

1-1 By: Swinford (Senate Sponsor - Estes) H.B. No. 3168  
1-2 (In the Senate - Received from the House May 11, 2007;  
1-3 May 15, 2007, read first time and referred to Committee on Natural  
1-4 Resources; May 22, 2007, reported favorably by the following vote:  
1-5 Yeas 9, Nays 0; May 22, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to incentives for and the regulation of biofuel production  
1-9 and distribution in this state.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. The heading to Chapter 16, Agriculture Code, is  
1-12 amended to read as follows:

1-13 CHAPTER 16. FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL  
1-14 PRODUCTION INCENTIVE PROGRAM

1-15 SECTION 2. Section 16.001, Agriculture Code, is amended by  
1-16 amending Subdivisions (1) and (6) and adding Subdivision (4-a) to  
1-17 read as follows:

1-18 (1) "Account" means the fuel ethanol, renewable  
1-19 methane, and biodiesel production account.

1-20 (4-a) "Renewable methane" means methane gas derived  
1-21 from animal waste or an agricultural byproduct, including creamery  
1-22 or fruit waste or corn silage.

1-23 (6) "Producer" means a person who operates a fuel  
1-24 ethanol, renewable methane, or biodiesel plant in this state.

1-25 SECTION 3. Sections 16.002(a) and (b), Agriculture Code,  
1-26 are amended to read as follows:

1-27 (a) To be eligible for a grant for fuel ethanol, renewable  
1-28 methane, or biodiesel produced in a plant, a producer must apply to  
1-29 the office for the registration of the plant. A producer may apply  
1-30 for the registration of more than one plant.

1-31 (b) An application for the registration of a plant must show  
1-32 to the satisfaction of the office that:

1-33 (1) the plant is capable of producing fuel ethanol,  
1-34 renewable methane, or biodiesel;

1-35 (2) the producer has made a substantial investment of  
1-36 resources in this state in connection with the plant; and

1-37 (3) the plant constitutes a permanent fixture in this  
1-38 state.

1-39 SECTION 4. Section 16.003(a), Agriculture Code, is amended  
1-40 to read as follows:

1-41 (a) On or before the fifth day of each month, a producer  
1-42 shall report to the office on:

1-43 (1) the number of gallons of fuel ethanol or biodiesel  
1-44 or MMBtu of renewable methane produced at each registered plant  
1-45 operated by the producer during the preceding month;

1-46 (2) the number of gallons of fuel ethanol or biodiesel  
1-47 imported into this state by the producer during the preceding  
1-48 month;

1-49 (3) the number of gallons of fuel ethanol or biodiesel  
1-50 sold or blended with motor fuels by the producer during the  
1-51 preceding month; and

1-52 (4) the total value of agricultural products consumed  
1-53 in each registered plant operated by the producer during the  
1-54 preceding month.

1-55 SECTION 5. The heading to Section 16.004, Agriculture Code,  
1-56 is amended to read as follows:

1-57 Sec. 16.004. FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL  
1-58 PRODUCTION ACCOUNT.

1-59 SECTION 6. Section 16.004(a), Agriculture Code, is amended  
1-60 to read as follows:

1-61 (a) The fuel ethanol, renewable methane, and biodiesel  
1-62 production account is an account in the general revenue fund that  
1-63 may be appropriated only to the office for the purposes of this  
1-64 chapter, including the making of grants under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) a list of recommended fuels;
- (2) proposed mechanisms for increasing the

3-1 availability of the fuels recommended under Subdivision (1) of this  
3-2 subsection to the majority of Texas drivers by 2010, including:

3-3 (A) rebates for retrofitting vehicles to make  
3-4 them compatible with the recommended fuels, if necessary;

3-5 (B) procurement agreements by municipalities and  
3-6 state agencies to purchase vehicles that are compatible with the  
3-7 recommended fuels; and

3-8 (C) market incentives to producers and  
3-9 distributors of the recommended fuels;

3-10 (3) an assessment of:

3-11 (A) the anticipated effects on ground-level  
3-12 ozone levels in urban areas as a result of using the recommended  
3-13 fuels;

3-14 (B) the cost to the state to implement the  
3-15 mechanisms proposed under Subdivision (2) of this subsection;

3-16 (C) the possible benefits to the state in reduced  
3-17 health care costs that may result from using the recommended fuels;

3-18 (D) the number of new jobs expected to be created  
3-19 in this state that may result from using the recommended fuels;

3-20 (E) projected costs to Texas consumers of using  
3-21 the recommended fuels;

3-22 (F) the anticipated effect on state revenue as a  
3-23 result of new economic activity related to the production,  
3-24 distribution, and use of the recommended fuels; and

3-25 (G) the net reduction of emissions projected to  
3-26 result from using the recommended fuels; and

3-27 (4) any statutory changes needed to implement the  
3-28 strategy or a recommended mechanism.

3-29 (b) For each fuel in the list of fuels recommended under  
3-30 this section, the State Energy Conservation Office shall include an  
3-31 analysis of the life cycle emissions for the fuel and a  
3-32 determination of how well the fuel achieves the goal of producing at  
3-33 least 20 percent less emissions over its life cycle than  
3-34 conventional gasoline. The life cycle of a fuel includes emissions  
3-35 that occur in the production of the fuel. If part of the fuel's  
3-36 production process includes carbon capture and storage, also known  
3-37 as carbon sequestration, the resulting reduction in carbon dioxide  
3-38 emissions is included in computing the life cycle emissions for the  
3-39 fuel.

3-40 (c) The State Energy Conservation Office may establish a  
3-41 task force to assist in developing the strategy and recommendations  
3-42 required by Subsections (a) and (b) of this section.

3-43 (d) Not later than October 1, 2008, the State Energy  
3-44 Conservation Office shall deliver the report required by this  
3-45 section to the governor, the lieutenant governor, the speaker of  
3-46 the house of representatives, and the standing committees of the  
3-47 legislature with primary jurisdiction over environmental,  
3-48 economic, and transportation matters.

3-49 SECTION 13. The changes in a fee charged or a payment made  
3-50 for the production of biodiesel under Sections 16.005 and 16.006,  
3-51 Agriculture Code, as amended by this Act, apply only to biodiesel  
3-52 produced on or after the effective date of this Act.

3-53 SECTION 14. This Act takes effect immediately if it  
3-54 receives a vote of two-thirds of all the members elected to each  
3-55 house, as provided by Section 39, Article III, Texas Constitution.  
3-56 If this Act does not receive the vote necessary for immediate  
3-57 effect, this Act takes effect September 1, 2007.

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