

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Global Warming Solutions Act; imposing a fee and providing a penalty.

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

SECTION 1. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 391 to read as follows:

CHAPTER 391. TEXAS GLOBAL WARMING SOLUTIONS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 391.001. SHORT TITLE. This chapter may be cited as the Texas Global Warming Solutions Act.

Sec. 391.002. DEFINITIONS. In this chapter:

(1) "Allowance" means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(2) "Alternative compliance mechanism" means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same period as a direct emission reduction and that is approved by the commission. The term includes a flexible compliance schedule, alternative control technology, process change, or product substitution.

(3) "Carbon dioxide equivalent" means the amount of carbon dioxide by weight that would produce the same global warming effect as a given weight of another greenhouse gas, based on the best available science, including that available from the

1 Intergovernmental Panel on Climate Change.

2 (4) "Commission" means the Texas Commission on
3 Environmental Quality.

4 (5) "Cost-effective" means economical, in terms of
5 cost per unit of reduced emissions of greenhouse gases relative to
6 the global warming potential of those emissions.

7 (6) "Direct emission reduction" means a greenhouse gas
8 emission reduction made by an action taken by a greenhouse gas
9 emission source at that source.

10 (7) "Electric utility" has the meaning assigned by
11 Section 31.002, Utilities Code.

12 (8) "Emissions reduction measure" means a program,
13 measure, standard, or alternative compliance mechanism applicable
14 to a source that is designed to reduce emissions of greenhouse gases
15 and that is authorized under this chapter.

16 (9) "Greenhouse gas" includes carbon dioxide,
17 methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and
18 sulfur hexafluoride.

19 (10) "Greenhouse gas emissions limit" means an
20 authorization during a specified year to emit greenhouse gases
21 specified by the commission not to exceed a specified amount,
22 expressed in tons of carbon dioxide equivalents.

23 (11) "Greenhouse gas emission source" or "source"
24 means any source or category of sources of greenhouse gas emissions
25 whose emissions are at such a level of significance, as determined
26 by the commission, that participation of the source or category of
27 sources in the program established under this chapter will enable

1 the commission to effectively reduce greenhouse gas emissions and
2 monitor compliance with the statewide greenhouse gas emissions
3 limit.

4 (12) "Market-based compliance mechanism" means
5 either:

6 (A) a system of market-based declining annual
7 aggregate emissions limitations for sources that emit greenhouse
8 gases; or

9 (B) greenhouse gas emissions exchanges, banking,
10 credits, and other transactions, governed by rules and protocols
11 established by the commission, that result in the same greenhouse
12 gas emission reduction over the same period as direct compliance
13 with a greenhouse gas emissions limit or emissions reduction
14 measure adopted by the commission under this chapter.

15 (13) "Municipally owned utility" has the meaning
16 assigned by Section 11.003, Utilities Code.

17 (14) "Retail electric provider" has the meaning
18 assigned by Section 31.002, Utilities Code.

19 (15) "Statewide greenhouse gas emissions" means the
20 total annual emissions of greenhouse gases in this state, expressed
21 in tons of carbon dioxide equivalents, including all emissions of
22 greenhouse gases from the generation of electricity delivered to
23 and consumed in this state, accounting for transmission and
24 distribution line losses, whether the electricity is generated in
25 this state or imported.

26 (16) "Statewide greenhouse gas emissions limit" or
27 "statewide emissions limit" means the maximum allowable level of

1 statewide greenhouse gas emissions in 2023, as determined by the
2 commission under Subchapter C.

3 Sec. 391.003. ROLE OF COMMISSION. The commission shall
4 monitor and regulate greenhouse gas emission sources that cause
5 global warming in order to reduce those emissions.

6 Sec. 391.004. ROLE OF OTHER STATE AGENCIES. Each state
7 agency shall consider and implement strategies to reduce greenhouse
8 gas emissions generated by the agency.

9 Sec. 391.005. AUTHORITY OF PUBLIC UTILITY COMMISSION;
10 OBLIGATION OF ELECTRIC UTILITIES. This chapter does not affect:

11 (1) the authority of the Public Utility Commission of
12 Texas; or

13 (2) the obligation of an electric utility to provide
14 customers with safe and reliable electric service.

15 Sec. 391.006. CONSTRUCTION OF CHAPTER. This chapter does
16 not:

17 (1) relieve a person from complying with other
18 applicable federal, state, or local laws or regulations, including
19 state air and water quality requirements and other requirements
20 designed to protect public health or the environment;

21 (2) preclude, prohibit, or restrict the construction
22 of a new facility, as defined by Section 382.003, or the expansion
23 of an existing facility subject to regulation under this chapter if
24 the facility:

25 (A) meets all applicable requirements; and

26 (B) is in compliance with rules adopted under
27 this chapter;

1 (3) limit the existing authority of a state entity to
2 adopt and implement greenhouse gas emissions reduction measures; or

3 (4) relieve any state entity of its legal obligation
4 to comply with an existing law, rule, or regulation.

5 Sec. 391.007. EFFECT OF CHAPTER ON OTHER PROGRAMS. This
6 chapter does not confer authority on the commission to alter
7 programs administered by other state agencies for the reduction of
8 greenhouse gas emissions.

9 Sec. 391.008. ADJUSTMENT OF DEADLINES. (a) In the event of
10 extraordinary circumstances, a catastrophic event, or the threat of
11 significant economic harm, the governor may adjust a deadline
12 established under this chapter to the earliest feasible date after
13 that deadline.

14 (b) The deadline adjustment period may not exceed one year
15 unless the governor makes an additional deadline adjustment under
16 Subsection (a).

17 (c) Not later than the 10th day after the date the governor
18 invokes a deadline adjustment under Subsection (a), the governor
19 shall provide written notification to each member of the
20 legislature of the adjustment.

21 (d) This section does not affect the powers and duties
22 established under Chapter 418, Government Code.

23 Sec. 391.009. CONSULTATION WITH OTHER GOVERNMENTAL
24 ENTITIES. In developing its plans to reduce greenhouse gas
25 emissions under this chapter, the commission shall consult with
26 other states, the federal government, and other nations to identify
27 the most effective strategies and methods for reducing greenhouse

1 gases, managing greenhouse gas control programs, and facilitating
2 the development of integrated and cost-effective regional,
3 national, and international greenhouse gas reduction programs.

4 Sec. 391.010. ALTERNATIVE RULES TO CONTROL CERTAIN
5 GREENHOUSE GAS EMISSIONS. If Chapter 386 is repealed or expires,
6 the commission by rule shall implement alternative rules for
7 controlling mobile sources of greenhouse gas emissions in order to
8 achieve equivalent or greater reductions compared to those achieved
9 under that chapter.

10 [Sections 391.011-391.050 reserved for expansion]

11 SUBCHAPTER B. GREENHOUSE GAS EMISSIONS REPORTING

12 Sec. 391.051. RULES FOR REPORTING AND VERIFICATION OF
13 GREENHOUSE GAS EMISSIONS. (a) Not later than January 1, 2011, the
14 commission by rule shall:

15 (1) require the reporting and verification of
16 statewide greenhouse gas emissions; and

17 (2) begin to monitor and enforce compliance with this
18 section.

19 (b) The commission shall adopt rules that:

20 (1) beginning with the greenhouse gas emission sources
21 that contribute the most to statewide emissions, require the owner
22 or operator of a greenhouse gas emission source to monitor and
23 annually report greenhouse gas emissions;

24 (2) account for greenhouse gas emissions from all
25 electricity consumed in the state, including:

26 (A) electricity consumed by transmission and
27 distribution line losses of electricity generated inside the state

1 or generated outside the state; and

2 (B) electricity generated by retail sellers of
3 electricity, including retail electric providers and municipally
4 owned utilities;

5 (3) ensure rigorous and consistent accounting of
6 emissions and provide reporting tools and formats to ensure
7 collection of necessary data;

8 (4) ensure that the owners or operators of greenhouse
9 gas emission sources maintain comprehensive records of all reported
10 greenhouse gas emissions; and

11 (5) include notification of any person subject to
12 rules under this section.

13 Sec. 391.052. REVIEW AND UPDATE OF REPORTING REQUIREMENTS.

14 The commission shall:

15 (1) as necessary, periodically review and update the
16 emissions reporting requirements described by this subchapter;

17 (2) review existing and proposed international,
18 federal, and state greenhouse gas emissions reporting programs and
19 make reasonable efforts to promote consistency among the programs
20 established under this subchapter and other programs; and

21 (3) streamline reporting requirements on greenhouse
22 gas emission sources.

23 [Sections 391.053-391.100 reserved for expansion]

24 SUBCHAPTER C. STATEWIDE GREENHOUSE GAS EMISSIONS LIMIT

25 Sec. 391.101. PROCEDURE FOR ESTABLISHING GREENHOUSE GAS
26 EMISSIONS LIMIT. (a) Not later than January 1, 2011, the
27 commission shall determine the amount of greenhouse gas emissions

1 in this state in 1990 and approve a statewide greenhouse gas
2 emissions limit that is equivalent to that amount. The limit must
3 be achieved by 2023.

4 (b) The commission shall hold at least one public workshop
5 and provide an opportunity for all interested parties to comment on
6 the determinations made by the commission under Subsection (a).
7 The commission shall approve the statewide greenhouse gas emissions
8 limit at a public hearing. The commission shall provide public
9 notice of the public workshop and hearing.

10 (c) To ensure the most accurate determinations feasible
11 under Subsection (a), the commission shall evaluate the best
12 available scientific, technological, and economic information on
13 greenhouse gas emissions to determine the 1990 amount of greenhouse
14 gas emissions.

15 Sec. 391.102. USE OF STATEWIDE LIMIT. The commission shall
16 use the statewide greenhouse gas emissions limit to maintain and
17 continue reductions in emissions of greenhouse gases after 2023.

18 Sec. 391.103. RECOMMENDATIONS. The commission shall
19 periodically make recommendations to the governor and the
20 legislature on how to continue reducing greenhouse gas emissions
21 after 2023.

22 [Sections 391.104-391.150 reserved for expansion]

23 SUBCHAPTER D. GREENHOUSE GAS EMISSIONS REDUCTIONS

24 Sec. 391.151. MAXIMUM GREENHOUSE GAS EMISSIONS REDUCTIONS.
25 Subject to the criteria and schedules established under this
26 subchapter, the commission in an open public process shall adopt
27 rules that facilitate achieving the maximum technologically

1 feasible and cost-effective reductions in greenhouse gas emissions
2 from sources.

3 Sec. 391.152. EARLY ACTIONS TO REDUCE GREENHOUSE GAS
4 EMISSIONS. (a) Not later than June 30, 2010, the commission shall
5 publish and make available to the public a list of early actions
6 that can be implemented to reduce greenhouse gas emissions before
7 the measures and limits adopted under Section 391.154 are
8 implemented.

9 (b) Before January 1, 2013, the commission shall adopt rules
10 to implement the actions identified on the list under Subsection
11 (a).

12 (c) The rules adopted by the commission under this section
13 must make it possible to achieve the maximum technologically
14 feasible and cost-effective reductions in greenhouse gas emissions
15 from sources in furtherance of achieving the statewide greenhouse
16 gas emissions limit established under Section 391.101.

17 (d) Not later than January 1, 2013, the commission shall
18 begin enforcing the rules adopted under this section.

19 Sec. 391.153. COMPREHENSIVE PLAN. (a) Not later than
20 January 1, 2012, the commission shall prepare and approve a
21 comprehensive plan for achieving the maximum technologically
22 feasible and cost-effective reductions in greenhouse gas emissions
23 from sources by 2023.

24 (b) The commission shall consult with each state agency
25 having jurisdiction over sources, including the Public Utility
26 Commission of Texas, on all elements of the comprehensive plan that
27 pertain to energy-related matters, including electrical

1 generation, alternative pollution standards or requirements, the
2 provision of reliable and affordable electrical service, petroleum
3 refining, and statewide fuel supplies, to ensure that the
4 greenhouse gas emissions reduction activities to be adopted and
5 implemented by the commission are complementary, nonduplicative,
6 and capable of being implemented in an efficient and cost-effective
7 manner.

8 (c) The comprehensive plan must identify and make
9 recommendations on direct emission reduction measures, alternative
10 compliance mechanisms, market-based compliance mechanisms, and
11 potential monetary and nonmonetary incentives for sources that the
12 commission finds are necessary or desirable to facilitate the
13 achievement of the maximum feasible and cost-effective reductions
14 of greenhouse gas emissions by 2023.

15 (d) In making the determinations required by Subsection
16 (c), the commission shall consider all relevant information
17 pertaining to greenhouse gas emissions reduction programs in other
18 states, localities, and nations, including the northeastern states
19 of the United States, Canada, and the European Union.

20 (e) The commission shall evaluate the total potential costs
21 and total potential economic and noneconomic benefits of the
22 comprehensive plan for reducing greenhouse gases to this state's
23 economy, environment, and public health, using the best available
24 economic models, emission estimation techniques, and other
25 scientific methods.

26 (f) In developing the comprehensive plan, the commission
27 shall:

1 (1) take into account the relative contribution of
2 each source or source category to statewide greenhouse gas
3 emissions and the potential for adverse effects on small
4 businesses;

5 (2) recommend a de minimis threshold of greenhouse gas
6 emissions below which emissions reduction requirements will not
7 apply; and

8 (3) identify opportunities for emissions reduction
9 measures from all verifiable and enforceable voluntary actions,
10 including carbon sequestration projects that capture and store or
11 reuse carbon from emissions and best management practices.

12 (g) The commission shall conduct a series of public
13 workshops to give interested parties an opportunity to comment on
14 the comprehensive plan. The commission shall conduct some of the
15 workshops in regions of the state that have the most significant
16 exposure to air pollutants, including communities with large
17 minority and low-income populations.

18 (h) At least once every five years, the commission shall
19 update the comprehensive plan in order to achieve the maximum
20 technologically feasible and cost-effective reductions of
21 greenhouse gas emissions.

22 Sec. 391.154. SOURCE GREENHOUSE GAS EMISSIONS LIMITS AND
23 EMISSIONS REDUCTION MEASURES. (a) Not later than January 1, 2014,
24 the commission by rule shall adopt greenhouse gas emissions limits
25 and emissions reduction measures for sources or categories of
26 sources to achieve the maximum technologically feasible and
27 cost-effective reductions in greenhouse gas emissions in

1 furtherance of achieving the statewide greenhouse gas emissions
2 limit established under Section 391.101.

3 (b) To the extent feasible, in adopting rules under this
4 section and Subchapter E, the commission shall:

5 (1) design the rules, including rules concerning the
6 distribution of emissions allowances where appropriate, in a manner
7 that is equitable, seeks to minimize costs and maximize the total
8 benefits to this state, and encourages early action to reduce
9 greenhouse gas emissions;

10 (2) ensure that activities undertaken to comply with
11 the rules do not disproportionately impact low-income communities
12 in a negative manner;

13 (3) ensure that an entity that has voluntarily reduced
14 its greenhouse gas emissions before the implementation of rules
15 adopted under this section receives appropriate credit for early
16 voluntary reductions;

17 (4) ensure that activities undertaken pursuant to the
18 rules complement and do not interfere with efforts to achieve and
19 maintain federal and state ambient air quality standards and to
20 reduce toxic air contaminant emissions;

21 (5) consider the cost-effectiveness of the rules;

22 (6) consider overall societal benefits, including
23 reductions in other air pollutants, diversification of energy
24 sources, and other benefits to the economy, environment, and public
25 health;

26 (7) minimize the administrative burden of
27 implementing and complying with the rules;

1 (8) minimize reductions in emissions of greenhouse
2 gases in this state that are offset by increases in emissions of
3 greenhouse gases outside this state; and

4 (9) consider the significance of the contribution of
5 each source to statewide emissions of greenhouse gases.

6 (c) The commission by rule may establish a system of
7 market-based declining annual aggregate emissions limits for
8 greenhouse gas emission sources, applicable from January 1, 2015,
9 to December 31, 2023, that the commission determines will
10 aggregately achieve the maximum technologically feasible and
11 cost-effective reductions in greenhouse gas emissions from those
12 sources. The initial adoption of rules under this subsection must
13 be completed on or before January 1, 2014.

14 (d) Any rule adopted under this subchapter or Subchapter E
15 must ensure that:

16 (1) the greenhouse gas emissions reductions achieved
17 are permanent, quantifiable, verifiable, and enforceable by the
18 commission;

19 (2) for rules adopted under Subchapter E, the
20 reduction is in addition to:

21 (A) any greenhouse gas emissions reduction
22 otherwise required by law or regulation; and

23 (B) any other greenhouse gas emissions reduction
24 that otherwise would occur; and

25 (3) if applicable, the greenhouse gas emissions
26 reduction occurs over the same period and is equivalent in amount to
27 any direct emission reduction required under this chapter.

1 (e) The commission shall rely upon the best available
2 economic and scientific information and the commission's
3 assessment of existing and projected technological capabilities
4 when adopting the rules required by this section.

5 (f) The commission shall consult with the Public Utility
6 Commission of Texas in the development of the rules as they affect
7 electricity and natural gas providers in order to minimize
8 duplicative or inconsistent regulatory requirements.

9 (g) After January 1, 2014, the commission may revise rules
10 adopted under this section and adopt additional rules to further
11 the provisions of this chapter.

12 (h) A rule adopted under this section on or before January
13 1, 2014, takes effect January 1, 2015.

14 Sec. 391.155. EARLY IMPLEMENTATION OF CHAPTER. This
15 chapter does not restrict the commission from:

16 (1) adopting greenhouse gas emissions limits or
17 emissions reduction measures for sources or categories of sources
18 before January 1, 2014;

19 (2) enforcing those limits or measures before January
20 1, 2013; or

21 (3) providing early reduction credit where
22 appropriate.

23 Sec. 391.156. PUBLIC AND PRIVATE INVESTING. To the extent
24 feasible and applicable, the commission shall ensure that the
25 greenhouse gas emissions reduction rules, programs, mechanisms,
26 and incentives under its jurisdiction:

27 (1) direct public and private investment toward the

1 most disadvantaged communities in this state; and

2 (2) provide an opportunity for small businesses,
3 schools, affordable housing associations, and other community
4 institutions to participate in and benefit from statewide efforts
5 to reduce greenhouse gas emissions.

6 [Sections 391.157-391.200 reserved for expansion]

7 SUBCHAPTER E. MARKET-BASED COMPLIANCE MECHANISMS

8 Sec. 391.201. OPTIONAL RULES FOR MARKET-BASED COMPLIANCE
9 MECHANISMS. (a) The commission may include the use of market-based
10 compliance mechanisms in the rules adopted under Section 391.154.

11 (b) Before including market-based compliance mechanisms in
12 the rules adopted under Section 391.154, to the extent feasible and
13 in furtherance of achieving the statewide greenhouse gas emissions
14 limit established under Section 391.101, the commission shall:

15 (1) consider the potential for direct, indirect, and
16 cumulative emission effects from these mechanisms, including
17 localized effects in communities that are already adversely
18 affected by air pollution;

19 (2) design any market-based compliance mechanism to
20 prevent an increase in the emissions of toxic air contaminants or
21 criteria air pollutants (ozone, carbon monoxide, particulate
22 matter, sulfur dioxide, lead, and nitrogen dioxide) for which the
23 United States Environmental Protection Agency sets standards; and

24 (3) maximize additional environmental and economic
25 benefits for this state, as appropriate.

26 (c) The commission shall adopt rules governing how
27 regulated entities subject to greenhouse gas emissions limits and

1 mandatory emissions reporting requirements may use market-based
2 compliance mechanisms to achieve compliance with greenhouse gas
3 emissions limits.

4 Sec. 391.202. ADOPTION OF METHODOLOGIES. (a) The
5 commission shall adopt:

6 (1) methodologies for the quantification of voluntary
7 greenhouse gas emissions reductions; and

8 (2) rules to verify any voluntary greenhouse gas
9 emissions reductions that are authorized by the commission for use
10 in complying with greenhouse gas emissions limits established by
11 the commission.

12 (b) Chapter 2001, Government Code, does not apply to the
13 adoption of the methodologies described by Subsection (a).

14 [Sections 391.203-391.250 reserved for expansion]

15 SUBCHAPTER F. ENFORCEMENT

16 Sec. 391.251. MONITORING AND ENFORCEMENT. The commission
17 shall monitor compliance with and enforce any rule, order,
18 emissions limitation, emissions reduction measure, or market-based
19 compliance mechanism adopted by the commission under this chapter.

20 [Sections 391.252-391.300 reserved for expansion]

21 SUBCHAPTER G. GREENHOUSE GAS EMISSIONS CONTROL ACCOUNT; FEES

22 Sec. 391.301. GREENHOUSE GAS EMISSIONS CONTROL
23 ACCOUNT. (a) The greenhouse gas emissions control account is a
24 separate account in the general revenue fund.

25 (b) The account consists of:

26 (1) transfers to the account;

27 (2) interest earned on the account;

- 1 (3) fees collected under this subchapter;
- 2 (4) penalties paid under this chapter; and
- 3 (5) grants and donations accepted for the account.

4 (c) Money in the account may be used only to administer
5 programs under this chapter.

6 (d) Any money in the account not used in a fiscal year
7 remains in the account. The account is exempt from the application
8 of Section 403.095, Government Code.

9 Sec. 391.302. FEES. (a) Not later than June 30, 2011, the
10 commission shall impose on the owner of a greenhouse gas emission
11 source an annual fee.

12 (b) The commission by rule shall determine the amount of the
13 fee, which may not exceed the source's fair share of the annual cost
14 to implement programs under this chapter, including:

15 (1) the cost of monitoring compliance with rules under
16 this chapter; and

17 (2) the cost of enforcing those rules.

18 [Sections 391.303-391.350 reserved for expansion]

19 SUBCHAPTER H. ADVISORY COMMITTEES

20 Sec. 391.351. ENVIRONMENTAL JUSTICE ADVISORY COMMITTEE.

21 (a) Not later than January 1, 2010, the commission shall convene an
22 Environmental Justice Advisory Committee to advise the commission
23 in developing the comprehensive plan under Section 391.153 and in
24 implementing this chapter.

25 (b) The Environmental Justice Advisory Committee must
26 consist of at least three members who represent communities in the
27 state with the most significant exposure to air pollution caused by

1 the emission of greenhouse gases, including communities with large
2 minority or low-income populations.

3 (c) The commission shall appoint the Environmental Justice
4 Advisory Committee members from nominations received from
5 environmental justice organizations and community groups.

6 (d) The commission shall provide a reasonable per diem for
7 attendance at Environmental Justice Advisory Committee meetings by
8 advisory committee members from nonprofit organizations.

9 Sec. 391.352. ECONOMIC AND TECHNOLOGICAL ADVANCEMENT
10 ADVISORY COMMITTEE. (a) The commission shall appoint an Economic
11 and Technological Advancement Advisory Committee to advise the
12 commission on activities that will facilitate investment in and
13 implementation of technological research and development
14 opportunities for the purpose of assisting in the reduction of
15 greenhouse gas emissions, including:

16 (1) identifying new technologies, research,
17 demonstration projects, and funding opportunities;

18 (2) developing state, national, and international
19 partnerships and technology transfer opportunities; and

20 (3) identifying and assessing research and advanced
21 technology investment and incentive opportunities.

22 (b) The Economic and Technological Advancement Advisory
23 Committee may advise the commission on state, regional, national,
24 and international economic and technological developments related
25 to greenhouse gas emissions reductions.

26 SECTION 2. This Act takes effect September 1, 2009.