

By: Swinford

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 electrical 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 incentives to encourage the construction of facilities to generate electrical energy with certain types of agricultural residues, urban wood waste, forest 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 electrical 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; and

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

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

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

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

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

18 (7) "Urban wood waste" means:

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

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

24 Sec. 22.003. GRANT PROGRAM. (a) The department shall
25 develop and administer an agricultural biomass and landfill
26 diversion incentive program to make grants to farmers, loggers, and
27 diverters who provide qualified agricultural biomass, forest wood

1 waste, urban wood waste, or storm-generated biomass debris to
2 facilities that use biomass to generate electrical energy in order
3 to provide an incentive for the construction of facilities for that
4 purpose and to:

5 (1) promote economic development;

6 (2) encourage the use of renewable sources in the
7 generation of electrical energy;

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

11 (4) divert waste from landfills.

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

18 (1) is located in this state;

19 (2) was constructed on or after June 30, 2008;

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

23 (4) uses the best available emissions control
24 technology, considering the technical practicability and economic
25 reasonableness of reducing or eliminating the air contaminant
26 emissions resulting from the facility;

27 (5) maintains its emissions control equipment in good

1 working order; and

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

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

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

21 (e) To receive a grant under this chapter, a farmer, logger,
22 or diverter must file an application with the department on a form
23 prescribed by the department. The form must require the applicant
24 to provide the information necessary to determine whether the
25 applicant is entitled to receive a grant and to determine the amount
26 of the grant to which the applicant is entitled.

27 (f) The department shall provide for the distribution of

1 grant money under this chapter to eligible farmers, loggers, and
2 diverters. Grant money must be distributed to eligible farmers,
3 loggers, and diverters in the order in which applications for the
4 grants are received. The department shall make grants not less
5 often than quarterly, subject to appropriations.

6 (g) The department may contract with and provide for the
7 compensation of private consultants, contractors, and other
8 persons to administer the agricultural biomass and landfill
9 diversion incentive program.

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

14 (1) legislative appropriations;

15 (2) gifts, grants, donations, and matching funds
16 received under Subsection (b); and

17 (3) other money required by law to be deposited in the
18 account.

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

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

26 (d) Income from money in the account shall be credited to
27 the account.

1 (e) The account is exempt from the application of Section
2 403.095, Government Code.

3 Sec. 22.005. LIMITATION ON GRANT AMOUNT. The total amount
4 of grants awarded under this chapter during each state fiscal year
5 may not exceed \$30 million.

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

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

21 (c) The provisions of this chapter governing grants to
22 farmers, loggers, and diverters, including the provisions
23 governing the amount of a grant, apply to a grant under Subsection
24 (b) to a facility that uses biomass to generate electrical energy.

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 until
4 funds are appropriated for those purposes.

5 Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The
6 agricultural biomass and landfill diversion incentive program
7 terminates on August 31, 2022. On September 1, 2022:

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

12 (2) this chapter expires.

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