

By: Swinford

H.B. No. 3168

A BILL TO BE ENTITLED

1 AN ACT

2 relating to incentives for and the regulation of biofuel production  
3 and distribution in this state.

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

5 SECTION 1. The heading to Chapter 16, Agriculture Code, is  
6 amended to read as follows:

7 CHAPTER 16. FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL  
8 PRODUCTION INCENTIVE PROGRAM

9 SECTION 2. Section 16.001, Agriculture Code, is amended by  
10 amending Subdivisions (1) and (6) and adding Subdivision (4-a) to  
11 read as follows:

12 (1) "Account" means the fuel ethanol, renewable  
13 methane, and biodiesel production account.

14 (4-a) "Renewable methane" means methane gas derived  
15 from animal waste or an agricultural byproduct, including creamery  
16 or fruit waste or corn silage.

17 (6) "Producer" means a person who operates a fuel  
18 ethanol, renewable methane, or biodiesel plant in this state.

19 SECTION 3. Sections 16.002(a) and (b), Agriculture Code,  
20 are amended to read as follows:

21 (a) To be eligible for a grant for fuel ethanol, renewable  
22 methane, or biodiesel produced in a plant, a producer must apply to  
23 the office for the registration of the plant. A producer may apply  
24 for the registration of more than one plant.

1 (b) An application for the registration of a plant must show  
2 to the satisfaction of the office that:

3 (1) the plant is capable of producing fuel ethanol,  
4 renewable methane, or biodiesel;

5 (2) the producer has made a substantial investment of  
6 resources in this state in connection with the plant; and

7 (3) the plant constitutes a permanent fixture in this  
8 state.

9 SECTION 4. Section 16.003(a), Agriculture Code, is amended  
10 to read as follows:

11 (a) On or before the fifth day of each month, a producer  
12 shall report to the office on:

13 (1) the number of gallons of fuel ethanol or biodiesel  
14 or MMBtu of renewable methane produced at each registered plant  
15 operated by the producer during the preceding month;

16 (2) the number of gallons of fuel ethanol or biodiesel  
17 imported into this state by the producer during the preceding  
18 month;

19 (3) the number of gallons of fuel ethanol or biodiesel  
20 sold or blended with motor fuels by the producer during the  
21 preceding month; and

22 (4) the total value of agricultural products consumed  
23 in each registered plant operated by the producer during the  
24 preceding month.

25 SECTION 5. The heading to Section 16.004, Agriculture Code,  
26 is amended to read as follows:

27 Sec. 16.004. FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL

1 PRODUCTION ACCOUNT.

2 SECTION 6. Section 16.004(a), Agriculture Code, is amended  
3 to read as follows:

4 (a) The fuel ethanol, renewable methane, and biodiesel  
5 production account is an account in the general revenue fund that  
6 may be appropriated only to the office for the purposes of this  
7 chapter, including the making of grants under this chapter.

8 SECTION 7. The heading to Section 16.005, Agriculture Code,  
9 is amended to read as follows:

10 Sec. 16.005. FEE ON FUEL ETHANOL, RENEWABLE METHANE, AND  
11 BIODIESEL PRODUCTION.

12 SECTION 8. Sections 16.005(a), (b), and (d), Agriculture  
13 Code, are amended to read as follows:

14 (a) The office shall impose a fee on each producer in an  
15 amount equal to 3.2 cents for each gallon of fuel ethanol or MMBtu  
16 of renewable methane and 1.6 cents for each gallon of biodiesel  
17 produced in each registered plant operated by the producer.

18 (b) For each fiscal year, the office may not impose fees on a  
19 producer for more than 18 million gallons of fuel ethanol or  
20 biodiesel or MMBtu of renewable methane produced at any one  
21 registered plant.

22 (d) The office may not impose fees on a producer for fuel  
23 ethanol, renewable methane, or biodiesel produced at a registered  
24 plant after the 10th anniversary of the date production from the  
25 plant begins.

26 SECTION 9. The heading to Section 16.006, Agriculture Code,  
27 is amended to read as follows:

1           Sec. 16.006. FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL  
2 GRANTS.

3           SECTION 10. Sections 16.006(a), (b), (c), and (e),  
4 Agriculture Code, are amended to read as follows:

5           (a) The office, after consultation with the department,  
6 shall make grants to producers as an incentive for the development  
7 of the fuel ethanol, renewable methane, and biodiesel industry and  
8 agricultural production in this state.

9           (b) A producer is entitled to receive from the account 20  
10 cents for each gallon of fuel ethanol or MMBtu of renewable methane  
11 and 10 cents for each gallon of biodiesel produced in each  
12 registered plant operated by the producer until the 10th  
13 anniversary of the date production from the plant begins.

14           (c) For each fiscal year a producer may not receive grants  
15 for more than 18 million gallons of fuel ethanol or biodiesel or  
16 MMBtu of renewable methane produced at any one registered plant.

17           (e) If the office determines that the amount of money  
18 credited to the account is not sufficient to distribute the full  
19 amount of grant funds to eligible producers as provided by this  
20 chapter for a fiscal year, the office shall proportionately reduce  
21 the amount of each grant for each gallon of fuel ethanol or  
22 biodiesel or each MMBtu of renewable methane produced as necessary  
23 to continue the incentive program during the remainder of the  
24 fiscal year.

25           SECTION 11. Chapter 16, Agriculture Code, is amended by  
26 adding Section 16.007 to read as follows:

27           Sec. 16.007. REGULATION OF FUEL ETHANOL OR BIODIESEL IN A

1 MANNER MORE STRINGENT THAN FEDERAL LAW. (a) In this section,  
2 "state agency" has the meaning assigned by Section 315.002,  
3 Government Code.

4 (b) Except as provided by this section and the Reid vapor  
5 pressure requirements for gasoline used as control measures in the  
6 state implementation plan, a state agency may not adopt or  
7 implement rules in a manner that restricts the production or  
8 distribution of fuel ethanol or biodiesel if the rules impose a  
9 restriction more stringent than federal law provides.

10 (c) After January 1, 2009, Subsection (b) does not apply to  
11 a rule adopted by the Texas Commission on Environmental Quality if  
12 that commission determines that, without imposing the restriction  
13 provided by the rule, emissions generated by using fuel ethanol or  
14 biodiesel will materially jeopardize compliance with the state  
15 implementation plan for attaining national ambient air quality  
16 standards.

17 SECTION 12. (a) The State Energy Conservation Office shall  
18 prepare a report that provides a coherent strategy for and  
19 recommends mechanisms for increasing the availability of  
20 low-emission automotive fuels. The report must include:

21 (1) a list of recommended fuels;

22 (2) proposed mechanisms for increasing the  
23 availability of the fuels recommended under Subdivision (1) of this  
24 subsection to the majority of Texas drivers by 2010, including:

25 (A) rebates for retrofitting vehicles to make  
26 them compatible with the recommended fuels, if necessary;

27 (B) procurement agreements by municipalities and

1 state agencies to purchase vehicles that are compatible with the  
2 recommended fuels; and

3 (C) market incentives to producers and  
4 distributors of the recommended fuels;

5 (3) an assessment of:

6 (A) the anticipated effects on ground-level  
7 ozone levels in urban areas as a result of using the recommended  
8 fuels;

9 (B) the cost to the state to implement the  
10 mechanisms proposed under Subdivision (2) of this subsection;

11 (C) the possible benefits to the state in reduced  
12 health care costs that may result from using the recommended fuels;

13 (D) the number of new jobs expected to be created  
14 in this state that may result from using the recommended fuels;

15 (E) projected costs to Texas consumers of using  
16 the recommended fuels;

17 (F) the anticipated effect on state revenue as a  
18 result of new economic activity related to the production,  
19 distribution, and use of the recommended fuels; and

20 (G) the net reduction of emissions projected to  
21 result from using the recommended fuels; and

22 (4) any statutory changes needed to implement the  
23 strategy or a recommended mechanism.

24 (b) For each fuel in the list of fuels recommended under  
25 this section, the State Energy Conservation Office shall include an  
26 analysis of the life cycle emissions for the fuel and a  
27 determination of how well the fuel achieves the goal of producing at

1 least 20 percent less emissions over its life cycle than  
2 conventional gasoline. The life cycle of a fuel includes emissions  
3 that occur in the production of the fuel. If part of the fuel's  
4 production process includes carbon capture and storage, also known  
5 as carbon sequestration, the resulting reduction in carbon dioxide  
6 emissions is included in computing the life cycle emissions for the  
7 fuel.

8 (c) The State Energy Conservation Office may establish a  
9 task force to assist in developing the strategy and recommendations  
10 required by Subsections (a) and (b) of this section.

11 (d) Not later than October 1, 2008, the State Energy  
12 Conservation Office shall deliver the report required by this  
13 section to the governor, the lieutenant governor, the speaker of  
14 the house of representatives, and the standing committees of the  
15 legislature with primary jurisdiction over environmental,  
16 economic, and transportation matters.

17 SECTION 13. The changes in a fee charged or a payment made  
18 for the production of biodiesel under Sections 16.005 and 16.006,  
19 Agriculture Code, as amended by this Act, apply only to biodiesel  
20 produced on or after the effective date of this Act.

21 SECTION 14. This Act takes effect immediately if it  
22 receives a vote of two-thirds of all the members elected to each  
23 house, as provided by Section 39, Article III, Texas Constitution.  
24 If this Act does not receive the vote necessary for immediate  
25 effect, this Act takes effect September 1, 2007.