

By: Zaffirini

S.B. No. 1523

A BILL TO BE ENTITLED

AN ACT

relating to air pollutant emissions from electric generating facilities; providing for an administrative penalty.

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

SECTION 1. Chapter 382, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. EMISSIONS REDUCTIONS REQUIRED FOR ELECTRIC GENERATING FACILITIES

Sec. 382.351. DEFINITIONS. In this subchapter:

(1) "Annual emissions period" means the period from May 1 of each year to April 30 of the following year.

(2) "Electric generating facility" means a facility located in this state that generates electric energy for compensation, including a facility owned or operated by a municipal corporation, electric cooperative, or river authority.

Sec. 382.352. AUTHORITY TO REDUCE AIR CONTAMINANT EMISSIONS. This subchapter does not limit the authority of the commission to require reductions of emissions of any air contaminant from any electric generating facility or class of electric generating facilities.

Sec. 382.357. MERCURY EMISSIONS REDUCTIONS. (a) For each annual emissions period, the total annual emissions of mercury and mercury compounds from each electric generating facility may not exceed 10 percent of the facility's total emissions of mercury and

1 mercury compounds during 2002, as reported to the commission.

2 (b) For an electric generating facility that was not in
3 operation for all or any part of 2002 or that was not operating at
4 full capacity for a period during that year, the commission may
5 impose for the facility a maximum allowable level of emissions of
6 mercury and mercury compounds that the commission computes from
7 convincing evidence and that corresponds to 10 percent of an
8 emissions level the commission estimates the facility would have
9 emitted had the facility operated at full capacity throughout that
10 year.

11 Sec. 382.360. ENFORCEMENT. (a) The commission shall
12 penalize an electric generating facility that emits in an annual
13 emissions period a quantity of mercury or mercury compounds greater
14 than that allowed for that period by Section 382.357 and commission
15 rules adopted under that section. The commission shall penalize
16 the facility by:

17 (1) assessing an administrative penalty, in an amount
18 determined by commission rules, for each unit weight of mercury or
19 mercury compounds emissions by which the facility exceeded the
20 emissions limitation; and

21 (2) issuing an order reducing the quantity of mercury
22 and mercury compounds that the facility may emit in the next annual
23 emissions period by a quantity of emissions equal to the excessive
24 emissions in the annual emissions period in which the facility
25 emitted the excessive quantity of mercury or mercury compounds.

26 (c) In addition to the penalties required by Subsection (a),
27 the commission may penalize an electric generating facility that

1 emits in an annual emissions period a quantity of mercury or mercury
2 compounds greater than that allowed by Section 382.357 and
3 commission rules adopted under that section by:

4 (1) ordering the facility to cease operations; or

5 (2) taking other enforcement action provided by
6 commission rules.

7 SECTION 2. Section 39.264, Utilities Code, is amended by
8 amending Subsections (d), (e), (f), (l), and (r) and adding
9 Subsection (t) to read as follows:

10 (d) A municipal corporation, electric cooperative, or river
11 authority may exclude any electric generating facilities of 25
12 megawatts or less from the requirements prescribed by this section.
13 Not later than January 1, 2000, a municipal corporation, electric
14 cooperative, or river authority must inform the conservation
15 commission of its intent to exclude those facilities. An electric
16 generating facility excluded under this section is subject to
17 Subchapter I, Chapter 382, Health and Safety Code.

18 (e) The owner or operator of an electric generating facility
19 shall apply to the conservation commission for a permit for the
20 emission of air contaminants on or before September 1, 2000. A
21 permit issued by the conservation commission under this section
22 shall require the facility to achieve emissions reductions or
23 trading emissions allowances as provided by this section. The
24 conservation commission shall amend the permit to require as a
25 permit condition that the facility achieve emissions reductions or
26 trading emissions allowances as required by Subchapter I, Chapter
27 382, Health and Safety Code. If the facility uses coal as a fuel,

1 the permit must also be conditioned on the facility's emissions
2 meeting opacity limitations provided by conservation commission
3 rules. Notwithstanding Section 382.0518(g), Health and Safety
4 Code, a facility that does not obtain a permit as required by this
5 subsection may not operate after May 1, 2003, unless the
6 conservation commission finds good cause for an extension.

7 (f) The conservation commission shall develop rules for the
8 permitting of electric generating facilities. The rules adopted
9 under this subsection shall provide, by region, for the allocation
10 of emissions allowances of sulphur dioxides and nitrogen oxides
11 among electric generating facilities and for facilities to trade
12 emissions allowances for those contaminants until those rules are
13 superseded by Subchapter I, Chapter 382, Health and Safety Code,
14 and the rules adopted under that subchapter.

15 (l) A facility may not trade an unused allowance under this
16 section or Subchapter I, Chapter 382, Health and Safety Code, for a
17 contaminant for use as a credit for another contaminant.

18 (r) [~~An applicant for a permit under Subsection (e) shall~~
19 ~~publish notice of intent to obtain the permit in accordance with~~
20 ~~Section 382.056, Health and Safety Code. The conservation~~
21 ~~commission shall provide an opportunity for a public hearing and~~
22 ~~the submission of public comment and send notice of a decision on an~~
23 ~~application for a permit under Subsection (e) in the same manner as~~
24 ~~provided by Sections 382.0561 and 382.0562, Health and Safety~~
25 ~~Code.] The conservation commission shall review and renew a permit
26 issued under this section in accordance with Section 382.055,
27 Health and Safety Code.~~

1 (t) This subsection and Subsections (c), (g), (h), (i), (j),
2 (n), (o), (p), and (q) expire May 1, 2007.

3 SECTION 3. (a) The Texas Commission on Environmental
4 Quality shall adopt rules to implement the changes in law made by
5 this Act not later than March 1, 2006. The Texas Commission on
6 Environmental Quality by rule shall provide for permits and permit
7 amendments as necessary for electric generating facilities to meet
8 the goals of and for the commission to enforce Subchapter I, Chapter
9 382, Health and Safety Code, as added by this Act, and Section
10 39.264, Utilities Code, as amended by this Act.

11 (b) The first annual emissions period to which Subchapter I,
12 Chapter 382, Health and Safety Code, as added by this Act, applies
13 is the period from May 1, 2007, to April 30, 2008.

14 (c) The amendments to Section 39.264, Utilities Code, made
15 by this Act do not apply to a violation of that section committed
16 before the effective date of the amendments. For purposes of this
17 subsection, a violation of that section is committed before the
18 effective date of the amendments if any element of the violation
19 occurs before that date. A violation committed before the
20 effective date of the amendments is covered by Section 39.264,
21 Utilities Code, as that section existed on the date on which the
22 violation was committed, and the former law is continued in effect
23 for that purpose.

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2005.