

By: Averitt

S.B. No. 16

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the enhancement of air quality, including the capture  
3 of carbon dioxide and development of a greenhouse gas registry, the  
4 development of emissions reduction technologies, and the  
5 improvement of energy efficiency in buildings, vehicles, and  
6 appliances; providing civil penalties.

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

8 ARTICLE 1. ADVANCED CLEAN ENERGY PROJECTS

9 SECTION 1.01. Subdivision (1-a), Section 382.003, Health  
10 and Safety Code, is amended to read as follows:

11 (1-a) "Advanced clean energy project" means a project  
12 for which an application for a permit under this chapter is received  
13 by the commission on or after January 1, 2008, and before January 1,  
14 2020, and that:

15 (A) involves the use of coal, biomass, petroleum  
16 coke, solid waste, or fuel cells using hydrogen derived from such  
17 fuels, in the generation of electricity, or the creation of liquid  
18 fuels outside of the existing fuel production infrastructure while  
19 co-generating electricity;

20 (B) is capable of achieving on an annual basis a  
21 99 percent or greater reduction of sulfur dioxide emissions, a 95  
22 percent or greater reduction of mercury emissions, and an emission  
23 rate for nitrogen oxides of 0.05 pounds or less per million British  
24 thermal units; and

1 (C) captures at least 50 percent of the carbon  
2 dioxide in the fuel being combusted and sequesters that carbon  
3 dioxide through methods that include geologic storage [~~renders~~  
4 ~~carbon dioxide capable of capture, sequestration, or abatement if~~  
5 ~~any carbon dioxide is produced by the project~~].

6 SECTION 1.02. Section 382.003, Health and Safety Code, is  
7 amended by adding Subdivision (7-bb) to read as follows:

8 (7-bb) "Geologic storage" means the underground  
9 storage of carbon dioxide in a suitable geologic formation,  
10 including storage that is accomplished in conjunction with an  
11 enhanced oil recovery project.

12 SECTION 1.03. Subsection (b), Section 382.0567, Health and  
13 Safety Code, 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. Subsection (b), Section 386.051, Health and  
24 Safety Code, 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;

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

11 (6) the plug-in hybrid motor vehicle rebate program  
12 established under Subchapter G; and

13 (7) the energy-efficient appliance purchase incentive  
14 program established under Section 2305.080, Government Code.

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

17 (b) Appropriate commission objectives include:

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

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

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

24 (4) achieving reductions of emissions of diesel  
25 exhaust from school buses; and

26 (5) advancing new technologies that reduce oxides of  
27 nitrogen and other emissions from facilities and other stationary

1 sources.

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

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

8 (1) the information included in the annual reviews  
9 conducted under Subsection (a);

10 (2) specific information for individual projects as  
11 required by Subsection (c);

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

14 (4) a summary of the commission's activities under  
15 Section 386.052.

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

18 (c) The fund consists of:

19 (1) the amount of money deposited to the credit of the  
20 fund under:

21 (A) Section 386.056;

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

23 (C) Sections 501.138, 502.1675, and 548.5055,  
24 Transportation Code; and

25 (2) grant money recaptured under Section 386.111(d)  
26 and Chapters 387 and 391.

27 SECTION 2.05. Subsection (a), Section 386.252, Health and

1 Safety Code, is amended to read as follows:

2 (a) Money in the fund may be used only to implement and  
3 administer programs established under the plan and shall be  
4 allocated as follows:

5 (1) for the diesel emissions reduction incentive  
6 program, 87.5 percent of the money in the fund, of which not more  
7 than four percent may be used for the clean school bus program;  
8 ~~and~~ not more than 10 percent may be used for on-road diesel  
9 purchase or lease incentives; not more than 10 percent may be used  
10 for the new technology implementation program, of which a defined  
11 amount may be set aside for electricity storage projects related to  
12 renewable energy; and a specified percentage may be used for  
13 light-duty plug-in hybrid motor vehicle rebates;

14 (2) for the new technology research and development  
15 program, 9.5 percent of the money in the fund, of which up to  
16 \$250,000 is allocated for administration, up to \$200,000 is  
17 allocated for a health effects study, \$500,000 is to be deposited in  
18 the state treasury to the credit of the clean air account created  
19 under Section 382.0622 to supplement funding for air quality  
20 planning activities in affected counties, not less than 20 percent  
21 is to be allocated each year to support research related to air  
22 quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth  
23 nonattainment areas by a nonprofit organization based in Houston of  
24 which \$216,000 each year shall be contracted to the Energy Systems  
25 Laboratory at the Texas Engineering Experiment Station for the  
26 development and annual calculation of creditable statewide  
27 emissions reductions obtained through wind and other renewable

1 energy resources for the State Implementation Plan, and the balance  
2 is to be allocated each year to a nonprofit organization or an  
3 institution of higher education based in Houston to be used to  
4 implement and administer the new technology research and  
5 development program under a contract with the commission for the  
6 purpose of identifying, testing, and evaluating new  
7 emissions-reducing technologies with potential for  
8 commercialization in this state and to facilitate their  
9 certification or verification; and

10 (3) for administrative costs incurred by the  
11 commission and the laboratory, three percent of the money in the  
12 fund.

13 SECTION 2.06. Subtitle C, Title 5, Health and Safety Code,  
14 is amended by adding Chapter 391 to read as follows:

15 CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND  
16 STATIONARY SOURCES PROGRAM

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 391.001. DEFINITIONS. In this chapter:

19 (1) "Best available control technologies" or "BACT"  
20 has the meaning assigned by 42 U.S.C. Section 7479(3).

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

23 (3) "Facility" has the meaning assigned by Section  
24 382.003.

25 (4) "Incremental cost" has the meaning assigned by  
26 Section 386.001.

27 (5) "New technology" means emissions control

1 technology that results in emissions reductions that exceed state  
2 or federal requirements existing at the time of submission of a new  
3 technology implementation grant application.

4 (6) "Stationary source" has the meaning assigned by 42  
5 U.S.C. Section 7602(z).

6 Sec. 391.002. PROGRAM. (a) The commission shall establish  
7 and administer a new technology implementation program to implement  
8 new technologies to reduce emissions from facilities and other  
9 stationary sources located within the state. Under the program,  
10 the commission shall provide grants or other financial incentives  
11 for eligible projects to offset the incremental cost of emissions  
12 reductions.

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

15 (1) advanced clean energy projects, as defined by  
16 Section 382.003;

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

20 (3) electricity storage projects related to renewable  
21 energy.

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

25 (b) Guidelines must include protocols to calculate  
26 projected emissions reductions, project cost-effectiveness, and  
27 safeguards to ensure that funded projects generate emissions

1 reductions not otherwise required by state or federal law.

2 (c) The commission may propose revisions to the guidelines  
3 and criteria adopted under this section as necessary to improve the  
4 ability of the plan to achieve its goals.

5 (d) Because the legislature finds that the current state of  
6 air quality in the state jeopardizes the state's ability to meet  
7 federal air quality requirements, the commission may adopt  
8 emergency rules under Section 2001.034, Government Code, with  
9 abbreviated notice, to carry out any rulemaking necessary to  
10 implement this chapter.

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

14 Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS  
15 IN CERTAIN NONATTAINMENT AREAS. A project funded under this  
16 chapter must comply with Sections 386.055 and 386.056, as  
17 applicable.

18 [Sections 391.005-391.100 reserved for expansion]

19 SUBCHAPTER B. GRANT APPLICATIONS

20 Sec. 391.101. APPLICATION FOR GRANT. (a) Any person as  
21 defined by Section 382.003 that owns a facility located within the  
22 state may apply for a grant under the program established under  
23 Section 391.002. The commission may adopt guidelines to allow a  
24 person other than the owner to apply for and receive a grant in  
25 order to improve the ability of the program to achieve its goals.

26 (b) An application for a grant under this chapter must be  
27 made on a form provided by the commission and must contain



1 information required by the commission, including:

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

3 (2) information necessary for the commission to  
4 determine whether the project meets eligibility requirements for  
5 the type of project proposed, including a statement of the amounts  
6 of any other public financial assistance the project will receive;  
7 and

8 (3) other information the commission may require.

9 (c) An application for a grant under this chapter must  
10 contain a plan for implementation of a program that will provide  
11 project information and education to the public in the areas  
12 subject to public notice under federal and state permitting  
13 requirements for the proposed project until completion of the  
14 permitting process. This plan shall include provision of a  
15 publicly accessible, informational website.

16 Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES.

17 (a) The commission shall review an application for a grant for a  
18 project authorized under this chapter according to dates specified  
19 in a request for grant applications. If the commission determines  
20 that an application is incomplete, the commission shall notify the  
21 applicant and provide an explanation of what is missing from the  
22 application. The commission shall evaluate the completed  
23 application according to the appropriate project criteria.

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

27 (c) The commission may deny an application for a project

1 that does not meet the applicable project criteria or that the  
2 commission determines is not made in good faith, is not credible, or  
3 is not in compliance with this chapter and the goals of this  
4 chapter.

5 (d) Subject to the availability of funds, the commission  
6 shall award a grant under this chapter in conjunction with the  
7 execution of a contract that obligates the commission to make the  
8 grant and the recipient to perform the actions described in the  
9 recipient's grant application. Subject to Section 391.204, the  
10 contract must incorporate provisions for recapturing grant money  
11 for noncompliance with grant requirements. Grant money recaptured  
12 under the contract provision shall be deposited in the Texas  
13 emissions reduction plan fund and reallocated for other projects  
14 under this subchapter.

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

17 (f) The commission shall solicit review and comment from:

18 (1) the comptroller to assess the financial stability  
19 of the applicant, the economic benefit and job creation associated  
20 with the project, and any other information related to the duties of  
21 that office;

22 (2) the Public Utility Commission of Texas to assess  
23 the reliability of the proposed technology and the feasibility and  
24 cost-effectiveness of electric transmission associated with the  
25 project and any other information related to the duties of that  
26 agency; and

27 (3) the Railroad Commission of Texas to assess the

1 availability and cost of the fuel involved with the project and any  
2 other information related to the duties of that agency.

3 (g) The commission may solicit review and comment from other  
4 state agencies or other entities with subject matter expertise as  
5 applicable, in reviewing grant applications.

6 Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL  
7 REQUIRED. (a) An application for a new technology implementation  
8 grant under this chapter must show reasonable evidence that the  
9 proposed technology is capable of providing a significant reduction  
10 in emissions.

11 (b) The commission shall consider specifically, for each  
12 proposed technology implementation grant application:

13 (1) the projected potential for reduced emissions and  
14 the cost-effectiveness of the technology;

15 (2) the potential for the technology to contribute  
16 significantly to air quality goals; and

17 (3) the strength of the implementation plan.

18 Sec. 391.104. REPORTING REQUIREMENTS. The commission shall  
19 prepare an annual report that summarizes the applications received  
20 and grant awards made in the preceding year. Preparation of the  
21 report must include the participation of the state agencies  
22 involved in the review of applications under Section 391.102.

23 [Sections 391.105-391.200 reserved for expansion]

24 SUBCHAPTER C. PROJECT REQUIREMENTS

25 Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The  
26 commission shall establish criteria for setting priorities for  
27 projects eligible to receive grants under this chapter. The

1 commission shall review and may modify the criteria and priorities  
2 as appropriate.

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

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

8 (d) A new technology implementation project must document,  
9 in a manner acceptable to the commission, a reduction of the  
10 baseline emissions adopted by the commission for the relevant  
11 facility or stationary source. After studying available emissions  
12 reduction technologies, the commission may adopt a minimum  
13 percentage reduction of emissions to be required by this subsection  
14 to improve the ability of the program to achieve its goals.

15 (e) If a baseline emissions standard does not exist for a  
16 facility, the commission, for purposes of this subchapter, shall  
17 establish an appropriate baseline emissions level for comparison  
18 purposes.

19 (f) Water usage for proposed projects must be consistent  
20 with the state water plan.

21 Sec. 391.202. CALCULATION OF COST-EFFECTIVENESS. The  
22 commission shall establish reasonable methodologies for evaluating  
23 project cost-effectiveness consistent with accepted methods.

24 Sec. 391.203. COST-EFFECTIVENESS CRITERIA; DETERMINATION  
25 OF GRANT AMOUNT. (a) The commission may not award a grant that,  
26 net of taxes, provides an amount that exceeds the incremental cost  
27 of the proposed project.

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

7       Sec. 391.204. COST SHARING. (a) The commission shall  
8 require an applicant to bear at least 50 percent of the costs of  
9 implementing a project funded under this chapter.

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

13       Sec. 391.205. PREFERENCES. (a) In awarding grants under  
14 this chapter and except as provided by Subsection (c), the  
15 commission shall assign preference to:

16               (1) projects that use natural resources originating or  
17 produced in the state;

18               (2) projects that contain an energy efficiency  
19 component; or

20               (3) projects that include the use of solar, wind, or  
21 other renewable energy sources.

22       (b) higher preference shall be given to projects that  
23 include more than one of the criteria described by Subsection (a).

24       (c) Preferences described by Subsection (a) may be assigned  
25 only if the cost-effectiveness and emission performance of the  
26 project is comparable to a project not claiming a preference  
27 described by Subsection (a).

1           [Sections 391.206-391.300 reserved for expansion]

2                   SUBCHAPTER D. FUNDING; EXPIRATION

3           Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a  
4 grant under this chapter must use the grant to pay the incremental  
5 costs of the purchase and installation of the project for which the  
6 grant is made, which may include reasonable and necessary expenses  
7 for the labor needed to install emissions-reducing equipment. The  
8 recipient may not use the grant for the costs of operation and  
9 maintenance of the emissions-reducing equipment.

10           Sec. 391.302. TIME OF USE OF GRANT FUNDING. Funds  
11 appropriated for grants to be made by the commission under this  
12 chapter for a fiscal year may be distributed in subsequent fiscal  
13 years if the grant has been awarded and treated as a binding  
14 encumbrance by the commission before the end of the appropriation  
15 year of the funds appropriated for grant purposes. Distribution of  
16 the grant funds is subject to Section 403.071, Government Code.

17           Sec. 391.303. EXPIRATION. This chapter expires August 31,  
18 2019.

19           SECTION 2.07. Subsection (b), Section 403.071, Government  
20 Code, is amended to read as follows:

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

1 Chapter 391, Health and Safety Code, or to repair and remodeling  
2 projects that exceed the amount of \$20,000, including furniture and  
3 other equipment, architects' and engineering fees, and other costs  
4 related to the contracts or projects.

5 ARTICLE 3. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND  
6 ACCELERATED VEHICLE RETIREMENT PROGRAM

7 SECTION 3.01. Subsection (d), Section 382.210, Health and  
8 Safety Code, is amended to read as follows:

9 (d) A participating county shall provide an electronic  
10 means for distributing vehicle repair or replacement funds once all  
11 program criteria have been met with regard to the repair or  
12 replacement. The county shall ensure that funds are transferred to  
13 a participating dealer under this section not later than the 14th  
14 [~~five~~] business day [~~days~~] after the date the county receives proof  
15 of the sale and any required administrative documents from the  
16 participating dealer.

17 ARTICLE 4. TEXAS EMISSIONS REDUCTION PLAN

18 SECTION 4.01. Subsection (b-1), Section 501.138,  
19 Transportation Code, is amended to read as follows:

20 (b-1) Fees collected under Subsection (b) to be sent to the  
21 comptroller shall be deposited as follows:

22 (1) before September 1, 2008, to the credit of the  
23 Texas emissions reduction plan fund; and

24 (2) on or after September 1, 2008, to the credit of the  
25 Texas Mobility Fund, except that \$5 of each fee imposed under  
26 Subsection (a)(1) and deposited on or after September 1, 2008, and  
27 before August 31, 2019 [~~September 1, 2015~~], shall be deposited to

1 the credit of the Texas emissions reduction plan fund.

2 SECTION 4.02. Subsection (b-3), Section 501.138,  
3 Transportation Code, is amended to read as follows:

4 (b-3) This subsection and Subsection (b-2) expire August  
5 31, 2019 [~~September 1, 2015~~].

6 SECTION 4.03. Subsection (d), Section 151.0515, Tax Code,  
7 is amended to read as follows:

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

9 SECTION 4.04. Subsection (c), Section 152.0215, Tax Code,  
10 is amended to read as follows:

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

12 SECTION 4.05. Section 390.006, Health and Safety Code, is  
13 amended to read as follows:

14 Sec. 390.006. EXPIRATION. This chapter expires August 31,  
15 2019 [~~2013~~].

16 SECTION 4.06. Section 386.001, Health and Safety Code, is  
17 amended by adding Subdivision (10-a) to read as follows:

18 (10-a) "Stationary engine" means a machine that  
19 converts fuel into mechanical motion, including turbines and other  
20 internal combustion devices used in nonmobile applications.

21 SECTION 4.07. Section 386.002, Health and Safety Code, is  
22 amended to read as follows:

23 Sec. 386.002. EXPIRATION. This chapter expires August 31,  
24 2019 [~~2013~~].

25 SECTION 4.08. Subsection (c), Section 386.104, Health and  
26 Safety Code, is amended to read as follows:

27 (c) For a proposed project as described by Section



1 386.102(b), other than a project involving a marine vessel or  
2 engine, not less than 75 percent of vehicle miles traveled or hours  
3 of operation projected for the five years immediately following the  
4 award of a grant must be projected to take place in a nonattainment  
5 area or affected county of this state. The commission may also  
6 allow vehicle travel on highways and roadways, or portions of a  
7 highway or roadway, designated by the commission and located  
8 outside a nonattainment area or affected county to count towards  
9 the percentage of use requirement in this subsection. For a  
10 proposed project involving a marine vessel or engine, the vessel or  
11 engine must be operated in the intercoastal waterways or bays  
12 adjacent to a nonattainment area or affected county of this state  
13 for a sufficient amount of time over the lifetime of the project, as  
14 determined by the commission, to meet the cost-effectiveness  
15 requirements of Section 386.105. For a proposed project involving  
16 a mobile generator used for natural gas recovery purposes that is  
17 operated in a nonattainment area or affected county, the 75 percent  
18 of hours of operation in a nonattainment area or affected county  
19 projected for the project need not occur in the five years  
20 immediately following the award of a grant.

21 SECTION 4.09. Chapter 386, Health and Safety Code, is  
22 amended by adding Subchapter G to read as follows:

23 SUBCHAPTER G. PLUG-IN HYBRID MOTOR VEHICLE REBATE PROGRAM

24 Sec. 386.301. DEFINITIONS. In this subchapter:

25 (1) "Light-duty motor vehicle" has the meaning  
26 assigned by Section 386.151.

27 (2) "Motor vehicle" has the meaning assigned by

1 Section 386.151.

2 (3) "Plug-in hybrid motor vehicle" means a vehicle  
3 that:

4 (A) draws motive power from a battery with a  
5 capacity of at least four kilowatt-hours;

6 (B) can be recharged from an external source of  
7 electricity for motive power; and

8 (C) is a light-duty motor vehicle.

9 Sec. 386.302. COMMISSION DUTIES REGARDING PLUG-IN HYBRID  
10 MOTOR VEHICLE PURCHASE PROGRAM. (a) The commission shall develop  
11 a rebate program for new plug-in hybrid motor vehicles and shall  
12 adopt rules necessary to implement the program.

13 (b) The program shall authorize statewide rebates for the  
14 purchase of new plug-in hybrid motor vehicles for a purchaser who  
15 agrees to register the vehicle in this state and operate the vehicle  
16 in this state for not less than 75 percent of the vehicle's annual  
17 mileage.

18 (c) Only one rebate may be provided for each new plug-in  
19 hybrid motor vehicle.

20 Sec. 386.303. PLUG-IN HYBRID MOTOR VEHICLE REBATE. A new  
21 plug-in hybrid motor vehicle is eligible for a \$4,000 rebate.

22 Sec. 386.304. MODIFICATION OF INCENTIVE. After evaluating  
23 new technologies, the commission may change the rebate established  
24 by Section 386.303 to improve the ability of the program to achieve  
25 its goals, including a phase out of the rebate based on the level of  
26 market saturation of each vehicle, consistent with federal  
27 regulations governing the phase out, if any, of incentives for

1 hybrid vehicles.

2 Sec. 386.305. MANUFACTURER'S REPORT. Not later than July 1  
3 of each year and preceding the beginning of the vehicle model year,  
4 a manufacturer of motor vehicles shall provide to the commission a  
5 list of the new vehicle models that the manufacturer intends to sell  
6 in this state during that model year that meet the definition of  
7 plug-in hybrid motor vehicles under Section 386.301. The  
8 manufacturer may supplement the list provided to the commission  
9 under this section as necessary to include additional new vehicle  
10 models the manufacturer intends to sell in this state during the  
11 model year.

12 Sec. 386.306. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On  
13 August 1 of each year the commission shall publish a list of the new  
14 model motor vehicles as listed for the commission under Section  
15 386.305. The commission shall publish and supplement that list as  
16 necessary to include additional new vehicle models listed in a  
17 supplement to the original list provided by a manufacturer under  
18 Section 386.305.

19 (b) The commission shall distribute the list of eligible  
20 motor vehicles to all new motor vehicle dealers in this state.

21 Sec. 386.307. COMMISSION TO ACCOUNT FOR MOTOR VEHICLE  
22 REBATES. (a) The commission by rule shall develop a method to  
23 administer and account for the motor vehicle rebates authorized by  
24 this subchapter and to pay rebates to the purchaser of a new motor  
25 vehicle on application of the purchaser as provided by this  
26 subchapter.

27 (b) The commission shall develop and publish forms and

1 instructions for the purchaser of a new motor vehicle to use in  
2 applying to the commission for a rebate under this subchapter. The  
3 commission shall make the forms available to new motor vehicle  
4 dealers. Dealers shall make the forms available to their  
5 prospective purchasers.

6 (c) In addition to other forms developed and published under  
7 this section, the commission shall develop and publish a  
8 verification form by which, with information provided by the  
9 dealer, the commission can verify the sale of a vehicle covered by  
10 this subchapter. The verification form must include at least the  
11 name of the purchaser, the vehicle identification number of the  
12 vehicle involved, the date of the purchase, and the name of the new  
13 motor vehicle dealer involved in the transaction. At the time of  
14 sale of a vehicle eligible for a rebate under this subchapter, the  
15 dealer shall complete the verification form supplied to the dealer  
16 by the commission. The purchaser must include the completed  
17 verification form as part of the purchaser's application for a  
18 rebate. The dealer shall maintain a copy of the completed  
19 verification form for at least two years from the date of the  
20 transaction.

21 Sec. 386.308. SUSPENSION OF REBATES. (a) The commission  
22 shall track motor vehicle rebate applications and payments.

23 (b) If the balance of funds available for motor vehicle  
24 rebates falls below 15 percent of the total allocated for the  
25 rebates during a fiscal year, the commission may suspend the  
26 rebates until the date the commission can certify that the balance  
27 available in the fund for rebates is an amount adequate to resume

1 the rebates or the beginning of the next fiscal year, whichever is  
2 earlier. If the commission suspends the rebates, the commission  
3 shall immediately notify all new motor vehicle dealers that the  
4 rebates have been suspended.

5 (c) The commission shall establish a toll-free telephone  
6 number available to motor vehicle dealers to call to verify that  
7 rebates are available. The commission may provide for issuing  
8 verification numbers over the telephone.

9 (d) Reliance by a dealer on information provided by the  
10 commission is a complete defense to an action involving or based on  
11 eligibility of a vehicle for a rebate or availability of vehicles  
12 eligible for a rebate.

13 ARTICLE 5. NEW TECHNOLOGY RESEARCH

14 AND DEVELOPMENT PROGRAM

15 SECTION 5.01. Subsection (a), Section 386.252, Health and  
16 Safety Code, is amended to read as follows:

17 (a) Money in the fund may be used only to implement and  
18 administer programs established under the plan and shall be  
19 allocated as follows:

20 (1) for the diesel emissions reduction incentive  
21 program, 87.5 percent of the money in the fund, of which not more  
22 than four percent may be used for the clean school bus program and  
23 not more than 10 percent may be used for on-road diesel purchase or  
24 lease incentives;

25 (2) for the new technology research and development  
26 program, nine [~~9.5~~] percent of the money in the fund, of which up to  
27 \$250,000 is allocated for administration, up to \$200,000 is

1 allocated for a health effects study, \$500,000 is to be deposited in  
2 the state treasury to the credit of the clean air account created  
3 under Section 382.0622 to supplement funding for air quality  
4 planning activities in affected counties, not less than 20 percent  
5 is to be allocated each year to support the energy efficient  
6 appliance purchase incentive program created under Subchapter E,  
7 Chapter 2305, Government Code, [~~research related to air quality for~~  
8 ~~the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment~~  
9 ~~areas by a nonprofit organization based in Houston]~~ of which  
10 \$216,000 each year shall be contracted to the Energy Systems  
11 Laboratory at the Texas Engineering Experiment Station for the  
12 development and annual calculation of creditable statewide  
13 emissions reductions obtained through wind and other renewable  
14 energy resources for the State Implementation Plan, and the balance  
15 is to be allocated each year to the commission [~~a nonprofit~~  
16 ~~organization or an institution of higher education based in~~  
17 ~~Houston]~~ to be used to implement and administer the new technology  
18 research and development program [~~under a contract with the~~  
19 ~~commission]~~ for the purpose of identifying, testing, and evaluating  
20 new emissions-reducing technologies with potential for  
21 commercialization in this state and to facilitate their  
22 certification or verification; and

23 (3) for administrative costs incurred by the  
24 commission and the laboratory, 3.5 [~~three~~] percent of the money in  
25 the fund, of which two percent is allocated to the commission and  
26 1.5 percent is allocated to the laboratory.

27 SECTION 5.02. Section 387.003, Health and Safety Code, is

1 amended to read as follows:

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

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

22           (c) If the commission contracts with one or more nonprofit  
23 organizations to [~~The board of directors of a nonprofit~~  
24 ~~organization under contract with the commission to establish and]~~  
25 administer a new technology research and development program under  
26 [~~as provided by~~] this chapter, the board of directors of each  
27 organization may not have more than 11 members, must include two

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

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

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

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

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

26 (g) [~~(h)~~] A nonprofit organization that receives grants  
27 from the commission under this program is subject to Chapters 551



1 and 552, Government Code.

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

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

10 SECTION 5.04. Subsections (a), (b), and (f), Section  
11 387.005, Health and Safety Code, are amended to read as follows:

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

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

19 [~~the establishment of a testing facility to~~  
20 ~~evaluate retrofits, add-ons, advanced technologies, and fuels, or~~  
21 ~~combinations of retrofits, add-ons, advanced technologies, and~~  
22 ~~fuels, to determine their effectiveness in producing emissions~~  
23 ~~reductions, with emphasis on the reduction of oxides of nitrogen, and~~

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

27 (3) advanced technologies for reducing oxides of

1 nitrogen and other emissions from stationary sources; and

2 (4) field validation of innovative technologies for  
3 reducing emissions of oxides that require demonstration of  
4 viability for full commercial acceptance.

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

17 (f) Selection of grant recipients by a nonprofit  
18 organization or an institution of higher education described by  
19 Section 387.003(a) [~~386.252(a)(2)~~] under contract with the  
20 commission for the purpose of establishing and administering a new  
21 technology research and development program as provided by this  
22 chapter is subject to the commission's review and to the other  
23 requirements of this chapter. A grant contract under this chapter  
24 using funds described by Section 386.252 may not be made by a  
25 nonprofit organization or an institution of higher education if the  
26 commission or executive director of the commission does not consent  
27 to the grant or contract.

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

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

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

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

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

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

16 (1) the projected potential for reduced emissions of  
17 oxides of nitrogen and the cost-effectiveness of the technology  
18 once it has been commercialized including the impact on fuel  
19 consumption and maintenance costs for retrofits and rebuilds;

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

22 (3) the strength of the commercialization plan.

23 ARTICLE 6. ENERGY EFFICIENT APPLIANCE PURCHASE INCENTIVE PROGRAM

24 SECTION 6.01. Subchapter E, Chapter 2305, Government Code,  
25 is amended by adding Section 2305.080 to read as follows:

26 Sec. 2305.080. ENERGY EFFICIENT APPLIANCE PURCHASE  
27 INCENTIVE PROGRAM. (a) The energy office is the supervising state

1 agency for the energy-efficient appliance purchase incentive  
2 program.

3 (b) The energy office may accept gifts, grants, or other  
4 assistance for the purpose of implementation of this section.

5 (c) The energy office shall use funds provided for the  
6 program to provide financial incentives designed to assist persons  
7 in the purchase of equipment and appliances that meet or exceed the  
8 federal Energy Star standards designated by the United States  
9 Environmental Protection Agency and the United States Department of  
10 Energy.

11 (d) Programs approved under this section must include the  
12 retirement of materials and appliances that contribute to energy  
13 consumption or peak energy demand to ensure the reduction of energy  
14 consumption, energy demand, or peak loads, and associated emissions  
15 of air contaminants.

16 (e) Appliances funded through the program under this  
17 section may include:

18 (1) air conditioning units; and

19 (2) refrigeration units.

20 ARTICLE 7. BUILDING ENERGY CODES

21 SECTION 7.01. Subsection (a), Section 388.003, Health and  
22 Safety Code, is amended to read as follows:

23 (a) To achieve energy conservation in single-family  
24 residential construction, the energy efficiency provisions  
25 [~~chapter~~] of the International Residential Code, as it existed on  
26 May 1, 2009 [~~2001~~], is adopted as the energy code in this state for  
27 single-family residential construction.

1 SECTION 7.02. Subsection (b), Section 388.003, Health and  
2 Safety Code, is amended to read as follows:

3 (b) To achieve energy conservation in all other  
4 residential, commercial, and industrial construction, the  
5 International Energy Conservation Code as it existed on May 1, 2009  
6 [~~2001~~], is adopted as the energy code for use in this state for all  
7 other residential, commercial, and industrial construction.

8 SECTION 7.03. Subsection (b-1), Section 388.003, Health and  
9 Safety Code, as added by Section 3.01, Chapter 262 (S.B. 12), Acts  
10 of the 80th Legislature, Regular Session, 2007, is amended to read  
11 as follows:

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

1 International Energy Conservation Code.

2 SECTION 7.04. Subsection (c), Section 388.003, Health and  
3 Safety Code, is amended to read as follows:

4 (c) A municipality shall establish procedures:

5 (1) for the administration and enforcement of the  
6 codes; and

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

10 SECTION 7.05. Subsection (d), Section 388.003, Health and  
11 Safety Code, is amended to read as follows:

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

16 SECTION 7.06. Subsection (e), Section 388.003, Health and  
17 Safety Code, is amended to read as follows:

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

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

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

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

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

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

18 SECTION 7.07. Subsection (f), Section 388.003, Health and  
19 Safety Code, is amended to read as follows:

20 (f) Each municipality, and each county that has established  
21 procedures under Subsection (d), shall periodically review and  
22 consider revisions made by the International Code Council to the  
23 International Energy Conservation Code and the energy efficiency  
24 chapter of the International Residential Code adopted after May 1,  
25 2009 [~~2001~~].

26 SECTION 7.08. The following provisions of the Health and  
27 Safety Code are repealed:

1           (1) Subsection (b-1), Section 388.003, as added by  
2 Section 11, Chapter 939 (H.B. 3693), Acts of the 80th Legislature,  
3 Regular Session, 2007; and

4           (2) Subsection (b-2), Section 388.003, as added by  
5 Section 3.01, Chapter 262 (S.B. 12), Acts of the 80th Legislature,  
6 Regular Session, 2007.

7           ARTICLE 8. IDLING OF MOTOR VEHICLES

8           SECTION 8.01. Section 382.0191, Health and Safety Code, is  
9 amended to read as follows:

10          Sec. 382.0191. IDLING OF MOTOR VEHICLE WHILE USING SLEEPER  
11 BERTH. (a) In this section, "idling" means allowing an engine to  
12 run while the motor vehicle is not engaged in forward or reverse  
13 motion.

14          (b) The commission may not prohibit or limit the idling of a  
15 motor vehicle when idling is necessary to power a heater or air  
16 conditioner while a driver is using the vehicle's sleeper berth for  
17 a government-mandated rest period. Idling is not necessary to  
18 power a heater or air conditioner if the vehicle is within two miles  
19 of a facility offering external heating and air conditioning  
20 connections at a time when those connections are available.

21          (c) No driver using the vehicle's sleeper berth may idle the  
22 vehicle in a residential area as defined by Section 244.001, Local  
23 Government Code, or in a school zone or within 1,000 feet of a  
24 hospital or a public school during its hours of operation. An  
25 offense under this subsection shall be punishable by a fine not to  
26 exceed \$500.

27          ~~[(d) This section expires September 1, 2009.]~~



1       ARTICLE 9. EXEMPTION OF THE WEIGHT OF CERTAIN IDLE REDUCTION  
2       SYSTEMS FOR COMMERCIAL VEHICLES FROM MAXIMUM WEIGHT RESTRICTIONS

3       SECTION 9.01. Section 621.001, Transportation Code, is  
4 amended to read as follows:

5       Sec. 621.001. DEFINITIONS. In this chapter:

6           (1) "Commercial motor vehicle" means a motor vehicle,  
7 other than a motorcycle, designed or used for:

8                   (A) the transportation of property; or

9                   (B) delivery purposes.

10          (2) "Commission" means the Texas Transportation  
11 Commission.

12          (3) "Department" means the Texas Department of  
13 Transportation.

14          (4) "Director" means the executive director of the  
15 Texas Department of Transportation.

16          (5) "Idle reduction system" means any system that  
17 provides heating, cooling, or electrical service to a commercial  
18 vehicle cab for the purpose of reducing vehicle idling.

19          (6) "Motor vehicle" means a vehicle that is  
20 self-propelled.

21          (7) [~~(6)~~] "Semitrailer" means a vehicle without motive  
22 power that is designed, or used with a motor vehicle, so that some  
23 of its weight and the weight of its load rests on or is carried by  
24 the motor vehicle.

25          (8) [~~(7)~~] "Trailer" means a vehicle without motive  
26 power that is:

27                   (A) designed or used to carry property or

1 passengers on its own structure exclusively; and

2 (B) drawn by a motor vehicle.

3 (9) [~~(8)~~] "Truck-tractor" means a motor vehicle  
4 designed or used primarily for drawing another vehicle:

5 (A) that is not constructed to carry a load other  
6 than a part of the weight of the vehicle and load being drawn; or

7 (B) that is engaged with a semitrailer in the  
8 transportation of automobiles or boats and that transports the  
9 automobiles or boats on part of the truck-tractor.

10 (10) [~~(9)~~] "Vehicle" means a mechanical device, other  
11 than a device moved by human power or used exclusively upon  
12 stationary rails or tracks, in, on, or by which a person or property  
13 can be transported on a public highway. The term includes a motor  
14 vehicle, commercial motor vehicle, truck-tractor, trailer, or  
15 semitrailer but does not include manufactured housing as defined by  
16 Chapter 1201, Occupations Code.

17 (11) [~~(10)~~] "Single axle weight" means the total  
18 weight transmitted to the road by all wheels whose centers may be  
19 included between two parallel transverse vertical planes 40 inches  
20 apart, extending across the full width of the vehicle.

21 (12) [~~(11)~~] "Tandem axle weight" means the total  
22 weight transmitted to the road by two or more consecutive axles  
23 whose centers may be included between parallel transverse vertical  
24 planes spaced more than 40 inches and not more than 96 inches apart,  
25 extending across the full width of the vehicle.

26 (13) [~~(12)~~] "Port of entry" means a place designated  
27 by executive order of the president of the United States, by order

1 of the United States secretary of the treasury, or by act of the  
2 United States Congress at which a customs officer is authorized to  
3 accept entries of merchandise, collect duties, and enforce customs  
4 and navigation laws. The term includes a publicly owned or  
5 privately owned international port of entry between this state and  
6 the United Mexican States.

7 SECTION 9.02. Section 621.101, Transportation Code, is  
8 amended by adding Subsection (d) to read as follows:

9 (d) Notwithstanding any provision of this section or any  
10 other section to the contrary, the maximum gross vehicle weight  
11 limit, bridge formula limit, and axle weight limit for any vehicle  
12 or combination of vehicles equipped with an idle reduction system  
13 may be increased by a quantity necessary to compensate for the  
14 additional weight of the idle reduction system as provided for in 23  
15 U.S.C. Section 127. In no case shall the additional weight increase  
16 allowed by this subsection be greater than 400 pounds. On request  
17 by an appropriate law enforcement officer, the vehicle operator  
18 shall provide proof that the idle reduction technology is fully  
19 functional at all times and that the gross weight increase is not  
20 used for any purpose other than for the use of an idle reduction  
21 system.

22 ARTICLE 10. APPLIANCE EFFICIENCY STANDARDS

23 SECTION 10.01. Subtitle C, Title 5, Health and Safety Code,  
24 is amended by adding Chapter 392 to read as follows:

25 CHAPTER 392. APPLIANCE EFFICIENCY STANDARDS

26 SUBCHAPTER A. GENERAL PROVISIONS

27 Sec. 392.001. DEFINITIONS. In this chapter:

1           (1) "Bottle-type water dispenser" means a water  
2 dispenser that uses a bottle or reservoir as the source of potable  
3 water.

4           (2) "Commercial hot food holding cabinet" means a  
5 heated, fully enclosed compartment with one or more solid or glass  
6 doors that is designed to maintain the temperature of hot food that  
7 has been cooked in a separate appliance.

8           (3) "Compact audio product," also known as a mini,  
9 mid, micro, or shelf audio system, means an integrated audio system  
10 encased in a single housing that includes an amplifier and radio  
11 tuner with attached or separable speakers that can reproduce audio  
12 from magnetic tape, compact disc, DVD, or flash memory.

13           (4) "Digital versatile disc" or "DVD" means a  
14 laser-encoded plastic medium capable of storing a large amount of  
15 digital audio, video, or computer data.

16           (5) "DVD player" means a digital versatile disc player  
17 that:

18                   (A) is a commercially available electronic  
19 product encased in a single housing that includes an integral power  
20 supply; and

21                   (B) is designed to decode digitized video signals  
22 on a DVD.

23           (6) "DVD recorder" means a digital versatile disc  
24 recorder that:

25                   (A) is a commercially available electronic  
26 product encased in a single housing that includes an integral power  
27 supply; and

1           (B) is designed for the production or recording  
2 of digitized video signals on a DVD.

3           (7) "Energy Star Program" means the United States  
4 Environmental Protection Agency's Energy Star Program.

5           (8) "Portable electric spa" means a factory-built  
6 electric spa or hot tub, supplied with equipment for heating and  
7 circulating water.

8           (9) "Residential pool pump" means a pump used to  
9 circulate and filter residential swimming pool water to maintain  
10 the water's clarity and sanitation.

11           (10) "Water dispenser" means a factory-made assembly  
12 that mechanically cools and heats potable water and that dispenses  
13 the cooled or heated water by integral or remote means.

14           Sec. 392.002. APPLICABILITY; EXEMPTIONS. (a) This  
15 chapter applies to the following new products sold, offered for  
16 sale, or installed in this state:

- 17           (1) bottle-type water dispensers;  
18           (2) commercial hot food holding cabinets;  
19           (3) compact audio products;  
20           (4) DVD players and recorders;  
21           (5) portable electric spas;  
22           (6) residential pool pumps; and  
23           (7) any other products that are designated by the  
24 comptroller in accordance with Section 392.102.

25           (b) This chapter does not apply to:

- 26           (1) a new product manufactured in this state and sold  
27 outside the state;

1           (2) a new product manufactured outside this state and  
2 sold at wholesale inside the state for final retail sale and  
3 installation outside the state;

4           (3) a product installed in a mobile manufactured home  
5 at the time of the home's construction;

6           (4) a product designed expressly for installation and  
7 use in a recreational vehicle;

8           (5) a commercial heated glass merchandising cabinet,  
9 dresser warmer, or cook-and-hold appliance for hot food;

10          (6) a compact audio product that:

11                   (A) can be independently powered by internal  
12 batteries;

13                   (B) has a powered external satellite antenna; or

14                   (C) can provide a video output signal; or

15          (7) a DVD recorder that has an electronic programming  
16 guide function that provides an interactive, onscreen menu of  
17 television listings and downloads program information from the  
18 vertical blanking interval of a regular television signal.

19           [Sections 392.003-392.050 reserved for expansion]

20                   SUBCHAPTER B. EFFICIENCY STANDARDS

21           Sec. 392.051. MINIMUM EFFICIENCY STANDARDS FOR CERTAIN  
22 APPLIANCES. (a) Not later than September 1, 2010, the  
23 comptroller, in consultation with the state energy conservation  
24 office, shall adopt rules establishing minimum efficiency  
25 standards for each type of new product described by Section  
26 392.002(a).

27           (b) If the United States Environmental Protection Agency or

1 the United States Department of Energy adopt an Energy Star rating  
2 for any appliances covered by this chapter, the standard contained  
3 in this chapter is preempted by the federal requirements.

4 Sec. 392.052. NEW OR INCREASED EFFICIENCY STANDARDS.

5 (a) The comptroller may adopt rules to establish increased  
6 efficiency standards for a product listed in Section 392.002(a) or  
7 to establish standards for a product not listed in that subsection.

8 (b) In considering new or increased standards, the  
9 comptroller, in consultation with the state energy conservation  
10 office, shall prescribe new or increased efficiency standards if  
11 the comptroller determines that the standards would:

12 (1) serve to promote energy conservation in this  
13 state; and

14 (2) be cost-effective for consumers who purchase and  
15 use the new product.

16 Sec. 392.053. EFFECTIVE DATE OF STANDARDS. A standard  
17 established under this subchapter takes effect on the first  
18 anniversary of the date the rule establishing the standard is  
19 adopted.

20 Sec. 392.054. BOTTLE-TYPE WATER DISPENSERS. A bottle-type  
21 water dispenser designed for dispensing both hot and cold water may  
22 not have standby energy consumption greater than 1.2 kilowatt-hours  
23 per day, as measured in accordance with the test criteria contained  
24 in version 1 of the "Energy Star Program Requirements for Bottled  
25 Water Coolers," except that Section D, "Timer Usage," of those test  
26 criteria may not be used to test units with an integral, automatic  
27 timer.

1       Sec. 392.055. COMMERCIAL HOT FOOD HOLDING CABINETS. (a) A  
2 commercial hot food holding cabinet must have a maximum idle energy  
3 rate of not greater than 40 watts per cubic foot of interior volume,  
4 as determined by the "idle energy rate-dry test" in ASTM F2140-01,  
5 "Standard Test Method for Performance of Hot Food Holding  
6 Cabinets," copyright 2007 ASTM International.

7       (b) Interior volume must be measured in accordance with the  
8 method shown in the "Energy Star Program Requirements for  
9 Commercial Hot Food Holding Cabinets" as in effect on August 15,  
10 2003.

11       Sec. 392.056. COMPACT AUDIO PRODUCTS. A compact audio  
12 product may not use more than two watts in standby-passive mode for  
13 a product without a permanently illuminated clock display and four  
14 watts in standby-passive mode for a product with a permanently  
15 illuminated clock display, as measured in accordance with  
16 International Electrotechnical Commission (IEC) test method  
17 62087:2002-2003(E), "Methods of Measurement for the Power  
18 Consumption of Audio, Video, and Related Equipment."

19       Sec. 392.057. DVD PLAYERS OR RECORDERS. A DVD player or  
20 recorder may not use more than three watts in standby-passive mode,  
21 as measured in accordance with International Electrotechnical  
22 Commission (IEC) test method 62087:2002-2003(E), "Methods of  
23 Measurement for the Power Consumption of Audio, Video, and Related  
24 Equipment."

25       Sec. 392.058. PORTABLE ELECTRIC SPAS. A portable electric  
26 spa may not have a standby power greater than 5(v) watts where v  
27 equals the total volume in gallons. Standby power must be measured



1 in accordance with the test method for portable electric spas  
2 contained in Section 1604, Title 20, California Code of  
3 Regulations, as of December 2006.

4 Sec. 392.059. RESIDENTIAL POOL PUMP MOTORS. (a) A  
5 residential pool pump motor manufactured on or after January 1,  
6 2006, may not be a split-phase or capacitor start-induction run  
7 type motor.

8 (b)(1) A residential pool pump motor with a pool pump motor  
9 capacity of one horsepower or more that is manufactured on or after  
10 January 1, 2008, must be capable of operating at two or more speeds  
11 with a low speed having a rotation rate that is not more than  
12 one-half of the motor's maximum rotation rate. The pump motor must  
13 be operated with a pump control that has the capability of operating  
14 the pump at a minimum of two speeds.

15 (2) A residential pool pump motor with a pool pump  
16 motor capacity of one horsepower or more that is manufactured on or  
17 after January 1, 2010, and installed in existing residential pool  
18 pumps as a replacement residential pool pump motor must be capable  
19 of operating at two or more speeds with a low speed having a  
20 rotation rate that is no more than one-half of the motor's maximum  
21 rotation rate. The pump motor must be operated with a pump control  
22 that is capable of operating the pump at a minimum of two speeds.

23 (c) A pool pump motor control manufactured on or after  
24 January 1, 2008, that is sold for use with a pool pump capable of  
25 operating at two or more speeds must be able to operate the pool  
26 pump at a minimum of two speeds. The control's default circulation  
27 speed setting may be no more than one-half of the motor's maximum

1 rotation rate. Any high-speed override capability must be for a  
2 temporary period not to exceed one 24-hour cycle without resetting  
3 to default settings.

4 Sec. 392.060. TRACKING, REPORTING, AND CLAIMING EMISSION  
5 REDUCTION CREDITS ASSOCIATED WITH ENERGY EFFICIENCY. The Texas  
6 Commission on Environmental Quality shall work with the Energy  
7 Systems Laboratory at the Texas Engineering Experiment Station of  
8 The Texas A&M University System to ensure that the state receives  
9 full credit in the state implementation plan for air emission  
10 reductions achieved through energy efficiency.

11 [Sections 392.061-392.100 reserved for expansion]

12 SUBCHAPTER C. IMPLEMENTATION AND MODIFICATION OF EFFICIENCY

13 STANDARDS

14 Sec. 392.101. PRODUCT COMPLIANCE. (a) A new product  
15 described by Section 392.002(a) may not be sold or offered for sale  
16 in this state unless the efficiency of the new product meets or  
17 exceeds the applicable efficiency standards prescribed by the rules  
18 adopted under Subchapter B.

19 (b) On or after the first anniversary of the date for the  
20 sale or offering for sale of a new product subject to an efficiency  
21 standard adopted under this chapter, that product may not be  
22 installed for compensation in this state unless the efficiency of  
23 the product meets or exceeds the applicable efficiency standards  
24 prescribed by the rules adopted under Subchapter B.

25 Sec. 392.102. APPLICATION FOR WAIVER. For purposes of this  
26 chapter, the comptroller may apply for a waiver of federal  
27 preemption in accordance with federal procedures under 42 U.S.C.

1 Section 6297(d) to authorize state efficiency standards for a  
2 product regulated by the federal government.

3 [Sections 392.103-392.150 reserved for expansion]

4 SUBCHAPTER D. TESTING, CERTIFICATION, LABELING, AND ENFORCEMENT

5 Sec. 392.151. PRODUCT TESTING. (a) The manufacturer of a  
6 new product subject to an efficiency standard adopted under this  
7 chapter shall test samples of the product in accordance with the  
8 test procedures adopted under this chapter.

9 (b) The comptroller, in consultation with the state energy  
10 conservation office, by rule shall adopt test procedures for  
11 determining a product's energy efficiency if Subchapter B does not  
12 provide for the procedures. The comptroller shall adopt test  
13 methods approved by the United States Department of Energy or, in  
14 the absence of those test methods, other appropriate nationally  
15 recognized test methods.

16 (c) The comptroller may adopt revised test procedures when  
17 new versions of test procedures become available.

18 Sec. 392.152. PRODUCT CERTIFICATION. (a) Except as  
19 provided by Subsection (c), the manufacturer of a new product  
20 subject to an efficiency standard adopted under this chapter shall  
21 certify to the comptroller that the product is in compliance with  
22 that standard according to test results.

23 (b) The comptroller shall adopt rules governing the  
24 certification of products under this section and shall coordinate  
25 certification by this state with the certification programs of  
26 other states and federal agencies with similar standards.

27 (c) Subsection (a) does not apply to a manufacturer of

1 single-voltage external AC to DC power supplies, walk-in  
2 refrigerators, or walk-in freezers.

3 Sec. 392.153. PRODUCT LABELING. (a) The manufacturer of a  
4 new product subject to an efficiency standard adopted under this  
5 chapter shall identify each product offered for sale or  
6 installation in this state as being in compliance with this chapter  
7 by means of a mark, label, or tag on the product and packaging at the  
8 time of sale or installation.

9 (b) The comptroller shall adopt rules governing the  
10 identification of products and packaging under this section. The  
11 rules must to the greatest practical extent be coordinated with the  
12 labeling programs of other states and federal agencies with  
13 equivalent efficiency standards. The comptroller shall allow the  
14 use of existing marks, labels, or tags that connote compliance with  
15 the efficiency requirements of this chapter.

16 Sec. 392.154. COMPTROLLER TESTING FOR EFFICIENCY STANDARDS  
17 COMPLIANCE. (a) The comptroller may test products subject to an  
18 efficiency standard adopted under this chapter for compliance with  
19 the applicable efficiency standards. If a product tested is found  
20 not to be in compliance with the standards, the comptroller shall  
21 impose against the manufacturer of the product an assessment in an  
22 amount sufficient to recover the costs of purchasing and testing  
23 the product.

24 (b) The comptroller shall make information available to the  
25 public on any product found under this section not to be in  
26 compliance with the standards.

27 Sec. 392.155. INSPECTIONS. The comptroller may have

1 periodic inspections conducted of a distributor or retailer of new  
2 products covered by Section 392.002 subject to an efficiency  
3 standard adopted under this chapter to determine compliance with  
4 this chapter. The inspections must be conducted at reasonable and  
5 convenient hours. Notice must be given before an inspection may be  
6 conducted.

7 Sec. 392.156. COMPLAINTS. The comptroller shall  
8 investigate a complaint received concerning a violation of this  
9 chapter and shall report the results of the investigation to the  
10 attorney general.

11 Sec. 392.157. ATTORNEY GENERAL ENFORCEMENT. The attorney  
12 general may institute proceedings to enforce this chapter.

13 Sec. 392.158. VIOLATIONS AND PENALTIES. (a) The  
14 comptroller shall issue a warning to a person for the person's first  
15 violation of this chapter.

16 (b) A person's second and subsequent violations are subject  
17 to a civil penalty of not more than \$250.

18 (c) Each violation constitutes a separate violation, and  
19 each day that a violation continues constitutes a separate  
20 violation.

21 (d) A penalty assessed under this section is in addition to  
22 costs assessed under Section 392.154.

23 Sec. 392.159. RULES FOR IMPLEMENTATION AND ENFORCEMENT.  
24 The comptroller may adopt additional rules necessary to ensure the  
25 proper implementation and enforcement of this chapter.

26 SECTION 10.02. (a) The efficiency standards prescribed by  
27 rules adopted under Subchapter B, Chapter 392, Health and Safety

1 Code, as added by this article, apply only to the sale or offer of  
2 sale of a new product to which that chapter applies that occurs on  
3 or after January 1, 2011.

4 (b) Notwithstanding Subsection (a) of this section, a new  
5 residential pool pump that does not meet the efficiency standards  
6 contained in Section 392.059, Health and Safety Code, as added by  
7 this article, may be sold in this state through December 31, 2011.

8 ARTICLE 11. GREENHOUSE GAS REGISTRY

9 SECTION 11.01. Chapter 382, Health and Safety Code, is  
10 amended by adding Subchapter J to read as follows:

11 SUBCHAPTER J. GREENHOUSE GAS REGISTRY

12 Sec. 382.501. GREENHOUSE GAS REGISTRY. (a) The commission  
13 along with the Railroad Commission of Texas and the Public Utility  
14 Commission of Texas shall jointly participate in the federal  
15 government process for developing federal greenhouse gas reporting  
16 requirements and the federal greenhouse gas registry requirements.

17 (b) The commission shall adopt rules to comply with any  
18 federal greenhouse gas reporting requirements adopted by the  
19 federal government for private and public facilities eligible to  
20 participate in the federal greenhouse gas registry. In adopting  
21 the rules, the commission shall adopt and incorporate by reference  
22 rules implementing the federal reporting requirements and the  
23 federal registry.

24 ARTICLE 12. PERMITTING

25 SECTION 12.01. Section 382.0518, Health and Safety Code, is  
26 amended by adding Subsection (c-1) to read as follows:

27 (c-1) In considering the issuance of a permit for a new

1 electric generating facility, the commission shall analyze and  
2 consider:

3 (1) the cumulative effects of the facility's expected  
4 emissions together with the cumulative effects of the authorized  
5 emissions from all sources of pollution permitted under this  
6 section, as well as all sources of pollution from electric  
7 generating facility applications determined to be technically  
8 complete, that are located within a radius of impact specified by  
9 commission rule, or 100 miles, whichever is greater;

10 (2) whether the emissions from the facility will cause  
11 an area to be designated a nonattainment area; and

12 (3) whether the emissions from the facility will  
13 negatively affect compliance with the state implementation plan.

14 SECTION 12.02. Subsections (a) and (d), Section 382.055,  
15 Health and Safety Code, are amended to read as follows:

16 (a) A preconstruction permit issued or renewed by the  
17 commission is subject to review to determine whether the authority  
18 to operate should be renewed according to the following schedule:

19 (1) a preconstruction permit issued before December 1,  
20 1991, is subject to review not later than 10 [~~15~~] years after the  
21 date of the last renewal before January 1, 2010 [~~issuance~~];

22 (2) a preconstruction permit issued on or after  
23 December 1, 1991, is subject to review:

24 (A) every 10 years after the date of issuance; or

25 (B) on the filing of an application for an  
26 amendment to the permit, if:

27 (i) the applicant is subject to Section

1 382.056;

2 (ii) the application is filed with the  
3 commission not more than three years before the date the permit is  
4 scheduled to expire; and

5 (iii) the applicant does not object to  
6 having the permit subjected to review at that time; and

7 (3) for cause, a preconstruction permit issued on or  
8 after December 1, 1991, for a facility at a nonfederal source may  
9 contain a provision requiring the permit to be renewed at a period  
10 of between five and 10 years.

11 (d) In determining whether and under which conditions a  
12 preconstruction permit should be renewed, the commission shall  
13 consider, at a minimum:

14 (1) the performance of the owner or operator of the  
15 facility according to the method developed by the commission under  
16 Section 5.754, Water Code; ~~and~~

17 (2) the condition and effectiveness of existing  
18 emission control equipment and practices;

19 (3) whether construction of the facility has been  
20 completed;

21 (4) whether the facility has been commercially  
22 operated; and

23 (5) whether the facility has ceased operation for the  
24 preceding five years or more.

25 ARTICLE 13. EFFECTIVE DATE

26 SECTION 13.01. This Act takes effect September 1, 2009.