

BILL ANALYSIS

C.S.S.B. 16
By: Averitt
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

This bill furthers the goals of S.B. 12, 80th Legislature, Regular Session, 2007, by modifying and enhancing the Texas Emissions Reduction Program and the Low Income Vehicle Repair Assistance Program, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP).

C.S.S.B. 16 requires the Office of the Comptroller of Public Accounts, the Texas Commission on Environmental Quality (TCEQ), the Public Utility Commission (PUC), and the Texas Railroad Commission (RRC) to collaborate to identify and financially encourage innovative emissions control-based clean air technologies that exceed current state and federal guidelines. The bill establishes in Texas Emissions Reduction Program (TERP) the New Technology Implementation Grant Program for Facilities & Stationary Sources.

C.S.S.B 16 makes adjustments to the LIRAP and TERP including extending expiration dates. Adds the New Technology Research & Development Program under TERP; addresses building code standards; idling of motor vehicles and weight exemptions for idle reduction systems; housing partnership program rebates; the development of a federal greenhouse reporting rule and addresses emission data and monitoring.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2.05 (Section 391.003, Health and Safety Code).

Rulemaking authority is expressly granted to Texas Natural Resource Conservation Commission in SECTION 10.01 (Section 382.501, Health and Safety Code).

Rulemaking authority is expressly granted to the State Energy Conservation Office in SECTION 6.01 (Section 388.003, Health and Safety Code).

Rulemaking authority is expressly granted to the Comptroller of Public Accounts in SECTION 2.05 (Section 391.302, Health and Safety Code).

ANALYSIS

ARTICLE 1. ADVANCED CLEAN ENERGY PROJECTS

SECTION 1.01. Amends Section 382.003(1-a), Health and Safety Code, to redefine "advanced clean energy project." Adds Section 382.003(7-c) to define "geologic storage."

SECTION 1.02. Amends Section 382.0566(c) by adding language to provide that, except as provided by Subsection (c-1), the permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code, as applicable. Adds Subsection (c-1) to

provide that Subsection (c) does not apply to a permit to add technology to a facility as part of a pilot study related to an advanced clean energy project under certain circumstances.

SECTION 1.03. Amends Section 382.0567(b), Health and Safety Code, by adding "or new technology project, as described by Section 391.002" to existing language prohibiting TCEQ from considering any technology or level of emission reduction to be achievable solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive as a certain type of project.

ARTICLE 2. NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM

SECTION 2.01. Amends Section 386.051(b), Health and Safety Code, by expanding the list of programs for which TCEQ and the comptroller of public accounts (comptroller) are required to provide grants or other funding under the plan.

SECTION 2.02. Amends Section 386.052(b), Health and Safety Code, to expand the list of appropriate TCEQ objectives.

SECTION 2.03. Amends Section 386.057(b), Health and Safety Code, to require additional information to be included in the required biennial plan report published by TCEQ in consultation with the Texas Emissions Reduction Plan Advisory Board (advisory board).

SECTION 2.04. Amends Section 386.251(c), Health and Safety Code, by adding language to include grant money recaptured under Chapter 391 as part of the Texas emissions reduction plan fund (fund).

SECTION 2.05. Amends Subtitle C, Title 5, Health and Safety Code, by adding Chapter 391
NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM FOR FACILITIES AND
STATIONARY SOURCES

SUBCHAPTER A. GENERAL PROVISIONS

Section 391.001. DEFINITIONS. Defines "best available control technology," "commission," "facility," "incremental cost," "new technology" and "stationary source."

Section 391.002. GRANT PROGRAM. (a) Requires TCEQ to establish and administer a new technology implementation program to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources located within the state. Requires TCEQ, under the program, to provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions reductions. (b) Authorizes certain projects to be considered for a grant under the program.

Section 391.003. GUIDELINES AND CRITERIA. (a) Requires TCEQ to adopt grant guidelines and criteria consistent with the requirements of this chapter. (b) Sets forth protocols and safeguards that must be included in the guidelines. (c) Authorizes TCEQ to propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the program to achieve its goals. (d) Authorizes TCEQ to adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement Chapter 391. (e) Provides that the rulemaking requirements of Chapter 2001, Government Code, except as provided by Subsection (d), do not apply to the adoption or revision of guidelines and criteria under this section.

Section 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS IN CERTAIN NONATTAINMENT AREAS. Requires that a project funded under this chapter comply with Sections 386.055 and 386.056, as applicable.

[Reserves Sections 391.005-391.100 for expansion.]

SUBCHAPTER B. GRANT APPLICATIONS AND REVIEW

Section 391.101. APPLICATION FOR GRANT. (a) Authorizes the owner of a facility located in the state to apply for a grant under the program established under Section 391.002. To improve the ability of the program to achieve its goals, authorizes TCEQ to adopt guidelines to allow a person other than the owner to apply for and receive a grant. (b) Requires an application for a grant under this chapter be made on a form provided by and contain information required by TCEQ, including a detailed description of the proposed project, information necessary for TCEQ to determine whether the project meets TCEQ's eligibility requirements and other information TCEQ may require. (c) Requires an application for a grant under this chapter contain a plan for implementation of a program that will provide certain project information and education to the public until completion of the permitting process. Requires the plan provide for a publicly accessible informational Internet website.

Section 391.102. GRANT APPLICATION REVIEW PROCEDURES. (a) Sets forth requirements for TCEQ in the review and evaluation of grant applications for a project authorized under this chapter. (b) Requires TCEQ, to the extent possible, to coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant. (c) Authorizes TCEQ to deny an application for a project under certain circumstances. (d) Requires TCEQ, subject to the availability of funds, to award a grant under this chapter in conjunction with the execution of a contract that obligates TCEQ to make the grant and the recipient to perform the actions described in the recipient's grant application. Requires the contract, subject to Section 391.204, incorporate provisions for recapturing grant money for noncompliance with grant requirements. Requires that grant money recaptured under the contract provisions be deposited in the fund and reallocated for other projects under this subchapter. (e) Authorizes an applicant to seek reimbursement for qualifying equipment installed after the effective date of this program. (f) Sets forth requirements for TCEQ in coordinating interagency application review procedures. (g) Authorizes TCEQ to solicit review and comment from other state agencies or other entities with subject matter expertise as applicable, in reviewing grant applications.

Section 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL REQUIRED. (a) Requires that an application for a new technology implementation grant under this chapter show reasonable evidence that the proposed technology is capable of providing a significant reduction in emissions. (b) Requires TCEQ to consider specifically, for each proposed technology implementation grant application, the projected potential for reduced emissions and the cost-effectiveness of the new technology, the potential for the new technology to contribute significantly to air quality goals, and the strength of the implementation plan.

Section 391.104. REPORTING REQUIREMENTS. Requires TCEQ, with the required participation of the state agencies involved in the review of applications under Section 391.102, to prepare an annual report that summarizes the applications received and grant awards made in the preceding year.

[Reserves Sections 391.105-391.200 expansion.]

SUBCHAPTER C. PROJECT REQUIREMENTS

Section 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) Requires TCEQ to establish criteria for setting priorities for projects eligible to receive grants under this chapter. Requires TCEQ to review and authorizes TCEQ to modify the criteria and priorities as appropriate. (b) Requires that a proposed project meet the requirements of this section to be eligible for a grant under the program established under Section 391.002. (c) Requires that each proposed project meet the cost-effectiveness requirements established by TCEQ. (d) Requires that a new technology implementation project document a reduction of the baseline emissions adopted by TCEQ for the relevant facility or stationary source. Authorizes TCEQ, after studying available emissions reduction technologies, to impose a required minimum percentage reduction of emissions to be required by this subsection. (e) Requires TCEQ, for purposes of this subchapter, to adopt an appropriate baseline emissions level for comparison purposes if a baseline emissions standard does not exist for a facility. (f) Requires that planned water usage for proposed projects be consistent with the state water plan.

Section 391.202. EVALUATING COST-EFFECTIVENESS. Requires TCEQ to establish reasonable methodologies for evaluating project cost-effectiveness consistent with accepted methods.

Section 391.203. DETERMINATION OF GRANT AMOUNT. (a) Prohibits TCEQ from awarding a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project. (b) Requires TCEQ, in determining the amount of a grant under this subchapter, to reduce the incremental cost of a proposed project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Section 391.204. COST SHARING; RECAPTURING GRANT. (a) Requires TCEQ to require an applicant to bear at least 50 percent of the costs of implementing a project funded under this chapter. (b) Prohibits TCEQ from requiring repayment of grant money, except that TCEQ must require provisions for recapturing grant money for noncompliance with grant requirements.

Section 391.205. PREFERENCES. (a) Requires TCEQ, in awarding grants under this chapter and except as provided by Subsection (c), to assign preference to certain projects. (b) Requires that greater preference be given to projects that include more than one of the criteria described by Subsection (a). (c) Authorizes TCEQ to give preferences described by Subsection (a) only if the cost-effectiveness and emission performance of the project are comparable to those of a project not claiming a preference described by Subsection (a).

[Reserves Sections 391.206-391.300 for expansion.]

SUBCHAPTER D. FUNDING; EXPIRATION

Section 391.301. RESTRICTION ON USE OF GRANT. Requires a recipient of a grant under this chapter to use the grant to pay the incremental costs of the purchase and installation of the project for which the grant is made, which may include certain reasonable and necessary expenses. Prohibits the recipient from using the grant for the costs of operating and maintaining the emissions-reducing equipment.

Section 391.302. COMPTROLLER REVIEW OF USE OF GRANT FUNDS. (a) Requires the comptroller to annually review each recipient of a new technology implementation grant under this chapter to ensure the recipient's use of the grant complies with state law and terms of the award. (b) Requires TCEQ to provide the comptroller with all monitoring reports received from grant recipients and any other documentation requested by the comptroller to assist with such a review. (c) Requires the comptroller, on a finding of any misuse of funds or other noncompliance with grant requirements, to report to TCEQ recommendations for subsequent action, including the recapture of funds misused. (d) Provides that a finding of any misuse of grant funds by a recipient of a grant under this chapter results in a debt owed to the state, and the comptroller is authorized to withhold warrants and electronic funds transfers to the recipient in accordance with Section 403.055, Government Code. (e) Authorizes the comptroller to contract with another state agency, an institution of higher education, or a private entity to conduct a review under this section or to assist the comptroller in conducting any part of the review. (f) Authorizes the comptroller to adopt rules to implement this section.

Section 391.303. TIME OF USE OF GRANT FUNDING. Authorizes money appropriated for grants to be made by TCEQ under this chapter for a fiscal year to be distributed in subsequent fiscal years if the grant has been awarded and treated as a binding encumbrance by TCEQ before the end of the appropriation year of the money appropriated for grant purposes. Provides that distribution of the grant money is subject to Section 403.071, Government Code.

Section 391.304. EXPIRATION. Provides that this chapter expires August 31, 2019.

SECTION 2.06. Amends Section 403.071(b), Government Code, to authorize a claim to be presented to the comptroller not later than four years after the end of the fiscal year for which the appropriation from the claim is to be paid was made if the appropriation relates to grants awarded under Chapter 391, Health and Safety Code.

ARTICLE 3. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; CLEAN AIR ACT FEES

SECTION 3.01. Amends Section 382.0622 (a), Health and Safety Code, by adding (a)(3) to provide Clean Air Act fees include fees collected that are required under Section 185 of the federal Clean Air Act (42 U.S.C. Section 7511d).

SECTION 3.02 Amends Section 382.210(d), Health and Safety Code, to require a participating county to ensure that funds are transferred to a participating dealer under this section not later than the 10th business day, rather than five business days, after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

SECTION 3.03. Amends Section 382.220 (c), Health and Safety Code, to add "local government fleet or vehicle acquisition or replacement" to those purposes for which money made available for the implementation of a program under Subsection (b) may not be expended. Amends Subsection (d) to authorize TCEQ to reduce the match requirements for a county that proposes to develop and implement certain programs.

ARTICLE 4. TEXAS EMISSIONS REDUCTION PLAN

SECTION 4.01. Amends Section 386.001, Health and Safety Code, by adding Subdivision (10-a) to define "stationary engine."

SECTION 4.02. Amends Section 386.002, Health and Safety Code, to provide that Chapter 386 expires August 31, 2019, rather than August 31, 2013.

SECTION 4.03. Amends Section 386.104(c), Health and Safety Code, to provide that, for a proposed project involving non-road equipment used for natural gas recovery purposes, the equipment must be operated in a nonattainment area or affected county for a sufficient amount of use over the lifetime of the project, as determined by TCEQ, to meet the cost-effectiveness requirements of Section 386.105.

SECTION 4.04. Amends Section 390.006, Health and Safety Code, to provide that Chapter 390 expires August 31, 2019, rather than August 31, 2013.

SECTION 4.05. Amends Section 151.0515(d), Tax Code, to provide that Section 151.0515 expires August 31, 2019, rather than August 31, 2013.

SECTION 4.06. Amends Section 152.0215(c), Tax Code, to provide that Section 152.0215 expires August 31, 2019, rather than August 31, 2013.

SECTION 4.07. Amends Section 501.138(b-3), Transportation Code, to provide that Subsections (b-3) and (b-2) expire September 1, 2019, rather than September 1, 2015.

SECTION 4.08. Amends Section 502.1675(c), Transportation Code, to provide that Section 502.1675 expires August 31, 2019, rather than August 31, 2013.

SECTION 4.09. Amends Section 548.5055(c), Transportation Code, is amended to provide that the section expires August 31, 2019, rather than August 31, 2013.

ARTICLE 5. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

SECTION 5.01. Amends Sections 386.252(a), Health and Safety Code, by adding to the provision authorizing money in the fund be used only to implement and administer programs established under the plan language revising requirements for specified allocations of money in the fund to certain programs, purposes and entities and revising certain specified allocations. Strikes existing language relating to certain programs, purposes and entities. Amends Section 386.252(b) to provide the money, allocated under Subsection (a) to a particular program, may be used for another program under the plan as determined by the commission.

SECTION 5.02. Amends Section 387.003(a), Health and Safety Code, to require TCEQ to establish and administer a program as provided by this chapter and authorize TCEQ to contract with one or more well-qualified nonprofit organizations or institutions of higher education for administration of this program. Amends Subsection (b) requiring TCEQ, under the program, to provide grants to be used to support development of emissions-reducing technologies that are authorized to be used for projects eligible for award under Chapters 386 and 391, rather than just Chapter 386. Provides that the primary objective of this chapter is to promote the development of commercialization technologies to reduce emissions of oxides of nitrogen in Texas nonattainment areas, rather than technologies that will support projects authorized to be funded under Chapter 386 and this chapter, including advanced technologies such as fuel cells, catalysts, and fuel additives. Amends Subsection (c) to provide that if TCEQ contracts with one or more nonprofit organizations or institutions of higher education to administer a program under this chapter, the board of directors of each organization is prohibited from having more than 11 members or from including more than four county judges, and is required to include two persons of relevant scientific expertise to be nominated by TCEQ. Strikes existing language prohibiting the board of directors of a nonprofit organization under contract with the TCEQ to establish and administer a program as provided by this chapter from having more than four county judges selected from counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas. Amends Subsection (d) by striking the existing language of the subsection in its entirety and renaming subsequent subsections accordingly. Adds language requiring TCEQ to provide oversight as appropriate for grants provided to a nonprofit organization or an institution of higher education under this program. Amends Subsection (e) to require a nonprofit organization or an institution of higher education to submit to TCEQ for approval a budget for the disposition of funds granted under the program. Amends Subsection (f) to require TCEQ to limit the use of grants for administrative costs incurred by a nonprofit organization or an institution of higher education to an amount not to exceed 10 percent of the total program funding, rather than the funding provided to the nonprofit organization under this program.

SECTION 5.03. Amends Section 387.004, Health and Safety Code, to require TCEQ from time to time to issue or contract with a nonprofit organization or an institution of higher education described in Section 387.003(a), rather than Section 386.252(a)(2), to issue specific requests for proposals or program opportunity notices for technology projects to be funded under the program.

SECTION 5.04. Amends Sections 387.005(a), Health and Safety Code, to revise and expand the mix of technologies to which grants awarded under the chapter are to be directed. Strikes Subsection 387.005(a)(2) in its entirety and renames subsequent subdivisions accordingly. Amends Subsections 387.005(b) and (f) to reference "or an institution of higher education described by Section 387.003(a)."

SECTION 5.05. Amends Section 387.006(a), Health and Safety Code, to require that an application for a technology grant under this chapter show reasonable evidence that the proposed technology project has a substantial commercialization plan and organization and the technology proposed for funding is likely to be offered for commercial sale in this state as soon as practicable after the date of the application for funding. Amends Subsection (b) to require TCEQ to include the impact on fuel consumption and maintenance costs for retrofits and rebuilds in the information to be considered for each proposed technology project application.

SECTION 5.06. Amends Chapter 387, Health and Safety Code, by adding Section 387.010 AIR QUALITY RESEARCH. (a) Requires TCEQ to contract with a nonprofit organization or institution of higher education to establish and administer a program under this section supporting research related to air quality. (b) Sets forth requirements and prohibitions relating to the size, composition and certain actions of the board. (c) Requires TCEQ to provide oversight as appropriate for grants provided under the program established under this section. (d) Requires a nonprofit organization or institution of higher education to submit to TCEQ for approval a budget for the disposition of funds granted under the program established under this section. (e) Requires a nonprofit organization or institution of higher education to be reimbursed for costs incurred in establishing and administering the research program related to air quality under this section. Prohibits reimbursable administrative costs of a nonprofit organization or institution of higher education from exceeding 10 percent of the program budget. (f) Provides

that a nonprofit organization that receives grants from TCEQ under this section is subject to Chapters 551 and 552, Government Code.

ARTICLE 6. BUILDING ENERGY CODES

SECTION 6.01. Reenacts and amends Section 388.003, Health and Safety Code, as amended by Chapters 262 (S.B. 12) and 939 (H.B. 3693), Acts of the 80th Legislature, Regular Session, 2007. Amends Section 388.003(a) to provide that, to achieve energy conservation in single-family residential construction, the energy efficiency provisions of the International Residential Code (IRC), as it existed on May 1, 2001, are adopted as the energy code in this state for single-family residential construction. Adds language to provide that beginning January 1, 2012, the energy efficiency provisions of IRC, as it existed on May 1, 2009, are adopted as the energy code in this state for single-family residential construction. Amends Section 388.003(b) by adding language to provide that beginning January 1, 2012, the International Energy Conservation Code (IECC), as it existed on May 1, 2009, is adopted as the energy code in this state for all other residential, commercial, and industrial construction. Amends Section 388.003(b-1) by making non-substantive changes. Amends Section 388.003(c), Health and Safety Code, to require a municipality to establish procedures to ensure that code-certified inspectors or approved energy efficiency program verifiers are required to perform inspections and enforce the code in the inspectors' jurisdictions. Amends Section 388.003(d) to authorize a municipality, rather than a municipality or county, to establish procedures to adopt local amendments to the IECC and the energy efficiency provisions, rather than chapter, of the IRC. Amends Section 388.003(e) by striking references to nonattainment areas and counties and by striking existing language authorizing the laboratory, for the purpose of establishing uniform requirements throughout a region and on request of certain units of government, to make certain recommendations. Makes conforming changes. Amends Section 388.003(f) to require each municipality, rather than each municipality and each county that has established procedures under Subsection (d), to periodically review and consider revisions made by the International Code Council to the IECC and the energy efficiency chapter of the IRC adopted after May 1, 2009, rather than May 1, 2001.

ARTICLE 7. IDLING OF MOTOR VEHICLES

SECTION 7.01. Amends Section 382.0191(b), Health and Safety Code, to prohibit TCEQ, except as provided by Subsection (c), from prohibiting or limiting the idling of any motor vehicle with a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine that has been certified by the United States Environmental Protection Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling. Strikes existing language prohibiting TCEQ from prohibiting or limiting the idling of a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period. Strikes existing language providing that idling is not necessary to power a heater or air conditioner if the vehicle is within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available. Amends Section 382.0191(d) to provide that Section 382.0191 expires November 1, 2010, rather than September 1, 2009.

ARTICLE 8. MAXIMUM WEIGHT FOR VEHICLES WITH IDLE REDUCTION SYSTEMS

SECTION 8.01 Amends Section 621.001, Transportation Code, to define "Idle reduction system."

SECTION. 8.02. Amends Section 621.101, Transportation Code, by adding Subsection (d) requiring that the maximum gross vehicle weight limit, bridge formula limit, and axle weight limit for any vehicle or combination of vehicles equipped with an idle reduction system, notwithstanding any provision of this section or any section to the contrary, to be increased by a quantity necessary to compensate for the additional weight of the idle reduction system as provided for in 23 U.S.C. Section 127. Amends Subsection (e) to prohibit the additional weight increase allowed by Subsection (d) from being greater than 400 pounds. Amends Subsection (f) to require the vehicle operator, on request by an appropriate law enforcement officer, to provide

proof that the idle reduction technology is fully functional at all times and that the weight increase is not used for any purpose other than for the use as an idle reduction system.

ARTICLE 9. HOUSING PARTNERSHIP PROGRAM REBATES

SECTION 9.01. Amends Section 2305.036(b), Government Code, to include rebates. Amends Section 2305.036(e), to include state agencies.

ARTICLE 10. DEVELOPMENT OF FEDERAL GREENHOUSE GAS REPORTING RULE

SECTION 10.01. Amends Chapter 382, Health and Safety Code, by adding Subchapter J, FEDERAL GREENHOUSE GAS REGULATION

Section 382.501. DEVELOPMENT AND IMPLEMENTATION OF FEDERAL GREENHOUSE GAS REPORTING RULE. (a) Requires TCEQ and the Railroad Commission of Texas, the Department of Agriculture and the Public Utility Commission of Texas to jointly participate in the federal government process for developing federal greenhouse gas reporting and registry requirements. (b) Requires TCEQ to adopt rules as necessary to comply with any federal greenhouse gas reporting requirements adopted by the federal government for private and public facilities eligible to participate in the federal greenhouse gas registry. Requires TCEQ, in adopting the rules, to adopt and incorporate by reference rules implementing the federal reporting requirements and the federal registry.

Section 382.502. VOLUNTARY ACTIONS REGISTRY. Requires TCEQ to establish a registry of voluntary actions taken by businesses in this state or state agencies since September 1, 2001, to reduce carbon dioxide emissions and to work with EPA to give credit for early action under any federal rules that may be adopted for federal greenhouse gas regulation.

ARTICLE 11. EMISSIONS INFORMATION

SECTION 11.01. (a) Amends Section 382.014, Health and Safety Code, by changing the heading to read "EMISSION INVENTORY AND ELECTRONIC EMISSIONS DATABASE." Adds Section 382.014(b) to require TCEQ to compile certain information into an existing online database and requires the information to be searchable by permit number. Adds Section 382.014(c) to require TCEQ to assess annually the emissions information compiled under Section 382.014 and to submit to the governor, lieutenant governor and speaker of the house of representatives a report of such information not later than December 31 of each year. (b) Requires TCEQ to begin compiling emission inventory information in the electronic database as required under Section 382.014, Health and Safety Code, as amended by this article, not later than December 31, 2011. (c) Requires TCEQ to submit the initial report required by Section 382.014(c), Health and Safety Code, as added by this article, not later than December 31, 2011.

SECTION 11.02 Amends Section 382.016, Health and Safety Code, by adding Subsections (c), (d) and (e). Subsection (c) provides that, if EPA adopts a maximum achievable control technology standard for the control of mercury emissions from coal-fired electric generating facilities, not later than 18 months after the adoption of the standard the owner or operator of certain coal-fired electric generating facilities operating on the date the standards is adopted shall install and operate a continuous emission monitor to measure and record the concentration of mercury in the exhaust gases from each stack at the facility unless another means of measuring and recording the concentration of mercury is prescribed by federal rules. Subsection (d) provides that, if the measurement and monitoring of mercury is required under Subsection (a), the owner or operator of a coal-fired electric generating facility shall quarterly report to TCEQ and make available to the public information related to mercury emissions from the facility. Subsection (e) provides that Subsection (a) does not limit the authority of TCEQ to otherwise require mercury emissions monitoring at electric generating facilities.

ARTICLE 12. NO APPROPRIATION; EFFECTIVE DATE

SECTION 12.01. Provides that this Act does not make an appropriation.

SECTION 12.02. Effective date.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

ARTICLE 1. ADVANCED CLEAN ENERGY PROJECTS

SECTION 1.01 The substitute bill adds to the definition of "Advanced clean energy project" authorization to use a standard permit. The definition is also expanded to include projects that are implemented in connection with the construction of new, modified or existing facilities or whether the project involves the entire or portion emission stream from the facility. The original bill did not have these additions to the definition. The substitute also states the specified project emission stream is capable of achieving an annual average emission rate for nitrogen oxides of 0.05 pounds per million British thermal units where as the original bill did not mention an annual average. The substitute changes the wording of Subsection (c) due to drafter's preference, although the intent remains the same. The substitute puts the definition of "geologic storage in section (7-c) where it was Section 1.02 of the original bill.

SECTION 1.02 Section 382.0566 Health and Safety Code Subsection (c-1) is added to the bill to exempt a permit adding technology to a facility for a pilot study with regard to an advanced clean energy project and states the specifications. The original bill does not include any pilot project program of this type. The structure of numbering subsections is different in the substitute from the original due to drafter's preference and flow of language. "Except as provided by Subsection (c-1)" is added to Subsection (c).

SECTION 1.03. No changes.

ARTICLE 2 - NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM

SECTION 2.01 Subsection (b), Section 386.051, Health and Safety Code. The original bill has subdivisions (6) regarding purchase credit for hybrid cars and (7) regarding an energy-efficient appliance purchase incentive program. The substitute strikes those subdivisions.

SECTION 2.02 Section 386.052(b), Health and Safety Code. The substitute adds a subdivision (6) regarding taking appropriate action for areas in nonattainment, near nonattainment or future nonattainment areas with heavy concentrations of emissions of fine particulate matter from internal combustion engines. The original bill does not have this language.

SECTION 2.03 No change

SECTION 2.04 Section 386.251(c), Health and Safety Code, subdivision (C) is changed by removing reference to Chapter 387. The original bill lists Chapters 387 and 391.

SECTION 2.05 The title in the substitute has been changed to "GRANT" PROGRAM where as the original bill simply called this section PROGRAM. Minor wording changes are made in the substitute due to drafter's preference that do not change the meaning of the language. Section 391.003(d) GUIDELINES AND CRITERIA. The substitute deletes the opening statement in the original subsection that the legislature finds the current state of air quality in the state jeopardizes the state's ability to meet federal air quality requirements. SUBCHAPTER B: The title in the substitute to "GRANT APPLICATIONS AND REVIEW" and the original bill did not include "AND REVIEW." Section 391.101, APPLICATION FOR GRANT, the wording is different in the substitute from the original bill due to drafter's preference. The meaning is not altered. The Sections are broken down by the drafter in the substitute out of preference and ease of reading. Section 391.202, the title is changed from the original bill "CALCULATION OF COST-EFFECTIVENESS" to the substitute's "EVALUATING OF COST-EFFECTIVENESS."

SECTION 2.06 No change.

ARTICLE 3 - LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; CLEAN AIR ACT FEES. The substitute bill adds "Clean Air Act Fees" to the title whereas the original bill made no reference.

SECTION 3.01 The substitute bill adds subdivision (3) relating to fees required to be collected under the Federal Clean Air Act as stipulated.

SECTION 3.02 The substitute adds language stating that the commission is permitted to lower the required match for a county that proposes to develop fraud detection programs as stipulated. The original bill made no such provision.

ARTICLE 4 - TEXAS EMISSIONS REDUCTION PLAN

SECTION 4.01 The substitute bill puts the sections from the original bill in different order. This section was the original bill's SECTION 4.05 regarding the definition of "stationary engines."

SECTION 4.02 The language in this section of the substitute was originally in SECTION 4.06 of the original bill.

SECTION 4.03 The language in this section of the substitute was originally in SECTION 4.07 of the original bill.

SECTION 4.04 No change.

SECTION 4.05 The language of this section of the substitute was originally in SECTION 4.02 of the original bill.

SECTION 4.06 The language of this section of the substitute was originally in SECTION 4.03 of the original bill.

SECTION 4.07 The language of this section of the substitute was originally in SECTION 4.01 of the original bill.

SECTION 4.08 The substitute bill uses this section to extend the expiration date to August 31, 2019, whereas, the original bill uses this section, Subchapter G to outline the PLUG-IN HYBRID MOTOR VEHICLE PURCHASE CREDIT PROGRAM. The substitute has no language with regard to a plug in hybrid program. Subchapter H of the original bill outlines an ENERGY-EFFICIENT APPLIANCE PURCHASE INCENTIVE PROGRAM, where the substitute bill makes no reference to such a program in this section.

SECTION 4.09 The substitute bill adds this section and changes the expiration date to August 31, 2019. The original bill Amends Subsection (b) Section 152.002 of the Tax Code with regard to the purchase programs.

ARTICLE 5: NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

SECTION 5.01 The substitute bill strikes the language regarding the "10 percent" in the original bill that can be used for the new technology implementation program where the substitute refers to "a specified amount." The substitute also deletes any reference to the use of funds for light-duty plug-in or hybrid vehicle purchase credits and the appliance purchase incentive program. The substitute makes the contracting language more specific referring to the Energy Systems Laboratory at the Texas Engineering Experiment Station for \$216,000 annually for development and computation of emission reductions through wind and renewable energy resources for the state implementation plan (SIP). Allocations are stipulated. The original bill left the language much more vague stating a portion shall be allocated for research related to air quality administered by a non profit or institution of higher education.

SECTION 5.02 NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM. The substitute makes a small change from the original bill when referencing reducing emissions of oxides of nitrogen in nonattainment areas "designated in this state." The original bill did not get that specific.

SECTION 5.03 No change.

SECTION 5.04 No change.

SECTION 5.05 No change.

SECTION 5.06 No change.

ARTICLE 6 - BUILDING ENERGY CODES

SECTION 6.01 The substitute bill deletes the reference to duplexes where the original bill made the reference. The original bill had a subsection (a-1) regarding statutory warranties and building and performance standards under Section 430.001 of the Property Code and inspections under Subtitle F, Title 16, Property Code, Subsection (a). That language was stricken from the substitute bill. The drafter reorganized the sections and the original bill's SECTION 6.02 has become Subsection (b-1) of the substitute bill. The substitute bill adds (b-2) and (b-3) and states the State Energy Conservation Office shall adopt rules allowing persons who have an interest in the adoption of the energy codes in (b-1) to comment on the codes being considered and stipulates who and what the adoption of those codes are to include. The original bill required new construction to be built with an electrical outlet compatible with recharging a plug-in vehicle. The substitute bill does not include this language.

ARTICLE 7: IDLING OF MOTOR VEHICLES No change

ARTICLE 8 MAXIMUM WEIGHT FOR VEHICLES WITH IDLE REDUCTION SYSTEMS

The original bill had the title "EXEMPTION OF THE WEIGHT OF CERTAIN IDLE REDUCTION SYSTEMS FOR COMMERCIAL VEHICLES FROM MAXIMUM WEIGHT RESTRICTIONS"

SECTION 8.01 The original bill had the definition of "Idle reduction system" numbered as (5) while renumbering the definitions following appropriately. For simplicity sake, the drafter listed the definition in the substitute as (4-a) for "Idle reduction system" leaving no need to renumber the definitions following. The substitute also adds the language "sleeper berth" in describing the commercial vehicle where the original bill did not.

ARTICLE 9: The substitute bill lists this as "HOUSING PARTNERSHIP PROGRAM REBATES" while the original bill lists this section as "APPLIANCE EFFICIENCY STANDARDS." The original bill sets out the specifics for the appliance efficiency program including definitions, appliances included and exempted, efficiency standards, adding new or increased efficiency standards, applicable dates, tracking, reporting and claiming emission reduction credits, product certification, product labeling, Comptroller testing for efficiency standard compliance, inspections, complaints, Attorney General enforcement, violations, penalties, and rules for implementation. The substitute bill does not include this language. The substitute bill permits state agencies to promote the efficient use of energy by using rebates in Texas residential housing.

ARTICLE 10: The title has changed from the original bill's GREEN HOUSE GAS REGISTRY to the substitute's FEDERAL GREENHOUSE GAS REGULATION. The substitute bill adds a VOLUNTARY ACTIONS REGISTRY permitting businesses or agencies of Texas to work with the Environmental Protection Agency to get credit for taking early action in reducing carbon dioxide emissions.

ARTICLE 11: The substitute bill is titled EMISSIONS INFORMATION and the original bill is titled PERMITTING. The substitute bill requires TCEQ to create an electronic emissions database emission inventory regarding the allowed emissions as stipulated. The information gathered will be submitted in report form to the governor, lieutenant governor and speaker of the house. The substitute also requires the state to implement mercury monitoring should the US Environmental Protection Agency establish standards as detailed. The original bill requires the consideration of cumulative effect in the issuance of permits for new electric generating facilities as stipulated.

ARTICLE 12: No change.