

BILL ANALYSIS

C.S.H.B. 1090
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Biomass is organic matter that can be processed into energy through power generation or liquid fuels. Sources of biomass include agricultural residues, debris and crops; wood, plant and animal waste; and organic components of municipal and industrial wastes. Biomass is the nation's second largest renewable electricity source. Since Texas is one of the nation's leading agricultural states and also claims a large forest industry, it has the potential to be a national leader in biomass power.

C.S.H.B. 1090 establishes a program at the Texas Department of Agriculture to provide incentives for a farmer, logger or diverter to gather and deliver biomass material to operators of power plants that generate electricity from biomass.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Commissioner of Agriculture in Section 1 of this bill.

ANALYSIS

SECTION 1. Amends Title 2, Agriculture Code, by adding Chapter 22, as follows:

CHAPTER 22. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION INCENTIVE PROGRAM

Sec. 22.001. **POLICY AND PURPOSE.** It is the policy of this state and the purpose of this chapter to reduce air pollution, improve air quality, protect public health, help this state diversify its energy supply, and divert waste from landfills through new price-support incentives to encourage the construction of facilities to generate electric energy with certain types of agricultural residues, forest wood waste, urban wood waste, storm-generated biomass debris, and energy-dedicated crops.

Sec. 22.002. **DEFINITIONS.** Defines "diverter," "farmer," "forest wood waste," "logger," "qualified agricultural biomass," "storm-generated biomass debris," and "urban wood waste."

Sec. 22.003. **GRANT PROGRAM.** (a) Requires the Department of Agriculture to develop and administer the landfill diversion and agricultural biomass incentive program to make grants to farmers, loggers and diverters who provide quality agricultural biomass, forest wood waste, urban wood waste and storm-generated biomass to facilities that convert biomass to electrical energy in order to promote economic development, encourage the use of renewable sources in the production of electrical energy, reduce air pollution caused by the burning of agricultural biomass in the open fields and divert waste from landfills.

(b) States that subject to Section 22.005 a farmer, logger or diverter is entitled to receive a grant in the amount of \$20 per dry ton for each ton of qualified agricultural biomass provided by the farmer, logger or diverter in a form suitable for biomass conversion to biomass power plants located in Texas that are placed in service after August 31, 2009 and sell power to a third party using qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated

biomass debris. Also states that the biomass facility must use the best available emissions control technology, maintain its emissions control equipment in good working order; and stay in compliance with its operating permit issued by the Texas Commission on Environmental Quality under Chapter 382, Health and Safety Code.

(c) Authorizes the commissioner of agriculture (commissioner), by rule, to authorize the making of a grant for providing a bone-dry ton of a type or source of qualified agricultural biomass in an amount greater than the amount provided by Subsection (b) if the commissioner determines that a grant in a greater amount is necessary to provide an adequate incentive to convert that type or source of qualified agricultural biomass to energy.

(d) Requires the Public Utility Commission of Texas (PUC) and the Texas Commission on Environmental Quality (TCEQ) to assist the department as necessary to enable the department to determine whether a facility meets the requirement of this section for purposes of eligibility of farmers for grants under this chapter.

(e) Requires a farmer, logger or diverter, in order to receive a grant under this chapter, to deliver qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to a Texas biomass-powered facility, and that the operator of the facility shall:

- (1) verify and document the amount of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris delivered to the facility for the generation of electric energy; and
- (2) make a grant on behalf of the department in the appropriate amount to each farmer, logger, or diverter who delivers qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to the facility.

(f) Requires the department on a quarterly basis to reimburse each operator of a facility for grants under this chapter made by the operator during the preceding quarter to eligible farmers, loggers and diverters. To receive reimbursement for one or more grants, an operator of a facility must file an application with the department that verifies the amount of the grants made by the operator during the preceding quarter for which the operator seeks reimbursement.

(g) Authorizes the department to contract with and provide for the compensation of private consultants, contractors, and other persons to administer the landfill diversion and agricultural biomass incentive program.

Sec. 22.004. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION INCENTIVE PROGRAM ACCOUNT. (a) Provides that the landfill diversion and agricultural biomass incentive program account is an account in the general revenue fund. Sets forth the composition of the account.

(b) Authorizes the department to solicit and accept gifts in kind, donations, and grants of money from the federal government, local governments, private corporations, or other persons to be used for the purposes of this chapter.

(c) Authorizes money in the account to be appropriated to the department only for the purpose of implementing and maintaining the agricultural biomass and landfill diversion incentive program.

(d) Requires income from money in the account to be credited to the account.

(e) Exempts the account from the application of Section 403.095 of the Government Code

Sec. 22.005. LIMITATION ON GRANT AMOUNT. Authorizes the department to grant no more than \$30 million each fiscal year under this chapter.

Sec. 22.006. ELIGIBILITY OF ELECTRICAL ENERGY-GENERATION FACILITIES FOR GRANTS. (a) Except as provided by Subsection (b), a facility that uses biomass to generate electrical energy is not eligible to receive a grant under this chapter or under any other state law for the generation of electrical energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris for which a farmer, logger, or diverter has received a grant under this chapter.

(b) Authorizes that a facility that uses biomass to generate electrical energy may receive a grant under this chapter for generating electrical energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that arrives at the facility in a form unsuitable for generating electrical energy and that the facility processes into a form suitable for generating electrical energy.

(c) States that to receive a grant from the department under Subsection (b), an operator of a facility must file an application with the department that verifies the amount of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris that the facility processed into a form suitable for generating electric energy. The department shall make grants to eligible operators of facilities quarterly, subject to appropriations. The provisions of this chapter governing grants to farmers, loggers, and diverters, including the provisions governing the amount of a grant, apply to a grant from the department under Subsection (b) to the extent they can be made applicable.

Sec. 22.007. RULES. Requires the commissioner, in consultation with PUC and TCEQ, to adopt rules to implement this chapter.

Sec. 22.008. AVAILABILITY OF FUNDS. Notwithstanding any other provision of this chapter, the department is not required to administer this chapter or adopt rules under this chapter, and the operator of a facility described by Section 22.003(b) is not required to make a grant on behalf of the department, until funds are appropriated for those purposes.

Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The agricultural biomass and landfill diversion incentive program terminates on August 31, 2019. On September 1, 2019:

- (1) any unobligated funds remaining in the agricultural biomass and landfill diversion incentive program account shall be transferred to the undedicated portion of the general revenue fund; and
- (2) this chapter expires.

SECTION 2. States that the Act takes effect on September 1, 2007.

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

Section 22.003 (b)(2)

The Substitute modifies Section 22.003 (b)(2) by changing the “placed in service” date for biomass-powered electric generation facilities from June 30, 2008 to August 31, 2009, thus pushing back the date for when grants could be made available to farmers, loggers and diverters who deliver qualified biomass material to operators of biomass-powered electric generation facilities.

Section 22.003 (e)

The Substitute modifies Section 22.003 of H.B. 1090 by restructuring the process for awarding grants to farmers, loggers and diverters who deliver qualified agricultural biomass, forest wood

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waste, urban wood waste or storm-generated biomass debris to a Texas biomass-powered facility that was placed in service after August 31, 2009.

In the original bill, farmers, loggers and diverters would file grant applications with the Department of Agriculture to receive a grant of \$20 for each bone-dry ton of qualified biomass material delivered to a biomass-powered electric generation facility. Farmers, loggers and diverters were to receive grants on a quarterly basis or more.

The Substitute modifies the grant process by requiring an operator of a biomass-powered electric generation facility to make grants available on behalf of the Department to all farmers, loggers and diverters who deliver usable qualified biomass to the power plant. The grant is now paid through the facility instead of the Department.

Section 22.003 (f)

The Substitute modifies Section 22.003 (f) and instructs the Department to reimburse all operators of Texas biomass-powered electric generation facilities on a quarterly basis for all grants that were awarded by operators on behalf of the Department. The reimbursements are provided to an operator after the operator files an application with the Department that verifies the amount of grants that were made available by the operator during the preceding quarter.

Section 22.008

The Substitute clarifies that an operator is not required to make a grant available on behalf of the Department to farmers, loggers and diverters until appropriations are made available.

Section 22.009

The Substitute changes the expiration date of the grant program from August 31, 2022 to August 31, 2019, which in effect shortens the life of the grant program and reduces the cost of the program to the State.