

Chapter 1196

AN ACT

relating to the agricultural biomass and landfill diversion incentive program.

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

SECTION 1. Section 22.002, Agriculture Code, is amended by amending Subdivisions (1) and (5) and adding Subdivisions (1-a) and (5-a) to read as follows:

(1) "Co-firing biomass" means a solid fuel that:

(A) contains qualified agricultural biomass;

(B) is produced by a renewable biomass aggregator and bio-coal fuel producer; and

(C) is used to supplement coal combustion for the generation of electricity.

(1-a) "Diverter":

(A) means:

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

(ii) a handler of nonhazardous industrial waste that is registered or permitted under Chapter 361, Health and Safety Code; ~~[or]~~

(iii) a facility that separates recyclable materials from a municipal solid waste stream and that is registered or permitted under Chapter 363, Health and Safety Code,

1 as a municipal solid waste management facility; or
2 (iv) a renewable biomass aggregator and
3 bio-coal fuel producer that operates an integrated harvesting,
4 transportation, and solid biofuel conversion facility for
5 qualified agricultural biomass; and

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

8 (5) "Qualified agricultural biomass" means:

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

15 (i) field or seed crop residues, including
16 straw from rice or wheat, cotton gin trash, corn stover, grain
17 sorghum (milo) harvest residues, sugarcane bagasse, and
18 switchgrass;

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

21 (iii) forest wood waste or urban wood
22 waste, including state designated forest management cuttings and
23 brush management cuttings from private lands; and

24 (iv) agricultural livestock waste
25 nutrients; and

26 (B) a crop grown and used specifically for its
27 energy generation value, including a crop consisting of a

1 fast-growing tree species.

2 (5-a) "Renewable biomass aggregator and bio-coal fuel
3 producer" means an operator of an integrated harvesting,
4 transportation, and fuel conversion facility that aggregates
5 qualified agricultural or forest biomass and produces renewable
6 fuel suitable for replacing coal or co-firing with coal.

7 SECTION 2. Section 22.003, Agriculture Code, is amended by
8 amending Subsections (a), (b), (c), (d), (e), and (f) and adding
9 Subsection (h) to read as follows:

10 (a) The department shall develop and administer an
11 agricultural biomass and landfill diversion incentive program to
12 make grants to farmers, loggers, ~~and~~ diverters, and renewable
13 biomass aggregators and bio-coal fuel producers who provide
14 qualified agricultural biomass, forest wood waste, urban wood
15 waste, co-firing biomass, or storm-generated biomass debris to
16 facilities that use biomass to generate electric energy in order to
17 provide an incentive for the construction of facilities for that
18 purpose and to:

19 (1) promote economic development;

20 (2) encourage the use of renewable sources in the
21 generation of electric energy;

22 (3) reduce air pollution caused by burning
23 agricultural biomass, forest wood waste, urban wood waste,
24 co-firing biomass, or storm-generated biomass debris in open
25 fields; and

26 (4) divert waste from landfills.

27 (b) Subject to Section 22.005, a farmer, logger, ~~or~~

1 diverter, or renewable biomass aggregator and bio-coal fuel
2 producer is entitled to receive a grant in the amount of \$20 for
3 each bone-dry ton of qualified agricultural biomass, forest wood
4 waste, urban wood waste, co-firing biomass, or storm-generated
5 biomass debris provided by the farmer, logger, [~~or~~] diverter, or
6 renewable biomass aggregator and bio-coal fuel producer in a form
7 suitable for generating electric energy to a facility that:

8 (1) is located in this state;

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

10 (3) generates electric energy sold to a third party by
11 using qualified agricultural biomass, forest wood waste, urban wood
12 waste, co-firing biomass, or storm-generated biomass debris;

13 (4) uses the best available emissions control
14 technology, considering the technical practicability and economic
15 reasonableness of reducing or eliminating the air contaminant
16 emissions resulting from the facility;

17 (5) maintains its emissions control equipment in good
18 working order; and

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

22 (c) The commissioner by rule may authorize a grant to be
23 made for providing each bone-dry ton of a type or source of
24 qualified agricultural biomass, forest wood waste, urban wood
25 waste, co-firing biomass, or storm-generated biomass debris in an
26 amount that is greater than the amount provided by Subsection (b) if
27 the commissioner determines that a grant in a greater amount is

1 necessary to provide an adequate incentive to use that type or
2 source of qualified agricultural biomass, forest wood waste, urban
3 wood waste, co-firing biomass, or storm-generated biomass debris to
4 generate electric energy.

5 (d) The Public Utility Commission of Texas and the Texas
6 Commission on Environmental Quality shall assist the department as
7 necessary to enable the department to determine whether a facility
8 meets the requirements of Subsection (b) for purposes of the
9 eligibility of farmers, loggers, [~~and~~] diverters, and renewable
10 biomass aggregators and bio-coal fuel producers for grants under
11 this chapter.

12 (e) To receive a grant under this chapter, a farmer, logger,
13 [~~or~~] diverter, or renewable biomass aggregator and bio-coal fuel
14 producer must deliver qualified agricultural biomass, forest wood
15 waste, urban wood waste, co-firing biomass, or storm-generated
16 biomass debris to a facility described by Subsection (b). The
17 operator of each facility described by that subsection shall:

18 (1) verify and document the amount of qualified
19 agricultural biomass, forest wood waste, urban wood waste,
20 co-firing biomass, or storm-generated biomass debris delivered to
21 the facility for the generation of electric energy; and

22 (2) make a grant on behalf of the department in the
23 appropriate amount to each farmer, logger, [~~or~~] diverter, or
24 renewable biomass aggregator and bio-coal fuel producer who
25 delivers qualified agricultural biomass, forest wood waste, urban
26 wood waste, co-firing biomass, or storm-generated biomass debris to
27 the facility.

1 (f) The department quarterly shall reimburse each operator
2 of a facility described by Subsection (b) for grants under this
3 chapter made by the operator during the preceding quarter to
4 eligible farmers, loggers, ~~and~~ diverters, and renewable biomass
5 aggregators and bio-coal fuel producers. To receive reimbursement
6 for one or more grants, an operator of a facility described by that
7 subsection must file an application with the department that
8 verifies the amount of the grants made by the operator during the
9 preceding quarter for which the operator seeks reimbursement.

10 (h) Notwithstanding Subsection (b)(2), a facility placed in
11 service before August 31, 2009, is eligible for reimbursement under
12 this chapter if another facility placed in operation after August
13 31, 2009, is located 25 miles or less from the existing facility.

14 SECTION 3. Section 22.004(c), Agriculture Code, is amended
15 to read as follows:

16 (c) Money in the account may be appropriated only to the
17 department for the purpose of implementing, ~~and~~ maintaining, and
18 administering the agricultural biomass and landfill diversion
19 incentive program.

20 SECTION 4. The heading to Section 22.005, Agriculture Code,
21 is amended to read as follows:

22 Sec. 22.005. LIMITATION ON GRANT AMOUNT; SCHEDULE OF
23 PAYMENTS.

24 SECTION 5. Section 22.005, Agriculture Code, is amended by
25 adding Subsection (c) to read as follows:

26 (c) On a determination that money in the agricultural
27 biomass and landfill diversion incentive account is insufficient to

1 pay reimbursements under Section 22.003 or grants under Section
2 22.006, the department, in consultation with interested parties,
3 may develop a proportionate and equitable schedule to pay the
4 reimbursements or grants. In developing a schedule to pay
5 reimbursements or grants under this subsection, the department may
6 consider a facility's:
7 (1) effect on wages and job creation or job retention;
8 (2) level of capital investment; and
9 (3) effect on the local economy and the economy of this
10 state.

11 SECTION 6. This Act takes effect September 1, 2009.

David Newkurt

President of the Senate

Jim Strawn

Speaker of the House

I certify that H.B. No. 4031 was passed by the House on April 28, 2009, by the following vote: Yeas 139, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4031 on May 29, 2009, by the following vote: Yeas 145, Nays 0, 1 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 4031 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0.

Aetsy Spaw

Secretary of the Senate

APPROVED:

19 JUN '09

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2 PM O'CLOCK

JUN 19 2009

Colby Hunter III