

HOUSE BILL NO. 176

INTRODUCED BY F. WILMER

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT SUBSTITUTING THE TERM "ETHANOL-BLENDED GASOLINE" FOR "GASOHOL"; AMENDING AND MAKING UNIFORM DEFINITIONS OF AND REFERENCES TO ETHANOL AND RELATED TERMS; REMOVING THE PERCENTAGE OF ETHANOL IN GASOLINE THAT STATE EMPLOYEES ARE REQUESTED TO USE WHEN FUELING STATE VEHICLES; AMENDING SECTIONS 2-17-414, 15-6-135, 15-70-201, 15-70-202, 15-70-204, 15-70-221, 15-70-501, 15-70-502, 15-70-503, 15-70-511, 15-70-512, 15-70-513, 15-70-514, 15-70-521, 15-70-522, 15-70-523, 15-70-527, 17-6-317, 75-11-302, AND 75-11-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-17-414, MCA, is amended to read:

"2-17-414. State vehicles to use ethanol-blended fuel gasoline -- definition. (1) A department, agency, institution, office, board, and commission of the executive, legislative, and judicial branches of state government and a state institution of higher education owning or operating a motor vehicle capable of burning ethanol-blended fuel gasoline shall take all reasonable steps to ensure that the operators of those vehicles use ethanol-blended fuel gasoline in the vehicles if ethanol-blended fuel gasoline is commercially available within the operating area of the vehicle and is priced competitively with the ~~motor vehicle fuel gasoline~~ otherwise used by the vehicle.

(2) For purposes of this section, "ethanol-blended fuel gasoline" means a fuel mixture ~~that is 90% of~~ gasoline and ~~10% anhydrous~~ ethanol produced from agricultural products, including grain and wood or wood products, and that is used for the purpose of effectively and efficiently operating internal combustion engines.

(3) An entity subject to the requirements of subsection (1) may not take any disciplinary, judicial, administrative, or other adverse action against the operator of a motor vehicle for failing to purchase ethanol-blended fuel gasoline for the operation of the motor vehicle."

Section 2. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property -- description -- taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of ~~gasohol~~ ethanol-blended gasoline during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities;

(g) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the

respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) Class five property is taxed at 3% of its market value."

Section 3. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the

business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state for:

- (i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;
- (ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks; or
- (iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than the gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be distributed after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends ~~alcohol~~ ethanol with gasoline.

(7) "Ethanol" means nominally anhydrous ethyl alcohol that has been denatured as specified in 27 CFR

parts 20 and 21 and that meets the standards for ethanol adopted pursuant to 82-15-103.

(8) "Ethanol-blended gasoline" means gasoline blended with ethanol. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10. A blend that is 85% denatured ethanol and 15% gasoline would be reflected as E-85.

~~(7)~~(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

~~(8)~~(10) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

~~(9) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

~~(10)~~(11) (a) "Gasoline" includes:

(i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) except for ~~alcohol~~ ethanol blended into ~~gasohol~~ ethanol-blended gasoline, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

~~(11)~~(12) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

~~(12)~~(13) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(13)~~(14) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and ~~(10)~~ (11) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

~~(14)~~(15) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(15)~~(16) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(16)~~(17) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

Section 4. Section 15-70-202, MCA, is amended to read:

"15-70-202. License and security of gasoline distributors -- denial or revocation of license. (1) (a) Each gasoline distributor, including an exporter and importer, as those terms are defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports gasoline, or both, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

(7) A distributor ~~may not who blends~~ blend gasoline or ethanol-blended gasoline ~~must be unless~~ licensed ~~with~~ by the department. If a distributor cannot be licensed, the distributor is required to buy preblended ~~gasoline~~ ethanol-blended gasoline."

Section 5. Section 15-70-204, MCA, is amended to read:

"15-70-204. (Temporary) Gasoline license tax -- rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) ~~Gasoline~~ Ethanol-blended gasoline, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

(4) Beginning on the date that the requirement for use of ~~gasoline~~ ethanol-blended gasoline contained in 82-15-121 occurs, ~~gasoline~~ ethanol-blended gasoline is subject to the tax imposed in subsection (1)(b). (Terminates on occurrence of contingency--sec. 21, Ch. 452, L. 2005.)

15-70-204. (Effective on occurrence of contingency) Gasoline license tax -- rate. (1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state

in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) ~~Gasohol, as defined in 15-70-201,~~ Ethanol-blended gasoline is subject to 85% of the tax imposed in subsection (1)(b)."

Section 6. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing ~~alcohol~~ ethanol to be used in ~~gasohol~~ ethanol-blended gasoline, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on

which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid."

Section 7. Section 15-70-501, MCA, is amended to read:

"15-70-501. Short title. This part may be cited as the "~~Alcohol~~ Ethanol Tax Incentive and Administration Act of 1983"."

Section 8. Section 15-70-502, MCA, is amended to read:

"15-70-502. Purpose. The purpose of this part is to establish schedules for the tax incentive for the production of ~~alcohol~~ ethanol to be blended for ~~gasohol~~ ethanol-blended gasoline and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of ~~alcohol-fuel~~ ethanol production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana."

Section 9. Section 15-70-503, MCA, is amended to read:

"15-70-503. Definitions. As used in this part, the definitions in 15-70-201 and the following definitions apply:

(1) ~~"Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.~~

(2)(1) "Department" means the department of transportation.

(2) "Ethanol distributor" means any person who, for the purpose of making ethanol-blended gasoline, engages in the business of producing ethanol for sale, use, or distribution.

(3) "Ethanol-blended gasoline dealer" means any person who blends ethanol with gasoline to produce ethanol-blended gasoline for sale from a wholesale or retail outlet, for use, or for distribution in this state.

(3)(4) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.

~~(4) "Gasohol" means a gasoline fuel that is blended with denatured ethanol. Typically gasohol is a blend of 10% denatured ethanol and 90% gasoline, but the blended amounts may differ. The percentage of ethanol in the blend is identified by the letter "E" followed by the percentage number. A blend that is 10% denatured ethanol and 90% gasoline would be reflected as E-10.~~

~~————(5) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state."~~

Section 10. Section 15-70-511, MCA, is amended to read:

"15-70-511. Licensing of alcohol ethanol distributors. ~~Every alcohol~~ An ethanol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth ~~such~~ information as that may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled."

Section 11. Section 15-70-512, MCA, is amended to read:

"15-70-512. Distributor's statement. Each ~~alcohol~~ ethanol distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by ~~him~~ the distributor, that includes the following:

(1) the number of gallons of ~~alcohol~~ ethanol manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each ~~gasohol~~ ethanol-blended gasoline dealer to whom ~~he~~ the distributor sold ~~alcohol ethanol~~ and the number of gallons sold to each dealer; and

(3) ~~such~~ other information as that the department may reasonably require to administer the tax laws of this state."

Section 12. Section 15-70-513, MCA, is amended to read:

"15-70-513. Recordkeeping requirements. The records of each ~~alcohol~~ ethanol distributor and ~~gasohol ethanol-blended gasoline~~ dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and ~~such~~ other information as that the department may require."

Section 13. Section 15-70-514, MCA, is amended to read:

"15-70-514. Examination of records. The department or its authorized representative may examine the books, papers, records, and equipment of any ~~alcohol~~ ethanol distributor or ~~gasohol~~ ethanol-blended gasoline dealer."

Section 14. Section 15-70-521, MCA, is amended to read:

"15-70-521. Denaturing ~~alcohol~~ ethanol -- refund authorized. Any ~~alcohol~~ An ethanol distributor who, for the purpose of denaturing ~~alcohol~~ ethanol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used."

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

"15-70-522. Tax incentive for production of ~~alcohol~~ ethanol -- rules. (1) (a) If the ~~alcohol~~ ethanol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the ~~alcohol~~ ethanol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to ~~alcohol~~ ethanol distributors for distilling ~~alcohol~~ ethanol that:

- (i) is to be blended with gasoline for sale as ~~gasohol~~ ethanol-blended gasoline in Montana;
- (ii) was exported from Montana to be blended with gasoline for sale as ~~gasohol~~ ethanol-blended gasoline;

or

- (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.
- (b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of ~~alcohol~~ ethanol distilled in accordance with subsection (1) is 20 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the ~~alcohol~~ ethanol. The tax incentive is available to a facility for the first 6 years from the date that the facility begins production. The facility shall file a business plan with the department at least 2 years before the estimated beginning date of production. After the initial business plan is filed, the facility shall provide the department with quarterly updates regarding any changes to the business plan.

(3) Regardless of the ~~alcohol~~ ethanol tax incentive provided in subsection (2):

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

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

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

(i) 20% Montana product is used to produce ~~alcohol~~ ethanol at the facility in the first year of production;

(ii) 25% Montana product is used to produce ~~alcohol~~ ethanol at the facility in the second year of production;

(iii) 35% Montana product is used to produce ~~alcohol~~ ethanol at the facility in the third year of production;

(iv) 45% Montana product is used to produce ~~alcohol~~ ethanol at the facility in the fourth year of production;

(v) 55% Montana product is used to produce ~~alcohol~~ ethanol at the facility in the fifth year of production;

and

(vi) 65% Montana product is used to produce ~~alcohol~~ ethanol at the facility in the sixth year of production.

(4) (a) An ~~alcohol~~ ethanol distributor may not receive tax incentive payments under subsection (2) that exceed \$2 million in any consecutive 12-month period. Subject to subsections (5) and (6), an ~~alcohol~~ ethanol distributor may receive tax incentive payments commencing the first quarter after a facility begins production. The distributor shall report its production to the department pursuant to 15-70-205.

(b) The distributor's report must include:

(i) the total number of gallons produced for the month;

(ii) the total amount of products purchased for the production of ~~alcohol~~ ethanol;

(iii) the percentage of the total amount of products purchased that are Montana products; and

(iv) other information that the department determines is necessary.

(5) (a) A plant shall apply for the incentive payment by submitting an application to the department when the plant has proof of commitment from lenders to finance the plant. Subject to subsection (5)(b), the department shall respond to the applicant with approval of the application within 45 days of receipt of the application, after confirming the lending commitment. Upon approval of the application, the department shall enter into a contract with the plant that ensures the state's commitment to pay incentive payments to qualifying ethanol plants.

(b) If the department is not able to confirm a lending commitment, the department shall deny the application.

(6) After the department has verified production, the application provisions of subsection (5) are met, and the plant owner presents proof of financing, the department shall begin payments of the ~~alcohol~~ ethanol tax

incentives based on actual production according to the terms of subsections (2) and (4).

(7) The department shall ~~prescribe~~ adopt rules necessary to carry out the provisions of this section ~~within 1 year of April 28, 2005~~. The department shall coordinate and request information and input from the ~~alcohol~~ ethanol production industry as a part of the rulemaking process and shall follow the procedures provided in Title 2, chapter 4."

Section 16. Section 15-70-523, MCA, is amended to read:

"15-70-523. Application for payment of tax incentive. (1) The claimant shall apply for payment of the tax incentive by signed statement; on a form furnished by the department. The form must be accompanied by:

(a) the original production records and invoices issued to the ~~gasohol~~ ethanol-blended gasoline dealer at the time of sale and delivery, showing total gallons of ~~alcohol~~ ethanol sold; and

(b) a certificate of blending issued by the ~~alcohol~~ ethanol purchaser showing the total gallons of ~~alcohol~~ ethanol blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made."

Section 17. Section 15-70-527, MCA, is amended to read:

"15-70-527. Penalty for failure to file. ~~Any alcohol~~ An ethanol distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction ~~must~~ shall be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both."

Section 18. Section 17-6-317, MCA, is amended to read:

"17-6-317. Participation by private financial institutions -- rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

(i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;

(ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or

(iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to business enterprises that are producing or will produce value-added products or commodities.

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under 17-6-318.

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the state's

average weekly wage, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the state's average weekly wage, the borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based upon the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based upon the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) Except as provided in subsection (5)(b), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(b) A business enterprise for the production of ~~alcohol~~ ethanol to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(6) The board may adopt rules that it considers necessary to implement this section."

Section 19. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation fuel as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with ~~alcohol~~ ethanol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to

prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock

company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as ~~gasohol~~ ethanol-blended gasoline, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

- (a) an underground storage tank as defined in 75-11-503;
- (b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;
- (c) an aboveground storage tank with a capacity less than 30,000 gallons; or
- (d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:
 - (i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);
 - (ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and
 - (iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

- (a) physical injury to tangible property, including loss of use of that property caused by the injury; or
- (b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 20. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint -- statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department

of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

- (a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;
- (b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;
- (c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;
- (d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and
- (e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) ~~Alcohol~~ Ethanol that is blended with gasoline to be sold as ~~gasohol~~ ethanol-blended gasoline is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than \$4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

NEW SECTION. Section 21. Name change -- directions to code commissioner. If legislation enacted by the 60th legislature contains a reference to gasohol, the code commissioner shall change the reference to ethanol-blended gasoline.

NEW SECTION. Section 22. Effective date. [This act] is effective on passage and approval.

- END -

