Agricultural Biomass and Landfill Diversion Incentive

By
CSG Committee on Suggested State Legislation [1]
Thursday, May 29, 2008 at 12:00 AM

Suggested State Legislation: This Act establishes a program to provide grants to farmers, loggers, and others who provide agricultural biomass to facilities in the state that generate electric energy and use the best available emissions control technology.

The bill entitles farmers, loggers, or diverters $20 per each ton of bone-dry agricultural biomass suitable for biomass conversion. The bill authorizes the department of agriculture to grant no more than $30 million each fiscal year. The grants to the farmers, loggers, and diverters will be made by the operators of the electric generation facilities. Operators that process unsuitable biomass into a form suitable for producing electric energy are also eligible for grants under this program. The bill provides that the facility operators are reimbursed on a quarterly basis by department of agriculture, after filing out an application with the agency that verifies the amount of qualified agricultural biomass processed into a form suitable for generating electric energy. The bill limits the amount an operator can receive to no more than $6 million.

This Act creates an Agricultural Biomass and Landfill Diversion Incentive Program Account in the state General Revenue Fund, consisting of money transferred to the account at the direction of the Legislature, gifts, grants, donations and money from any other sources to be used by the department of agriculture to implement the incentive program.

Submitted as:
Texas
HB1090 (Enrolled version)
Status: Enacted into law in 2007.

Download the PDF Version [3]

Section 1. [Short Title.] This Act can be cited as “An Act to Create an Agricultural Biomass and Landfill Incentive Program.”

Section 2. [Definitions.] As used in this [chapter]:
(1) “Farmer” means the owner or operator of an agricultural facility that produces qualified agricultural biomass.
(2) “Logger” means a harvester of forest wood waste, regardless of whether the harvesting occurs as a part of the harvesting of merchantable timber.
“Diverter” means:
(A) a person or facility that qualifies for an exemption under [insert citation];
(B) a handler of nonhazardous industrial waste that is registered or permitted under [insert citation]; or
(C) a facility that separates recyclable materials from a municipal solid waste stream and that is registered or permitted under [insert citation] as a municipal solid waste management facility; and
(D) does not include a facility that uses biomass to generate electric energy.

“Forest wood waste” includes residual tops and limbs of trees, unused cull trees, pre-commercial thinnings, and wood or debris from noncommercial tree species, slash, or brush.

“Qualified agricultural biomass” means:
(A) agricultural residues that are of a type that historically have been disposed of in a landfill, relocated from their point of origin and stored in a manner not intended to enhance or restore the soil, burned in open fields in the area from which they are derived, or burned in fields and orchards that continue to be used for the production of agricultural goods, and includes:
(i) field or seed crop residues, including straw from rice or wheat;
(ii) fruit or nut crop residues, including orchard or vineyard prunings and removals;
(iii) forest wood waste or urban wood waste; and
(iv) agricultural livestock waste nutrients; and
(B) a crop grown and used specifically for its energy generation value, including a crop consisting of a fast-growing tree species.

“Storm-generated biomass debris” means biomass-based residues that result from a natural weather event, including a hurricane, tornado, or flood, that would otherwise be disposed of in a landfill or burned in the open. The term includes:
(A) trees, brush, and other vegetative matter that have been damaged or felled by severe weather but that would not otherwise qualify as forest wood waste; and
(B) clean solid wood waste that has been damaged by severe weather but that would not otherwise qualify as urban wood waste.

“Urban wood waste” means:
(A) solid wood waste material, other than pressure-treated, chemically treated, or painted wood waste, that is free of rubber, plastic, glass, nails, or other inorganic material; and
(B) landscape or right-of-way trimmings.

Section 3. [Agricultural Biomass and Landfill Diversion Incentive Program.]
(a) The [department] shall develop and administer an Agricultural Biomass and Landfill Diversion Incentive Program to make grants to farmers, loggers, and diverters who provide qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to facilities that use biomass to generate electric energy in order to provide an incentive for the construction of facilities for that purpose and to:
(1) promote economic development;
(2) encourage the use of renewable sources in the generation of electric energy;
(3) reduce air pollution caused by burning agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris in open fields; and
(4) divert waste from landfills.
(b) Subject to Section 5 of this Act, a farmer, logger, or diverter is entitled to receive a grant in the amount of [$20] for each bone-dry ton of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris provided by the farmer, logger, or diverter in a form suitable for generating electric energy to a facility that:
(1) is located in this state;
(2) was placed in service after [August 31, 2009];
(3) generates electric energy sold to a third party by using qualified agricultural biomass, forest wood
waste, urban wood waste, or storm-generated biomass debris; 
(4) uses the best available emissions control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the air contaminant emissions resulting from the facility; 
(5) maintains its emissions control equipment in good working order; and 
(6) is in compliance with its operating permit issued by the [Commission on Environmental Quality] under [insert citation].

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

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

(e) To receive a grant under this [chapter], a farmer, logger, or diverter must deliver qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to a facility described by Subsection (f). The operator of each facility described by that subsection shall:

(1) verify and document the amount of qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris delivered to the facility for the generation of electric energy; and 
(2) make a grant on behalf of the [department] in the appropriate amount to each farmer, logger, or diverter who delivers qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris to the facility.

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

(g) The [department] may contract with and provide for the compensation of private consultants, contractors, and other persons to assist the [department] in administering the Agricultural Biomass and Landfill Diversion Incentive Program.

Section 4. [Agricultural Biomass and Landfill Diversion Incentive Program Account.] 
(a) There is created an [Agricultural Biomass and Landfill Diversion Incentive Program Account] as an account in the [General Revenue Fund]. The account is composed of:

(1) legislative appropriations;
(2) gifts, grants, donations, and matching funds received under Subsection (b); and 
(3) other money required by law to be deposited in the account.

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

(c) Money in the account may be appropriated only to the [department] for the purpose of implementing and maintaining the Agricultural Biomass and Landfill Diversion Incentive Program.

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

(e) The account is exempt from the [insert citation].

Section 5. [Limitation on Grant Amount.]
(a) The total amount of grants awarded by operators of facilities under this [chapter] during each state fiscal year shall not exceed [$30 million].

(b) During each state fiscal year, the [department] may not pay to an operator of a facility as reimbursements under this [chapter] an amount that exceeds [$6 million].

Section 6. [Eligibility of Operators of Electric Energy Generation Facilities for Grants.]
(a) Except as provided by Subsection (b), an operator of a facility that uses biomass to generate electric energy is not eligible to receive a grant under this [chapter] or under any other state law for the generation of electric energy with qualified agricultural biomass, forest wood waste, urban wood waste, or storm-generated biomass debris for which a farmer, logger, or diverter has received a grant under this [chapter].

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

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

Section 7. [Rules.] The [commissioner], in consultation with the [Public Utility Commission] and the [Commission on Environmental Quality], shall adopt rules to implement this [chapter].

Section 8. [Availability of Funds.] Notwithstanding any other provision of this [chapter], the [department] is not required to administer this [chapter] or adopt rules under this [chapter], and the operator of a facility is not required to make a grant on behalf of the [department], until funds are appropriated for those purposes.

Section 9. [Expiration of Program and Chapter]. The Agricultural Biomass and Landfill Diversion Incentive Program terminates on [August 31, 2019]. On [September 1, 2019] any unobligated funds remaining in the Agricultural Biomass and Landfill Diversion Incentive Program Account shall be transferred to the undedicated portion of the [General Revenue Fund]; and this [chapter] expires.

Section 10. [Severability.] [Insert severability clause.]

Section 11. [Repealer.] [Insert repealer clause.]

Section 12. [Effective Date.] [Insert effective date.]
