

1-1 By: Jackson S.B. No. 357  
1-2 (In the Senate - Filed January 29, 2007; February 21, 2007,  
1-3 read first time and referred to Subcommittee on Agriculture, Rural  
1-4 Affairs and Coastal Resources; April 30, 2007, reported adversely,  
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1-7 sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR S.B. No. 357 By: Jackson

1-9 A BILL TO BE ENTITLED  
1-10 AN ACT

1-11 relating to the establishment of a program by the Department of  
1-12 Agriculture to make grants to encourage the construction of  
1-13 facilities that generate electric energy with certain types of  
1-14 agricultural residues, waste, debris, or crops.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-16 SECTION 1. Title 2, Agriculture Code, is amended by adding  
1-17 Chapter 22 to read as follows:

1-18 CHAPTER 22. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION  
1-19 INCENTIVE PROGRAM

1-20 Sec. 22.001. POLICY AND PURPOSE. It is the policy of this  
1-21 state and the purpose of this chapter to reduce air pollution,  
1-22 improve air quality, protect public health, help this state  
1-23 diversify its energy supply, and divert waste from landfills  
1-24 through new price-support incentives to encourage the construction  
1-25 of facilities to generate electric energy with certain types of  
1-26 agricultural residues, forest wood waste, urban wood waste,  
1-27 storm-generated biomass debris, and energy-dedicated crops.

1-28 Sec. 22.002. DEFINITIONS. In this chapter:

1-29 (1) "Diverter":

1-30 (A) means:

1-31 (i) a person or facility that qualifies for  
1-32 an exemption under Section 361.111 or 363.006, Health and Safety  
1-33 Code;

1-34 (ii) a handler of nonhazardous industrial  
1-35 waste that is registered or permitted under Chapter 361, Health and  
1-36 Safety Code; or

1-37 (iii) a facility that separates recyclable  
1-38 materials from a municipal solid waste stream and that is  
1-39 registered or permitted under Chapter 363, Health and Safety Code,  
1-40 as a municipal solid waste management facility; and

1-41 (B) does not include a facility that uses biomass  
1-42 to generate electric energy.

1-43 (2) "Farmer" means the owner or operator of an  
1-44 agricultural facility that produces qualified agricultural  
1-45 biomass.

1-46 (3) "Forest wood waste" includes residual tops and  
1-47 limbs of trees, unused cull trees, thinnings, and wood or debris  
1-48 from noncommercial tree species, slash, or brush.

1-49 (4) "Logger" means a harvester of forest wood waste,  
1-50 regardless of whether the harvesting occurs as a part of the  
1-51 harvesting of merchantable timber.

1-52 (5) "Qualified agricultural biomass" means:

1-53 (A) agricultural residues that are of a type that  
1-54 historically have been disposed of in a landfill, relocated from  
1-55 their point of origin and stored in a manner not intended to enhance  
1-56 or restore the soil, burned in open fields in the area from which  
1-57 they are derived, or burned in fields and orchards that continue to  
1-58 be used for the production of agricultural goods, and includes:

1-59 (i) field or seed crop residues, including  
1-60 straw from rice or wheat;

1-61 (ii) fruit or nut crop residues, including  
1-62 orchard or vineyard prunings and removals;

1-63 (iii) forest wood products or urban wood

2-1 products; and  
 2-2 (iv) agricultural livestock waste  
 2-3 nutrients; and

2-4 (B) a crop grown and used specifically for its  
 2-5 energy generation value, including a crop consisting of a  
 2-6 fast-growing tree species.

2-7 (6) "Storm-generated biomass debris" means  
 2-8 biomass-based residues that result from a natural weather event,  
 2-9 including a hurricane, tornado, or flood, that would otherwise be  
 2-10 disposed of in a landfill or burned in the open. The term includes:

2-11 (A) trees, brush, and other vegetative matter  
 2-12 that have been damaged or felled by severe weather but that would  
 2-13 not otherwise qualify as forest wood waste; and

2-14 (B) clean solid wood waste that has been damaged  
 2-15 by severe weather but that would not otherwise qualify as urban wood  
 2-16 waste.

2-17 (7) "Urban wood waste" means:

2-18 (A) solid wood waste material, other than  
 2-19 pressure-treated, chemically treated, or painted wood waste, that  
 2-20 is free of rubber, plastic, glass, nails, or other inorganic  
 2-21 material; and

2-22 (B) landscape or right-of-way trimmings.

2-23 Sec. 22.003. GRANT PROGRAM. (a) The department shall  
 2-24 develop and administer an agricultural biomass and landfill  
 2-25 diversion incentive program to make grants to farmers, loggers, and  
 2-26 diverters who provide qualified agricultural biomass, forest wood  
 2-27 waste, urban wood waste, or storm-generated biomass debris to  
 2-28 facilities that use biomass to generate electric energy in order to  
 2-29 provide an incentive for the construction of facilities for that  
 2-30 purpose and to:

2-31 (1) promote economic development;

2-32 (2) encourage the use of renewable sources in the  
 2-33 generation of electric energy;

2-34 (3) reduce air pollution caused by burning  
 2-35 agricultural biomass, forest wood waste, urban wood waste, or  
 2-36 storm-generated biomass debris in open fields; and

2-37 (4) divert waste from landfills.

2-38 (b) Subject to Section 22.005, a farmer, logger, or diverter  
 2-39 is entitled to receive a grant in the amount of \$20 for each  
 2-40 bone-dry ton of qualified agricultural biomass, forest wood waste,  
 2-41 urban wood waste, or storm-generated biomass debris provided by the  
 2-42 farmer, logger, or diverter in a form suitable for generating  
 2-43 electric energy to a facility that:

2-44 (1) is located in this state;

2-45 (2) was placed in service after August 31, 2009;

2-46 (3) generates electric energy sold to a third party by  
 2-47 using qualified agricultural biomass, forest wood waste, urban wood  
 2-48 waste, or storm-generated biomass debris;

2-49 (4) uses the best available emissions control  
 2-50 technology, considering the technical practicability and economic  
 2-51 reasonableness of reducing or eliminating the air contaminant  
 2-52 emissions resulting from the facility;

2-53 (5) maintains its emissions control equipment in good  
 2-54 working order; and

2-55 (6) is in compliance with its operating permit issued  
 2-56 by the Texas Commission on Environmental Quality under Chapter 382,  
 2-57 Health and Safety Code.

2-58 (c) The commissioner by rule may authorize a grant to be  
 2-59 made for providing each bone-dry ton of a type or source of  
 2-60 qualified agricultural biomass, forest wood waste, urban wood  
 2-61 waste, or storm-generated biomass debris in an amount that is  
 2-62 greater than the amount provided by Subsection (b) if the  
 2-63 commissioner determines that a grant in a greater amount is  
 2-64 necessary to provide an adequate incentive to use that type or  
 2-65 source of qualified agricultural biomass, forest wood waste, urban  
 2-66 wood waste, or storm-generated biomass debris to generate electric  
 2-67 energy.

2-68 (d) The Public Utility Commission of Texas and the Texas  
 2-69 Commission on Environmental Quality shall assist the department as

3-1 necessary to enable the department to determine whether a facility  
 3-2 meets the requirements of Subsection (b) for purposes of the  
 3-3 eligibility of farmers, loggers, and diverters for grants under  
 3-4 this chapter.

3-5 (e) To receive a grant under this chapter, a farmer, logger,  
 3-6 or diverter must deliver qualified agricultural biomass, forest  
 3-7 wood waste, urban wood waste, or storm-generated biomass debris to  
 3-8 a facility described by Subsection (b). The operator of each  
 3-9 facility described by that subsection shall:

3-10 (1) verify and document the amount of qualified  
 3-11 agricultural biomass, forest wood waste, urban wood waste, or  
 3-12 storm-generated biomass debris delivered to the facility for the  
 3-13 generation of electric energy; and

3-14 (2) make a grant on behalf of the department in the  
 3-15 appropriate amount to each farmer, logger, or diverter who delivers  
 3-16 qualified agricultural biomass, forest wood waste, urban wood  
 3-17 waste, or storm-generated biomass debris to the facility.

3-18 (f) The department quarterly shall reimburse each operator  
 3-19 of a facility described by Subsection (b) for grants under this  
 3-20 chapter made by the operator during the preceding quarter to  
 3-21 eligible farmers, loggers, and diverters. To receive reimbursement  
 3-22 for one or more grants, an operator of a facility described by that  
 3-23 subsection must file an application with the department that  
 3-24 verifies the amount of the grants made by the operator during the  
 3-25 preceding quarter for which the operator seeks reimbursement.

3-26 (g) The department may contract with and provide for the  
 3-27 compensation of private consultants, contractors, and other  
 3-28 persons to assist the department in administering the agricultural  
 3-29 biomass and landfill diversion incentive program.

3-30 Sec. 22.004. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION  
 3-31 INCENTIVE PROGRAM ACCOUNT. (a) The agricultural biomass and  
 3-32 landfill diversion incentive program account is an account in the  
 3-33 general revenue fund. The account is composed of:

3-34 (1) legislative appropriations;  
 3-35 (2) gifts, grants, donations, and matching funds  
 3-36 received under Subsection (b); and

3-37 (3) other money required by law to be deposited in the  
 3-38 account.

3-39 (b) The department may solicit and accept gifts in kind,  
 3-40 donations, and grants of money from the federal government, local  
 3-41 governments, private corporations, or other persons to be used for  
 3-42 the purposes of this chapter.

3-43 (c) Money in the account may be appropriated only to the  
 3-44 department for the purpose of implementing and maintaining the  
 3-45 agricultural biomass and landfill diversion incentive program.

3-46 (d) Income from money in the account shall be credited to  
 3-47 the account.

3-48 (e) The account is exempt from the application of Section  
 3-49 403.095, Government Code.

3-50 Sec. 22.005. LIMITATION ON GRANT AMOUNT. (a) The total  
 3-51 amount of grants awarded by operators of facilities under Section  
 3-52 22.003 and by the department under Section 22.006 during each state  
 3-53 fiscal year may not exceed \$30 million.

3-54 (b) During each state fiscal year, the department may not  
 3-55 pay to an operator of a facility as reimbursements under Section  
 3-56 22.003 or grants under Section 22.006 an amount that exceeds 20  
 3-57 percent of the total amount of the reimbursements or grants to  
 3-58 operators of facilities under those sections during that state  
 3-59 fiscal year.

3-60 Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY  
 3-61 GENERATION FACILITIES FOR GRANTS. (a) Except as provided by  
 3-62 Subsection (b), an operator of a facility that uses biomass to  
 3-63 generate electric energy is not eligible to receive a grant under  
 3-64 this chapter or under any other state law for the generation of  
 3-65 electric energy with qualified agricultural biomass, forest wood  
 3-66 waste, urban wood waste, or storm-generated biomass debris for  
 3-67 which a farmer, logger, or diverter has received a grant under this  
 3-68 chapter.

3-69 (b) An operator of a facility that uses biomass to generate

4-1 electric energy may receive a grant from the department under this  
4-2 chapter for generating electric energy with qualified agricultural  
4-3 biomass, forest wood waste, urban wood waste, or storm-generated  
4-4 biomass debris that arrives at the facility in a form unsuitable for  
4-5 generating electric energy and that the facility processes into a  
4-6 form suitable for generating electric energy.

4-7 (c) To receive a grant from the department under Subsection  
4-8 (b), an operator of a facility must file an application with the  
4-9 department that verifies the amount of qualified agricultural  
4-10 biomass, forest wood waste, urban wood waste, or storm-generated  
4-11 biomass debris that the facility processed into a form suitable for  
4-12 generating electric energy. The department shall make grants to  
4-13 eligible operators of facilities quarterly, subject to  
4-14 appropriations. The provisions of this chapter governing grants to  
4-15 farmers, loggers, and diverters, including the provisions  
4-16 governing the amount of a grant, apply to a grant from the  
4-17 department under Subsection (b) to the extent they can be made  
4-18 applicable.

4-19 Sec. 22.007. RULES. The commissioner, in consultation with  
4-20 the Public Utility Commission of Texas and the Texas Commission on  
4-21 Environmental Quality, shall adopt rules to implement this chapter.

4-22 Sec. 22.008. AVAILABILITY OF FUNDS. Notwithstanding any  
4-23 other provision of this chapter, the department is not required to  
4-24 administer this chapter or adopt rules under this chapter, and the  
4-25 operator of a facility described by Section 22.003(b) is not  
4-26 required to make a grant on behalf of the department, until funds  
4-27 are appropriated for those purposes.

4-28 Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The  
4-29 agricultural biomass and landfill diversion incentive program  
4-30 terminates on August 31, 2019. On September 1, 2019:

4-31 (1) any unobligated funds remaining in the  
4-32 agricultural biomass and landfill diversion incentive program  
4-33 account shall be transferred to the undedicated portion of the  
4-34 general revenue fund; and

4-35 (2) this chapter expires.

4-36 SECTION 2. This Act takes effect September 1, 2007.

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