

By: Swinford

H.B. No. 3168

A BILL TO BE ENTITLED

AN ACT

relating to incentives for biofuel production, distribution, and use in this state.

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

SECTION 1. Section 16.002, Agriculture Code, is amended to read as follows:

Sec. 16.002. PLANT REGISTRATION. (a) To be eligible for a grant for fuel ethanol or biodiesel produced in a plant, a producer must apply to the department [~~office~~] for the registration of the plant. A producer may apply for the registration of more than one plant.

(b) An application for the registration of a plant must show to the satisfaction of the department [~~office~~] that:

(1) the plant is capable of producing fuel ethanol or biodiesel;

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

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

(c) The department [~~office, after consultation with the department,~~] shall register each plant that qualifies under this section. [~~The office shall notify the department of plants registered under this section.~~]

SECTION 2. Section 16.003(a), Agriculture Code, is amended

1 to read as follows:

2 (a) On or before the fifth day of each month, a producer
3 shall report to the department [~~office~~] on:

4 (1) the number of gallons of fuel ethanol or biodiesel
5 produced at each registered plant operated by the producer during
6 the preceding month;

7 (2) the number of gallons of fuel ethanol or biodiesel
8 imported into this state by the producer during the preceding
9 month;

10 (3) the number of gallons of fuel ethanol or biodiesel
11 sold or blended with motor fuels by the producer during the
12 preceding month; and

13 (4) the total value of agricultural products consumed
14 in each registered plant operated by the producer during the
15 preceding month.

16 SECTION 3. Section 16.004, Agriculture Code, is amended to
17 read as follows:

18 Sec. 16.004. FUEL ETHANOL AND BIODIESEL PRODUCTION
19 ACCOUNT. (a) The fuel ethanol and biodiesel production account is
20 an account in the general revenue fund that may be appropriated only
21 to the department [~~office~~] for the purposes of this chapter,
22 including the making of grants under this chapter.

23 (b) The account is composed of:

24 (1) fees collected under Section 16.005; and

25 (2) money transferred to the account by an act of the
26 legislature [~~under Subsection (c)~~].

27 [~~(c) The comptroller shall transfer from the undedicated~~

1 ~~portion of the general revenue fund to the account an amount of~~
2 ~~money equal to 5.25 times the amount of the fees collected under~~
3 ~~Section 16.005.]~~

4 SECTION 4. Sections 16.005(a), (b), (c), and (d),
5 Agriculture Code, are amended to read as follows:

6 (a) The department [~~office~~] shall impose a fee on each
7 producer in an amount equal to 3.2 cents for each gallon of fuel
8 ethanol or biodiesel produced in each registered plant operated by
9 the producer.

10 (b) For each fiscal year, the department [~~office~~] may not
11 impose fees on a producer for more than 18 million gallons of fuel
12 ethanol or biodiesel produced at any one registered plant.

13 (c) The department [~~office~~] shall transfer the fees
14 collected under this section to the comptroller for deposit to the
15 credit of the account.

16 (d) The department [~~office~~] may not impose fees on a
17 producer for fuel ethanol or biodiesel produced at a registered
18 plant after the 10th anniversary of the date production from the
19 plant begins.

20 SECTION 5. Sections 16.006(a), (d), and (e), Agriculture
21 Code, are amended to read as follows:

22 (a) The department [~~office, after consultation with the~~
23 ~~department,~~] shall make grants to producers as an incentive for the
24 development of the fuel ethanol and biodiesel industry and
25 agricultural production in this state.

26 (d) The department [~~office~~] by rule shall provide for the
27 distribution of grant funds under this chapter to producers. The

1 department [~~office~~] shall make grants not less often than
2 quarterly.

3 (e) If the department [~~office~~] determines that the amount of
4 money credited to the account is not sufficient to distribute the
5 full amount of grant funds to eligible producers as provided by this
6 chapter for a fiscal year, the department [~~office~~] shall
7 proportionately reduce the amount of each grant for each gallon of
8 fuel ethanol or biodiesel produced as necessary to continue the
9 incentive program during the remainder of the fiscal year.

10 SECTION 6. Chapter 16, Agriculture Code, is amended by
11 adding Section 16.007 to read as follows:

12 Sec. 16.007. REGULATION OF FUEL ETHANOL OR BIODIESEL IN A
13 MANNER MORE STRINGENT THAN FEDERAL LAW. (a) In this section,
14 "state agency" has the meaning assigned by Section 315.002,
15 Government Code.

16 (b) Except as provided by this section, a state agency may
17 not adopt or implement rules in a manner that restricts the
18 production or distribution of fuel ethanol or biodiesel if the
19 rules impose a restriction more stringent than federal law
20 provides, unless the agency determines that the restriction is
21 necessary to maintain delegated authority under a federal program.

22 (c) After May 1, 2009, Subsection (b) does not apply to a
23 rule adopted by the Texas Commission on Environmental Quality if
24 that commission determines that, without imposing the restriction
25 provided by the rule, emissions generated by using fuel ethanol or
26 biodiesel will materially jeopardize compliance with the state
27 implementation plan for attaining national ambient air quality

1 standards.

2 SECTION 7. Section 390.001, Health and Safety Code, is
3 amended by amending Subdivisions (1) and (4) and adding Subdivision
4 (1-a) to read as follows:

5 (1) "Biodiesel" has the meaning assigned by Section
6 16.001, Agriculture Code.

7 (1-a) "Diesel exhaust" means one or more of the air
8 pollutants emitted from an engine by the combustion of diesel fuel,
9 including particulate matter, nitrogen oxides, volatile organic
10 compounds, air toxics, and carbon monoxide.

11 (4) "Qualifying fuel" includes:

12 (A) any liquid or gaseous fuel or additive
13 registered or verified by the United States Environmental
14 Protection Agency, other than standard gasoline or diesel, that is
15 ultimately dispensed into a school bus that provides reductions of
16 emissions of particulate matter; and

17 (B) biodiesel in blends containing at least five
18 percent biodiesel.

19 SECTION 8. The following provisions of the Agriculture Code
20 are repealed:

21 (1) Section 16.001(5);

22 (2) Section 16.003(c); and

23 (3) Section 16.005(e).

24 SECTION 9. Sections 1 through 6 and Section 8 of this Act
25 take effect only if House Bill No. 1, Acts of the 80th Legislature,
26 Regular Session, 2007, or similar legislation providing for funding
27 the fuel ethanol and biodiesel production account, becomes law. If

1 that bill or similar legislation does not become law, those
2 sections have no effect.

3 SECTION 10. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2007.