

HIGHLIGHTS OF HB 1090 (REPRESENTATIVE SWINFORD/SENATOR JACKSON)

HB 1090, authored by Representative David Swinford and sponsored by Senator Mike Jackson, provides incentives through a grant program at the Texas Department of Agriculture for the delivery of agricultural and wood waste materials to facilities that generate electricity through the use of biomass.

Under the bill, farmers, loggers and “diverters” are eligible to receive \$20 per dry ton for each ton of qualified biomass (agricultural waste, wood waste, urban wood waste and storm debris) that is delivered to a biomass power plant. The grant is paid to the farmer, logger or diverter by the power plant operator, who is then reimbursed on a quarterly basis by the Department.

To be eligible to disperse grants and receive reimbursements from the Department of Agriculture, the biomass facility must:

1. be located in Texas;
2. be placed in service after August 31, 2009;
3. generate electric energy sold to a third party by using qualified agricultural biomass, forest wood waste, urban wood waste or storm-generated biomass debris;
4. use 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. maintain its emissions control equipment in good working order; and
6. be in compliance with its operating permit issued by the Texas Commission on Environmental Quality.

A qualified biomass facility is unable to receive more than \$6 million in reimbursements from the Department on an annual basis. The state may make available for reimbursements no more than \$30 million per year. The grant program expires on August 31, 2019.

HB 1090 also requires the Commissioner of the Department of Agriculture, in consultation with the Texas Forest Service, to conduct a study to determine the volume of wood waste in the East Texas and Central Texas forest regions. The results of the study shall be reported no later than January 1, 2009 to the governor, lieutenant governor and the speaker of the House of Representatives.

HB 1090 was amended in the Senate to resolve a controversial and complex issue associated with the Texas renewable portfolio standard (RPS). HB 1090 keeps Texas’s voluntary and mandatory renewable energy markets whole by stating that, “a [voluntary] renewable energy credit retired for purposes other than to meet the requirements of [the RPS] may not affect the minimum annual renewable energy requirement under [the RPS] for a retail electric provider, municipally owned utility, or electric cooperative.”

In short, entities that must adhere to the requirements of the RPS may not reduce their RPS requirement by the amount of voluntary renewable energy developed in Texas. Put another way, entities required to meet the RPS cannot count as their own the renewable energy credits voluntarily retired in Texas by others.

In addition, given the fierce debate over renewable energy policy in Texas, HB 1090 also allows electricity customers served at the transmission level (largely industrial energy users and

manufacturers) to “opt-out” of the RPS if they so choose. Finally, HB 1090 allows the Commission to establish an “alternative compliance payment” to meet the RPS requirement. If the mechanism is created, an entity that has a renewable energy purchase requirement may pay the alternative compliance payment instead of applying renewable energy credits toward the satisfaction of the entity’s RPS obligation.

If adopted, the alternative compliance payment for a renewable energy purchase requirement from wind energy may not be less than \$2.50 per credit or greater than \$20 per credit. Prior to September 1, 2009, an alternative compliance payment may not be set above \$5 per credit. The Commission may establish a separate alternative compliance payment for non-wind renewable technologies.

The Public Utility Commission of Texas is required to conduct a study of the effect that the revised RPS has on:

1. market power; and
2. the rates paid for electricity by residential customers.

No later than January 1, 2009, the Public Utility Commission of Texas shall prepare the report and present it to the governor, lieutenant governor and speaker of the House of Representatives.