
- (v) 55% Montana product is used to produce alcohol at the facility in the fifth year of production; and
- (vi) 65% Montana product is used to produce alcohol at the facility in the sixth year of production.

(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) (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 subsections (2) and (4).

(7) The department shall ~~prescribe~~ adopt rules necessary to carry out the provisions of this section, ~~within 1 year of April 28, 2005.~~ 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."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 25, and the provisions of Title 2, chapter 15, part 25, apply to [section 1].

NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 5. Termination.** [This act] terminates at the end of the fiscal year that the director of the department of transportation certifies to the code commissioner that at least 40 million gallons of ethanol or biofuel are produced in Montana.

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