

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
**AGENDA ITEM REQUEST**  
**for Proposed Rulemaking**

**AGENDA REQUESTED: October 18, 2011**

**DATE OF REQUEST: September 29, 2011**

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2141**

**CAPTION: Docket No. 2011-1221-RUL.** Consideration for publication of, and hearing on, a proposed new Division 6, Alternative Fueling Facilities Program, Sections 114.660 - 114.662 of 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, and corresponding revisions to the state implementation plan.

The proposed rulemaking would implement part of Senate Bill 385, from the 82nd Legislature, 2011, Regular Session, relating to establishing the criteria for prioritizing facilities to receive grants under the Alternative Fueling Facilities Program. Facilities eligible to receive grants under the program include a facility to store, compress, or dispense alternative fuels in a nonattainment area. Under the program, alternative fuels are defined as a fuel, other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 80% methanol by volume. (Steve Dayton, Betsy Peticolas) (Rule Project No. 2011-052-114-EN)

Susana M. Hildebrand, P.E.  
**Chief Engineer**

David Brymer  
**Division Director**

Bruce McAnally  
**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

Date: September 29, 2011

**To:** Commissioners

**Thru:** Bridget Bohac, Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Susana M. Hildebrand, P.E., Chief Engineer

**Docket No.:** 2011-1221-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 114, Control of Air Pollution from Motor Vehicles  
SB 385: Alternative Fueling Facilities Program  
Rule Project No. 2011-052-114-EN

### **Background and reason(s) for the rulemaking:**

Senate Bill (SB) 385, 82nd Legislature, 2011, Regular Session, by Senators Williams and Fraser, creates a new Texas Health and Safety Code (THSC), Chapter 393. This new chapter establishes the Alternative Fueling Facilities Program (AFFP) to be funded from the Texas Emissions Reduction Plan (TERP) Fund and administered by the Texas Commission on Environmental Quality (commission). The commission is to establish by rule the criteria for prioritizing facilities eligible to receive grants under the AFFP. Facilities eligible to receive grants under the program include a facility to store, compress, or dispense alternative fuels in a nonattainment area. Under the program, alternative fuels are defined as a fuel, other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 80% methanol by volume. The rules are to be adopted as soon as practicable after September 1, 2011, the effective date of SB 385. This proposed rulemaking is to comply with that requirement.

It should be noted that SB 20, 82nd Legislature, 2011, Regular Session, by Senators Williams and West, also established the AFFP under a different chapter number in the THSC. However, because SB 385 was enacted last, it is the operative legislation for this rulemaking.

### **Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:** Under THSC, §393.004(a), the commission is to adopt rules to establish the criteria for prioritizing facilities eligible to receive a grant. The proposed rules outline criteria that may be considered by the executive director in establishing the priorities for each application period.

**B.) Scope required by federal regulations or state statutes:** The proposed rules are required by THSC, Chapter 393, as added by SB 385.

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**C.) Additional staff recommendations that are not required by federal rule or state statute:** Staff is not recommending additional provisions beyond what is required under THSC, Chapter 393.

**Statutory authority:**

- Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties;
- TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state;
- TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission;
- THSC, §382.107, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act;
- THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air;
- THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air;
- THSC, Chapter 386, which establishes the TERP program; and
- THSC, Chapter 393.004, which directs the commission to adopt rules to establish criteria for prioritizing facilities eligible to receive grants under the Alternative Fueling Facilities Program.

**Effect on the:**

**A.) Regulated community:** This rule will not affect regulated entities.

**B.) Public:** The proposed criteria for prioritizing the grants will affect any applicant for a grant under this program, including companies and other entities. The rules will provide information to potential applicants on the criteria that may be used by the executive director in implementing the program. This will help potential applicants to determine what facilities may be most likely to be funded.

**C.) Agency programs:** Staff will need to develop processes, criteria, and forms for implementing the new grant program. Prior to each grant application period, the specific funding priorities for that grant round will need to be determined.

**Stakeholder meetings:**

Stakeholder meetings are not proposed as part of the rulemaking process.

**Potential controversial concerns and legislative interest:**

The proposed rules incorporate provisions required under THSC, Chapter 393. The proposal does not go further than what is required to comply with the statutory changes.

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Therefore, staff does not anticipate any concerns being raised about the rules. Staff expects that the legislators involved in SB 385 and stakeholders will be interested in how the commission implements the new provisions.

**Will this rulemaking affect any current policies or require development of new policies?**

Prior to each grant application period, the specific priorities for that grant round will need to be developed.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

This rulemaking is required to implement the AFFP under THSC, Chapter 393, as added by SB 385. If rulemaking is not completed, implementation of the program could not be put into effect. Possible alternatives are not adopting the rules or adopting the rules at a later date and delaying implementation of the program.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** October 18, 2011

**Anticipated *Texas Register* publication date:** November 4, 2011

**Public hearing date:** November 29, 2011

**Public comment period:** November 4, 2011 – December 5, 2011

**Anticipated adoption date:** March 28, 2012

**Agency contacts:**

Steve Dayton, Rule Project Manager, 239-6824, Air Quality Division

Betsy Peticolas, Staff Attorney, 239-1439

Bruce McAnally, Texas Register Coordinator, 239-2141

**Attachments**

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Susana M. Hildebrand, P.E.  
Anne Idsal  
Curtis Seaton  
Ashley Morgan  
Office of General Counsel  
Steve Dayton  
Bruce McAnally

The Texas Commission on Environmental Quality (commission or agency) proposes new §§114.660 - 114.662.

If adopted, the new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

### **Background and Summary of the Factual Basis for the Proposed Rules**

Senate Bill (SB) 385, 82nd Legislature, 2011, amended the Texas Health and Safety Code (THSC), by adding Chapter 393, Alternative Fueling Facilities Program (program). This program is designed to provide funding for eligible entities to construct, reconstruct, or acquire a facility to store, compress, or dispense alternative fuels in a nonattainment area, as designated under Federal Clean Air Act §107(d) (42 United States Code, §7407).

Under the program, alternative fuels are defined as a fuel, other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 80% methanol by volume. These rules are proposed to comply with THSC, §393.004(a), which requires the commission to adopt rules to establish criteria for prioritizing facilities eligible to receive grants under the program.

SB 20, 82nd Legislature, 2011, also established the program under a different chapter number in the THSC. However, because SB 385 was enacted last, it is the operative legislation for this rulemaking.

### **Section by Section Discussion**

#### *§114.660, Purpose*

Proposed §114.660 would define the purpose of the proposed rules as the criteria that the executive director may use when establishing priorities for funding projects under the program, as required by THSC, §393.004.

#### *§114.661, Criteria for Prioritizing Facilities Eligible to Receive a Grant*

Proposed §114.661 outlines the criteria to be used for prioritizing facilities to receive grants under this program, as required by THSC, §393.004.

Proposed subsection (a) lists criteria that may be used by the executive director to establish priorities for funding. Prior to each grant application period, the executive director would establish specific priorities for funding projects under that application period.

Under proposed subsection (a)(1), the need for reductions in nitrogen oxides or other pollutants of concern in the area where the facility would be located could be considered

in prioritizing the funding, in order to meet or maintain federal air quality standards.

Under proposed subsection (a)(2), the type of alternative fuel and the vehicles or equipment that would use the fuel could be considered by the executive director in establishing the funding priorities. This proposed subsection would allow the executive director to determine that certain types of alternative fuels or vehicles and equipment should receive greater priority in funding decisions in order to best implement the program.

Proposed subsection (a)(3) would allow consideration of the potential for the project to increase the use of the alternative fuel in nonattainment areas and the state in general. Under this proposed subsection, the likelihood that a project would provide broader benefits in increasing the use of the alternative fuel could be considered in determining the priorities for funding.

Proposed subsection (a)(4), would allow the executive director to consider the potential for the project to increase the use of alternative fuels and alternative fuel technologies produced, manufactured, or otherwise based in Texas could be considered. This proposed provision would allow the executive director to put a priority on the use of Texas-based fuels and technologies.

Proposed subsection (a)(5) would allow the executive director to consider the current and projected need for the facility. Use of this provision would help to ensure that facilities with the greatest need or potential for use would receive higher priority over facilities where the need for the facility is less.

Proposed subsection (a)(6) would allow the executive director to consider the expected use of the facility for fueling vehicles funded under local, state, or federal incentive programs, including programs implemented under the Texas Emissions Reduction Plan (TERP). If this provision were used, the executive director could help support implementation of other funding programs for alternative fuel vehicles through prioritizing funding for facilities that would be used by those vehicles.

Proposed subsection (a)(7) would allow the executive director to consider the location of the proposed facility in relation to major highways and transportation routes and the ease of access to the facility for use by the public. The ease of access to the facility could be a factor in the success of the grant-funded project, and this provision would allow the executive director to consider that factor in setting funding priorities.

Proposed subsection (a)(8) would allow the executive director to consider the location of the proposed facility in relation to an area where increased truck traffic would not be expected to negatively impact the region's air quality or sensitive receptors. This

provision would allow the executive director to consider potential negative impacts of increased truck traffic to a proposed facility on regional air quality and on sensitive receptors.

Proposed subsection (a)(9) would allow the executive director to consider the percentage of costs of the facility to be paid by the applicant and from other sources of funding. This provision would take into account that the financial stake that an applicant has in a project could be a factor in the potential success of the facility.

Proposed subsection (a)(10) would allow the executive director to consider the commitment by the applicant to operating the facility over a period of time. This provision would allow the executive director to set priorities for how long a facility would be operated and to place a priority on projects where an applicant intends to operate the facility for a longer period,

Proposed subsection (b) would authorize the executive director to establish additional criteria for the award of a grant, including establishing certain operational, maintenance, and reporting requirements.

Proposed subsection (c) would authorize the executive director to limit grants under a grant application period according to the priorities established for that grant application

period. Under this provision, the priorities established for a particular grant application period could be used not only for ranking projects submitted by applicants, but also to limit projects that may be funded to those meeting priorities.

*§114.662, Implementation Schedule*

Proposed §114.662 identifies the expiration date of the program, as stated in THSC, §393.007. Under this section, the program would expire on August 31, 2018.

**Fiscal Note: Costs to State and Local Government**

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules are administrative in nature and establish the criteria for prioritizing alternative fueling facilities eligible to receive grants under the program funded by Account 5071 - TERP. The agency will implement the program using currently available resources, and funds allocated to funding fueling facilities in the program are approximately \$2.2 million.

SB 385 authorizes the agency to create the program using a portion of the funds appropriated in Account 5071 - TERP. The proposed rules, as required by SB 385, would add a new division to Chapter 114 to outline the criteria that will be used to

prioritize facilities eligible to receive a grant under the voluntary program. The rules are administrative in nature, and detailed program criteria and procedures will be developed separate from these rules and enforced through a grant contract. A separate, but related rulemaking establishes the criteria for prioritizing vehicles eligible to receive grant funding.

The proposed rules are not expected to have a significant fiscal impact on state agencies or units of local government since they are administrative in nature. However, these government entities could choose to apply for and receive a grant under the program. The grant could not be used for administrative expenses, and grant awards would be limited to the lesser of 50% of eligible costs or \$500,000. The program is voluntary, and it is not known at this time how many governmental entities would apply for this type of grant.

### **Public Benefits and Costs**

Nina Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be an increase in available alternative fueling facilities for alternative fuel vehicles or engines, providing more choices to the public for use of alternative fuels.

The proposed rules are not expected to have a direct significant fiscal impact on individuals since they are administrative in nature and establish the criteria that will be used to prioritize facilities eligible to receive a grant under the voluntary program. However, if an individual becomes eligible to apply for and receive a grant to pay the costs of an alternative fueling facility, that individual could experience the same cost savings as a governmental entity or business that qualifies for a grant award.

The proposed rules are not expected to have a significant fiscal impact on large businesses since the rules are administrative in nature. However, large businesses could choose to apply for and receive a grant under the program to offset the cost of providing such a facility. The grant could not be used for administrative expenses, and grant awards would be limited to the lesser of 50% of eligible costs or \$500,000. The program is voluntary, and it is not known at this time how many large businesses would apply for this type of grant.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules since the rules are administrative in nature. If a small business voluntarily applies for a grant and receives a grant award under the program, the small business could expect to receive the same type of benefit as a large business.

### **Small Business Regulatory Flexibility Analysis**

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

### **Local Employment Impact Statement**

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The new Chapter 114 rules are proposed in accordance with SB 385, which added THSC, Chapter 393. The proposed rules are part of the implementation of a new voluntary incentive program to increase the availability of alternative fueling facilities in nonattainment areas of this state. The program offers financial incentives for the voluntary construction, reconstruction, or acquisition of alternative fueling facilities. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Also, none of the proposed rules place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not

exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Takings Impact Assessment**

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 385. The new rules establish criteria for prioritizing facilities eligible to receive a grant as part of the implementation of a voluntary program. The promulgation and enforcement of the proposed rules is neither a statutory nor a constitutional taking because participation in the program is voluntary and the program does not involve restrictions or controls on real property. Therefore, the rules do not constitute a taking under Texas Government

Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it is part of implementing a voluntary incentive grant program and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on November 29, 2011, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called

upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-052-114-EN. The comment period closes December 5, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Stephen Dayton, Implementation Grants Section, (512) 239-6824.

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 6: ALTERNATIVE FUELING FACILITIES PROGRAM**

**§§114.660 - 114.662**

**Statutory Authority**

These new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These new rules are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. Finally, these proposed new rules are proposed under THSC, §393.004, requiring the commission to establish by rule the criteria for prioritizing facilities eligible to receive a grant.

The proposed rules implement THSC, §393.004.

**§114.660. Purpose.**

(a) These rules establish the criteria that the executive director may use for prioritizing facilities eligible to receive grants under the Alternative Fueling Facilities Program, established under Texas Health and Safety Code, Chapter 393.

(b) The requirements of Texas Health and Safety Code, Chapter 393, apply to grants awarded under this program.

**§114.661. Criteria for Prioritizing Facilities Eligible to Receive a Grant.**

(a) Prior to each grant application period, the executive director will establish specific priorities for funding projects under that application period. Criteria that may be considered in establishing the funding priorities include, but are not limited to:

(1) the need for reductions in nitrogen oxides or other pollutants of concern in the area where the facility will be located in order to meet or maintain federal air quality standards;

(2) the type of alternative fuel and the vehicles or equipment that will use the fuel;

(3) the potential for the project to increase the use of the alternative fuel in nonattainment areas and Texas in general;

(4) the potential for the project to increase the use of alternative fuels and alternative fuel technologies produced, manufactured, or otherwise based in Texas;

(5) the need for the facility, based on the current and expected number of vehicles and equipment that would be served by the facility or the fuel made available as a result of the facility, and the availability of other sources of the alternative fuel in the area;

(6) the expected use of the facility for fueling vehicles funded under local, state, or federal incentive programs, including the programs implemented under the Texas Emissions Reduction Plan;

(7) the location of the proposed facility in relation to major highways and transportation routes and the ease of access to the facility for use by the public;

(8) the location of the proposed facility in relation to an area where increased truck traffic would not be expected to negatively impact the region's air quality or sensitive receptors;

(9) the percentage of costs of the facility to be paid by the applicant and other sources of funding;

(10) the commitment by the applicant to operating the facility over a period of time, and

(11) consideration of technical and economic factors associated with a project.

(b) The executive director may establish additional criteria for the award of a grant, including establishing certain operational, maintenance, and reporting requirements.

(c) The executive director may limit the grants under a grant application period according to the priorities established for that grant application period.

**§114.662. Implementation Schedule.**

This division expires on August 31, 2018.

AN ACT

relating to the creation of programs to support the use of alternative fuels, including an alternative fuel program to be funded by the Texas emissions reduction plan fund and a grant program for certain natural gas vehicles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 386.252, Health and Safety Code, as amended by Chapters 1125 (H.B. 1796) and 1232 (S.B. 1759), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which:

(A) not more than four percent may be used for the clean school bus program;

(B) not more than 10 percent may be used for on-road diesel purchase or lease incentives; ~~and~~

(C) a specified amount may be used for the new technology implementation grant program, from which a defined amount may be set aside for electricity storage projects related to renewable energy;

(D) five percent shall be used for the clean

1 fleet program;

2 (E) two percent may be used for the Texas  
3 alternative fueling facilities program;

4 (F) not less than 16 percent shall be used for the  
5 natural gas vehicle grant program; and

6 (G) not more than four percent may be used to  
7 provide grants for natural gas fueling stations under Section  
8 394.010;

9 (2) for the new technology research and development  
10 program, nine percent of the money in the fund, of which:

11 (A) up to \$200,000 is allocated for a health  
12 effects study;

13 (B) \$500,000 is to be deposited in the state  
14 treasury to the credit of the clean air account created under  
15 Section 382.0622 to supplement funding for air quality planning  
16 activities in affected counties;

17 (C) not less than 20 percent is to be allocated  
18 each year to support research related to air quality as provided by  
19 Section 387.010; and

20 (D) the balance is allocated each year to the  
21 commission to be used to:

22 (i) implement and administer the new  
23 technology research and development program for the purpose of  
24 identifying, testing, and evaluating new emissions-reducing  
25 technologies with potential for commercialization in this state and  
26 to facilitate their certification or verification; and

27 (ii) contract with the Energy Systems

1 Laboratory at the Texas Engineering Experiment Station for \$216,000  
2 annually for the development and annual computation of creditable  
3 statewide emissions reductions obtained through wind and other  
4 renewable energy resources for the state implementation plan; and

5 (3) two percent is allocated to the commission and 1.5  
6 percent is allocated to the laboratory for administrative costs  
7 incurred by the commission and the laboratory.

8 SECTION 2. Section 386.252, Health and Safety Code, is  
9 amended by adding Subsections (e), (f), and (g) to read as follows:

10 (e) The commission may allocate unexpended money designated  
11 for the Texas alternative fueling facilities program to other  
12 programs described under Subsection (a) after the commission  
13 allocates money to recipients under the alternative fueling  
14 facilities program.

15 (f) Notwithstanding Subsection (a), the commission may  
16 reallocate money in the fund if:

17 (1) the commission, in consultation with the governor  
18 and the advisory board, determines that the use of the money in the  
19 fund for the program established under Chapter 394 will cause the  
20 state to be in noncompliance with the state implementation plan to  
21 the extent that federal action is likely; and

22 (2) the commission finds that the reallocation of some  
23 or all of the funding for the program established under Chapter 394  
24 would resolve the noncompliance.

25 (g) Under Subsection (f), the commission may not reallocate  
26 more than the minimum amount of money necessary to resolve the  
27 noncompliance.

1 SECTION 3. Subtitle C, Title 5, Health and Safety Code, is  
2 amended by adding Chapters 393 and 394 to read as follows:

3 CHAPTER 393. ALTERNATIVE FUELING FACILITIES PROGRAM

4 Sec. 393.001. DEFINITIONS. In this chapter:

5 (1) "Alternative fuel" means a fuel other than  
6 gasoline or diesel fuel, other than biodiesel fuel, including  
7 electricity, compressed natural gas, liquified natural gas,  
8 hydrogen, propane, or a mixture of fuels containing at least 85  
9 percent methanol by volume.

10 (2) "Commission" means the Texas Commission on  
11 Environmental Quality.

12 (3) "Program" means the Texas alternative fueling  
13 facilities program established under this chapter.

14 Sec. 393.002. PROGRAM. (a) The commission shall establish  
15 and administer the Texas alternative fueling facilities program to  
16 provide fueling facilities for alternative fuel in nonattainment  
17 areas. Under the program, the commission shall provide a grant for  
18 each eligible facility to offset the cost of those facilities.

19 (b) An entity that constructs, reconstructs, or acquires an  
20 alternative fueling facility is eligible to participate in the  
21 program.

22 Sec. 393.003. APPLICATION FOR GRANT. (a) An entity  
23 operating in this state that constructs, reconstructs, or acquires  
24 a facility to store, compress, or dispense alternative fuels may  
25 apply for and receive a grant under the program.

26 (b) The commission may adopt guidelines to allow a regional  
27 planning commission, council of governments, or similar regional

1 planning agency created under Chapter 391, Local Government Code,  
2 or a private nonprofit organization to apply for and receive a grant  
3 to improve the ability of the program to achieve its goals.

4 (c) An application for a grant under this chapter must be  
5 made on a form provided by the commission and must contain the  
6 information required by the commission.

7 Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS.

8 (a) The commission by rule shall establish criteria for  
9 prioritizing facilities eligible to receive grants under this  
10 chapter. The commission shall review and revise the criteria as  
11 appropriate.

12 (b) To be eligible for a grant under the program, the entity  
13 receiving the grant must agree to make the alternative fueling  
14 facility available to persons not associated with the entity at  
15 times designated by the grant agreement.

16 (c) A recipient of a grant under this chapter is not  
17 eligible to receive a second grant under this chapter for the same  
18 facility.

19 Sec. 393.005. RESTRICTION ON USE OF GRANT. A recipient of a  
20 grant under this chapter shall use the grant only to pay the costs  
21 of the facility for which the grant is made. The recipient may not  
22 use the grant to pay the recipient's administrative expenses.

23 Sec. 393.006. AMOUNT OF GRANT. For each eligible facility  
24 for which a recipient is awarded a grant under the program, the  
25 commission shall award the grant in an amount equal to the lesser  
26 of:

27 (1) 50 percent of the sum of the actual eligible costs

1 incurred by the grant recipient within deadlines established by the  
2 commission to construct, reconstruct, or acquire the facility; or

3 (2) \$500,000.

4 Sec. 393.007. EXPIRATION. This chapter expires August 31,  
5 2018.

6 CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

7 Sec. 394.001. DEFINITIONS. In this chapter:

8 (1) "Advisory board" means the Texas Emissions  
9 Reduction Plan Advisory Board.

10 (2) "Commission" means the Texas Commission on  
11 Environmental Quality.

12 (3) "Executive director" means the executive director  
13 of the Texas Commission on Environmental Quality.

14 (4) "Heavy-duty motor vehicle" means a motor vehicle  
15 with:

16 (A) a gross vehicle weight rating of more than  
17 8,500 pounds; and

18 (B) an engine certified to the United States  
19 Environmental Protection Agency's standards for heavy-duty  
20 engines.

21 (5) "Incremental cost" means the difference between  
22 the manufacturer's suggested retail price of a baseline vehicle,  
23 the documented dealer price of a baseline vehicle, cost to lease or  
24 otherwise commercially finance a baseline vehicle, cost to repower  
25 with a baseline engine, or other appropriate baseline cost  
26 established by the commission, and the actual cost of the natural  
27 gas vehicle purchase, lease, or other commercial financing, or

1 repower.

2 (6) "Medium-duty motor vehicle" means a motor vehicle  
3 with a gross vehicle weight rating of more than 8,500 pounds that:

4 (A) is certified to the United States  
5 Environmental Protection Agency's light-duty emissions standard;  
6 or

7 (B) has an engine certified to the United States  
8 Environmental Protection Agency's light-duty emissions standard.

9 (7) "Motor vehicle" has the meaning assigned by  
10 Section 386.151.

11 (8) "Natural gas vehicle" means a motor vehicle that  
12 receives not less than 75 percent of its power from compressed or  
13 liquefied natural gas.

14 (9) "Program" means the Texas natural gas vehicle  
15 grant program established under this chapter.

16 Sec. 394.002. PROGRAM. The commission shall establish and  
17 administer the Texas natural gas vehicle grant program to encourage  
18 an entity that has a heavy-duty or medium-duty motor vehicle to  
19 repower the vehicle with a natural gas engine or replace the vehicle  
20 with a natural gas vehicle. Under the program, the commission shall  
21 provide grants for eligible heavy-duty motor vehicles and  
22 medium-duty motor vehicles to offset the incremental cost for the  
23 entity of repowering or replacing the heavy-duty or medium-duty  
24 motor vehicle.

25 Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a  
26 qualifying vehicle that may be considered for a grant under the  
27 program if during the calendar year the entity:

1           (1) purchased, leased, or otherwise commercially  
2 financed the vehicle as a new on-road heavy-duty or medium-duty  
3 motor vehicle that:

4                   (A) is a natural gas vehicle;

5                   (B) is certified to current federal emissions  
6 standards;

7                   (C) replaces an on-road heavy-duty or  
8 medium-duty motor vehicle of the same weight classification and  
9 use; and

10                   (D) is powered by an engine certified to:

11                           (i) emit not more than 0.2 grams of nitrogen  
12 oxides per brake horsepower hour; or

13                           (ii) meet or exceed the United States  
14 Environmental Protection Agency's Bin 5 standard for light-duty  
15 engines when powering the vehicle; or

16           (2) repowered the on-road motor vehicle to a natural  
17 gas vehicle powered by a natural gas engine that:

18                   (A) is certified to current federal emissions  
19 standards; and

20                   (B) is:

21                           (i) a heavy-duty engine that is certified  
22 to emit not more than 0.2 grams of nitrogen oxides per brake  
23 horsepower hour; or

24                           (ii) certified to meet or exceed the United  
25 States Environmental Protection Agency's Bin 5 standard for  
26 light-duty engines when powering the vehicle.

27           (b) A heavy-duty or medium-duty motor vehicle is not a

1 qualifying vehicle if the vehicle or the natural gas engine  
2 powering the vehicle:

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

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

8 Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity  
9 operating in this state that operates a heavy-duty or medium-duty  
10 motor vehicle may apply for and receive a grant under this chapter.

11 (b) An application for a grant under this chapter must be  
12 made on a form provided by the commission and must contain the  
13 information required by the commission.

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

15 (1) simplify the application form; and

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

18 Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission  
19 by rule shall establish criteria for prioritizing qualifying  
20 vehicles eligible to receive grants under this chapter. The  
21 commission shall review and revise the criteria as appropriate  
22 after consultation with the advisory board.

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

24 (1) the use of the qualifying vehicle must be  
25 projected to result in a reduction in emissions of nitrogen oxides  
26 of at least 25 percent as compared to the motor vehicle or engine  
27 being replaced, based on:

1           (A) the baseline emission level set by the  
2 commission under Subsection (g); and

3           (B) the certified emission rate of the new  
4 vehicle; and

5           (2) the qualifying vehicle must:

6           (A) replace a heavy-duty or medium-duty motor  
7 vehicle that:

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

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

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

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

19           (B) be a heavy-duty or medium-duty motor vehicle  
20 repowered with a natural gas engine that:

21                   (i) is installed in an on-road vehicle that  
22 has been owned, leased, or otherwise commercially financed and  
23 registered and operated by the applicant in Texas for at least the  
24 two years immediately preceding the submission of a grant  
25 application;

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

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

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

8           (c) As a condition of receiving a grant, the qualifying  
9 vehicle must be continuously owned, leased, or otherwise  
10 commercially financed and registered and operated in the state by  
11 the grant recipient until the earlier of the fourth anniversary of  
12 the date of reimbursement of the grant-funded expenses or until the  
13 date the vehicle has been in operation for 400,000 miles after the  
14 date of reimbursement. Not less than 75 percent of the annual use  
15 of the qualifying vehicle, either mileage or fuel use as determined  
16 by the commission, must occur in:

17                   (1) the counties any part of which are included in the  
18 area described by Section 394.010(a); or

19                   (2) counties designated as nonattainment areas within  
20 the meaning of Section 107(d) of the federal Clean Air Act (42  
21 U.S.C. Section 7407).

22           (d) The commission shall include and enforce the usage  
23 provisions in the grant contracts. The commission shall monitor  
24 compliance with the ownership, leasing, and usage requirements,  
25 including submission of reports on at least an annual basis, or more  
26 frequently as determined by the commission.

27           (e) The commission by contract may require the return of all

1 or a portion of grant funds for a grant recipient's noncompliance  
2 with the usage and percentage of use requirements under this  
3 section.

4 (f) A heavy-duty or medium-duty motor vehicle replaced  
5 under this program must be rendered permanently inoperable by  
6 crushing the vehicle, by making a hole in the engine block and  
7 permanently destroying the frame of the vehicle, or by another  
8 method approved by the commission that permanently removes the  
9 vehicle from operation in this state. The commission shall  
10 establish criteria for ensuring the permanent destruction of the  
11 engine or vehicle. The commission shall enforce the destruction  
12 requirements.

13 (g) The commission shall establish baseline emission levels  
14 for emissions of nitrogen oxides for on-road heavy-duty or  
15 medium-duty motor vehicles being replaced by using the emission  
16 certification for the engine or vehicle being replaced. The  
17 commission may consider deterioration of the emission performance  
18 of the engine of the vehicle being replaced in establishing the  
19 baseline emission level. The commission may consider and establish  
20 baseline emission rates for additional pollutants of concern, as  
21 determined by the commission after consultation with the advisory  
22 board.

23 (h) Mileage or fuel use requirements established by the  
24 commission under Subsection (b)(2)(A)(ii) may differ by vehicle  
25 weight categories and type of use.

26 (i) The executive director shall waive the requirements of  
27 Subsection (b)(2)(A)(i) on a finding of good cause, which may

1 include short lapses in registration or operation due to economic  
2 conditions, seasonal work, or other circumstances.

3 Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a  
4 grant under this chapter shall use the grant to pay the incremental  
5 costs of the replacement for which the grant is made, which may  
6 include the initial cost of the natural gas vehicle or natural gas  
7 engine and the reasonable and necessary expenses incurred for the  
8 labor needed to install emissions-reducing equipment. The  
9 recipient may not use the grant to pay the recipient's  
10 administrative expenses.

11 Sec. 394.007. AMOUNT OF GRANT. (a) The commission shall  
12 develop a grant schedule that:

13 (1) assigns a standardized grant in an amount between  
14 60 and 90 percent of the incremental cost of a natural gas vehicle  
15 purchase, lease, other commercial finance, or repowering;

16 (2) is based on:

17 (A) the certified emission level of nitrogen  
18 oxides, or other pollutants as determined by the commission, of the  
19 engine powering the natural gas vehicle; and

20 (B) the usage of the natural gas vehicle; and

21 (3) may take into account the overall emissions  
22 reduction achieved by the natural gas vehicle.

23 (b) Not less than 60 percent of the total amount of grants  
24 awarded under this chapter for the purchase and repowering of motor  
25 vehicles must be awarded to motor vehicles with a gross vehicle  
26 weight rating of at least 33,001 pounds. The minimum grant  
27 requirement under this subsection does not apply if the commission

1 does not receive enough grant applications to satisfy the  
2 requirement for motor vehicles described by this subsection that  
3 are eligible to receive a grant under this chapter.

4 (c) A person may not receive a grant under this chapter  
5 that, when combined with any other grant, tax credit, or other  
6 governmental incentive, exceeds the incremental cost of the vehicle  
7 for which the grant is awarded. A person shall return to the  
8 commission the amount of a grant awarded under this chapter that,  
9 when combined with any other grant, tax credit, or other  
10 governmental incentive, exceeds the incremental cost of the vehicle  
11 for which the grant is awarded.

12 (d) The commission shall reduce the amount of a grant  
13 awarded under this chapter as necessary to keep the combined  
14 incentive total at or below the incremental cost of the vehicle for  
15 which the grant is awarded if the grant recipient is eligible to  
16 receive an automatic incentive at or before the time a grant is  
17 awarded under this chapter.

18 Sec. 394.008. GRANT PROCEDURES. (a) The commission shall  
19 adopt procedures for:

20 (1) awarding grants under this chapter in the form of  
21 rebates; and

22 (2) streamlining the grant application, contracting,  
23 reimbursement, and reporting process for qualifying natural gas  
24 vehicle purchases or repowers.

25 (b) Procedures adopted under this section must:

26 (1) provide for the commission to compile and  
27 regularly update a listing of preapproved natural gas vehicles:

1           (A) powered by natural gas engines certified to  
2 emit not more than 0.2 grams of nitrogen oxides per brake horsepower  
3 hour; or

4           (B) certified to the United States Environmental  
5 Protection Agency's light-duty Bin 5 standard or better;

6           (2) if a federal standard for the calculation of  
7 emissions reductions exists, provide a method to calculate the  
8 reduction in emissions of nitrogen oxides, volatile organic  
9 compounds, carbon monoxide, particulate matter, and sulfur  
10 compounds for each replacement or repowering;

11           (3) assign a standardized rebate amount for each  
12 qualifying vehicle under Section 394.007;

13           (4) allow for processing rebates on an ongoing  
14 first-come, first-served basis;

15           (5) provide for contracts between the commission and  
16 participating dealers under Section 394.009;

17           (6) allow grant recipients to assign their grant funds  
18 to participating dealers to offset the purchase or lease price;

19           (7) require grant applicants to identify natural gas  
20 fueling stations that are available to fuel the qualifying vehicle  
21 in the area of its use;

22           (8) provide for payment not later than the 30th day  
23 after the date the request for reimbursement for an approved grant  
24 is received;

25           (9) provide for application submission and  
26 application status checks to be made over the Internet; and

27           (10) consolidate, simplify, and reduce the

1 administrative work for applicants and the commission associated  
2 with grant application, contracting, reimbursement, and reporting  
3 requirements.

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

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

9 Sec. 394.009. PARTICIPATING DEALERS. (a) In this section,  
10 "participating dealer" means a person who:

11 (1) sells, leases, or otherwise commercially finances  
12 on-road heavy-duty or medium-duty natural gas vehicles or  
13 heavy-duty or medium-duty natural gas engines; and

14 (2) has satisfied all requirements established by the  
15 commission for participation in the program as a dealer.

16 (b) A participating dealer must agree to the terms and  
17 conditions of a standardized contract developed by the commission.

18 (c) A participating dealer shall:

19 (1) provide information regarding natural gas vehicle  
20 grants to fleet operators;

21 (2) assist an applicant who purchases, leases, or  
22 otherwise commercially finances a natural gas vehicle or engine  
23 from the dealer with the completion of the application; and

24 (3) submit completed applications and documentation  
25 to the commission on behalf of an applicant who purchases, leases,  
26 or otherwise commercially finances a natural gas vehicle or engine  
27 from the dealer.

1 (d) A participating dealer may not approve a grant.

2 (e) The commission shall:

3 (1) maintain and make available to the public online a  
4 list of all qualified dealers; and

5 (2) establish requirements for participation in the  
6 program by sellers of on-road heavy-duty or medium-duty natural gas  
7 vehicles and heavy-duty or medium-duty natural gas engines.

8 Sec. 394.010. CLEAN TRANSPORTATION TRIANGLE. (a) To  
9 ensure that natural gas vehicles purchased, leased, or otherwise  
10 commercially financed or repowered under the program have access to  
11 fuel, and to build the foundation for a self-sustaining market for  
12 natural gas vehicles in Texas, the commission shall award grants to  
13 support the development of a network of natural gas vehicle fueling  
14 stations along the interstate highways connecting Houston, San  
15 Antonio, Dallas, and Fort Worth. In awarding the grants, the  
16 commission shall provide for:

17 (1) strategically placed natural gas vehicle fueling  
18 stations in and between the Houston, San Antonio, and Dallas-Fort  
19 Worth areas to enable a natural gas vehicle to travel along that  
20 triangular area relying solely on natural gas fuel;

21 (2) grants to be dispersed through a competitive  
22 bidding process to offset a portion of the cost of installation of  
23 the natural gas dispensing equipment;

24 (3) contracts that require the recipient stations to  
25 meet operational, maintenance, and reporting requirements as  
26 specified by the commission; and

27 (4) a listing, to be maintained by the commission and

1 made available to the public online, of all natural gas vehicle  
2 fueling stations that have received grant funding, including  
3 location and hours of operation.

4 (b) The commission may not award more than:

5 (1) three station grants to any entity; or

6 (2) one grant for each station.

7 (c) Grants awarded under this section may not exceed:

8 (1) \$100,000 for a compressed natural gas station;

9 (2) \$250,000 for a liquefied natural gas station; or

10 (3) \$400,000 for a station providing both liquefied  
11 and compressed natural gas.

12 (d) Stations funded by grants under this section must be  
13 publicly accessible and located not more than three miles from an  
14 interstate highway system. The commission shall give preference  
15 to:

16 (1) stations providing both liquefied natural gas and  
17 compressed natural gas at a single location; and

18 (2) stations located not more than one mile from an  
19 interstate highway system.

20 (e) To meet the goals of this section, the commission may  
21 solicit grant applications under this section for a new fueling  
22 station in a specific area or location.

23 (f) Grants made under this section are not subject to the  
24 requirements of Sections 394.002 through 394.008. The commission  
25 shall develop an application package and review applications in  
26 accordance with Sections 386.110 and 386.111.

27 (g) The commission, in consultation with the natural gas

1 industry, shall determine the most efficient use of funding for the  
2 station grants under this section to maximize the availability of  
3 natural gas fueling stations.

4 Sec. 394.011. ADMINISTRATION OF PROGRAM. The commission  
5 may contract with one or more entities for administration of the  
6 program.

7 Sec. 394.012. EXPIRATION. This chapter expires August 31,  
8 2017.

9 SECTION 4. The Texas Commission on Environmental Quality  
10 shall adopt rules under Section 393.004, Health and Safety Code, as  
11 added by this Act, as soon as practicable after the effective date  
12 of this Act.

13 SECTION 5. The Texas Commission on Environmental Quality  
14 shall adopt rules and establish procedures under Chapter 394,  
15 Health and Safety Code, as added by this Act, as soon as practicable  
16 after the effective date of this Act.

17 SECTION 6. To the extent of any conflict, this Act prevails  
18 over another Act of the 82nd Legislature, Regular Session, 2011,  
19 relating to nonsubstantive additions to and corrections in enacted  
20 codes.

21 SECTION 7. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 385 passed the Senate on April 4, 2011, by the following vote: Yeas 29, Nays 2; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 29, Nays 2.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 385 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 112, Nays 27, four present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor