

Amend **HB 37** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 2155.451(a), Government Code, as added by Section 19, Chapter 1331, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are [~~that term is~~] defined by Section 386.001, Health and Safety Code.

SECTION 2. Section 271.907(b), Local Government Code, as added by Section 20, Chapter 1331, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(b) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are [~~that term is~~] defined by Section 386.001, Health and Safety Code.

SECTION 3. Sections 386.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The utility commission, the commission, and the comptroller[~~, and the council~~] shall establish and administer the Texas emissions reduction plan in accordance with this chapter.

(b) Under the plan, the commission[~~, and the council~~] and the comptroller[~~, and the council~~] 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; and

(3) the new technology research and development program established under Chapter 387.

SECTION 4. Section 387.001, Health and Safety Code, is amended to read as follows:

Sec. 387.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Program"[~~, "program"~~] means the new technology research and development program.

SECTION 5. Section 387.002(b), Health and Safety Code, as amended by Section 1, Chapter 29, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(b) The Texas Council on Environmental Technology shall work to enhance the entrepreneurial and inventive spirit of Texans to assist in developing solutions to air, water, and waste problems by:

(1) identifying and evaluating new technologies and seeking the approval of the United States Environmental Protection Agency for and facilitating the deployment of those technologies; and

(2) assisting the commission and the United States Environmental Protection Agency in the process of ensuring credit for new, innovative, and creative technological advancements[+]

~~[(3) competing for and managing federal grants and funds from other sources available for carrying out the objectives of the council; and~~

~~[(4) entering into public-private partnerships to facilitate development of environmental technology infrastructure in this state].~~

SECTION 6. Section 387.003, Health and Safety Code, as amended by Section 2, Chapter 29, and Section 13, Chapter 1331, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 387.003. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM. (a) The commission, in consultation with the Texas Council on Environmental Technology, shall establish and administer a new technology research and development program as provided by this chapter.

(b) Under the program, the commission [~~Texas Council on Environmental Technology~~] shall provide grants to be used to support development of emissions-reducing technologies that may be used for projects eligible for awards under Chapter 386 and other new technologies that show promise for commercialization. The primary objective of this chapter is to promote the development of commercialization technologies that will support projects that may be funded under Chapter 386 and this chapter, including advanced

technologies such as fuel cells, catalysts, and fuel additives.

~~[(c) When making a grant under the program, the Texas Council on Environmental Technology may collect a fee from the grant recipient in an amount not to exceed five percent of the amount of the grant to be used by the council only to:~~

~~[(1) monitor project progress;~~

~~[(2) disseminate information about project accomplishments;~~

~~[(3) track technology deployment into the marketplace; and~~

~~[(4) provide estimates of the impact that commercialization of funded projects will have on the environment.]~~

SECTION 7. Section 387.004, Health and Safety Code, is amended to read as follows:

Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY PROPOSALS. The commission ~~[Texas Council on Environmental Technology]~~ from time to time shall issue specific requests for proposals (RFPs) or program opportunity notices (PONs) for technology projects to be funded under the program.

SECTION 8. Sections 387.005(b) and (c), Health and Safety Code, and Section 387.005(f), Health and Safety Code, as added by Section 3, Chapter 29, Acts of the 78th Legislature, Regular Session, 2003, are amended to read as follows:

(b) The commission ~~[Texas Council on Environmental Technology]~~ shall identify and evaluate and may consider making grants for technology projects that would allow qualifying fuels to be produced from energy resources in this state. In considering projects under this subsection, the commission ~~[council]~~ shall give preference to projects involving otherwise unusable energy resources in this state and producing qualifying fuels at prices lower than otherwise available and low enough to make the projects to be funded under the program economically attractive to local businesses in the area for which the project is proposed.

(c) In soliciting proposals under Section 387.004 and determining how to allocate grant money available for projects under this chapter, the commission ~~[Texas Council on Environmental Technology]~~ shall give special consideration to advanced

technologies and retrofit or add-on projects that provide multiple benefits by reducing emissions of particulates and other air pollutants.

(f) If a commissioner [~~member of the Texas Council on Environmental Technology~~] is an employee or owner of an entity that applies for a grant under this chapter, the commissioner [~~member~~], before a vote on the grant, shall disclose the fact of the commissioner's [~~member's~~] employment or ownership. The disclosure must be entered into the minutes of the meeting. The commissioner [~~member~~] may not vote on or otherwise participate in the awarding of the grant. If the commissioner [~~member~~] does not comply with this subsection, the entity is not eligible for the grant.

SECTION 9. Section 387.006(b), Health and Safety Code, is amended to read as follows:

(b) The commission [~~Texas Council on Environmental Technology~~] shall consider specifically, for each proposed technology project application:

(1) the projected potential for reduced emissions of oxides of nitrogen and the cost-effectiveness of the technology once it has been commercialized;

(2) the potential for the technology to contribute significantly to air quality goals; and

(3) the strength of the commercialization plan.

SECTION 10. Section 387.007, Health and Safety Code, is amended to read as follows:

Sec. 387.007. COST-SHARING. The commission [~~Texas Council on Environmental Technology~~] may require cost-sharing for technology projects funded under this chapter but may not require repayment of grant money, except that the commission [~~council~~] shall require provisions for recapturing grant money for noncompliance with grant requirements. Grant money recaptured under the contract provision shall be deposited in the environmental research fund and reallocated for other projects under this chapter.

SECTION 11. Section 387.008, Health and Safety Code, as amended by Section 4, Chapter 29, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 387.008. ENVIRONMENTAL RESEARCH FUND. (a) The environmental research fund is an account in the general revenue fund. The fund consists of ~~[fees collected under Section 387.003(c) and]~~ money from gifts, grants, or donations to the fund for designated or general use and from any other source designated by the legislature.

(b) Money in the environmental research fund may be used only by the commission for operations ~~[the operation]~~ and projects under this chapter ~~[of the Texas Council on Environmental Technology]~~.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the fund. Interest earned on the fund shall be credited to the fund.

SECTION 12. Sections 387.009 and 387.010, Health and Safety Code, are amended to read as follows:

Sec. 387.009. ADVISORY COMMITTEES. The commission ~~[Texas Council on Environmental Technology]~~ may appoint advisory committees as necessary or desirable to assist the commission ~~[council]~~ in performing its duties under this chapter. An advisory committee may include representatives of industry, environmental groups, consumer groups, local governments, agriculture, the commission, the General Land Office, and the Railroad Commission of Texas. Any senator or representative desiring to do so may participate on any advisory committee appointed under this section. Members of an advisory committee are not entitled to compensation.

Sec. 387.010. REPORTS. (a) Not ~~[later than December 1, 2002, and not]~~ later than December 1 of each even-numbered ~~[subsequent second]~~ year, the commission ~~[Texas Council on Environmental Technology]~~ shall report to the legislature on projects funded under the new technology research and development program, describing the technical objectives and accomplishments of the project and the progress of the project technology toward commercialization. Using sound science, the report shall detail the costs and actual realized benefits of the program and of each project funded under the program.

(b) The commission shall ensure that all research reports under the program are accessible to the public, including, as

practicable, through the commission's Internet website.

SECTION 13. Section 387.002(c), Health and Safety Code, is repealed.

SECTION 14. On the effective date of this Act:

(1) except as otherwise provided by Chapter 387, Health and Safety Code, as amended by this Act, the functions of the Texas Council on Environmental Technology are transferred to the Texas Commission on Environmental Quality, including:

(A) managing of grants approved by the council before the effective date of this Act; and

(B) requesting proposals for grants, reviewing grant applications, and awarding grant contracts;

(2) any contract or other obligation of the council is transferred to the commission; and

(3) the property and records of the council and its predecessor agencies are transferred to the commission.

SECTION 15. Section 11.21, Article IX, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act), is amended to read as follows:

Sec. 11.21. Appropriations Limited to Revenue Collections: Texas Emissions Reduction Plan.

(a) Appropriations made by this section supersede appropriations made by other sections of this Act to the extent of any conflict.

(b) Out of the Texas Emissions Reduction Plan (TERP) Account No. 5071, the following amounts are appropriated to the Texas Commission on Environmental Quality (TCEQ) for each year of the state fiscal biennium beginning September 1, 2003:

(1) 87.5 percent of the revenues accruing to the account in each state fiscal year (estimated to be \$104,210,750 in fiscal year 2004 and \$127,568,875 in fiscal year 2005) to be used for incentive payments for the Diesel Emissions Reduction Program established in Subchapter C, Chapter 386, Health and Safety Code;

(2) 9.5 percent of the revenues accruing to the account in each state fiscal year (estimated to be \$11,314,310 in fiscal year 2004 and \$13,850,335 in fiscal year 2005) for the New Technology Research and Development Program established in Chapter

387, Health and Safety Code; and

(3) 1.5 percent of the revenues accruing to the account in each state fiscal year to be used to cover administrative costs associated with the Diesel Emissions Reduction Program.

(c) Of the money appropriated by Subsection (b)(2) of this section:

(1) \$500,000 shall be deposited to the Clean Air Account No. 151 for use by the Texas Commission on Environmental Quality (TCEQ) to supplement funding for air quality activities in affected counties, as defined by Section 386.001, Health and Safety Code;

(2) the Texas Commission on Environmental Quality (TCEQ) may use not more than \$250,000 for administrative costs of the New Technology Research and Development Program; and

(3) not less than 20 percent of the money shall be allocated for use in each state fiscal year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston as provided by Section 386.252, Health and Safety Code.

(d) Of the money appropriated by Subsection (b)(3) of this section, the Texas Commission on Environmental Quality (TCEQ) may use not more than \$606,845 in the state fiscal year ending August 31, 2004, for administrative costs associated with the Diesel Emissions Reduction Program and may use not more than \$551,540 in the state fiscal year ending August 31, 2005, for administrative costs associated with the Diesel Emissions Reduction Program.

(e) Out of the Texas Emissions Reduction Plan (TERP) Account No. 5071, 1.5 percent of revenues accruing to the account in each state fiscal year are appropriated to the Texas Engineering Experiment Station (TEES) for each year of the state fiscal biennium beginning September 1, 2003, to be used for administrative costs associated with the Texas Building and Energy Performance Standards under Chapter 388, Health and Safety Code. The Texas Engineering Experiment Station (TEES) may use not more than \$950,421 in the state fiscal year ending August 31, 2004, for administrative costs associated with the Texas Building and Energy

Performance Standards and may use not more than \$953,616 in the state fiscal year ending August 31, 2005, for administrative costs associated with the Texas Building and Energy Performance Standards.

~~(f) [Included in the amounts appropriated in this Act are revenues accruing to the Texas Emissions Reduction Plan (TERP) Account No. 5071 during the 2004-05 biennium (estimated to be \$21,402,000 in fiscal year 2004 and \$21,828,000 in fiscal year 2005) to carry out programs of the TERP.]~~

~~[(b) Allocations of TERP revenues included in this Act are as follows:~~

~~[(1) For the Texas Commission on Environmental Quality (TCEQ), 72 percent of TERP revenues to be used as incentive payments for the Diesel Emissions Reduction Program established in Subchapter C, Chapter 386, Health and Safety Code (estimated to be \$15,409,490 in fiscal year 2004 and \$15,716,160 in fiscal year 2005) and 0.75 percent of TERP revenues to be used for administrative costs incurred by the TCEQ in administering the Diesel Emissions Reduction Program (estimated to be \$160,515 in fiscal year 2004 and \$163,710 in fiscal year 2005), as provided by Section 386.252, Health and Safety Code,~~

~~[(2) For the Public Utility Commission (PUC), 7.5 percent of TERP revenues to be used for grant payments for the Energy Efficiency Grant Program as provided in Subchapter E, Chapter 386, Health and Safety Code, (estimated to be \$1,605,150 in fiscal year 2004 and \$1,637,100 in fiscal year 2005) and 0.75 percent of TERP revenues to be used for administrative costs incurred by the PUC in administering the Energy Efficiency Grant Program (estimated to be \$160,515 in fiscal year 2004 and \$163,710 in fiscal year 2005), as provided by Section 386.252, Health and Safety Code,~~

~~[(3) For the Fiscal Programs - Comptroller of Public Accounts, 10 percent of TERP revenues to be used for incentive payments for the Motor Vehicle Purchase or Lease Incentive Program established in Subchapter D, Chapter 386, Health and Safety Code, (estimated to be \$2,140,200 in fiscal year 2004 and \$2,182,800 in fiscal year 2005) and 0.75 percent of TERP revenues to be used for~~

~~administrative costs incurred by the Comptroller in administering the Motor Vehicle Purchase or Lease Incentive Program (estimated to be \$160,515 in fiscal year 2004 and \$163,710 in fiscal year 2005), as provided by Section 386.252, Health and Safety Code,~~

~~[(4) For the Texas Engineering Experiment Station (TEES), 0.75 percent of TERP revenues to be used for administrative costs associated with the Texas Building Energy Performance Standards, Chapter 388, Health and Safety Code (estimated to be \$160,515 in fiscal year 2004 and \$163,710 in fiscal year 2005), as provided by Section 386.252, Health and Safety Code,~~

~~[(5) For the Texas Council on Environmental Technology (TCET), 7.5 percent of TERP revenues to be used for grant funding and administrative costs associated with the New Technology Research and Development Program established in Chapter 387, Health and Safety Code (estimated to be \$1,605,149 in fiscal year 2004 and \$1,637,099 in fiscal year 2005). The first \$90,000 from the 7.5 percent of TERP revenues allocated to the Texas Council of Environmental Technology in each fiscal year shall be deposited to the Clean Air Account No. 151 for use by TCEQ to supplement funding for air quality activities in affected counties as defined in Section 386.001, Health and Safety Code. Of the remaining amounts appropriated to the Texas Council on Environmental Technology, not more than \$203,893 in each fiscal year shall be spent on administrative costs with remaining funds to be used to make grants for new technologies. The amount appropriated for administrative costs may increase as provided in Subsection (c), if revenues to the TERP Account No. 5071 exceed \$21,402,000 in fiscal year 2004 or exceed \$21,828,000 in fiscal year 2005.~~

~~[(c)] It is the intent of the Legislature that fees generated and deposited to the TERP Account No. 5071 cover, at a minimum, the costs of the appropriations made out of the TERP Account No. 5071 by this Act, as well as the "other direct and indirect costs" associated with TERP programs. In the event that actual or projected revenue collections are insufficient to offset the costs identified by this provision, the Legislative Budget Board may direct that the Comptroller reduce the appropriation authority provided above to be within the amount of revenue expected to be~~

available, provided that the reduction is in proportion to each agency's share of TERP funding as allocated above and as provided in Section 386.252, Health and Safety Code.

~~[(d) In the event that the Comptroller makes a finding that revenues to the TERP Account No. 5071 will total more than \$21,402,000 in fiscal year 2004 or more than \$21,828,000 in fiscal year 2005, the Comptroller shall notify the Legislative Budget Board of that finding at least 14 days prior to the disbursement of such funds. The Comptroller shall include in that notification an estimate of the amount expected to be received in excess of those amounts and an estimate of the amount of additional funds each agency will receive according to the allocation schedule described in section (e) below.]~~

~~[(e) In addition to amounts appropriated by this section out of the TERP Account No. 5071, there is hereby appropriated all revenues received by the TERP Account No. 5071 in excess of \$21,402,000 in fiscal year 2004 and in excess of \$21,828,000 in fiscal year 2005 of the biennium. Such additional amounts shall be allocated to each agency according to the following proportions: 72 percent to TCEQ for incentive payments for the Diesel Emissions Reduction Program; 7.5 percent to the PUC for grant payments for the Energy Efficiency Grant Program; 10 percent to the Fiscal Programs -- Comptroller of Public Accounts for incentive payments for the Motor Vehicle Purchase or Lease Incentive Program; 6.9 percent to the TCET for grants and 0.2 percent to the TCET for administrative costs; 0.4 percent to be deposited to the Clean Air Account No. 151 and appropriated to TCEQ to supplement funding for air quality activities in affected counties; 2.25 percent to TCEQ for administrative costs; 0.35 percent to the Comptroller for administrative costs; 0.2 percent to the PUC for administrative costs; and 0.2 percent to the TEES for administrative costs.]~~

(g) ~~[(f)]~~ Any unexpended balances in the appropriations made by this section out of the TERP Account No. 5071 on August 31, 2004, are hereby appropriated for the same purposes for the fiscal year beginning September 1, 2004.

(h) ~~[(g) Contingent on the passage of House Bill 638, or similar legislation, relating to the Texas emissions reduction plan~~

~~by the Seventy-eighth Legislature:~~

~~[(1) Notwithstanding other provisions contained in this Section, appropriations out of the TERP Account No. 5071 are hereby modified according to the allocations of funding contained in Health and Safety Code, Section 386.252, as amended.~~

~~[(2) Of amounts appropriated pursuant to Subsection (g), additional appropriations to the TCEQ for administrative costs shall not exceed \$446,330 in fiscal year 2004 and \$387,830 in fiscal year 2005; additional appropriations to the TEES for administration shall not exceed \$789,906 in each fiscal year; and additional appropriations to the TCET for administration shall not exceed the statutory limits for administrative costs contained in Health and Safety Code, Section 386.252.~~

~~[(3)]~~ The "Number of Full-Time-Equivalent Positions (FTE)" indicated herein for the TCEQ is hereby increased by 9 each fiscal year of the biennium and~~+~~ the "Number of Full-Time-Equivalent Positions (FTE)" indicated herein for the TEES is hereby increased by 12 each fiscal year of the biennium~~+~~ ~~and the "Number of Full-Time-Equivalent Positions (FTE)" indicated herein for the TCET is hereby increased by 5 each fiscal year of the biennium~~.

SECTION 16. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.