

SECOND REGULAR SESSION  
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SENATE SUBSTITUTE FOR  
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# SENATE BILLS NOS. 837, 866, 972 & 990

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

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TERRY L. SPIELER, Secretary.

3336S.15P

## AN ACT

To repeal sections 142.028, 348.430, 348.432 and 414.032, RSMo, relating to agriculturally-based fuels, and to enact in lieu thereof five new sections relating to the same subject.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 142.028, 348.430, 348.432 and 414.032, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 142.028, 142.031, 348.430, 348.432 and 1, to read as follows:

142.028. 1. As used in this section, the following terms mean:

(1) "Fuel ethanol", one hundred ninety-eight proof ethanol denatured in conformity with the United States Bureau of Alcohol, Tobacco and Firearms' regulations and fermented and distilled in a facility whose principal (over fifty percent) feed stock is cereal grain or cereal grain by-products;

(2) "Fuel ethanol blends", a mixture of ninety percent gasoline and ten percent fuel ethanol in which the gasoline portion of the blend or the finished blend meets the American Society for Testing and Materials - specification number D-439;

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

(3) "Missouri qualified fuel ethanol producer", any producer of fuel ethanol whose principal place of business and facility for the fermentation and distillation of fuel ethanol is located within the state of Missouri and which has made formal application, posted a bond, and conformed to the requirements of this section.

2. The "Missouri Qualified Fuel Ethanol Producer Incentive Fund" is hereby created and subject to appropriations shall be used to provide economic subsidies to Missouri qualified fuel ethanol producers pursuant to this section. The director of the department of agriculture shall administer the fund pursuant to this section.

3. A Missouri qualified fuel ethanol producer shall be eligible for a monthly grant from the fund, except that a Missouri qualified fuel ethanol producer shall only be eligible for the grant for a total of sixty months **unless such producer during those sixty months failed, due to a lack of appropriations, to receive the full amount from the fund for which they were eligible, in which case such producers shall continue to be eligible for up to twenty-four additional months or until they have received the maximum amount of funding for which they were eligible during the original sixty month time period**. The amount of the grant is determined by calculating the estimated gallons of qualified fuel ethanol production to be produced from Missouri agricultural products for the succeeding calendar month, as certified by the department of agriculture, and applying such figure to the per-gallon incentive credit established in this subsection. Each Missouri qualified fuel ethanol producer shall be eligible for a total grant in any [calendar] **fiscal** year equal to twenty cents per gallon for the first twelve and one-half million gallons of qualified fuel ethanol produced from Missouri agricultural products in the [calendar] **fiscal** year plus five cents per gallon for the next twelve and one-half million gallons of qualified fuel ethanol produced from Missouri agricultural products in the [calendar] **fiscal** year. All such qualified fuel ethanol produced by a Missouri qualified fuel ethanol producer in excess of twenty-five million gallons shall not be applied to the computation of a grant pursuant to this subsection. The department of agriculture shall pay all grants for a particular month by the fifteenth day after receipt and approval of the application described in subsection 4 of this section. If actual production of qualified fuel ethanol during a particular month either exceeds or is less than that estimated by a Missouri qualified fuel ethanol producer, the department of agriculture shall adjust the subsequent monthly grant by paying additional amount or subtracting the amount in deficiency by using the calculation described in this subsection.

4. In order for a Missouri qualified fuel ethanol producer to obtain a grant from the fund for a particular month, an application for such funds shall be received no later than fifteen days prior to the first day of the month for which the grant is sought. The application shall include:

- (1) The location of the Missouri qualified fuel ethanol producer;
- (2) The average number of citizens of Missouri employed by the Missouri qualified fuel

ethanol producer in the preceding quarter, if applicable;

(3) The number of bushels of Missouri agricultural commodities used by the Missouri qualified fuel ethanol producer in the production of fuel ethanol in the preceding quarter;

(4) The number of gallons of qualified fuel ethanol the producer expects to manufacture during the month for which the grant is applied;

(5) A copy of the qualified fuel ethanol producer license required pursuant to subsection 5 of this section, name and address of surety company, and amount of bond to be posted pursuant to subsection 5 of this section; and

(6) Any other information deemed necessary by the department of agriculture to adequately ensure that such grants shall be made only to Missouri qualified fuel ethanol producers.

5. The director of the department of agriculture, in consultation with the department of revenue, shall promulgate rules and regulations necessary for the administration of the provisions of this section. The director shall also establish procedures for bonding Missouri qualified fuel ethanol producers. Each Missouri qualified fuel ethanol producer who attempts to obtain moneys pursuant to this section shall be bonded in an amount not to exceed the estimated maximum monthly grant to be issued to such Missouri qualified fuel ethanol producer.

6. [No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.] **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.**

**142.031. 1. As used in this section the following terms shall mean:**

(1) "Biodiesel", fuel as defined in ASTM Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels;

(2) "Qualified biodiesel producer", a facility that produces biodiesel, is registered with the United States Environmental Protection Agency according to the requirements of 40 CFR 79, and at least fifty-one percent is owned by agricultural producers actively engaged in agricultural production for commercial purposes.

2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby created and subject to appropriations with funds from general revenue or other revenue sources shall be used to provide economic subsidies to Missouri qualified biodiesel

producers pursuant to this section. The director of the department of agriculture shall administer the fund pursuant to this section.

3. A Missouri qualified biodiesel producer shall be eligible for a quarterly grant from the fund, except that a Missouri qualified biodiesel producer shall only be eligible for the grant for a total of twenty quarters. The amount of the grant is determined by calculating the estimated gallons of qualified biodiesel production to be produced from Missouri agricultural products for the succeeding quarter, as certified by the department of agriculture, and applying such figure to the per-gallon incentive credit established in this subsection. At the beginning of each quarter, the previous quarter's grant shall be reconciled against the actual gallons produced within ten days of the end of the quarter. If the number of gallons of biodiesel produced is greater than the number of gallons estimated for the previous quarter, the qualified biodiesel producer shall receive an amount equal to thirty cents per gallon for each gallon produced in excess of the original estimate. If the number of gallons of biodiesel produced is less than the number of gallons estimated for the previous quarter, the qualified biodiesel producer shall return an amount equal to thirty cents per gallon for every gallon overestimated. The overestimated or underestimated amount of gallons of biodiesel produced shall be offset against the succeeding quarter's estimated amount. If an application for a grant pursuant to this section is not received for the succeeding quarter the overestimated or underestimated amount shall be paid by the obligated party within thirty days of the reconciliation. Each Missouri qualified biodiesel producer shall be eligible for a total grant in any calendar year equal to thirty cents per gallon for up to fifteen million gallons of qualified biodiesel produced from Missouri agricultural products in the calendar year. The department of agriculture shall pay all grants for a particular quarter within fifteen days after receipt and approval of the application described in subsection 4 of this section.

4. In order for a Missouri qualified biodiesel producer to obtain a grant from the fund for a particular quarter, an application for such funds shall be received no later than fifteen days prior to the first day of the quarter for which the grant is sought. The application shall include:

- (1) The location of the Missouri qualified biodiesel producer;
- (2) The average number of citizens of Missouri employed by the Missouri qualified biodiesel producer in the preceding quarter, if applicable;
- (3) The number of bushel equivalents of Missouri agricultural commodities used by the Missouri qualified biodiesel producer in the production of biodiesel in the preceding quarter;

**(4) The number of gallons of qualified biodiesel the producer expects to manufacture during the quarter for which the grant is applied;**

**(5) A copy of the qualified biodiesel producer license required pursuant to subsection 5 of this section, name and address of surety company, and amount of bond to be posted pursuant to subsection 5 of this section; and**

**(6) Any other information deemed necessary by the department of agriculture to adequately ensure that such grants shall be made only to Missouri qualified biodiesel producers.**

**5. The director of the department of agriculture, in consultation with the department of revenue, shall promulgate rules and regulations necessary for the administration of the provisions of this section. The director shall also establish procedures for bonding Missouri qualified biodiesel producers. Each Missouri qualified biodiesel producer who attempts to obtain moneys pursuant to this section shall be bonded in an amount not to exceed the estimated maximum quarterly grant to be issued to such Missouri qualified biodiesel producer.**

**6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.**

348.430. 1. The tax credit created in this section shall be known as the "Agricultural Product Utilization Contributor Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) ["Contributor", an individual, partnership, corporation, trust, limited liability company, entity or person that contributes cash funds to the authority;

(3)] "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

[~~(4)~~] **(3)** "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility;

**(4) "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the**

laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(5) "Nonproducer member", a person, partnership, corporation, trust or limited liability company that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;

(6) "Producer member", a person, partnership, corporation, trust or limited liability company whose main purpose is agricultural production that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;

[(5)] (7) "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source.

3. For tax year 1999, a [contributor] **producer member** who contributes funds to the authority may receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 148, RSMo, chapter 147, RSMo, in an amount of up to one hundred percent of such contribution. The awarding of such credit shall be at the approval of the authority, based on the least amount of credits necessary to provide incentive for the contributions. A [contributor] **producer member** that receives tax credits for a contribution to the authority shall receive no other consideration or compensation for such contribution, other than a federal tax deduction, if applicable, and goodwill. A [contributor] **producer member** that receives tax credits for a contribution provided in this section may not be a member, owner, investor or lender of an eligible new generation cooperative **or eligible new generation processing entity** that receives financial assistance from the authority either at the time the contribution is made or for a period of two years thereafter.

4. A [contributor] **producer member** shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the [contributor] **producer member** meets all criteria prescribed by this section and the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section shall initially be claimed [for] **in** the taxable year in which the [contributor] **producer**

**member** contributes funds to the authority. Any amount of credit that exceeds the tax due for a [contributor's] **producer member's** taxable year may be carried forward to any of the [contributor's] **producer member's** five subsequent taxable years. Tax credits issued pursuant to this section may be assigned, transferred or sold. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

5. The funds derived from contributions in this section shall be used for financial assistance or technical assistance for the purposes provided in section 348.407, to rural agricultural business concepts as approved by the authority. The authority may provide or facilitate loans, equity investments, or guaranteed loans for rural agricultural business concepts, but limited to two million dollars per project or the net state economic impact, whichever is less. Loans, equity investments or guaranteed loans may only be provided to feasible projects, and for an amount that is the least amount necessary to cause the project to occur, as determined by the authority. The authority may structure the loans, equity investments or guaranteed loans in a way that facilitates the project, but also provides for a compensatory return on investment or loan payment to the authority, based on the risk of the project.

6. In any given year, at least ten percent of the funds granted to rural agricultural business concepts shall be awarded to grant requests of twenty-five thousand dollars or less. No single rural agricultural business concept shall receive more than two hundred thousand dollars in grant awards from the authority. Agricultural businesses owned by minority members or women shall be given consideration in the allocation of funds.

348.432. 1. The tax credit created in this section shall be known as the "New Generation Cooperative Incentive Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(3) "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility and approved by the authority;

**(4) "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development**

**facility or a renewable fuel production facility in which producer members:**

**(a) Hold a majority of the governance or voting rights of the entity and any governing committee;**

**(b) Control the hiring and firing of management; and**

**(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;**

[(4)] **(5)** "Employee-qualified capital project", an eligible new generation cooperative with capital costs greater than fifteen million dollars which will employ at least one hundred employees;

[(5)] **(6)** "Large capital project", an eligible new generation cooperative with capital costs greater than one million dollars;

[(6)] "Member", a person, partnership, corporation, trust or limited liability company that invests cash funds to an eligible new generation cooperative;]

**(7) "Nonproducer member", a person, partnership, corporation, trust or limited liability company that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;**

**(8) "Producer member", a person, partnership, corporation, trust or limited liability company whose main purpose is agricultural production that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;**

[(7)] **(9)** "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source;

[(8)] **(10)** "Small capital project", an eligible new generation cooperative with capital costs of no more than one million dollars.

3. Beginning tax year 1999, and [subsequent tax years] **ending December 31, 2002**, any **producer** member who invests cash funds in an eligible new generation cooperative **or eligible new generation processing entity** may receive a credit against the tax **or estimated quarterly tax** otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter 148, RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of such **producer** member's investment or fifteen thousand dollars.

**4. For all tax years beginning on or after January 1, 2003, any producer member who invests cash funds in an eligible new generation cooperative may receive a credit against the tax or estimated quarterly tax otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo,**



**chapter 147, RSMo, or chapter 148, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars. Tax credits claimed in a taxable year may be done so on a quarterly basis and applied to the estimated quarterly tax pursuant to subsection 3 of this section.**

[4.] **5.** A **producer** member shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the **producer** member meets all criteria prescribed by this section and is approved by the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section shall initially be claimed [for] **in** the taxable year in which the **producer** member contributes capital to an eligible new generation cooperative **or eligible new generation processing entity**. Any amount of credit that exceeds the tax due for a **producer** member's taxable year may be carried back to any of the **producer** member's three prior taxable years and carried forward to any of the **producer** member's five subsequent taxable years. Tax credits issued pursuant to this section may be assigned, transferred, sold or otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit as the **producer** member. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

[5.] **6.** Ten percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to small capital projects. If any portion of the ten percent of tax credits offered to small capital costs projects is unused in any calendar year, then the unused portion of tax credits may be offered to employee-qualified capital projects and large capital projects. If the authority receives more applications for tax credits for small capital projects than tax credits are authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for small capital projects.

[6.] **7.** Ninety percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to employee-qualified capital projects and large capital projects. If any portion of the ninety percent of tax credits offered to employee-qualified capital projects and large capital costs projects is unused in any fiscal year, then the unused portion of tax credits may be offered to small capital projects. The maximum tax credit allowed per employee-qualified capital project is three million dollars and the maximum tax credit allowed per large capital project is one million five hundred thousand dollars. If the authority approves the maximum tax credit allowed for any employee-qualified capital project or any large capital project, then the authority, by rule, shall determine the method of distribution of such maximum tax credit. In addition, if the authority receives more tax credit applications for employee-qualified capital projects and large capital projects than the amount of tax credits authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for

employee-qualified capital projects and large capital projects.

[414.032. 1. All kerosene, diesel fuel, heating oil, aviation turbine fuel, gasoline, gasoline-alcohol blends and other motor fuels shall meet the requirements in the annual book of ASTM standards and supplements thereto. The director may promulgate rules and regulations on the labeling, standards for, and identity of motor fuels and heating oils.

2. All sellers of motor fuel which has been blended with an alcohol additive shall notify the buyer of same.

3. All sellers of motor fuel which has been blended with at least one percent oxygenate by weight shall notify the buyer at the pump of the type of oxygenate. The provisions of this subsection may be satisfied with a sticker or label on the pump stating that the motor fuel may or may not contain the oxygenate. The department of agriculture shall provide the sticker or label, which shall be reasonable in size and content, at no cost to the sellers.

4. The director may inspect gasoline, gasoline-alcohol blends or other motor fuels to insure that these fuels conform to advertised grade and octane. In no event shall the penalty for a first violation of this section exceed a written reprimand.]

**Section 1. Sixty days after the effective date of the nationwide ban of Methyl Tertiary-Butyl Ether (MTBE) by the federal government, MTBE shall not be added as an oxygenate to any fuel sold in Missouri. However, in any event, fuel containing MTBE shall not be sold in Missouri after July 31, 2004.**

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