

1-1 By: Swinford, et al. (Senate Sponsor - Jackson) H.B. No. 1090
1-2 (In the Senate - Received from the House May 1, 2007;
1-3 May 2, 2007, read first time and referred to Subcommittee on
1-4 Agriculture, Rural Affairs and Coastal Resources; May 3, 2007,
1-5 rereferred to Committee on Natural Resources; May 14, 2007,
1-6 reported adversely, with favorable Committee Substitute by the
1-7 following vote: Yeas 9, Nays 0; May 14, 2007, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 1090 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 \$6
3-57 million.

3-58 Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY
3-59 GENERATION FACILITIES FOR GRANTS. (a) Except as provided by
3-60 Subsection (b), an operator of a facility that uses biomass to
3-61 generate electric energy is not eligible to receive a grant under
3-62 this chapter or under any other state law for the generation of
3-63 electric energy with qualified agricultural biomass, forest wood
3-64 waste, urban wood waste, or storm-generated biomass debris for
3-65 which a farmer, logger, or diverter has received a grant under this
3-66 chapter.

3-67 (b) An operator of a facility that uses biomass to generate
3-68 electric energy may receive a grant from the department under this
3-69 chapter for generating electric energy with qualified agricultural

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

4-5 (c) To receive a grant from the department under Subsection
4-6 (b), an operator of a facility must file an application with the
4-7 department that verifies the amount of qualified agricultural
4-8 biomass, forest wood waste, urban wood waste, or storm-generated
4-9 biomass debris that the facility processed into a form suitable for
4-10 generating electric energy. The department shall make grants to
4-11 eligible operators of facilities quarterly, subject to
4-12 appropriations. The provisions of this chapter governing grants to
4-13 farmers, loggers, and diverters, including the provisions
4-14 governing the amount of a grant, apply to a grant from the
4-15 department under Subsection (b) to the extent they can be made
4-16 applicable.

4-17 Sec. 22.007. RULES. The commissioner, in consultation with
4-18 the Public Utility Commission of Texas and the Texas Commission on
4-19 Environmental Quality, shall adopt rules to implement this chapter.

4-20 Sec. 22.008. AVAILABILITY OF FUNDS. Notwithstanding any
4-21 other provision of this chapter, the department is not required to
4-22 administer this chapter or adopt rules under this chapter, and the
4-23 operator of a facility described by Section 22.003(b) is not
4-24 required to make a grant on behalf of the department, until funds
4-25 are appropriated for those purposes.

4-26 Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The
4-27 agricultural biomass and landfill diversion incentive program
4-28 terminates on August 31, 2019. On September 1, 2019:

- 4-29 (1) any unobligated funds remaining in the
- 4-30 agricultural biomass and landfill diversion incentive program
- 4-31 account shall be transferred to the undedicated portion of the
- 4-32 general revenue fund; and
- 4-33 (2) this chapter expires.

4-34 SECTION 2. This Act takes effect September 1, 2007.

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