

AMENDED IN SENATE SEPTEMBER 7, 2001

AMENDED IN SENATE AUGUST 21, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

## SENATE BILL

**No. 87**

**Introduced by Senator Costa  
(Coauthor: Senator Ortiz)**

(Coauthors: Assembly Members Alquist, Briggs, Dickerson, Florez,  
and Matthews)

June 18, 2001

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An act to add Chapter 7.6 (commencing with Section 25660) to Division 15 of, *and to repeal Chapter 7.7 (commencing with Section 25678) of*, the Public Resources Code, relating to energy resources, and making an appropriation therefor.

### LEGISLATIVE COUNSEL'S DIGEST

SB 87, as amended, Costa. ~~Ethanol: biomass resources~~ *production incentives.*

Existing law requires the State Energy Resources Conservation and Development Commission to establish a grant program that provides a \$0.40 per gallon production incentive for liquid fuels fermented in this state from biomass and biomass-derived resources produced in this state.

This bill would *repeal that grant program and instead would* require the commission to adopt guidelines to establish a program to foster the development of new in-state production facilities to produce ethanol for use as ~~an additive in~~ California transportation fuel. The bill would require the commission to provide producers of ethanol ~~and other liquid~~

~~fuels~~ a market-based production incentive, including a greater production incentive for the production of ethanol from cellulose biomass *originating in California*. *The bill would also require the commission to establish production incentives for ethanol produced from agricultural products not originating in California.* The bill would create the continuously appropriated Ethanol Production Incentive Account in the General Fund.

This bill would appropriate \$25,000,000 from the General Fund to the Ethanol Production Incentive Account for use by the commission for the purpose of funding ~~grants pursuant to the bill~~ *the production incentive program.*

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 7.6 (commencing with Section 25660)  
2 is added to Division 15 of the Public Resources Code, to read:

3

4 CHAPTER 7.6. ETHANOL PRODUCTION INCENTIVE PROGRAM

5

6 25660. The Legislature finds and declares all of the  
7 following:

8 (a) The Governor of the State of California has found that “on  
9 balance, there is a significant risk to the environment from using  
10 MTBE in gasoline in California” and signed Executive Order  
11 D-5-99 banning its use beginning on January 1, 2003.

12 (b) Ethanol is the only available oxygenate that has undergone  
13 full environmental review and has been approved by the California  
14 Environmental Policy Council as a substitute for MTBE in order  
15 to meet federal oxygen and State Air Resources Board  
16 requirements governing the use of California transportation fuel.

17 (c) United States ethanol production capacity is concentrated in  
18 the Midwestern states and the planned expansion of that industry  
19 may not be sufficient to meet the cumulative ethanol demand  
20 resulting from the actions of California and other states.

21 (d) California currently has little in-state ethanol production  
22 capability and is unable to supply the projected ethanol demand in  
23 California gasoline in 2003. California must compete with other  
24 states for Midwest ethanol supplies, creating the potential for

future supply and demand imbalances, ethanol price volatility, and resultant gasoline price volatility in California.

(e) California produces 350 commercial agricultural commodities on over nine million acres of irrigated cropland, many of which commodities can serve as suitable sources for ethanol production, such as wheat, corn, barley, sugar beets, sugar cane, sorghum, and other high starch and sugar sources.

(f) California also has large biomass resources in the form of forest, agricultural, and urban waste that create landfill disposal and forest health and other environmental problems, which could be alleviated by converting these biomass wastes to ethanol.

(g) An in-state ethanol production industry will create jobs, stimulate rural economies, return billion of dollars in economic activity to the state's economy, and provide forest health, air quality, and water quality benefits.

(h) It is in the State of California's interest to create a program to provide incentives for the in-state production of ethanol. By creating this program, it is the goal of the State of California to create an industry that can supply at least 50 percent of the ethanol needed for use in California transportation fuel by 2010.

25660.1. (a) The commission shall establish the Ethanol Production Incentive Program to foster the development of new in-state production facilities to produce ethanol for use as ~~an additive in~~ California transportation fuel.

(b) The program shall provide producers of qualifying ethanol ~~and other liquid fuels~~ a market-based production incentive. Incentive mechanisms may include a program that will pay for the difference between the market price of fuel per gallon and a target price for the fuel established by the commission in its guidelines to implement the program, and a competitive solicitation process whereby production incentives are awarded. The commission shall establish a tiered incentive approach to account for various external factors, including a greater production incentive for producing ethanol from cellulose biomass. The incentive for producing ethanol from starch ~~products, sugar, or alcohol products originating in California~~ may not exceed twenty cents (\$0.20) per gallon, and the incentive for producing ethanol from cellulose biomass *originating in California* may not exceed forty cents (\$0.40) per gallon. *The commission shall also establish production incentives for ethanol produced from agricultural*

1 *products not originating in the state. The commission, to the extent*  
2 *it determines feasible, shall allocate a percentage of production*  
3 *incentives awarded pursuant to this section to ethanol produced*  
4 *from cellulose biomass, consistent with the intent of the*  
5 *Legislature to encourage in-state ethanol production that achieves*  
6 *air quality and waste reduction benefits.*

7 (c) To qualify for production incentives, the ethanol ~~or other~~  
8 ~~liquid fuel~~ shall be produced from agricultural products ~~as well as~~  
9 ~~or forestry, agricultural, and or urban biomass waste, of which at~~  
10 ~~least 50 percent originated in California and is produced in new or~~  
11 ~~enhanced at new facilities or by new production capacity at~~  
12 ~~existing facilities located in this state and placed in operation on~~  
13 ~~or after the effective date of this statute section.~~

14 (d) The commission shall award production incentives to  
15 producers of qualifying ethanol ~~and other liquid fuels~~ through an  
16 auction or other competitive solicitation process whereby  
17 production incentives are awarded to the lowest bidders, provided  
18 that no single bidder or production facility shall receive production  
19 incentives under any of the following circumstances:

20 (1) In excess of the maximum levels specified pursuant to  
21 subdivision (b).

22 (2) For a period exceeding eight years from the date of the  
23 ~~facilities-~~ facility's initial online operation.

24 (3) For any qualifying ethanol ~~or other liquid fuel~~ that was sold  
25 at rates equal to or greater than a target price as determined by the  
26 commission.

27 (4) For any qualifying ethanol ~~or other liquid fuel~~ produced  
28 that was used onsite by the facility and not available for use as ~~an~~  
29 ~~additive in~~ California transportation fuel.

30 (5) For any qualifying ethanol ~~or other liquid fuel that was~~  
31 ~~produced on or after January 1, 2011, from products originating~~  
32 ~~in California, or for qualifying ethanol produced on or after~~  
33 ~~January 1, 2007, from products not originating in California.~~

34 ~~(6) For ethanol used as a California transportation fuel.~~

35 (e) *The commission may award production incentives in the*  
36 *form of either loans or grants, upon making a determination as to*  
37 *the mechanism that will produce and sustain the greatest public*  
38 *benefit.*

39 (f) The commission shall limit the amount of funding available  
40 for any single bidder or production facility.

~~(f)~~

(g) The commission may require an applicant competing for funding to place a forfeitable bid bond or other financial guarantee as an assurance of the applicant's intent to move forward with the proposed project. The amount of the bond or guarantee may not exceed 10 percent of the total amount of funding requested by the applicant.

~~(g)~~

(h) The commission shall develop and adopt guidelines governing the grant program authorized under this section. The guidelines shall be adopted at a publicly noticed meeting and all interested parties shall be provided an opportunity to comment either orally or in writing. The commission shall provide not less than 30 days notice for the public meeting. Subsequent substantive changes to adopted guidelines shall be adopted by the commission at a public meeting upon written notice to the public of not less than 10 days. Notwithstanding any other provision of law, the guidelines are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(h)~~

(i) Funds to further the purposes of this section may be committed for multiple years.

~~(i) Awards~~

(j) *Grants or loans* made pursuant to this section are ~~grants~~, subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and certified to receive, payments or awards, including satisfying conditions specified by the commission, do not constitute the rendering of goods, services, or a direct benefit to the commission.

~~(j) Awards made pursuant to this section are exempt from the provisions, including the repayment provisions, specified in Chapter 7.4 (commencing with Section 25645).~~

25660.2. (a) The Ethanol Production Incentive Account is hereby created in the General Fund for the purpose of funding the ~~grant~~ program established in Section 25660.1.

(b) Notwithstanding Section 13340 of the Government Code, the moneys deposited into the Ethanol Production Incentive Account shall be continuously appropriated to the commission, without regard to fiscal year, for the purposes of Section 25660.1.

(c) It is the intent of the Legislature to fully fund this program through the 2010-11 fiscal year.

(d) The commission may use up to 2 percent of the funds appropriated to the Ethanol Production Incentive Account to develop guidelines and to implement the program.

(e) The commission shall provide the Governor and the Legislature with an annual report that provides the status of the program and the extent to which account funds have been used. The commission shall produce a final report that describes the success of the program and makes recommendations on additional steps to foster the waste-based or other liquid transportation fuel production industry in California.

SEC. 2. *Chapter 7.7 (commencing with Section 25678) of Division 15 of the Public Resources Code is repealed.*

SEC. 3. The sum of twenty-five million dollars (\$25,000,000) is hereby appropriated from the General Fund to the Ethanol Production Incentive Account for use by the State Energy Resources Conservation and Development Commission for purposes of implementing the ~~grant~~ program established by Section 25660.1 of the Public Resources Code.

CORRECTIONS

Text — Pages 4 and 5.

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