

1-1 By: Averitt S.B. No. 16  
1-2 (In the Senate - Filed January 29, 2009; February 10, 2009,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 April 6, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 4; April 6, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 16 By: Averitt

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the enhancement of air quality, including the capture  
1-11 and storage of carbon dioxide and development of a greenhouse gas  
1-12 registry, the development of emissions reduction technologies, and  
1-13 the improvement of energy efficiency in buildings, vehicles, and  
1-14 appliances; providing civil penalties.

1-15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-16 ARTICLE 1. ADVANCED CLEAN ENERGY PROJECTS

1-17 SECTION 1.01. Subdivision (1-a), Section 382.003, Health  
1-18 and Safety Code, is amended to read as follows:

1-19 (1-a) "Advanced clean energy project" means a project  
1-20 for which an application for a permit under this chapter is received  
1-21 by the commission on or after January 1, 2008, and before January 1,  
1-22 2020, and that:

1-23 (A) involves the use of coal, biomass, petroleum  
1-24 coke, solid waste, or fuel cells using hydrogen derived from such  
1-25 fuels, in the generation of electricity, or the creation of liquid  
1-26 fuels outside of the existing fuel production infrastructure while  
1-27 co-generating electricity;

1-28 (B) is capable of achieving on an annual basis a  
1-29 99 percent or greater reduction of sulfur dioxide emissions, a 95  
1-30 percent or greater reduction of mercury emissions, and an emission  
1-31 rate for nitrogen oxides of 0.05 pounds or less per million British  
1-32 thermal units; and

1-33 (C) captures at least 50 percent of the carbon  
1-34 dioxide in the fuel being combusted and sequesters that carbon  
1-35 dioxide through methods that include geologic storage ~~[renders~~  
1-36 ~~carbon dioxide capable of capture, sequestration, or abatement if~~  
1-37 ~~any carbon dioxide is produced by the project].~~

1-38 SECTION 1.02. Section 382.003, Health and Safety Code, is  
1-39 amended by adding Subdivision (7-bb) to read as follows:

1-40 (7-bb) "Geologic storage" means the underground  
1-41 storage of carbon dioxide in a suitable geologic formation,  
1-42 including storage that is accomplished in conjunction with an  
1-43 enhanced oil recovery project.

1-44 SECTION 1.03. Subsection (b), Section 382.0567, Health and  
1-45 Safety Code, is amended to read as follows:

1-46 (b) The commission may not consider any technology or level  
1-47 of emission reduction to be achievable for purposes of a best  
1-48 available control technology analysis or lowest achievable  
1-49 emission rate analysis conducted by the commission under another  
1-50 provision of this chapter solely because the technology is used or  
1-51 the emission reduction is achieved by a facility receiving an  
1-52 incentive as an advanced clean energy project or new technology  
1-53 project, as described by Section 391.002.

1-54 ARTICLE 2. NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM

1-55 SECTION 2.01. Subsection (b), Section 386.051, Health and  
1-56 Safety Code, is amended to read as follows:

1-57 (b) Under the plan, the commission and the comptroller shall  
1-58 provide grants or other funding for:

1-59 (1) the diesel emissions reduction incentive program  
1-60 established under Subchapter C, including for infrastructure  
1-61 projects established under that subchapter;

1-62 (2) the motor vehicle purchase or lease incentive  
1-63 program established under Subchapter D;

- 2-1 (3) the new technology research and development
- 2-2 program established under Chapter 387; ~~and~~
- 2-3 (4) the clean school bus program established under
- 2-4 Chapter 390;
- 2-5 (5) the new technology implementation grant program
- 2-6 established under Chapter 391;
- 2-7 (6) the plug-in hybrid purchase credit program
- 2-8 established under Subchapter G; and
- 2-9 (7) the energy-efficient appliance purchase incentive
- 2-10 program established under Subchapter H.

2-11 SECTION 2.02. Subsection (b), Section 386.052, Health and

2-12 Safety Code, is amended to read as follows:  
2-13 (b) Appropriate commission objectives include:

- 2-14 (1) achieving maximum reductions in oxides of nitrogen
- 2-15 to demonstrate compliance with the state implementation plan;
- 2-16 (2) preventing areas of the state from being in
- 2-17 violation of national ambient air quality standards;
- 2-18 (3) achieving cost-saving and multiple benefits by
- 2-19 reducing emissions of other pollutants; ~~and~~
- 2-20 (4) achieving reductions of emissions of diesel
- 2-21 exhaust from school buses; and
- 2-22 (5) advancing new technologies that reduce oxides of
- 2-23 nitrogen and other emissions from facilities and other stationary
- 2-24 sources.

2-25 SECTION 2.03. Subsection (b), Section 386.057, Health and

2-26 Safety Code, is amended to read as follows:  
2-27 (b) Not later than December 1, 2002, and not later than

- 2-28 December 1 of each subsequent second year, the commission, in
- 2-29 consultation with the advisory board, shall publish and submit to
- 2-30 the legislature a biennial plan report. The report must include:
- 2-31 (1) the information included in the annual reviews
- 2-32 conducted under Subsection (a);
- 2-33 (2) specific information for individual projects as
- 2-34 required by Subsection (c);
- 2-35 (3) information contained in reports received under
- 2-36 Sections 386.205, 388.003(e), ~~and~~ 388.006, and 391.104; and
- 2-37 (4) a summary of the commission's activities under
- 2-38 Section 386.052.

2-39 SECTION 2.04. Subsection (c), Section 386.251, Health and

2-40 Safety Code, is amended to read as follows:  
2-41 (c) The fund consists of:

- 2-42 (1) the amount of money deposited to the credit of the
- 2-43 fund under:
  - 2-44 (A) Section 386.056;
  - 2-45 (B) Sections 151.0515 and 152.0215, Tax Code; and
  - 2-46 (C) Sections 501.138, 502.1675, and 548.5055,
  - 2-47 Transportation Code; and
  - 2-48 (2) grant money recaptured under Section 386.111(d)
  - 2-49 and Chapters 387 and 391.

2-50 SECTION 2.05. Subtitle C, Title 5, Health and Safety Code,

2-51 is amended by adding Chapter 391 to read as follows:  
2-52 CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND

2-53 STATIONARY SOURCES PROGRAM  
2-54 SUBCHAPTER A. GENERAL PROVISIONS

2-55 Sec. 391.001. DEFINITIONS. In this chapter:

- 2-56 (1) "Best available control technologies" or "BACT"
- 2-57 has the meaning assigned by 42 U.S.C. Section 7479(3).
- 2-58 (2) "Commission" means the Texas Commission on
- 2-59 Environmental Quality.
- 2-60 (3) "Facility" has the meaning assigned by Section
- 2-61 382.003.
- 2-62 (4) "Incremental cost" has the meaning assigned by
- 2-63 Section 386.001.
- 2-64 (5) "New technology" means emissions control
- 2-65 technology that results in emissions reductions that exceed state
- 2-66 or federal requirements existing at the time of submission of a new
- 2-67 technology implementation grant application.
- 2-68 (6) "Stationary source" has the meaning assigned by 42
- 2-69 U.S.C. Section 7602(z).

3-1 Sec. 391.002. PROGRAM. (a) The commission shall establish  
 3-2 and administer a new technology implementation program to implement  
 3-3 new technologies to reduce emissions from facilities and other  
 3-4 stationary sources located within the state. Under the program,  
 3-5 the commission shall provide grants or other financial incentives  
 3-6 for eligible projects to offset the incremental cost of emissions  
 3-7 reductions.

3-8 (b) Projects that may be considered for a grant under the  
 3-9 program include:

3-10 (1) advanced clean energy projects, as defined by  
 3-11 Section 382.003;

3-12 (2) new technology projects that reduce emissions of  
 3-13 regulated pollutants from point sources that involve capital  
 3-14 expenditures that exceed \$500 million; and

3-15 (3) electricity storage projects related to renewable  
 3-16 energy.

3-17 Sec. 391.003. GUIDELINES AND CRITERIA. (a) The commission  
 3-18 shall adopt grant guidelines and criteria consistent with the  
 3-19 requirements of this chapter.

3-20 (b) Guidelines must include protocols to calculate  
 3-21 projected emissions reductions, project cost-effectiveness, and  
 3-22 safeguards to ensure that funded projects generate emissions  
 3-23 reductions not otherwise required by state or federal law.

3-24 (c) The commission may propose revisions to the guidelines  
 3-25 and criteria adopted under this section as necessary to improve the  
 3-26 ability of the plan to achieve its goals.

3-27 (d) Because the legislature finds that the current state of  
 3-28 air quality in the state jeopardizes the state's ability to meet  
 3-29 federal air quality requirements, the commission may adopt  
 3-30 emergency rules under Section 2001.034, Government Code, with  
 3-31 abbreviated notice, to carry out any rulemaking necessary to  
 3-32 implement this chapter.

3-33 (e) Except as provided by Subsection (d), the rulemaking  
 3-34 requirements of Chapter 2001, Government Code, do not apply to the  
 3-35 adoption or revision of guidelines and criteria under this section.

3-36 Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS  
 3-37 IN CERTAIN NONATTAINMENT AREAS. A project funded under this  
 3-38 chapter must comply with Sections 386.055 and 386.056, as  
 3-39 applicable.

3-40 [Sections 391.005-391.100 reserved for expansion]

#### 3-41 SUBCHAPTER B. GRANT APPLICATIONS

3-42 Sec. 391.101. APPLICATION FOR GRANT. (a) Any person, as  
 3-43 defined by Section 382.003, that owns a facility located within the  
 3-44 state may apply for a grant under the program established under  
 3-45 Section 391.002. The commission may adopt guidelines to allow a  
 3-46 person other than the owner to apply for and receive a grant in  
 3-47 order to improve the ability of the program to achieve its goals.

3-48 (b) An application for a grant under this chapter must be  
 3-49 made on a form provided by the commission and must contain  
 3-50 information required by the commission, including:

3-51 (1) a detailed description of the proposed project;

3-52 (2) information necessary for the commission to  
 3-53 determine whether the project meets eligibility requirements for  
 3-54 the type of project proposed, including a statement of the amounts  
 3-55 of any other public financial assistance the project will receive;  
 3-56 and

3-57 (3) other information the commission may require.

3-58 (c) An application for a grant under this chapter must  
 3-59 contain a plan for implementation of a program that will provide  
 3-60 project information and education to the public in the areas  
 3-61 subject to public notice under federal and state permitting  
 3-62 requirements for the proposed project until completion of the  
 3-63 permitting process. This plan shall include provision of a  
 3-64 publicly accessible informational website.

3-65 Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES.

3-66 (a) The commission shall review an application for a grant for a  
 3-67 project authorized under this chapter according to dates specified  
 3-68 in a request for grant applications. If the commission determines  
 3-69 that an application is incomplete, the commission shall notify the

4-1 applicant and provide an explanation of what is missing from the  
 4-2 application. The commission shall evaluate the completed  
 4-3 application according to the appropriate project criteria.

4-4 (b) To the extent possible, the commission shall coordinate  
 4-5 project review and approval with any timing constraints related to  
 4-6 project purchases or installations to be made by an applicant.

4-7 (c) The commission may deny an application for a project  
 4-8 that does not meet the applicable project criteria or that the  
 4-9 commission determines is not made in good faith, is not credible, or  
 4-10 is not in compliance with this chapter and the goals of this  
 4-11 chapter.

4-12 (d) Subject to the availability of funds, the commission  
 4-13 shall award a grant under this chapter in conjunction with the  
 4-14 execution of a contract that obligates the commission to make the  
 4-15 grant and the recipient to perform the actions described in the  
 4-16 recipient's grant application. Subject to Section 391.204, the  
 4-17 contract must incorporate provisions for recapturing grant money  
 4-18 for noncompliance with grant requirements. Grant money recaptured  
 4-19 under the contract provisions shall be deposited in the Texas  
 4-20 emissions reduction plan fund and reallocated for other projects  
 4-21 under this subchapter.

4-22 (e) An applicant may seek reimbursement for qualifying  
 4-23 equipment installed after the effective date of this program.

4-24 (f) In coordinating interagency application review  
 4-25 procedures, the commission:

4-26 (1) shall solicit review and comment from:

4-27 (A) the comptroller to assess the financial  
 4-28 stability of the applicant, the economic benefit and job creation  
 4-29 associated with the project, and any other information related to  
 4-30 the duties of that office;

4-31 (B) the Public Utility Commission of Texas to  
 4-32 assess the reliability of the proposed technology and the  
 4-33 feasibility and cost-effectiveness of electric transmission  
 4-34 associated with the project and any other information related to  
 4-35 the duties of that agency; and

4-36 (C) the Railroad Commission of Texas to assess  
 4-37 the availability and cost of the fuel involved with the project and  
 4-38 any other information related to the duties of that agency;

4-39 (2) shall incorporate the review results into the  
 4-40 grant award decision process; and

4-41 (3) as part of the report required under Section  
 4-42 391.104, shall justify awards made to projects that have been  
 4-43 negatively reviewed by agencies under Subdivision (1).

4-44 (g) The commission may solicit review and comment from other  
 4-45 state agencies or other entities with subject matter expertise, as  
 4-46 applicable, in reviewing grant applications.

4-47 Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL  
 4-48 REQUIRED. (a) An application for a new technology implementation  
 4-49 grant under this chapter must show reasonable evidence that the  
 4-50 proposed technology is capable of providing a significant reduction  
 4-51 in emissions.

4-52 (b) The commission shall consider specifically, for each  
 4-53 proposed technology implementation grant application:

4-54 (1) the projected potential for reduced emissions and  
 4-55 the cost-effectiveness of the technology;

4-56 (2) the potential for the technology to contribute  
 4-57 significantly to air quality goals; and

4-58 (3) the strength of the implementation plan.

4-59 Sec. 391.104. REPORTING REQUIREMENTS. The commission shall  
 4-60 prepare an annual report that summarizes the applications received  
 4-61 and grant awards made in the preceding year. Preparation of the  
 4-62 report must include the participation of the state agencies  
 4-63 involved in the review of applications under Section 391.102.

4-64 [Sections 391.105-391.200 reserved for expansion]

#### 4-65 SUBCHAPTER C. PROJECT REQUIREMENTS

4-66 Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The  
 4-67 commission shall establish criteria for setting priorities for  
 4-68 projects eligible to receive grants under this chapter. The  
 4-69 commission shall review and may modify the criteria and priorities

5-1 as appropriate.

5-2 (b) A proposed project must meet the requirements of this  
5-3 section to be eligible for a grant under the program established  
5-4 under Section 391.002.

5-5 (c) Each proposed project must meet the cost-effectiveness  
5-6 requirements established by the commission.

5-7 (d) A new technology implementation project must document,  
5-8 in a manner acceptable to the commission, a reduction of the  
5-9 baseline emissions adopted by the commission for the relevant  
5-10 facility or stationary source. After studying available emissions  
5-11 reduction technologies, the commission may adopt a minimum  
5-12 percentage reduction of emissions to be required by this subsection  
5-13 to improve the ability of the program to achieve its goals.

5-14 (e) If a baseline emissions standard does not exist for a  
5-15 facility, the commission, for purposes of this subchapter, shall  
5-16 establish an appropriate baseline emissions level for comparison  
5-17 purposes.

5-18 (f) Water usage for proposed projects must be consistent  
5-19 with the state water plan.

5-20 Sec. 391.202. CALCULATION OF COST-EFFECTIVENESS. The  
5-21 commission shall establish reasonable methodologies for evaluating  
5-22 project cost-effectiveness consistent with accepted methods.

5-23 Sec. 391.203. COST-EFFECTIVENESS CRITERIA; DETERMINATION  
5-24 OF GRANT AMOUNT. (a) The commission may not award a grant that,  
5-25 net of taxes, provides an amount that exceeds the incremental cost  
5-26 of the proposed project.

5-27 (b) In determining the amount of a grant under this  
5-28 subchapter, the commission shall reduce the incremental cost of a  
5-29 proposed project by the value of any existing financial incentive  
5-30 that directly reduces the cost of the proposed project, including  
5-31 tax credits or deductions, other grants, or any other public  
5-32 financial assistance.

5-33 Sec. 391.204. COST SHARING. (a) The commission shall  
5-34 require an applicant to bear at least 50 percent of the costs of  
5-35 implementing a project funded under this chapter.

5-36 (b) The commission may not require repayment of grant money,  
5-37 except that the commission must require provisions for recapturing  
5-38 grant money for noncompliance with grant requirements.

5-39 Sec. 391.205. PREFERENCES. (a) In awarding grants under  
5-40 this chapter and except as provided by Subsection (c), the  
5-41 commission shall assign preference to:

5-42 (1) projects that use natural resources originating or  
5-43 produced in the state;

5-44 (2) projects that contain an energy efficiency  
5-45 component; or

5-46 (3) projects that include the use of solar, wind, or  
5-47 other renewable energy sources.

5-48 (b) Higher preference shall be given to projects that  
5-49 include more than one of the criteria described by Subsection (a).

5-50 (c) Preferences described by Subsection (a) may be assigned  
5-51 only if the cost-effectiveness and emission performance of the  
5-52 project is comparable to a project not claiming a preference  
5-53 described by Subsection (a).

5-54 [Sections 391.206-391.300 reserved for expansion]

5-55 SUBCHAPTER D. FUNDING; EXPIRATION

5-56 Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a  
5-57 grant under this chapter must use the grant to pay the incremental  
5-58 costs of the purchase and installation of the project for which the  
5-59 grant is made, which may include reasonable and necessary expenses  
5-60 for the labor needed to install emissions-reducing equipment. The  
5-61 recipient may not use the grant for the costs of operation and  
5-62 maintenance of the emissions-reducing equipment.

5-63 Sec. 391.302. COMPTROLLER REVIEW OF USE OF GRANT FUNDS.  
5-64 (a) The comptroller shall conduct an annual review of each  
5-65 recipient of new technology implementation grant funds under this  
5-66 chapter to ensure that the recipient's use of the funds complies  
5-67 with state law and the terms of the award.

5-68 (b) To assist with a review under this section, the  
5-69 commission shall provide the comptroller with all monitoring

6-1 reports received from grant recipients and any other documentation  
 6-2 requested by the comptroller.

6-3 (c) On a finding of any misuse of funds or other  
 6-4 noncompliance with grant requirements, the comptroller shall  
 6-5 report recommendations for subsequent action, including the  
 6-6 recapture of funds misused, to the commission.

6-7 (d) A finding of any misuse of grant funds by a recipient of  
 6-8 a grant under this chapter results in a debt owed to the state, and  
 6-9 the comptroller may place the recipient on warrant hold in  
 6-10 accordance with Section 403.055, Government Code.

6-11 (e) The comptroller may contract with another state agency,  
 6-12 an institution of higher education, or a private entity to conduct a  
 6-13 review under this section or to assist the comptroller in  
 6-14 conducting any part of the review.

6-15 (f) The comptroller may adopt rules to implement this  
 6-16 section.

6-17 Sec. 391.303. TIME OF USE OF GRANT FUNDING. Funds  
 6-18 appropriated for grants to be made by the commission under this  
 6-19 chapter for a fiscal year may be distributed in subsequent fiscal  
 6-20 years if the grant has been awarded and treated as a binding  
 6-21 encumbrance by the commission before the end of the appropriation  
 6-22 year of the funds appropriated for grant purposes. Distribution of  
 6-23 the grant funds is subject to Section 403.071, Government Code.

6-24 Sec. 391.304. EXPIRATION. This chapter expires August 31,  
 6-25 2019.

6-26 SECTION 2.06. Subsection (b), Section 403.071, Government  
 6-27 Code, is amended to read as follows:

6-28 (b) A claim may not be paid from an appropriation unless the  
 6-29 claim is presented to the comptroller for payment not later than two  
 6-30 years after the end of the fiscal year for which the appropriation  
 6-31 was made. However, a claim may be presented not later than four  
 6-32 years after the end of the fiscal year for which the appropriation  
 6-33 from which the claim is to be paid was made if the appropriation  
 6-34 relates to new construction contracts, to grants awarded under  
 6-35 Chapter 391, Health and Safety Code, or to repair and remodeling  
 6-36 projects that exceed the amount of \$20,000, including furniture and  
 6-37 other equipment, architects' and engineering fees, and other costs  
 6-38 related to the contracts or projects.

6-39 ARTICLE 3. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND  
 6-40 ACCELERATED VEHICLE RETIREMENT PROGRAM

6-41 SECTION 3.01. Subsection (d), Section 382.210, Health and  
 6-42 Safety Code, is amended to read as follows:

6-43 (d) A participating county shall provide an electronic  
 6-44 means for distributing vehicle repair or replacement funds once all  
 6-45 program criteria have been met with regard to the repair or  
 6-46 replacement. The county shall ensure that funds are transferred to  
 6-47 a participating dealer under this section not later than the 10th  
 6-48 [five] business day [days] after the date the county receives proof  
 6-49 of the sale and any required administrative documents from the  
 6-50 participating dealer.

6-51 SECTION 3.02. Section 382.220, Health and Safety Code, is  
 6-52 repealed.

6-53 ARTICLE 4. TEXAS EMISSIONS REDUCTION PLAN

6-54 SECTION 4.01. Subsection (b-1), Section 501.138,  
 6-55 Transportation Code, is amended to read as follows:

6-56 (b-1) Fees collected under Subsection (b) to be sent to the  
 6-57 comptroller shall be deposited as follows:

6-58 (1) before September 1, 2008, to the credit of the  
 6-59 Texas emissions reduction plan fund; and

6-60 (2) on or after September 1, 2008, to the credit of the  
 6-61 Texas Mobility Fund, except that \$5 of each fee imposed under  
 6-62 Subsection (a)(1) and deposited on or after September 1, 2008, and  
 6-63 before August 31, 2019 [~~September 1, 2015~~], shall be deposited to  
 6-64 the credit of the Texas emissions reduction plan fund.

6-65 SECTION 4.02. Subsection (b-3), Section 501.138,  
 6-66 Transportation Code, is amended to read as follows:

6-67 (b-3) This subsection and Subsection (b-2) expire August  
 6-68 31, 2019 [~~September 1, 2015~~].

6-69 SECTION 4.03. Subsection (d), Section 151.0515, Tax Code,

7-1 is amended to read as follows:  
7-2 (d) This section expires August 31, 2019 [~~2013~~].  
7-3 SECTION 4.04. Subsection (c), Section 152.0215, Tax Code,  
7-4 is amended to read as follows:  
7-5 (c) This section expires August 31, 2019 [~~2013~~].  
7-6 SECTION 4.05. Section 390.006, Health and Safety Code, is  
7-7 amended to read as follows:  
7-8 Sec. 390.006. EXPIRATION. This chapter expires August 31,  
7-9 2019 [~~2013~~].  
7-10 SECTION 4.06. Section 386.001, Health and Safety Code, is  
7-11 amended by adding Subdivision (10-a) to read as follows:  
7-12 (10-a) "Stationary engine" means a machine that  
7-13 converts fuel into mechanical motion, including turbines and other  
7-14 internal combustion devices used in nonmobile applications.  
7-15 SECTION 4.07. Section 386.002, Health and Safety Code, is  
7-16 amended to read as follows:  
7-17 Sec. 386.002. EXPIRATION. This chapter expires August 31,  
7-18 2019 [~~2013~~].  
7-19 SECTION 4.08. Subsection (c), Section 386.104, Health and  
7-20 Safety Code, is amended to read as follows:  
7-21 (c) For a proposed project as described by Section  
7-22 386.102(b), other than a project involving a marine vessel or  
7-23 engine, not less than 75 percent of vehicle miles traveled or hours  
7-24 of operation projected for the five years immediately following the  
7-25 award of a grant must be projected to take place in a nonattainment  
7-26 area or affected county of this state. The commission may also  
7-27 allow vehicle travel on highways and roadways, or portions of a  
7-28 highway or roadway, designated by the commission and located  
7-29 outside a nonattainment area or affected county to count towards  
7-30 the percentage of use requirement in this subsection. For a  
7-31 proposed project involving a marine vessel or engine, the vessel or  
7-32 engine must be operated in the intercoastal waterways or bays  
7-33 adjacent to a nonattainment area or affected county of this state  
7-34 for a sufficient amount of time over the lifetime of the project, as  
7-35 determined by the commission, to meet the cost-effectiveness  
7-36 requirements of Section 386.105. For a proposed project involving  
7-37 a mobile generator used for natural gas recovery purposes that is  
7-38 operated in a nonattainment area or affected county, the 75 percent  
7-39 of hours of operation in a nonattainment area or affected county  
7-40 projected for the project need not occur in the five years  
7-41 immediately following the award of a grant.  
7-42 SECTION 4.09. Chapter 386, Health and Safety Code, is  
7-43 amended by adding Subchapters G and H to read as follows:  
7-44 SUBCHAPTER G. PLUG-IN HYBRID MOTOR VEHICLE PURCHASE CREDIT PROGRAM  
7-45 Sec. 386.301. DEFINITIONS. In this subchapter:  
7-46 (1) "Golf cart" has the meaning assigned by Section  
7-47 502.001, Transportation Code.  
7-48 (2) "Light-duty motor vehicle" has the meaning  
7-49 assigned by Section 386.151.  
7-50 (3) "Motor vehicle" has the meaning assigned by  
7-51 Section 386.151.  
7-52 (4) "Neighborhood electric vehicle" means a motor  
7-53 vehicle that:  
7-54 (A) is originally manufactured to meet, and does  
7-55 meet, the equipment requirements and safety standards established  
7-56 for "low speed vehicles" in Federal Motor Vehicle Safety Standard  
7-57 500 (49 C.F.R. Section 571.500);  
7-58 (B) is a slow-moving vehicle, as defined by  
7-59 Section 547.001, Transportation Code, that is able to attain a  
7-60 speed of more than 20 miles per hour but not more than 25 miles per  
7-61 hour in one mile on a paved, level surface;  
7-62 (C) is a four-wheeled motor vehicle;  
7-63 (D) is powered by electricity or alternative  
7-64 power sources;  
7-65 (E) has a gross vehicle weight rating of less  
7-66 than 3,000 pounds; and  
7-67 (F) is not a golf cart.  
7-68 (5) "Plug-in hybrid motor vehicle" means a vehicle  
7-69 that:

8-1 (A) draws motive power from a battery with a  
8-2 capacity of at least four kilowatt-hours;

8-3 (B) can be recharged from an external source of  
8-4 electricity for motive power; and

8-5 (C) is a light-duty motor vehicle capable of  
8-6 operating at highway speeds, excluding golf carts and neighborhood  
8-7 electric vehicles.

8-8 Sec. 386.302. COMMISSION DUTIES REGARDING PLUG-IN HYBRID  
8-9 MOTOR VEHICLE PURCHASE CREDIT PROGRAM. (a) The commission shall  
8-10 develop a credit-towards-purchase program for new plug-in hybrid  
8-11 motor vehicles and shall adopt rules necessary to implement the  
8-12 program.

8-13 (b) The program shall authorize statewide credits toward  
8-14 the purchase of new plug-in hybrid motor vehicles for a purchaser  
8-15 who is a state resident and who agrees to register the vehicle in  
8-16 this state and operate the vehicle in this state for not less than  
8-17 75 percent of the vehicle's annual mileage.

8-18 (c) Only one purchase credit may be provided for each new  
8-19 plug-in hybrid motor vehicle.

8-20 Sec. 386.303. PLUG-IN HYBRID MOTOR VEHICLE PURCHASE CREDIT.  
8-21 A new plug-in hybrid motor vehicle is eligible for a \$4,000 purchase  
8-22 credit.

8-23 Sec. 386.304. MODIFICATION OF INCENTIVE. After evaluating  
8-24 new technologies, the commission may change the purchase credit  
8-25 established by Section 386.303 to improve the ability of the  
8-26 program to achieve its goals.

8-27 Sec. 386.305. MANUFACTURER'S REPORT. Not later than July 1  
8-28 of each year and preceding the beginning of the vehicle model year,  
8-29 a manufacturer of motor vehicles shall provide to the commission a  
8-30 list of the new vehicle models that the manufacturer intends to sell  
8-31 in this state during that model year that meet the definition of  
8-32 plug-in hybrid motor vehicles under Section 386.301. The  
8-33 manufacturer may supplement the list provided to the commission  
8-34 under this section as necessary to include additional new vehicle  
8-35 models the manufacturer intends to sell in this state during the  
8-36 model year.

8-37 Sec. 386.306. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On  
8-38 August 1 of each year the commission shall publish a list of the new  
8-39 model motor vehicles as listed for the commission under Section  
8-40 386.305. The commission shall publish and supplement that list as  
8-41 necessary to include additional new vehicle models listed in a  
8-42 supplement to the original list provided by a manufacturer under  
8-43 Section 386.305.

8-44 (b) The commission shall distribute the list of eligible  
8-45 motor vehicles to all new motor vehicle dealers in this state.

8-46 Sec. 386.307. COMMISSION TO ACCOUNT FOR MOTOR VEHICLE  
8-47 PURCHASE CREDITS. (a) The commission by rule shall develop a  
8-48 method to administer and account for the motor vehicle purchase  
8-49 credits authorized by this subchapter and to pay a refund for the  
8-50 amount of the credit to a dealer of a new motor vehicle on  
8-51 application of the dealer as provided by this subchapter.

8-52 (b) The commission shall develop and publish forms and  
8-53 instructions for a new motor vehicle dealer to use in applying to  
8-54 the commission for a refund for purchase credits authorized under  
8-55 this subchapter.

8-56 (c) In addition to other forms developed and published under  
8-57 this section, the commission shall develop and publish a  
8-58 verification form by which, with information provided by the  
8-59 dealer, the commission can verify the sale of a vehicle covered by  
8-60 this subchapter. The verification form must include at least the  
8-61 name of the purchaser, the vehicle identification number of the  
8-62 vehicle, the date of the purchase, and the name of the new motor  
8-63 vehicle dealer making the transaction. At the time of sale of a  
8-64 vehicle eligible for a purchase credit under this subchapter, the  
8-65 dealer shall complete the verification form supplied to the dealer  
8-66 by the commission. The new motor vehicle dealer must include the  
8-67 completed verification form as part of the dealer's application for  
8-68 a refund. The dealer shall maintain a copy of the completed  
8-69 verification form for at least two years after the date of the



9-1 transaction.  
 9-2 Sec. 386.308. SUSPENSION OF PURCHASE CREDITS. (a) The  
 9-3 commission shall track new motor vehicle dealer refund applications  
 9-4 and payments.

9-5 (b) If the balance of funds available for motor vehicle  
 9-6 purchase credits falls below 15 percent of the total allocated for  
 9-7 the credits during a fiscal year, the commission may suspend the  
 9-8 credits until the date the commission can certify that the balance  
 9-9 available in the fund for credits is an amount adequate to resume  
 9-10 the credits or the beginning of the next fiscal year, whichever is  
 9-11 earlier. If the commission suspends the purchase credits, the  
 9-12 commission shall immediately notify all new motor vehicle dealers  
 9-13 that the credits have been suspended.

9-14 (c) The commission shall establish a toll-free telephone  
 9-15 number and a website available to motor vehicle dealers to call or  
 9-16 access to easily verify that funds for purchase credits are  
 9-17 available. The commission may provide for issuing verification  
 9-18 numbers over the telephone or the website.

9-19 (d) Reliance by a dealer on information provided by the  
 9-20 commission is a complete defense to an action involving or based on  
 9-21 eligibility of a vehicle for a purchase credit or availability of  
 9-22 vehicles eligible for a purchase credit.

9-23 Sec. 386.309. EXPIRATION. This subchapter and the purchase  
 9-24 credit program authorized under this subchapter expire January 1,  
 9-25 2019.

9-26 [Sections 386.310-386.350 reserved for expansion]  
 9-27 SUBCHAPTER H. ENERGY-EFFICIENT APPLIANCE PURCHASE INCENTIVE  
 9-28 PROGRAM

9-29 Sec. 386.351. DEFINITION. In this subchapter,  
 9-30 "governmental entity" means the commissioners court of a  
 9-31 participating county or other appropriate governmental entity,  
 9-32 including a regional council of government or a metropolitan  
 9-33 planning organization.

9-34 Sec. 386.352. PURCHASE INCENTIVE PROGRAM. (a) The  
 9-35 commission is the supervising state agency for the energy-efficient  
 9-36 appliance purchase incentive program.

9-37 (b) The commission by rule shall establish, and authorize a  
 9-38 governmental entity to implement, an energy-efficient appliance  
 9-39 purchase incentive program subject to agency oversight that may  
 9-40 include reasonable periodic commission audits.

9-41 (c) The participating governmental entities shall use funds  
 9-42 provided for the program to provide financial incentives designed  
 9-43 to assist persons in the purchase of equipment and appliances that  
 9-44 meet or exceed the federal Energy Star standards designated by the  
 9-45 United States Environmental Protection Agency and the United States  
 9-46 Department of Energy.

9-47 (d) Programs approved under this section must include the  
 9-48 retirement of materials and appliances that contribute to energy  
 9-49 consumption or peak energy demand to ensure the reduction of energy  
 9-50 consumption, energy demand, or peak loads and of associated  
 9-51 emissions of air contaminants.

9-52 (e) Appliances funded under this section may include:

- 9-53 (1) air conditioning units; and
- 9-54 (2) refrigeration units.

9-55 Sec. 386.353. ADMINISTRATION OF INCENTIVE PROGRAM.

9-56 (a) Money allocated by the commission under the incentive program  
 9-57 developed under this subchapter shall be administered by the  
 9-58 governmental entity implementing the program. A participating  
 9-59 governmental entity shall be reimbursed from the fund for costs  
 9-60 incurred in administering the incentive program established under  
 9-61 this subchapter. Reimbursable administrative costs of a  
 9-62 participating governmental entity may not exceed 10 percent of the  
 9-63 entity's total program budget.

9-64 (b) The commission and implementing governmental entities  
 9-65 may accept gifts, grants, or other assistance for the purpose of  
 9-66 implementing this section.

9-67 Sec. 386.354. IMPLEMENTATION GUIDELINES AND REQUIREMENTS.

9-68 (a) The commission by rule shall adopt guidelines to assist a  
 9-69 participating governmental entity in implementing an

10-1 energy-efficient appliance purchase incentive program. The  
 10-2 guidelines at a minimum shall recommend:

10-3 (1) a minimum and maximum amount towards purchase of  
 10-4 eligible appliances; and

10-5 (2) criteria for determining eligibility, taking into  
 10-6 account:

10-7 (A) the extent to which the incentive will reduce  
 10-8 energy consumption, energy demand, or peak loads and reduce  
 10-9 associated emissions of air contaminants;

10-10 (B) the condition of materials and appliances to  
 10-11 be retired; and

10-12 (C) any other relevant considerations.

10-13 (b) A participating governmental entity shall provide an  
 10-14 electronic means for distributing energy-efficient appliance  
 10-15 purchase incentive funds once all program criteria have been met  
 10-16 with regard to the purchase. The governmental entity shall ensure  
 10-17 that funds are transferred to the purchaser not later than 14  
 10-18 business days after the date the governmental entity receives proof  
 10-19 of the purchase and any required administrative documents from the  
 10-20 purchaser.

10-21 SECTION 4.10. Subsection (b), Section 152.002, Tax Code, is  
 10-22 amended to read as follows:

10-23 (b) "Total consideration" does not include:

10-24 (1) a cash discount;

10-25 (2) a full cash or credit refund to a customer of the  
 10-26 sales price of a motor vehicle returned to the seller;

10-27 (3) the amount charged for labor or service rendered  
 10-28 in installing, applying, remodeling, or repairing the motor vehicle  
 10-29 sold;

10-30 (4) a financing, carrying, or service charge or  
 10-31 interest on credit extended on a motor vehicle sold under a  
 10-32 conditional sale or other deferred payment contract;

10-33 (5) the value of a motor vehicle taken by a seller as  
 10-34 all or a part of the consideration for sale of another motor  
 10-35 vehicle, including any cash payment to the buyer under Section  
 10-36 348.404, Finance Code;

10-37 (6) a charge for transportation of the motor vehicle  
 10-38 after a sale;

10-39 (7) motor vehicle inventory tax; or

10-40 (8) an amount made available to the customer under  
 10-41 Subchapter G, Chapter 382, or Subchapter G, Chapter 386, Health and  
 10-42 Safety Code.

10-43 ARTICLE 5. NEW TECHNOLOGY RESEARCH  
 10-44 AND DEVELOPMENT PROGRAM

10-45 SECTION 5.01. Subsections (a) and (b), Section 386.252,  
 10-46 Health and Safety Code, are amended to read as follows:

10-47 (a) Money in the fund may be used only to implement and  
 10-48 administer programs established under the plan and shall be  
 10-49 allocated as follows:

10-50 (1) for the diesel emissions reduction incentive  
 10-51 program, 87.5 percent of the money in the fund, of which not more  
 10-52 than four percent may be used for the clean school bus program and  
 10-53 not more than 10 percent may be used for on-road diesel purchase or  
 10-54 lease incentives; not more than 10 percent may be used for the new  
 10-55 technology implementation program, of which a defined amount may be  
 10-56 set aside for electricity storage projects related to renewable  
 10-57 energy; and a specified percentage may be used for light-duty  
 10-58 plug-in hybrid motor vehicle purchase credits;

10-59 (2) for the new technology research and development  
 10-60 program, nine [9.5] percent of the money in the fund, of which up to  
 10-61 [\$250,000 is allocated for administration, up to] \$200,000 is  
 10-62 allocated for a health effects study, \$500,000 is to be deposited in  
 10-63 the state treasury to the credit of the clean air account created  
 10-64 under Section 382.0622 to supplement funding for air quality  
 10-65 planning activities in affected counties, not less than 20 percent  
 10-66 is to be allocated each year to support the energy-efficient  
 10-67 appliance purchase incentive program created under Subchapter H  
 10-68 [research related to air quality for the  
 10-69 Houston-Calveston-Brazoria and Dallas-Fort Worth nonattainment

11-1 ~~areas by a nonprofit organization based in Houston of which~~  
 11-2 ~~\$216,000 each year shall be contracted to the Energy Systems~~  
 11-3 ~~Laboratory at the Texas Engineering Experiment Station for the~~  
 11-4 ~~development and annual calculation of creditable statewide~~  
 11-5 ~~emissions reductions obtained through wind and other renewable~~  
 11-6 ~~energy resources for the State Implementation Plan], and the~~  
 11-7 ~~balance is to be allocated each year to the commission [a nonprofit~~  
 11-8 ~~organization or an institution of higher education based in~~  
 11-9 ~~Houston] to be used to implement and administer the new technology~~  
 11-10 ~~research and development program [under a contract with the~~  
 11-11 ~~commission] for the purpose of identifying, testing, and evaluating~~  
 11-12 ~~new emissions-reducing technologies with potential for~~  
 11-13 ~~commercialization in this state and to facilitate their~~  
 11-14 ~~certification or verification of which, a portion shall be~~  
 11-15 ~~allocated for research related to air quality administered by a~~  
 11-16 ~~nonprofit organization or an institution of higher education; and~~

11-17 (3) ~~for administrative costs incurred by the~~  
 11-18 ~~commission and the laboratory, 3.5 [three] percent of the money in~~  
 11-19 ~~the fund, of which two percent is allocated to the commission and~~  
 11-20 ~~1.5 percent is allocated to the laboratory.~~

11-21 (b) ~~The [Up to 25 percent of the] money allocated under~~  
 11-22 ~~Subsection (a) to a particular program [and not expended under that~~  
 11-23 ~~program by January 1 of the second fiscal year of a fiscal biennium]~~  
 11-24 ~~may be used for another program under the plan as determined by the~~  
 11-25 ~~commission [in consultation with the advisory board].~~

11-26 SECTION 5.02. Section 387.003, Health and Safety Code, is  
 11-27 amended to read as follows:

11-28 Sec. 387.003. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT  
 11-29 PROGRAM. (a) ~~The commission [A nonprofit organization or~~  
 11-30 ~~institution of higher education described by Section~~  
 11-31 ~~386.252(a)(2), under a contract with the commission as described by~~  
 11-32 ~~that section,] shall establish and administer a new technology~~  
 11-33 ~~research and development program as provided by this chapter. The~~  
 11-34 ~~commission may contract with one or more well-qualified nonprofit~~  
 11-35 ~~organizations or institutions of higher education for~~  
 11-36 ~~administration of this program [more than one entity and may limit~~  
 11-37 ~~the amount of each grant contract accordingly].~~

11-38 (b) Under the program, the commission shall provide grants  
 11-39 to be used to support development of emissions-reducing  
 11-40 technologies that may be used for projects eligible for awards  
 11-41 under Chapters [Chapter] 386 and 391 and other new technologies  
 11-42 that show promise for commercialization. The primary objective of  
 11-43 this chapter is to promote the development of commercialization  
 11-44 technologies to reduce emissions of oxides of nitrogen in Texas  
 11-45 nonattainment areas [that will support projects that may be funded  
 11-46 under Chapter 386 and this chapter, including advanced technologies  
 11-47 such as fuel cells, catalysts, and fuel additives].

11-48 (c) If the commission contracts with one or more nonprofit  
 11-49 organizations or institutions of higher education to [The board of  
 11-50 directors of a nonprofit organization under contract with the  
 11-51 commission to establish and] administer a new technology research  
 11-52 and development program under [as provided by] this chapter, the  
 11-53 board of directors of each organization may not have more than 11  
 11-54 members, must include two persons of relevant scientific expertise  
 11-55 to be nominated by the commission, and may not include more than  
 11-56 four county judges [selected from counties in the  
 11-57 Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment  
 11-58 areas]. The two persons of relevant scientific expertise to be  
 11-59 nominated by the commission may be employees or officers of the  
 11-60 commission, provided that they do not participate in funding  
 11-61 decisions affecting the granting of funds by the commission to a  
 11-62 nonprofit organization on whose board they serve.

11-63 (d) ~~[The commission may enter into a grant contract with an~~  
 11-64 ~~institution of higher education described by Section 386.252(a)(2)~~  
 11-65 ~~for the institution to operate a testing facility which would be~~  
 11-66 ~~available for demonstration of eligible projects receiving grants~~  
 11-67 ~~under this chapter.~~

11-68 [(e)] The commission shall provide oversight as appropriate  
 11-69 for grants provided to a nonprofit organization or an institution

12-1 of higher education under this program.

12-2 (e) [~~(f)~~] A nonprofit organization or an institution of  
 12-3 higher education shall submit to the commission for approval a  
 12-4 budget for the disposition of funds granted under this program.

12-5 (f) [~~(g)~~] The commission shall limit the use of grants for  
 12-6 administrative costs incurred by a nonprofit organization or an  
 12-7 institution of higher education to an amount not to exceed 10  
 12-8 percent of the total program funding [~~provided to the nonprofit~~  
 12-9 organization under this program].

12-10 (g) [~~(h)~~] A nonprofit organization that receives grants  
 12-11 from the commission under this program is subject to Chapters 551  
 12-12 and 552, Government Code.

12-13 SECTION 5.03. Section 387.004, Health and Safety Code, is  
 12-14 amended to read as follows:

12-15 Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY PROPOSALS.  
 12-16 The commission from time to time shall issue or contract with a  
 12-17 nonprofit organization or an institution of higher education  
 12-18 described by Section 387.003(a) [386.252(a)(2)] to issue specific  
 12-19 requests for proposals (RFPs) or program opportunity notices (PONs)  
 12-20 for technology projects to be funded under the program.

12-21 SECTION 5.04. Subsections (a), (b), and (f), Section  
 12-22 387.005, Health and Safety Code, are amended to read as follows:

12-23 (a) Grants awarded under this chapter shall be directed  
 12-24 toward a balanced mix of:

12-25 (1) retrofit and add-on technologies and other  
 12-26 advanced technologies that reduce emissions from the existing stock  
 12-27 of engines and vehicles targeted by the Texas emissions reduction  
 12-28 plan, provided that the technologies do not significantly reduce  
 12-29 the fuel economy of those engines and vehicles;

12-30 (2) ~~[the establishment of a testing facility to~~  
 12-31 ~~evaluate retrofits, add-ons, advanced technologies, and fuels, or~~  
 12-32 ~~combinations of retrofits, add-ons, advanced technologies, and~~  
 12-33 ~~fuels, to determine their effectiveness in producing emissions~~  
 12-34 ~~reductions, with emphasis on the reduction of oxides of nitrogen; and~~

12-35 ~~[(3)] advanced technologies for new engines and~~  
 12-36 ~~vehicles that produce very-low or zero emissions of oxides of~~  
 12-37 ~~nitrogen, including stationary and mobile fuel cells;~~

12-38 (3) advanced technologies for reducing oxides of  
 12-39 nitrogen and other emissions from stationary sources; and

12-40 (4) field validation of innovative technologies for  
 12-41 reducing emissions of oxides that require demonstration of  
 12-42 viability for full commercial acceptance.

12-43 (b) The commission, directly or through a nonprofit  
 12-44 organization or an institution of higher education described by  
 12-45 Section 387.003(a) [386.252(a)(2)], shall identify and evaluate  
 12-46 and may consider making grants for technology projects that would  
 12-47 allow qualifying fuels to be produced from energy resources in this  
 12-48 state. In considering projects under this subsection, the  
 12-49 commission shall give preference to projects involving otherwise  
 12-50 unusable energy resources in this state and producing qualifying  
 12-51 fuels at prices lower than otherwise available and low enough to  
 12-52 make the projects to be funded under the program economically  
 12-53 attractive to local businesses in the area for which the project is  
 12-54 proposed.

12-55 (f) Selection of grant recipients by a nonprofit  
 12-56 organization or an institution of higher education described by  
 12-57 Section 387.003(a) [386.252(a)(2)] under contract with the  
 12-58 commission for the purpose of establishing and administering a new  
 12-59 technology research and development program as provided by this  
 12-60 chapter is subject to the commission's review and to the other  
 12-61 requirements of this chapter. A grant contract under this chapter  
 12-62 using funds described by Section 386.252 may not be made by a  
 12-63 nonprofit organization or an institution of higher education if the  
 12-64 commission or executive director of the commission does not consent  
 12-65 to the grant or contract.

12-66 SECTION 5.05. Section 387.006, Health and Safety Code, is  
 12-67 amended to read as follows:

12-68 Sec. 387.006. EVIDENCE OF COMMERCIALIZATION POTENTIAL  
 12-69 REQUIRED. (a) An application for a technology grant under this

13-1 chapter must show reasonable [~~clear and compelling~~] evidence that:

13-2 (1) the proposed technology project has a substantial  
13-3 [~~strong~~] commercialization plan and organization; and

13-4 (2) the technology proposed for funding[+  
13-5 [~~(A)~~] is likely to be offered for commercial sale  
13-6 in this state as soon as practicable [~~but no later than five years~~]  
13-7 after the date of the application for funding[+, and

13-8 [~~(B) once commercialized, will offer~~  
13-9 ~~opportunities for projects eligible for funding under Chapter 386~~].

13-10 (b) The commission shall consider specifically, for each  
13-11 proposed technology project application:

13-12 (1) the projected potential for reduced emissions of  
13-13 oxides of nitrogen and the cost-effectiveness of the technology  
13-14 once it has been commercialized, including the impact on fuel  
13-15 consumption and maintenance costs for retrofits and rebuilds;

13-16 (2) the potential for the technology to contribute  
13-17 significantly to air quality goals; and

13-18 (3) the strength of the commercialization plan.

13-19 SECTION 5.06. Chapter 387, Health and Safety Code, is  
13-20 amended by adding Section 387.010 to read as follows:

13-21 Sec. 387.010. AIR QUALITY RESEARCH. (a) A nonprofit  
13-22 organization or institution of higher education described by  
13-23 Section 386.252(a)(2), under a contract with the commission, shall  
13-24 establish and administer a program under this section supporting  
13-25 research related to air quality.

13-26 (b) The board of directors of a nonprofit organization under  
13-27 contract with the commission to establish and administer the  
13-28 research program related to air quality under this section may not  
13-29 have more than 11 members, must include two persons with relevant  
13-30 scientific expertise to be nominated by the commission, and may not  
13-31 include more than four county judges selected from counties in the  
13-32 Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment  
13-33 areas. The two persons with relevant scientific expertise to be  
13-34 nominated by the commission may be employees or officers of the  
13-35 commission, provided that they do not participate in funding  
13-36 decisions affecting the granting of funds by the commission to a  
13-37 nonprofit organization on whose board they serve.

13-38 (c) The commission shall provide oversight as appropriate  
13-39 for grants provided to a nonprofit organization under the program  
13-40 established under this section.

13-41 (d) A nonprofit organization shall submit to the commission  
13-42 for approval a budget for the disposition of funds granted under the  
13-43 program established under this section.

13-44 (e) A nonprofit organization shall be reimbursed for costs  
13-45 incurred in establishing and administering the research program  
13-46 related to air quality under this section. Reimbursable  
13-47 administrative costs of a nonprofit organization may not exceed 10  
13-48 percent of the organization's total program budget.

13-49 (f) A nonprofit organization that receives grants from the  
13-50 commission under this section is subject to Chapters 551 and 552,  
13-51 Government Code.

#### 13-52 ARTICLE 6. BUILDING ENERGY CODES

13-53 SECTION 6.01. Section 388.003, Health and Safety Code, is  
13-54 amended by amending Subsections (a) and (b) and adding Subsection  
13-55 (a-1) to read as follows:

13-56 (a) To achieve energy conservation in single-family and  
13-57 duplex residential construction, the energy efficiency provisions  
13-58 [chapter] of the International Residential Code, as it existed on  
13-59 May 1, 2001, is adopted as the energy code in this state for  
13-60 single-family and duplex residential construction. Beginning  
13-61 January 1, 2012, the energy efficiency provisions of the  
13-62 International Residential Code, as it existed on May 1, 2009, is  
13-63 adopted as the energy code in this state for single-family and  
13-64 duplex residential construction.

13-65 (a-1) For the purposes of energy code compliance under the  
13-66 limited statutory warranties and building and performance  
13-67 standards under Section 430.001, Property Code, and inspections of  
13-68 new residential construction required under Subtitle F, Title 16,  
13-69 Property Code, Subsection (a) of this section controls for

14-1 single-family and duplex residential construction located in  
 14-2 unincorporated areas not in the extraterritorial jurisdiction of a  
 14-3 municipality. To the extent of any conflict between this  
 14-4 subsection and any other law, including Section 430.001, Property  
 14-5 Code, this subsection prevails.

14-6 (b) To achieve energy conservation in all other  
 14-7 residential, commercial, and industrial construction, the  
 14-8 International Energy Conservation Code as it existed on May 1,  
 14-9 2001, is adopted as the energy code for use in this state for all  
 14-10 other residential, commercial, and industrial construction.  
 14-11 Beginning January 1, 2012, the International Energy Conservation  
 14-12 Code, as it existed on May 1, 2009, is adopted as the energy code in  
 14-13 this state for all other residential, commercial, and industrial  
 14-14 construction.

14-15 SECTION 6.02. Subsection (b-1), Section 388.003, Health and  
 14-16 Safety Code, as added by Section 3.01, Chapter 262 (S.B. 12), Acts  
 14-17 of the 80th Legislature, Regular Session, 2007, is amended to read  
 14-18 as follows:

14-19 (b-1) If the State Energy Conservation Office determines,  
 14-20 based on written recommendations from the laboratory, that the  
 14-21 latest published [~~edition of the~~] International Residential Code  
 14-22 energy efficiency provisions or the latest published edition of the  
 14-23 International Energy Conservation Code will result in residential  
 14-24 or commercial sector energy efficiency and air quality impact, on  
 14-25 average, that is equivalent to or better than the energy efficiency  
 14-26 and air quality achievable under the editions adopted under  
 14-27 Subsection (a) or (b), the office may by rule adopt the equivalent  
 14-28 or more stringent editions and substitute them for the energy codes  
 14-29 described by Subsection (a) or (b). The rule, if adopted, shall  
 14-30 establish an effective date for the new energy codes but not earlier  
 14-31 than nine months after the date of adoption. The laboratory shall  
 14-32 make its recommendations not later than six months after  
 14-33 publication of new editions at the end of each three-year code  
 14-34 development cycle of the International Residential Code and the  
 14-35 International Energy Conservation Code.

14-36 SECTION 6.03. Subsections (c), (d), (e), and (f), Section  
 14-37 388.003, Health and Safety Code, are amended to read as follows:

14-38 (c) A municipality shall establish procedures:

14-39 (1) for the administration and enforcement of the  
 14-40 codes; and

14-41 (2) to ensure that code-certified inspectors or  
 14-42 approved energy efficiency program verifiers shall perform  
 14-43 inspections and enforce the code in the inspectors' jurisdictions.

14-44 (d) A municipality [~~or county~~] may establish procedures to  
 14-45 adopt local amendments to the International Energy Conservation  
 14-46 Code and the energy efficiency provisions [~~chapter~~] of the  
 14-47 International Residential Code.

14-48 (e) Local amendments may not result in less stringent  
 14-49 overall energy efficiency requirements [~~in nonattainment areas and~~  
 14-50 ~~in affected counties~~] than the energy efficiency chapter of the  
 14-51 International Residential Code or International Energy  
 14-52 Conservation Code. Local amendments must comply with the National  
 14-53 Appliance Energy Conservation Act of 1987 (42 U.S.C. Sections  
 14-54 6291-6309), as amended. The laboratory, at the request of a  
 14-55 municipality or county, shall determine the relative impact of  
 14-56 proposed local amendments to an energy code, including whether  
 14-57 proposed amendments are substantially equal to or less stringent  
 14-58 than the unamended code. [~~For the purpose of establishing uniform~~  
 14-59 ~~requirements throughout a region, and on request of a council of~~  
 14-60 ~~governments, a county, or a municipality, the laboratory may~~  
 14-61 ~~recommend a climatically appropriate modification or a climate zone~~  
 14-62 ~~designation for a county or group of counties that is different from~~  
 14-63 ~~the climate zone designation in the unamended code.] The  
 14-64 laboratory shall:~~

14-65 (1) report its findings to the council, county, or  
 14-66 municipality, including an estimate of any energy savings potential  
 14-67 above the base code from local amendments; and

14-68 (2) annually submit a report to the commission:

14-69 (A) identifying the municipalities and counties

15-1 whose codes are more stringent than the unamended code, and whose  
 15-2 codes are equally stringent or less stringent than the unamended  
 15-3 code; and

15-4 (B) quantifying energy savings and emissions  
 15-5 reductions from this program.

15-6 (f) Each municipality, and each county that has established  
 15-7 procedures under Subsection (d), shall periodically review and  
 15-8 consider revisions made by the International Code Council to the  
 15-9 International Energy Conservation Code and the energy efficiency  
 15-10 chapter of the International Residential Code adopted after May 1,  
 15-11 2009 [~~2001~~].

15-12 SECTION 6.04. Chapter 388, Health and Safety Code, is  
 15-13 amended by adding Section 388.0035 to read as follows:

15-14 Sec. 388.0035. REQUIREMENT OF COMPATIBILITY WITH PLUG-IN  
 15-15 MOTOR VEHICLES. The State Energy Conservation Office by rule shall  
 15-16 amend the energy code as adopted under Section 388.003 to require  
 15-17 that buildings newly constructed after January 1, 2012, have an  
 15-18 electrical system, including outlets, that is capable of recharging  
 15-19 plug-in electric or plug-in hybrid electric motor vehicles.

15-20 SECTION 6.05. The following provisions of the Health and  
 15-21 Safety Code are repealed:

15-22 (1) Subsection (b-1), Section 388.003, as added by  
 15-23 Section 11, Chapter 939 (H.B. 3693), Acts of the 80th Legislature,  
 15-24 Regular Session, 2007; and

15-25 (2) Subsection (b-2), Section 388.003, as added by  
 15-26 Section 3.01, Chapter 262 (S.B. 12), Acts of the 80th Legislature,  
 15-27 Regular Session, 2007.

15-28 ARTICLE 7. IDLING OF MOTOR VEHICLES

15-29 SECTION 7.01. Section 382.0191, Health and Safety Code, is  
 15-30 amended to read as follows:

15-31 Sec. 382.0191. IDLING OF MOTOR VEHICLE WHILE USING SLEEPER  
 15-32 BERTH. (a) In this section, "idling" means allowing an engine to  
 15-33 run while the motor vehicle is not engaged in forward or reverse  
 15-34 motion.

15-35 (b) Except as provided by Subsection (c), the [The]  
 15-36 commission may not prohibit or limit the idling of any [a] motor  
 15-37 vehicle with a gross vehicle weight rating greater than 8,500  
 15-38 pounds that is equipped with a 2008 or subsequent model year  
 15-39 heavy-duty diesel engine that has been certified by the United  
 15-40 States Environmental Protection Agency or another state  
 15-41 environmental agency to emit no more than 30 grams of nitrogen  
 15-42 oxides emissions per hour when idling [is necessary to power a  
 15-43 heater or air conditioner while a driver is using the vehicle's  
 15-44 sleeper berth for a government-mandated rest period. Idling is not  
 15-45 necessary to power a heater or air conditioner if the vehicle is  
 15-46 within two miles of a facility offering external heating and air  
 15-47 conditioning connections at a time when those connections are  
 15-48 available].

15-49 (c) No driver using the vehicle's sleeper berth may idle the  
 15-50 vehicle in a residential area as defined by Section 244.001, Local  
 15-51 Government Code, or in a school zone or within 1,000 feet of a  
 15-52 hospital or a public school during its hours of operation. An  
 15-53 offense under this subsection shall be punishable by a fine not to  
 15-54 exceed \$500.

15-55 (d) This section expires November [~~September~~] 1, 2010  
 15-56 [~~2009~~].

15-57 ARTICLE 8. EXEMPTION OF THE WEIGHT OF CERTAIN IDLE REDUCTION  
 15-58 SYSTEMS FOR COMMERCIAL VEHICLES FROM MAXIMUM WEIGHT RESTRICTIONS

15-59 SECTION 8.01. Section 621.001, Transportation Code, is  
 15-60 amended to read as follows:

15-61 Sec. 621.001. DEFINITIONS. In this chapter:

15-62 (1) "Commercial motor vehicle" means a motor vehicle,  
 15-63 other than a motorcycle, designed or used for:

15-64 (A) the transportation of property; or

15-65 (B) delivery purposes.

15-66 (2) "Commission" means the Texas Transportation  
 15-67 Commission.

15-68 (3) "Department" means the Texas Department of  
 15-69 Transportation.

16-1 (4) "Director" means the executive director of the  
16-2 Texas Department of Transportation.

16-3 (5) "Idle reduction system" means any system that  
16-4 provides heating, cooling, or electrical service to a commercial  
16-5 vehicle cab for the purpose of reducing vehicle idling.

16-6 (6) "Motor vehicle" means a vehicle that is  
16-7 self-propelled.

16-8 (7) [~~6~~] "Semitrailer" means a vehicle without motive  
16-9 power that is designed, or used with a motor vehicle, so that some  
16-10 of its weight and the weight of its load rests on or is carried by  
16-11 the motor vehicle.

16-12 (8) [~~7~~] "Trailer" means a vehicle without motive  
16-13 power that is:

16-14 (A) designed or used to carry property or  
16-15 passengers on its own structure exclusively; and

16-16 (B) drawn by a motor vehicle.

16-17 (9) [~~8~~] "Truck-tractor" means a motor vehicle  
16-18 designed or used primarily for drawing another vehicle:

16-19 (A) that is not constructed to carry a load other  
16-20 than a part of the weight of the vehicle and load being drawn; or

16-21 (B) that is engaged with a semitrailer in the  
16-22 transportation of automobiles or boats and that transports the  
16-23 automobiles or boats on part of the truck-tractor.

16-24 (10) [~~9~~] "Vehicle" means a mechanical device, other  
16-25 than a device moved by human power or used exclusively upon  
16-26 stationary rails or tracks, in, on, or by which a person or property  
16-27 can be transported on a public highway. The term includes a motor  
16-28 vehicle, commercial motor vehicle, truck-tractor, trailer, or  
16-29 semitrailer but does not include manufactured housing as defined by  
16-30 Chapter 1201, Occupations Code.

16-31 (11) [~~10~~] "Single axle weight" means the total  
16-32 weight transmitted to the road by all wheels whose centers may be  
16-33 included between two parallel transverse vertical planes 40 inches  
16-34 apart, extending across the full width of the vehicle.

16-35 (12) [~~11~~] "Tandem axle weight" means the total  
16-36 weight transmitted to the road by two or more consecutive axles  
16-37 whose centers may be included between parallel transverse vertical  
16-38 planes spaced more than 40 inches and not more than 96 inches apart,  
16-39 extending across the full width of the vehicle.

16-40 (13) [~~12~~] "Port of entry" means a place designated  
16-41 by executive order of the president of the United States, by order  
16-42 of the United States secretary of the treasury, or by act of the  
16-43 United States Congress at which a customs officer is authorized to  
16-44 accept entries of merchandise, collect duties, and enforce customs  
16-45 and navigation laws. The term includes a publicly owned or  
16-46 privately owned international port of entry between this state and  
16-47 the United Mexican States.

16-48 SECTION 8.02. Section 621.101, Transportation Code, is  
16-49 amended by adding Subsection (d) to read as follows:

16-50 (d) Notwithstanding any provision of this section or any  
16-51 other section to the contrary, the maximum gross vehicle weight  
16-52 limit, bridge formula limit, and axle weight limit for any vehicle  
16-53 or combination of vehicles equipped with an idle reduction system  
16-54 may be increased by a quantity necessary to compensate for the  
16-55 additional weight of the idle reduction system as provided for in 23  
16-56 U.S.C. Section 127. In no case shall the additional weight increase  
16-57 allowed by this subsection be greater than 400 pounds. On request  
16-58 by an appropriate law enforcement officer, the vehicle operator  
16-59 shall provide proof that the idle reduction technology is fully  
16-60 functional at all times and that the gross weight increase is not  
16-61 used for any purpose other than for use as an idle reduction system.

16-62 ARTICLE 9. APPLIANCE EFFICIENCY STANDARDS

16-63 SECTION 9.01. Subtitle C, Title 5, Health and Safety Code,  
16-64 is amended by adding Chapter 392 to read as follows:

16-65 CHAPTER 392. APPLIANCE EFFICIENCY STANDARDS

16-66 SUBCHAPTER A. GENERAL PROVISIONS

16-67 Sec. 392.001. DEFINITIONS. In this chapter:

16-68 (1) "Bottle-type water dispenser" means a water  
16-69 dispenser that uses a bottle or reservoir as the source of potable



17-1 water.

17-2 (2) "Commercial hot food holding cabinet" means a  
 17-3 heated, fully enclosed compartment with one or more solid or glass  
 17-4 doors that is designed to maintain the temperature of hot food that  
 17-5 has been cooked in a separate appliance.

17-6 (3) "Compact audio product," also known as a mini,  
 17-7 mid, micro, or shelf audio system, means an integrated audio system  
 17-8 encased in a single housing that includes an amplifier and radio  
 17-9 tuner with attached or separable speakers that can reproduce audio  
 17-10 from magnetic tape, compact disc, DVD, or flash memory.

17-11 (4) "Digital versatile disc" or "DVD" means a  
 17-12 laser-encoded plastic medium capable of storing a large amount of  
 17-13 digital audio, video, or computer data.

17-14 (5) "DVD player" means a digital versatile disc player  
 17-15 that:

17-16 (A) is a commercially available electronic  
 17-17 product encased in a single housing that includes an integral power  
 17-18 supply; and

17-19 (B) is designed to decode digitized video signals  
 17-20 on a DVD.

17-21 (6) "DVD recorder" means a digital versatile disc  
 17-22 recorder that:

17-23 (A) is a commercially available electronic  
 17-24 product encased in a single housing that includes an integral power  
 17-25 supply; and

17-26 (B) is designed for the production or recording  
 17-27 of digitized video signals on a DVD.

17-28 (7) "Energy Star Program" means the United States  
 17-29 Environmental Protection Agency's Energy Star Program.

17-30 (8) "Portable electric spa" means a factory-built  
 17-31 electric spa or hot tub, supplied with equipment for heating and  
 17-32 circulating water.

17-33 (9) "Residential pool pump" means a pump used to  
 17-34 circulate and filter residential swimming pool water to maintain  
 17-35 the water's clarity and sanitation.

17-36 (10) "Water dispenser" means a factory-made assembly  
 17-37 that mechanically cools and heats potable water and that dispenses  
 17-38 the cooled or heated water by integral or remote means.

17-39 Sec. 392.002. APPLICABILITY; EXEMPTIONS. (a) This  
 17-40 chapter applies to the following new products sold, offered for  
 17-41 sale, or installed in this state:

17-42 (1) bottle-type water dispensers;

17-43 (2) commercial hot food holding cabinets;

17-44 (3) compact audio products;

17-45 (4) DVD players and recorders;

17-46 (5) portable electric spas; and

17-47 (6) residential pool pumps.

17-48 (b) This chapter does not apply to:

17-49 (1) a new product manufactured in this state and sold  
 17-50 outside the state;

17-51 (2) a new product manufactured outside this state and  
 17-52 sold at wholesale inside the state for final retail sale and  
 17-53 installation outside the state;

17-54 (3) a product installed in a mobile manufactured home  
 17-55 at the time of the home's construction;

17-56 (4) a product designed expressly for installation and  
 17-57 use in a recreational vehicle;

17-58 (5) a commercial heated glass merchandising cabinet,  
 17-59 dresser warmer, or cook-and-hold appliance for hot food;

17-60 (6) a compact audio product that:

17-61 (A) can be independently powered by internal  
 17-62 batteries;

17-63 (B) has a powered external satellite antenna; or

17-64 (C) can provide a video output signal; or

17-65 (7) a DVD recorder that has an electronic programming  
 17-66 guide function that provides an interactive, onscreen menu of  
 17-67 television listings and that downloads program information from the  
 17-68 vertical blanking interval of a regular television signal.

17-69 [Sections 392.003-392.050 reserved for expansion]

## SUBCHAPTER B. EFFICIENCY STANDARDS

18-1                   Sec. 392.051. MINIMUM EFFICIENCY STANDARDS FOR CERTAIN  
 18-2 APPLIANCES. (a) Not later than September 1, 2010, the  
 18-3 comptroller, in consultation with the state energy conservation  
 18-4 office, shall adopt rules establishing minimum efficiency  
 18-5 standards for each type of new product described by Section  
 18-6 392.002(a).

18-7                   (b) If the United States Environmental Protection Agency or  
 18-8 the United States Department of Energy adopt an Energy Star rating  
 18-9 for any appliance covered by this chapter, the standard contained  
 18-10 in this chapter is preempted by the federal requirements.

18-11                   Sec. 392.052. NEW OR INCREASED EFFICIENCY STANDARDS.  
 18-12 (a) The comptroller may adopt rules to establish increased  
 18-13 efficiency standards for a product listed in Section 392.002(a) or  
 18-14 to establish standards for a product not listed in that subsection.

18-15                   (b) In considering new or increased standards, the  
 18-16 comptroller, in consultation with the state energy conservation  
 18-17 office, shall prescribe new or increased efficiency standards if  
 18-18 the comptroller determines that the standards would:

18-19                   (1) serve to promote energy conservation in this  
 18-20 state; and

18-21                   (2) be cost-effective for consumers who purchase and  
 18-22 use the new product.

18-23                   Sec. 392.053. EFFECTIVE DATE OF STANDARDS. A standard  
 18-24 established under this subchapter takes effect on the first  
 18-25 anniversary of the date the rule establishing the standard is  
 18-26 adopted.

18-27                   Sec. 392.054. BOTTLE-TYPE WATER DISPENSERS. A bottle-type  
 18-28 water dispenser designed for dispensing both hot and cold water may  
 18-29 not have standby energy consumption greater than 1.2 kilowatt-hours  
 18-30 per day, as measured in accordance with the test criteria contained  
 18-31 in version 1 of the "Energy Star Program Requirements for Bottled  
 18-32 Water Coolers," except that Section D, "Timer Usage," of those test  
 18-33 criteria may not be used to test units with an integral automatic  
 18-34 timer.

18-35                   Sec. 392.055. COMMERCIAL HOT FOOD HOLDING CABINETS. (a) A  
 18-36 commercial hot food holding cabinet must have a maximum idle energy  
 18-37 rate of not greater than 40 watts per cubic foot of interior volume,  
 18-38 as determined by the "idle energy rate-dry test" in ASTM F2140-01,  
 18-39 "Standard Test Method for Performance of Hot Food Holding  
 18-40 Cabinets," copyright 2007 ASTM International.

18-41                   (b) Interior volume of a commercial hot food holding cabinet  
 18-42 must be measured in accordance with the method shown in the "Energy  
 18-43 Star Program Requirements for Commercial Hot Food Holding Cabinets"  
 18-44 as in effect on August 15, 2003.

18-45                   Sec. 392.056. COMPACT AUDIO PRODUCTS. A compact audio  
 18-46 product may not use more than two watts in standby-passive mode for  
 18-47 a product without a permanently illuminated clock display and four  
 18-48 watts in standby-passive mode for a product with a permanently  
 18-49 illuminated clock display, as measured in accordance with  
 18-50 International Electrotechnical Commission (IEC) test method  
 18-51 62087:2002-2003(E), "Methods of Measurement for the Power  
 18-52 Consumption of Audio, Video, and Related Equipment."

18-53                   Sec. 392.057. DVD PLAYERS OR RECORDERS. A DVD player or  
 18-54 recorder may not use more than three watts in standby-passive mode,  
 18-55 as measured in accordance with International Electrotechnical  
 18-56 Commission (IEC) test method 62087:2002-2003(E), "Methods of  
 18-57 Measurement for the Power Consumption of Audio, Video, and Related  
 18-58 Equipment."

18-59                   Sec. 392.058. PORTABLE ELECTRIC SPAS. A portable electric  
 18-60 spa may not have a standby power greater than 5(v) watts where v  
 18-61 equals the total volume in gallons. Standby power must be measured  
 18-62 in accordance with the test method for portable electric spas  
 18-63 contained in Section 1604, Title 20, California Code of  
 18-64 Regulations, as of December 2006.

18-65                   Sec. 392.059. RESIDENTIAL POOL PUMP MOTORS. (a) A  
 18-66 residential pool pump motor manufactured on or after January 1,  
 18-67 2006, may not be a split-phase or capacitor start-induction run  
 18-68 type motor.

19-1 (b)(1) A residential pool pump motor with a pool pump motor  
 19-2 capacity of one horsepower or more that is manufactured on or after  
 19-3 January 1, 2008, must be capable of operating at two or more speeds  
 19-4 with a low speed having a rotation rate that is not more than  
 19-5 one-half of the motor's maximum rotation rate. The pump motor must  
 19-6 be operated with a pump control that has the capability of operating  
 19-7 the pump at a minimum of two speeds.

19-8 (2) A residential pool pump motor with a pool pump  
 19-9 motor capacity of one horsepower or more that is manufactured on or  
 19-10 after January 1, 2010, and installed in existing residential pool  
 19-11 pumps as a replacement residential pool pump motor must be capable  
 19-12 of operating at two or more speeds with a low speed having a  
 19-13 rotation rate that is not more than one-half of the motor's maximum  
 19-14 rotation rate. The pump motor must be operated with a pump control  
 19-15 that is capable of operating the pump at a minimum of two speeds.

19-16 (c) A pool pump motor control manufactured on or after  
 19-17 January 1, 2008, that is sold for use with a pool pump capable of  
 19-18 operating at two or more speeds must be able to operate the pool  
 19-19 pump at a minimum of two speeds. The control's default circulation  
 19-20 speed setting may be no more than one-half of the motor's maximum  
 19-21 rotation rate. Any high-speed override capability must be for a  
 19-22 temporary period not to exceed one 24-hour cycle without resetting  
 19-23 to default settings.

19-24 Sec. 392.060. TRACKING, REPORTING, AND CLAIMING EMISSION  
 19-25 REDUCTION CREDITS ASSOCIATED WITH ENERGY EFFICIENCY. The Texas  
 19-26 Commission on Environmental Quality shall work with the Energy  
 19-27 Systems Laboratory at the Texas Engineering Experiment Station of  
 19-28 The Texas A&M University System to ensure that the state receives  
 19-29 full credit in the state implementation plan for air emission  
 19-30 reductions achieved through energy efficiency.

19-31 [Sections 392.061-392.100 reserved for expansion]  
 19-32 SUBCHAPTER C. IMPLEMENTATION AND MODIFICATION OF EFFICIENCY  
 19-33 STANDARDS

19-34 Sec. 392.101. PRODUCT COMPLIANCE. (a) A new product  
 19-35 described by Section 392.002(a) may not be sold or offered for sale  
 19-36 in this state unless the efficiency of the new product meets or  
 19-37 exceeds the applicable efficiency standards prescribed by the rules  
 19-38 adopted under Subchapter B.

19-39 (b) On or after the first anniversary of the date for the  
 19-40 sale or offering for sale of a new product subject to an efficiency  
 19-41 standard adopted under this chapter, that product may not be  
 19-42 installed for compensation in this state unless the efficiency of  
 19-43 the product meets or exceeds the applicable efficiency standards  
 19-44 prescribed by the rules adopted under Subchapter B.

19-45 [Sections 392.102-392.150 reserved for expansion]  
 19-46 SUBCHAPTER D. TESTING, CERTIFICATION, LABELING, AND ENFORCEMENT

19-47 Sec. 392.151. PRODUCT TESTING. (a) The manufacturer of a  
 19-48 new product subject to an efficiency standard adopted under this  
 19-49 chapter shall test samples of the product in accordance with the  
 19-50 test procedures adopted under this chapter.

19-51 (b) The comptroller, in consultation with the state energy  
 19-52 conservation office, by rule shall adopt test procedures for  
 19-53 determining a product's energy efficiency if Subchapter B does not  
 19-54 provide for the procedures. The comptroller shall adopt test  
 19-55 methods approved by the United States Department of Energy or, in  
 19-56 the absence of those test methods, other appropriate nationally  
 19-57 recognized test methods.

19-58 (c) The comptroller may adopt revised test procedures when  
 19-59 new versions of test procedures become available.

19-60 Sec. 392.152. PRODUCT CERTIFICATION. (a) Except as  
 19-61 provided by Subsection (c), the manufacturer of a new product  
 19-62 subject to an efficiency standard adopted under this chapter shall  
 19-63 certify to the comptroller that the product is in compliance with  
 19-64 that standard according to test results.

19-65 (b) The comptroller shall adopt rules governing the  
 19-66 certification of products under this section and shall coordinate  
 19-67 certification by this state with the certification programs of  
 19-68 other states and federal agencies with similar standards.

19-69 (c) Subsection (a) does not apply to a manufacturer of

20-1 single-voltage external AC to DC power supplies, walk-in  
 20-2 refrigerators, or walk-in freezers.

20-3 Sec. 392.153. PRODUCT LABELING. (a) The manufacturer of a  
 20-4 new product subject to an efficiency standard adopted under this  
 20-5 chapter shall identify each product offered for sale or  
 20-6 installation in this state as being in compliance with this chapter  
 20-7 by means of a mark, label, or tag on the product and packaging at the  
 20-8 time of sale or installation.

20-9 (b) The comptroller shall adopt rules governing the  
 20-10 identification of products and packaging under this section. The  
 20-11 rules must to the greatest practical extent be coordinated with the  
 20-12 labeling programs of other states and federal agencies with  
 20-13 equivalent efficiency standards. The comptroller shall allow the  
 20-14 use of existing marks, labels, or tags that connote compliance with  
 20-15 the efficiency requirements of this chapter.

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

20-24 (b) The comptroller shall make information available to the  
 20-25 public on any product found under this section not to be in  
 20-26 compliance with the standards.

20-27 Sec. 392.155. INSPECTIONS. The comptroller may have  
 20-28 periodic inspections conducted of a distributor or retailer of new  
 20-29 products covered by Section 392.002 subject to an efficiency  
 20-30 standard adopted under this chapter to determine compliance with  
 20-31 this chapter. The inspections must be conducted at reasonable and  
 20-32 convenient hours. Notice must be given before an inspection may be  
 20-33 conducted.

20-34 Sec. 392.156. COMPLAINTS. The comptroller shall  
 20-35 investigate a complaint received concerning a violation of this  
 20-36 chapter and shall report the results of the investigation to the  
 20-37 attorney general.

20-38 Sec. 392.157. ATTORNEY GENERAL ENFORCEMENT. The attorney  
 20-39 general may institute proceedings to enforce this chapter.

20-40 Sec. 392.158. VIOLATIONS AND PENALTIES. (a) The  
 20-41 comptroller shall issue a warning to a person for the person's first  
 20-42 violation of this chapter.

20-43 (b) A person's second and subsequent violations are subject  
 20-44 to a civil penalty of not more than \$250.

20-45 (c) Each violation constitutes a separate violation, and  
 20-46 each day that a violation continues constitutes a separate  
 20-47 violation.

20-48 (d) A penalty assessed under this section is in addition to  
 20-49 costs assessed under Section 392.154.

20-50 Sec. 392.159. RULES FOR IMPLEMENTATION AND ENFORCEMENT.  
 20-51 The comptroller may adopt additional rules as necessary to ensure  
 20-52 the proper implementation and enforcement of this chapter.

20-53 SECTION 9.02. (a) The efficiency standards prescribed by  
 20-54 rules adopted under Subchapter B, Chapter 392, Health and Safety  
 20-55 Code, as added by this article, apply only to the sale or offer of  
 20-56 sale of a new product to which that chapter applies that occurs on  
 20-57 or after January 1, 2011.

20-58 (b) Notwithstanding Subsection (a) of this section, a new  
 20-59 residential pool pump that does not meet the efficiency standards  
 20-60 contained in Section 392.059, Health and Safety Code, as added by  
 20-61 this article, may be sold in this state through December 31, 2011.

20-62 ARTICLE 10. GREENHOUSE GAS REGISTRY

20-63 SECTION 10.01. Chapter 382, Health and Safety Code, is  
 20-64 amended by adding Subchapter J to read as follows:

20-65 SUBCHAPTER J. GREENHOUSE GAS REGISTRY

20-66 Sec. 382.501. GREENHOUSE GAS REGISTRY. (a) The commission  
 20-67 along with the Railroad Commission of Texas and the Public Utility  
 20-68 Commission of Texas shall jointly participate in the federal  
 20-69 government process for developing federal greenhouse gas reporting

21-1 requirements and the federal greenhouse gas registry requirements.  
21-2 (b) The commission shall adopt rules to comply with any  
21-3 federal greenhouse gas reporting requirements adopted by the  
21-4 federal government for private and public facilities eligible to  
21-5 participate in the federal greenhouse gas registry. In adopting  
21-6 the rules, the commission shall adopt and incorporate by reference  
21-7 rules implementing the federal reporting requirements and the  
21-8 federal registry.

ARTICLE 11. PERMITTING

21-10 SECTION 11.01. Section 382.0518, Health and Safety Code, is  
21-11 amended by adding Subsections (c-1), (c-2), (c-3), (c-4), and (c-5)  
21-12 to read as follows:

21-13 (c-1) In considering the issuance of a permit for a new  
21-14 electric generating facility expected to emit 100 tons per year or  
21-15 more of volatile organic compounds or nitrogen oxides, the  
21-16 commission shall consider:

21-17 (1) the formation of ozone due to the cumulative  
21-18 effects of the facility's expected emissions, authorized emissions  
21-19 from issued permits for a new major source or a major modification  
21-20 to an existing major source, and actual authorized emissions from  
21-21 all facilities permitted under this section, as applicable; and

21-22 (2) whether the emissions from the facility in regard  
21-23 to the formation of ozone will negatively affect compliance with  
21-24 the state's air quality state implementation plan.

21-25 (c-2) The commission shall conduct an analysis when a  
21-26 facility described by Subsection (c-1) is located:

21-27 (1) in an unclassifiable or designated attainment area  
21-28 for ozone; and

21-29 (2) within a distance of a designated ozone  
21-30 nonattainment county as specified by commission rule.

21-31 (c-3) The commission shall specify by rule an ozone de  
21-32 minimis impact level. The de minimis impact level shall be used to  
21-33 determine the effect of a facility described by Subsection (c-1).

21-34 (c-4) A facility's emissions that contribute at or below the  
21-35 de minimis impact level will be presumed to have no significant  
21-36 impact and will not be considered to cause or contribute to a  
21-37 violation of the ozone national ambient air quality standard.

21-38 (c-5) A facility's emissions that contribute above the de  
21-39 minimis impact level may be required to reduce the impact of its  
21-40 emissions to at or below the de minimis impact level by obtaining  
21-41 sufficient emissions reductions. The commission may consider  
21-42 federally enforceable reductions of projected emissions from the  
21-43 facility or actual emissions from other sources within the area  
21-44 described by Subsection (c-2) to meet this requirement.

21-45 SECTION 11.02. Subsections (a) and (d), Section 382.055,  
21-46 Health and Safety Code, are amended to read as follows:

21-47 (a) A preconstruction permit issued or renewed by the  
21-48 commission is subject to review to determine whether the authority  
21-49 to operate should be renewed according to the following schedule:

21-50 (1) a preconstruction permit issued before December 1,  
21-51 1991, is subject to review not later than 10 [15] years after the  
21-52 date of the last renewal before January 1, 2010 [issuance];

21-53 (2) a preconstruction permit issued on or after  
21-54 December 1, 1991, is subject to review:

21-55 (A) every 10 years after the date of issuance; or

21-56 (B) on the filing of an application for an  
21-57 amendment to the permit, if:

21-58 (i) the applicant is subject to Section  
21-59 382.056;

21-60 (ii) the application is filed with the  
21-61 commission not more than three years before the date the permit is  
21-62 scheduled to expire; and

21-63 (iii) the applicant does not object to  
21-64 having the permit subjected to review at that time; and

21-65 (3) for cause, a preconstruction permit issued on or  
21-66 after December 1, 1991, for a facility at a nonfederal source may  
21-67 contain a provision requiring the permit to be renewed at a period  
21-68 of between five and 10 years.

21-69 (d) In determining whether and under which conditions a

22-1 preconstruction permit should be renewed, the commission shall  
22-2 consider, at a minimum:

22-3 (1) the performance of the owner or operator of the  
22-4 facility according to the method developed by the commission under  
22-5 Section 5.754, Water Code; ~~and~~

22-6 (2) the condition and effectiveness of existing  
22-7 emission control equipment and practices;

22-8 (3) whether construction of the facility has been  
22-9 completed;

22-10 (4) whether the facility has been commercially  
22-11 operated; and

22-12 (5) whether the facility has ceased operation for the  
22-13 preceding five years or more.

22-14 SECTION 11.03. (a) Not later than September 1, 2011, the  
22-15 Texas Commission on Environmental Quality shall adopt rules  
22-16 governing the analysis to be conducted under Subsection (c-2),  
22-17 Section 382.0518, Health and Safety Code, as added by this Act.

22-18 (b) Not later than December 1, 2010, the Texas Commission on  
22-19 Environmental Quality shall submit an interim progress report to  
22-20 the legislature regarding the analysis to be conducted under  
22-21 Subsection (c-2), Section 382.0518, Health and Safety Code, as  
22-22 added by this Act.

22-23 ARTICLE 12. EFFECTIVE DATE

22-24 SECTION 12.01. This Act takes effect September 1, 2009.

22-25 \* \* \* \* \*