



1997 ASSEMBLY BILL 134

February 24, 1997 - Introduced by Representatives HAHN, FREESE, HARSDORF, AINSWORTH, BOYLE, OWENS, MUSSER, SCHAFER, SERATTI and ZUKOWSKI, cosponsored by Senator ZIEN. Referred to Committee on Rural Affairs.

- 1 **AN ACT to create** 16.957 and 20.505 (1) (dm) of the statutes; **relating to:** the
2 creation of an ethanol production incentive program.

Analysis by the Legislative Reference Bureau

This bill establishes an ethanol production incentive program to be administered by the department of administration (DOA). Under the program, ethanol producers may receive incentive payments for qualifying ethanol production. In order to qualify for incentive payments, the ethanol must be produced by a facility that was constructed on or after the effective date of the bill. In addition, the ethanol must be at least 99% pure, be denatured and be subsequently blended with gasoline. Finally, the ethanol must be fermented, distilled and dehydrated in a certified production facility. In order to become certified, the production facility must be located in this state and must file an application and a test claim with DOA.

In calculating the amount of an incentive payment to an ethanol producer, DOA is required to allocate the lesser of \$1,000,000 or the amount appropriated for incentive payments in a fiscal year, among 3-month computation periods. If sufficient funds are allocated to a computation period, DOA is required to pay ethanol producers incentive payments of 20 cents for each gallon of qualifying ethanol produced during the computation period. If the funds allocated to that computation period are insufficient, the available funds are prorated among ethanol producers on the basis of the number of gallons of qualifying ethanol produced during that computation period. Any funds allocated to a computation period that are not needed to make incentive payments to ethanol producers are used to increase the total amount allocated for the next computation period in that fiscal year, if any.

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The bill imposes certain limitations on the amount of incentive payments that may be received under the program. The amount of the ethanol production incentive payments paid to any ethanol producer, together with any ethanol production incentive payments made to any person controlling, controlled by or under common control with the ethanol producer, may not exceed, in any computation period, 20% of the amount available for incentive payments during the computation period, or, in any fiscal year, \$300,000. DOA may require a producer to submit unqualified opinions based on audits performed by an accountant before paying any claim for incentive payments under the program. In addition, incentive payments may not be made for any ethanol production facility more than 5 years after a payment was made for ethanol produced at that facility.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.957 of the statutes is created to read:

2 **16.957 Ethanol production incentive program.** (1) DEFINITIONS. In this
3 section:

4 (a) "Computation period" means a period of 3 consecutive months ending on
5 March 31, June 30, September 30 or December 31.

6 (b) "Control" means possess, directly or indirectly, the power to direct or cause
7 the direction of the management and policies of a person, whether that power is
8 exercised through one or more intermediary entities, or alone, or in conjunction with,
9 or by an agreement with, another person, and whether that power is established
10 through majority ownership, minority ownership, voting of securities, common
11 directors, common officers, common stockholders, voting trusts, holding trusts or
12 affiliated companies or by contract or other direct or indirect means. "Control"
13 includes owning, holding or controlling, directly or indirectly, at least 5% of the
14 voting power in the election of directors of a corporation or association.

15 **(2) CREATION.** There is created an ethanol production incentive program to be
16 funded under s. 20.505 (1) (dm) and administered by the department.

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1 **(3) CERTIFICATION OF PRODUCTION FACILITIES.** No ethanol producer may
2 participate in the ethanol incentive program, unless the production facility is
3 certified by the department under this subsection. In order to have a production
4 facility certified, the ethanol producer must submit an application and a test claim
5 for the computation period immediately preceding the computation period in which
6 the initial claim for an incentive payment is made. A test claim shall provide the
7 same information as is required for a claim for payment under sub. (4). The
8 department may not certify a production facility under this subsection unless the
9 production facility is located in this state.

10 **(4) SUBMISSION OF CLAIMS.** In order to receive payments under the ethanol
11 incentive program, an ethanol producer shall submit a claim to the department
12 under this subsection. The claim shall include the name of the producer, the location
13 of the production facility, the computation period for which the claim is submitted,
14 the number of gallons of ethanol produced during the computation period that
15 qualify for incentive payments under sub. (5), the form of organization of the
16 producer and any other information which may be specified by the department.

17 **(5) QUALIFIED ETHANOL PRODUCTION.** In order for an ethanol producer to qualify
18 for incentive payments for ethanol production under this section, the ethanol
19 produced by that producer shall meet all of the following criteria:

20 (a) The ethanol shall have been produced by a facility the construction of which
21 was begun on or after the effective date of this paragraph [revisor inserts date].

22 (b) The ethanol shall be fermented, distilled and dehydrated in a production
23 facility certified under sub. (3).

24 (c) The ethanol shall be at least 99% pure, be denatured and be subsequently
25 blended with gasoline.

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1 **(6) CALCULATION OF INCENTIVE PAYMENTS.** Subject to sub. (7), incentive payments
2 to ethanol producers for the production of ethanol that qualifies under sub. (5) shall
3 be calculated as follows:

4 (a) In each fiscal year, the department shall allocate the lesser of \$1,000,000
5 or the amount appropriated under s. 20.505 (1) (dm) for that fiscal year, equally
6 among the computation periods for that fiscal year.

7 (b) The department shall pay to each ethanol producer submitting a claim
8 under sub. (4) an incentive payment of 20 cents for each gallon of ethanol that is
9 produced during the computation period and that qualifies for incentive payments
10 under sub. (5), if sufficient funds have been allocated to that computation period to
11 pay all of these claims. If the funds allocated to the computation period are
12 insufficient to pay each ethanol producer an incentive payment of 20 cents for each
13 gallon of ethanol that is produced during the computation period and that qualifies
14 for incentive payments under sub. (5), the department shall distribute the available
15 funds to the ethanol producers that submitted claims in proportion to the number of
16 gallons of ethanol produced by each of the ethanol producers during the computation
17 period that qualify for incentive payments under sub. (5).

18 (c) Any funds remaining after the application of par. (b) shall be used to increase
19 the total amount allocated for the next computation period in that fiscal year, if any.

20 **(7) LIMITATIONS ON INCENTIVE PAYMENTS.** Notwithstanding any other provision
21 in this section:

22 (a) The incentive payment paid to an ethanol producer, together with incentive
23 payments paid to any person controlling, controlled by or under common control with
24 the ethanol producer, may not exceed any of the following:

