

1 AN ACT

2 relating to the establishment of a program by the Department of
3 Agriculture to make grants to encourage the construction of
4 facilities that generate electric energy with certain types of
5 agricultural residues, waste, debris, or crops and to the state's
6 goal for generating renewable energy.

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

8 SECTION 1. Title 2, Agriculture Code, is amended by adding
9 Chapter 22 to read as follows:

10 CHAPTER 22. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION

11 INCENTIVE PROGRAM

12 Sec. 22.001. POLICY AND PURPOSE. It is the policy of this
13 state and the purpose of this chapter to reduce air pollution,
14 improve air quality, protect public health, help this state
15 diversify its energy supply, and divert waste from landfills
16 through new price-support incentives to encourage the construction
17 of facilities to generate electric energy with certain types of
18 agricultural residues, forest wood waste, urban wood waste,
19 storm-generated biomass debris, and energy-dedicated crops.

20 Sec. 22.002. DEFINITIONS. In this chapter:

21 (1) "Diverter":

22 (A) means:

23 (i) a person or facility that qualifies for
24 an exemption under Section 361.111 or 363.006, Health and Safety

1 Code;

2 (ii) a handler of nonhazardous industrial
3 waste that is registered or permitted under Chapter 361, Health and
4 Safety Code; or

5 (iii) a facility that separates recyclable
6 materials from a municipal solid waste stream and that is
7 registered or permitted under Chapter 363, Health and Safety Code,
8 as a municipal solid waste management facility; and

9 (B) does not include a facility that uses biomass
10 to generate electric energy.

11 (2) "Farmer" means the owner or operator of an
12 agricultural facility that produces qualified agricultural
13 biomass.

14 (3) "Forest wood waste" includes residual tops and
15 limbs of trees, unused cull trees, pre-commercial thinnings, and
16 wood or debris from noncommercial tree species, slash, or brush.

17 (4) "Logger" means a harvester of forest wood waste,
18 regardless of whether the harvesting occurs as a part of the
19 harvesting of merchantable timber.

20 (5) "Qualified agricultural biomass" means:

21 (A) agricultural residues that are of a type that
22 historically have been disposed of in a landfill, relocated from
23 their point of origin and stored in a manner not intended to enhance
24 or restore the soil, burned in open fields in the area from which
25 they are derived, or burned in fields and orchards that continue to
26 be used for the production of agricultural goods, and includes:

27 (i) field or seed crop residues, including

1 straw from rice or wheat;

2 (ii) fruit or nut crop residues, including
3 orchard or vineyard prunings and removals;

4 (iii) forest wood waste or urban wood
5 waste; and

6 (iv) agricultural livestock waste
7 nutrients; and

8 (B) a crop grown and used specifically for its
9 energy generation value, including a crop consisting of a
10 fast-growing tree species.

11 (6) "Storm-generated biomass debris" means
12 biomass-based residues that result from a natural weather event,
13 including a hurricane, tornado, or flood, that would otherwise be
14 disposed of in a landfill or burned in the open. The term includes:

15 (A) trees, brush, and other vegetative matter
16 that have been damaged or felled by severe weather but that would
17 not otherwise qualify as forest wood waste; and

18 (B) clean solid wood waste that has been damaged
19 by severe weather but that would not otherwise qualify as urban wood
20 waste.

21 (7) "Urban wood waste" means:

22 (A) solid wood waste material, other than
23 pressure-treated, chemically treated, or painted wood waste, that
24 is free of rubber, plastic, glass, nails, or other inorganic
25 material; and

26 (B) landscape or right-of-way trimmings.

27 Sec. 22.003. GRANT PROGRAM. (a) The department shall

1 develop and administer an agricultural biomass and landfill
2 diversion incentive program to make grants to farmers, loggers, and
3 diverters who provide qualified agricultural biomass, forest wood
4 waste, urban wood waste, or storm-generated biomass debris to
5 facilities that use biomass to generate electric energy in order to
6 provide an incentive for the construction of facilities for that
7 purpose and to:

8 (1) promote economic development;

9 (2) encourage the use of renewable sources in the
10 generation of electric energy;

11 (3) reduce air pollution caused by burning
12 agricultural biomass, forest wood waste, urban wood waste, or
13 storm-generated biomass debris in open fields; and

14 (4) divert waste from landfills.

15 (b) Subject to Section 22.005, a farmer, logger, or diverter
16 is entitled to receive a grant in the amount of \$20 for each
17 bone-dry ton of qualified agricultural biomass, forest wood waste,
18 urban wood waste, or storm-generated biomass debris provided by the
19 farmer, logger, or diverter in a form suitable for generating
20 electric energy to a facility that:

21 (1) is located in this state;

22 (2) was placed in service after August 31, 2009;

23 (3) generates electric energy sold to a third party by
24 using qualified agricultural biomass, forest wood waste, urban wood
25 waste, or storm-generated biomass debris;

26 (4) uses the best available emissions control
27 technology, considering the technical practicability and economic

1 reasonableness of reducing or eliminating the air contaminant
2 emissions resulting from the facility;

3 (5) maintains its emissions control equipment in good
4 working order; and

5 (6) is in compliance with its operating permit issued
6 by the Texas Commission on Environmental Quality under Chapter 382,
7 Health and Safety Code.

8 (c) The commissioner by rule may authorize a grant to be
9 made for providing each bone-dry ton of a type or source of
10 qualified agricultural biomass, forest wood waste, urban wood
11 waste, or storm-generated biomass debris in an amount that is
12 greater than the amount provided by Subsection (b) if the
13 commissioner determines that a grant in a greater amount is
14 necessary to provide an adequate incentive to use that type or
15 source of qualified agricultural biomass, forest wood waste, urban
16 wood waste, or storm-generated biomass debris to generate electric
17 energy.

18 (d) The Public Utility Commission of Texas and the Texas
19 Commission on Environmental Quality shall assist the department as
20 necessary to enable the department to determine whether a facility
21 meets the requirements of Subsection (b) for purposes of the
22 eligibility of farmers, loggers, and diverters for grants under
23 this chapter.

24 (e) To receive a grant under this chapter, a farmer, logger,
25 or diverter must deliver qualified agricultural biomass, forest
26 wood waste, urban wood waste, or storm-generated biomass debris to
27 a facility described by Subsection (b). The operator of each

1 facility described by that subsection shall:

2 (1) verify and document the amount of qualified
3 agricultural biomass, forest wood waste, urban wood waste, or
4 storm-generated biomass debris delivered to the facility for the
5 generation of electric energy; and

6 (2) make a grant on behalf of the department in the
7 appropriate amount to each farmer, logger, or diverter who delivers
8 qualified agricultural biomass, forest wood waste, urban wood
9 waste, or storm-generated biomass debris to the facility.

10 (f) The department quarterly shall reimburse each operator
11 of a facility described by Subsection (b) for grants under this
12 chapter made by the operator during the preceding quarter to
13 eligible farmers, loggers, and diverters. To receive reimbursement
14 for one or more grants, an operator of a facility described by that
15 subsection must file an application with the department that
16 verifies the amount of the grants made by the operator during the
17 preceding quarter for which the operator seeks reimbursement.

18 (g) The department may contract with and provide for the
19 compensation of private consultants, contractors, and other
20 persons to assist the department in administering the agricultural
21 biomass and landfill diversion incentive program.

22 Sec. 22.004. AGRICULTURAL BIOMASS AND LANDFILL DIVERSION
23 INCENTIVE PROGRAM ACCOUNT. (a) The agricultural biomass and
24 landfill diversion incentive program account is an account in the
25 general revenue fund. The account is composed of:

26 (1) legislative appropriations;

27 (2) gifts, grants, donations, and matching funds

1 received under Subsection (b); and

2 (3) other money required by law to be deposited in the
3 account.

4 (b) The department may solicit and accept gifts in kind,
5 donations, and grants of money from the federal government, local
6 governments, private corporations, or other persons to be used for
7 the purposes of this chapter.

8 (c) Money in the account may be appropriated only to the
9 department for the purpose of implementing and maintaining the
10 agricultural biomass and landfill diversion incentive program.

11 (d) Income from money in the account shall be credited to
12 the account.

13 (e) The account is exempt from the application of Section
14 403.095, Government Code.

15 Sec. 22.005. LIMITATION ON GRANT AMOUNT. (a) The total
16 amount of grants awarded by operators of facilities under Section
17 22.003 and by the department under Section 22.006 during each state
18 fiscal year may not exceed \$30 million.

19 (b) During each state fiscal year, the department may not
20 pay to an operator of a facility as reimbursements under Section
21 22.003 or grants under Section 22.006 an amount that exceeds \$6
22 million.

23 Sec. 22.006. ELIGIBILITY OF OPERATORS OF ELECTRIC ENERGY
24 GENERATION FACILITIES FOR GRANTS. (a) Except as provided by
25 Subsection (b), an operator of a facility that uses biomass to
26 generate electric energy is not eligible to receive a grant under
27 this chapter or under any other state law for the generation of

1 electric energy with qualified agricultural biomass, forest wood
2 waste, urban wood waste, or storm-generated biomass debris for
3 which a farmer, logger, or diverter has received a grant under this
4 chapter.

5 (b) An operator of a facility that uses biomass to generate
6 electric energy may receive a grant from the department under this
7 chapter for generating electric energy with qualified agricultural
8 biomass, forest wood waste, urban wood waste, or storm-generated
9 biomass debris that arrives at the facility in a form unsuitable for
10 generating electric energy and that the facility processes into a
11 form suitable for generating electric energy.

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

24 Sec. 22.007. RULES. The commissioner, in consultation with
25 the Public Utility Commission of Texas and the Texas Commission on
26 Environmental Quality, shall adopt rules to implement this chapter.

27 Sec. 22.008. AVAILABILITY OF FUNDS. Notwithstanding any

1 other provision of this chapter, the department is not required to
2 administer this chapter or adopt rules under this chapter, and the
3 operator of a facility described by Section 22.003(b) is not
4 required to make a grant on behalf of the department, until funds
5 are appropriated for those purposes.

6 Sec. 22.009. EXPIRATION OF PROGRAM AND CHAPTER. The
7 agricultural biomass and landfill diversion incentive program
8 terminates on August 31, 2019. On September 1, 2019:

9 (1) any unobligated funds remaining in the
10 agricultural biomass and landfill diversion incentive program
11 account shall be transferred to the undedicated portion of the
12 general revenue fund; and

13 (2) this chapter expires.

14 SECTION 2. Section 39.904, Utilities Code, is amended by
15 amending Subsection (m) and adding Subsections (m-1), (m-2), (m-3),
16 and (o) to read as follows:

17 (m) A renewable energy credit retired for purposes other
18 than to meet the requirements of Subsection (c)(1) may not affect
19 the minimum annual renewable energy requirement under Subsection
20 (c)(1) for a retail electric provider, municipally owned utility,
21 or electric cooperative.

22 (m-1) As provided by this subsection, the commission shall
23 reduce the requirement under Subsection (c)(1) for a retail
24 electric provider, municipally owned utility, or electric
25 cooperative that is subject to a renewable energy requirement under
26 this section and that serves a customer receiving electric service
27 at transmission-level voltage if, before any year for which the

1 commission calculates renewable energy requirements under
2 Subsection (c)(1), the customer notifies the commission in writing
3 that the customer chooses not to support the goal for renewable
4 energy generation under this section for that year. The commission
5 shall exclude from the calculation of a retail electric provider's,
6 municipally owned utility's, or electric cooperative's requirement
7 under Subsection (c)(1) energy sold by the retail electric
8 provider, municipally owned utility, or electric cooperative at
9 transmission-level voltage to customers who have submitted the
10 notice to the commission under this subsection for the applicable
11 year.

12 (m-2) The commission shall determine the reporting
13 requirements and schedule necessary to implement Subsections (m)
14 and (m-1).

15 (m-3) Subsections (m), (m-1), and (m-2) do not alter the
16 renewable energy goals or targets established in Subsection (a) or
17 reduce the minimum statewide renewable energy requirements of
18 Subsection (c)(1) [~~Notwithstanding any other provision of law, the~~
19 ~~commission shall ensure that all renewable capacity installed in~~
20 ~~this state and all renewable energy credits awarded, produced,~~
21 ~~procured, or sold from renewable capacity in this state are counted~~
22 ~~toward the goal in Subsection (a)].~~

23 (o) The commission may establish an alternative compliance
24 payment. An entity that has a renewable energy purchase
25 requirement under this section may elect to pay the alternative
26 compliance payment instead of applying renewable energy credits
27 toward the satisfaction of the entity's obligation under this

1 section. The commission may establish a separate alternative
2 compliance payment for the goal of 500 megawatts of capacity from
3 renewable energy technologies other than wind energy. The
4 alternative compliance payment for a renewable energy purchase
5 requirement that could be satisfied with a renewable energy credit
6 from wind energy may not be less than \$2.50 per credit or greater
7 than \$20 per credit. Prior to September 1, 2009, an alternative
8 compliance payment under this subsection may not be set above \$5 per
9 credit. In implementing this subsection, the commission shall
10 consider:

11 (1) the effect of renewable energy credit prices on
12 retail competition;

13 (2) the effect of renewable energy credit prices on
14 electric rates;

15 (3) the effect of the alternative compliance payment
16 level on the renewable energy credit market; and

17 (4) any other factors necessary to ensure the
18 continued development of the renewable energy industry in this
19 state while protecting ratepayers from unnecessary rate increases.

20 SECTION 3. (a) The commissioner of agriculture, in
21 consultation with the Texas Forest Service, shall conduct a study
22 to determine the volume of wood waste in the East Texas and Central
23 Texas forest regions of this state.

24 (b) Not later than January 1, 2009, the commissioner of
25 agriculture shall prepare and present to the governor, the
26 lieutenant governor, the speaker of the house of representatives,
27 and each member of the legislature a report describing the results

1 of the study.

2 SECTION 4. (a) The Public Utility Commission of Texas shall
3 conduct a study of the effect that Section 39.904, Utilities Code,
4 has had on:

5 (1) market power in this state; and

6 (2) the rates paid for electricity by residential
7 customers in this state.

8 (b) Not later than January 1, 2009, the Public Utility
9 Commission of Texas shall prepare and present to the governor,
10 lieutenant governor, and speaker of the house of representatives a
11 report describing the results of the study that specifies any
12 changes in market power and any costs to or savings for residential
13 customers because of the implementation of Section 39.904,
14 Utilities Code.

15 SECTION 5. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 1090 was passed by the House on May 1, 2007, by the following vote: Yeas 144, Nays 1, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1090 on May 21, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1090 on May 26, 2007, by the following vote: Yeas 139, Nays 4, 2 present, not voting.

Chief Clerk of the House

H.B. No. 1090

I certify that H.B. No. 1090 was passed by the Senate, with amendments, on May 17, 2007, by the following vote: Yeas 28, Nays 3; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1090 on May 27, 2007, by the following vote: Yeas 27, Nays 3.

Secretary of the Senate

APPROVED: _____

Date

Governor