

By: Averitt

S.B. No. 1672

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to nitrogen oxide allowance allocation adjustments and the  
3 incorporation of modifications to federal rules under the state  
4 implementation plan.

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

6 SECTION 1. Subsections (b), (c), and (e), Section 382.0173,  
7 Health and Safety Code, are amended to read as follows:

8 (b) The commission may require emissions reductions in  
9 conjunction with implementation of the rules adopted under  
10 Subsection (a) only for electric generating units. The commission  
11 shall make permanent allocations that are reflective of the  
12 allocation requirements of 40 C.F.R. Subparts AA through HH and  
13 Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of  
14 Part 60, as applicable, at no cost to units as defined in 40 C.F.R.  
15 Sections [~~Section~~] 51.123 and 60.4102 using the United States  
16 Environmental Protection Agency's allocation method as specified  
17 by 40 C.F.R. Section 60.4142(a)(1)(i) [~~, as issued by that agency on~~  
18 ~~May 12, 2005,~~] or 40 C.F.R. Section 96.142(a)(1)(i) [~~, as issued by~~  
19 ~~that agency on May 18, 2005~~], as applicable, with the exception of  
20 nitrogen oxides which shall be allocated according to the  
21 additional requirements of Subsection (c). The commission shall  
22 maintain a special reserve of allocations for new units commencing  
23 operation on or after January 1, 2001, as defined by 40 C.F.R.  
24 Subparts AA through HH and Subparts AAA through HHH of Part 96 and

1 40 C.F.R. Subpart HHHH of Part 60, as applicable, with the exception  
2 of nitrogen oxides which shall be allocated according to the  
3 additional requirements of Subsection (c).

4 (c) Additional requirements regarding NOx allocations:

5 (1) The commission shall maintain a special reserve of  
6 allocations for nitrogen oxide of 9.5 percent for new units.  
7 Beginning with the 2015 control period, units shall be considered  
8 new for each control period in which they do not have five years of  
9 operating data reported to the commission prior to the date of  
10 allocation for a given control period. Prior to the 2015 control  
11 period, units that commenced operation on or after January 1, 2001,  
12 will receive NOx allocations from the special reserve only.

13 (2) Nitrogen oxide allowances shall be established for  
14 the 2009-2014 control periods for units commencing operation before  
15 January 1, 2001, using the average of the three highest amounts of  
16 the unit's adjusted control period heat input for 2000 through  
17 2004, with the adjusted control period heat input for each year  
18 calculated as follows:

19 (A) if the unit is coal-fired during the year,  
20 the unit's control period heat input for such year is multiplied by  
21 90 percent;

22 (B) if the unit is natural gas-fired during the  
23 year, the unit's control period heat input for such year is  
24 multiplied by 50 percent; and

25 (C) if the fossil fuel fired unit is not subject  
26 to Paragraph [~~Subparagraph~~] (A) or (B) of this subdivision  
27 [~~paragraph~~], the unit's control period heat input for such year is

1 multiplied by 30 percent.

2 (3) Before the allocation date specified by EPA for  
3 the control period beginning January 1, 2018 [~~2016~~], and every five  
4 years thereafter, the commission shall adjust the baseline for all  
5 affected units using the average of the three highest amounts of the  
6 unit's adjusted control period heat input for periods one through  
7 five of the preceding nine [~~seven~~] control periods, with the  
8 adjusted control period heat input for each year calculated as  
9 follows:

10 (A) for units commencing operation before  
11 January 1, 2001:

12 (i) if the unit is coal-fired during the  
13 year, the unit's control period heat input for such year is  
14 multiplied by 90 percent;

15 (ii) if the unit is natural gas-fired  
16 during the year, the unit's control period heat input for such year  
17 is multiplied by 50 percent; and

18 (iii) if the fossil fuel fired unit is not  
19 subject to Subparagraph (i) or (ii) [~~Subdivision (3)(A)(i) or~~  
20 ~~(3)(A)(ii)]~~ of this paragraph [~~subparagraph~~], the unit's control  
21 period heat input for such year is multiplied by 30 percent; and [~~-~~]

22 (B) for units commencing operation on or after  
23 January 1, 2001, in accordance with the formulas set forth by USEPA  
24 in 40 C.F.R. 96.142 with any corrections to this section that may be  
25 issued by USEPA prior to the allocation date.

26 (e) In adopting rules under Subsection (a), the commission  
27 shall incorporate any modifications to the federal rules cited in

1 this section that result from:

2           (1) a request for rehearing regarding those rules that  
3 is filed with the United States Environmental Protection Agency;

4           (2) [~~or from~~] a petition for review of those rules that  
5 is filed with a court; or

6           (3) a final rulemaking action of the United States  
7 Environmental Protection Agency.

8           SECTION 2. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act takes effect September 1, 2007.