

SECOND REGULAR SESSION

# HOUSE BILL NO. 1890

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES MYERS (Sponsor), LAGER, WHORTON, HOBBS,  
CHINN AND SANDER (Co-sponsors).

Read 1st time February 28, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5306L.01I

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### AN ACT

To repeal sections 142.028 and 142.031, RSMo, and to enact in lieu thereof two new sections relating to fuel ethanol and qualified biodiesel producer funds.

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

Section A. Sections 142.028 and 142.031, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 142.028 and 142.031, to read as follows:

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

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

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

9 (3) "Missouri qualified fuel ethanol producer", any producer of fuel ethanol whose  
10 principal place of business and facility for the fermentation and distillation of fuel ethanol is  
11 located within the state of Missouri and is at least fifty-one percent owned by agricultural  
12 producers **who are residents of this state and who are** actively engaged in agricultural  
13 production for commercial purposes, and which has made formal application, posted a bond, and  
14 conformed to the requirements of this section.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

45           (1) The location of the Missouri qualified fuel ethanol producer;

46           (2) The average number of citizens of Missouri employed by the Missouri qualified fuel  
47 ethanol producer in the preceding quarter, if applicable;

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

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

52 (5) A copy of the qualified fuel ethanol producer license required pursuant to subsection  
53 5 of this section, name and address of surety company, and amount of bond to be posted pursuant  
54 to subsection 5 of this section; and

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

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

64 6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
65 is created under the authority delegated in this section shall become effective only if it complies  
66 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section  
67 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
68 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
69 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the  
70 grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be  
71 invalid and void.

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

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

4 (2) "Qualified biodiesel producer", a facility that produces biodiesel, is registered with  
5 the United States Environmental Protection Agency according to the requirements of 40 CFR  
6 79, and at least fifty-one percent is owned by agricultural producers **who are residents of this**  
7 **state and who are** actively engaged in agricultural production for commercial purposes.

8 2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby created and  
9 subject to appropriations shall be used to provide economic subsidies to Missouri qualified  
10 biodiesel producers pursuant to this section. The director of the department of agriculture shall  
11 administer the fund pursuant to this section.

12 3. A Missouri qualified biodiesel producer shall be eligible for a monthly grant from the  
13 fund provided that fifty-one percent of the feedstock originates in the state of Missouri and that  
14 one hundred percent of the feedstock originates in the United States. A Missouri qualified

15 biodiesel producer shall only be eligible for the grant for a total of sixty months unless such  
16 producers during the sixty months fail, due to a lack of appropriations, to receive the full amount  
17 from the fund for which the producers were eligible, in which case such producers shall continue  
18 to be eligible for up to twenty-four additional months or until they have received the maximum  
19 amount of funding for which such producers were eligible during the original sixty-month time  
20 period. The amount of the grant is determined by calculating the estimated gallons of qualified  
21 biodiesel produced during the preceding month from Missouri agricultural products, as certified  
22 by the department of agriculture, and applying such figure to the per-gallon incentive credit  
23 established in this subsection. Each Missouri qualified biodiesel producer shall be eligible for  
24 a total grant in any fiscal year equal to thirty cents per gallon for the first fifteen million gallons  
25 of qualified biodiesel produced from Missouri agricultural products in the fiscal year plus ten  
26 cents per gallon for the next fifteen million gallons of qualified biodiesel produced from  
27 Missouri agricultural products in the fiscal year. All such qualified biodiesel produced by a  
28 Missouri qualified biodiesel producer in excess of thirty million gallons shall not be applied to  
29 the computation of a grant pursuant to this subsection. The department of agriculture shall pay  
30 all grants for a particular month by the fifteenth day after receipt and approval of the application  
31 described in subsection 4 of this section.

32 4. In order for a Missouri qualified biodiesel producer to obtain a grant from the fund,  
33 an application for such funds shall be received no later than fifteen days following the last day  
34 of the month for which the grant is sought. The application shall include:

- 35 (1) The location of the Missouri qualified biodiesel producer;
- 36 (2) The average number of citizens of Missouri employed by the Missouri qualified  
37 biodiesel producer in the preceding month, if applicable;
- 38 (3) The number of bushel equivalents of Missouri agricultural commodities used by the  
39 Missouri qualified biodiesel producer in the production of biodiesel in the preceding month;
- 40 (4) The number of gallons of qualified biodiesel the producer manufactures during the  
41 month for which the grant is applied;
- 42 (5) A copy of the qualified biodiesel producer license required pursuant to subsection  
43 5 of this section, name and address of surety company, and amount of bond to be posted pursuant  
44 to subsection 5 of this section; and
- 45 (6) Any other information deemed necessary by the department of agriculture to  
46 adequately ensure that such grants shall be made only to Missouri qualified biodiesel producers.

47 5. The director of the department of agriculture, in consultation with the department of  
48 revenue, shall promulgate rules and regulations necessary for the administration of the provisions  
49 of this section.

50           6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that  
51 is created under the authority delegated in this section shall become effective only if it complies  
52 with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section  
53 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
54 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
55 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the  
56 grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be  
57 invalid and void.

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