

**BILL ANALYSIS**

Senate Research Center

S.B. 1523  
By: Zaffirini  
Natural Resources  
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As Filed

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

The mercury emissions cap set by the United States Environmental Protection Agency (EPA) by a ruling on March 15, 2005, will not help Texas. The mercury emissions cap set for Texas is higher than the amount emitted in 2000 and 2001, and will not result in anything close to the 90 percent mercury reduction from all coal-burning power plants that would come from enforcing the Maximum Achievable Control Technology (MACT) requirement of the Clean Air Act. The new ruling allows utilities to buy their way out of mercury reduction through trading credits, a policy never before allowed for a hazardous toxic pollutant due to the risk of creating toxic hotspots.

Texas' coal-burning power plants are the worst in the nation for toxic mercury, with 9,815 pounds emitted in 2002. Texas coal plants release 11 percent of the total mercury pollution nationwide, and include other toxins, including arsenic, dioxin, lead, and cadmium. Mercury in the air has the potential to enter waterways where it is converted to methylmercury, thus contaminating fish and wildlife. Human exposure to these toxins typically occurs from eating contaminated fish. Children exposed to such toxins can develop permanent brain damage, learning disabilities, sensory impairment, and attention deficits. Adult reaction to such toxins increases cardiovascular risks and impairs the ability to concentrate and think clearly.

As proposed, S.B. 1523 prohibits the total annual emissions of mercury and mercury compounds of each electric generating facility from exceeding 10 percent of the facility's total emissions of mercury and mercury compounds as reported in 2002 and establishes penalties.

**RULEMAKING AUTHORITY**

Reference is made to rulemaking authority given to the Texas Commission on Environmental Quality (TCEQ) in SECTION 1 (Section 382.360, Health and Safety Code) of this bill. [Bill as drafted does not expressly grant rulemaking authority to TCEQ.]

**SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 382, Health and Safety Code, by adding Subchapter I, as follows:

**SUBCHAPTER I. EMISSIONS REDUCTIONS REQUIRED FOR  
ELECTRIC GENERATING FACILITIES**

Sec. 382.351. DEFINITIONS. Defines "annual emissions period" and "electric generating facility."

Sec. 382.352. AUTHORITY TO REDUCE AIR CONTAMINANT EMISSIONS. Provides that this subchapter does not limit the authority of the Texas Commission on Environmental Quality (TCEQ) to require reductions of emissions of any air contaminant from any electric generating facility or class of electric generating facilities.

[Bill as drafted does not contain Sections 382.353 through 382.356.]

Sec. 382.357. MERCURY EMISSIONS REDUCTIONS. (a) Prohibits the total annual emissions of mercury and mercury compounds from each electric generating facility, for each annual emissions period, from exceeding 10 percent of the facility's total emissions of mercury and mercury compounds during 2002, as reported to TCEQ.

(b) Authorizes TCEQ, for an electric generating facility that was not in operation for all or any part of 2002 or that was not operating at full capacity for a period during that year, to impose for the facility, a maximum allowable level of emissions of mercury and mercury compounds that TCEQ computes from convincing evidence and that corresponds to 10 percent of an emissions level TCEQ estimates the facility would have emitted had the facility operated at full capacity throughout that year.

[Bill as drafted does not contain Sections 382.358 and 382.359.]

Sec. 382.360. ENFORCEMENT. (a) Requires TCEQ to penalize an electric generating facility that emits, in an annual emissions period, a quantity of mercury or mercury compounds greater than that allowed for that period by Section 382.357 and TCEQ rules adopted under that section. Requires the commission to penalize the facility by assessing an administrative penalty, in an amount determined by TCEQ rules, for each unit weight of mercury or mercury compounds emissions by which the facility exceeded the emissions limitation and issuing an order reducing the quantity of mercury and mercury compounds that the facility may emit in the next annual emissions period by a quantity of emissions equal to the excessive emissions in the annual emissions period in which the facility emitted the excessive quantity of mercury or mercury compounds.

(b) [Bill as drafted does not contain Subsection (b).]

(c) Authorizes TCEQ, in addition to the penalties required by Subsection (a), to penalize an electric generating facility that emits in an annual emissions period a quantity of mercury or mercury compounds greater than that allowed by Section 382.357 and TCEQ rules adopted under that section by ordering the facility to cease operations or taking other enforcement action provided by TCEQ rules.

SECTION 2. Amends Section 39.264, Utilities Code, by amending Subsections (d), (e), (f), (l), and (r) and adding Subsection (t), as follows:

(d) Provides that an electric generating facility excluded under this section is subject to Subchapter I, Chapter 382, Health and Safety Code.

(e) Requires TCEQ to amend the permit for the emission of air contaminants to require as a permit condition that the facility achieve emissions reductions or trading emissions allowances as required by Subchapter I, Chapter 382, Health and Safety Code.

(f) Requires the rules adopted under this subsection to provide, by region, for the allocation of emissions allowances of sulphur dioxides and nitrogen oxides among electric generating facilities and for facilities to trade emissions allowances for those contaminants until those rules are superseded by Subchapter I, Chapter 382, Health and Safety Code, and the rules adopted under that subchapter.

(l) Prohibits a facility from trading an unused allowance under this section or Subchapter I, Chapter 382, Health and Safety Code, for a contaminant for use as a credit for another contaminant.

(r) Deletes existing text requiring an applicant for a permit under Subsection (c) to publish a notice of intent and requiring TCEQ to hold a public hearing and allow public comment and send a notice of a decision on the application.

(t) Provides that this subsection and Subsections (c), (g), (h), (i), (j), (n), (o), (p), and (q) expire May 1, 2007.

SECTION 3. (a) Requires TCEQ to adopt rules necessary to implement the changes in law made by this Act no later than March 1, 2006. Requires TCEQ, by rule, to provide for permits and permit amendments as necessary for electric generating facilities to meet the goals of and for

TCEQ to enforce Subchapter I, Chapter 382, Health and Safety Code, as added by this Act, and Section 39.264, Utilities Code, as amended by this Act.

(b) Provides that the first annual emissions period to which Subchapter I, Chapter 382, Health and Safety Code, as added by this Act, applies is the period from May 1, 2007, to April 30, 2008.

(c) Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2005.