



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 11/04/2003 (Per: RCT)



☞ The 2003 drafting file for LRB 03-2583/5  
has been copied/added to the 2003 drafting file for  
**LRB 03-3637**

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

**2003 DRAFTING REQUEST**

**Bill**

Received: 04/22/2003

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Stephen Freese (608) 266-7502

By/Representing:

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Agriculture - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Freese@legis.state.wi.us

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Modify ethanol incentive program

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							State
/1	btradewe 05/07/2003	wjackson 05/09/2003	rschluet 05/09/2003		amentkow 05/09/2003		State
/2	btradewe 09/30/2003	wjackson 09/30/2003	chaugen 09/30/2003		sbasford 09/30/2003		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	btradewe 10/29/2003	wjackson 10/30/2003	jfrantze 10/30/2003	_____	sbasford 10/30/2003		State
/4	btradewe 10/31/2003	wjackson 10/31/2003	jfrantze 11/03/2003	_____	lemery 11/03/2003		State
/5	btradewe 11/04/2003	wjackson 11/04/2003	pgreensl 11/04/2003	_____	sbasford 11/04/2003		

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1/4 pg PJ/RF

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15 W/LJ 11/4

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10/13      11/3

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/4 wlj 10/31

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*J* 10/30      *J* 10/30

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1/3 WJ 10/30

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/?	btradewe						

*[Handwritten signature]*  
 5-9-03  
 CPJ

FE Sent For:

<END>

To: Members of the Wisconsin State Legislature  
From: The Wisconsin Ethanol Producers Association (WEPA)  
Re: Wisconsin ethanol production incentives

The Wisconsin Ethanol Producers Association (WEPA) is grateful to the Governor and the Legislature for adopting an ethanol production incentive program. The program has led to the construction of two ethanol plants currently operating in the state and the production of approximately 66 million gallons of ethanol per year. In addition, a third plant designed to produce 20 million gallons of ethanol per year is currently under construction and should begin production sometime in the 2<sup>nd</sup> quarter of 2003. The action taken by the Governor and the Legislature have been important in getting this infant industry off the ground.

The original program was designed to provide \$3 million/year for one plant. The 2001-2003 budget included funding of \$3 million for that purpose. During budget review deliberations, the appropriation was cut to \$2,945,000, which, under the current administrative rule, will be roughly split in half by the two plants currently producing ethanol. Though the state has realized the economic benefits from the combined \$88 million investment, it will not be making a payment to eligible producers until June 2003. However, given the current recommended funding of \$1.9 million and a third plant being eligible for the incentive in fiscal year 2003-2004, it is unlikely that we will see any new plants developed in the near future.

WEPA appreciates the difficult fiscal situation facing the state. Certainly cuts need to be made. However, we also believe that cutting spending is but one part of balancing the budget. The other part is growing the revenue. We believe that expanding an ethanol industry is one way to grow the Wisconsin economy and we hope that the Governor and the Legislature, through the current budget process, will develop an economic development package and will make ethanol production a part of that package.

In spite of the difficult economic times, the state of Nebraska adopted a new production incentive program that is leading to a significant expansion of the ethanol industry in that state. We believe that the adoption of a similar program would lead to expansion in Wisconsin as well. The major provisions of the Nebraska program include a \$2,812,500/year/plant maximum incentive for a period of 8 years and a contractual relationship between the producer and the state. Both of these provisions are extremely important in convincing lending institutions to provide the financing necessary to build the plants.

We would welcome the opportunity to work with the Legislature to develop a Wisconsin program that insures the profitability of existing plants and leads to the development of additional plants necessary to satisfy, at the very least, the demand for ethanol in our state. Provisions of such a proposal would include the following changes to our current law.

1. Establish a contractual relationship between the state and the producers for a period of eight years and eliminate the current proration provision.
2. Lower the incentive payment from 20 to 13.00<sup>61</sup> cents/gallon for the biennium.
3. Cap payments for the biennium at 3 plants in 2003-2004 and 4 plants in 2004-2005.

4. Change current sunset from 2006 to 2010.
5. Eliminate the monitoring language.

**We believe that the adoption of these provisions is both fiscally prudent and will send a positive message to existing producers, potential producers and the lending institutions who must be willing to take the risks to make ethanol production an ongoing reality in this state.**

**93.75 Payments to ethanol producers.**

*enter into bond's contracts with ethanol producers and*

**93.75(1)**

**(1) Eligibility.** Beginning on July 1, 2001, the department shall administer a program under which the department makes payments to a person who produces ethanol and who satisfies all of the following criteria:

**93.75(1)(a)**

**(a)** The person produces in this state, within 12 months, over 10,000,000 gallons of ethanol or, during the first 12 months that the person produces ethanol in this state, a lesser amount of ethanol that is established by the department by rule.

**93.75(1)(b)**

**(b)** The person has been producing ethanol in this state for fewer than 60 months.

**93.75(1)(c)**

**(c)** The person purchases the substances from which the person produces ethanol from a local source, as defined by the department by rule.

**93.75(2)**

**(2) Payments.** The department shall pay a person who is eligible under sub. (1) at the rate of ~~20~~ <sup>13 2/3</sup> cents per gallon for not more than 15,000,000 gallons of ethanol produced in this state within 12 months, ~~except that if there are insufficient funds to make payments at this rate to all eligible persons the department shall prorate the payments.~~ *Payments to producers would be capped at 3 plants in 2002-2004 and 4 plants in 2004-2015*

**93.75(3)**

**(3) Rules.** The department shall promulgate rules for the program under this section. The department shall include all of the following in the rules:

**93.75(3)(a)**

**(a)** The amount of ethanol that a person must produce within the first 12 months that the person produces ethanol in this state to be eligible for payments under this section.

**93.75(3)(b)**

**(b)** A definition of "local source" for the purposes of sub. (1) (c).

**93.75(3)(e)**

**(e)** A method for prorating payments under sub. (2).

**93.75(3m)**

**(3m) Monitoring.**

**93.75(3m)(a)**

**(a)** The department of transportation shall monitor the impact of ethanol sales in this state on the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads.

93.75(3m)(b) 

(b) If the department of transportation determines, on or before December 31, 2003, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2003, and not later than December 31, 2003.

93.75(3m)(c) 

(c) If the department of transportation determines, after December 31, 2003, and before January 1, 2005, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2004, and not later than December 31, 2004.

93.75(3m)(d) 

(d) If the department of transportation determines, after December 31, 2004, and before January 1, 2006, that the amount of federal moneys received by this state for highways and other surface transportation purposes, excluding federal moneys received for railroads, is decreased due to ethanol sales in this state, the department of transportation shall notify the department of agriculture, trade and consumer protection of that determination not sooner than October 1, 2005, and not later than December 31, 2005.

93.75(4) 

(4) **Sunset.** The department may not make a payment under this section after June 30, 2010 2006, or the first day of the 6th month beginning after the department receives a notice under sub. (3m), whichever is sooner.

93.75 - ANNOT. 

**History:** 1999 a. 55.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2583/1

RCT./:.....

WLj

SOON (in 5/7)

2003 BILL

Note

1 AN ACT <sup>GEN</sup> ...; relating to: payments to ethanol producers and making an  
2 appropriation.

*Analysis by the Legislative Reference Bureau*

Current law requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to make payments to an ethanol producer during its first 60 months of ethanol production if the producer satisfies certain requirements. The payments are 20 cents per gallon for not more than 15,000,000 gallons of ethanol produced within 12 months, except that, if there is insufficient funding, DATCP must prorate the payments. The program ends on June 30, 2006, or earlier if the Department of Transportation (DOT) determines that federal transportation aids are decreased because of ethanol sales in this state.

\* + This bill creates a sum sufficient appropriation for payments by DATCP to ethanol producers and eliminates the requirement that DATCP prorate payments if funding is insufficient to make full payments. The bill requires DATCP and a producer to enter into a contract under which DATCP makes the payments. The bill limits the total number of contracts into which DATCP may enter to four and reduces the per gallon payment to 13.67 cents. The bill also extends the program until June 30, 2010, and eliminates the provision that ends the program earlier if DOT determines that federal transportation aids are decreased because of ethanol sales.

prohibits DATCP from entering into any contracts after June 30, 2005

**BILL**

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. 20.115 (1) (d)<sup>✓</sup> of the statutes is amended to read:

2 20.115 (1) (d) *Payments to ethanol producers.* ~~The amounts in the schedule A~~  
3 sum sufficient for payments to ethanol producers under s. 93.75 to the extent that  
4 the payments are not made under par. (k). No funds may be encumbered under this  
5 paragraph after June 30, 2006 2010<sup>✓</sup>.

History: 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 192, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109.

6 SECTION 2. 20.115 (1) (k)<sup>✓</sup> of the statutes is amended to read:

7 20.115 (1) (k) *Payments to ethanol producers.* The amounts in the schedule for  
8 payments to ethanol producers under s. 93.75. All moneys transferred from the  
9 appropriation account under s. 20.505 (8) (hm) 2m. shall be credited to this  
10 appropriation account. Notwithstanding s. 20.001 (3) (a), the unencumbered  
11 balance on June 30 of each year shall revert to the appropriation account under s.  
12 20.505 (8) (hm). No funds may be encumbered under this paragraph after June 30,  
13 2006 2010<sup>✓</sup>.

History: 1971 c. 125, 215; 1973 c. 90, 299, 333; 1975 c. 39 ss. 78m, 79, 79m, 79n, 732 (1); 1975 c. 224; 1975 c. 394 ss. 1, 27; 1977 c. 29 ss. 112 to 115v, 1650m (1), (4), 1654 (1); 1977 c. 87, 106, 181, 418; 1979 c. 34, 129, 221, 289, 335; 1981 c. 20, 66, 93, 283, 346, 357; 1983 a. 27, 132, 368; 1983 a. 410 ss. 5, 2202 (2); 1985 a. 7, 8, 29, 138, 153, 313; 1987 a. 27, 281, 354; 1987 a. 399 ss. 34 to 38, 38u; 1987 a. 403 s. 256; 1989 a. 31, 219, 227, 282, 284, 335, 336; 1991 a. 39, 269, 309, 315; 1993 a. 16, 166, 243, 437, 456, 497; 1995 a. 27, 42, 79, 460; 1997 a. 27, 192, 252, 264; 1999 a. 5, 9, 55, 185; 2001 a. 16, 38, 56, 103, 109.

14 SECTION 3. 93.75 (1) (intro.)<sup>✓</sup> of the statutes is amended to read:

15 93.75 (1) ELIGIBILITY. (intro.) ~~Beginning on July 1, 2001~~ Subject to sub. (1m)<sup>✓</sup>,  
16 the department shall ~~administer a program~~ enter into a binding contract under  
17 which the department makes payments to a person who produces ethanol and who  
18 satisfies all of the following criteria:

19 SECTION 4. 93.75 (1m) of the statutes is created to read:

**BILL**

1           93.75 (1m)<sup>✓</sup> LIMIT ON NUMBER OF CONTRACTS. The department may not enter into  
 2 more than a total of 3 contracts under sub. (1)<sup>✓</sup> before July 1, 2004, and may not enter  
 3 into a total of more than 4 contracts under sub. (1)<sup>✓</sup> before July 1, 2005. The  
 4 department may not enter into any contracts under sub. (1) after June 30, 2005.

5           **SECTION 5.** 93.75 (2)<sup>✓</sup> of the statutes is amended to read:

6           93.75 (2) PAYMENTS. The department shall pay a person who is eligible under  
 7 sub. (1) at the rate of 20 13.67<sup>✓</sup> cents per gallon for not more than 15,000,000 gallons  
 8 of ethanol produced in this state within 12 months, ~~except that if there are~~  
 9 ~~insufficient funds to make payments at this rate to all eligible persons the~~  
 10 ~~department shall prorate the payments.~~<sup>✓</sup>

11           History: 1999 a. 55.  
 11           **SECTION 6.** 93.75 (3) <sup>c</sup>(a) of the statutes is repealed.

12           **SECTION 7.** 93.75 (3m)<sup>✓</sup> of the statutes is repealed.

13           **SECTION 8.** 93.75 (4)<sup>✓</sup> of the statutes is amended to read:

14           93.75 (4) SUNSET. The department may not make a payment under this section  
 15 after June 30, 2006, ~~or the first day of the 6th month beginning after the department~~  
 16 ~~receives a notice under sub. (3m), whichever is sooner~~ 2010.

17           History: 1999 a. 55.  
 17           **SECTION 9. Initial applicability.**

18           (1) The treatment of section 93.75 (2) of the statutes first applies to ethanol  
 19 produced on the effective date of this subsection.

20           **SECTION 10. Effective date.**

21           (1) This act takes effect on July 1, 2003<sup>5</sup>, or the first day of the first month  
 22 beginning after publication, whichever is later.

23

(END)

*Note*<sup>✓</sup>

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2583/1dn

RCT:/:.....

WLj

This is the draft to modify the program that provides payments to ethanol producers. Please review it carefully to ensure that it carries out the intent of the request.

The description of the proposal, but not the marked-up version of the statute, indicated that the payments should be made for eight years, rather than five years as under current law. The request also indicated that the program should be sunset in 2010. These provisions seem to be inconsistent. If DATCP entered into a contract in 2005, eight years worth of payments would last until 2013. This draft does not change the current five year term for payments.

The draft changes the amount of the per gallon payment, so I thought that it should specify when the change takes effect. As drafted, the changes apply to ethanol produced beginning on July 1, 2003, or on the first day of the first month that begins after the bill is published, whichever is later. Please let me know if you want a different provision.

Ordinarily, a legislature would have the power to terminate or change the amount of payments under a subsidy program established by an earlier legislature. Even though the draft provides for a contract between DATCP and a producer, I am not certain what a court would do if a future legislature failed to appropriate sufficient funds to pay the subsidies required under a contract.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2583/1dn  
RCT:wlj:rs

May 9, 2003

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The draft changes the amount of the per-gallon payment, so I thought that it should specify when the change takes effect. As drafted, the changes apply to ethanol produced beginning on July 1, 2003, or on the first day of the first month that begins after the bill is published, whichever is later. Please let me know if you want a different provision.

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Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.state.wi.us

**Tradewell, Becky**

**From:** Simatic, Kurt  
**Sent:** Monday, September 29, 2003 1:25 PM  
**To:** Tradewell, Becky  
**Subject:** changes to LRB 2583/1

Becky:

We would like to make the following changes to this draft which relates to payments to ethanol producers and making an appropriation

- the payment program itself would not have a sunset; each producer who enters into a contract with DATCP would have its eligibility sunset after 8 years.
- the changes can take effect on July 1, 2004 or on the first day of the first month that begins after the bill is published.
- as a way of being fair to producers receiving payments under the existing plan, is there a way to prorate their payments over the course of the 8 years in this bill and take into account the payments already received? (so the existing producers do not start over again with 8 full years)

If you have any questions, please email me or call me at 6-7502.

Thanks.

**Kurt Simatic**  
Legislative Assistant  
Speaker Pro Tem Steve Freese



State of Wisconsin  
2003 - 2004 LEGISLATURE  
SOON

LRB-2583/2  
RCT:wlj:vw

RMF

2003 BILL

Note

No II

The bill makes a producer eligible for payments for its first 96 months of ethanol production

REGEN

1 AN ACT to repeal 93.75 (3) (c) and 93.75 (3m); to amend 20.115 (1) (d), 20.115  
2 (1) (k), 93.75 (1) (intro.), 93.75 (2) and 93.75 (4); and to create 93.75 (1m) of the  
3 statutes; relating to: payments to ethanol producers and making an  
4 appropriation.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to make payments to an ethanol producer during its first 60 months of ethanol production if the producer satisfies certain requirements. The payments are 20 cents per gallon for not more than 15,000,000 gallons of ethanol produced within 12 months, except that, if there is insufficient funding, DATCP must prorate the payments. The program ends on June 30, 2006, or earlier if the Department of Transportation (DOT) determines that federal transportation aids are decreased because of ethanol sales in this state.

- \* This bill creates a sum sufficient appropriation for payments by DATCP to ethanol producers and eliminates the requirement that DATCP prorate payments if funding is insufficient to make full payments. The bill requires DATCP and a producer to enter into a contract under which DATCP makes the payments. The bill limits the total number of contracts into which DATCP may enter to four, prohibits DATCP from entering into any contracts after June 30, 2005, and reduces the per-gallon payment to 13.67 cents. The bill also ~~ends~~ the program ~~with June 30, 2006~~ and eliminates the provision that ends the program ~~with June 30, 2006~~ if DOT determines that federal transportation aids are decreased because of ethanol sales.

no date for

**BILL**

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:*

SECTION 1. 20.115 (1) (d) of the statutes is amended to read:

20.115 (1) (d) *Payments to ethanol producers.* The amounts in the schedule A sum sufficient for payments to ethanol producers under s. 93.75 to the extent that the payments are not made under par. (k) ~~No funds may be encumbered under this paragraph after June 30, 2006~~ <sup>Strike period</sup> <sub>2006</sub> <sup>note scored text</sup> <sub>2001</sub> <sup>plain period</sup>

SECTION 2. 20.115 (1) (k) of the statutes is amended to read:

20.115 (1) (k) *Payments to ethanol producers.* The amounts in the schedule for payments to ethanol producers under s. 93.75. All moneys transferred from the appropriation account under s. 20.505 (8) (hm) 2m. shall be credited to this appropriation account. Notwithstanding s. 20.001 (3) (a), the unencumbered balance on June 30 of each year shall revert to the appropriation account under s. 20.505 (8) (hm). ~~No funds may be encumbered under this paragraph after June 30, 2006~~ <sup>strike sentence</sup> <sub>2006</sub> <sub>2001</sub>

SECTION 3. 93.75 (1) (intro.) of the statutes is amended to read:

93.75 (1) ELIGIBILITY. (intro.) ~~Beginning on July 1, 2001~~ Subject to sub. (1m), the department shall administer a program enter into a binding contract under which the department makes payments to a person who produces ethanol and who satisfies all of the following criteria:

SECTION 4. 93.75 (1m) of the statutes is created to read:

93.75 (1m) LIMIT ON NUMBER OF CONTRACTS. The department may not enter into more than a total of 3 contracts under sub. (1) before July 1, 2004, and may not enter

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**BILL**

1 into a total of more than 4 contracts under sub. (1) before July 1, 2005. The  
2 department may not enter into any contracts under sub. (1) after June 30, 2005.

3 **SECTION 5.** 93.75 (2) of the statutes is amended to read:

4 93.75 (2) PAYMENTS. The department shall pay a person who is eligible under  
5 sub. (1) at the rate of ~~20~~ 13.67 cents per gallon for not more than 15,000,000 gallons  
6 of ethanol produced in this state within 12 months, ~~except that if there are~~  
7 ~~insufficient funds to make payments at this rate to all eligible persons the~~  
8 ~~department shall prorate the payments.~~

9 **SECTION 6.** 93.75 (3) (c) of the statutes is repealed.

10 **SECTION 7.** 93.75 (3m) of the statutes is repealed.

11 **SECTION 8.** <sup>RP</sup>93.75 (4) of the statutes ~~is amended to read:~~

LPS:  
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12 93.75 (4) SUNSET. The department may not make a payment under this section  
13 after June 30, 2006, or the first day of the 6th month beginning after the department  
14 receives a notice under sub. (3m), whichever is sooner 2010.

15 **SECTION 9. Initial applicability.**

16 (1) The treatment of section 93.75 (2) of the statutes first applies to ethanol  
17 produced on the effective date of this subsection.

18 **SECTION 10. Effective date.**

19 (1) This act takes effect on July 1, <sup>2004</sup>~~2003~~, or the first day of the first month  
20 beginning after publication, whichever is later.

21 (END)

Insert 3-14

Insert 2-18

-2583/2

Section #. 93.75 (1) (b) of the statutes is amended to read:

93.75 (1) (b) The person has been producing ethanol in this state for fewer than 96 months.

History: 1999 a. 55.

2003

Nonstat File Sequence: **AAA**

LRB -2583 12

NONSTAT SESSLAW *Insert 3-14*

1. In the component bar:

For the action phrase, execute: ..... create → action: → \*NS: → nonstat

For the budget action phrase, execute: ..... create → action: → \*NS: → 91XX

For a subsection, execute: ..... create → text: → \*NS: → sub

For a paragraph, execute: ..... create → text: → \*NS: → par

For a subdivision, execute: ..... create → text: → \*NS: → subd

For a subdivision paragraph, execute: ..... create → text: → \*NS: → subpar

2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9100 department code.

SECTION #   91  . Nonstatutory provisions: ...

( #1 )

*If* the department of agriculture, trade and consumer protection has determined that an ethanol producer <sup>is eligible for payments</sup> under section 93075, 2001 statute, before July 1, 2004, the department shall enter into a contract as provided under section 93075 (1) of the statute, as affected by this act, with the producer and shall make payments to the producer as provided under section 93075 (2) of the statute, as affected by this act, for ethanol produced by the producer beginning on the effective date of this subsection to the end of the period specified in section 93075 (1) (b) of the statute, as affected by this act, or until the producer ceases to be eligible for the payments, whichever is sooner.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2583/2dn  
RCT./.....  
WJ

**Kurt Simatic:**

After thinking about this some more, I decided that it would be a good idea to be explicit about what happens to an ethanol producer that has been getting payments under the current version of the statutes. Please review the nonstatutory provision that I added, as well as the rest of the draft, to ensure that it carries out your intent.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2583/2dn  
RCT:wlj:ch

September 30, 2003

**Kurt Simatic:**

After thinking about this some more, I decided that it would be a good idea to be explicit about what happens to an ethanol producer that has been getting payments under the current version of the statutes. Please review the nonstatutory provision that I added, as well as the rest of the draft, to ensure that it carries out your intent.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

**Tradewell, Becky**

---

**From:** Simatic, Kurt  
**Sent:** Tuesday, October 28, 2003 2:50 PM  
**To:** Tradewell, Becky  
**Subject:** LRB 2583/2

Becky:

We have do changes to this draft relating to ethanol payments:

-we would like to make it a cap sum sufficient of no more than \$6 million for payments by DATCP to ethanol producers

-reduce the per gallon payment to 10 cents.

**Kurt Simatic**  
Legislative Assistant  
Speaker Pro Tem Steve Freese



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-25837 3  
RCT:wlj:ch

SOON (M 10/29)

YMY

2003 BILL

No ff

but provides that the total amount appropriated for the payments in a fiscal year may not exceed \$6,000,000 the bill

REGEN

- 1 AN ACT *to repeal* 93.75 (3) (c), 93.75 (3m) and 93.75 (4); *to amend* 20.115 (1) (d),
- 2 20.115 (1) (k), 93.75 (1) (intro.), 93.75 (1) (b) and 93.75 (2); and *to create* 93.75
- 3 (1m) of the statutes; **relating to:** payments to ethanol producers and making
- 4 an appropriation.

**Analysis by the Legislative Reference Bureau**

Current law requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to make payments to an ethanol producer during its first 60 months of ethanol production if the producer satisfies certain requirements. The payments are 20 cents per gallon for not more than 15,000,000 gallons of ethanol produced within 12 months, except that, if there is insufficient funding, DATCP must prorate the payments. The program ends on June 30, 2006, or earlier if the Department of Transportation (DOT) determines that federal transportation aids are decreased because of ethanol sales in this state.

This bill creates a sum sufficient appropriation for payments by DATCP to ethanol producers, ~~and~~ eliminates the requirement that DATCP prorate payments if funding is insufficient to make full payments. ~~The bill~~ <sup>Under the bill,</sup> a producer eligible for payments for its first 96 months of ethanol production. The bill requires DATCP and a producer to enter into a contract under which DATCP makes the payments. The bill limits the total number of contracts into which DATCP may enter to four, prohibits DATCP from entering into any contracts after June 30, 2005, and reduces the per-gallon payment to ~~18.97~~ cents. The bill also eliminates the June 30, 2006, ending date for the program and eliminates the provision that ends the program if

**BILL**

DOT determines that federal transportation aids are decreased because of ethanol sales.

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. 20.115 (1) (d) of the statutes is amended to read:

2 20.115 (1) (d) *Payments to ethanol producers.* The amounts in the schedule A  
3 sum sufficient for payments to ethanol producers under s. 93.75. ~~No funds may be~~  
4 ~~encumbered under this paragraph after June 30, 2006 to the extent that the~~  
5 ~~payments are not made under par. (k).~~ *The amount appropriated under this paragraph*  
6 *in a fiscal year may not exceed the difference*

7 SECTION 2. 20.115 (1) (k) of the statutes is amended to read: *between*

8 20.115 (1) (k) *Payments to ethanol producers.* The amounts in the schedule for  
9 payments to ethanol producers under s. 93.75. All moneys transferred from the  
10 appropriation account under s. 20.505 (8) (hm) 2m. shall be credited to this  
11 appropriation account. Notwithstanding s. 20.001 (3) (a), the unencumbered  
12 balance on June 30 of each year shall revert to the appropriation account under s.  
13 20.505 (8) (hm). ~~No funds may be encumbered under this paragraph after June 30,~~  
14 ~~2006.~~

15 SECTION 3. 93.75 (1) (intro.) of the statutes is amended to read:

16 93.75 (1) ELIGIBILITY. (intro.) ~~Beginning on July 1, 2001~~ Subject to sub. (1m),  
17 the department shall ~~administer a program~~ enter into a binding contract under  
18 which the department makes payments to a person who produces ethanol and who  
19 satisfies all of the following criteria:

SECTION 4. 93.75 (1) (b) of the statutes is amended to read:

\$6,000,000 and the amount appropriated under par (k) in that fiscal year.

**BILL**

1           93.75 (1) (b) The person has been producing ethanol in this state for fewer than  
2    60 96 months.

3           **SECTION 5.** 93.75 (1m) of the statutes is created to read:

4           **93.75 (1m) LIMIT ON NUMBER OF CONTRACTS.** The department may not enter into  
5    a total of more than 4 contracts under sub. (1) before July 1, 2005. The department  
6    may not enter into any contracts under sub. (1) after June 30, 2005.

7           **SECTION 6.** 93.75 (2) of the statutes is amended to read:

8           **93.75 (2) PAYMENTS.** The department shall pay a person who is eligible under  
9    sub. (1) at the rate of 20 ~~1000~~<sup>10</sup> cents per gallon for not more than 15,000,000 gallons  
10   of ethanol produced in this state within 12 months, ~~except that if there are~~  
11   ~~insufficient funds to make payments at this rate to all eligible persons the~~  
12   ~~department shall prorate the payments.~~

13           **SECTION 7.** 93.75 (3) (c) of the statutes is repealed.

14           **SECTION 8.** 93.75 (3m) of the statutes is repealed.

15           **SECTION 9.** 93.75 (4) of the statutes is repealed.

16           **SECTION 10. Nonstatutory provisions.**

17           (1) If the department of agriculture, trade and consumer protection has  
18   determined that an ethanol producer is eligible for payments under section 93.75,  
19   2001 states., before July 1, 2004, the department shall enter into a contract as  
20   provided under section 93.75 (1) of the statutes, as affected by this act, with the  
21   producer and shall make payments to the producer as provided under section 93.75  
22   (2) of the statutes, as affected by this act, for ethanol produced by the producer  
23   beginning on the effective date of this subsection to the end of the period specified  
24   in section 93.75 (1) (b) of the statutes, as affected by this act, or until the producer  
25   ceases to be eligible for the payments, whichever is sooner.



**Tradewell, Becky**

---

**From:** Simatic, Kurt  
**Sent:** Thursday, October 30, 2003 6:01 PM  
**To:** Tradewell, Becky  
**Subject:** LRB 2583/3 ethanol incentive program

Becky:

One more change...

We would like to retain 93.75 (3m) which was repealed in all previous drafts, relating to DOT monitoring of ethanol sales and determining its effect on federal transportation aids.

Thanks.

**Kurt Simatic**  
Legislative Assistant  
Speaker Pro Tem Steve Freese

6-7502



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2583/14

RCT:wljf

SOON (11/31)

YMR

2003 BILL

No F

Current law requires the Department of Transportation (DOT) to determine whether federal transportation aids are decreased because of ethanol sales in this state.  
regenerate

1 AN ACT to repeal 93.75 (3) (c), 93.75 (3m) and 93.75 (4); to amend 20.115 (1) (d),  
2 20.115 (1) (k), 93.75 (1) (intro.), 93.75 (1) (b) and 93.75 (2); and to create 93.75  
3 (1m) of the statutes; relating to: payments to ethanol producers and making  
4 an appropriation.

**Analysis by the Legislative Reference Bureau**

\*  
\*  
Current law requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to make payments to an ethanol producer during its first 60 months of ethanol production if the producer satisfies certain requirements. The payments are 20 cents per gallon for not more than 15,000,000 gallons of ethanol produced within 12 months, except that, if there is insufficient funding, DATCP must prorate the payments. The program ends on June 30, 2006, or earlier if the Department of Transportation (DOT) determines that federal transportation aids are decreased because of ethanol sales in this state.

This bill creates a sum sufficient appropriation for payments by DATCP to ethanol producers, but provides that the total amount appropriated for the payments in a fiscal year may not exceed \$6,000,000. The bill eliminates the requirement that DATCP prorate payments if funding is insufficient to make full payments. Under the bill, a producer is eligible for payments for its first 96 months of ethanol production. The bill requires DATCP and a producer to enter into a contract under which DATCP makes the payments. The bill limits the total number of contracts into which DATCP may enter to four, prohibits DATCP from entering into any contracts after June 30, 2005, and reduces the per-gallon payment to 10 cents. The bill also

**BILL**

eliminates the June 30, 2006, ending date for the program and eliminates the provision that ends the program if DOT determines that federal transportation aids are decreased because of ethanol sales.

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.** 20.115 (1) (d) of the statutes is amended to read:

2           20.115 (1) (d) *Payments to ethanol producers.* ~~The amounts in the schedule A~~  
3 ~~sum sufficient~~ for payments to ethanol producers under s. 93.75. ~~No funds may be~~  
4 ~~encumbered under this paragraph after June 30, 2006 to the extent that the~~  
5 ~~payments are not made under par. (k).~~ The amount appropriated under this  
6 paragraph in a fiscal year may not exceed the difference between \$6,000,000 and the  
7 amount appropriated under par. (k) in that fiscal year.

8           **SECTION 2.** 20.115 (1) (k) of the statutes is amended to read:

9           20.115 (1) (k) *Payments to ethanol producers.* The amounts in the schedule for  
10 payments to ethanol producers under s. 93.75. All moneys transferred from the  
11 appropriation account under s. 20.505 (8) (hm) 2m. shall be credited to this  
12 appropriation account. Notwithstanding s. 20.001 (3) (a), the unencumbered  
13 balance on June 30 of each year shall revert to the appropriation account under s.  
14 20.505 (8) (hm). ~~No funds may be encumbered under this paragraph after June 30,~~  
15 ~~2006.~~

16           **SECTION 3.** 93.75 (1) (intro.) of the statutes is amended to read:

17           93.75 (1) **ELIGIBILITY.** (intro.) ~~Beginning on July 1, 2001~~ Subject to sub. (1m),  
18 the department shall administer a program enter into a binding contract under

**BILL**

1 which the department makes payments to a person who produces ethanol and who  
2 satisfies all of the following criteria:

3 **SECTION 4.** 93.75 (1) (b) of the statutes is amended to read:

4 93.75 (1) (b) The person has been producing ethanol in this state for fewer than  
5 60 96 months.

6 **SECTION 5.** 93.75 (1m) of the statutes is created to read:

7 93.75 (1m) **LIMIT ON NUMBER OF CONTRACTS.** The department may not enter into  
8 a total of more than 4 contracts under sub. (1) before July 1, 2005. The department  
9 may not enter into any contracts under sub. (1) after June 30, 2005.

10 **SECTION 6.** 93.75 (2) of the statutes is amended to read:

11 93.75 (2) **PAYMENTS.** The department shall pay a person who is eligible under  
12 sub. (1) at the rate of ~~20~~ 10 cents per gallon for not more than 15,000,000 gallons of  
13 ethanol produced in this state within 12 months, ~~except that if there are insufficient~~  
14 ~~funds to make payments at this rate to all eligible persons the department shall~~  
15 ~~prorate the payments.~~

16 **SECTION 7.** 93.75 (3) (c) of the statutes is repealed.

17 ~~**SECTION 8.** 93.75 (3m) of the statutes is repealed.~~

18 **SECTION 9.** 93.75 (4) of the statutes is repealed.

19 **SECTION 10. Nonstatutory provisions.**

20 (1) If the department of agriculture, trade and consumer protection has  
21 determined that an ethanol producer is eligible for payments under section 93.75,  
22 2001 states., before July 1, 2004, the department shall enter into a contract as  
23 provided under section 93.75 (1) of the statutes, as affected by this act, with the  
24 producer and shall make payments to the producer as provided under section 93.75  
25 (2) of the statutes, as affected by this act, for ethanol produced by the producer

✓ 16  
Insert  
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3-16

**BILL**

1 beginning on the effective date of this subsection to the end of the period specified  
2 in section 93.75 (1) (b) of the statutes, as affected by this act, or until the producer  
3 ceases to be eligible for the payments, whichever is sooner.

4 **SECTION 11. Initial applicability.**

5 (1) The treatment of section 93.75 (2) of the statutes first applies to ethanol  
6 produced on the effective date of this subsection.

7 **SECTION 12. Effective date.**

8 (1) This act takes effect on July 1, 2004, or the first day of the first month  
9 beginning after publication, whichever is later.

10

(END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2003/4ins  
RCT.....

Insert 3-16

SECTION ~~h.~~<sup>#</sup> 93.75 (3m) (d) of the statutes is amended to read:

93.75 (3m) (d) If the department of transportation determines, during any year  
after ~~December 31, 2004, and before January 1, 2006,~~ that the amount of federal  
moneys received by this state for highways and other surface transportation  
purposes, excluding federal moneys received for railroads, is decreased due to  
ethanol sales in this state, the department of transportation shall notify the  
department of agriculture, trade and consumer protection of that determination ~~not~~  
~~sooner than October 1, 2005, and not later than December 31, 2005~~ of the following  
year.

History: 1999 a. 55.

11/4/03 Per Freese's office - they want the program to  
end if federal transportation funds are reduced.

RET



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2583/5

RCT:wlj:pg

2003 BILL

1 AN ACT *to repeal* 93.75 (3) (c); *to amend* 20.115 (1) (d), 20.115 (1) (k), 93.75 (1)  
2 (intro.), 93.75 (1) (b), 93.75 (2), 93.75 (3m) (d) and 93.75 (4); and *to create* 93.75  
3 (1m) of the statutes; **relating to:** payments to ethanol producers and making  
4 an appropriation.

---

*Analysis by the Legislative Reference Bureau*

Current law requires the Department of Agriculture, Trade and Consumer Protection (DATCP) to make payments to an ethanol producer during its first 60 months of ethanol production if the producer satisfies certain requirements. The payments are 20 cents per gallon for not more than 15,000,000 gallons of ethanol produced within 12 months, except that, if there is insufficient funding, DATCP must prorate the payments. Current law requires the Department of Transportation (DOT) to determine whether federal transportation aids are decreased because of ethanol sales in this state. The program ends on June 30, 2006, or earlier if DOT determines that federal transportation aids are decreased because of ethanol sales in this state.

This bill creates a sum sufficient appropriation for payments by DATCP to ethanol producers, but provides that the total amount appropriated for the payments in a fiscal year may not exceed \$6,000,000. The bill eliminates the requirement that DATCP prorate payments if funding is insufficient to make full payments. Under the bill, a producer is eligible for payments for its first 96 months of ethanol production. The bill requires DATCP and a producer to enter into a contract under which DATCP makes the payments. The bill limits the total number of contracts into

**BILL**

which DATCP may enter to four, prohibits DATCP from entering into any contracts after June 30, 2005, and reduces the per-gallon payment to 10 cents. The bill also eliminates the June 30, 2006, ending date for the program, but does not eliminate the provision that ends the program if DOT determines that federal transportation aids are decreased because of ethanol sales.

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.** 20.115 (1) (d) of the statutes is amended to read:

2           20.115 (1) (d) *Payments to ethanol producers.* ~~The amounts in the schedule A~~  
3 ~~sum sufficient~~ for payments to ethanol producers under s. 93.75. ~~No funds may be~~  
4 ~~encumbered under this paragraph after June 30, 2006 to the extent that the~~  
5 ~~payments are not made under par. (k).~~ The amount appropriated under this  
6 paragraph in a fiscal year may not exceed the difference between \$6,000,000 and the  
7 amount appropriated under par. (k) in that fiscal year.

8           **SECTION 2.** 20.115 (1) (k) of the statutes is amended to read:

9           20.115 (1) (k) *Payments to ethanol producers.* The amounts in the schedule for  
10 payments to ethanol producers under s. 93.75. All moneys transferred from the  
11 appropriation account under s. 20.505 (8) (hm) 2m. shall be credited to this  
12 appropriation account. Notwithstanding s. 20.001 (3) (a), the unencumbered  
13 balance on June 30 of each year shall revert to the appropriation account under s.  
14 20.505 (8) (hm). ~~No funds may be encumbered under this paragraph after June 30,~~  
15 ~~2006.~~

16           **SECTION 3.** 93.75 (1) (intro.) of the statutes is amended to read:

17           93.75 (1) **ELIGIBILITY.** (intro.) ~~Beginning on July 1, 2001~~ Subject to sub. (1m),  
18 the department shall ~~administer a program enter into a binding contract under~~

**BILL**

1 which the department makes payments, subject to sub. (4), to a person who produces  
2 ethanol and who satisfies all of the following criteria:

3 **SECTION 4.** 93.75 (1) (b) of the statutes is amended to read:

4 93.75 (1) (b) The person has been producing ethanol in this state for fewer than  
5 ~~60~~ 96 months.

6 **SECTION 5.** 93.75 (1m) of the statutes is created to read:

7 93.75 (1m) **LIMIT ON NUMBER OF CONTRACTS.** The department may not enter into  
8 a total of more than 4 contracts under sub. (1) before July 1, 2005. The department  
9 may not enter into any contracts under sub. (1) after June 30, 2005.

10 **SECTION 6.** 93.75 (2) of the statutes is amended to read:

11 93.75 (2) **PAYMENTS.** The department shall pay a person who is eligible under  
12 sub. (1) at the rate of ~~20~~ 10 cents per gallon for not more than 15,000,000 gallons of  
13 ethanol produced in this state within 12 months, ~~except that if there are insufficient~~  
14 ~~funds to make payments at this rate to all eligible persons the department shall~~  
15 ~~prorate the payments.~~

16 **SECTION 7.** 93.75 (3) (c) of the statutes is repealed.

17 **SECTION 8.** 93.75 (3m) (d) of the statutes is amended to read:

18 93.75 (3m) (d) If the department of transportation determines, during any year  
19 ~~after December 31, 2004, and before January 1, 2006~~, that the amount of federal  
20 moneys received by this state for highways and other surface transportation  
21 purposes, excluding federal moneys received for railroads, is decreased due to  
22 ethanol sales in this state, the department of transportation shall notify the  
23 department of agriculture, trade and consumer protection of that determination not  
24 sooner than October 1, ~~2005~~, and not later than December 31, ~~2005~~ of the following  
25 year.

**BILL**

1           **SECTION 9.** 93.75 (4) of the statutes is amended to read:

2           **93.75 (4) SUNSET.** The department may not make a payment under this section  
3 after ~~June 30, 2006,~~ or the first day of the 6th month beginning after the department  
4 receives a notice under sub. (3m), ~~whichever is sooner.~~

5           **SECTION 10. Nonstatutory provisions.**

6           (1) If the department of agriculture, trade and consumer protection has  
7 determined that an ethanol producer is eligible for payments under section 93.75,  
8 2001 stats., before July 1, 2004, the department shall enter into a contract as  
9 provided under section 93.75 (1) of the statutes, as affected by this act, with the  
10 producer and shall make payments to the producer as provided under section 93.75  
11 (2) of the statutes, as affected by this act, for ethanol produced by the producer  
12 beginning on the effective date of this subsection to the end of the period specified  
13 in section 93.75 (1) (b) of the statutes, as affected by this act, or until the producer  
14 ceases to be eligible for the payments, whichever is sooner.

15           **SECTION 11. Initial applicability.**

16           (1) The treatment of section 93.75 (2) of the statutes first applies to ethanol  
17 produced on the effective date of this subsection.

18           **SECTION 12. Effective date.**

19           (1) This act takes effect on July 1, 2004, or on the first day of the first month  
20 beginning after publication, whichever is later.

21

(END)