

By: Landgraf, Bell of Montgomery

H.B. No. 4472

A BILL TO BE ENTITLED

AN ACT

relating to the Texas emissions reduction plan.

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

SECTION 1. Section 386.051(b), Health and Safety Code, is amended to read as follows:

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under Section 386.252(a);

(7) a health effects study as provided by Section 386.252(a);

(8) air quality planning activities as provided by Section 386.252(d);

1 (9) a contract with the Energy Systems Laboratory at
2 the Texas A&M Engineering Experiment Station for computation of
3 creditable statewide emissions reductions as provided by Section
4 386.252(a);

5 (10) the Texas clean fleet program established under
6 Chapter 392;

7 (11) the Texas alternative fueling facilities program
8 established under Chapter 393;

9 (12) the Texas natural gas vehicle grant program
10 established under Chapter 394;

11 (13) other programs the commission may develop that
12 lead to reduced emissions of nitrogen oxides, particulate matter,
13 or volatile organic compounds in a nonattainment area or affected
14 county;

15 (14) other programs the commission may develop that
16 support congestion mitigation to reduce mobile source ozone
17 precursor emissions;

18 (15) the seaport and rail yard areas emissions
19 reduction program established under Subchapter D-1;

20 (16) conducting research and other activities
21 associated with making any necessary demonstrations to the United
22 States Environmental Protection Agency to account for the impact of
23 foreign emissions or an exceptional event;

24 (17) studies of or pilot programs for incentives for
25 port authorities located in nonattainment areas or affected
26 counties as provided by Section 386.252(a); ~~and~~

27 (18) the governmental alternative fuel fleet grant

1 program established under Chapter 395;

2 (19) the purchase, maintenance, upgrade, and
3 operation of air monitoring equipment as provided by Section
4 386.252(a);

5 (20) fee-based contracts entered into under the
6 program established under Section 386.058;

7 (21) the energy efficiency loan guarantee program
8 established under Section 388.013; and

9 (22) remittance of funds to the state highway fund for
10 use by the Texas Department of Transportation for congestion
11 mitigation and air quality improvement projects in nonattainment
12 areas.

13 SECTION 2. Section 386.057, Health and Safety Code, is
14 amended by adding Subsection (e) to read as follows:

15 (e) Not later than October 1 of each year, the Texas
16 Department of Transportation shall report to the commission the
17 following information for all congestion mitigation and air quality
18 improvement projects in nonattainment areas that are planned to be
19 funded, or received initial funding during the preceding 10 years,
20 from money received by the department under Section 386.250:

21 (1) projects to mitigate congestion and improve air
22 quality that are currently planned;

23 (2) projects to mitigate congestion and improve air
24 quality that have been completed;

25 (3) estimated emissions reductions for all planned and
26 completed congestion mitigation projects; and

27 (4) estimated cost per ton analysis of reduced

1 emissions of nitrogen oxides, particulate matter, or volatile
2 organic compounds for each congestion mitigation project planned or
3 completed.

4 SECTION 3. Subchapter B, Chapter 386, Health and Safety
5 Code, is amended by adding Section 386.058 to read as follows:

6 Sec. 386.058. FEE-BASED CONTRACTS FOR PURCHASE OF
7 REDUCTIONS IN EMISSIONS OF NITROGEN OXIDES. (a) The commission by
8 rule shall establish a program authorizing the commission to enter
9 into fee-based contracts for the purchase of reductions in
10 emissions of nitrogen oxides.

11 (b) The program established under this section must:

12 (1) specify the types of projects that are eligible
13 for fee-based contracts under the program, such as marine emission
14 capture systems;

15 (2) measure nitrogen oxides emissions input and output
16 on a continuous basis;

17 (3) require nitrogen oxides emissions reduced under
18 the contract to be verified and certified by the commission;

19 (4) assign a dollar per ton fee based solely on the
20 dollar per ton cost of the reduction in emissions of nitrogen
21 oxides;

22 (5) require payments under the contract to be made
23 only for actual reductions in nitrogen oxides emissions that are
24 verified by the commission; and

25 (6) authorize the commission to enter into multiyear
26 contracts under the program.

27 (c) Notwithstanding Section 386.055:

1 (1) the commission may enter into a fee-based contract
2 under the program established under this section for a project
3 involving a new emissions reduction measure that would otherwise
4 generate marketable credits under a state or federal emissions
5 reduction credit averaging, banking, or trading program if, during
6 the term of the contract, the project is not used for credit under
7 any state or federal emissions reduction credit averaging, banking,
8 or trading program; and

9 (2) a project that was subject to a fee-based contract
10 under the program established under this section may be used for
11 credit under a state or federal emissions reduction credit
12 averaging, banking, or trading program if:

13 (A) the contract has expired or otherwise
14 terminated and the project is not subject to any other fee-based
15 contract entered into under the program established under this
16 section; and

17 (B) the project otherwise meets the requirements
18 of the applicable state or federal emissions reduction credit
19 averaging, banking, or trading program.

20 SECTION 4. Sections 386.104(c) and (c-1), Health and Safety
21 Code, are amended to read as follows:

22 (c) Except as otherwise provided by this subsection, for a
23 proposed project as described by Section 386.102(b), [~~other than a~~
24 ~~project involving a marine vessel or engine,~~] not less than 75
25 percent of vehicle miles traveled or hours of operation projected
26 for the five years immediately following the award of a grant must
27 be projected to take place in a nonattainment area or affected

1 county of this state. The commission may set the minimum percentage
2 of vehicle miles traveled or hours of operation required to take
3 place in a nonattainment area or affected county at a percentage and
4 for a period that is different from the percentage and period
5 specified by this subsection, provided that the commission may not
6 set the minimum percentage at a level that is less than 55 percent.
7 The commission may allow vehicle travel on highways and roadways,
8 or portions of a highway or roadway, designated by the commission
9 and located outside a nonattainment area or affected county to
10 count towards the percentage of use requirement in this subsection.

11 (c-1) For a proposed project involving a marine vessel or
12 engine, the vessel or engine must be operated in the intercoastal
13 waterways or bays adjacent to a nonattainment area or affected
14 county of this state for a sufficient percentage [~~amount~~] of time
15 over the lifetime of the project, as determined by the commission,
16 to meet the cost-effectiveness requirements of Section 386.105.
17 The percentage determined by the commission under this subsection
18 may not be less than 55 percent.

19 SECTION 5. Section 386.154, Health and Safety Code, is
20 amended by adding Subsections (f), (g), and (h) to read as follows:

21 (f) A new light-duty motor vehicle powered by an electric
22 drive is eligible for a \$750 incentive if the vehicle:

23 (1) is a motorcycle as defined by Section 541.201,
24 Transportation Code;

25 (2) satisfies the requirements of Subsections
26 (d)(2)-(5);

27 (3) was acquired on or after September 1, 2013, or a

1 later date as established by the commission, by the person applying
2 for the incentive under this subsection and for use or lease by that
3 person and not for resale; and

4 (4) is not a motor-assisted scooter or pocket bike or
5 minimotorbike as those terms are defined by Section 551.351,
6 Transportation Code.

7 (g) The incentive under Subsection (f) is limited to 500
8 vehicles for each state fiscal biennium.

9 (h) Notwithstanding Subsections (c) and (e) and subject to
10 Section 386.252(a)(11), at the beginning of the second state fiscal
11 year of the biennium, the commission may adjust the initial vehicle
12 limitations provided under Subsections (c) and (e) based on demand
13 for incentives under this section during the preceding state fiscal
14 year.

15 SECTION 6. Section 386.250, Health and Safety Code, as
16 effective September 1, 2021, is amended by amending Subsection (c)
17 and adding Subsection (d) to read as follows:

18 (c) The commission may not remit more than 40 percent of the
19 amount deposited to the credit of the fund to the state highway fund
20 for use by the Texas Department of Transportation for projects
21 described by Section 386.051(b)(22).

22 (d) Not later than the 30th day after the last day of each
23 state fiscal biennium, the commission shall transfer the
24 unencumbered balance of the fund remaining on the last day of the
25 state fiscal biennium to the credit of a separate account
26 established in the fund for use by the commission for funding
27 research at the Texas A&M Transportation Institute to determine:

1 (1) the cost-effectiveness of existing emissions
2 reduction programs under the plan; and

3 (2) cost-effective programs that are not currently
4 authorized to receive funding under the plan that would improve the
5 emissions reduction capabilities of the plan [~~the Texas emissions~~
6 ~~reduction plan account~~].

7 SECTION 7. Sections 386.252(a), (f), and (h), Health and
8 Safety Code, as effective September 1, 2021, are amended to read as
9 follows:

10 (a) Money in the fund and account may be used only to
11 implement and administer programs established under the plan.
12 Subject to the reallocation of funds by the commission under
13 Subsection (h), money from the fund and account to be used for the
14 programs under Section 386.051(b) shall initially be allocated per
15 state fiscal year as follows:

16 (1) four percent may be used for the clean school bus
17 program under Chapter 390;

18 (2) six [~~three~~] percent may be used for the new
19 technology implementation grant program under Chapter 391, from
20 which at least \$1 million will be set aside for electricity storage
21 projects related to renewable energy;

22 (3) five percent may be used for the Texas clean fleet
23 program under Chapter 392;

24 (4) not more than \$3 million may be used by the
25 commission to fund a regional air monitoring program in commission
26 Regions 3 and 4 to be implemented under the commission's oversight,
27 including direction regarding the type, number, location, and

1 operation of, and data validation practices for, monitors funded by
2 the program through a regional nonprofit entity located in North
3 Texas having representation from counties, municipalities, higher
4 education institutions, and private sector interests across the
5 area;

6 (5) 10 percent may be used for the Texas natural gas
7 vehicle grant program under Chapter 394;

8 (6) not more than \$6 million may be used for the Texas
9 alternative fueling facilities program under Chapter 393, of which
10 a specified amount may be used for fueling stations to provide
11 natural gas fuel, except that money may not be allocated for the
12 Texas alternative fueling facilities program for the state fiscal
13 year ending August 31, 2019;

14 (7) not more than \$1 million [~~\$750,000~~] may be used
15 each year to support research related to air quality as provided by
16 Chapter 387;

17 (8) not more than \$200,000 may be used for a health
18 effects study;

19 (9) at least \$6 million but not more than \$16 million
20 may be used by the commission for administrative costs, including
21 all direct and indirect costs for administering the plan, costs for
22 conducting outreach and education activities, and costs
23 attributable to the review or approval of applications for
24 marketable emissions reduction credits;

25 (10) six percent may be used by the commission for the
26 seaport and rail yard areas emissions reduction program established
27 under Subchapter D-1;

1 (11) five percent may be used for the light-duty motor
2 vehicle purchase or lease incentive program established under
3 Subchapter D;

4 (12) not less [~~more~~] than \$216,000 and not more than \$1
5 million may be used by the commission to contract with the Energy
6 Systems Laboratory at the Texas A&M Engineering Experiment Station
7 annually for:

8 (A) the development and annual computation of
9 creditable statewide emissions reductions obtained through wind
10 and other renewable energy resources for the state implementation
11 plan; and

12 (B) the annual computation of creditable
13 statewide emissions reductions attributable to energy efficiency
14 programs;

15 (13) not more than \$500,000 may be used for studies of
16 or pilot programs for incentives for port authorities located in
17 nonattainment areas or affected counties to encourage cargo
18 movement that reduces emissions of nitrogen oxides and particulate
19 matter; [~~and~~]

20 (14) not more than \$10 million may be used by the
21 commission for the purchase, maintenance, upgrade, and operation of
22 air monitoring equipment, including data analysis, to be used in
23 nonattainment areas and affected counties;

24 (15) not more than \$10 million may be used by the
25 commission for fee-based contracts entered into under the program
26 established under Section 386.058;

27 (16) not more than \$5 million may be allocated for the

1 energy efficiency loan guarantee program established under Section
2 388.013; and

3 (17) the balance is to be used by the commission for
4 the diesel emissions reduction incentive program under Subchapter C
5 as determined by the commission.

6 (f) Not more than \$5 [~~\$2.5~~] million from the fund and
7 account may be used by the commission to conduct research and other
8 activities associated with making any necessary demonstrations to
9 the United States Environmental Protection Agency to account for
10 the impact of foreign emissions or an exceptional event.

11 (h) Subject to the limitations outlined in this section,
12 money allocated under this section to a particular program may be
13 used for another program under the plan as determined by the
14 commission, based on demand for grants for eligible projects under
15 particular programs [~~after the commission solicits projects to~~
16 ~~which to award grants according to the initial allocation~~
17 ~~provisions of this section~~].

18 SECTION 8. Chapter 388, Health and Safety Code, is amended
19 by adding Section 388.013 to read as follows:

20 Sec. 388.013. ENERGY EFFICIENCY LOAN GUARANTEE PROGRAM.

21 (a) The comptroller and the State Energy Conservation Office by
22 rule shall establish and administer a program that issues or
23 guarantees loans to be used for improvements that increase the
24 energy efficiency of residences that are not newly constructed.

25 (b) Rules adopted under this section must establish
26 eligibility requirements for receipt of a loan issued or guaranteed
27 under this section, including emissions reduction

1 cost-effectiveness criteria with preference given to nonattainment
2 areas or affected counties.

3 (c) The State Energy Conservation Office annually shall
4 submit to the commission and the laboratory a report that:

5 (1) evaluates the effectiveness of the program
6 established under this section; and

7 (2) quantifies energy savings and emissions
8 reductions as a result of this program for consideration in the
9 state implementation plan for emissions reduction credit.

10 SECTION 9. Section 389.002, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 389.002. USE OF CERTAIN INFORMATION FOR FEDERAL
13 RECOGNITION OF EMISSIONS REDUCTIONS. The commission, using
14 information derived from the reports to the commission under
15 Sections 386.205, 388.003(e), ~~and~~ 388.006, and 388.013, shall
16 take all appropriate and necessary actions so that emissions
17 reductions achieved by means of activities under Chapters 386 and
18 388 are credited by the United States Environmental Protection
19 Agency to the appropriate emissions reduction objectives in the
20 state implementation plan.

21 SECTION 10. Section 391.002(b), Health and Safety Code, is
22 amended to read as follows:

23 (b) Projects that may be considered for a grant under the
24 program include:

25 (1) advanced clean energy projects, as defined by
26 Section 382.003;

27 (2) new technology projects that reduce emissions of

1 regulated pollutants from stationary sources;

2 (3) new technology projects that reduce emissions from
3 upstream and midstream oil and gas production, completions,
4 gathering, storage, processing, and transmission activities
5 through:

6 (A) the replacement, repower, or retrofit of
7 stationary compressor engines;

8 (B) the installation of systems to reduce or
9 eliminate the loss of gas, flaring of gas, or burning of gas using
10 other combustion control devices; or

11 (C) the installation of systems that reduce
12 flaring emissions and other site emissions [~~by capturing waste heat
13 to generate electricity solely for on-site service~~]; and

14 (4) electricity storage projects related to renewable
15 energy, including projects to store electricity produced from wind
16 and solar generation that provide efficient means of making the
17 stored energy available during periods of peak energy use.

18 SECTION 11. Section 391.205(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) Except as provided by Subsection (c), in awarding grants
21 under this chapter the commission shall give preference to projects
22 that:

23 (1) involve the transport, use, recovery for use, or
24 prevention of the loss of natural resources originating or produced
25 in this state;

26 (2) contain an energy efficiency component;

27 (3) include the use of solar, wind, or other renewable

1 energy sources; ~~or~~

2 (4) recover waste heat from the combustion of natural
3 resources and use the heat to generate electricity; or

4 (5) reduce flaring emissions and other site emissions.

5 SECTION 12. Section 391.301, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a
8 grant under this chapter must use the grant to pay the incremental
9 costs of the purchase, lease, or ~~and~~ installation of the project
10 for which the grant is made, which may include reasonable and
11 necessary expenses for the labor needed to install
12 emissions-reducing equipment. The recipient may ~~not~~ use the
13 grant for the costs of operating and maintaining the
14 emissions-reducing equipment.

15 SECTION 13. Section 394.003, Health and Safety Code, is
16 amended by amending Subsection (a) and adding Subsection (c) to
17 read as follows:

18 (a) A vehicle is a qualifying vehicle that may be considered
19 for a grant under the program if during the eligibility period
20 established by the commission the entity:

21 (1) purchased, leased, or otherwise commercially
22 financed the vehicle as an ~~a new~~ on-road heavy-duty or
23 medium-duty motor vehicle that:

24 (A) is a new natural gas vehicle or, subject to
25 Subsection (c), a used natural gas vehicle;

26 (B) is certified to the appropriate current
27 federal emissions standards as determined by the commission; and

1 (C) replaces an on-road heavy-duty or
2 medium-duty motor vehicle of the same weight classification and
3 use; or

4 (2) repowered the on-road motor vehicle to a natural
5 gas vehicle powered by a natural gas engine that is certified to the
6 appropriate current federal emissions standards as determined by
7 the commission.

8 (c) A used natural gas vehicle that is proposed to replace
9 an on-road heavy-duty or medium-duty motor vehicle must be of model
10 year 2017 or later, provided that the model year may not be more
11 than six years older than the current model year at the time of the
12 submission of the grant application.

13 SECTION 14. Section 394.005(b), Health and Safety Code, is
14 amended to read as follows:

15 (b) To be eligible for a grant under the program:

16 (1) the use of the qualifying vehicle must be
17 projected to result in a reduction in emissions of nitrogen oxides
18 of at least 25 percent as compared to the motor vehicle or engine
19 being replaced, based on:

20 (A) the baseline emission level set by the
21 commission under Subsection (g); and

22 (B) the certified emission rate of the qualifying
23 ~~[new]~~ vehicle; and

24 (2) the qualifying vehicle must:

25 (A) replace a heavy-duty or medium-duty motor
26 vehicle that:

27 (i) is an on-road vehicle that has been

1 owned, leased, or otherwise commercially financed and registered
2 and operated by the applicant in Texas for at least the two years
3 immediately preceding the submission of a grant application;

4 (ii) satisfies any minimum average annual
5 mileage or fuel usage requirements established by the commission;

6 (iii) satisfies any minimum percentage of
7 annual usage requirements established by the commission; and

8 (iv) is in operating condition and has at
9 least two years of remaining useful life, as determined in
10 accordance with criteria established by the commission;

11 (B) replace a heavy-duty or medium-duty motor
12 vehicle that:

13 (i) is owned by the applicant;

14 (ii) is an on-road vehicle that has been:

15 (a) owned, leased, or otherwise
16 commercially financed and operated in Texas as a fleet vehicle for
17 at least the two years immediately preceding the submission of a
18 grant application; and

19 (b) registered in a county located in
20 the clean transportation zone for at least the two years
21 immediately preceding the submission of a grant application; and

22 (iii) otherwise satisfies the mileage,
23 usage, and useful life requirements established under Paragraph (A)
24 as determined by documentation associated with the vehicle; or

25 (C) be a heavy-duty or medium-duty motor vehicle
26 repowered with a natural gas engine that:

27 (i) is installed in an on-road vehicle that

1 has been owned, leased, or otherwise commercially financed and
2 registered and operated by the applicant in Texas for at least the
3 two years immediately preceding the submission of a grant
4 application;

5 (ii) satisfies any minimum average annual
6 mileage or fuel usage requirements established by the commission;

7 (iii) satisfies any minimum percentage of
8 annual usage requirements established by the commission; and

9 (iv) is installed in an on-road vehicle
10 that, at the time of the vehicle's repowering, was in operating
11 condition and had at least two years of remaining useful life, as
12 determined in accordance with criteria established by the
13 commission.

14 SECTION 15. Section 501.138, Transportation Code, is
15 amended by amending Subsections (b-1), (b-2), and (b-3) and adding
16 Subsection (b-4) to read as follows:

17 (b-1) Except as provided by Subsection (b-4), fees [~~Fees~~]
18 collected under Subsection (b) to be sent to the comptroller shall
19 be deposited to the credit of the Texas [~~Mobility Fund, except that~~
20 ~~\$5 of each fee imposed under Subsection (a)(1) and deposited on or~~
21 ~~after September 1, 2008, and before September 1, 2015, shall be~~
22 ~~deposited to the credit of the Texas~~] emissions reduction plan
23 fund.

24 (b-2) The comptroller shall establish a record of the amount
25 of the fees deposited to the credit of the Texas emissions reduction
26 plan fund [~~Mobility Fund~~] under Subsection (b-1). On or before the
27 fifth workday of each month, the Texas Department of Transportation

1 shall remit to the comptroller for deposit to the credit of the
2 Texas Mobility Fund [~~emissions reduction plan fund~~] an amount of
3 money equal to the amount of the fees deposited by the comptroller
4 to the credit of the Texas emissions reduction plan fund [~~Mobility~~
5 ~~Fund~~] under Subsection (b-1) in the preceding month. The Texas
6 Department of Transportation shall use for remittance to the
7 comptroller as required by this subsection money in the state
8 highway fund that is not required to be used for a purpose specified
9 by Section 7-a, Article VIII, Texas Constitution, and may not use
10 for that remittance money received by this state under the
11 congestion mitigation and air quality improvement program
12 established under 23 U.S.C. Section 149.

13 (b-3) This subsection and Subsections (b-1) and
14 [~~Subsection~~] (b-2) expire on the last day of the state fiscal
15 biennium during which the Texas Commission on Environmental Quality
16 publishes in the Texas Register the notice required by Section
17 382.037, Health and Safety Code.

18 (b-4) Fees collected under Subsection (b) to be sent to the
19 comptroller shall be deposited to the credit of the Texas Mobility
20 Fund if the fees are collected on or after the last day of the state
21 fiscal biennium during which the Texas Commission on Environmental
22 Quality publishes in the Texas Register the notice required by
23 Section 382.037, Health and Safety Code.

24 SECTION 16. The changes in law made by this Act apply only
25 to a Texas emissions reduction plan grant awarded on or after the
26 effective date of this Act. A grant awarded before the effective
27 date of this Act is governed by the law in effect on the date the

1 award was made, and the former law is continued in effect for that
2 purpose.

3 SECTION 17. The change in law made by this Act to Section
4 [501.138](#), Transportation Code, applies only to a fee collected on or
5 after the effective date of this Act. A fee collected before the
6 effective date of this Act is governed by the law in effect when the
7 fee was collected, and the former law is continued in effect for
8 that purpose.

9 SECTION 18. This Act takes effect September 1, 2021.