AMENDED IN SENATE SEPTEMBER 12, 2001

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

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: 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 California transportation fuel. The bill would require the commission to provide producers of ethanol 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 the production incentive program.

Vote: $^2/_3$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

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

CHAPTER 7.6. ETHANOL PRODUCTION INCENTIVE PROGRAM

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

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

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

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

(d) California currently has little in-state ethanol production capability and is unable to supply the projected ethanol demand in California gasoline in 2003. California must compete with other 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 California transportation fuel.

(b) The program shall provide producers of qualifying ethanol 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, 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 products not originating in the state. The commission, to the extent it determines feasible, shall allocate a percentage of production incentives awarded pursuant to this section to ethanol produced from cellulose biomass, consistent with the intent of the Legislature to encourage in-state ethanol production that achieves air quality and waste reduction benefits.

(c) To qualify for production incentives, the ethanol shall be produced from agricultural products or forestry, agricultural, or urban biomass waste, of which at least 50 percent originated in California and is produced at new facilities or by new production capacity at existing facilities located in this state and placed in operation on or after the effective date of this section.

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

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

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

(3) For any qualifying ethanol that was sold at rates equal to or greater than a target price as determined by the commission.

(4) For any qualifying ethanol produced that was used onsite by the facility and not available for use as California transportation fuel.

(5) For any qualifying ethanol produced on or after January 1, 2011, from products originating in California, or for qualifying ethanol produced on or after January 1, ~~2007~~ *2008*, from products not originating in California.

(6) If the commission receives eligible bids, comparable for costs and other pertinent terms as determined by the commission, from a producer using products originating entirely in California and a producer using products not originating entirely in California, the commission shall first award the production incentive to the producer using products originating entirely in California.

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

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

(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.

(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.

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

(j) Grants or loans made pursuant to this section are, 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.

(k) In awarding grants, the commission shall structure the production incentive to eliminate the continued need for the incentive by producers at the end of the contracted term of the production incentive.

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

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