

**House Bill 1796**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 382, Health and Safety Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. OFFSHORE GEOLOGIC STORAGE OF CARBON DIOXIDE

Sec. 382.501. DEFINITIONS. In this subchapter:

- (1) "Board" means the School Land Board.
- (2) "Bureau" means the Bureau of Economic Geology at The University of Texas at Austin.
- (3) "Carbon dioxide repository" means an offshore deep subsurface geologic repository for the storage of anthropogenic carbon dioxide.
- (4) "Land commissioner" means the commissioner of the General Land Office.

Sec. 382.502. RULES. (a) The commission by rule may adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) If the United States Environmental Protection Agency issues requirements regarding carbon dioxide sequestration, the commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

Sec. 382.503. STUDY; SELECTION OF LOCATION.

(a) The land commissioner shall contract with the bureau to conduct a study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository.

(b) The land commissioner shall recommend suitable

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sites for carbon dioxide storage to the board based on the findings of the study.

(c) The board shall make the final determination of suitable locations for carbon dioxide storage.

Sec. 382.504. CONTRACT FOR NECESSARY INFRASTRUCTURE AND OPERATION. (a) Once the location has been established for the carbon dioxide repository, the board may issue requests for proposals for the lease of permanent school fund land for the construction of any necessary infrastructure for the transportation and storage of carbon dioxide to be stored in the carbon dioxide repository.

(b) The board may contract for construction or operational services for the repository.

Sec. 382.505. ACCEPTANCE OF CARBON DIOXIDE FOR STORAGE; FEES AND CARBON CREDITS. (a) Once the carbon dioxide repository is established, the board may accept carbon dioxide for storage.

(b) The board by rule may establish a fee for the storage of carbon dioxide in the carbon dioxide repository. If this state participates in a program that facilitates the trading of carbon credits, a fee under this subsection may be established as a percentage of the carbon credits associated with the storage.

Sec. 382.506. MEASURING, MONITORING, AND VERIFICATION; ROLE OF BUREAU. (a) The commission by rule may establish standards for the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the

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carbon dioxide repository.

(b) The bureau shall perform the measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository.

(c) The bureau shall serve as a scientific advisor for the measuring, monitoring, and permanent storage status verification of the carbon dioxide repository.

(d) The bureau shall provide to the board data relating to the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository, as determined by the board.

Sec. 382.507. OWNERSHIP OF CARBON DIOXIDE.

(a) The board shall acquire title to carbon dioxide stored in the carbon dioxide repository.

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the permanent school fund and shall be administered and controlled by the board.

Sec. 382.508. LIABILITY. (a) The transfer of title to the state under Section 382.507 does not relieve a producer of carbon dioxide of liability for any act or omission regarding the generation of carbon dioxide performed before the carbon dioxide was stored.

(b) On the date the permanent school fund, under Section 382.507, acquires the right, title, and interest in

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(d) The bureau shall provide to the board data relating to the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository, as determined by the board.

Sec. 382.507. OWNERSHIP OF CARBON DIOXIDE.

(a) The board shall acquire title to carbon dioxide stored in the carbon dioxide repository **on a determination by the board that permanent storage has been verified and that the storage location has met all applicable state and federal requirements for closure of carbon dioxide storage sites.**

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the permanent school fund and shall be administered and controlled by the board.

Sec. 382.508. LIABILITY. (a) The transfer of title to the state under Section 382.507 does not relieve a producer of carbon dioxide of liability for any act or omission regarding the generation of **stored** carbon dioxide performed before the carbon dioxide was stored.

(b) On the date the permanent school fund, under Section 382.507, acquires the right, title, and interest in

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carbon dioxide, the producer of the carbon dioxide is relieved of liability for any act or omission regarding the carbon dioxide in the carbon dioxide repository.

Sec. 382.509. RATES FOR TRANSPORTATION. Neither the commission nor the board may establish or regulate the rates charged for the transportation of carbon dioxide to the carbon dioxide repository.

Sec. 382.510. ANNUAL REPORT. The land commissioner shall issue annually a report regarding the carbon dioxide repository. The report may be submitted electronically by posting on the General Land Office's Internet website. The report must include information regarding:

- (1) the total volume of carbon dioxide stored;
- (2) the total volume of carbon dioxide received for storage during the year; and
- (3) the volume of carbon dioxide received from each producer of carbon dioxide.

**No equivalent provision.**

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carbon dioxide, the producer of the carbon dioxide is relieved of liability for any act or omission regarding the carbon dioxide in the carbon dioxide repository.

(c) This section does not relieve a person who contracts with the board under Section 382.504(b) of liability for any act or omission regarding the construction or operation, as applicable, of the carbon dioxide repository.

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- (3) the volume of carbon dioxide received from each producer of carbon dioxide.

SECTION \_\_. This act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory unless a specific appropriation has been made to implement the

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provision or it is determined by the agency that the provisions imposed by this act may be absorbed within agency resources during the fiscal period without additional state funding.

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

Same as House version.

The following row was presented as identical to the language in the engrossed version of Senate Bill 184, relating to "no regrets" greenhouse gas emissions reduction strategies.

No equivalent provision.

SECTION \_\_. Chapter 2305, Government Code, is amended by adding Section 2305.201 to read as follows:  
Sec. 2305.201. STRATEGIES TO REDUCE EMISSIONS OF GREENHOUSE GASES. (a) In this section, "greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.  
(b) Not later than December 31, 2010, the comptroller shall prepare and deliver to each member of the legislature a report including a list of strategies for reducing emissions of greenhouse gases in this state that:  
(1) shall result in net savings for consumers or businesses in this state;  
(2) can be achieved without financial cost to consumers or businesses in this state; or  
(3) help businesses in the state maintain global competitiveness.

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(c) In preparing the list of emission reduction strategies, the comptroller shall consider the strategies for reducing the emissions of greenhouse gases that have been implemented in other states or nations.

(d) In determining under Subsection (b) whether an emission reduction strategy may result in a financial cost to consumers or businesses in this state, the comptroller shall consider the total net costs that may occur over the life of the strategy.

(e) A report prepared under Subsection (b) shall include the following information for each identified strategy:

(1) initial, short-term capital costs that may result from the implementation of the strategy delineated by the cost to business, and the costs to consumers; and

(2) lifetime costs and savings that may result from the implementation of the strategy delineated by the costs and savings to business and the costs and savings to consumers.

(f) The comptroller shall appoint one or more advisory committees to assist the comptroller in identifying and evaluating greenhouse gas emission reduction strategies. At least one representative from the following agencies shall serve on the advisory committee or committees:

(1) the Railroad Commission of Texas;

(2) the General Land Office;

(3) the Texas Commission on Environmental Quality;

(4) the Department of Agriculture; and

(5) a Texas institution of higher education.

(g) The comptroller may enter into an interagency

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agreement with the Texas Commission on Environmental Quality or other state agency for technical advice or assistance as necessary to complete the requirements of this section.

The following rows were presented as provisions in the House Committee Report version of Senate Bill 16, relating to the enhancement of air quality, including the capture and storage of carbon dioxide and development of a greenhouse gas registry, the development of emissions reduction technologies, and the improvement of energy efficiency in buildings, vehicles, and appliances.

No equivalent provision.

SECTION \_\_. Section 382.003(1-a), Health and Safety Code, is amended to read as follows:

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

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

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project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(B) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(i) on an annual basis a 99 percent or greater reduction of sulfur dioxide emissions or, if the project is designed for the use of feedstock substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average;

(ii) on an annual basis [,] a 95 percent or greater reduction of mercury emissions;

(iii) [, and] an annual average emission rate for nitrogen oxides of:

(a) 0.05 pounds or less per million British thermal units;

or

(b) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; and

(iv) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and

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

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project].

No equivalent provision.

SECTION \_\_. Section 382.0567(b), Health and Safety Code, is amended to read as follows:

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

No equivalent provision.

SECTION \_\_. Section 386.051(b), Health and Safety Code, is amended to read as follows:

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

- (1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;
- (2) the motor vehicle purchase or lease incentive program established under Subchapter D;
- (3) the new technology research and development program established under Chapter 387; [and]
- (4) the clean school bus program established under Chapter 390; and
- (5) the new technology implementation grant program established under Chapter 391.

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No equivalent provision.

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SECTION \_\_. Section 386.052(b), Health and Safety Code, is amended to read as follows:

(b) Appropriate commission objectives include:

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

No equivalent provision.

SECTION \_\_. Section 386.057(b), Health and Safety Code, is amended to read as follows:

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

- (1) the information included in the annual reviews conducted under Subsection (a);
- (2) specific information for individual projects as required by Subsection (c);
- (3) information contained in reports received under Sections 386.205, 388.003(e), [and] 388.006, and

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391.104; and  
(4) a summary of the commission's activities under Section 386.052.

No equivalent provision.

SECTION \_\_. Section 386.251(c), Health and Safety Code, is amended to read as follows:  
(c) The fund consists of:  
(1) the amount of money deposited to the credit of the fund under:  
(A) Section 386.056;  
(B) Sections 151.0515 and 152.0215, Tax Code; and  
(C) Sections 501.138, 502.1675, and 548.5055, Transportation Code; and  
(2) grant money recaptured under Section 386.111(d) and Chapter 391.

No equivalent provision.

SECTION \_\_. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 391 to read as follows:  
CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND STATIONARY SOURCES  
SUBCHAPTER A. GENERAL PROVISIONS  
Sec. 391.001. DEFINITIONS. In this chapter:  
(1) "Best available control technology" has the meaning assigned by Section 169 of the federal Clean Air Act (42 U.S.C. Section 7479(3)).  
(2) "Commission" means the Texas Commission on Environmental Quality.

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

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

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

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

Sec. 391.002. GRANT PROGRAM. (a) The commission shall establish and administer a new technology implementation grant program to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources in this state. Under the program, the commission shall provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions reductions.

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

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

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

(3) electricity storage projects related to renewable energy.

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

(b) The guidelines must include:

- (1) protocols to compute projected emissions reductions and project cost-effectiveness; and
- (2) safeguards to ensure that the projects funded result in emissions reductions not otherwise required by state or federal law.

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

(d) The commission may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

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

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

[Sections 391.005-391.100 reserved for expansion]

SUBCHAPTER B. GRANT APPLICATIONS AND REVIEW

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

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

- (1) a detailed description of the proposed project;
- (2) information necessary for the commission to determine whether the project meets the commission's eligibility requirements, including a statement of the amounts of any other public financial assistance the project will receive; and
- (3) other information the commission may require.

(c) An application for a grant under this chapter must contain a plan for implementation of a program that will provide project information and education to the public in the areas subject to public notice under federal and state permitting requirements for the proposed project until completion of the permitting process. The plan must provide for a publicly accessible informational Internet website.

Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this

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chapter according to dates specified in a request for grant applications. If the commission determines that an application is incomplete, the commission shall notify the applicant and provide an explanation of the information missing from the application. The commission shall evaluate the completed application according to the guidelines and criteria adopted under Section 391.003.

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

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

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

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- (e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.
- (f) In coordinating interagency application review procedures, the commission shall:
  - (1) solicit review and comments from:
    - (A) the comptroller to assess:
      - (i) the financial stability of the applicant;
      - (ii) the economic benefits and job creation potential associated with the project; and
      - (iii) any other information related to the duties of that office;
    - (B) the Public Utility Commission of Texas to assess:
      - (i) the reliability of the proposed technology;
      - (ii) the feasibility and cost-effectiveness of electric transmission associated with the project; and
      - (iii) any other information related to the duties of that agency; and
    - (C) the Railroad Commission of Texas to assess:
      - (i) the availability and cost of the fuel involved with the project; and
      - (ii) any other information related to the duties of that agency;
  - (2) consider the comments received under Subdivision (1) in the commission's grant award decision process; and
  - (3) as part of the report required by Section 391.104, justify awards made to projects that have been negatively reviewed by agencies under Subdivision (1).

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

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

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

- (1) the projected potential for reduced emissions and the cost-effectiveness of the new technology;
- (2) the potential for the new technology to contribute significantly to air quality goals; and
- (3) the strength of the implementation plan.

Sec. 391.104. REPORTING REQUIREMENTS. The commission annually shall prepare a report that summarizes the applications received and grants awarded in the preceding year. Preparation of the report must include the participation of the state agencies involved in the review of applications under Section 391.102.

[Sections 391.105-391.200 reserved for expansion]

**SUBCHAPTER C. PROJECT REQUIREMENTS**

Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission shall establish criteria for prioritizing projects eligible to receive grants under

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this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

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

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

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

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

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

Sec. 391.202. EVALUATING COST-EFFECTIVENESS. The commission shall establish reasonable methodologies for evaluating project cost-effectiveness, consistent with accepted methods.

Sec. 391.203. DETERMINATION OF GRANT AMOUNT. (a) The commission may not award a grant that, net of taxes, provides an amount that exceeds the

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incremental cost of the proposed project.

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

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

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

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

- (1) use natural resources originating or produced in this state;
- (2) contain an energy efficiency component; or
- (3) include the use of solar, wind, or other renewable energy sources.

(b) Projects that include more than one of the criteria described by Subsection (a) shall be given a greater preference in the award of grants under this chapter.

(c) The commission may give preference under Subsection (a) only if the cost-effectiveness and emission performance of the project are comparable to those of a

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project not claiming a preference described by that subsection.

[Sections 391.206-391.300 reserved for expansion]

SUBCHAPTER D. FUNDING; EXPIRATION

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

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

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

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

(d) A finding of any misuse of grant money by a

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recipient of a grant under this chapter results in a debt owed to the state, and the comptroller may withhold warrants and electronic funds transfers to the recipient in accordance with Section 403.055, Government Code.

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

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

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

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

SECTION \_\_. Section 403.071(b), Government Code, is amended to read as follows:

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

No equivalent provision.

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

No equivalent provision.

SECTION \_\_. Section 382.0622(a), Health and Safety Code, is amended to read as follows:

(a) Clean Air Act fees consist of:

(1) fees collected by the commission under Sections 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided by law; [and]

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

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

No equivalent provision.

SECTION \_\_. Section 382.210(d), Health and Safety Code, is amended to read as follows:

(d) A participating county shall provide an electronic means for distributing vehicle repair or replacement funds once all program criteria have been met with regard to the repair or replacement. The county shall ensure that funds are transferred to a participating dealer

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under this section not later than the 10th [five] business day [days] after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

No equivalent provision.

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

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

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

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No equivalent provision.

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

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

No equivalent provision.

SECTION \_\_. Section 386.002, Health and Safety Code, is amended to read as follows:

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

No equivalent provision.

SECTION \_\_. Section 386.104(c), Health and Safety Code, is amended to read as follows:

(c) For a proposed project as described by Section 386.102(b), other than a project involving a marine vessel or engine, not less than 75 percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement in this subsection. For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays

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adjacent to a nonattainment area or affected county of this state for a sufficient amount of time over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105. For a proposed project involving non-road equipment used for natural gas recovery purposes, the equipment must be operated in a nonattainment area or affected county for a sufficient amount of use over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105.

No equivalent provision.

SECTION \_\_. Section 390.006, Health and Safety Code, is amended to read as follows:  
Sec. 390.006. EXPIRATION. This chapter expires August 31, 2019 [2013].

No equivalent provision.

SECTION \_\_. Section 151.0515(d), Tax Code, is amended to read as follows:  
(d) This section expires August 31, 2019 [2013].

No equivalent provision.

SECTION \_\_. Section 152.0215(c), Tax Code, is amended to read as follows:  
(c) This section expires August 31, 2019 [2013].

No equivalent provision.

SECTION \_\_. Section 501.138(b-3), Transportation Code, is amended to read as follows:  
(b-3) This subsection and Subsection (b-2) expire August 31, 2019 [September 1, 2015].

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No equivalent provision.

SECTION \_\_. Section 502.1675(c), Transportation Code, is amended to read as follows:  
(c) This section expires August 31, 2019 [2013].

No equivalent provision.

SECTION \_\_. Section 548.5055(c), Transportation Code, is amended to read as follows:  
(c) This section expires August 31, 2019 [2013].

No equivalent provision.

SECTION \_\_. Sections 386.252(a) and (b), Health and Safety Code, are amended to read as follows:  
(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:  
(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which:  
(A) not more than four percent may be used for the clean school bus program;  
(B) [and] not more than 10 percent may be used for on-road diesel purchase or lease incentives; and  
(C) a specified amount may be used for the new technology implementation grant program, from which a defined amount may be set aside for electricity storage projects related to renewable energy;  
(2) for the new technology research and development program, nine [9.5] percent of the money in the fund, of which:  
(A) up to [\$250,000 is allocated for administration, up to] \$200,000 is allocated for a health effects study;  
(B) [,] \$500,000 is to be deposited in the state treasury

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to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties;

(C) [,] not less than 20 percent is to be allocated each year to support research related to air quality as provided by Section 387.010; [for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston of which \$216,000 each year shall be contracted to the Energy Systems Laboratory at the Texas Engineering Experiment Station for the development and annual calculation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the State Implementation Plan,] and

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

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

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

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the state implementation plan; and  
(3) two percent is allocated to the commission and 1.5 percent is allocated to the laboratory for administrative costs incurred by the commission and the laboratory[, three percent of the money in the fund].  
(b) The [Up to 25 percent of the] money allocated under Subsection (a) to a particular program [and not expended under that program by January 1 of the second fiscal year of a fiscal biennium] may be used for another program under the plan as determined by the commission [in consultation with the advisory board].

SECTION \_\_. Section 387.003, Health and Safety Code, is amended to read as follows:

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

(b) Under the program, the commission shall provide grants [to be used] to support development of emissions-reducing technologies that may be used for projects

No equivalent provision.

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eligible for awards under Chapters [Chapter] 386 and 391 and other new technologies that show promise for commercialization. The primary objective of this chapter is to promote the development of commercialization technologies to reduce emissions of oxides of nitrogen in nonattainment areas designated in this state [that will support projects that may be funded under Chapter 386 and this chapter, including advanced technologies such as fuel cells, catalysts, and fuel additives].

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

(d) [The commission may enter into a grant contract with an institution of higher education described by

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Section 386.252(a)(2) for the institution to operate a testing facility which would be available for demonstration of eligible projects receiving grants under this chapter.

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

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

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

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

SECTION \_\_. Section 387.004, Health and Safety Code, is amended to read as follows:

Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY PROPOSALS. The commission from time to time shall issue or contract with a nonprofit organization or an institution of higher education described by Section 387.003(a) [386.252(a)(2)] to issue specific requests for proposals (RFPs) or program

No equivalent provision.

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opportunity notices (PONs) for technology projects to be funded under the program.

No equivalent provision.

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

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

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

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

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

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

(4) field validation of innovative technologies that:

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

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

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

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

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SECTION \_\_. Section 387.006, Health and Safety Code, is amended to read as follows:

Sec. 387.006. EVIDENCE OF COMMERCIALIZATION POTENTIAL REQUIRED.

(a) An application for a technology grant under this chapter must show reasonable [clear and compelling] evidence that:

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

(2) the technology proposed for funding[:

[(A)] is likely to be offered for commercial sale in this state as soon as practicable [but no later than five years] after the date of the application for funding]; and

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

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

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

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

(3) the strength of the commercialization plan.

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

Sec. 387.010. AIR QUALITY RESEARCH. (a) The

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No equivalent provision.

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commission shall contract with a nonprofit organization or institution of higher education to establish and administer a program to support research related to air quality.

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

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

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

(e) A nonprofit organization or institution of higher education shall be reimbursed for costs incurred in establishing and administering the research program related to air quality under this section. Reimbursable

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administrative costs of a nonprofit organization or institution of higher education may not exceed 10 percent of the program budget.

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

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

SUBCHAPTER J. FEDERAL GREENHOUSE GAS REPORTING RULE

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

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

Sec. 382.502. VOLUNTARY ACTIONS INVENTORY. The commission shall:

No equivalent provision.

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- (1) establish an inventory of voluntary actions taken by businesses in this state or by state agencies since September 1, 2001, to reduce carbon dioxide emissions; and
- (2) work with the United States Environmental Protection Agency to give credit for early action under any federal rules that may be adopted for federal greenhouse gas regulation.

The following rows were presented as identical to the language in the engrossed version of Senate Bill 902, relating to restrictions on the release into the air of natural gas and associated vapors from a gas well.

No equivalent provision.

SECTION \_\_. Section 86.185, Natural Resources Code, is amended to read as follows:  
Sec. 86.185. RESTRICTIONS ON RELEASE OF [PROHIBITION AGAINST] GAS IN AIR: GAS WELLS IN GENERAL. (a) This section does not apply to a gas well to which Section 86.186 applies.  
(b) No gas from a gas well may be permitted to escape into the air after the expiration of 10 days from the time the gas is encountered in the gas well, or from the time of perforating the casing opposite a gas-bearing zone if casing is set through the zone, whichever is later, but the commission may permit the escape of gas into the air for an additional time if the operator of a well or other facility presents information to show the necessity for the escape; provided that the amount of gas which is flared

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under that authority is charged to the operator's allowable production. A necessity includes but is not limited to the following situations:

- (1) cleaning a well of sand or acid or both following stimulation treatment of a well; and
- (2) repairing or modifying a gas-gathering system.

SECTION \_\_. Subchapter F, Chapter 86, Natural Resources Code, is amended by adding Section 86.186 to read as follows:

Sec. 86.186. RESTRICTIONS ON RELEASE OF GAS IN AIR: GAS WELLS IN CERTAIN POPULOUS COUNTIES. (a) This section applies only to a gas well located in a county that:

- (1) has a population of more than 1.4 million; and
- (2) is located wholly or partly above a hydrocarbon-producing geological formation in which during 2008 the commission issued more than 1,000 drilling permits authorizing wells to be completed.

(b) After fracturing or refracturing a gas well that the operator anticipates completing or recompleting, the operator shall employ appropriate processes to minimize the release into the air of gas and associated vapors from the well.

(c) The operator of a gas well shall:

- (1) deliver all salable gas to a sales line as soon as the pressure of the gas at the wellhead is sufficient to permit the gas to flow into the line; or
- (2) shut in the well and conserve the gas.

No equivalent provision.

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(d) The operator of a gas well that has access to a sales line shall employ means or methods that minimize the release into the air of gas and associated vapors from the well when gas from the well is permitted to flow during the completion or recompletion of the well, except that the commission may authorize the release if the operator of the well or of another facility presents information to the commission showing the necessity for the release. The amount of gas flared or vented under the commission's authority shall be charged to the operator's allowable production. A necessity includes the following situations:

- (1) to avoid endangering the safety of persons performing work on the well or of the public;
- (2) to comply with an oil or gas lease entered into before September 1, 2009;
- (3) to repair or modify a gas-gathering system;
- (4) the composition of the gas does not meet the minimum quality standards of the gatherer of the gas;
- (5) the pressure of the gas at the wellhead is insufficient to permit the gas to flow into the sales line or another circumstance occurs that is beyond the control of the operator of the well; or
- (6) other circumstances or conditions determined by the commission to be relevant to the goal of preventing waste or protecting the public interest.

(e) The commission shall adopt rules to implement this section. Rules adopted under this subsection:

- (1) must require an operator to provide a statement on a

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form prescribed by the commission evidencing compliance with this section;

(2) must prescribe a procedure for obtaining commission authorization of the release into the air of gas and associated vapors from a gas well; and

(3) may limit the period for which gas and associated vapors from a gas well may be released into the air with commission authorization.

(f) The municipality in which a gas well is located may monitor the operator's compliance with this section. A municipality may adopt an ordinance to implement this subsection.

SECTION \_\_. Subsection (a), Section 86.012, Natural Resources Code, is amended to read as follows:

(a) The term "waste" includes:

(1) the operation of an oil well or wells with an inefficient gas-oil ratio;

(2) the drowning with water of a stratum or part of a stratum capable of producing gas in paying quantities;

(3) permitting a gas well to burn wastefully;

(4) the creation of unnecessary fire hazards;

(5) physical waste or loss incident to or resulting from so drilling, equipping, or operating a well or wells as to reduce or tend to reduce the ultimate recovery of gas from any pool;

(6) the escape of gas from a well producing both oil and gas into the open air in excess of the amount that is necessary in the efficient drilling or operation of the

No equivalent provision.

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well;

(7) the production of gas in excess of transportation or market facilities or reasonable market demand for the type of gas produced;

(8) the use of gas for the manufacture of carbon black without first having extracted the natural gasoline content from the gas, except it shall not be necessary to first extract the natural gasoline content from the gas where it is utilized in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(9) the use of sweet gas produced from a gas well for the manufacture of carbon black unless it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet and unless the sweet gas is produced from a well located in a common reservoir producing both sweet and sour gas;

(10) permitting gas produced from a gas well to escape into the air before or after the gas has been processed for its gasoline content, unless authorized as provided in Section 86.185 or 86.186 [of this code];

(11) the production of natural gas from a well producing oil from a stratum other than that in which the oil is found unless the gas is produced in a separate string of casing from that in which the oil is produced;

(12) the production of more than 100,000 cubic feet of gas to each barrel of crude petroleum oil unless the gas is put to one or more of the uses authorized for the type of gas so produced under allocations made by the

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commission or unless authorized as provided in Section 86.185 or 86.186 [of this code]; and  
(13) underground waste or loss however caused and whether or not defined in other subdivisions of this section.

No equivalent provision.

SECTION \_\_. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.