

By: Swinford, McReynolds, Christian,
Cook of Colorado

H.B. No. 1090

Substitute the following for H.B. No. 1090:

By: Garcia

C.S.H.B. No. 1090

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 electric 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 price-support incentives to encourage the construction
16 of facilities to generate electric energy with certain types of
17 agricultural residues, forest wood waste, urban wood waste,
18 storm-generated 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 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; and

3 (iii) forest wood products or urban 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 have been damaged or felled by severe weather but that would
14 not 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 electric energy in order to
3 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 electric 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 electric energy to a facility that:

18 (1) is located in this state;

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

20 (3) generates electric energy sold to a third party by
21 using qualified agricultural biomass, forest wood waste, urban wood
22 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 electric
14 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 Subsection (b) 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 deliver qualified agricultural biomass, forest
23 wood waste, urban wood waste, or storm-generated biomass debris to
24 a facility described by Subsection (b). The operator of each
25 facility described by that subsection shall:

26 (1) verify and document the amount of qualified
27 agricultural biomass, forest wood waste, urban wood waste, or

1 storm-generated biomass debris delivered to the facility for the
2 generation of electric energy; and

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

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

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

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

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

26 (3) other money required by law to be deposited in the
27 account.

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

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

8 (d) Income from money in the account shall be credited to
9 the account.

10 (e) The account is exempt from the application of Section
11 403.095, Government Code.

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

16 Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY
17 GENERATION FACILITIES FOR GRANTS. (a) Except as provided by
18 Subsection (b), an operator of a facility that uses biomass to
19 generate electric energy is not eligible to receive a grant under
20 this chapter or under any other state law for the generation of
21 electric energy with qualified agricultural biomass, forest wood
22 waste, urban wood waste, or storm-generated biomass debris for
23 which a farmer, logger, or diverter has received a grant under this
24 chapter.

25 (b) An operator of a facility that uses biomass to generate
26 electric energy may receive a grant from the department under this
27 chapter for generating electric energy with qualified agricultural

1 biomass, forest wood waste, urban wood waste, or storm-generated
2 biomass debris that arrives at the facility in a form unsuitable for
3 generating electric energy and that the facility processes into a
4 form suitable for generating electric energy.

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

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

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

26 Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The
27 agricultural biomass and landfill diversion incentive program

1 terminates on August 31, 2019. On September 1, 2019:

2 (1) any unobligated funds remaining in the
3 agricultural biomass and landfill diversion incentive program
4 account shall be transferred to the undedicated portion of the
5 general revenue fund; and

6 (2) this chapter expires.

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