

## **BILL ANALYSIS**

Senate Research Center

H.B. 4472  
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Natural Resources & Economic Development  
5/18/2021  
Engrossed

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

H.B. 4472 makes a number of changes to the Texas Emissions Reduction Plan (TERP). The bill allows the Texas Commission on Environmental Quality (TCEQ) more flexibility to administer the program. It also provides for additional funding and programs to achieve maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan, prevent areas of the state from being in violation of national ambient air quality standards, achieve cost-saving and multiple benefits by reducing emissions of other pollutants and advance new technologies that reduce oxides of nitrogen and other emissions from facilities and other stationary sources.

H.B. 4472 amends current law relating to the Texas emissions reduction plan.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 3 (Section 386.058, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 8 (Section 388.013, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the State Energy Conservation Office in SECTION 8 (Section 388.013, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 386.051(b), Health and Safety Code, as follows:

(b) Requires the Texas Commission on Environmental Quality (TCEQ) and the Comptroller of Public Accounts of the State of Texas (comptroller), under the Texas emissions reduction plan (TERP), to provide grants or other funding for:

(1) - (9) makes no changes to these subdivisions;

(10) and (11) makes nonsubstantive changes to these subdivisions;

(13)-(16) makes no changes to these subdivisions;

(17) and (18) makes nonsubstantive changes to these subdivisions;

(19) the purchase, maintenance, upgrade, and operation of air monitoring equipment as provided by Section 386.252(a) (relating to the initial allocation of money in the fund);

(20) fee-based contracts entered into under the program established under Section 386.058;

(21) the energy efficiency loan guarantee program established under Section 388.013; and

(22) the remittance of TERP funds to the state highway fund for use by the Texas Department of Transportation (TxDOT) for congestion mitigation and air quality improvement projects in nonattainment areas.

Makes nonsubstantive changes.

SECTION 2. Amends Section 386.057, Health and Safety Code, by adding Subsection (e), as follows:

(e) Requires TxDOT, not later than October 1 of each year, to report to TCEQ the following information for all congestion mitigation and air quality improvement projects in nonattainment areas that are planned to be funded, or received initial funding during the preceding 10 years, from money received by TxDOT under Section 386.250 (Texas Emissions Reduction Plan Fund):

- (1) projects to mitigate congestion and improve air quality that are currently planned;
- (2) projects to mitigate congestion and improve air quality that have been completed;
- (3) estimated emissions reductions for all planned and completed congestion mitigation projects; and
- (4) estimated cost per ton analysis of reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds for each congestion mitigation project planned or completed.

SECTION 3. Amends Subchapter B, Chapter 386, Health and Safety Code, by adding Section 386.058, as follows:

Sec. 386.058. FEE-BASED CONTRACTS FOR PURCHASE OF REDUCTIONS IN EMISSIONS OF NITROGEN OXIDES. (a) Requires TCEQ by rule to establish a program authorizing TCEQ to enter into fee-based contracts for the purchase of reductions in emissions of nitrogen oxides.

(b) Requires that the program established under this section:

- (1) specify the types of projects that are eligible for fee-based contracts under the program, such as marine emission capture systems;
- (2) measure nitrogen oxides emissions input and output on a continuous basis;
- (3) require nitrogen oxides emissions reduced under the contract to be verified and certified by TCEQ;
- (4) assign a dollar per ton fee based solely on the dollar per ton cost of the reduction in emissions of nitrogen oxides;
- (5) require payments under the contract to be made only for actual reductions in nitrogen oxides emissions that are verified by TCEQ; and
- (6) authorize TCEQ to enter into multiyear contracts under the program.

(c) Provides that notwithstanding Section 386.055 (Availability of Emissions Reduction Credits Generally):

(1) TCEQ is authorized to enter into a fee-based contract under the program established under this section for a project involving a new emissions reduction measure that would otherwise generate marketable credits under a state or federal emissions reduction credit averaging, banking, or trading program if, during the term of the contract, the project is not used for credit under any state or federal emissions reduction credit averaging, banking, or trading program; and

(2) a project that was subject to a fee-based contract under the program established under this section is authorized to be used for credit under a state or federal emissions reduction credit averaging, banking, or trading program if the contract has expired or otherwise terminated and the project is not subject to any other fee-based contract entered into under the program established under this section and the project otherwise meets the requirements of the applicable state or federal emissions reduction credit averaging, banking, or trading program.

SECTION 4. Amends Sections 386.104(c) and (c-1), Health and Safety Code, as follows:

(c) Deletes existing text excepting a project involving a marine vessel or engine from the requirement that 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 is required to be projected to take place in a nonattainment area or affected county of this state.

(c-1) Requires that a vessel or engine, for a proposed project involving a marine vessel or engine, be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for a sufficient percentage, rather than a sufficient amount, of time over the lifetime of the project, as determined by TCEQ, to meet the cost-effectiveness requirements of Section 386.105 (Calculation of Cost-Effectiveness). Prohibits the percentage determined by TCEQ under this subsection from being less than 55 percent.

SECTION 5. Amends Section 386.154, Health and Safety Code, by adding Subsections (f), (g), and (h), as follows:

(f) Provides that a new light-duty motor vehicle powered by an electric drive is eligible for a \$750 incentive if the vehicle:

(1) is a motorcycle as defined by Section 541.201 (Vehicles), Transportation Code;

(2) satisfies the requirements of Subsections (d)(2)-(5) (relating to requirements for a light-duty motor vehicle to qualify for a \$2,500 incentive);

(3) was acquired on or after September 1, 2013, or a later date as established by TCEQ, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale; and

(4) is not a motor-assisted scooter or pocket bike or minimotorbike as those terms are defined by Section 551.351 (Definitions), Transportation Code.

(g) Provides that the incentive under Subsection (f) is limited to 500 vehicles for each state fiscal biennium.

(h) Authorizes TCEQ, notwithstanding Subsections (c) and (e) (relating to certain size limitations for certain incentive programs) and subject to Section 386.252(a)(11) (relating to authorizing five percent of money in the TERP Fund to be used for certain purchases and leases), at the beginning of the second state fiscal year of the biennium, to adjust the initial vehicle limitations provided under Subsections (c) and (e) based on demand for

incentives under Section 386.154 (Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements) during the preceding state fiscal year.

SECTION 6. Amends Section 386.250, Health and Safety Code, as effective September 1, 2021, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Prohibits TCEQ from remitting more than 40 percent of the amount deposited to the credit of the fund to the state highway fund for use by TxDOT for projects described by Section 386.051(b)(22).

(d) Creates this subsection from existing text. Requires TCEQ, not later than the 30th day after the last day of each state fiscal biennium, to transfer the unencumbered balance of the fund remaining on the last day of the state fiscal biennium to the credit of a separate account established in the fund for use by TCEQ for funding research at the Texas A&M Transportation Institute to determine the cost-effectiveness of existing emissions reduction programs under the plan and cost-effective programs that are not currently authorized to receive funding under the plan that would improve the emissions reduction capabilities of the plan, rather than to transfer the unencumbered balance of the fund remaining on the last day of the state fiscal biennium to the credit of the TERP account.

SECTION 7. Amends Sections 386.252(a), (f), and (h), Health and Safety Code, as effective September 1, 2021, as follows:

(a) Authorizes money from the fund and account to be used for the programs under Section 386.051(b), subject to the reallocation of funds by TCEQ under Subsection (h), to initially be allocated per state fiscal year as follows:

(1) makes no changes to this subdivision;

(2) six percent, rather than three percent, is authorized to be used for the new technology implementation grant program under Chapter 391 (New Technology Implementation for Facilities and Stationary Sources), from which at least \$1 million will be set aside for electricity storage projects related to renewable energy;

(3) makes a nonsubstantive change to this subdivision;

(4)-(6) makes no changes to these subdivisions;

(7) not more than \$1 million, rather than \$750,000, is authorized to be used each year to support research related to air quality as provided by Chapter 387 (Air Quality Research Support Program);

(8)-(11) makes no changes to these subdivisions;

(12) not less than \$216,000 and not more than \$1 million, rather than not more than \$216,000, is authorized to be used by TCEQ to contract with the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station (laboratory) annually for:

(A) the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan; and

(B) the annual computation of creditable statewide emissions reductions attributable to energy efficiency programs;

(13) makes a nonsubstantive change to this subdivision;

(14) not more than \$10 million is authorized to be used by TCEQ for the purchase, maintenance, upgrade, and operation of air monitoring equipment, including data analysis, to be used in nonattainment areas and affected counties;

(15) not more than \$10 million is authorized to be used by TCEQ for fee-based contracts entered into under the program established under Section 386.058;

(16) not more than \$5 million is authorized to be allocated for the energy efficiency loan guarantee program established under Section 388.013; and

(17) creates this subdivision from existing text and makes no further changes.

(f) Authorizes that not more than \$5 million, rather than \$2.5 million, from the fund and account be used by TCEQ to conduct 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.

(h) Authorizes that money allocated under Section 386.252 (Use of Fund) to a particular program, subject to the limitations outlined in Section 386.252, be used for another program under the plan as determined by TCEQ, based on demand for grants for eligible projects under particular programs, rather than based on demand for grants for eligible projects under particular programs after TCEQ solicits projects to which to award grants according to the initial allocation provisions of Section 386.252.

SECTION 8. Amends Chapter 388, Health and Safety Code, by adding Section 388.013, as follows:

Sec. 388.013. ENERGY EFFICIENCY LOAN GUARANTEE PROGRAM. (a) Requires the comptroller and the State Energy Conservation Office (SECO) by rule to establish and administer a program that issues or guarantees loans to be used for improvements that increase the energy efficiency of residences that are not newly constructed.

(b) Requires that rules adopted under this section establish eligibility requirements for receipt of a loan issued or guaranteed under this section, including emissions reduction cost-effectiveness criteria with preference given to nonattainment areas or affected counties.

(c) Requires SECO annually to submit to TECQ and the laboratory a report that:

(1) evaluates the effectiveness of the program established under this section; and

(2) quantifies energy savings and emissions reductions as a result of this program for consideration in the state implementation plan for emissions reduction credit.

SECTION 9. Amends Section 389.002, Health and Safety Code, to require TCEQ, using information derived from the reports to TCEQ under certain sections, including Section 388.013, to take all appropriate and necessary actions so that emissions reductions achieved by means of activities under Chapters 386 (Texas Emissions Reduction Plan) and 388 (Texas Building Energy Performance Standards) are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan.

SECTION 10. Amends Section 391.002(b), Health and Safety Code, to delete existing text authorizing new technology projects that reduce emissions from upstream and midstream oil and gas production, completions, gathering, storage, processing, and transmission activities through the installation of systems that reduce flaring emissions and other site emissions by capturing waste heat to generate electricity solely for on-site service to be considered for a grant under the program.

SECTION 11. Amends Section 391.205(a), Health and Safety Code, to require TCEQ, except as provided by Subsection (c) (relating to authorizing TCEQ to give preference to certain projects SRC-RAO H.B. 4472 87(R)

under certain conditions), in awarding grants under Chapter 391 (New Technology Implementation for Facilities and Stationary Sources), to give preference to certain projects, including projects that reduce flaring emissions and other site emissions. Makes nonsubstantive changes.

SECTION 12. Amends Section 391.301, Health and Safety Code, to require a recipient of a grant under Chapter 391 to use the grant to pay the incremental costs of the purchase, lease, or installation, rather than the cost of the purchase and lease, of the project for which the grant is made, which is authorized to include reasonable and necessary expenses for the labor needed to install emissions-reducing equipment.

SECTION 13. Amends Section 394.003, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that a vehicle is a qualifying vehicle that is authorized to be considered for a grant under the program if during the eligibility period established by TCEQ the entity took certain actions, including purchased, leased, or otherwise commercially financed the vehicle as an on-road heavy-duty or medium-duty motor vehicle that is a new natural gas vehicle or, subject to Subsection (c), a used natural gas vehicle, rather than purchased, leased, or otherwise commercially financed the vehicle as a new on-road heavy-duty or medium-duty motor vehicle that is a new natural gas vehicle.

(c) Requires that a used natural gas vehicle that is proposed to replace an on-road heavy-duty or medium-duty motor vehicle be of model year 2017 or later, provided that the model year is prohibited from being more than six years older than the current model year at the time of the submission of the grant application.

SECTION 14. Amends Section 394.005(b), Health and Safety Code, to provide that to be eligible for a grant under the program, the use of the qualifying vehicle is required to 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 the certified emission rate of the qualifying vehicle, rather than the new vehicle.

SECTION 15. Amends Section 501.138, Transportation Code, by amending Subsections (b-1), (b-2), and (b-3) and adding Subsection (b-4), as follows:

(b-1) Requires that fees collected under Subsection (b) (relating to the distribution of fees paid by applicants for a vehicle title) to be sent to the comptroller, except as provided by Subsection (b-4), be deposited to the credit of the TERP fund. Deletes existing text requiring that fees collected under Subsection (b) to be sent to the comptroller be deposited to the credit of the Texas Mobility Fund, except that \$5 of each fee imposed under Subsection (a)(1) (relating to a \$33 fee if the applicant's residence is a county located within a nonattainment area) and deposited on or after September 1, 2008, and before September 1, 2015, is required to be deposited to the credit of the TERP fund.

(b-2) Requires the comptroller to establish a record of the amount of the fees deposited to the credit of the TERP fund, rather than to the credit of the Texas Mobility Fund, under Subsection (b-1). Requires TxDOT, on or before the fifth workday of each month, to remit to the comptroller for deposit to the credit of the Texas Mobility Fund, rather than to the credit of the TERP fund, an amount of money equal to the amount of the fees deposited by the comptroller to the credit of the TERP fund, rather than to the credit of the Texas Mobility Fund, under Subsection (b-1) in the preceding month.

(b-3) Provides that certain subsections, including Subsection (b-1), expire on the last day of the state fiscal biennium during which TCEQ publishes in the Texas Register the notice required by Section 382.037 (Notice in Texas Register Regarding National Ambient Air Quality Standards for Ozone), Health and Safety Code. Makes a nonsubstantive change.

(b-4) Requires that fees collected under Subsection (b) to be sent to the comptroller be deposited to the credit of the Texas Mobility Fund if the fees are collected on or after the last day of the state fiscal biennium during which TCEQ publishes in the Texas Register the notice required by Section 382.037, Health and Safety Code.

SECTION 16. Provides that the changes in law made by this Act apply only to a TERP grant awarded on or after the effective date of this Act. Provides that 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 17. Makes application of Section 501.138, Transportation Code, prospective.

SECTION 18. Effective date: September 1, 2021.