

## **BILL ANALYSIS**

Senate Research Center

S.B. 385  
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Natural Resources  
9/7/2011  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 385 provides incentives to build refueling stations for alternative fuel fleets. The ability to increase the number of alternative fuel vehicles in the state depends on the availability of infrastructure to fuel such vehicles.

This bill creates the Alternative Fueling Facilities Program. The program will provide a reimbursement of up to \$500,000 per facility, which is funded through the Texas Emissions Reduction Plan Fund not to exceed two percent of the fund. Also, the facilities in the program must be made available to outside users.

S.B. 385 amends current law relating to the creation of programs to support the use of alternative fuels, including an alternative fuel program to be funded by the Texas emissions reduction plan fund and a grant program for certain natural gas vehicles.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Sections 393.004 and 394.005, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Reenacts Section 386.252(a), Health and Safety Code, as amended by Chapters 1125 (H.B. 1796) and 1232 (S.B. 1759), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

(a) Authorizes money in the Texas emissions reduction plan fund (fund) to be used only to implement and administer programs established under the Texas emissions reduction plan (plan) to be allocated for certain purposes, including the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which, not more than four percent may be used for the clean school bus program; not more than 10 percent may be used for on-road diesel purchase or lease incentives; 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; five percent shall be used for the clean fleet program; two percent may be used for the Texas alternative fueling facilities program; not less than 16 percent shall be used for the natural gas vehicle grant program; and not more than four percent may be used to provide grants for natural gas fueling stations under Section 394.010.

SECTION 2. Amends Section 386.252, Health and Safety Code, by adding Subsections (e), (f), and (g), as follows:

(e) Authorizes the Texas Natural Resource Conservation Commission (TNRCC) to allocate unexpended money designated for the Texas alternative fueling facilities program to other programs described under Subsection (a) (relating to the use of money

in the funds) after TNRCC allocates money to recipients under the alternative fueling facilities program.

(f) Authorizes TNRCC, notwithstanding Subsection (a), to reallocate money in the fund if:

(1) TNRCC, in consultation with the governor and the advisory board, determines that the use of the money in the fund for the program established under Chapter 394 will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

(2) TNRCC finds that the reallocation of some or all of the funding for the program established under Chapter 394 would resolve the noncompliance.

(g) Prohibits TNRCC, under Subsection (f), from reallocating more than the minimum amount of money necessary to resolve the noncompliance.

SECTION 3. Amends Subtitle C, Title 5, Health and Safety Code, by adding Chapters 393 and 394, as follows:

#### CHAPTER 393. ALTERNATIVE FUELING FACILITIES PROGRAM

Sec. 393.001. DEFINITIONS. Defines "alternative fuel," "commission," and "program," in this chapter.

Sec. 393.002. PROGRAM. (a) Requires the Texas Commission on Environmental Quality (TCEQ) to establish and administer the Texas alternative fueling facilities program (program) to provide fueling facilities for alternative fuel in nonattainment areas. Requires TCEQ, under the program, to provide a grant for each eligible facility to offset the cost of those facilities.

(b) Provides that an entity that constructs, reconstructs, or acquires an alternative fueling facility is eligible to participate in the program.

Sec. 393.003. APPLICATION FOR GRANT. (a) Authorizes an entity operating in this state that constructs, reconstructs, or acquires a facility to store, compress, or dispense alternative fuels to apply for and receive a grant under the program.

(b) Authorizes TCEQ to adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391 (Regional Planning Commissions), Local Government, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) Requires that an application for a grant under this chapter be made on a form provided by TCEQ and contain the information required by TCEQ.

Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS. (a) Requires TCEQ by rule to establish criteria for prioritizing facilities eligible to receive grants under this chapter. Requires TCEQ to review and revise the criteria as appropriate.

(b) Requires that to be eligible for a grant under the program, the entity receiving the grant must agree to make the alternative fueling facility available to persons not associated with the entity at times designated by the grant agreement.

(c) Provides that a recipient of a grant under this chapter is not eligible to receive a second grant under this chapter for the same facility.

Sec. 393.005. RESTRICTION ON USE OF GRANT. Requires the recipient of a grant under this chapter to use the grant only to pay the costs of the facility for which the grant

is made. Prohibits the recipient from using the grant to pay the recipient's administrative expenses.

Sec. 393.006. AMOUNT OF GRANT. Requires TCEQ, for each eligible facility for which a recipient is awarded a grant under the program, to award the grant in an amount equal to the lesser of 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by TCEQ to construct, reconstruct, or acquire the facility, or \$500,000.

Sec. 393.007. EXPIRATION. Provides that this chapter expires on August 31, 2018.

#### CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

Sec. 394.001. DEFINITIONS. Defines, in this chapter, "advisory board," "commission," "executive director," "heavy-duty motor vehicle," "incremental cost," "medium-duty motor vehicle," "motor vehicle," "natural gas vehicle," and "program."

Sec. 394.002. PROGRAM. Requires TCEQ to establish and administer the Texas natural gas vehicle grant program (NGV program) to encourage an entity that has a heavy-duty or medium-duty motor vehicle to repower the vehicle with a natural gas engine or replace the vehicle with a natural gas vehicle. Requires TCEQ, under the NGV program, to provide grants for eligible heavy-duty motor vehicles and medium-duty motor vehicles to offset the incremental cost for the entity of repowering or replacing the heavy-duty or medium-duty motor vehicle.

Sec. 394.003. QUALIFYING VEHICLES. (a) Provides that a vehicle is a qualifying vehicle that may be considered for a grant under the NGV program if during the calendar year the entity:

(1) purchased, leased, or otherwise commercially financed the vehicle as a new on-road heavy-duty or medium-duty motor vehicle that:

(A) is a natural gas vehicle;

(B) is certified to current federal emissions standards;

(C) replaces an on-road heavy-duty or medium-duty motor vehicle of the same weight classification and use; and

(D) is powered by an engine certified to:

(i) emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle; or

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that:

(A) is certified to current federal emissions standards; and

(B) is:

(i) a heavy-duty engine that is certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) certified to meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle.

(b) Provides that a heavy-duty or medium-duty motor vehicle is not a qualifying vehicle if the vehicle or the natural gas engine powering the vehicle has been awarded a grant under this chapter for a previous reporting period, or has received a similar grant or tax credit in another jurisdiction if that grant or tax credit program is relied on for credit in the state implementation plan.

Sec. 394.004. APPLICATION FOR GRANT. (a) Authorizes only an entity operating in this state that operates a heavy-duty or medium-duty motor vehicle to apply for and receive a grant under this chapter.

(b) Requires that an application for a grant under this chapter be made on a form provided by TCEQ and contain the information required by TCEQ.

(c) Requires TCEQ, after consulting stakeholders, to simplify the application form, and minimize, to the maximum extent possible, documentation required for an application.

Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) Requires TCEQ by rule to establish criteria for prioritizing qualifying vehicles eligible to receive grants under this chapter. Requires TCEQ to review and revise the criteria as appropriate after consultation with the advisory board.

(b) Provides that to be eligible for a grant under the NGV program:

(1) the use of the qualifying vehicle must be projected to result in a reduction in emissions of nitrogen oxides of at least 25 percent as compared to the motor vehicle or engine being replaced, based on:

(A) the baseline emission level set by TCEQ under Subsection (g); and

(B) the certified emission rate of the new vehicle; and

(2) the qualifying vehicle must:

(A) replace a heavy-duty or medium-duty motor vehicle that:

(i) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by TCEQ;

(iii) satisfies any minimum percentage of annual usage requirements established by TCEQ; and

(iv) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by TCEQ; or

(B) be a heavy-duty or medium-duty motor vehicle repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by TCEQ;

(iii) satisfies any minimum percentage of annual usage requirements established by TCEQ; and

(iv) is installed in an on-road vehicle that, at the time of the vehicle's repowering, was in operating condition and had at least two years of remaining useful life, as determined in accordance with criteria established by TCEQ.

(c) Requires the qualifying vehicle, as a condition of receiving a grant, to be continuously owned, leased, or otherwise commercially financed and registered and operated in the state by the grant recipient until the earlier of the fourth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement. Requires that not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by TCEQ, occur in:

(1) the counties any part of which are included in the area described by Section 394.010(a); or

(2) counties designated as nonattainment areas within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(d) Requires TCEQ to include and enforce the usage provisions in the grant contracts. Requires TCEQ to monitor compliance with the ownership, leasing, and usage requirements, including submission of reports on at least an annual basis, or more frequently as determined by TCEQ.

(e) Authorizes TCEQ by contract to require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) Requires that a heavy-duty or medium-duty motor vehicle replaced under this program be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by TCEQ that permanently removes the vehicle from operation in this state. Requires TCEQ to establish criteria for ensuring the permanent destruction of the engine or vehicle. Requires TCEQ to enforce the destruction requirements.

(g) Requires TCEQ to establish baseline emission levels for emissions of nitrogen oxides for on-road heavy-duty or medium-duty motor vehicles being replaced by using the emission certification for the engine or vehicle being replaced. Authorizes TCEQ to consider deterioration of the emission performance of the engine of the vehicle being replaced in establishing the baseline emission level. Authorizes TCEQ to consider and establish baseline emission rates for additional pollutants of concern, as determined by TCEQ after consultation with the Texas Emissions Reduction Plan Advisory Board (advisory board).

(h) Authorizes that mileage or fuel use requirements established by TCEQ under Subsection (b)(2)(A)(ii) differ by vehicle weight categories and type of use.

(i) Requires the executive director of TCEQ to waive the requirements of Subsection (b)(2)(A)(i) on a finding of good cause, which may include short lapses in registration or operation due to economic conditions, seasonal work, or other circumstances.

Sec. 394.006. RESTRICTION ON USE OF GRANT. Requires a recipient of a grant under this chapter to use the grant to pay the incremental costs of the replacement for which the grant is made, which may include the initial cost of the natural gas vehicle or natural gas engine and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. Prohibits the recipient from using the grant to pay the recipient's administrative expenses.

Sec. 394.007. AMOUNT OF GRANT. (a) Requires TCEQ to develop a grant schedule that:

(1) assigns a standardized grant in an amount between 60 and 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering;

(2) is based on the certified emission level of nitrogen oxides, or other pollutants as determined by TCEQ, of the engine powering the natural gas vehicle, and the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

(b) Requires that not less than 60 percent of the total amount of grants awarded under this chapter for the purchase and repowering of motor vehicles be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. Provides that the minimum grant requirement under this subsection does not apply if TCEQ does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant under this chapter.

(c) Prohibits a person from receiving a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded. Requires a person to return to TCEQ the amount of a grant awarded under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded.

(d) Requires TCEQ to reduce the amount of a grant awarded under this chapter as necessary to keep the combined incentive total at or below the incremental cost of the vehicle for which the grant is awarded if the grant recipient is eligible to receive an automatic incentive at or before the time a grant is awarded under this chapter.

Sec. 394.008. GRANT PROCEDURES. (a) Requires TCEQ to adopt procedures for:

(1) awarding grants under this chapter in the form of rebates; and

(2) streamlining the grant application, contracting, reimbursement, and reporting process for qualifying natural gas vehicle purchases or repowers.

(b) Requires that procedures adopted under this section:

(1) provide for TCEQ to compile and regularly update a listing of preapproved natural gas vehicles:

(A) powered by natural gas engines certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(B) certified to the United States Environmental Protection Agency's light-duty Bin 5 standard or better;

(2) if a federal standard for the calculation of emissions reductions exists, provide a method to calculate the reduction in emissions of nitrogen oxides, volatile organic compounds, carbon monoxide, particulate matter, and sulfur compounds for each replacement or repowering;

(3) assign a standardized rebate amount for each qualifying vehicle under Section 394.007;

(4) allow for processing rebates on an ongoing first-come, first-served basis;

(5) provide for contracts between TCEQ and participating dealers under Section 394.009;

(6) allow grant recipients to assign their grant funds to participating dealers to offset the purchase or lease price;

(7) require grant applicants to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use;

(8) provide for payment not later than the 30th day after the date the request for reimbursement for an approved grant is received;

(9) provide for application submission and application status checks to be made over the Internet; and

(10) consolidate, simplify, and reduce the administrative work for applicants and TCEQ associated with grant application, contracting, reimbursement, and reporting requirements.

(c) Requires TCEQ, or its designee, to oversee the grant process and is responsible for final approval of any grant.

(d) Provides that grant recipients are responsible for meeting all grant conditions, including reporting and monitoring as required by TCEQ through the grant contract.

Sec. 394.009. PARTICIPATING DEALERS. (a) Defines, in this section, "participating dealer."

(b) Requires a participating dealer to agree to the terms and conditions of a standardized contract developed by TCEQ.

(c) Requires a participating dealer to:

(1) provide information regarding natural gas vehicle grants to fleet operators;

(2) assist an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer with the completion of the application; and

(3) submit completed applications and documentation to TCEQ on behalf of an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer.

(d) Prohibits a participating dealer from approving a grant.

(e) Requires TCEQ to maintain and make available to the public online a list of all qualified dealers, and establish requirements for participation in the program by sellers of on-road heavy-duty or medium-duty natural gas vehicles and heavy-duty or medium-duty natural gas engines.

Sec. 394.010. CLEAN TRANSPORTATION TRIANGLE. (a) Requires TCEQ, to ensure that natural gas vehicles purchased, leased, or otherwise commercially financed or repowered under the program have access to fuel, and to build the foundation for a self-sustaining market for natural gas vehicles in Texas, to award grants to support the development of a network of natural gas vehicle fueling stations along the interstate highways connecting Houston, San Antonio, Dallas, and Fort Worth. Requires TCEQ, in awarding the grants, to provide for:

(1) strategically placed natural gas vehicle fueling stations in and between the Houston, San Antonio, and Dallas-Fort Worth areas to enable a natural gas vehicle to travel along that triangular area relying solely on natural gas fuel;

(2) grants to be dispersed through a competitive bidding process to offset a portion of the cost of installation of the natural gas dispensing equipment;

(3) contracts that require the recipient stations to meet operational, maintenance, and reporting requirements as specified by TCEQ; and

(4) a listing, to be maintained by TCEQ and made available to the public online, of all natural gas vehicle fueling stations that have received grant funding, including location and hours of operation.

(b) Prohibits TCEQ from awarding more than three station grants to any entity, or one grant for each station.

(c) Prohibits grants awarded under this section from exceeding \$100,000 for a compressed natural gas station, \$250,000 for a liquefied natural gas station, or \$400,000 for a station providing both liquefied and compressed natural gas.

(d) Requires that stations funded by grants under this section be publicly accessible and located not more than three miles from an interstate highway system. Requires TCEQ to give preference to stations providing both liquefied natural gas and compressed natural gas at a single location, and stations located not more than one mile from an interstate highway system.

(e) Authorizes TCEQ, to meet the goals of this section, to solicit grant applications under this section for a new fueling station in a specific area or location.

(f) Provides that grants made under this section are not subject to the requirements of Sections 394.002 through 394.008. Requires TCEQ to develop an application package and review applications in accordance with Sections 386.110 and 386.111.

(g) Requires TCEQ, in consultation with the natural gas industry, to determine the most efficient use of funding for the station grants under this section to maximize the availability of natural gas fueling stations.



Sec. 394.011. ADMINISTRATION OF PROGRAM. Authorizes TCEQ to contract with one or more entities for administration of the program.

Sec. 394.012. EXPIRATION. Provides that this chapter expires August 31, 2017.

SECTION 4. Requires TCEQ to adopt rules under Section 393.004, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 5. Requires TCEQ to adopt rules and establish procedures under Chapter 394, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 6. Provides that to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 7. Effective date: September 1, 2011.