

BILL ANALYSIS

C.S.H.B. 3868
By: Landgraf
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee, the Texas Emissions Reduction Plan (TERP) was established by the 77th Texas Legislature in 2001 through Senate Bill 5. Under the administration of the Texas Commission on Environmental Quality (TCEQ), TERP has proven to be a successful program at improving Texas' air quality and ensuring compliance with National Ambient Air Quality Standards (NAAQS) established by the United States Environmental Protection Agency (EPA) under authority of the Federal Clean Air Act (CAA). In the past twenty-four years, a number of programs have been added to TERP, adding to the administrative requirements and obligations by the agency to administer an increasingly complicated program.

The Committee Substitute for House Bill 3868 attempts to improve efficiencies and maximize competition within the program through the consolidation of a number of TERP programs, the alignment of provisions governing existing programs within TERP, and by ensuring infrastructure funds are made eligible through the Texas Clean School Bus Program. Additionally, CSHB 3868 creates a new third-party scrappage database of vehicles and vehicle owners that would qualify for vehicle scrappage provisions of TERP.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision

RULEMAKING AUTHORITY

It is the author's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B 3868 amends the Texas Health and Safety Code in the following ways:

- (1) Removes the Texas alternative fueling facilities program described in Chapter 393, the Texas natural gas vehicle grant program described in Chapter 394, the governmental alternative fuel fleet grant program described under Chapter 395, and the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G of Chapter 386 as TERP programs to which the commission and the comptroller shall provide grants or other funding for through Section 386.051(b).
- (2) Creates a database and outreach initiative for the commission to administer a program designed to facilitate the replacement of pre-2009 model year diesel-powered vehicles by connecting applicants for a grant or other funding with owners of those diesel-powered vehicles to enable the applicant to partner with the vehicle owner for purposes of satisfying the requirements established under TERP. As part of the program, the commission shall develop and maintain a database of owners of pre-2009 model year diesel-powered vehicles who are willing to partner with applicants for state or local clean vehicle programs and conduct a public outreach initiative to promote awareness of and participation in the program and in applicable state and local clean vehicle programs.

The database created must include specific contact, vehicle, and other relevant information as determined by the commission, and require applicants that want to access the database to register with the commission. As part of the public outreach required, the commission shall include educational materials and information on the program on the commission's internet website, and may collaborate with local government entities and stakeholders to recruit participants in the database and encourage applications for state and local clean vehicle programs.

- (3) Under Section 386.252, Health and Safety Code, makes changes to TERP funding allocations to various programs as follows:
 - a. Changes from eight percent to three percent the amount of funds available for the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G and the new technology implementation grant program under Chapter 391 and strikes all language for funding for the Texas hydrogen, infrastructure, vehicle, and equipment grant program.
 - b. Increases funding for the Texas clean fleet program, which is now put under Chapter 392A in the bill, from five to twenty-one percent.
 - c. Strikes all funding for the Texas natural gas vehicle grant program under Chapter 394, the Texas alternative fueling facilities program under Chapter 393, and the governmental alternative fuel fleet grant program established under Chapter 395.

- (4) Amends Chapter 390 of the Health and Safety Code, regarding the Clean School Bus Program, by adding a new Sec. 390.0045 to ensure that entities that apply for grants through the program may also receive funds through the program for refueling infrastructure, equipment, and services. The bill states that in order to qualify for those dollars, the grant recipient purchasing, leasing, installing, or procuring the refueling infrastructure or equipment or services must do so in conjunction with the purchase or lease of a motor vehicle described by Section 390.004 or the conversion of a motor vehicle to operate primarily on an alternative fuel; demonstrate that a refueling station that meets the needs of the recipient is not available within five miles of the location at which the recipient's vehicles are stored or primarily used; and that for the purchase or installation of refueling infrastructure or equipment, the infrastructure or equipment will be owned and operated by the grant recipient, and for the lease of refueling infrastructure or equipment or the procurement of refueling services, a third-party service provider engaged by the grant recipient will provide the infrastructure, equipment, or services.

- (5) Strikes Chapter 392 of the Health and Safety Code and creates a new Chapter 392A, establishing an augmented Texas Clean Fleet Program. The new Chapter 392A aligns language from Subchapter G of Chapter 386 of the Health and Safety Code (Texas hydrogen, infrastructure, vehicle and equipment program), Chapter 393 of the Health and Safety Code (alternative fueling facilities program), and Chapter 394 of the Health and Safety Code (Texas natural gas vehicle grant program) into the Texas clean fleet program, while also transferring provisions of the existing Texas clean fleet program in Chapter 392 to the newly established Texas large fleet project in Chapter 392A established by the bill.

The bill makes the following non-conforming and substantive changes in the newly established Chapter 392A, as compared to the existing Chapter 392:

- a. Adds definitions as they currently exist in Chapter 394 of the Health and Safety Code and places them in Chapter 392A for the following terms: "certified", "clean transportation zone", "executive director", "heavy-duty motor vehicle", "natural gas engine", and "natural gas vehicle." The bill also adds the definition for the term "political subdivision" as it currently exists in Chapter 395 of the Health and Safety Code, and the terms "qualifying fuel" and "repower" as they currently exist in Chapter 386 of the Health and Safety Code, and adds them to

definitions in Chapter 392A.

The bill also adds “renewable diesel” to the definition of “alternative fuel” and defines it as a diesel fuel substitute produced from non-petroleum renewable source and refined from at least ninety-nine percent renewable feedstock.

- b. The bill provides that Chapter 392A of the Health and Safety Code 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.
- c. The bill states that the commission shall establish and administer the Texas clean fleet program to encourage a person that has diesel-powered vehicles to purchase or replace them with alternative fuel or hybrid vehicles. The commission, through the program, shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting sources in designated areas in the clean transportation zone. Projects that may be considered include the purchase, lease, replacement, or repowering of an on-road or non-road alternative fuel or hybrid vehicles powered by powered by an alternative fuel engine and be certified to the current federal emissions standards applicable to that engine. Projects considered for a grant may also include those for the use of a qualifying fuel and the implementation of infrastructure projects. The bill also specifies that a project is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document – but does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in vehicles, equipment, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or if the purchase of an alternate fuel or hybrid vehicle or infrastructure is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.
- d. The bill adds language stating that entities that apply for grants through the program may also receive funds through the program for refueling infrastructure, equipment, and services. The bill states that in order to qualify for those dollars, the grant recipient purchasing, leasing, installing, or procuring the refueling infrastructure or equipment or services must do so in conjunction with the purchase or lease of a qualifying vehicle described by Section 392A.102; demonstrate that a refueling station that meets the needs of the recipient is not available within five miles of the location at which the recipient’s vehicles are stored or primarily used; and that for the purchase or installation of refueling infrastructure or equipment, the infrastructure or equipment will be owned and operated by the grant recipient, and for the lease of refueling infrastructure or equipment or the procurement of refueling services, a third-party service provider engaged by the grant recipient will provide the infrastructure, equipment, or services.
- e. The bill states that the commission shall establish criteria for prioritizing projects eligible to receive grants under the program. The commission shall review and revise the criteria as appropriate.
- f. The bill states that commission shall develop a simple, standardized application package for grants under this subchapter that includes an application form, a brief description of the program, the projects that are eligible for available funding, the selection criteria and evaluation process, the required documentation, the name of a person or office to contact for more information, an example of the contract that an applicant will be required to execute before receiving a grant, any other information the commission considers useful to inform the applicant and expedite the application process. The bill also specifies the application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required. The

bill states that the commission may allow an entity to seek funds for multiple projects established by this chapter through a single application, provided that an applicant follows all requirements specified by this chapter and all criteria established by the commission for any specific project. The bill requires that the commission make the opening date, key requirements, and as much of the application form as the agency deems possible available no later than 30 days prior to the opening of the program. The bill states that all applications submitted under this chapter shall be considered on a competitive basis. Finally, the bill states that the commission may adopt guidelines to allow a political subdivision, regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

- g. The bill outlines the application review procedures by which the commission shall review and evaluate, make determinations, deny, and award grants under this chapter, including:
 - i. The commission shall review an application for a grant for a project authorized under this chapter. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.
 - ii. The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.
 - iii. The commission may deny an application for a grant that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.
 - iv. Subject to availability of funds, the commission shall award a grant under the program in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions compared with the volume of emissions reductions that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the Texas emissions reduction plan fund and reallocated for other projects under this chapter.
 - v. The commission shall provide for application submission and application status checks using procedures established by the commission, which may include application submission and application status checks to be made over the Internet.
 - vi. The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant under the program.
 - vii. The commission shall ensure payment for awards under the program is made not later than the 30th day after the date the request for reimbursement for an approved grant is approved by the commission.
- h. The bill creates general grant conditions and eligibility requirements for the administration of the program. The bill states a grant recipient under this chapter

is responsible for meeting all grant conditions, including reporting and monitoring as required by the commission through the grant contract.

- i. The bill states that a qualifying vehicle may be considered for a grant under the program if during the eligibility period established by the commission the person purchases, leases, or otherwise commercially finances a new on-road or non-road vehicle or, subject to subsection (c), a used alternative vehicle, so long as the vehicles replace a diesel-powered on-road or non-road vehicle of the same use, as opposed to only replacing a diesel-powered on-road vehicle of the same weight classification, and that they emit oxides of nitrogen at a rate that is at least 25 percent less than the rate at which the former engine in the vehicle or equipment being repowered under the program emits such pollutants. The bill states that a vehicle is not a qualifying vehicle under Chapter 392A if the vehicle is a neighborhood electric vehicle or has been used as a qualifying vehicle to qualify for a grant under this chapter for a previous reporting period or by another person, and or has qualified for a similar grant or tax credit in another jurisdiction to state that a qualifying vehicle may not have qualified for a similar grant in another jurisdiction if that grant is relied on for credit in the state implementation plan. Finally, the bill states that a used alternative fuel vehicle that is proposed to replace an on-road heavy-duty or medium-duty motor vehicle must be not more than six years older than the current model year at the time of the submission of the grant application.
- j. The bill transfers language regarding grant eligibility for qualifying vehicle replacement or repowering project from existing language in Sec. 392.005 of the Health and Safety Code, with the exception that the bill strikes a provision in Sec. 392.005(a) requiring that the commission must establish the criteria by rule, thereby removing that rulemaking authority.
- k. The bill strikes language currently found in Sec. 386.0515 of the Health and Safety Code and transfers it to the newly created Chapter 392A in the bill, with the exception that the bill strikes the language found in Sec. 386.0515(b), thereby removing the authority regarding specific eligibility requirements of the program.
- l. The bill states that subject to Section 392A.152(c), a recipient of a grant under the program shall use the grant to pay the incremental costs of any purchase, replacement, or repowering project for which the grant is made, which may include the initial cost of the alternative fuel or hybrid vehicle, and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.
- m. The bill specifies the totals by which funds initially allocated to the Texas clean fleet program from Section 386.252(a)(3), Health and Safety Code, shall be allocated to the program projects of the bill. Those totals are:
 - i. 35.5% for the natural gas vehicle grant project;
 - ii. 24% for the large fleet grant projects;
 - iii. 23.5% for the hydrogen infrastructure and vehicle grant projects; and
 - iv. 17% for the alternative fueling facilities grant projects.
- n. The bill states that subject to the limitations outlined in the subsection, money allocated under this section to a particular project may be used for another project in this section as determined by the commission, based on demand for grants for eligible projects after the commission solicits projects to which to award grants according to the initial allocation provisions of this section. If the commission determines there is not sufficient demand under the projects of this section, the commission may redirect funds to other TERP programs, as provided by Section 386.252(h) of the Health and Safety Code.
- o. The bill describes specific project provisions for the consolidated Texas clean fleet program, including:

- i. For natural gas vehicle grant projects involving the replacement of a motor vehicle with a natural gas vehicle or the repowering of a motor vehicle with a natural gas engine, that:
 1. As a condition of receiving a grant to which this section applies and in addition to the requirements of Section 392A.103(b), not less than 75 percent of the annual use of the qualifying natural gas vehicle, either mileage or fuel use as determined by the commission, must occur in the clean transportation zone.
 2. For purposes of Section 392A.105, the incremental costs of the replacement or repower of a motor vehicle for which a grant to which this section applies may include a portion of the initial cost of the natural gas vehicle or natural gas engine, including the cost of the natural gas fuel system and installation.
 3. The commission shall develop a grant schedule for grants to which this section applies that assigns a standardized grant in an amount up to 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering; is based on the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle and the usage of the natural gas vehicle, and may take into account the overall emissions reduction achieved by the natural gas vehicle.
 4. Not less than 60 percent of the total amount of grants to which this section applies that are awarded for the purchase and repowering of motor vehicles must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The minimum grant requirement under this subsection does not apply if the commission does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant to which this section applies.
 5. A person may not receive a grant to which this section applies that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under the program that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded.
 6. The commission shall reduce the amount of a grant to which this section applies 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 the program.
 7. The commission shall establish criteria for awarding grants to which this section applies to reimburse eligible costs, for the commission to compile and regularly update a listing of potentially eligible natural gas vehicles and natural gas engines that are certified to the appropriate current federal emissions standards as determined by the commission, for 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, for assigning a

standardized grant amount for each qualifying vehicle or engine repower for grants to which this section applies, and for requiring applicants for grants to which this section applies to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use.

- ii. For large fleet grant projects and an entity operating in this state that operates a fleet of at least 75 vehicles and places 10 or more qualifying vehicles in service for use entirely in this state during a calendar year, that:
 1. Notwithstanding Subsection (a)(2), an entity that submits a grant application for 10 or more qualifying vehicles is eligible to participate in the program with respect to a grant to which this section applies even if the commission denies approval for one or more of the vehicles during the application process.
 2. The amount the commission shall award for each vehicle being replaced or repowered is up to 90 percent, as determined by the commission, of the incremental cost for replacement or repowering of a heavy-duty vehicle. The commission may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.
- iii. For a grant under the program involving a hydrogen project described by Subsection (b), that:
 1. The commission shall prioritize the awarding of grants to which this section applies in the following order:
 - a. projects to replace on-road heavy-duty motor vehicles with newer on-road hydrogen vehicles;
 - b. projects to purchase, lease, or repower on-road heavy-duty motor vehicles with a powertrain that runs on or is powered by hydrogen;
 - c. projects to implement hydrogen refueling infrastructure that will be accessible and available to the public at times designated by the grant contract;
 - d. projects to replace non-road heavy-duty motor vehicles with newer non-road hydrogen vehicles; and
 - e. projects to purchase, lease, or repower non-road heavy-duty motor vehicles with a powertrain that runs on or is powered by hydrogen.
 2. Subject to Subsection (b), in awarding grants to which this section applies, the commission shall give preference to the most cost-effective projects that will result in the greatest reduction in emissions of oxides of nitrogen.
 3. The amount the commission shall award for each vehicle being replaced or repowered is up to 90 percent, as determined by the commission, of the incremental cost for replacement of a heavy-duty or light-duty vehicle. The commission may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.

4. In addition to the requirements of this chapter, the commission shall establish additional eligibility and prioritization criteria as needed to implement the program with respect to grants to which this section applies.
- iv. For alternative fueling facilities grant project grants issued under the program to provide fueling facilities for alternative fuel in the clean transportation zone and that do not apply to the use of grant money under the program that is used pursuant to Section 392A.052 for the purchase, lease, or installation of refueling infrastructure or equipment or the procurement of refueling services, that:
1. Under the program, the commission shall provide a grant to which this section applies for each eligible alternative fueling facility to offset the cost of those facilities.
 2. An entity that constructs or reconstructs an alternative fueling facility is eligible to participate in the program with respect to a grant to which this section applies.
 3. To ensure that alternative fuel vehicles have access to fuel and to build the foundation for a self-sustaining market for alternative fuels in Texas, the commission shall provide for strategically placed fueling facilities in the clean transportation zone to enable an alternative fuel vehicle to travel in those areas relying solely on the alternative fuel.
 4. The commission shall maintain a listing to be made available to the public online of all vehicle fueling facilities that have received funding through a grant to which this section applies, including location and hours of operation.
 5. An entity operating in this state that constructs or reconstructs a facility to dispense alternative fuels may apply for and receive a grant under the program with respect to a grant to which this section applies.
 6. In addition to the requirements of this chapter, the commission shall establish additional eligibility and prioritization criteria as needed to implement the program with respect to grants to which this section applies.
 7. The prioritization criteria established under Subsection (g) must provide that, for each grant round, the commission may not award a grant to an entity that does not agree to make the alternative fueling facility accessible and available to the public at times designated by the grant contract until each eligible entity that does agree to those terms has been awarded a grant.
 8. The commission may not award more than one grant to which this section applies for each facility.
 9. The commission may give preference to or otherwise limit grant selections to fueling facilities providing specific types of alternative fuels, fueling facilities in a specified area or location, and fueling facilities meeting other specified prioritization criteria established by the commission.
 10. For fueling facilities to provide natural gas, the commission shall give preference to facilities providing both liquefied natural gas and compressed natural gas at a single location, facilities located not more than one mile from an interstate highway system,

facilities located in the area in and between the Houston, San Antonio, and Dallas-Fort Worth areas, and facilities located in the area in and between the Corpus Christi, Laredo, and San Antonio areas.

11. A recipient of a grant to which this section applies shall use the grant only to pay the costs of the facility for which the grant is made. In addition to any other limitation provided by this chapter, the recipient may not use the grant to pay the recipient's expenses for the purchase of land or an interest in land, or expenses for equipment or facility improvements that are not directly related to the delivery, storage, compression, or dispensing of the alternative fuel at the facility.
12. Each grant to which this section applies must be awarded using a contract that requires the recipient to meet operational, maintenance, and reporting requirements as specified by the commission.
13. A grant to which this section applies that is awarded for a facility to provide an alternative fuel other than natural gas may not exceed 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission.
14. A grant to which this section applies that is awarded for a facility to provide natural gas may not exceed \$400,000 for a compressed natural gas facility, \$400,000 for a liquefied natural gas facility, \$600,000 for a facility providing both liquefied and compressed natural gas.
15. The requirements of Sections 392A.052 and 392A.103 do not apply to an applicant that is only seeking funding through a grant to which this section applies.

p. The bill repeals the following sections of the Health and Safety Code:

- i. Section 386.0515;
- ii. Subchapter G, Chapter 386;
- iii. Section 382.252(g);
- iv. Chapter 392;
- v. Chapter 393;
- vi. Chapter 394; and Chapter 395.

EFFECTIVE DATE

On September 1, 2025.

COMPARISON OF ORIGINAL TO SUBSTITUTE

As filed, HB 3868 removed the Governmental Alternative Fuel Fleet Grant Program as a program that would receive funds as provided by Section 386.051(b) of the Health and Safety Code. C.S.H.B. 3868 maintains this provision and strikes the governing chapter for the program entirely, but allows political subdivisions, which were previously eligible to apply for grants through the program offered by Chapter 395, to apply for grants in the newly created Texas clean fleet program in Chapter 392A of the bill. The substitute also adds the definition for political subdivisions to the definitions listed in the bill as substituted.

As filed, HB 3868 reduced funding to the clean school bus program from four percent to three percent, increased funding for the Texas clean fleet program from five percent to six percent, removed a requirement that a specified amount of funding from the Texas alternative fueling facilities program may be used for fueling stations to provide natural gas fuel, and struck language stated that 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. Those provisions are no longer found in the bill as substituted.

As filed, HB 3868 added a definition for hydrogen vehicle to mean a motor vehicle that uses hydrogen to operate the vehicle, including through the use of hydrogen fuel cells or an internal combustion engine that runs on hydrogen. That provision is no longer in the bill as substituted.

As filed, HB 3868 amended Sec. 391.002(b) of the Health and Safety Code to include projects that may be considered for a grant under the new technology and implementation for facilities and stationary sources funds to add projects that encourage the adoption of hydrogen infrastructure and vehicles, including implementation of hydrogen infrastructure projects, purchase or lease of on-road or non-road hydrogen vehicles, replacement of on-road or non-road vehicles with newer on-road or non-road hydrogen vehicles, use of hydrogen fuel, and purchase or lease of hydrogen engines and heavy equipment. That language is no longer found in the bill as substituted.

As filed, HB 3868 amended Section 393.006(a) of the Health and Safety Code for alternative fueling facilities grants to strike the provision that grants awarded under the chapter for a facility to provide alternative fuels other than natural gas may not exceed \$600,000. The bill as substituted eliminates Chapter 393 entirely, so this provision is no longer found in the bill. In the bill as substituted, Chapter 392A.155(n) is similar to the current language found in Section 393.006(a) of the Health and Safety Code, and the bill as substituted does maintain the removal of the provision that grants awarded under the chapter for a facility to provide alternative fuels other than natural gas may not exceed \$600,000 as originally found in HB 3868 as filed.

As substituted, the bill adds the following language to CSHB 3868:

- (1) Removes the Texas alternative fueling facilities program described in Chapter 393, the Texas natural gas vehicle grant program described in Chapter 394, the governmental alternative fuel fleet grant program described under Chapter 395, and the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G of Chapter 386 as TERP programs to which the commission and the comptroller shall provide grants or other funding for through Section 386.051(b).
- (2) Creates a database and outreach initiative for the commission to administer a program designed to facilitate the replacement of pre-2009 model year diesel-powered vehicles by connecting applicants for a grant or other funding with owners of those diesel-powered vehicles to enable the applicant to partner with the vehicle owner for purposes of satisfying the requirements established under TERP. As part of the program, the commission shall develop and maintain a database of owners of pre-2009 model year diesel-powered vehicles who are willing to partner with applicants for state or local clean vehicle programs and conduct a public outreach initiative to promote awareness of and participation in the program and in applicable state and local clean vehicle programs.

The database created must include specific contact, vehicle, and other relevant information as determined by the commission, and require applicants that want to access the database to register with the commission. As part of the public outreach required, the commission shall include educational materials and information on the program on the commission's internet website, and may collaborate with local government entities and stakeholders to recruit participants in the database and encourage applications for state and local clean vehicle programs.

- (3) Under Section 386.252, Health and Safety Code, makes changes to TERP funding allocations to various programs as follows:
 - a. Changes from eight percent to three percent the amount of funds available for the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G and the new technology implementation grant program under Chapter 391 and strikes all language for funding for the Texas hydrogen, infrastructure, vehicle, and equipment grant program.
 - b. Increases funding for the Texas clean fleet program under Chapter 392A established by the bill from five to twenty-one percent.
 - c. Strikes all funding for the Texas natural gas vehicle grant program under Chapter 394, the Texas alternative fueling facilities program under Chapter 393, and the governmental alternative fuel fleet grant program established under Chapter 395.
- (4) Amends Chapter 390 of the Health and Safety Code, regarding the Clean School Bus Program, by adding a new Sec. 390.0045 to ensure that entities that apply for grants through the program may also receive funds through the program for refueling infrastructure, equipment, and services. The bill states that in order to qualify for those dollars, the grant recipient purchasing, leasing, installing, or procuring the refueling infrastructure or equipment or services must do so in conjunction with the purchase or lease of a motor vehicle described by Section 390.004 or the conversion of a motor vehicle to operate primarily on an alternative fuel; demonstrate that a refueling station that meets the needs of the recipient is not available within five miles of the location at which the recipient's vehicles are stored or primarily used; and that for the purchase or installation of refueling infrastructure or equipment, the infrastructure or equipment will be owned and operated by the grant recipient, and for the lease of refueling infrastructure or equipment or the procurement of refueling services, a third-party service provider engaged by the grant recipient will provide the infrastructure, equipment, or services.
- (5) Strikes Chapter 392 of the Health and Safety Code and creates a new Chapter 392A, establishing an augmented Texas Clean Fleet Program. The new Chapter 392A aligns language from Subchapter G of Chapter 386 of the Health and Safety Code (Texas hydrogen, infrastructure, vehicle and equipment program), Chapter 393 of the Health and Safety Code (alternative fueling facilities program), and Chapter 394 of the Health and Safety Code (Texas natural gas vehicle grant program) into the Texas clean fleet program, while also transferring provisions of the existing Texas clean fleet program in Chapter 392 to the newly established Texas large fleet project in Chapter 392A established by the bill.

The bill makes the following non-conforming and substantive changes in the newly established Chapter 392A, as compared to the existing Chapter 392:

- a. Adds definitions as they currently exist in Chapter 394 of the Health and Safety Code and places them in Chapter 392A for the following terms: "certified", "clean transportation zone", "executive director", "heavy-duty motor vehicle", "natural gas engine", and "natural gas vehicle." The bill also adds the definition for the term "political subdivision" as it currently exists in Chapter 395 of the Health and Safety Code, and the terms "qualifying fuel" and "repower" as they currently exist in Chapter 386 of the Health and Safety Code, and adds them to definitions in Chapter 392A.

The bill also adds “renewable diesel” to the definition of “alternative fuel” and defines it as a diesel fuel substitute produced from non-petroleum renewable source and refined from at least ninety-nine percent renewable feedstock.

- b. The bill provides that Chapter 392A of the Health and Safety Code 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.
- c. The bill states that the commission shall establish and administer the Texas clean fleet program to encourage a person that has diesel-powered vehicles to purchase or replace them with alternative fuel or hybrid vehicles. The commission, through the program, shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting sources in designated areas in the clean transportation zone. Projects that may be considered include the purchase, lease, replacement, or repowering of an on-road or non-road alternative fuel or hybrid vehicles powered by powered by an alternative fuel engine and be certified to the current federal emissions standards applicable to that engine. Projects considered for a grant may also include those for the use of a qualifying fuel and the implementation of infrastructure projects. The bill also specifies that a project is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document – but does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in vehicles, equipment, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or if the purchase of an alternate fuel or hybrid vehicle or infrastructure is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.
- d. The bill adds language stating that entities that apply for grants through the program may also receive funds through the program for refueling infrastructure, equipment, and services. The bill states that in order to qualify for those dollars, the grant recipient purchasing, leasing, installing, or procuring the refueling infrastructure or equipment or services must do so in conjunction with the purchase or lease of a qualifying vehicle described by Section 392A.102; demonstrate that a refueling station that meets the needs of the recipient is not available within five miles of the location at which the recipient’s vehicles are stored or primarily used; and that for the purchase or installation of refueling infrastructure or equipment, the infrastructure or equipment will be owned and operated by the grant recipient, and for the lease of refueling infrastructure or equipment or the procurement of refueling services, a third-party service provider engaged by the grant recipient will provide the infrastructure, equipment, or services.
- e. The bill states that the commission shall establish criteria for prioritizing projects eligible to receive grants under the program. The commission shall review and revise the criteria as appropriate.
- f. The bill states that commission shall develop a simple, standardized application package for grants under this subchapter that includes an application form, a brief description of the program, the projects that are eligible for available funding, the selection criteria and evaluation process, the required documentation, the name of a person or office to contact for more information, an example of the contract that an applicant will be required to execute before receiving a grant, any other information the commission considers useful to inform the applicant and expedite the application process. The bill also specifies the application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required. The bill states that the commission may allow an entity to seek funds for multiple

projects established by this chapter through a single application, provided that an applicant follows all requirements specified by this chapter and all criteria established by the commission for any specific project. The bill requires that the commission make the opening date, key requirements, and as much of the application form as the agency deems possible available no later than 30 days prior to the opening of the program. The bill states that all applications submitted under this chapter shall be considered on a competitive basis. Finally, the bill states that the commission may adopt guidelines to allow a political subdivision, regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

- g. The bill outlines the application review procedures by which the commission shall review and evaluate, make determinations, deny, and award grants under this chapter, including:
 - i. The commission shall review an application for a grant for a project authorized under this chapter. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.
 - ii. The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.
 - iii. The commission may deny an application for a grant that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.
 - iv. Subject to availability of funds, the commission shall award a grant under the program in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions compared with the volume of emissions reductions that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the Texas emissions reduction plan fund and reallocated for other projects under this chapter.
 - v. The commission shall provide for application submission and application status checks using procedures established by the commission, which may include application submission and application status checks to be made over the Internet.
 - vi. The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant under the program.
 - vii. The commission shall ensure payment for awards under the program is made not later than the 30th day after the date the request for reimbursement for an approved grant is approved by the commission.
- h. The bill creates general grant conditions and eligibility requirements for the administration of the program. The bill states a grant recipient under this chapter

is responsible for meeting all grant conditions, including reporting and monitoring as required by the commission through the grant contract.

- i. The bill states that a qualifying vehicle may be considered for a grant under the program if during the eligibility period established by the commission the person purchases, leases, or otherwise commercially finances a new on-road or non-road vehicle or, subject to subsection (c), a used alternative vehicle, so long as the vehicles replace a diesel-powered on-road or non-road vehicle of the same use, as opposed to only replacing a diesel-powered on-road vehicle of the same weight classification, and that they emit oxides of nitrogen at a rate that is at least 25 percent less than the rate at which the former engine in the vehicle or equipment being repowered under the program emits such pollutants. The bill states that a vehicle is not a qualifying vehicle under Chapter 392A if the vehicle is a neighborhood electric vehicle or has been used as a qualifying vehicle to qualify for a grant under this chapter for a previous reporting period or by another person, and or has qualified for a similar grant or tax credit in another jurisdiction to state that a qualifying vehicle may not have qualified for a similar grant in another jurisdiction if that grant is relied on for credit in the state implementation plan. Finally, the bill states that a used alternative fuel vehicle that is proposed to replace an on-road heavy-duty or medium-duty motor vehicle must be not more than six years older than the current model year at the time of the submission of the grant application.
- j. The bill transfers language regarding grant eligibility for qualifying vehicle replacement or repowering project from existing language in Sec. 392.005 of the Health and Safety Code, with the exception that the bill strikes a provision in Sec. 392.005(a) requiring that the commission must establish the criteria by rule, thereby removing that rulemaking authority.
- k. The bill strikes language currently found in Sec. 386.0515 of the Health and Safety Code and transfers it to the newly created Chapter 392A in the bill, with the exception that the bill strikes the language found in Sec. 386.0515(b), thereby removing the authority regarding specific eligibility requirements of the program.
- l. The bill states that subject to Section 392A.152(c), a recipient of a grant under the program shall use the grant to pay the incremental costs of any purchase, replacement, or repowering project for which the grant is made, which may include the initial cost of the alternative fuel or hybrid vehicle, and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.
- m. The bill specifies the totals by which funds initially allocated to the Texas clean fleet program from Section 386.252(a)(3), Health and Safety Code, shall be allocated to the program projects of the bill. Those totals are:
 - i. 35.5% for the natural gas vehicle grant project;
 - ii. 24% for the large fleet grant projects;
 - iii. 23.5% for the hydrogen infrastructure and vehicle grant projects; and
 - iv. 17% for the alternative fueling facilities grant projects.
- n. The bill states that subject to the limitations outlined in the subsection, money allocated under this section to a particular project may be used for another project in this section as determined by the commission, based on demand for grants for eligible projects after the commission solicits projects to which to award grants according to the initial allocation provisions of this section. If the commission determines there is not sufficient demand under the projects of this section, the commission may redirect funds to other TERP programs, as provided by Section 386.252(h) of the Health and Safety Code.
- o. The bill describes specific project provisions for the consolidated Texas clean fleet program, including:

- i. For natural gas vehicle grant projects involving the replacement of a motor vehicle with a natural gas vehicle or the repowering of a motor vehicle with a natural gas engine, that:
 1. As a condition of receiving a grant to which this section applies and in addition to the requirements of Section 392A.103(b), not less than 75 percent of the annual use of the qualifying natural gas vehicle, either mileage or fuel use as determined by the commission, must occur in the clean transportation zone.
 2. For purposes of Section 392A.105, the incremental costs of the replacement or repower of a motor vehicle for which a grant to which this section applies may include a portion of the initial cost of the natural gas vehicle or natural gas engine, including the cost of the natural gas fuel system and installation.
 3. The commission shall develop a grant schedule for grants to which this section applies that assigns a standardized grant in an amount up to 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering; is based on the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle and the usage of the natural gas vehicle, and may take into account the overall emissions reduction achieved by the natural gas vehicle.
 4. Not less than 60 percent of the total amount of grants to which this section applies that are awarded for the purchase and repowering of motor vehicles must be awarded for motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The minimum grant requirement under this subsection does not apply if the commission does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant to which this section applies.
 5. A person may not receive a grant to which this section applies that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under the program that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded.
 6. The commission shall reduce the amount of a grant to which this section applies 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 the program.
 7. The commission shall establish criteria for awarding grants to which this section applies to reimburse eligible costs, for the commission to compile and regularly update a listing of potentially eligible natural gas vehicles and natural gas engines that are certified to the appropriate current federal emissions standards as determined by the commission, for 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, for assigning a

standardized grant amount for each qualifying vehicle or engine repower for grants to which this section applies, and for requiring applicants for grants to which this section applies to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use.

- ii. For large fleet grant projects and an entity operating in this state that operates a fleet of at least 75 vehicles and places 10 or more qualifying vehicles in service for use entirely in this state during a calendar year, that:
 1. Notwithstanding Subsection (a)(2), an entity that submits a grant application for 10 or more qualifying vehicles is eligible to participate in the program with respect to a grant to which this section applies even if the commission denies approval for one or more of the vehicles during the application process.
 2. The amount the commission shall award for each vehicle being replaced or repowered is up to 90 percent, as determined by the commission, of the incremental cost for replacement or repowering of a heavy-duty vehicle. The commission may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.
- iii. For a grant under the program involving a hydrogen project described by Subsection (b), that:
 1. The commission shall prioritize the awarding of grants to which this section applies in the following order:
 - a. projects to replace on-road heavy-duty motor vehicles with newer on-road hydrogen vehicles;
 - b. projects to purchase, lease, or repower on-road heavy-duty motor vehicles with a powertrain that runs on or is powered by hydrogen;
 - c. projects to implement hydrogen refueling infrastructure that will be accessible and available to the public at times designated by the grant contract;
 - d. projects to replace non-road heavy-duty motor vehicles with newer non-road hydrogen vehicles; and
 - e. projects to purchase, lease, or repower non-road heavy-duty motor vehicles with a powertrain that runs on or is powered by hydrogen.
 2. Subject to Subsection (b), in awarding grants to which this section applies, the commission shall give preference to the most cost-effective projects that will result in the greatest reduction in emissions of oxides of nitrogen.
 3. The amount the commission shall award for each vehicle being replaced or repowered is up to 90 percent, as determined by the commission, of the incremental cost for replacement of a heavy-duty or light-duty vehicle. The commission may revise the standards for determining grant amounts as needed to reflect changes to federal emission standards and decisions on pollutants of concern.

4. In addition to the requirements of this chapter, the commission shall establish additional eligibility and prioritization criteria as needed to implement the program with respect to grants to which this section applies.
- iv. For alternative fueling facilities grant project grants issued under the program to provide fueling facilities for alternative fuel in the clean transportation zone and that do not apply to the use of grant money under the program that is used pursuant to Section 392A.052 for the purchase, lease, or installation of refueling infrastructure or equipment or the procurement of refueling services, that:
1. Under the program, the commission shall provide a grant to which this section applies for each eligible alternative fueling facility to offset the cost of those facilities.
 2. An entity that constructs or reconstructs an alternative fueling facility is eligible to participate in the program with respect to a grant to which this section applies.
 3. To ensure that alternative fuel vehicles have access to fuel and to build the foundation for a self-sustaining market for alternative fuels in Texas, the commission shall provide for strategically placed fueling facilities in the clean transportation zone to enable an alternative fuel vehicle to travel in those areas relying solely on the alternative fuel.
 4. The commission shall maintain a listing to be made available to the public online of all vehicle fueling facilities that have received funding through a grant to which this section applies, including location and hours of operation.
 5. An entity operating in this state that constructs or reconstructs a facility to dispense alternative fuels may apply for and receive a grant under the program with respect to a grant to which this section applies.
 6. In addition to the requirements of this chapter, the commission shall establish additional eligibility and prioritization criteria as needed to implement the program with respect to grants to which this section applies.
 7. The prioritization criteria established under Subsection (g) must provide that, for each grant round, the commission may not award a grant to an entity that does not agree to make the alternative fueling facility accessible and available to the public at times designated by the grant contract until each eligible entity that does agree to those terms has been awarded a grant.
 8. The commission may not award more than one grant to which this section applies for each facility.
 9. The commission may give preference to or otherwise limit grant selections to fueling facilities providing specific types of alternative fuels, fueling facilities in a specified area or location, and fueling facilities meeting other specified prioritization criteria established by the commission.
 10. For fueling facilities to provide natural gas, the commission shall give preference to facilities providing both liquefied natural gas and compressed natural gas at a single location, facilities located not more than one mile from an interstate highway system,

facilities located in the area in and between the Houston, San Antonio, and Dallas-Fort Worth areas, and facilities located in the area in and between the Corpus Christi, Laredo, and San Antonio areas.

11. A recipient of a grant to which this section applies shall use the grant only to pay the costs of the facility for which the grant is made. In addition to any other limitation provided by this chapter, the recipient may not use the grant to pay the recipient's expenses for the purchase of land or an interest in land, or expenses for equipment or facility improvements that are not directly related to the delivery, storage, compression, or dispensing of the alternative fuel at the facility.
 12. Each grant to which this section applies must be awarded using a contract that requires the recipient to meet operational, maintenance, and reporting requirements as specified by the commission.
 13. A grant to which this section applies that is awarded for a facility to provide an alternative fuel other than natural gas may not exceed 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission.
 14. A grant to which this section applies that is awarded for a facility to provide natural gas may not exceed \$400,000 for a compressed natural gas facility, \$400,000 for a liquefied natural gas facility, \$600,000 for a facility providing both liquefied and compressed natural gas.
 15. The requirements of Sections 392A.052 and 392A.103 do not apply to an applicant that is only seeking funding through a grant to which this section applies.
- p. The bill repeals the following sections of the Health and Safety Code:
- i. Section 386.0515;
 - ii. Subchapter G, Chapter 386;
 - iii. Section 382.252(g);
 - iv. Chapter 392;
 - v. Chapter 393;
 - vi. Chapter 394; and
 - vii. Chapter 395.