

BILL ANALYSIS

Senate Research Center

S.B. 16
By: Averitt
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill furthers the goals of S.B. 12, 80th Legislature, Regular Session, 2007, by modifying and enhancing the Texas Emissions Reduction Program and the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

Other mechanisms in the bill designed to incentivize the adoption of innovative clean air technologies include a rebate program for plug-in hybrid passenger vehicles and support for electricity storage projects related to renewable energy.

As proposed, S.B. 16 provides incentives for new, point source-oriented air quality technologies, modifies and enhances existing state air quality programs, and establishes appliance standards and energy efficient building codes.

S.B. 16 requires the Office of the Comptroller of Public Accounts, the Texas Commission on Environmental Quality (TCEQ), the Public Utility Commission (PUC), and the Texas Railroad Commission (RRC) to collaborate to identify and financially encourage innovative emissions control-based clean air technologies that exceed current state and federal guidelines.

The bill also establishes the Energy Efficient Appliance Grant Program, which will incentivize the purchase of equipment and appliances that meet or exceed federal Energy Star standards, and it encourages the rest of the state to match the energy efficient building codes that certain Texas municipalities have already established.

S.B. 16 requires TCEQ, PUC, and RRC to jointly participate in the development of federal laws, rules, and requirements related to climate change.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Texas Commission on Environmental Quality in SECTION 2.06 (Section 391.003, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 10.01 (Sections 392.051, 392.052, 392.151, 392.152, 392.153, 392.159, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Natural Resources Conservation Commission in SECTION 4.09 (Sections 386.302 and 386.307, Health and Safety Code) and SECTION 11.01 (Section 382.501, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the State Energy Conservation Office (SECO) is rescinded in SECTION 7.08 (Section 388.003, Health and Safety Code) of this bill.

Rulemaking authority previously granted to SECO is modified in SECTION 7.03 (Section 388.003, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. ADVANCED CLEAN ENERGY PROJECTS

SECTION 1.01. Amends Section 382.003(1-a), Health and Safety Code, to redefine "advanced clean energy project."

SECTION 1.02. Amends Section 382.003, Health and Safety Code, by adding Subdivision (7-bb), to define "geologic storage."

SECTION 1.03. Amends Section 382.0567(b), Health and Safety Code, to prohibit the Texas Natural Resource Conservation Commission (TNRCC) from considering any technology or level of emission reduction to be achievable solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive as an advanced clean energy project or new technology project, as described by Section 391.002.

ARTICLE 2. NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM

SECTION 2.01. Amends Section 386.051(b), Health and Safety Code, to require TNRCC and the comptroller of public accounts (comptroller), under the plan, to provide grants or other funding for certain programs, including the new technology implementation grant program established under Chapter 391; the plug-in hybrid motor vehicle rebate program established under Subchapter G; and the energy-efficient appliance purchase incentive program established under Section 2305.080, Government Code.

SECTION 2.02. Amends Section 386.052(b), Health and Safety Code, to include among appropriate TNRCC objectives the advancing of new technologies that reduce oxides of nitrogen and other emissions from facilities and other stationary sources. Makes nonsubstantive changes.

SECTION 2.03. Amends Section 386.057(b), Health and Safety Code, to require that the biennial report published by TNRCC and the Texas Emissions Reduction Plan Advisory Board (advisory board) include certain information and information contained in reports received under certain sections, including Section 391.104. Makes a nonsubstantive change.

SECTION 2.04. Amends Section 386.251(c), Health and Safety Code, to include in the Texas emissions reduction plan fund (fund) grant money recaptured under Chapters 387 and 391.

SECTION 2.05. Amends Section 386.252(a), Health and Safety Code, to prohibit more than 10 percent of money in the fund for the diesel emissions reduction incentive program from being used for the new technology implementation program, of which a defined amount is authorized to be set aside for electricity storage projects related to renewable energy, and to authorize a specified percentage to be used for light-duty plug-in hybrid motor vehicle rebates. Makes nonsubstantive changes.

SECTION 2.06. Amends Subtitle C, Title 5, Health and Safety Code, by adding Chapter 391, as follows:

CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND STATIONARY SOURCES PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 391.001. DEFINITIONS. Defines "best available control techniques" or "BACT," "commission," "facility," "incremental cost," "new technology," and "stationary source."

Sec. 391.002. PROGRAM. (a) Requires the Texas Commission on Environmental Quality (TCEQ) to establish and administer a new technology implementation program to implement new technologies to reduce emissions from facilities and other stationary sources located within the state. Requires TCEQ, under the program, to provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions reductions.

(b) Authorizes certain projects to be considered for a grant under the program.

Sec. 391.003. GUIDELINES AND CRITERIA. (a) Requires TCEQ to adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) Requires that guidelines include protocols to calculate projected emissions reductions, project cost-effectiveness, and safeguards to ensure that funded projects generate emissions not otherwise required by state or federal law.

(c) Authorizes TCEQ to propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals.

(d) Authorizes TCEQ to adopt emergency rules under Section 2001.034 (Emergency Rulemaking), Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter because the legislature finds that the current state of air quality in the state jeopardizes the state's ability to meet federal air quality requirements.

(e) Provides that the rulemaking requirements of Chapter 2001, Government Code, except as provided by Subsection (d), do not apply to the adoption or revision of guidelines and criteria under this section.

Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS IN CERTAIN NONATTAINMENT AREAS. Requires that a project funded under this chapter comply with Sections 386.055 (Availability of Emissions Reduction Credits Generally) and 386.056 (Availability of Emissions Reductions in Certain Nonattainment Areas), as applicable.

[Reserves Sections 391.005-391.100 for expansion.]

SUBCHAPTER B. GRANT APPLICATIONS

Sec. 391.101. APPLICATION FOR GRANT. (a) Authorizes any person as defined by Section 382.003 that owns a facility located within the state to apply for a grant under the program established under Section 391.002. Authorizes TCEQ to adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

(b) Requires that an application for a grant under this chapter be made on a form provided by TCEQ and contain certain information required by TCEQ.

(c) Requires that an application for a grant under this chapter contain a plan for implementation of a program that will provide project information and education to the public in the areas subject to public notice under federal and state permitting requirements for the proposed project until completion of the permitting process. Requires that this plan include provision of a publicly accessible, informational website.

Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES. (a) Requires TCEQ to review an application for a grant for a project authorized under this chapter according to dates specified in a request for grant applications; to notify the applicant and provide an explanation of what is missing from the application if TCEQ determines it is incomplete; and evaluate the completed application according to the appropriate project criteria.

(b) Requires TCEQ, to the extent possible, to coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) Authorizes TCEQ to deny an application for a project that does not meet the applicable project criteria or that TCEQ determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.

(d) Requires TCEQ, subject to the availability of funds, to award a grant under this chapter in conjunction with the execution of a contract that obligates TCEQ to make the grant and the recipient to perform the actions described in the recipient's grant application. Requires that the contract, subject to Section 391.204, incorporate provisions for recapturing grant money for noncompliance with grant requirements. Requires that grant money recaptured under the contract provision be deposited in the fund and reallocated for other projects under this subchapter.

(e) Authorizes an applicant to seek reimbursement for qualifying equipment installed after the effective date of this program.

(f) Requires TCEQ to solicit review and comment from:

(1) the comptroller to assess the financial stability of the applicant, the economic benefit and job creation associated with the project, and any other information related to the duties of that office;

(2) the Public Utility Commission of Texas to assess the reliability of the proposed technology and the feasibility and cost-effectiveness of electric transmission associated with the project and any other information related to the duties of that agency; and

(3) the Railroad Commission of Texas to assess the availability and cost of the fuel involved with the project and any other information related to the duties of that agency.

(g) Authorizes TCEQ to solicit review and comment from other state agencies or other entities with subject matter expertise as applicable, in reviewing grant applications.

Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL REQUIRED.

(a) Requires that an application for a new technology implementation grant under this chapter show reasonable evidence that the proposed technology is capable of providing a significant reduction in emissions.

(b) Requires TCEQ to consider specifically, for each proposed technology implementation grant application, the projected potential for reduced emissions and the cost-effectiveness of the technology, the potential for the technology to contribute significantly to air quality goals, and the strength of the implementation plan.

Sec. 391.104. REPORTING REQUIREMENTS. Requires TCEQ, with the required participation of the state agencies involved in the review of applications under Section 391.102, to prepare an annual report that summarizes the applications received and grant awards made in the preceding year.

[Reserves Sections 391.105-391.200 expansion.]

SUBCHAPTER C. PROJECT REQUIREMENTS

Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) Requires TCEQ to establish criteria for setting priorities for projects eligible to receive grants under this chapter. Requires TCEQ to review and authorizes TCEQ to modify the criteria and priorities as appropriate.

(b) Requires that a proposed project meet the requirements of this section to be eligible for a grant under the program established under Section 391.002.

(c) Requires that each proposed project meet the cost-effectiveness requirements established by TCEQ.

(d) Requires that a new technology implementation project document, in a manner acceptable to TCEQ, a reduction of the baseline emissions adopted by TCEQ for the relevant facility or stationary source. Authorizes TCEQ, after studying available emissions reduction technologies, to adopt a minimum percentage reduction of emissions to be required by this subsection to improve the ability of the program to achieve its goals.

(e) Requires TCEQ, for purposes of this subchapter, if a baseline emissions standard does not exist for a facility, to establish an appropriate baseline emissions level for comparison purposes.

(f) Requires that water usage for proposed projects be consistent with the state water plan.

Sec. 391.202. CALCULATION OF COST-EFFECTIVENESS. Requires TCEQ to establish reasonable methodologies for evaluating project cost-effectiveness consistent with accepted methods.

Sec. 391.203. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. (a) Prohibits TCEQ from awarding a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) Requires TCEQ, in determining the amount of a grant under this subchapter, to reduce the incremental cost of a proposed project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Sec. 391.204. COST SHARING. (a) Requires TCEQ to require an applicant to bear at least 50 percent of the costs of implementing a project funded under this chapter.

(b) Prohibits TCEQ from requiring repayment of grant money, except that TCEQ is required to require provisions for recapturing grant money for noncompliance with grant requirements.

Sec. 391.205. PREFERENCES. (a) Requires TCEQ, in awarding grants under this chapter and except as provided by Subsection (c), to assign preference to certain projects.

(b) Requires that higher preference be given to projects that include more than one of the criteria described by Subsection (a).

(c) Authorizes preferences described by Subsection (a) to be assigned only if the cost-effectiveness and emission performance of the project is comparable to a project not claiming a preference described by Subsection (a).

[Reserves Sections 391.206-391.300 for expansion.]

SUBCHAPTER D. FUNDING; EXPIRATION

Sec. 391.301. RESTRICTION ON USE OF GRANT. Requires a recipient of a grant under this chapter to use the grant to pay the incremental costs of the purchase and installation of the project for which the grant is made, which may include reasonable and necessary expenses for the labor needed to install emissions-reducing equipment. Prohibits the recipient from using the grant for the costs of operation and maintenance of the emissions-reducing equipment.

Sec. 391.302. TIME OF USE OF GRANT FUNDING. Authorizes funds appropriated for grants to be made by TCEQ under this chapter for a fiscal year to be distributed in subsequent fiscal years if the grant has been awarded and treated as a binding encumbrance by TCEQ before the end of the appropriation year of the funds appropriated for grant purposes. Provides that distribution of the grant funds is subject to Section 403.071 (Claims and Available Money; Offense), Government Code.

Sec. 391.303. EXPIRATION. Provides that this chapter expires August 31, 2019.

SECTION 2.07. Amends Section 403.071(b), Government Code, to authorize a claim to be presented to the comptroller not later than four years after the end of the fiscal year for which the appropriation from the claim is to be paid was made if the appropriation relates to grants awarded under Chapter 391, Health and Safety Code.

ARTICLE 3. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

SECTION 3.01. Amends Section 382.210(d), Health and Safety Code, to require a participating county to ensure that funds are transferred to a participating dealer under this section not later than the 14th business day, rather than five business days, after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

ARTICLE 4. TEXAS EMISSIONS REDUCTION PLAN

SECTION 4.01. Amends Section 501.138(b-1), Transportation Code, to require that fees collected under Subsection (b) (relating to the fees the county assessor-collector is required to send) be sent to the comptroller be deposited before September 1, 2008, to the credit of the Texas emissions reduction plan fund and on or after September 1, 2008, to the credit of the Texas Mobility Fund, except that \$5 of each fee imposed under Subsection (a)(1) (relating to amount if the applicant's residence is a county within a nonattainment area) and deposited on or after September 1, 2008, and before August 31, 2019, rather than September 1, 2015, is required to be deposited to the Texas emissions reduction plan fund.

SECTION 4.02. Amends Section 501.138(b), Transportation Code, to provide that Subsections (b-3) and (b-2) expire August 31, 2019, rather than September 1, 2015.

SECTION 4.03. Amends Section 151.0515(d), Tax Code, to provide that this section expires August 31, 2019, rather than August 31, 2013.

SECTION 4.04. Amends Section 152.0215(c), Tax Code, to provide that this section expires August 31, 2019, rather than August 31, 2013.

SECTION 4.05. Amends Section 390.006, Health and Safety Code, to provide that this chapter expires August 31, 2019, rather than August 31, 2013.

SECTION 4.06. Amends Section 386.001, Health and Safety Code, by adding Subdivision (10-a), to define "stationary engine."

SECTION 4.07. Amends Section 386.002, Health and Safety Code, to provide that this chapter expires August 31, 2019, rather than August 31, 2013.

SECTION 4.08. Amends Section 386.104(c), Health and Safety Code, to provide that for a proposed project involving a mobile generator used for natural gas recovery purposes that is operated in a nonattainment area or affected county, the 75 percent of hours of operation in a nonattainment area or affected county projected for the project need not occur in the five years immediately following the award of a grant.

SECTION 4.09. Amends Chapter 386, Health and Safety Code, by adding Subchapter G, as follows:

SUBCHAPTER G. PLUG-IN HYBRID MOTOR VEHICLE REBATE PROGRAM

Sec. 386.301. DEFINITIONS. Defines "light-duty motor vehicle," "motor vehicle," and "plug-in hybrid motor vehicle" (hybrid).

Sec. 386.302. COMMISSION DUTIES REGARDING PLUG-IN HYBRID MOTOR VEHICLE PURCHASE PROGRAM. (a) Requires TNRCC to develop a rebate program for new hybrids and to adopt rules necessary to implement the program.

(b) Requires that the program authorize statewide rebates for the purchase of new hybrids for a purchaser who agrees to register and operate the vehicle in this state for not less than 75 percent of the vehicle's annual mileage.

(c) Authorizes only one rebate to be provided for each new hybrid.

Sec. 386.303. PLUG-IN HYBRID MOTOR VEHICLE REBATE. Provides that a new hybrid is eligible for a \$4,000 rebate.

Sec. 386.304. MODIFICATION OF INCENTIVE. Authorizes TNRCC, after evaluating new technologies, to change the rebate established by Section 386.303 to improve the ability of the program to achieve its goals, including a phase out of the rebate based on the level of market saturation of each vehicle, consistent with federal regulations governing the phase out, if any, of incentives for hybrid vehicles.

Sec. 386.305. MANUFACTURER'S REPORT. Requires a manufacturer of motor vehicles, not later than July 1 of each year and preceding the beginning of the vehicle model year, to provide to TNRCC a list of the new vehicle models that the manufacturer intends to sell in this state during that model year that meet the definition of hybrids under Section 386.301. Authorizes the manufacturer to supplement the list provided to TNRCC under this section as necessary to include additional new vehicle models the manufacturer intends to sell in this state during the model year.

Sec. 386.306. LIST OF ELIGIBLE MOTOR VEHICLES. (a) Requires TNRCC, on August 1 of each year to publish, and to publish and supplement as necessary to include any additional vehicles, a list of the new model motor vehicles as listed for TNRCC under Section 386.305.

(b) Requires TNRCC to distribute the list of eligible motor vehicles to all new motor vehicle dealers in this state.

Sec. 386.307. COMMISSION TO ACCOUNT FOR MOTOR VEHICLE REBATES. (a) Requires TNRCC by rule to develop a method to administer and account for the motor vehicle rebates authorized by this subchapter and to pay rebates to the purchaser of a new motor vehicle on application of the purchaser as provided by this subchapter.

(b) Requires TNRCC to develop and publish forms and instructions for the purchaser of a new motor vehicle to use in applying to TNRCC for a rebate under this subchapter, and to make the forms available to new motor vehicle dealers, who are required to make the forms available to their prospective purchasers.

(c) Requires TNRCC, in addition to other forms developed and published under this section, to develop and publish a verification form by which, with information provided by the dealer, TNRCC can verify the sale of a vehicle covered by this subchapter. Requires that the verification form include at least the name of the purchaser, the vehicle identification number (VIN) of the vehicle involved, the date of the purchase, and the name of the new motor vehicle dealer involved in the transaction. Requires the dealer, at the time of sale of a vehicle eligible for a rebate under this subchapter, to complete the verification form supplied to the dealer by TNRCC. Requires the purchaser to include the completed verification form as part of the purchaser's application for a rebate. Requires the dealer to maintain a copy of the completed verification form for at least two years from the date of the transaction.

Sec. 386.308. SUSPENSION OF REBATES. (a) Requires TNRCC to track motor vehicle rebate applications and payments.

(b) Authorizes TNRCC, if the balance of funds available for motor vehicle rebates falls below 15 percent of the total allocated for the rebates during a fiscal year, to suspend the rebates until the date TNRCC can certify that the balance available in the fund is an amount adequate to resume the rebates or the beginning of the next fiscal year, whichever is earlier. Requires TNRCC to immediately notify all new motor vehicle dealers if the rebates are suspended.

(c) Requires TNRCC to establish a toll-free telephone number to motor vehicle dealers to call to verify that rebates are available and authorizes TNRCC to provide for issuing verification numbers over the telephone.

(d) Provides that reliance by a dealer on information provided by TNRCC is a complete defense to an action involving or based on eligibility of a vehicle or availability of vehicles eligible for a rebate.

ARTICLE 5. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

SECTION 5.01. Amends Section 386.252 (a), Health and Safety Code, as follows:

(2) Decreases from 9.5 to nine the percentage of the money in the fund to be used for the new technology research and development program (program). Provides that not less than 20 percent is to be allocated each year to support the energy efficient appliance purchase incentive program created under Subchapter E (Competitive Grant Programs), Chapter 2305 (Restitution for Oil Overcharges), Government Code, rather than research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston, of which certain amounts are contracted to the Energy Systems Laboratory and the balance is to be allocated each year to TCEQ to be used to implement and administer the program, rather than allocated each year to a nonprofit organization or an institution of higher education based in Houston to be used to implement and administer the program under a contract with TCEQ for certain purposes.

(3) Increases from three percent to 3.5 percent of the money in the fund, of which two percent is allocated to TCEQ and 1.5 percent is allocated to the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System (laboratory), for administrative costs incurred by TCEQ and the laboratory.

SECTION 5.02. Amends Section 387.003, Health and Safety Code, as follows:

Sec. 387.003. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM. (a) Requires TCEQ to establish and administer a program as provided by this chapter and authorizes TCEQ to contract with one or more well-qualified nonprofit organizations or institutions of higher education for administration of this program. Deletes existing text requiring a nonprofit organization or institution of higher education described by Section 386.252 (a)(2) (relating to allocation of money in the fund), under a contract with TCEQ as described by that section, to establish and administer a program as provided by this chapter and authorizing TCEQ to contract with more than one entity and to limit the amount of each grant accordingly.

(b) Requires TCEQ, under the program, to provide grants to be used to support development of emissions-reducing technologies that are authorized to be used for projects eligible for awards under Chapters 386 and 391 and other new technologies that show promise for commercialization. Provides that the primary objective of this chapter is to promote the development of commercialization technologies to reduce emissions of oxides of nitrogen in Texas nonattainment areas, rather than that will support projects that are authorized to be funded under

Chapter 386 and this chapter, including advanced technologies such as fuel cells, catalysts, and fuel additives.

(c) Provides that if TCEQ contracts with one or more nonprofit organizations to administer a program under this chapter, the board of directors of each organization is prohibited from having more than 11 members or from including more than four county judges, and is required to include two persons of relevant scientific expertise to be nominated by TCEQ. Deletes existing text prohibiting the board of directors of a nonprofit organization under contract with TCEQ to establish and administer a program as provided by this chapter from having more than four county judges selected from counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas.

(d) Deletes existing text authorizing TCEQ to enter into a grant contract with an institution described by Section 386.252 (a)(2) for the institution to operate a testing facility which would be available for demonstration of eligible projects receiving grants under this chapter. Redesignates existing Subsection (e) as Subsection (d). Requires TCEQ to provide oversight as appropriate for grants provided to a nonprofit organization or an institution of higher education under this program.

(e) Redesignates existing Subsection (f) as Subsection (e). Makes a conforming change.

(f) Redesignates existing Subsection (g) as Subsection (f). Requires TCEQ to limit the use of grants for administrative costs incurred by a nonprofit organization or an institution of higher education to an amount not to exceed 10 percent of the total program funding, rather than the funding provided to the nonprofit organization under this program.

(g) Redesignates existing Subsection (h) as Subsection (g) and makes a nonsubstantive change.

SECTION 5.03. Amends Section 387.004, Health and Safety Code, to make conforming changes.

SECTION 5.04. Amends Section 387.005(a), (b), and (f), Health and Safety Code, as follows:

(a) Requires that grants awarded under this chapter be directed toward a balanced mix of:

(1) certain technologies that reduce emissions from the existing stock of engines and vehicles targeted by the Texas emissions reduction plan, provided that the technologies do not significantly reduce the fuel economy of those engines and vehicles;

(2) advanced technologies for new engines and vehicles that produce very-low or zero emissions of oxides of nitrogen, including stationary and mobile fuel cells, rather than the establishment of a testing facility to evaluate retrofits, add-ons, advanced technologies, and fuels, or a combination thereof, to determine their effectiveness in producing emissions reductions, with emphasis on the reduction of oxides and nitrogen;

(3) advanced technologies for reducing oxides of nitrogen and other emissions from stationary sources; and

(4) field validation of innovative technologies for reducing emissions of oxides that require demonstration of viability for full commercial acceptance.

(b) Makes conforming changes.

(f) Makes conforming changes.

SECTION 5.05. Amends Section 387.006, Health and Safety Code, as follows:

Sec. 387.006. EVIDENCE OF COMMERCIALIZATION POTENTIAL REQUIRED.

(a) Requires that an application for a technology grant under this chapter show reasonable evidence that the proposed technology project has a substantial commercialization plan and organization and the technology proposed for funding is likely to be offered for commercial sale in this state as soon as practicable after the date of the application for funding. Deletes existing text requiring that an application for a technology grant under this chapter show clear and compelling evidence that the proposed technology project has a strong commercialization plan and organization and the technology proposed for funding is likely to be offered for commercial sale in this state as soon as practicable but no later than five years after the date of the application for funding and once commercialized, the proposed technology will offer opportunities for projects eligible for funding under Chapter 386.

(b) Requires TCEQ to consider certain information for each proposed technology project application.

ARTICLE 6. ENERGY EFFICIENT APPLIANCE PURCHASE INCENTIVE PROGRAM

SECTION 6.01. Amends Subchapter E, Chapter 2305, Government Code, by adding Section 2305.080, as follows:

Sec. 2305.080. ENERGY EFFICIENT APPLIANCE PURCHASE INCENTIVE PROGRAM. (a) Provides that the state energy conservation office of the comptroller's office (energy office) is the supervising state agency for the energy-efficient appliance purchase incentive program.

(b) Authorizes the energy office to accept gifts, grants, or other assistance for the purpose of implementation of this section.

(c) Requires the energy office to use funds provided for the program to provide financial incentives designed to assist persons in the purchase of equipment and appliances that meet or exceed the federal Energy Star standards designated by the United States Environmental Protection Agency (EPA) and the United States Department of Energy.

(d) Requires that programs approved under this section include the retirement of materials and appliances that contribute to energy consumption or peak energy demand to ensure the reduction of energy consumption, energy demand, or peak loads, and associated emissions of air contaminants.

(e) Authorizes appliances funded through the program under this section to include air conditioning units and refrigeration units.

ARTICLE 7. BUILDING ENERGY CODES

SECTION 7.01. Amends Section 388.003(a), Health and Safety Code, to provide that the energy efficiency provisions, rather than chapter, of the International Residential Code (IRC), as it existed on May 1, 2009, rather than May 1, 2001, is adopted as the energy code in this state for single-family residential construction to achieve energy conservation in single-family residential construction.

SECTION 7.02. Amends Section 388.003(b), Health and Safety Code, to provide that the International Energy Conservation Code (IECC) as it existed on May 1, 2009, rather than May 1, 2001, is adopted as the energy code for use in this state for all other residential, commercial, and industrial construction.

SECTION 7.03. Amends Section 388.003(b), Health and Safety Code, as added by Section 3.01, Chapter 262 (S.B. 12), Acts of the 80th Legislature, Regular Session, 2007, as follows:

(b-1) Provides that if the energy office determines that the latest published, rather than the latest published edition of, the IRC energy efficiency provisions or the latest published edition of the IECC will result in better residential or commercial sector energy efficiency and air quality impact, on average, than previously adopted editions, the energy office is authorized by rule to adopt the latest edition.

SECTION 7.04. Amends Section 388.003(c), Health and Safety Code, to require a municipality to establish procedures to ensure that code-certified inspectors or approved energy efficiency program verifiers are required to perform inspections and enforce the code in the inspectors' jurisdictions.

SECTION 7.05. Amends Section 388.003(d), Health and Safety Code, to authorize a municipality or county to establish procedures to adopt local amendments to the IECC and the energy efficiency provisions, rather than chapter, of the IRC.

SECTION 7.06. Amends Section 388.003(e), Health and Safety Code, to prohibit local amendments from resulting in less stringent overall energy efficiency requirements in nonattainment areas and in affected counties than the energy efficient chapter of the IRC or IECC. Deletes existing text authorizing the laboratory, for the purpose of establishing uniform requirements throughout a region, and on request of a council of governments, a county, or a municipality, to recommend a climatically appropriate modification or a climate zone designation for a county or group of counties that is different from the climate zone designation in the unamended code.

SECTION 7.07. Amends Section 388.003(f), Health and Safety Code, to require each municipality, and each county that has established procedures under Subsection (d), to periodically review and consider revisions made by the IECC and the energy efficiency chapter of the IRC adopted after May 1, 2009, rather than May 1, 2001.

SECTION 7.08. (1) Repealer: Section 388.003(b-1) (relating to the authorization of the energy office by rule to adopt the latest published editions of IRC or IECC into the energy code), as added by Section 11, Chapter 939 (H.B. 3693), Acts of the 80th Legislature, Regular Session, 2007.

(2) Repealer: Section 388.003(b-2) (relating to the requirement of the energy office by rule to establish a procedure for certain persons who have an interest in the adoption of energy codes under Subsection (b-1) to have an opportunity to comment on the codes under consideration), as added by Section 3.01, Chapter 262 (S.B. 12), Acts of the 80th Legislature, Regular Session, 2007.

ARTICLE 8. IDLING OF MOTOR VEHICLES

SECTION 8.01. Amends Section 382.0191, Health and Safety Code, by deleting Subsection (d), which provides that this section expires September 1, 2009.

ARTICLE 9. EXEMPTION OF THE WEIGHT OF CERTAIN IDLE REDUCTION SYSTEMS FOR COMMERCIAL VEHICLES FROM MAXIMUM WEIGHT RESTRICTIONS

SECTION 9.01. Amends Section 621.001, Transportation Code, to define "idle reduction system" and make nonsubstantive changes.

SECTION. 9.02. Amends Section 621.101, Transportation Code, by adding Subsection (d), as follows:

(d) Authorizes the maximum gross vehicle weight limit, bridge formula limit, and axle weight limit for any vehicle or combination of vehicles equipped with an idle reduction system, notwithstanding any provision of this section or any section to the contrary, to be increased by a quantity necessary to compensate for the additional weight of the idle reduction system as provided for in 23 U.S.C. Section 127. Prohibits the additional weight increase allowed by this subsection from being greater than 400 pounds. Requires

the vehicle operator, on request by an appropriate law enforcement officer, to provide proof that the idle reduction technology is fully functional at all times and that the gross weight increase is not used for any purpose other than for the use of an idle reduction system.

ARTICLE 10. APPLIANCE EFFICIENCY STANDARDS

SECTION 10.01. Amends Subtitle C, Title 5, Health and Safety Code, by adding Chapter 392, as follows:

CHAPTER 392. APPLIANCE EFFICIENCY STANDARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 392.001. DEFINITIONS. Defines "bottle-type water dispenser," "commercial hot food holding cabinet," "compact audio product," "digital versatile disc" or "DVD," "DVD player," "DVD recorder," "Energy Star Program," "portable electric spa," "residential pool pump," and "water dispenser."

Sec. 392.002. APPLICABILITY; EXEMPTIONS. (a) Provides that this chapter applies to certain new products sold, offered for sale, or installed in this state.

(b) Exempts certain products from application of this chapter.

[Reserves Sections 392.003-392.050 for expansion.]

SUBCHAPTER B. EFFICIENCY STANDARDS

Sec. 392.051. MINIMUM EFFICIENCY STANDARDS FOR CERTAIN APPLIANCES. (a) Requires the comptroller, in consultation with the energy office, not later than September 1, 2010, to adopt rules establishing minimum efficiency standards for each type of new product described by Section 392.002(a).

(b) Provides that if EPA or the United States Department of Energy adopt an Energy Star rating for any appliances covered by this chapter, the standard contained in this chapter is preempted by federal requirements.

Sec. 392.052. NEW OR INCREASED EFFICIENCY STANDARDS. (a) Authorizes the comptroller to adopt rules to establish increased efficiency standards for a product listed in Section 392.002(a) or to establish standards for a product not listed in that subsection.

(b) Requires the comptroller, in consultation with the energy office, to prescribe new or increased efficiency standards if the comptroller determines that the standards would serve to promote energy conservation in this state and be cost-effective for consumers who purchase and use the new product.

Sec. 392.053. EFFECTIVE DATE OF STANDARDS. Provides that a standard established under this subchapter takes effect on the first anniversary of the date the rule establishing the standard is adopted.

Sec. 392.054. BOTTLE-TYPE WATER DISPENSERS. Prohibits a bottle-type water dispenser designed for dispensing both hot and cold water from having standby energy consumption greater than 1.2 kilowatt-hours per day, as measured in accordance with the test criteria contained in version 1 of the "Energy Star Program Requirements for Bottled Water Coolers," except that Section D, "Timer Usage," of those test criteria is prohibited from being used to test units with an integral, automatic timer.

Sec. 392.055. COMMERCIAL HOT FOOD HOLDING CABINETS. (a) Requires that a commercial hot food holding cabinet have a maximum idle energy rate of not greater than 40 watts per cubic foot of interior volume, as determined by the "idle energy rate-

dry test" in ASTM F2140-01, "Standard Test Method for Performance of Hot Food Holding Cabinets," copyright 2007 ASTM International.

(b) Requires that interior volume be measured in accordance with the method shown in the "Energy Star Program Requirements for Commercial Hot Food Holding Cabinets" as in effect on August 15, 2003.

Sec. 392.056. **COMPACT AUDIO PRODUCTS.** Prohibits a compact audio product from using more than two watts in a standby-passive mode for a product without a permanently illuminated clock display and four watts in standby-passive mode for a product with a permanently illuminated clock display, as measured in accordance with International Electrotechnical Commission (IEC) test method 62087:2002-2003(E), "Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment."

Sec. 392.057. **DVD PLAYERS OR RECORDERS.** Prohibits a DVD player or recorder from using more than three watts in stand-by passive mode, as measured in accordance with the IEC test method 62087:2002-2003(E), "Methods of Measurement for the Power Consumption of Audio, Video, and Related Equipment."

Sec. 392.058. **PORTABLE ELECTRIC SPAS.** Prohibits a portable electric spa from having a standby power greater than 5(v) watts where v equals the total volume in gallons. Requires that standby power be measured in accordance with the test method for portable electric spas contained in Section 1604, Title 20, California Code of Regulations, as of December 2006.

Sec. 392.059. **RESIDENTIAL POOL PUMP MOTORS.** (a) Prohibits a residential pool pump motor manufactured on or after January 1, 2006, from being a split-phase or capacitor start-induction run type motor.

(b) Requires that a residential pool pump motor with a pool pump motor capacity of one horsepower or more that is manufactured on or after January 1, 2008, and a pool pump motor that is manufactured on or after January 1, 2010, and installed in existing residential pool pumps as a replacement residential pool pump motor, be capable of operating at two or more speeds with a low speed having a rotation rate that is not more than one-half of the motor's maximum rotation rate. Requires that the pump motor be operated with a pup control that has the capability of operating the pump at a minimum of two speeds.

(c) Requires that a pool pump motor control manufactured on or after January 1, 2008, that is sold for use with a pool pump capable of operating at two or more speeds be able to operate the pool pump at a minimum of two speeds. Provides that the control's default circulation speed setting may be no more than one-half of the motor's maximum rotation rate and any high-speed override capability is required to be for a temporary period not to exceed one 24-hour cycle without resetting to default settings.

Sec. 392.060. **TRACKING, REPORTING, AND CLAIMING EMISSION REDUCTION CREDITS ASSOCIATED WITH ENERGY EFFICIENCY.** Requires TCEQ to work with the laboratory to ensure that the state receives full credit in the state implementation plan for air emission reductions achieved through energy efficiency.

[Reserves Sections 392.061-392.100 for expansion.]

SUBCHAPTER C. IMPLEMENTATION AND MODIFICATION OF EFFICIENCY STANDARDS

Sec. 392.101. **PRODUCT COMPLIANCE.** (a) Prohibits a new product described by Section 392.002(a) from being sold or offered for sale in this state unless the efficiency of the new product meets or exceeds the applicable efficiency standards prescribed by the rules adopted under Subchapter B.

(b) Prohibits a product, on or after the first anniversary of the date for the sale or offering for sale of a new product subject to an efficiency standard adopted under this chapter, from being installed for compensation in this state unless the efficiency of the product meets or exceeds the applicable efficiency standards prescribed by the rules adopted under Subchapter B.

Sec. 392.102. APPLICATION FOR WAIVER. Authorizes the comptroller, for purposes of this chapter, to apply for a waiver of federal preemption in accordance with federal procedures under 42 U.S.C. Section 6297(d) to authorize state efficiency standards for a product regulated by the federal government.

[Reserves Sections 392.103-392.150 for expansion.]

SUBCHAPTER D. TESTING, CERTIFICATION, LABELING, AND ENFORCEMENT

Sec. 392.151. PRODUCT TESTING. (a) Requires the manufacturer of a new product subject to an efficiency standard adopted under this chapter to test samples of the product in accordance with the test procedures adopted under this chapter.

(b) Requires the comptroller, in consultation with the energy office, by rule to adopt test procedures for determining a product's energy efficiency if Subchapter B does not provide for the procedures and to adopt test methods approved by the United States Department of Energy or, in the absence of those test methods, other appropriate nationally recognized test methods.

(c) Authorizes the comptroller to adopt revised test procedures when new versions of test procedures become available.

Sec. 392.152. PRODUCT CERTIFICATION. (a) Requires the manufacturer of a new product subject to an efficiency standard adopted under this chapter, except as provided by Subsection (c), to certify to the comptroller that the product is in compliance with that standard according to test results.

(b) Requires the comptroller to adopt rules governing the certification of products under this section and to coordinate certification by this state with the certification programs of other states and federal agencies with similar standards.

(c) Provides that Subsection (a) does not apply to a manufacturer of single-voltage external AC to DC power supplies, walk-in refrigerators, or walk-in freezers.

Sec. 392.153. PRODUCT LABELING. (a) Requires the manufacturer of a new product subject to an efficiency standard adopted under this chapter to identify each product offered for sale or installation in this state as being in compliance with this chapter by means of a mark, label, or tag on the product and packaging at the time of sale or installation.

(b) Requires the comptroller to adopt rules governing the identification of products and packaging under this section. Requires that the rules to the greatest practical extent be coordinated with the labeling programs of other states and federal agencies with equivalent efficiency standards. Requires the comptroller to allow the use of existing marks, labels, or tags that connote compliance with the energy efficiency requirements of this chapter.

Sec. 392.154. COMPTROLLER TESTING FOR EFFICIENCY STANDARDS COMPLIANCE. (a) Authorizes the comptroller to test products subject to an efficiency standard adopted under this chapter for compliance with the applicable efficiency standards. Requires the comptroller, if the product tested is in noncompliance with the standards, to impose against the manufacturer of the product an assessment in an amount sufficient to recover the costs of purchasing and testing the product.

(b) Requires the comptroller to make information available to the public on any product found under this section not to be in compliance with the standards.

Sec. 392.155. INSPECTIONS. Authorizes the comptroller to have periodic inspections conducted of a distributor or retailer of new products covered by Section 392.002 subject to an efficiency standard adopted under this chapter to determine compliance with this chapter. Requires the inspections to be conducted at reasonable and convenient hours and that notice be given before an inspection is authorized to be conducted.

Sec. 392.156. COMPLAINTS. Requires the comptroller to investigate a complaint received concerning a violation of this chapter and to report the results of the investigation to the attorney general.

Sec. 392.157. ATTORNEY GENERAL ENFORCEMENT. Authorizes the attorney general to institute proceedings to enforce this chapter.

Sec. 392.158. VIOLATIONS AND PENALTIES. (a) Requires the comptroller to issue a warning to a person for the person's first violation of this chapter.

(b) Provides that a person's second and subsequent violations are subject to a civil penalty of not more than \$250.

(c) Provides that each violation constitutes a separate violation, and each day that a violation continues constitutes a separate violation.

(d) Provides that a penalty assessed under this section is in addition to costs assessed under Section 392.154.

Sec. 392.159. RULES FOR IMPLEMENTATION AND ENFORCEMENT. Authorizes the comptroller to adopt additional rules necessary to ensure the proper implementation and enforcement of this chapter.

SECTION 10.02. (a) Makes application of the efficiency standards prescribed by rules adopted under Subchapter B, Chapter 392, Health and Safety Code, as added by this article, prospective to January 1, 2011.

(b) Authorizes a new residential pool pump that does not meet the efficiency standards contained in Section 392.059, Health and Safety Code, as added by this article, notwithstanding Subsection (a) of this section, to be sold through December 31, 2011.

ARTICLE 11. GREENHOUSE GAS REGISTRY

SECTION 11.01. Amends Chapter 382, Health and Safety Code, by adding Subchapter J, as follows:

SUBCHAPTER J. GREENHOUSE GAS REGISTRY

Sec. 382.501. GREENHOUSE GAS REGISTRY. (a) Requires TNRCC along with the Railroad Commission of Texas and the Public Utility Commission of Texas to jointly participate in the federal government process for developing federal greenhouse gas reporting and registry requirements.

(b) Requires TNRCC to adopt rules to comply with any federal greenhouse gas reporting requirements adopted by the federal government for private and public facilities eligible to participate in the federal greenhouse gas registry. Requires TNRCC, in adopting the rules, to adopt and incorporate by reference rules implementing the federal reporting requirements and the federal registry.

ARTICLE 12. PERMITTING

SECTION 12.01. Amends Section 382.0518, Health and Safety Code, by adding Subsection (c-1), to require TNRCC, in considering the issuance of a permit for a new electric generating facility, to analyze and consider certain information.

SECTION 12.02. Amends Sections 382.055(a) and (d), Health and Safety Code, as follows:

(a) Provides that a preconstruction permit issued or renewed by TNRCC is subject to review to determine whether the authority to operate should be renewed according to a certain schedule, that a preconstruction permit issued before December 1, 1991, is subject to review not later than 10 years after the date of the last renewal before January 1, 2010, rather than 15 years after the date of issuance.

(d) Requires TNRCC, in determining whether and under which conditions a preconstruction permit should be renewed, to consider, at a minimum, certain information including whether construction of the facility has been completed, whether the facility has been commercially operated, and whether the facility has ceased operation for the preceding five years or more. Makes nonsubstantive changes.

ARTICLE 13. EFFECTIVE DATE

SECTION 13.01. Effective date: September 1, 2009.