

By: Swinford, McReynolds, Christian,
Cook of Colorado

H.B. No. 1090

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a program by the Department of Agriculture to make grants to encourage the construction of facilities that generate electric energy with certain types of agricultural residues, waste, debris, or crops.

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

SECTION 1. Title 2, Agriculture Code, is amended by adding Chapter 22 to read 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. In this chapter:

(1) "Diverter":

(A) means:

(i) a person or facility that qualifies for an exemption under Section 361.111 or 363.006, Health and Safety Code;

1 (ii) a handler of nonhazardous industrial
2 waste that is registered or permitted under Chapter 361, Health and
3 Safety Code; or

4 (iii) a facility that separates recyclable
5 materials from a municipal solid waste stream and that is
6 registered or permitted under Chapter 363, Health and Safety Code,
7 as a municipal solid waste management facility; and

8 (B) does not include a facility that uses biomass
9 to generate electric energy.

10 (2) "Farmer" means the owner or operator of an
11 agricultural facility that produces qualified agricultural
12 biomass.

13 (3) "Forest wood waste" includes residual tops and
14 limbs of trees, unused cull trees, thinnings, and wood or debris
15 from noncommercial tree species, slash, or brush.

16 (4) "Logger" means a harvester of forest wood waste,
17 regardless of whether the harvesting occurs as a part of the
18 harvesting of merchantable timber.

19 (5) "Qualified agricultural biomass" means:

20 (A) agricultural residues that are of a type that
21 historically have been disposed of in a landfill, relocated from
22 their point of origin and stored in a manner not intended to enhance
23 or restore the soil, burned in open fields in the area from which
24 they are derived, or burned in fields and orchards that continue to
25 be used for the production of agricultural goods, and includes:

26 (i) field or seed crop residues, including
27 straw from rice or wheat;

1 (ii) fruit or nut crop residues, including
2 orchard or vineyard prunings and removals;

3 (iii) forest wood products or urban wood
4 products; and

5 (iv) agricultural livestock waste
6 nutrients; and

7 (B) a crop grown and used specifically for its
8 energy generation value, including a crop consisting of a
9 fast-growing tree species.

10 (6) "Storm-generated biomass debris" means
11 biomass-based residues that result from a natural weather event,
12 including a hurricane, tornado, or flood, that would otherwise be
13 disposed of in a landfill or burned in the open. The term includes:

14 (A) trees, brush, and other vegetative matter
15 that have been damaged or felled by severe weather but that would
16 not otherwise qualify as forest wood waste; and

17 (B) clean solid wood waste that has been damaged
18 by severe weather but that would not otherwise qualify as urban wood
19 waste.

20 (7) "Urban wood waste" means:

21 (A) solid wood waste material, other than
22 pressure-treated, chemically treated, or painted wood waste, that
23 is free of rubber, plastic, glass, nails, or other inorganic
24 material; and

25 (B) landscape or right-of-way trimmings.

26 Sec. 22.003. GRANT PROGRAM. (a) The department shall
27 develop and administer an agricultural biomass and landfill

1 diversion incentive program to make grants to farmers, loggers, and
2 diverters who provide qualified agricultural biomass, forest wood
3 waste, urban wood waste, or storm-generated biomass debris to
4 facilities that use biomass to generate electric energy in order to
5 provide an incentive for the construction of facilities for that
6 purpose and to:

7 (1) promote economic development;

8 (2) encourage the use of renewable sources in the
9 generation of electric energy;

10 (3) reduce air pollution caused by burning
11 agricultural biomass, forest wood waste, urban wood waste, or
12 storm-generated biomass debris in open fields; and

13 (4) divert waste from landfills.

14 (b) Subject to Section 22.005, a farmer, logger, or diverter
15 is entitled to receive a grant in the amount of \$20 for each
16 bone-dry ton of qualified agricultural biomass, forest wood waste,
17 urban wood waste, or storm-generated biomass debris provided by the
18 farmer, logger, or diverter in a form suitable for generating
19 electric energy to a facility that:

20 (1) is located in this state;

21 (2) was placed in service after August 31, 2009;

22 (3) generates electric energy sold to a third party by
23 using qualified agricultural biomass, forest wood waste, urban wood
24 waste, or storm-generated biomass debris;

25 (4) uses the best available emissions control
26 technology, considering the technical practicability and economic
27 reasonableness of reducing or eliminating the air contaminant

1 emissions resulting from the facility;

2 (5) maintains its emissions control equipment in good
3 working order; and

4 (6) is in compliance with its operating permit issued
5 by the Texas Commission on Environmental Quality under Chapter 382,
6 Health and Safety Code.

7 (c) The commissioner by rule may authorize a grant to be
8 made for providing each bone-dry ton of a type or source of
9 qualified agricultural biomass, forest wood waste, urban wood
10 waste, or storm-generated biomass debris in an amount that is
11 greater than the amount provided by Subsection (b) if the
12 commissioner determines that a grant in a greater amount is
13 necessary to provide an adequate incentive to use that type or
14 source of qualified agricultural biomass, forest wood waste, urban
15 wood waste, or storm-generated biomass debris to generate electric
16 energy.

17 (d) The Public Utility Commission of Texas and the Texas
18 Commission on Environmental Quality shall assist the department as
19 necessary to enable the department to determine whether a facility
20 meets the requirements of Subsection (b) for purposes of the
21 eligibility of farmers, loggers, and diverters for grants under
22 this chapter.

23 (e) To receive a grant under this chapter, a farmer, logger,
24 or diverter must deliver qualified agricultural biomass, forest
25 wood waste, urban wood waste, or storm-generated biomass debris to
26 a facility described by Subsection (b). The operator of each
27 facility described by that subsection shall:

1 (1) verify and document the amount of qualified
2 agricultural biomass, forest wood waste, urban wood waste, or
3 storm-generated biomass debris delivered to the facility for the
4 generation of electric energy; and

5 (2) make a grant on behalf of the department in the
6 appropriate amount to each farmer, logger, or diverter who delivers
7 qualified agricultural biomass, forest wood waste, urban wood
8 waste, or storm-generated biomass debris to the facility.

9 (f) The department quarterly shall reimburse each operator
10 of a facility described by Subsection (b) for grants under this
11 chapter made by the operator during the preceding quarter to
12 eligible farmers, loggers, and diverters. To receive reimbursement
13 for one or more grants, an operator of a facility described by that
14 subsection must file an application with the department that
15 verifies the amount of the grants made by the operator during the
16 preceding quarter for which the operator seeks reimbursement.

17 (g) The department may contract with and provide for the
18 compensation of private consultants, contractors, and other
19 persons to assist the department in administering the agricultural
20 biomass and landfill diversion incentive program.

21 Sec. 22.004. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION
22 INCENTIVE PROGRAM ACCOUNT. (a) The agricultural biomass and
23 landfill diversion incentive program account is an account in the
24 general revenue fund. The account is composed of:

25 (1) legislative appropriations;
26 (2) gifts, grants, donations, and matching funds
27 received under Subsection (b); and

1 (3) other money required by law to be deposited in the
2 account.

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

7 (c) Money in the account may be appropriated only to the
8 department for the purpose of implementing and maintaining the
9 agricultural biomass and landfill diversion incentive program.

10 (d) Income from money in the account shall be credited to
11 the account.

12 (e) The account is exempt from the application of Section
13 403.095, Government Code.

14 Sec. 22.005. LIMITATION ON GRANT AMOUNT. (a) The total
15 amount of grants awarded by operators of facilities under Section
16 22.003 and by the department under Section 22.006 during each state
17 fiscal year may not exceed \$30 million.

18 (b) During each state fiscal year, the department may not
19 pay to an operator of a facility as reimbursements under Section
20 22.003 or grants under Section 22.006 an amount that exceeds 20
21 percent of the total amount of the reimbursements or grants to
22 operators of facilities under those sections during that state
23 fiscal year.

24 Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY
25 GENERATION FACILITIES FOR GRANTS. (a) Except as provided by
26 Subsection (b), an operator of a facility that uses biomass to
27 generate electric energy is not eligible to receive a grant under

1 this chapter or under any other state law for the generation of
2 electric energy with qualified agricultural biomass, forest wood
3 waste, urban wood waste, or storm-generated biomass debris for
4 which a farmer, logger, or diverter has received a grant under this
5 chapter.

6 (b) An operator of a facility that uses biomass to generate
7 electric energy may receive a grant from the department under this
8 chapter for generating electric energy with qualified agricultural
9 biomass, forest wood waste, urban wood waste, or storm-generated
10 biomass debris that arrives at the facility in a form unsuitable for
11 generating electric energy and that the facility processes into a
12 form suitable for generating electric energy.

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

25 Sec. 22.007. RULES. The commissioner, in consultation with
26 the Public Utility Commission of Texas and the Texas Commission on
27 Environmental Quality, shall adopt rules to implement this chapter.

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

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

10 (1) any unobligated funds remaining in the
11 agricultural biomass and landfill diversion incentive program
12 account shall be transferred to the undedicated portion of the
13 general revenue fund; and

14 (2) this chapter expires.

15 SECTION 2. This Act takes effect September 1, 2007.