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S.B. No. 357

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the establishment of a program by the Department of  
3 Agriculture to make grants to encourage the construction of  
4 facilities that generate electrical energy with certain types of  
5 agricultural residues, waste, debris, or crops.

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

7 SECTION 1. Title 2, Agriculture Code, is amended by adding  
8 Chapter 22 to read as follows:

9 CHAPTER 22. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION

10 INCENTIVE PROGRAM

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

19 Sec. 22.002. DEFINITIONS. In this chapter:

20 (1) "Diverter":

21 (A) means:

22 (i) a person or facility that qualifies for  
23 an exemption under Section 361.111 or 363.006, Health and Safety  
24 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.