

1999 ASSEMBLY BILL 537

October 14, 1999 – Introduced by Representatives HAHN, FREESE, OTT, GRONEMUS, AINSWORTH, OWENS, GUNDERSON, ALBERS, HUEBSCH, BRANDEMUEHL, MEYER, GOETSCH, KLUSMAN, MUSSER, SERATTI and BLACK, cosponsored by Senators BAUMGART, RUDE, DRZEWIECKI and SCHULTZ. Referred to Committee on Agriculture.

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 and making an
3 appropriation.

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, denatured and subsequently blended with gasoline. Also, 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 amount shown in the appropriation schedule for incentive payments in a fiscal year, among three-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

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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.

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, \$500,000. In addition, incentive payments may not be made for any ethanol production facility more than five years after a payment was first made for ethanol produced at that facility. Also, 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.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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.

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

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

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

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

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

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

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

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

6 (a) In each fiscal year, the department shall allocate the amount shown in the
7 schedule for the appropriation under s. 20.505 (1) (dm) for that fiscal year equally
8 among the computation periods for that fiscal year.

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

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

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

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

4 1. In any computation period, 20% of the funds available for incentive
5 payments for that computation period.

6 2. In any fiscal year, \$500,000.

7 (b) No incentive payments may be made to an ethanol producer for ethanol
8 produced at an ethanol production facility certified under sub. (3) for a computation
9 period that begins at least 5 years after the computation period for which the ethanol
10 producer first received an incentive payment under this section for ethanol produced
11 at that ethanol production facility.

12 **(8) PAYMENT AND VERIFICATION OF INCENTIVE PAYMENTS.** The department shall
13 approve a claim submitted under sub. (4) and shall make the incentive payment
14 calculated under sub. (6) within 30 days after receiving the claim, unless the
15 department notifies the producer otherwise. The department shall verify the
16 accuracy of the claims submitted by a producer. The department may require that
17 the producer submit regular, unqualified opinions based on audits performed by an
18 accountant certified under ch. 442 before paying any claim made under this section
19 for incentive payments.

20 **(9) SUNSET.** The department may not make any incentive payment under sub.
21 (8) unless the department receives, before June 30, 2003, an application under sub.
22 (3) for certification of a production facility.

23 **SECTION 2.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
24 the following amounts for the purposes indicated:

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1999-00

2000-01

1 **20.505 Administration, department of**

2 (1) SUPERVISION AND MANAGEMENT; LAND INFORMATION

3 BOARD

4 (dm) Ethanol production incentive

5 program GPR B -0- 2,000,000

6 **SECTION 3.** 20.505 (1) (dm) of the statutes is created to read:

7 20.505 (1) (dm) *Ethanol production incentive program.* Biennially, the
8 amounts in the schedule for making incentive payments under the ethanol
9 production incentive program under s. 16.957.

10 **SECTION 4. Effective date.**

11 (1) This act takes effect on the 2nd day after publication of the 1999-2001
12 biennial budget act, or on the day after publication, whichever is later.

13 (END)