

## **BILL ANALYSIS**

Senate Research Center

H.B. 3168  
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Natural Resources  
5/17/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

There is currently debate about whether biodiesel negatively affects nitrogen oxide (NOx) emissions in Texas' nonattainment areas. The Environmental Protection Agency (EPA) has yet to put forth a clear stance on whether NOx increases or decreases with the use of biodiesel. This has forced the Texas Commission on Environmental Quality (TCEQ) to act as though NOx emissions increase with the use of biodiesel to ensure that the state meets state implementation plan requirements.

H.B. 3168 allows TCEQ to allow for the use of biodiesel until the EPA presents a clear policy surrounding the affects of biodiesel. H.B. 3168 prohibits TCEQ from pursuing rules through the TexLED program that are more stringent than EPA requirements.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 16.001, Agriculture Code, by amending Subdivisions (1) and (6) and adding Subdivision (4-a), as follows:

#### CHAPTER 16. FUEL, ETHANOL, RENEWABLE METHANE, AND BIODIESAL

##### PRODUCTION INCENTIVE PROGRAM

SECTION 2. Amends Section 16.001, Agriculture Code, by amending Subdivisions (1) and (6) and adding Subdivision (4-a), as follows:

- (a) Redefines "account."
- (4-a) Defines "renewable methane."
- (6) Redefines "producer."

SECTION 3. Amends Sections 16.002(a) and (b), Agriculture Code, as follows:

- (a) Includes renewable methane to the products for which a producer must apply to the Texas Economic Development and Tourism Office (office) for the registration of the plant to be eligible for a grant for fuel ethanol.
- (b) Requires an application for the registration of a plant to show to the satisfaction of the office that the plant is capable of producing fuel ethanol, renewable methane, or biodiesel.

SECTION 4. Amends Section 16.003(a), Agriculture Code, to include the number of gallons of fuel ethanol or biodiesel or MMBtu of renewable methane produced at each registered plant operated by the producer during the preceding month in the list of information that a producer is required to report to the office on or before the fifth day of each month.

SECTION 5. Amends the heading to Section 16.004, Agriculture Code, as follows:

Sec. 16.004. New heading: FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL PRODUCTION ACCOUNT.

SECTION 6. Amends Section 16.004(a), Agriculture Code, to provide that the fuel ethanol, renewable methane, and biodiesel production is an account in the general revenue fund that is authorized to be appropriated only to the office for the purposes of this chapter, including the making of a grant under this chapter.

SECTION 7. Amends the heading to Section 16.005, Agriculture Code, as follows:

Sec. 16.005. New heading: FEE ON FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL PRODUCTION.

SECTION 8. Amends Sections 16.005(a), (b), and (d), Agriculture Code, as follows:

(a) Requires the office to impose a fee on each producer in an amount equal to 3.2 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 1.6 cents for each gallon of biodiesel produced in each registered plant operated by the producer.

(b) Prohibits the office from imposing fees on a producer for more than 18 million gallons of fuel ethanol or biodiesel or MMBtu of renewable methane produced at any one registered plant for each fiscal year.

(d) Prohibits the office from imposing fees on a producer for fuel ethanol, renewable methane, or biodiesel produced at a registered plant after the 10th anniversary of the date production from the plant begins.

SECTION 9. Amends the heading to Section 16.006, Agriculture Code, as follows:

Sec. 16.006. New heading: FUEL ETHANOL, RENEWABLE METHANE, AND BIODIESEL GRANTS.

SECTION 10. Amends Sections 16.006(a), (b), (c), and (e), Agriculture Code, as follows:

(a) Requires the office to make grants to producers as an incentive for the development of the fuel ethanol, renewable methane, and biodiesel industry and agricultural production in this state after consultation with the Department of Agriculture (TDA).

(b) Entitles a producer to receive from the account 20 cents for each gallon of fuel ethanol or MMBtu of renewable methane and 10 cents for each gallon of biodiesel produced in each registered plant operated by the producer until the 10th anniversary of the date production from the plant begins.

(c) Prohibits a producer from receiving grants for more than 18 million gallons of fuel ethanol or biodiesel or MMBtu of renewable methane produced at any one registered plant for each fiscal year.

(e) Requires the office to proportionately reduce the amount of each grant for each gallon of fuel ethanol or biodiesel or each MMBtu of renewable methane produced as necessary to continue the incentive program during the remainder of the fiscal year if the office makes a certain determination.

SECTION 11. Amends Chapter 16, Agriculture Code, by adding Section 16.007, as follows:

Sec. 16.007. REGULATION OF FUEL ETHANOL OR BIODIESEL IN A MANNER MORE STRINGENT THAN FEDERAL LAW. (a) Defines "state agency."

(b) Prohibits a state agency from adopting or implementing rules in a manner that restricts the production or distribution of fuel ethanol or biodiesel if the rules

impose a restriction more stringent than federal law provides, except as provided by this section and the Reid Vapor pressure requirements for gasoline used as control measures in the state implementation plan.

(c) Provides that after January 1, 2009, Subsection (b) does not apply to a rule adopted by the Texas Commission on Environmental Quality (TCEQ) if TCEQ determines that without imposing the restriction provided by the rule emissions generated by using fuel ethanol or biodiesel will materially jeopardize compliance with the state implementation plan for attaining national ambient air quality standards.

SECTION 12. (a) Requires the State Energy Conservation Office (SECO) to prepare a report that provides a coherent strategy for and recommends mechanisms for increasing the availability of low-emissions automotive fuels. Sets forth certain recommendations, proposed mechanisms, assessments, and statutory changes that must be included in the report.

(b) Requires SECO to include an analysis of the life cycle emissions for the fuel and a determination of how well the fuel achieves the goal of producing at least 20 percent less emissions over its life cycle than conventional gasoline for each fuel in the list of fuels recommended under this section. Provides that the life cycle of a fuel includes emissions that occur in the production of the fuel. Provides that if part of the fuel's production process includes carbon capture and storage, also known as carbon sequestration, the resulting reduction in carbon dioxide emissions is included in computing the life cycle emissions for the fuel.

(c) Authorizes SECO to establish a task force to assist in developing the strategy and recommendations required by Subsections (a) and (b) of this section.

(d) Requires SECO to deliver the report required by this section to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary jurisdiction over environmental, economic, and transportation matters not later than October 1, 2008.

SECTION 13. Makes application of the changes in a fee charged or a payment made for the production of biodiesel under Sections 16.005 and 16.006, Agriculture Code, as amended by this Act, prospective.

SECTION 14. Effective date: upon passage or September 1, 2007.