

By: Averitt, et al.

S.B. No. 16

Substitute the following for S.B. No. 16:

By: Legler

C.S.S.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to the enhancement of air quality, including the capture and storage of carbon dioxide and development of a greenhouse gas registry, the development of emissions reduction technologies, and the improvement of energy efficiency in buildings, vehicles, and appliances.

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

ARTICLE 1. ADVANCED CLEAN ENERGY PROJECTS

SECTION 1.01. Section 382.003, Health and Safety Code, is amended by amending Subdivision (1-a) and adding Subdivision (7-c) to read as follows:

(1-a) "Advanced clean energy project" means a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the commission on or after January 1, 2008, and before January 1, 2020, and that:

(A) involves the use of coal, biomass, petroleum coke, solid waste, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

1 (B) with regard to the portion of the emissions
2 stream from the facility that is associated with the project, is
3 capable of achieving on an annual basis a 99 percent or greater
4 reduction of sulfur dioxide emissions and [7] a 95 percent or
5 greater reduction of mercury emissions [7] and achieving an annual
6 average emission rate for nitrogen oxides of 0.05 pounds or less per
7 million British thermal units; and

8 (C) captures not less than 50 percent of the
9 ~~[renders]~~ carbon dioxide in the portion of the emissions stream
10 from the facility that is associated with the project and
11 sequesters that captured carbon dioxide by geologic storage or
12 other means ~~[capable of capture, sequestration, or abatement if any~~
13 ~~carbon dioxide is produced by the project]~~.

14 (7-c) "Geologic storage" means the underground storage of
15 carbon dioxide in a suitable geologic formation, including storage
16 that is accomplished in conjunction with an enhanced oil recovery
17 project.

18 SECTION 1.02. Section 382.0566, Health and Safety Code, is
19 amended by amending Subsection (c) and adding Subsection (c-1) to
20 read as follows:

21 (c) Except as provided by Subsection (c-1), the ~~[The]~~ permit
22 process authorized by this section is subject to the requirements
23 relating to a contested case hearing under this chapter, Chapter 5,
24 Water Code, or Subchapters C-G, Chapter 2001, Government Code, as
25 applicable.

26 (c-1) Subsection (c) does not apply to a permit to add
27 technology to a facility as part of a pilot study related to an

1 advanced clean energy project if:

2 (1) the purpose of the pilot study is to test the
3 effectiveness of the technology;

4 (2) the pilot study will be conducted for a period of
5 not more than two years;

6 (3) the applicant for the permit submits documentation
7 evidencing that the technology is expected to reduce overall
8 emissions of air contaminants; and

9 (4) a report of the results of the pilot study will be
10 produced at the end of the permit period and will be made available
11 to the public.

12 SECTION 1.03. Section 382.0567(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) The commission may not consider any technology or level
15 of emission reduction to be achievable for purposes of a best
16 available control technology analysis or lowest achievable
17 emission rate analysis conducted by the commission under another
18 provision of this chapter solely because the technology is used or
19 the emission reduction is achieved by a facility receiving an
20 incentive as an advanced clean energy project or new technology
21 project, as described by Section 391.002.

22 ARTICLE 2. NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM

23 SECTION 2.01. Section 386.051(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) Under the plan, the commission and the comptroller shall
26 provide grants or other funding for:

27 (1) the diesel emissions reduction incentive program

1 established under Subchapter C, including for infrastructure
2 projects established under that subchapter;

3 (2) the motor vehicle purchase or lease incentive
4 program established under Subchapter D;

5 (3) the new technology research and development
6 program established under Chapter 387; ~~and~~

7 (4) the clean school bus program established under
8 Chapter 390; and

9 (5) the new technology implementation grant program
10 established under Chapter 391.

11 SECTION 2.02. Section 386.052(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) Appropriate commission objectives include:

14 (1) achieving maximum reductions in oxides of nitrogen
15 to demonstrate compliance with the state implementation plan;

16 (2) preventing areas of the state from being in
17 violation of national ambient air quality standards;

18 (3) achieving cost-saving and multiple benefits by
19 reducing emissions of other pollutants; ~~and~~

20 (4) achieving reductions of emissions of diesel
21 exhaust from school buses;

22 (5) advancing new technologies that reduce oxides of
23 nitrogen and other emissions from facilities and other stationary
24 sources; and

25 (6) taking appropriate actions, with a focus on areas
26 with heavy concentrations of emissions of fine particulate matter
27 from internal combustion engines, to assist areas designated as

1 nonattainment areas for fine particulate matter, areas that become
2 designated as nonattainment areas for fine particulate matter, and
3 areas in jeopardy of being designated as nonattainment areas for
4 fine particulate matter.

5 SECTION 2.03. Section 386.057(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) Not later than December 1, 2002, and not later than
8 December 1 of each subsequent second year, the commission, in
9 consultation with the advisory board, shall publish and submit to
10 the legislature a biennial plan report. The report must include:

11 (1) the information included in the annual reviews
12 conducted under Subsection (a);

13 (2) specific information for individual projects as
14 required by Subsection (c);

15 (3) information contained in reports received under
16 Sections 386.205, 388.003(e), [~~and~~] 388.006, and 391.104; and

17 (4) a summary of the commission's activities under
18 Section 386.052.

19 SECTION 2.04. Section 386.251(c), Health and Safety Code,
20 is amended to read as follows:

21 (c) The fund consists of:

22 (1) the amount of money deposited to the credit of the
23 fund under:

24 (A) Section 386.056;

25 (B) Sections 151.0515 and 152.0215, Tax Code; and

26 (C) Sections 501.138, 502.1675, and 548.5055,

27 Transportation Code; and

1 (2) grant money recaptured under Section 386.111(d)
2 and Chapter 391.

3 SECTION 2.05. Subtitle C, Title 5, Health and Safety Code,
4 is amended by adding Chapter 391 to read as follows:

5 CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM FOR
6 FACILITIES AND STATIONARY SOURCES
7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 391.001. DEFINITIONS. In this chapter:

9 (1) "Best available control technology" has the
10 meaning assigned by Section 169 of the federal Clean Air Act (42
11 U.S.C. Section 7479(3)).

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

14 (3) "Facility" has the meaning assigned by Section
15 382.003.

16 (4) "Incremental cost" has the meaning assigned by
17 Section 386.001.

18 (5) "New technology" means emissions control
19 technology that results in emissions reductions that exceed state
20 or federal requirements in effect at the time of submission of a new
21 technology implementation grant application.

22 (6) "Stationary source" has the meaning assigned by
23 Section 302 of the federal Clean Air Act (42 U.S.C. Section
24 7602(z)).

25 Sec. 391.002. GRANT PROGRAM. (a) The commission shall
26 establish and administer a new technology implementation grant
27 program to assist the implementation of new technologies to reduce

1 emissions from facilities and other stationary sources in this
2 state. Under the program, the commission shall provide grants or
3 other financial incentives for eligible projects to offset the
4 incremental cost of emissions reductions.

5 (b) Projects that may be considered for a grant under the
6 program include:

7 (1) advanced clean energy projects, as defined by
8 Section 382.003;

9 (2) new technology projects that reduce emissions of
10 regulated pollutants from point sources and involve capital
11 expenditures that exceed \$500 million; and

12 (3) electricity storage projects related to renewable
13 energy.

14 Sec. 391.003. GUIDELINES AND CRITERIA. (a) The commission
15 shall adopt grant guidelines and criteria consistent with the
16 requirements of this chapter.

17 (b) The guidelines must include:

18 (1) protocols to compute projected emissions
19 reductions and project cost-effectiveness; and

20 (2) safeguards to ensure that the projects funded
21 result in emissions reductions not otherwise required by state or
22 federal law.

23 (c) The commission may propose revisions to the guidelines
24 and criteria adopted under this section as necessary to improve the
25 ability of the program to achieve the program goals.

26 (d) The commission may adopt emergency rules under Section
27 2001.034, Government Code, with abbreviated notice, to carry out

1 any rulemaking necessary to implement this chapter.

2 (e) Except as provided by Subsection (d), the rulemaking
3 requirements of Chapter 2001, Government Code, do not apply to the
4 adoption or revision of guidelines and criteria under this section.

5 Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS
6 IN CERTAIN NONATTAINMENT AREAS. A project funded under this
7 chapter must comply with Sections 386.055 and 386.056, as
8 applicable.

9 [Sections 391.005-391.100 reserved for expansion]

10 SUBCHAPTER B. GRANT APPLICATIONS AND REVIEW

11 Sec. 391.101. APPLICATION FOR GRANT. (a) The owner of a
12 facility located in this state may apply for a grant under the
13 program established under Section 391.002. To improve the ability
14 of the program to achieve the program goals, the commission may
15 adopt guidelines to allow a person other than the owner to apply for
16 and receive a grant.

17 (b) An application for a grant under this chapter must be
18 made on a form provided by the commission and must contain
19 information required by the commission, including:

20 (1) a detailed description of the proposed project;

21 (2) information necessary for the commission to
22 determine whether the project meets the commission's eligibility
23 requirements, including a statement of the amounts of any other
24 public financial assistance the project will receive; and

25 (3) other information the commission may require.

26 (c) An application for a grant under this chapter must
27 contain a plan for implementation of a program that will provide

1 project information and education to the public in the areas
2 subject to public notice under federal and state permitting
3 requirements for the proposed project until completion of the
4 permitting process. The plan must provide for a publicly
5 accessible informational Internet website.

6 Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES.

7 (a) The commission shall review an application for a grant for a
8 project authorized under this chapter according to dates specified
9 in a request for grant applications. If the commission determines
10 that an application is incomplete, the commission shall notify the
11 applicant and provide an explanation of the information missing
12 from the application. The commission shall evaluate the completed
13 application according to the guidelines and criteria adopted under
14 Section 391.003.

15 (b) To the extent possible, the commission shall coordinate
16 project review and approval with any timing constraints related to
17 project purchases or installations to be made by an applicant.

18 (c) The commission may deny a grant application for a
19 project that does not meet the applicable criteria or that the
20 commission determines is not made in good faith, is not credible, or
21 is not in compliance with this chapter or the goals of this chapter.

22 (d) Subject to the availability of funding, the commission
23 shall award a grant under this chapter in conjunction with the
24 execution of a contract that obligates the commission to make the
25 grant and the recipient to perform the actions described by the
26 recipient's grant application. Subject to Section 391.204, the
27 contract must incorporate provisions for recapturing grant money

1 for noncompliance with grant requirements. Grant money recaptured
2 under the contract provisions shall be deposited in the Texas
3 emissions reduction plan fund and reallocated for other projects
4 under this subchapter.

5 (e) An applicant may seek reimbursement for qualifying
6 equipment installed after the effective date of this program.

7 (f) In coordinating interagency application review
8 procedures, the commission shall:

9 (1) solicit review and comments from:

10 (A) the comptroller to assess:

11 (i) the financial stability of the
12 applicant;

13 (ii) the economic benefits and job creation
14 potential associated with the project; and

15 (iii) any other information related to the
16 duties of that office;

17 (B) the Public Utility Commission of Texas to
18 assess:

19 (i) the reliability of the proposed
20 technology;

21 (ii) the feasibility and
22 cost-effectiveness of electric transmission associated with the
23 project; and

24 (iii) any other information related to the
25 duties of that agency; and

26 (C) the Railroad Commission of Texas to assess:

27 (i) the availability and cost of the fuel

1 involved with the project; and

2 (ii) any other information related to the
3 duties of that agency;

4 (2) consider the comments received under Subdivision
5 (1) in the commission's grant award decision process; and

6 (3) as part of the report required by Section 391.104,
7 justify awards made to projects that have been negatively reviewed
8 by agencies under Subdivision (1).

9 (g) The commission may solicit review and comments from
10 other state agencies or other entities with subject matter
11 expertise applicable to the review of a grant application.

12 Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL
13 REQUIRED. (a) An application for a new technology implementation
14 grant under this chapter must show reasonable evidence that the
15 proposed technology is capable of providing a significant reduction
16 in emissions.

17 (b) The commission shall consider specifically, for each
18 proposed new technology implementation grant application:

19 (1) the projected potential for reduced emissions and
20 the cost-effectiveness of the new technology;

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

23 (3) the strength of the implementation plan.

24 Sec. 391.104. REPORTING REQUIREMENTS. The commission
25 annually shall prepare a report that summarizes the applications
26 received and grants awarded in the preceding year. Preparation of
27 the report must include the participation of the state agencies

1 involved in the review of applications under Section 391.102.

2 [Sections 391.105-391.200 reserved for expansion]

3 SUBCHAPTER C. PROJECT REQUIREMENTS

4 Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The
5 commission shall establish criteria for prioritizing projects
6 eligible to receive grants under this chapter. The commission
7 shall review and may modify the criteria and priorities as
8 appropriate.

9 (b) A proposed project must meet the requirements of this
10 section to be eligible for a grant under the program established
11 under Section 391.002.

12 (c) Each proposed project must meet the cost-effectiveness
13 requirements established by the commission.

14 (d) A new technology implementation project must document,
15 in a manner acceptable to the commission, an achieved reduction
16 from the baseline emissions adopted by the commission for the
17 relevant facility or stationary source. After studying available
18 emissions reduction technologies, the commission may impose a
19 required minimum percentage reduction of emissions to improve the
20 ability of the program to achieve the program goals.

21 (e) If a baseline emissions standard does not exist for a
22 facility, the commission, for purposes of this subchapter, shall
23 adopt an appropriate baseline emissions level for comparison
24 purposes.

25 (f) Planned water usage by proposed projects must be
26 consistent with the state water plan.

27 Sec. 391.202. EVALUATING COST-EFFECTIVENESS. The

1 commission shall establish reasonable methodologies for evaluating
2 project cost-effectiveness, consistent with accepted methods.

3 Sec. 391.203. DETERMINATION OF GRANT AMOUNT. (a) The
4 commission may not award a grant that, net of taxes, provides an
5 amount that exceeds the incremental cost of the proposed project.

6 (b) In determining the amount of a grant under this
7 subchapter, the commission shall reduce the incremental cost of a
8 proposed project by the value of any existing financial incentive
9 that directly reduces the cost of the proposed project, including
10 tax credits or deductions, other grants, or any other public
11 financial assistance.

12 Sec. 391.204. COST SHARING; RECAPTURING GRANT. (a) The
13 commission shall require an applicant to bear at least 50 percent of
14 the costs of implementing a project funded under this chapter.

15 (b) The commission may not require repayment of grant money,
16 except that the commission must require provisions for recapturing
17 grant money for noncompliance with grant requirements.

18 Sec. 391.205. PREFERENCES. (a) Except as provided by
19 Subsection (c), in awarding grants under this chapter the
20 commission shall give preference to projects that:

21 (1) use natural resources originating or produced in
22 this state;

23 (2) contain an energy efficiency component; or

24 (3) include the use of solar, wind, or other renewable
25 energy sources.

26 (b) Projects that include more than one of the criteria
27 described by Subsection (a) shall be given a greater preference in

1 the award of grants under this chapter.

2 (c) The commission may give preference under Subsection (a)
3 only if the cost-effectiveness and emission performance of the
4 project are comparable to those of a project not claiming a
5 preference described by that subsection.

6 [Sections 391.206-391.300 reserved for expansion]

7 SUBCHAPTER D. FUNDING; EXPIRATION

8 Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a
9 grant under this chapter must use the grant to pay the incremental
10 costs of the purchase and installation of the project for which the
11 grant is made, which may include reasonable and necessary expenses
12 for the labor needed to install emissions-reducing equipment. The
13 recipient may not use the grant for the costs of operating and
14 maintaining the emissions-reducing equipment.

15 Sec. 391.302. COMPTROLLER REVIEW OF USE OF GRANT FUNDS. (a)
16 The comptroller annually shall conduct a review of each recipient
17 of a new technology implementation grant under this chapter to
18 ensure that the recipient's use of the grant complies with state law
19 and the terms of the award.

20 (b) To assist with a review under this section, the
21 commission shall provide the comptroller with all monitoring
22 reports received from grant recipients and any other documentation
23 requested by the comptroller.

24 (c) On a finding of any misuse of grant money or other
25 noncompliance with grant requirements, the comptroller shall
26 provide a report to the commission with recommendations for
27 subsequent action, including the recapture of money misused.

1 (d) A finding of any misuse of grant money by a recipient of
2 a grant under this chapter results in a debt owed to the state, and
3 the comptroller may withhold warrants and electronic funds
4 transfers to the recipient in accordance with Section 403.055,
5 Government Code.

6 (e) The comptroller may contract with another state agency,
7 an institution of higher education, or a private entity to conduct a
8 review under this section or to assist the comptroller in
9 conducting any part of the review.

10 (f) The comptroller may adopt rules to implement this
11 section.

12 Sec. 391.303. TIME OF USE OF GRANT FUNDING. Money
13 appropriated for grants to be made by the commission under this
14 chapter for a fiscal year may be distributed in subsequent fiscal
15 years if the grant has been awarded and treated as a binding
16 encumbrance by the commission before the end of the appropriation
17 year of the money appropriated for grant purposes. Distribution of
18 the grant money is subject to Section 403.071, Government Code.

19 Sec. 391.304. EXPIRATION. This chapter expires August 31,
20 2019.

21 SECTION 2.06. Section 403.071(b), Government Code, is
22 amended to read as follows:

23 (b) A claim may not be paid from an appropriation unless the
24 claim is presented to the comptroller for payment not later than two
25 years after the end of the fiscal year for which the appropriation
26 was made. However, a claim may be presented not later than four
27 years after the end of the fiscal year for which the appropriation

1 from which the claim is to be paid was made if the appropriation
2 relates to new construction contracts, to grants awarded under
3 Chapter 391, Health and Safety Code, or to repair and remodeling
4 projects that exceed the amount of \$20,000, including furniture and
5 other equipment, architects' and engineering fees, and other costs
6 related to the contracts or projects.

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

9 SECTION 3.01. Section 382.0622(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Clean Air Act fees consist of:

12 (1) fees collected by the commission under Sections
13 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided
14 by law; ~~and~~

15 (2) \$2 of each advance payment collected by the
16 Department of Public Safety for inspection certificates for
17 vehicles other than mopeds under Section 548.501, Transportation
18 Code; and

19 (3) fees collected that are required under Section 185
20 of the federal Clean Air Act (42 U.S.C. Section 7511d).

21 SECTION 3.02. Section 382.210(d), Health and Safety Code,
22 is amended to read as follows:

23 (d) A participating county shall provide an electronic
24 means for distributing vehicle repair or replacement funds once all
25 program criteria have been met with regard to the repair or
26 replacement. The county shall ensure that funds are transferred to
27 a participating dealer under this section not later than the 10th

1 [~~five~~] business day [~~days~~] after the date the county receives proof
2 of the sale and any required administrative documents from the
3 participating dealer.

4 SECTION 3.03. Sections 382.220(c) and (d), Health and
5 Safety Code, are amended to read as follows:

6 (c) Money that is made available for the implementation of a
7 program under Subsection (b) may not be expended for local
8 government fleet or vehicle acquisition or replacement, call center
9 management, application oversight, invoice analysis, education,
10 outreach, or advertising purposes.

11 (d) Fees collected under Sections 382.202 and 382.302 may be
12 used, in an amount not to exceed \$5 million per fiscal year, for
13 projects described by Subsection (b). The fees shall be made
14 available only to counties participating in the low-income vehicle
15 repair assistance, retrofit, and accelerated vehicle retirement
16 programs created under Section 382.209 and only on a matching
17 basis, whereby the commission provides money to a county in the same
18 amount that the county dedicates to a project authorized by
19 Subsection (b). The commission may reduce the match requirement
20 for a county that proposes to develop and implement independent
21 test facility fraud detection programs, including the use of remote
22 sensing technology for coordinating with law enforcement officials
23 to detect, prevent, and prosecute the use of counterfeit state
24 inspection stickers.

25 ARTICLE 4. TEXAS EMISSIONS REDUCTION PLAN

26 SECTION 4.01. Section 386.001, Health and Safety Code, is
27 amended by adding Subdivision (10-a) to read as follows:

1 (10-a) "Stationary engine" means a machine used in
2 nonmobile applications that converts fuel into mechanical motion,
3 including turbines and other internal combustion devices.

4 SECTION 4.02. Section 386.002, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 386.002. EXPIRATION. This chapter expires August 31,
7 2019 [~~2013~~].

8 SECTION 4.03. Section 386.104(c), Health and Safety Code,
9 is amended to read as follows:

10 (c) For a proposed project as described by Section
11 386.102(b), other than a project involving a marine vessel or
12 engine, not less than 75 percent of vehicle miles traveled or hours
13 of operation projected for the five years immediately following the
14 award of a grant must be projected to take place in a nonattainment
15 area or affected county of this state. The commission may also
16 allow vehicle travel on highways and roadways, or portions of a
17 highway or roadway, designated by the commission and located
18 outside a nonattainment area or affected county to count towards
19 the percentage of use requirement in this subsection. For a
20 proposed project involving a marine vessel or engine, the vessel or
21 engine must be operated in the intercoastal waterways or bays
22 adjacent to a nonattainment area or affected county of this state
23 for a sufficient amount of time over the lifetime of the project, as
24 determined by the commission, to meet the cost-effectiveness
25 requirements of Section 386.105. For a proposed project involving
26 non-road equipment used for natural gas recovery purposes, the
27 equipment must be operated in a nonattainment area or affected

1 county for a sufficient amount of use over the lifetime of the
2 project, as determined by the commission, to meet the
3 cost-effectiveness requirements of Section 386.105.

4 SECTION 4.04. Section 390.006, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 390.006. EXPIRATION. This chapter expires August 31,
7 2019 [~~2013~~].

8 SECTION 4.05. Section 151.0515(d), Tax Code, is amended to
9 read as follows:

10 (d) This section expires August 31, 2019 [~~2013~~].

11 SECTION 4.06. Section 152.0215(c), Tax Code, is amended to
12 read as follows:

13 (c) This section expires August 31, 2019 [~~2013~~].

14 SECTION 4.07. Section 501.138(b-3), Transportation Code,
15 is amended to read as follows:

16 (b-3) This subsection and Subsection (b-2) expire September
17 1, 2019 [~~2015~~].

18 SECTION 4.08. Section 502.1675(c), Transportation Code, is
19 amended to read as follows:

20 (c) This section expires August 31, 2019 [~~2013~~].

21 SECTION 4.09. Section 548.5055(c), Transportation Code, is
22 amended to read as follows:

23 (c) This section expires August 31, 2019 [~~2013~~].

24 ARTICLE 5. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

25 SECTION 5.01. Sections 386.252(a) and (b), Health and
26 Safety Code, are amended to read as follows:

27 (a) Money in the fund may be used only to implement and

1 administer programs established under the plan and shall be
2 allocated as follows:

3 (1) for the diesel emissions reduction incentive
4 program, 87.5 percent of the money in the fund, of which:

5 (A) not more than four percent may be used for the
6 clean school bus program;

7 (B) ~~and~~ not more than 10 percent may be used for
8 on-road diesel purchase or lease incentives; and

9 (C) a specified amount may be used for the new
10 technology implementation grant program, from which a defined
11 amount may be set aside for electricity storage projects related to
12 renewable energy;

13 (2) for the new technology research and development
14 program, nine ~~[9.5]~~ percent of the money in the fund, of which:

15 (A) up to ~~[\$250,000 is allocated for~~
16 ~~administration, up to]~~ \$200,000 is allocated for a health effects
17 study;

18 (B) ~~[7]~~ \$500,000 is to be deposited in the state
19 treasury to the credit of the clean air account created under
20 Section 382.0622 to supplement funding for air quality planning
21 activities in affected counties;

22 (C) ~~[7]~~ not less than 20 percent is to be
23 allocated each year to support research related to air quality as
24 provided by Section 387.010; ~~[for the Houston-Galveston-Brazoria~~
25 ~~and Dallas-Fort Worth nonattainment areas by a nonprofit~~
26 ~~organization based in Houston of which \$216,000 each year shall be~~
27 ~~contracted to the Energy Systems Laboratory at the Texas~~

1 ~~Engineering Experiment Station for the development and annual~~
2 ~~calculation of creditable statewide emissions reductions obtained~~
3 ~~through wind and other renewable energy resources for the State~~
4 ~~Implementation Plan,~~] and

5 (D) the balance is [~~to be~~] allocated each year to
6 the commission [~~a nonprofit organization or an institution of~~
7 ~~higher education based in Houston~~] to be used to:

8 (i) implement and administer the new
9 technology research and development program [~~under a contract with~~
10 ~~the commission~~] for the purpose of identifying, testing, and
11 evaluating new emissions-reducing technologies with potential for
12 commercialization in this state and to facilitate their
13 certification or verification; and

14 (ii) contract with the Energy Systems
15 Laboratory at the Texas Engineering Experiment Station for \$216,000
16 annually for the development and annual computation of creditable
17 statewide emissions reductions obtained through wind and other
18 renewable energy resources for the state implementation plan; and

19 (3) two percent is allocated to the commission and 1.5
20 percent is allocated to the laboratory for administrative costs
21 incurred by the commission and the laboratory [~~, three percent of~~
22 ~~the money in the fund~~].

23 (b) The [~~Up to 25 percent of the~~] money allocated under
24 Subsection (a) to a particular program [~~and not expended under that~~
25 ~~program by January 1 of the second fiscal year of a fiscal biennium~~]
26 may be used for another program under the plan as determined by the
27 commission [~~in consultation with the advisory board~~].

1 SECTION 5.02. Section 387.003, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 387.003. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT
4 PROGRAM. (a) The commission [~~A nonprofit organization or~~
5 ~~institution of higher education described by Section~~
6 ~~386.252(a)(2), under a contract with the commission as described by~~
7 ~~that section,~~] shall establish and administer a new technology
8 research and development program as provided by this chapter. The
9 commission may contract with one or more well-qualified nonprofit
10 organizations or institutions of higher education for
11 administration of this program [~~than one entity and may limit the~~
12 ~~amount of each grant contract accordingly~~].

13 (b) Under the program, the commission shall provide grants
14 [~~to be used~~] to support development of emissions-reducing
15 technologies that may be used for projects eligible for awards
16 under Chapters [~~Chapter~~] 386 and 391 and other new technologies
17 that show promise for commercialization. The primary objective of
18 this chapter is to promote the development of commercialization
19 technologies to reduce emissions of oxides of nitrogen in
20 nonattainment areas designated in this state [~~that will support~~
21 ~~projects that may be funded under Chapter 386 and this chapter,~~
22 ~~including advanced technologies such as fuel cells, catalysts, and~~
23 ~~fuel additives~~].

24 (c) If the commission contracts with one or more [~~The board~~
25 ~~of directors of a]~~ nonprofit organizations or institutions of
26 higher education to [~~organization under contract with the~~
27 ~~commission to establish and]~~ administer a new technology research

1 and development program under [~~as provided by~~] this chapter, the
2 board of directors of each organization may not have more than 11
3 members, must include two persons of relevant scientific expertise
4 to be nominated by the commission, and may not include more than
5 four county judges [~~selected from counties in the~~
6 ~~Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment~~
7 ~~areas~~]. The two persons of relevant scientific expertise to be
8 nominated by the commission may be employees or officers of the
9 commission, provided that they do not participate in funding
10 decisions affecting the granting of funds by the commission to a
11 nonprofit organization on whose board they serve.

12 (d) [~~The commission may enter into a grant contract with an~~
13 ~~institution of higher education described by Section 386.252(a)(2)~~
14 ~~for the institution to operate a testing facility which would be~~
15 ~~available for demonstration of eligible projects receiving grants~~
16 ~~under this chapter.~~

17 [~~(e)~~] The commission shall provide oversight as appropriate
18 for grants provided to a nonprofit organization or an institution
19 of higher education under this program.

20 (e) [~~(f)~~] A nonprofit organization or an institution of
21 higher education shall submit to the commission for approval a
22 budget for the disposition of funds granted under this program.

23 (f) [~~(g)~~] The commission shall limit the use of grants for
24 administrative costs incurred by a nonprofit organization or an
25 institution of higher education to an amount not to exceed 10
26 percent of the total program funding [~~provided to the nonprofit~~
27 ~~organization under this program~~].

1 (g) [~~(h)~~] A nonprofit organization that receives grants
2 from the commission under this program is subject to Chapters 551
3 and 552, Government Code.

4 SECTION 5.03. Section 387.004, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY
7 PROPOSALS. The commission from time to time shall issue or
8 contract with a nonprofit organization or an institution of higher
9 education described by Section 387.003(a) [~~386.252(a)(2)~~] to issue
10 specific requests for proposals (RFPs) or program opportunity
11 notices (PONs) for technology projects to be funded under the
12 program.

13 SECTION 5.04. Sections 387.005(a), (b), and (f), Health and
14 Safety Code, are amended to read as follows:

15 (a) Grants awarded under this chapter shall be directed
16 toward a balanced mix of:

17 (1) retrofit and add-on technologies and other
18 advanced technologies that reduce emissions from the existing stock
19 of engines and vehicles targeted by the Texas emissions reduction
20 plan, provided that the technologies do not significantly reduce
21 the fuel economy of those engines and vehicles;

22 (2) [~~the establishment of a testing facility to~~
23 ~~evaluate retrofits, add-ons, advanced technologies, and fuels, or~~
24 ~~combinations of retrofits, add-ons, advanced technologies, and~~
25 ~~fuels, to determine their effectiveness in producing emissions~~
26 ~~reductions, with emphasis on the reduction of oxides of nitrogen,~~
27 ~~and~~

1 ~~[(3)]~~ advanced technologies for new engines and
2 vehicles that produce very-low or zero emissions of oxides of
3 nitrogen, including stationary and mobile fuel cells;

4 (3) advanced technologies for reducing oxides of
5 nitrogen and other emissions from stationary sources; and

6 (4) field validation of innovative technologies that:

7 (A) reduce emissions of oxides of nitrogen and
8 other emissions; and

9 (B) require demonstration of viability for full
10 commercial acceptance.

11 (b) The commission, directly or through a nonprofit
12 organization or an institution of higher education described by
13 Section 387.003(a) [~~386.252(a)(2)~~], shall identify and evaluate
14 and may consider making grants for technology projects that would
15 allow qualifying fuels to be produced from energy resources in this
16 state. In considering projects under this subsection, the
17 commission shall give preference to projects involving otherwise
18 unusable energy resources in this state and producing qualifying
19 fuels at prices lower than otherwise available and low enough to
20 make the projects to be funded under the program economically
21 attractive to local businesses in the area for which the project is
22 proposed.

23 (f) Selection of grant recipients by a nonprofit
24 organization or an institution of higher education described by
25 Section 387.003(a) [~~386.252(a)(2)~~] under contract with the
26 commission for the purpose of establishing and administering a new
27 technology research and development program as provided by this

1 chapter is subject to the commission's review and to the other
2 requirements of this chapter. A grant contract under this chapter
3 using funds described by Section 386.252 may not be made by a
4 nonprofit organization or an institution of higher education if the
5 commission or executive director of the commission does not consent
6 to the grant or contract.

7 SECTION 5.05. Section 387.006, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 387.006. EVIDENCE OF COMMERCIALIZATION POTENTIAL
10 REQUIRED. (a) An application for a technology grant under this
11 chapter must show reasonable [~~clear and compelling~~] evidence that:

12 (1) the proposed technology project has a substantial
13 [~~strong~~] commercialization plan and organization; and

14 (2) the technology proposed for funding[+
15 [~~(A)~~] is likely to be offered for commercial sale
16 in this state as soon as practicable [~~but no later than five years~~]
17 after the date of the application for funding[+, and

18 [~~(B) once commercialized, will offer~~
19 ~~opportunities for projects eligible for funding under Chapter 386~~].

20 (b) The commission shall consider specifically, for each
21 proposed technology project application:

22 (1) the projected potential for reduced emissions of
23 oxides of nitrogen and the cost-effectiveness of the technology
24 once it has been commercialized, including the impact on fuel
25 consumption and maintenance costs for retrofits and rebuilds;

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

1 (3) the strength of the commercialization plan.

2 SECTION 5.06. Chapter 387, Health and Safety Code, is
3 amended by adding Section 387.010 to read as follows:

4 Sec. 387.010. AIR QUALITY RESEARCH. (a) The commission
5 shall contract with a nonprofit organization or institution of
6 higher education to establish and administer a program to support
7 research related to air quality.

8 (b) The board of directors of a nonprofit organization
9 establishing and administering the program under this section may
10 not have more than 11 members, must include two persons with
11 relevant scientific expertise to be nominated by the commission,
12 and may not include more than four county judges selected from
13 counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth
14 nonattainment areas. The two persons with relevant scientific
15 expertise to be nominated by the commission may be employees or
16 officers of the commission, provided that they do not participate
17 in funding decisions affecting the granting of funds by the
18 commission to a nonprofit organization on whose board they serve.

19 (c) The commission shall provide oversight as appropriate
20 for grants provided under the program established under this
21 section.

22 (d) A nonprofit organization or institution of higher
23 education shall submit to the commission for approval a budget for
24 the disposition of funds granted under the program established
25 under this section.

26 (e) A nonprofit organization or institution of higher
27 education shall be reimbursed for costs incurred in establishing

1 and administering the research program related to air quality under
2 this section. Reimbursable administrative costs of a nonprofit
3 organization or institution of higher education may not exceed 10
4 percent of the program budget.

5 (f) A nonprofit organization that receives grants from the
6 commission under this section is subject to Chapters 551 and 552,
7 Government Code.

8 ARTICLE 6. BUILDING ENERGY CODES

9 SECTION 6.01. Section 388.003, Health and Safety Code, as
10 amended by Chapters 262 (S.B. 12) and 939 (H.B. 3693), Acts of the
11 80th Legislature, Regular Session, 2007, is reenacted and amended
12 to read as follows:

13 Sec. 388.003. ADOPTION OF BUILDING ENERGY EFFICIENCY
14 PERFORMANCE STANDARDS. (a) To achieve energy conservation in
15 single-family residential construction, the energy efficiency
16 provisions [chapter] of the International Residential Code, as it
17 existed on May 1, 2001, are [is] adopted as the energy code in this
18 state for single-family residential construction. Beginning
19 January 1, 2012, the energy efficiency provisions of the
20 International Residential Code, as it existed on May 1, 2009, are
21 adopted as the energy code in this state for single-family
22 residential construction.

23 (b) To achieve energy conservation in all other
24 residential, commercial, and industrial construction, the
25 International Energy Conservation Code as it existed on May 1,
26 2001, is adopted as the energy code for use in this state for all
27 other residential, commercial, and industrial construction.

1 Beginning January 1, 2012, the International Energy Conservation
2 Code, as it existed on May 1, 2009, is adopted as the energy code in
3 this state for all other residential, commercial, and industrial
4 construction.

5 (b-1) If the State Energy Conservation Office determines,
6 based on written recommendations from the laboratory, that the
7 latest published [~~edition of the~~] International Residential Code
8 energy efficiency provisions or the latest published edition of the
9 International Energy Conservation Code will result in residential
10 or commercial sector energy efficiency and air quality impact that
11 overall is equivalent to or better than the energy efficiency and
12 air quality achievable under the editions adopted under Subsection
13 (a) or (b), the office may by rule adopt the equivalent or more
14 stringent editions and substitute them for the energy codes
15 described by Subsection (a) or (b). The rule, if adopted, shall
16 establish an effective date for the new energy codes but not earlier
17 than nine months after the date of adoption. The laboratory shall
18 make its recommendations not later than six months after
19 publication of new editions at the end of each three-year code
20 development cycle of the International Residential Code and the
21 International Energy Conservation Code.

22 (b-2) The State Energy Conservation Office by rule shall
23 establish a procedure for persons who have an interest in the
24 adoption of energy codes under Subsection (b-1) to have an
25 opportunity to comment on the codes under consideration. The
26 office shall consider persons who have an interest in adoption of
27 those codes to include:

1 (1) commercial and residential builders, architects,
2 and engineers;

3 (2) municipal, county, and other local government
4 authorities; and

5 (3) environmental groups.

6 (b-3) In developing written recommendations under
7 Subsection (b-1), the laboratory shall consider the comments
8 submitted under Subsection (b-2).

9 (c) A municipality shall establish procedures:

10 (1) for the administration and enforcement of the
11 codes; and

12 (2) to ensure that code-certified inspectors or
13 approved energy efficiency program verifiers shall perform
14 inspections and enforce the code in the inspectors' jurisdictions.

15 (d) A municipality [~~or county~~] may establish procedures to
16 adopt local amendments to the International Energy Conservation
17 Code and the energy efficiency provisions [~~chapter~~] of the
18 International Residential Code.

19 (e) Local amendments may not result in less stringent
20 overall energy efficiency requirements [~~in nonattainment areas and~~
21 ~~in affected counties~~] than the energy efficiency chapter of the
22 International Residential Code or International Energy
23 Conservation Code. Local amendments must comply with the National
24 Appliance Energy Conservation Act of 1987 (42 U.S.C. Sections
25 6291-6309), as amended. The laboratory, at the request of a
26 municipality [~~or county~~], shall determine the relative impact of
27 proposed local amendments to an energy code, including whether

1 proposed amendments are substantially equal to or less stringent
2 than the unamended code. [~~For the purpose of establishing uniform~~
3 ~~requirements throughout a region, and on request of a council of~~
4 ~~governments, a county, or a municipality, the laboratory may~~
5 ~~recommend a climatically appropriate modification or a climate zone~~
6 ~~designation for a county or group of counties that is different from~~
7 ~~the climate zone designation in the unamended code.] The
8 laboratory shall:~~

9 (1) report its findings to the council[~~, county,~~] or
10 municipality, including an estimate of any energy savings potential
11 above the base code from local amendments; and

12 (2) annually submit a report to the commission:

13 (A) identifying the municipalities [~~and~~
14 ~~counties~~] whose codes are more stringent than the unamended code,
15 and whose codes are equally stringent or less stringent than the
16 unamended code; and

17 (B) quantifying energy savings and emissions
18 reductions from this program.

19 (f) Each municipality[~~, and each county~~] that has
20 established procedures under Subsection (d)[~~7~~] shall periodically
21 review and consider revisions made by the International Code
22 Council to the International Energy Conservation Code and the
23 energy efficiency chapter of the International Residential Code
24 adopted after May 1, 2009 [~~2001~~].

25 (g) The laboratory shall have the authority to set and
26 collect fees to perform certain tasks in support of the
27 requirements in Sections 388.004, 388.007, and 388.008.

1 (h) Within the boundaries of an airport operated by a joint
2 board created under Subchapter D, Chapter 22, Transportation Code,
3 the constituent agencies of which are populous home-rule
4 municipalities, the powers of a municipality under this section are
5 exclusively the powers of the joint board.

6 (i) A building certified by a national, state, or local
7 accredited energy efficiency program and determined by the
8 laboratory to be in compliance with the energy efficiency
9 requirements of this section may, at the option of the
10 municipality, be considered in compliance. The United States
11 Environmental Protection Agency's Energy Star Program
12 certification of energy code equivalency shall be considered in
13 compliance.

14 ARTICLE 7. IDLING OF MOTOR VEHICLES

15 SECTION 7.01. Sections 382.0191(b) and (d), Health and
16 Safety Code, are amended to read as follows:

17 (b) Except as provided by Subsection (c), the ~~[The]~~
18 commission may not prohibit or limit the idling of any ~~[a]~~ motor
19 vehicle that:

20 (1) has a gross vehicle weight rating greater than
21 8,500 pounds; and

22 (2) is equipped with a 2008 or subsequent model year
23 heavy duty diesel engine that has been certified by the United
24 States Environmental Protection Agency or a state environmental
25 agency to emit not more than 30 grams of nitrogen oxides emissions
26 per hour when idling ~~[when idling is necessary to power a heater or~~
27 ~~air conditioner while a driver is using the vehicle's sleeper berth~~

1 ~~for a government-mandated rest period. Idling is not necessary to~~
2 ~~power a heater or air conditioner if the vehicle is within two miles~~
3 ~~of a facility offering external heating and air conditioning~~
4 ~~connections at a time when those connections are available].~~

5 (d) This section expires November 1, 2010 [~~September 1,~~
6 ~~2009~~].

7 ARTICLE 8. MAXIMUM WEIGHT FOR VEHICLES WITH IDLE REDUCTION SYSTEMS

8 SECTION 8.01. Section 621.001, Transportation Code, is
9 amended by adding Subdivision (4-a) to read as follows:

10 (4-a) "Idle reduction system" means a system that
11 provides heating, cooling, or electrical service to a commercial
12 vehicle's sleeper berth for the purpose of reducing the idling of a
13 motor vehicle.

14 SECTION 8.02. Section 621.101, Transportation Code, is
15 amended by adding Subsections (d), (e), and (f) to read as follows:

16 (d) Notwithstanding any provision to the contrary, the
17 maximum gross vehicle weight limit, bridge formula limit, and axle
18 weight limit for any vehicle or combination of vehicles equipped
19 with an idle reduction system shall be increased by an amount
20 necessary to compensate for the additional weight of the idle
21 reduction system as provided by 23 U.S.C. Section 127.

22 (e) The weight increase under Subsection (d) may not be
23 greater than 400 pounds.

24 (f) On request by an appropriate law enforcement officer or
25 an official of an appropriate regulatory agency, the vehicle
26 operator shall provide proof that:

27 (1) the idle reduction system is fully functional at

1 all times; and

2 (2) the weight increase is not used for any purpose
3 other than the use of an idle reduction system.

4 ARTICLE 9. HOUSING PARTNERSHIP PROGRAM REBATES

5 SECTION 9.01. Sections 2305.036(b) and (e), Government
6 Code, are amended to read as follows:

7 (b) The energy office shall promote the efficient use of
8 energy in Texas residential housing through grants, partnerships,
9 rebates, and loans.

10 (e) Nonprofit organizations, community action agencies,
11 local governments, regional government councils, universities,
12 utility companies, public housing authorities, community-based
13 organizations, social service agencies, state agencies, and other
14 service-related organizations may serve as leads in establishing
15 partnerships with the agency.

16 ARTICLE 10. DEVELOPMENT OF FEDERAL GREENHOUSE GAS REPORTING RULE

17 SECTION 10.01. Chapter 382, Health and Safety Code, is
18 amended by adding Subchapter J to read as follows:

19 SUBCHAPTER J. FEDERAL GREENHOUSE GAS REGULATION

20 Sec. 382.501. DEVELOPMENT AND IMPLEMENTATION OF FEDERAL
21 GREENHOUSE GAS REPORTING RULE. (a) The commission and the Railroad
22 Commission of Texas, the Department of Agriculture, and the Public
23 Utility Commission of Texas shall jointly participate in the
24 federal government process for developing federal greenhouse gas
25 reporting requirements and the federal greenhouse gas registry
26 requirements.

27 (b) The commission shall adopt rules as necessary to comply

1 with any federal greenhouse gas reporting requirements adopted by
2 the federal government for private and public facilities eligible
3 to participate in the federal greenhouse gas registry. In adopting
4 the rules, the commission shall adopt and incorporate by reference
5 rules implementing the federal reporting requirements and the
6 federal registry.

7 Sec. 382.502. VOLUNTARY ACTIONS REGISTRY. The commission
8 shall:

9 (1) establish a registry of voluntary actions taken by
10 businesses in this state or state agencies since September 1, 2001,
11 to reduce carbon dioxide emissions; and

12 (2) work with the United States Environmental
13 Protection Agency to give credit for early action under any federal
14 rules that may be adopted for federal greenhouse gas regulation.

15 ARTICLE 11. EMISSIONS INFORMATION

16 SECTION 11.01. (a) Section 382.014, Health and Safety
17 Code, is amended to read as follows:

18 Sec. 382.014. EMISSION INVENTORY AND ELECTRONIC EMISSIONS
19 DATABASE. (a) The commission may require a person whose activities
20 cause emissions of air contaminants to submit information to enable
21 the commission to develop an inventory of emissions of air
22 contaminants in this state.

23 (b) The commission shall compile into an existing online
24 database emission inventory information concerning permitted
25 allowable emissions for major point sources and other point sources
26 that submit an annual emissions inventory or meet one or more of the
27 requirements for submitting an annual emissions inventory. The

1 information must be searchable by permit number.

2 (c) The commission shall:

3 (1) assess annually the emissions information
4 compiled under this section; and

5 (2) submit to the governor, lieutenant governor, and
6 speaker of the house of representatives a report of the information
7 compiled under this section not later than December 31 of each year.

8 (b) The Texas Commission on Environmental Quality shall
9 begin compiling emission inventory information in the electronic
10 database as required under Section 382.014, Health and Safety Code,
11 as amended by this article, not later than December 31, 2011.

12 (c) The Texas Commission on Environmental Quality shall
13 submit the initial report required by Section 382.014(c), Health
14 and Safety Code, as added by this article, not later than December
15 31, 2011.

16 SECTION 11.02. Section 382.016, Health and Safety Code, is
17 amended by adding Subsections (c), (d), and (e) to read as follows:

18 (c) If the United States Environmental Protection Agency
19 adopts a maximum achievable control technology standard for the
20 control of mercury emissions from coal-fired electric generating
21 facilities, not later than 18 months after the adoption of the
22 standard the owner or operator of a bituminous, subbituminous, or
23 lignite coal-fired electric generating facility operating on the
24 date the standard is adopted shall install and operate a continuous
25 emission monitor to measure and record the concentration of mercury
26 in the exhaust gases from each stack at the facility unless another
27 means of measuring and recording the concentration of mercury is

1 prescribed by federal rules.

2 (d) If the measurement and monitoring of mercury is required
3 under Subsection (a), the owner or operator of a coal-fired
4 electric generating facility quarterly shall report to the
5 commission and make available to the public information related to
6 mercury emissions from the facility.

7 (e) Subsection (a) does not limit the authority of the
8 commission to otherwise require mercury emissions monitoring at
9 electric generating facilities.

10 ARTICLE 12. NO APPROPRIATION; EFFECTIVE DATE

11 SECTION 12.01. This Act does not make an appropriation. A
12 provision in this Act that creates a new governmental program,
13 creates a new entitlement, or imposes a new duty on a governmental
14 entity is not mandatory during a fiscal period for which the
15 legislature has not made a specific appropriation to implement the
16 provision.

17 SECTION 12.02. Except as otherwise provided by this Act,
18 this Act takes effect September 1, 2009.