

By: Thompson of Brazoria

H.B. No. 4378

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

1 Section 386.252(d);

2 (9) a contract with the Energy Systems Laboratory at  
3 the Texas A&M Engineering Experiment Station for computation of  
4 creditable statewide emissions reductions as provided by Section  
5 386.252(a);

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) three percent may be used for the new technology  
15 implementation grant program under Chapter 391, from which at least  
16 \$1 million will be set aside for electricity storage projects  
17 related to renewable energy;

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

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

1 area;

2 (5) 10 percent may be used for the Texas natural gas  
3 vehicle grant program under Chapter 394 and the Texas non-road  
4 natural gas grant program established under Chapter 394A;

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

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

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

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

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

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

27 (12) not more than \$216,000 is allocated to the

1 commission to contract with the Energy Systems Laboratory at the  
2 Texas A&M Engineering Experiment Station annually for the  
3 development and annual computation of creditable statewide  
4 emissions reductions obtained through wind and other renewable  
5 energy resources for the state implementation plan;

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

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

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

16 (1-a) "Clean transportation zone" means:

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

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

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

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

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

1 or

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

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

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

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

10 (ii) a highway corridor connecting Houston  
11 and Texarkana;

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

15 (G) counties in this state all or part of which  
16 are included in a nonattainment area designated under Section  
17 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407); and

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

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

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

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

- 1 (A) is a natural gas vehicle;
- 2 (B) is certified to the appropriate current  
3 federal emissions standards as determined by the commission; and
- 4 (C) replaces an on-road heavy-duty or  
5 medium-duty motor vehicle of the same weight classification and  
6 use; or
- 7 (2) repowered the on-road motor vehicle to a natural  
8 gas vehicle powered by a natural gas engine that is certified to the  
9 appropriate current federal emissions standards as determined by  
10 the commission.

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

- 13 (b) To be eligible for a grant under the program:
- 14 (1) the use of the qualifying vehicle must be  
15 projected to result in a reduction in emissions of nitrogen oxides  
16 of at least 25 percent as compared to the motor vehicle or engine  
17 being replaced, based on:
- 18 (A) the baseline emission level set by the  
19 commission under Subsection (g); and
- 20 (B) the certified emission rate of the qualifying  
21 ~~new~~ vehicle; ~~and~~
- 22 (2) the qualifying vehicle must:
- 23 (A) replace a heavy-duty or medium-duty motor  
24 vehicle that:
- 25 (i) is an on-road vehicle that has been  
26 owned, leased, or otherwise commercially financed and registered  
27 and operated by the applicant in Texas for at least the two years

1 immediately preceding the submission of a grant application;

2 (ii) satisfies any minimum average annual  
3 mileage or fuel usage requirements established by the commission;

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

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

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

11 (i) is owned by the applicant;

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

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

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

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

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

25 (i) is installed in an on-road vehicle that  
26 has been owned, leased, or otherwise commercially financed and  
27 registered and operated by the applicant in Texas for at least the



1 two years immediately preceding the submission of a grant  
2 application;

3 (ii) satisfies any minimum average annual  
4 mileage or fuel usage requirements established by the commission;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10                   (A) non-road nonrecreational equipment and  
11 vehicles;

12                   (B) construction equipment;

13                   (C) locomotives; and

14                   (D) marine vessels.

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

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

26           Sec. 394A.003. QUALIFYING VEHICLES AND EQUIPMENT. (a) A  
27 vehicle or piece of equipment is a qualifying vehicle or equipment

1 that may be considered for a grant under the program if during the  
2 eligibility period established by the commission the entity:

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

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

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

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

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

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

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

20 (2) has received a similar grant or tax credit in  
21 another jurisdiction if that grant or tax credit program is relied  
22 on for credit in the state implementation plan.

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

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

1 information required by the commission.

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

3 (1) simplify the application form; and

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

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

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

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

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

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

19 (2) the qualifying vehicle or equipment must:

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

21 (i) has been owned, leased, or otherwise  
22 commercially financed and operated by the applicant in Texas for at  
23 least the two years immediately preceding the submission of a grant  
24 application;

25 (ii) satisfies any minimum average annual  
26 mileage or fuel usage requirements established by the commission;

27 (iii) satisfies any minimum percentage of

1 annual usage requirements established by the commission; and

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

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

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

11 (ii) satisfies any minimum average annual  
12 mileage or fuel usage requirements established by the commission;

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

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

20 (c) As a condition of receiving a grant, the qualifying  
21 vehicle or equipment must be continuously owned, leased, or  
22 otherwise commercially financed and operated in the state by the  
23 grant recipient until the earlier of the fourth anniversary of the  
24 activity start date established by the commission or a date  
25 specified by the commission that takes into account the vehicle's  
26 or equipment's usage after the activity start date established by  
27 the commission. Not less than 75 percent of the annual use of the

1 qualifying vehicle or equipment, either mileage or fuel use as  
2 determined by the commission, must occur in the clean  
3 transportation zone.

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

8 (e) The commission shall include and enforce the usage  
9 provisions in the grant contracts. The commission shall monitor  
10 compliance with the ownership, leasing, and usage requirements,  
11 including submission of reports on at least an annual basis, or more  
12 frequently as determined by the commission.

13 (f) The commission by contract may require the return of all  
14 or a portion of grant funds for a grant recipient's noncompliance  
15 with the usage and percentage of use requirements under this  
16 section.

17 (g) A non-road vehicle or equipment replaced under this  
18 program must be rendered permanently inoperable by crushing the  
19 vehicle or equipment, by making a hole in the engine block and  
20 permanently destroying the frame of the vehicle or equipment, or by  
21 another method approved by the commission, or be permanently  
22 removed from operation in this state. The commission shall  
23 establish criteria for ensuring the permanent destruction or  
24 permanent removal of the vehicle, equipment, or engine, as  
25 applicable. The commission shall enforce the destruction and  
26 removal requirements. For purposes of this subsection, "permanent  
27 removal" means the permanent export of the vehicle, equipment, or

1 engine to a destination outside of the United States, Canada, or the  
2 United Mexican States.

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

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

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

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

27 Sec. 394A.007. AMOUNT OF GRANT. (a) The commission shall

1 develop a grant schedule that:

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

6 (2) is based on:

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

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

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

15 (b) A person may not receive a grant under this chapter  
16 that, when combined with any other grant, tax credit, or other  
17 governmental incentive, exceeds the incremental cost of the vehicle  
18 or equipment or engine repower for which the grant is awarded. A  
19 person shall return to the commission the amount of a grant awarded  
20 under this chapter that, when combined with any other grant, tax  
21 credit, or other governmental incentive, exceeds the incremental  
22 cost of the vehicle or equipment or engine repower for which the  
23 grant is awarded.

24 (c) The commission shall reduce the amount of a grant  
25 awarded under this chapter as necessary to keep the combined  
26 incentive total at or below the incremental cost of the vehicle or  
27 equipment for which the grant is awarded if the grant recipient is



1 eligible to receive an automatic incentive at or before the time a  
2 grant is awarded under this chapter.

3 Sec. 394A.008. GRANT PROCEDURES. (a) The commission shall  
4 establish procedures for:

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

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

10 (b) Procedures established under this section must:

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

16 (2) provide a method to calculate the reduction in  
17 emissions of nitrogen oxides, volatile organic compounds, carbon  
18 monoxide, particulate matter, and sulfur compounds for each  
19 replacement or repowering;

20 (3) assign a standardized grant amount for each  
21 qualifying vehicle or equipment or engine repower under Section  
22 394A.007;

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

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

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

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

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

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

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

17           Sec. 394A.009. EXPIRATION. This chapter expires on the  
18 last day of the state fiscal biennium during which the commission  
19 publishes in the Texas Register the notice required by Section  
20 [382.037](#).

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

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