

By: Swinford

H.B. No. 2151

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a fuel ethanol and biodiesel producer loan guarantee program.

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

SECTION 1. Chapter 58, Agriculture Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. FUEL ETHANOL AND BIODIESEL PRODUCER LOAN GUARANTEE PROGRAM

Sec. 58.071. DEFINITIONS. In this subchapter:

(1) "Biodiesel" has the meaning assigned by Section 16.001.

(2) "Commercial lender" means a commercial lending institution chartered by the state or federal government, including a savings and loan association, a credit union, or a Farm Credit System institution.

(3) "Eligible applicant" means a person applying for a loan guarantee under this subchapter who:

(A) meets the eligibility requirements established by department rule; and

(B) complies with the application procedures prescribed by this subchapter.

(4) "Fuel ethanol" has the meaning assigned by Section 16.001.

(5) "Plan" means the documentation submitted to the

1 lender in support of the application.

2 Sec. 58.072. FUEL ETHANOL AND BIODIESEL PRODUCER LOAN
3 GUARANTEE PROGRAM. (a) The board shall administer a loan guarantee
4 program that benefits eligible applicants who produce fuel ethanol
5 or biodiesel.

6 (b) The board, either directly or through authority
7 delegated to the commissioner, may grant to an eligible applicant a
8 guarantee of a loan made by a commercial lender for the purposes
9 prescribed by this subchapter. The guarantee amount may not exceed
10 the lesser of \$250,000 or 90 percent of the loan amount.

11 (c) The aggregate amount guaranteed under this subchapter
12 may not exceed twice the amount contained in the fuel ethanol and
13 biodiesel producer loan guarantee account in the Texas agricultural
14 fund.

15 (d) A loan guarantee recipient may use proceeds from the
16 loan for working capital for an operation related to the production
17 of fuel ethanol or biodiesel, including the lease of facilities and
18 the purchase of machinery and equipment, or for any other business
19 purpose, including the purchase of real estate, as identified in
20 the plan. A loan guarantee is voidable by the board if the
21 recipient uses loan proceeds for any purpose other than those
22 identified in the plan. The board shall include this restriction as
23 a condition in each loan guarantee instrument executed under this
24 subchapter.

25 (e) The board shall adopt an agreement, to be used between a
26 commercial lender and an approved eligible applicant, under which
27 the program provides a payment from money in the fuel ethanol and

1 biodiesel producer loan guarantee account for the purpose of
2 providing a reduced interest rate on a loan guaranteed to a borrower
3 under this subchapter. The board shall adopt rules to implement
4 this subsection. The maximum rate reduction under this subsection
5 may not exceed three percentage points.

6 Sec. 58.073. APPLICATION FOR LOAN GUARANTEE. (a) An
7 eligible applicant's documentation must include the following for
8 the board's review:

9 (1) the plan, as submitted to the lender, for the
10 applicant's proposed fuel ethanol or biodiesel production
11 operation to be financed that includes a budget for the proposed
12 operation;

13 (2) a completed application for a loan from a
14 commercial lender on which an eligible applicant has indicated how
15 the loan proceeds will be used to implement the applicant's plan;
16 and

17 (3) the signed statement of a loan officer of the
18 commercial lender that a loan guarantee is required for approval of
19 the loan application.

20 (b) The board may charge a reasonable fee for processing an
21 application filed under this section.

22 Sec. 58.074. BOARD CONSIDERATION OF LOAN GUARANTEE
23 APPLICATION. After reviewing the material submitted under Section
24 58.073, the board shall consider the following factors in deciding
25 whether to approve an application for a loan guarantee:

26 (1) the anticipated benefits from granting a loan
27 guarantee to the applicant, including both potential job creation

1 and commercial benefits to the fuel ethanol and biodiesel
2 industries;

3 (2) the applicant's qualifications;

4 (3) the feasibility of the applicant's plan; and

5 (4) other repayment sources available to the
6 applicant.

7 Sec. 58.075. DEFAULT. If the recipient of a loan guarantee
8 defaults on a loan that is guaranteed under this subchapter and the
9 authority is required to honor its guarantee, the authority,
10 through its representative, may bring suit against the defaulting
11 party. A suit brought by the authority under this section may have
12 venue in Travis County.

13 Sec. 58.076. MONEY FOR LOAN GUARANTEE PROGRAM. The
14 authority may accept gifts and grants of money from the federal
15 government, local governments, private corporations, or other
16 persons for use in the fuel ethanol and biodiesel producer loan
17 guarantee program. The legislature may appropriate money for the
18 program.

19 Sec. 58.077. FUEL ETHANOL AND BIODIESEL PRODUCER LOAN
20 GUARANTEE ACCOUNT. (a) The fuel ethanol and biodiesel producer
21 loan guarantee account is an account in the Texas agricultural
22 fund. Money in the account may be used for purposes authorized by
23 this subchapter.

24 (b) The account consists of funds and transfers made to the
25 account, grants and donations made for the purposes of the fuel
26 ethanol and biodiesel producer loan guarantee program, income
27 earned on money in the account, and any other money received under

1 this subchapter. Notwithstanding Section 404.071, Government
2 Code, income and interest earned on money in the account shall be
3 deposited to the credit of the account. At the end of each state
4 fiscal year the authority shall transfer to the general credit of
5 the Texas agricultural fund any interest earned on the account that
6 remains after payment of any administrative expenses of the
7 program. The account is exempt from the application of Section
8 403.095, Government Code.

9 (c) The board may spend not more than \$100,000 during each
10 state fiscal year from income earned on the account and from fees
11 collected by the authority under Section 58.073 to pay the costs of
12 administering the program.

13 (d) The board shall attempt to administer the fund in a
14 manner that makes private donations to the fund an eligible
15 itemized deduction for federal income taxation purposes.

16 (e) The board has the same authority in administering the
17 fuel ethanol and biodiesel producer loan guarantee program as it
18 has in administering other programs established by this chapter.

19 SECTION 2. This Act takes effect September 1, 2009.