

By: Hernandez

H.B. No. 2362

A BILL TO BE ENTITLED

AN ACT

relating to a greenhouse gas "cap and trade" program.

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

SECTION 1. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 391 to read as follows:

CHAPTER 391. "CAP AND TRADE" PROGRAM FOR GREENHOUSE GAS EMISSIONS

Sec. 391.001. DEFINITIONS. In this chapter:

(1) "Allowance" means an authorization to emit a certain amount of carbon dioxide.

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

(3) "Regional Greenhouse Gas Initiative" means a memorandum of understanding dated December 20, 2005, as may be amended, and the corresponding model rule, as may be amended, that establishes a "cap and trade" program in the northeast region of the United States.

Sec. 391.002. "CAP AND TRADE" PROGRAM. (a) The commission in consultation with the Public Utility Commission of Texas by rule shall establish a carbon dioxide "cap and trade" program that will limit and then reduce the total carbon dioxide emissions released by electric generating facilities in this state. The program must establish for a group of carbon dioxide emissions sources an aggregate cap on emissions from all regulated sources for each specified compliance period. The commission shall issue an

1 appropriate number of authorizations to emit carbon dioxide in the
2 form of emissions allowances. The emissions allowances must be
3 made available and issued to various persons, companies,
4 organizations, or other entities through a sale by auction or by
5 direct allocation. The total number of allowances made available
6 in any specified compliance period may not exceed the cap. A
7 regulated source shall completely and accurately measure and report
8 all emissions subject to the allowance and acquire and submit to the
9 commission the number of allowances that equals the source's
10 emissions at the end of the compliance period.

11 (b) The commission's rules establishing the carbon dioxide
12 "cap and trade" program shall be designed to:

13 (1) fully comply with the Regional Greenhouse Gas
14 Initiative or with another similar initiative as the commission
15 determines is best suited for the state; and

16 (2) permit the holders of carbon dioxide allowances to
17 trade them in a market to be established through the Regional
18 Greenhouse Gas Initiative or other entity as determined by the
19 commission.

20 (c) The commission and any other relevant state agency or
21 official shall take the steps necessary to allow electric
22 generating facilities in this state to participate in a market to
23 trade carbon dioxide allowances allocated under the program.

24 Sec. 391.003. AUCTION OF ALLOWANCES. (a) Rules adopted
25 under the "cap and trade" program must require that in 2009 at least
26 50 percent of all allowances issued under the program be sold
27 through an auction open to any person in this state who wishes to

1 participate. In the years after 2009, the percentage of allowances
2 sold through auction shall be as follows:

- 3 (1) in 2010, at least 60 percent;
- 4 (2) in 2011, at least 70 percent;
- 5 (3) in 2012, at least 80 percent;
- 6 (4) in 2013, at least 90 percent; and
- 7 (5) in 2014 and all following years, 100 percent.

8 (b) The proceeds recovered from the allowance auction must
9 be used to benefit consumers, balancing short-term and long-term
10 benefits. The proceeds may be used only for the following purposes,
11 in a proportion to be determined by the commission:

- 12 (1) to promote energy efficiency and conservation;
- 13 (2) to directly mitigate the effects of the program on
14 consumers of electricity; and
- 15 (3) to promote renewable energy technologies that do
16 not produce carbon dioxide emissions.

17 (c) The commission shall determine and specify details for
18 implementing the auction of carbon dioxide emission allowances,
19 including:

- 20 (1) the auction's design;
- 21 (2) the person to conduct and manage the auction; and
- 22 (3) the timing of the auction in any year relative to
23 the dates of the compliance period in the Regional Greenhouse Gas
24 Initiative or other market.

25 Sec. 391.004. AUCTION MANAGER. (a) The commission shall:

- 26 (1) engage a person to serve as auction manager that is
27 experienced in auction design and management; or

1 (2) contract with a person to serve as auction manager
2 that is determined by the commission to be qualified to design,
3 manage, and conduct the auction in a manner that assures the
4 efficiency of the auction.

5 (b) The selection process for choosing an auction manager to
6 design, manage, and conduct the auction shall include an open and
7 public request for proposals. Proposals submitted in response to a
8 request under this subsection must include a summary of
9 qualifications and experience relevant to designing, managing, and
10 conducting the auction.

11 (c) An auction manager selected by the commission may be
12 reimbursed only for reasonable costs of administering the auction,
13 as determined by the commission.

14 Sec. 391.005. ALLOWANCES HELD BY AUCTION MANAGER;
15 DISTRIBUTION OF AUCTION PROCEEDS. (a) The auction manager selected
16 under Section 391.004 shall be authorized to receive, hold, and
17 sell carbon dioxide emission allowances.

18 (b) The commission shall convey all allowances to the
19 auction manager who shall collect the auction proceeds and, without
20 further appropriation, distribute the proceeds in accordance with
21 Section 391.003(b) under commission oversight.

22 (c) The auction manager annually shall submit to the
23 commission a draft proposal on how to allocate the proceeds from the
24 allowances. The commission shall hold a public hearing, accept
25 public comment, and approve, modify, or reject the draft proposal.
26 If the commission rejects the proposal, the commission shall work
27 with the auction manager to draft an acceptable proposal.

1 (d) The office shall require an annual report from the
2 auction manager describing the auction and its results. The
3 commission shall make the report public and shall submit the report
4 to the appropriate legislative committees.

5 Sec. 391.006. OTHER COMMISSION POWERS AND DUTIES RELATED TO
6 CLIMATE-CHANGING SUBSTANCES. The responsibilities created by
7 establishing a carbon dioxide "cap and trade" program are in
8 addition to all other responsibilities imposed by any other law or
9 rule and do not reduce any authority of the commission, including
10 the authority to adopt standards and regulations necessary for this
11 state to join and participate in a multistate program, at any stage
12 in the development and implementation of the program, intended to
13 control emissions of carbon dioxide or other substances that are
14 determined by the commission to be damaging or altering the
15 climate.

16 SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is
17 amended by adding Section 39.911 to read as follows:

18 Sec. 39.911. GREENHOUSE GAS "CAP AND TRADE" PROGRAM. The
19 commission, in consultation with the Texas Commission on
20 Environmental Quality and the attorney general, through the
21 commission's authority under this chapter, including the authority
22 to review rates, prices, and schedules, shall adopt rules that
23 fully implement the greenhouse gas "cap and trade" program
24 prescribed by Chapter 391, Health and Safety Code. The commission
25 may adopt rules and enter any orders that ensure that the carbon
26 dioxide emissions associated with the generation of electric power
27 -serving the customer load of this state are treated on a

1 commercially comparable basis regardless of the location of the
2 power stations operating to serve that load.

3 SECTION 3. Not later than January 1, 2008, the Texas
4 Commission on Environmental Quality and the Public Utility
5 Commission of Texas shall adopt rules to implement Chapter 391,
6 Health and Safety Code, as added by this Act.

7 SECTION 4. This Act takes effect September 1, 2007.