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By:  Zaffirini S.B. No. 2154

A BILL TO BE ENTITLED

AN ACT

relating to the administration of certain programs under the Texas emissions reduction plan.

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

SECTION 1.  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 air quality research support program established under Chapter 387;

(4)  the clean school bus program established under Chapter 390;

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

(6)  the regional air monitoring program established under Section 386.252(a);

(7)  a health effects study as provided by Section 386.252(a);

(8)  air quality planning activities as provided by Section 386.252(d);

(9)  a contract with the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station for computation of creditable statewide emissions reductions as provided by Section 386.252(a);

(10)  the Texas clean fleet program established under Chapter 392;

(11)  the Texas alternative fueling facilities program established under Chapter 393;

(12)  the Texas natural gas vehicle grant program established under Chapter 394;

(13)  other programs the commission may develop that lead to reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds in a nonattainment area or affected county;

(14)  other programs the commission may develop that support congestion mitigation to reduce mobile source ozone precursor emissions;

(15)  the seaport and rail yard areas emissions reduction program established under Subchapter D-1;

(16)  conducting research and other activities associated with making any necessary demonstrations to the United States Environmental Protection Agency to account for the impact of foreign emissions or an exceptional event;

(17)  studies of or pilot programs for incentives for port authorities located in nonattainment areas or affected counties as provided by Section 386.252(a); [~~and~~]

(18)  the governmental alternative fuel fleet grant program established under Chapter 395; and

(19)  the Texas non-road natural gas grant program established under Chapter 394A.

SECTION 2.  Section 386.252(a), Health and Safety Code, is amended to read as follows:

(a)  Money in the fund may be used only to implement and administer programs established under the plan. Subject to the reallocation of funds by the commission under Subsection (h), money appropriated to the commission to be used for the programs under Section 386.051(b) shall initially be allocated as follows:

(1)  four percent may be used for the clean school bus program under Chapter 390;

(2)  three percent may be used for the new technology implementation grant program under Chapter 391, from which at least $1 million will be set aside for electricity storage projects related to renewable energy;

(3)  five percent may be used for the Texas clean fleet program under Chapter 392;

(4)  not more than $3 million may be used by the commission to fund a regional air monitoring program in commission Regions 3 and 4 to be implemented under the commission's oversight, including direction regarding the type, number, location, and operation of, and data validation practices for, monitors funded by the program through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area;

(5)  10 percent may be used for the Texas natural gas vehicle grant program under Chapter 394 and the Texas non-road natural gas grant program established under Chapter 394A;

(6)  not more than $6 million may be used for the Texas alternative fueling facilities program under Chapter 393, of which a specified amount may be used for fueling stations to provide natural gas fuel, except that money may not be allocated for the Texas alternative fueling facilities program for the state fiscal year ending August 31, 2019;

(7)  not more than $750,000 may be used each year to support research related to air quality as provided by Chapter 387;

(8)  not more than $200,000 may be used for a health effects study;

(9)  at least $6 million but not more than $8 million is allocated to the commission for administrative costs, including all direct and indirect costs for administering the plan, costs for conducting outreach and education activities, and costs attributable to the review or approval of applications for marketable emissions reduction credits;

(10)  six percent may be used by the commission for the seaport and rail yard areas emissions reduction program established under Subchapter D-1;

(11)  five percent may be used for the light-duty motor vehicle purchase or lease incentive program established under Subchapter D;

(12)  not more than $216,000 is allocated to the commission to contract with the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station annually for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan;

(13)  not more than $500,000 may be used for studies of or pilot programs for incentives for port authorities located in nonattainment areas or affected counties to encourage cargo movement that reduces emissions of nitrogen oxides and particulate matter; and

(14)  the balance is to be used by the commission for the diesel emissions reduction incentive program under Subchapter C as determined by the commission.

SECTION 3.  Section 393.001(1-a), Health and Safety Code, is amended to read as follows:

(1-a)  "Clean transportation zone" means:

(A)  counties containing or intersected by a portion of an interstate highway connecting the cities of Houston, San Antonio, Dallas, and Fort Worth;

(B)  counties located within the area bounded by the interstate highways described by Paragraph (A);

(C)  counties containing or intersected by a portion of:

(i)  an interstate highway connecting San Antonio to Corpus Christi or Laredo;

(ii)  the most direct route using highways in the state highway system connecting Corpus Christi and Laredo; or

(iii)  a highway corridor connecting Corpus Christi and Houston;

(D)  counties located within the area bounded by the highways described by Paragraph (C);

(E)  counties containing or intersected by a portion of:

(i)  a United States highway connecting Houston and Texarkana; or

(ii)  a highway corridor connecting Houston and Texarkana;

(F)  counties containing or intersected by a portion of an interstate highway connecting the cities of Dallas and Texarkana;

(G)  counties in this state all or part of which are included in a nonattainment area designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407); and

(H) [~~(F)~~]  counties designated as affected counties under Section 386.001.

SECTION 4.  Section 394.003(a), Health and Safety Code, is amended to read as follows:

(a)  A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the eligibility period established by the commission the entity:

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

(A)  is a natural gas vehicle;

(B)  is certified to the appropriate current federal emissions standards as determined by the commission; and

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

(2)  repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that is certified to the appropriate current federal emissions standards as determined by the commission.

SECTION 5.  Section 394.005(b), Health and Safety Code, is amended to read as follows:

(b)  To be eligible for a grant under the 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 the commission under Subsection (g); and

(B)  the certified emission rate of the qualifying [~~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 the commission;

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

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

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

(i)  is owned by the applicant;

(ii)  is an on-road vehicle that has been:

(a)  owned, leased, or otherwise commercially financed and operated in Texas as a fleet vehicle for at least the two years immediately preceding the submission of a grant application; and

(b)  registered in a county located in the clean transportation zone for at least the two years immediately preceding the submission of a grant application; and

(iii)  otherwise satisfies the mileage, usage, and useful life requirements established under Paragraph (A) as determined by documentation associated with the vehicle; or

(C)  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 the commission;

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

(3)  if the qualifying vehicle is a used natural gas vehicle, the vehicle must be of model year 2014 or later.

SECTION 6.  Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 394A to read as follows:

CHAPTER 394A. TEXAS NON-ROAD NATURAL GAS GRANT PROGRAM

Sec. 394A.001.  DEFINITIONS. In this chapter:

(1)  "Clean transportation zone" has the meaning assigned by Section 393.001.

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

(3)  "Executive director" means the executive director of the commission.

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

(5)  "Natural gas engine" has the meaning assigned by Section 394.001.

(6)  "Non-road engine" has the meaning assigned by Section 386.101.

(7)  "Non-road natural gas vehicle or equipment" means a vehicle or piece of equipment that is powered by a natural gas engine.

(8)  "Non-road vehicle or equipment" means a vehicle or piece of equipment, excluding a motor vehicle as defined by Section 386.151 or a non-road natural gas vehicle or equipment, that is powered by a non-road engine, including:

(A)  non-road nonrecreational equipment and vehicles;

(B)  construction equipment;

(C)  locomotives; and

(D)  marine vessels.

(9)  "Program" means the Texas non-road natural gas grant program established under this chapter.

Sec. 394A.002.  PROGRAM. The commission shall establish and administer the Texas non-road natural gas grant program to encourage an entity that has a non-road vehicle or equipment to repower the vehicle or equipment with a natural gas engine or replace the vehicle or equipment with a non-road natural gas vehicle or equipment. Under the program, the commission shall provide grants for eligible non-road vehicles or equipment to offset the incremental cost for the entity of repowering or replacing the non-road vehicle or equipment.

Sec. 394A.003.  QUALIFYING VEHICLES AND EQUIPMENT. (a) A vehicle or piece of equipment is a qualifying vehicle or equipment that may be considered for a grant under the program if during the eligibility period established by the commission the entity:

(1)  purchased, leased, or otherwise commercially financed the vehicle as a new non-road vehicle or equipment that:

(A)  is a non-road natural gas vehicle or equipment;

(B)  is certified to the appropriate current federal emissions standards as determined by the commission; and

(C)  replaces a non-road vehicle or equipment of the same weight classification and use; or

(2)  repowered the non-road vehicle or equipment to a non-road natural gas vehicle or equipment powered by a natural gas engine that is certified to the appropriate current federal emissions standards as determined by the commission.

(b)  A non-road vehicle or equipment is not a qualifying vehicle or equipment if the vehicle or equipment or the natural gas engine powering the vehicle or equipment:

(1)  has been awarded a grant under this chapter for a previous reporting period; or

(2)  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. 394A.004.  APPLICATION FOR GRANT. (a) Only an entity operating in this state that operates a non-road vehicle or equipment may apply for and receive a grant under this chapter.

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

(c)  The commission, after consulting stakeholders, shall:

(1)  simplify the application form; and

(2)  minimize, to the maximum extent possible, documentation required for an application.

Sec. 394A.005.  ELIGIBILITY FOR GRANTS. (a) The commission shall establish criteria for prioritizing qualifying vehicles and equipment eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b)  To be eligible for a grant under the program:

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

(A)  the baseline emission level set by the commission under Subsection (h); and

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

(2)  the qualifying vehicle or equipment must:

(A)  replace a non-road vehicle or equipment that:

(i)  has been owned, leased, or otherwise commercially financed 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 the commission;

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

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

(B)  be a non-road vehicle or equipment repowered with a natural gas engine that:

(i)  is installed in a non-road vehicle or equipment that has been owned, leased, or otherwise commercially financed 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 the commission;

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

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

(c)  As a condition of receiving a grant, the qualifying vehicle or equipment must be continuously owned, leased, or otherwise commercially financed and operated in the state by the grant recipient until the earlier of the fourth anniversary of the activity start date established by the commission or a date specified by the commission that takes into account the vehicle's or equipment's usage after the activity start date established by the commission. Not less than 75 percent of the annual use of the qualifying vehicle or equipment, either mileage or fuel use as determined by the commission, must occur in the clean transportation zone.

(d)  For purposes of Subsection (c), the commission shall establish the activity start date based on the date the commission accepts verification of the disposition of the vehicle, equipment, or engine, as applicable.

(e)  The commission shall include and enforce the usage provisions in the grant contracts. The commission shall 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 the commission.

(f)  The commission by contract may 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.

(g)  A non-road vehicle or equipment replaced under this program must be rendered permanently inoperable by crushing the vehicle or equipment, by making a hole in the engine block and permanently destroying the frame of the vehicle or equipment, or by another method approved by the commission, or be permanently removed from operation in this state. The commission shall establish criteria for ensuring the permanent destruction or permanent removal of the vehicle, equipment, or engine, as applicable. The commission shall enforce the destruction and removal requirements. For purposes of this subsection, "permanent removal" means the permanent export of the vehicle, equipment, or engine to a destination outside of the United States, Canada, or the United Mexican States.

(h)  The commission shall establish baseline emission levels for emissions of nitrogen oxides for non-road vehicles or equipment being replaced or repowered by using the emission certification for the vehicle, equipment, or engine being replaced. The commission may consider deterioration of the emission performance of the engine of the vehicle or equipment being replaced in establishing the baseline emission level. The commission may consider and establish baseline emission rates for additional pollutants of concern.

(i)  Mileage or fuel use requirements established by the commission under Subsection (b)(2)(A)(ii) may differ by vehicle or equipment weight categories and type of use.

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

Sec. 394A.006.  RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the replacement or engine repower for which the grant is made, which may include a portion of the initial cost of the non-road natural gas vehicle or equipment or natural gas engine, including the cost of the natural gas fuel system and installation. The recipient may not use the grant to pay the recipient's administrative expenses.

Sec. 394A.007.  AMOUNT OF GRANT. (a) The commission shall develop a grant schedule that:

(1)  assigns a standardized grant in an amount up to 90 percent of the incremental cost of a non-road natural gas vehicle or equipment purchase, lease, other commercial finance, or repowering;

(2)  is based on:

(A)  the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the non-road natural gas vehicle or equipment; and

(B)  the usage of the non-road natural gas vehicle or equipment; and

(3)  may take into account the overall emissions reduction achieved by the non-road natural gas vehicle or equipment.

(b)  A person may not receive 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 or equipment or engine repower for which the grant is awarded. A person shall return to the commission 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 or equipment or engine repower for which the grant is awarded.

(c)  The commission shall 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 or equipment 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. 394A.008.  GRANT PROCEDURES. (a) The commission shall establish procedures for:

(1)  awarding grants under this chapter to reimburse eligible costs; and

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

(b)  Procedures established under this section must:

(1)  provide for the commission to compile and regularly update a listing of potentially eligible non-road natural gas vehicles and equipment and natural gas engines that are certified to the appropriate current federal emissions standards as determined by the commission;

(2)  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 grant amount for each qualifying vehicle or equipment or engine repower under Section 394A.007;

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

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

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

(7)  provide for application submission and application status checks using procedures established by the commission, which may include application submission and status checks to be made over the Internet; and

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

(c)  The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant.

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

Sec. 394A.009.  EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

SECTION 7.  The changes in law made by this Act apply only to a Texas emissions reduction plan grant awarded on or after the effective date of this Act. A grant awarded before the effective date of this Act is governed by the law in effect on the date the award was made, and the former law is continued in effect for that purpose.

SECTION 8.  This Act takes effect September 1, 2019.