

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

**AGENDA REQUESTED:** November 6, 2013

**DATE OF REQUEST:** October 18, 2013

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Charlotte Horn, (512) 239-0778

**CAPTION: Docket No. 2013-1194-RUL.** Consideration for publication of, and hearing on, proposed amendments to 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter K, Mobile Source Incentive Programs, to add new Division 8, Drayage Truck Incentive Program, Sections 114.680 - 114.682, and corresponding revisions to the state implementation plan.

The proposed rulemaking would implement part of Senate Bill (SB) 1727, from the 83rd Legislature, 2013, Regular Session, establishing the Drayage Truck Incentive Program (program). The revisions to Chapter 114, as required by SB 1727, would establish criteria for the models of drayage trucks eligible for inclusion in the program. (Steve Dayton, Betsy Peticolas) (Rule Project No. 2013-037-114-AI)

Steve Hagle, P.E.  
\_\_\_\_\_  
**Deputy Director**

David Brymer  
\_\_\_\_\_  
**Division Director**

Charlotte Horn  
\_\_\_\_\_  
**Agenda Coordinator**

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

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** October 18, 2013

**Thru:** Bridget C. Bohac, Chief Clerk  
Zak Covar, Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Docket No.:** 2013-1194-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 114, Control of Air Pollution From Motor Vehicles  
SB 1727: Drayage Truck Incentive Program  
Rule Project No. 2013-037-114-AI

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

Senate Bill (SB) 1727, 83rd Legislature, 2013, Regular Session, by Senators Deuell and Garcia, amends Texas Health and Safety Code (THSC), Chapter 386, to add new Subchapter D-1. This subchapter establishes the Drayage Truck Incentive Program (program) to be funded from the Texas Emissions Reduction Plan (TERP) Fund and administered by the Texas Commission on Environmental Quality (commission). The changes enacted under SB 1727 require new rules to establish the criteria for models of drayage trucks eligible for funding under the program.

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

**A.) Summary of what the rulemaking will do:** SB 1727 amended THSC, Chapter 386, to add new Subchapter D-1. The program is established to provide financial incentives to encourage owners of drayage trucks operating in seaports and rail yards located in the state's air quality nonattainment areas to replace drayage trucks with pre-2007 model year engines with drayage trucks with 2010 or later model year engines.

Under THSC, §386.182, the commission is to establish by rule the criteria for the models of drayage trucks eligible for inclusion in the program. The proposed rules would define key program terms and establish criteria for the models of drayage trucks eligible for replacement and for purchase under the program.

Under the proposed rules, drayage activities would be defined as the transport of cargo, such as containerized, bulk, or break-bulk goods. Vehicles eligible for purchase funding under the program would include heavy-duty on-road vehicles over 26,000 pounds gross vehicle weight rating (GVWR) and with a day cab (i.e., no sleeper berth), and non-road yard trucks. To be considered a drayage truck, a vehicle must be used for drayage activities and operate on or transgress through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. Per THSC, §386.183, the seaport or rail yard must be located in a nonattainment area.

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**B.) Scope required by federal regulations or state statutes:** The proposed rules are required by changes to THSC, Chapter 386, under SB 1727.

**C.) Additional staff recommendations that are not required by federal rule or state statute:** Staff is not recommending additional provisions beyond those required or authorized by state statute.

**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 air 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; and
- THSC, Chapter 386, which establishes the TERP and the Drayage Truck Incentive Program.

**Effect on the:**

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

**B.) Public:** The public may benefit from improvements to air quality in the nonattainment areas where incentive funding is provided. In addition, individuals and businesses may benefit if an individual or business owns an eligible drayage truck and applies for and receives funding for the purchase of a replacement vehicle.

**C.) Agency programs:** The executive director will need to develop guidelines, criteria, and procedures to implement the program.

**Stakeholder meetings:**

Stakeholder meetings are not proposed for this rulemaking.

**Potential controversial concerns and legislative interest:**

There may be some interest, both for or against, the proposal to limit eligible vehicles to heavy-duty on-road vehicles over 26,000 pounds GVWR. Entities and individuals that currently operate vehicles with a lighter GVWR or that would want to purchase a lighter

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vehicle may not agree with the proposed limits. Also, the proposed requirement that the vehicle being purchased have a day cab only and no sleeper berth may generate concern by entities that would want to purchase a long-haul truck with a sleeper berth. Also, although the issue is not discussed in the proposed rule, there will be interest in decisions by the commission regarding the maximum distance a vehicle may be operated for at least 50% of its annual mileage.

Legislators involved in SB 1727 may be interested in the proposed rules.

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

The executive director will need to develop criteria and procedures to implement the program. Decisions will need to be made regarding how the grant amounts will be determined. Also, specific facilities, properties, and geographic areas will need to be determined to identify eligible rail yards and seaports.

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

If the rulemaking is not completed, the program could not be implemented. 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:** November 6, 2013

**Anticipated *Texas Register* publication date:** November 22, 2013

**Anticipated public hearing date (if any):** December 12, 2013

**Anticipated public comment period:** November 8, 2013 - December 18, 2013

**Anticipated adoption date:** April 9, 2014

**Agency contacts:**

Steve Dayton, Rule Project Manager, (512) 239-6824, Air Quality Division

Betsy Peticolas, Staff Attorney, (512) 239-1439

Charlotte Horn, Texas Register Coordinator, (512) 239-0778

**Attachments**

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Anne Idsal  
Tucker Royall  
Office of General Counsel  
Steve Dayton  
Charlotte Horn

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§114.680 - 114.682.

If adopted, the rules 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**

The purpose of this rulemaking is to add new rules for implementing the Drayage Truck Incentive Program (program) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1. The program provides financial incentives to encourage owners to replace drayage trucks with pre-2007 model year engines with drayage trucks with 2010 or later model year engines.

Senate Bill (SB) 1727, 83rd Legislature, 2013, amended THSC, Chapter 386, to add new Subchapter D-1, establishing the program. THSC, §386.182, requires the commission by rule to establish criteria for the models of drayage trucks that are eligible for inclusion in the program.

### **Section by Section Discussion**

*§114.680, Definitions*

New §114.680 is proposed to establish definitions for terms used in new Division 8 of Subchapter K. In this section, a *drayage truck* would be defined as a heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. This definition is intended to include vehicles that operate primarily within the boundaries of a seaport or rail yard and those vehicles that transport a load to or from a seaport or rail yard. *Drayage activities* would be defined as the transport of cargo, such as containerized, bulk, or break-bulk goods.

In this section, a *rail yard* would be defined as a rail facility where cargo is routinely transferred from drayage truck to train or vice versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or unloading delivery of rail-borne cargo. A *seaport* would be defined as a publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels to shore or vice versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. These proposed definitions are intended to define the eligible facilities and properties as those primarily associated with the intermodal transfer of cargo from trains or marine vessels to transport by truck. Also, under THSC, Chapter 386,

Subchapter D-1, only rail yards and seaports located in a nonattainment area are applicable to this program.

The terms *day cab* and *non-road yard truck* would also be defined in this section. In the proposed definitions, the term *day cab* would mean a conventional truck cab that does not include a sleeper berth. These types of vehicles are generally used for local or regional routes since they do not include a sleeper berth to facilitate long distance and overnight travel. A *non-road yard truck* would be defined as a mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor. These types of vehicles are used for movement of cargo containers within the boundaries of a facility or property, generally either from the off-load point to a storage location or to move cargo from one storage location to another within the facility or property. Some models of yard trucks are also manufactured to be registered and meet requirements for on-road use on public roads and highways. An on-road yard truck would be considered as a type of on-road heavy-duty vehicle.

#### *§114.681, Applicability*

New §114.681 is proposed to establish that the provisions of new §§114.680, 114.682, and 114.683 would apply to the new Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

*§114.682, Eligible Vehicle Models*

THSC, §386.182, requires the commission to establish by rule the criteria for the models of drayage trucks that are eligible for inclusion in the program. New §114.682 establishes the necessary criteria. Under the proposed criteria, models of drayage trucks eligible for purchase to replace an existing drayage truck would include a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) of over 26,000 pounds and having a day cab and a non-road yard truck. The proposed minimum limit on the GVWR is intended to exclude from the program large vans and smaller delivery vehicles that, while they may transport cargo from trains or marine vessels, are not generally considered drayage vehicles. Also, larger vehicles generally emit higher levels of pollutants and replacement of larger vehicles used for drayage activities will achieve the most benefit and best address the goals of the program. The requirement that an on-road heavy-duty vehicle must have a day cab is intended to help ensure that vehicles purchased under the program will be used for local and regional drayage activities in and near rail yards and seaports and not for long-haul transport out of the area.

Criteria is also proposed in this section for the models of existing drayage trucks eligible for replacement under the program, to include a heavy-duty on-road vehicle with a GVWR over 26,000 pounds and a non-road yard truck. The proposed criteria for vehicles being replaced do not require that an existing on-road heavy-duty vehicle only have a day cab. Although a vehicle with a sleeper berth is intended to facilitate long-

haul, overnight travel, many older long-haul vehicles have been used for shorter drayage activities as those vehicles become less reliable for long-distance travel. The proposed criteria would allow for replacement of these older long-haul vehicles that have a sleeper berth, if those vehicles are currently being used for drayage activities. The vehicle purchased to replace the older vehicle may not have a sleeper berth.

**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 agency will use available funding appropriated out of the Texas Emissions Reduction Plan (TERP) - Account 5071 to implement the new drayage truck program. For the 2014 - 2015 biennium, appropriated funding for the program is a minimum of \$1,551,923 each year.

The proposed rules would amend Chapter 114 to implement the portions of SB 1727 concerning drayage truck replacement. Specifically, the proposed rules would define key program terms and establish criteria for the models of drayage trucks eligible for replacement and for purchase under the program.

Public port and rail authorities operating a seaport or rail yard in a nonattainment area may own and operate heavy-duty on-road vehicles and non-road yard trucks to transfer cargo in and near a seaport or rail yard under their jurisdiction. Those entities and other state agencies and local governments that own and operate eligible drayage trucks in and through the applicable rail yards or seaports may benefit if those entities apply for and receive a grant to replace an older drayage truck with a newer model.

Applying for a grant would be voluntary, and it is not known at this time how many state agencies or local governments would do so. Per the requirements of THSC, §386.182(d), an incentive provided under this program may be used to fund no more than 80% of the purchase price of the drayage truck. Based on this criterion, eligible incentive amounts are expected to range between \$60,000 and \$100,000.

### **Public Benefits and Costs**

Ms. Chamness also determined that for each of the first five years the proposed rules are in effect, the anticipated public benefit will be an improvement in air quality in the areas of the state designated as nonattainment areas by the EPA under the Federal Clean Air Act and where incentive funding is awarded. The currently designated nonattainment areas include: El Paso PM<sub>10</sub> Nonattainment Area (City of El Paso); Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area (ten counties surrounding the cities of Dallas and Fort Worth); and Houston-Galveston-Brazoria Eight-Hour Ozone Nonattainment

Area (eight counties surrounding the cities of Houston and Galveston). A portion of Collin County is also designated nonattainment for the 2008 Lead National Ambient Air Quality Standard.

The proposed rules may benefit individuals that own or operate an eligible drayage truck if the individual applies for and receives a financial incentive under the program. Individuals that can utilize the funding should experience the same cost benefits as a local government or large business.

Businesses interested in applying for the program may benefit if their projects qualify for an incentive grant. Applying for a grant would be voluntary, and it is not known at this time how many businesses would do so. Per the requirements of THSC, §386.182(d), an incentive provided under this program may be used to fund no more than 80% of the purchase price of the drayage truck. Based on this criterion, eligible incentive amounts are expected to range between \$60,000 and \$100,000.

Staff is not able to determine how many businesses may be eligible to apply for a grant as a result of these proposed rules.

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

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small or micro-businesses are expected to experience the same benefits as a large business. Staff is not able to determine how many small and micro-businesses would be eligible to apply for a grant as a result of these proposed rules.

### **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 are required by state law and 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

rulemaking 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 1727, which amended THSC, Chapter 386. The proposed rules add eligibility requirements for a voluntary incentive program. 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. In addition, the proposed rules do not 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 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 1727. The rules establish criteria for a voluntary program and only affects motor vehicles and

equipment that are not considered to be private real property. The promulgation and enforcement of the proposed rules are neither a statutory nor a constitutional taking because the rules do not affect private 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 establishes criteria for 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 December 12, 2013 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 Michael Parrish, 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 2013-037-114-AI. The comment period closes December 18, 2013. 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 Steve Dayton, Implementation Grants Section, at (512) 239-6824.

**SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS**

**DIVISION 8: DRAYAGE TRUCK INCENTIVE PROGRAM**

**§§114.680 - 114.682**

**Statutory Authority**

The new sections 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. The new sections 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; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emission Reduction Plan. Finally, the new sections are proposed as part of the implementation of Senate Bill 1727.

The proposed rules implement THSC, §386.182.

**§114.680. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Day cab--A conventional truck cab that does not include a sleeper berth.

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels to shore or vice versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments.

**§114.681. Applicability.**

The provisions of §114.680 and §114.682 of this title (relating to Definitions and Eligible Vehicle Models) apply to the Drayage Truck Incentive Program established and implemented under Texas Health and Safety Code, Chapter 386, Subchapter D-1.

**§114.682. Eligible Vehicle Models.**

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating over 26,000 pounds and having a day cab only; and

(2) a non-road yard truck.

(b) Models of existing drayage trucks eligible for replacement under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating over 26,000 pounds; and

(2) a non-road yard truck.

(c) To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.

(d) The executive director may further define or limit vehicle models and engine model years eligible for purchase and replacement under the program in order to improve the effectiveness and further the goals of the program.

AN ACT

relating to the use of the Texas emissions reduction plan fund.

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

SECTION 1. Section 386.051, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under Section 386.252(a) [~~386.252(a)(5)~~];

(7) a health effects study as provided by Section 386.252(a) [~~386.252(a)(7)~~];

(8) air quality planning activities as provided by

1 Section 386.252(a) [~~386.252(a)(8)~~]; [~~and~~]

2 (9) a contract with the Energy Systems Laboratory at  
3 the Texas Engineering Experiment Station for computation of  
4 creditable statewide emissions reductions as provided by Section  
5 386.252(a)(14);

6 (10) the clean fleet program established under Chapter  
7 392;

8 (11) the alternative fueling facilities program  
9 established under Chapter 393;

10 (12) the natural gas vehicle grant program and clean  
11 transportation triangle program established under Chapter 394;

12 (13) other programs the commission may develop that  
13 lead to reduced emissions of nitrogen oxides, particulate matter,  
14 or volatile organic compounds in a nonattainment area or affected  
15 county;

16 (14) other programs the commission may develop that  
17 support congestion mitigation to reduce mobile source ozone  
18 precursor emissions; and

19 (15) the drayage truck incentive program established  
20 under Subchapter D-1 [~~386.252(a)(9)~~].

21 (b-1) Under the plan, the commission may establish and  
22 administer other programs, including other grants or funding  
23 programs, as determined by the commission to be necessary or  
24 effective in fulfilling its duties and achieving the objectives  
25 described under Section 386.052. The commission may apply the  
26 criteria and requirements applicable to the programs under  
27 Subsection (b) to programs established under this subsection, or

1 the commission may establish separate criteria and requirements as  
2 necessary to achieve the commission's objectives. The additional  
3 programs shall be consistent with and comply with all applicable  
4 laws, regulations, and guidelines pertaining to the use of state  
5 funds, the awarding and administration of grants and contracts, and  
6 achieving reductions in ozone precursors or particulate matter.  
7 Under this subsection, the commission may place a priority on  
8 programs that address the following goals:

9           (1) reduction of emissions of oxides of nitrogen or  
10 particulate matter from heavy-duty on-road vehicles and non-road  
11 equipment, including drayage vehicles, locomotives, and marine  
12 vessels, at seaport facilities or servicing seaport facilities in  
13 nonattainment areas; and

14           (2) reduction of emissions from the operation of  
15 drilling, production, completions, and related heavy-duty on-road  
16 vehicles or non-road equipment in oil and gas production fields  
17 where the commission determines that the programs can help prevent  
18 that area or an adjacent area from being in violation of national  
19 ambient air quality standards.

20           SECTION 2. Subchapter B, Chapter 386, Health and Safety  
21 Code, is amended by adding Section 386.0515 to read as follows:

22           Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION  
23 PROJECTS. (a) In this section, "agricultural product  
24 transportation" means the transportation of a raw agricultural  
25 product from the place of production using a heavy-duty truck to:

26           (1) a nonattainment area;

27           (2) an affected county;

1           (3) a destination inside the clean transportation  
2 triangle; or

3           (4) a county adjacent to a county described by  
4 Subdivision (2) or that contains an area described by Subdivision  
5 (1) or (3).

6           (b) Notwithstanding other eligibility requirements, the  
7 commission shall by rule or policy provide specific eligibility  
8 requirements under the Texas Clean Fleet Program established under  
9 Chapter 392 and under the Texas natural gas vehicle grant program  
10 established under Chapter 394, as added by Chapter 892 (Senate Bill  
11 No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for  
12 projects relating to agricultural product transportation.

13           (c) The determining factor for eligibility for  
14 participation in a program established under Chapter 392 or Chapter  
15 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd  
16 Legislature, Regular Session, 2011, for a project relating to  
17 agricultural product transportation is the overall accumulative  
18 net reduction in emissions of oxides of nitrogen in a nonattainment  
19 area, an affected county, or the clean transportation triangle.

20           SECTION 3. Subsection (b), Section 386.058, Health and  
21 Safety Code, is amended to read as follows:

22           (b) The governor shall appoint to the advisory board:

23                   (1) a representative of the trucking industry;

24                   (2) a representative of the air conditioning  
25 manufacturing industry;

26                   (3) a representative of the electric utility industry;

27                   (4) a representative of regional transportation; and

1           (5) a representative of the nonprofit organization  
2 described by Section 387.002 [~~386.252(a)(2)~~].

3           SECTION 4. Section 386.104, Health and Safety Code, is  
4 amended by adding Subsection (f-1) to read as follows:

5           (f-1) The commission may establish minimum percentage  
6 reduction standards alternative to the standards established under  
7 Subsection (f) as an incentive for the conversion of heavy-duty  
8 diesel on-road vehicle engines or non-road engines to operate under  
9 a dual-fuel configuration that uses natural gas and diesel fuels  
10 through an alternative fuel conversion system certified by the  
11 United States Environmental Protection Agency or the California Air  
12 Resources Board. In determining the emissions rate of the  
13 converted vehicle and engine to compute the emissions reductions  
14 that can be attributed to the conversion system, the commission may  
15 take into account whether the emissions certification requirements  
16 for the conversion system prevent fully accounting for the  
17 emissions reductions. If the commission determines it to be  
18 necessary and appropriate, the commission may consider under this  
19 subsection certified engine test information that demonstrates  
20 reductions of emissions of nitrogen oxides and other pollutants and  
21 other information to verify the emissions reductions.

22           SECTION 5. Section 386.106, Health and Safety Code, is  
23 amended to read as follows:

24           Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION  
25 OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the  
26 ~~[as provided by Section 386.107 and except for infrastructure~~  
27 ~~projects and infrastructure purchases that are part of a broader~~

1 ~~retrofit, repower, replacement, or add-on equipment project, the~~  
2 ~~commission may not award a grant for a proposed project the~~  
3 ~~cost-effectiveness of which, calculated in accordance with Section~~  
4 ~~386.105 and criteria developed under that section, exceeds \$15,000~~  
5 ~~per ton of oxides of nitrogen emissions reduced in the~~  
6 ~~nonattainment area or affected county for which the project is~~  
7 ~~proposed. This subsection does not restrict commission authority~~  
8 ~~under other law to require emissions reductions with a~~  
9 ~~cost-effectiveness that exceeds \$15,000 per ton.~~

10       [(b) ~~The~~] commission may not award a grant that, net of  
11 taxes, provides an amount that exceeds the incremental cost of the  
12 proposed project.

13       (b) [~~(c)~~] The commission shall adopt guidelines for  
14 capitalizing incremental lease costs so those costs may be offset  
15 by a grant under this subchapter.

16       (c) [~~(d)~~] In determining the amount of a grant under this  
17 subchapter, the commission shall reduce the incremental cost of a  
18 proposed new purchase, lease, retrofit, repower, or add-on  
19 equipment project by the value of any existing financial incentive  
20 that directly reduces the cost of the proposed project, including  
21 tax credits or deductions, other grants, or any other public  
22 financial assistance.

23       SECTION 6. Sections 386.152 and 386.153, Health and Safety  
24 Code, are amended to read as follows:

25       Sec. 386.152. [~~COMPTROLLER AND~~] COMMISSION DUTIES  
26 REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE  
27 PROGRAM. (a) The [~~comptroller and the~~] commission shall develop a

1 purchase or lease incentive program for new light-duty motor  
2 vehicles and shall adopt rules necessary to implement the program.

3 (b) The program shall authorize statewide incentives for  
4 the purchase or lease [~~, according to the schedule provided by~~  
5 ~~Section 386.153,~~] of new light-duty motor vehicles powered by  
6 compressed natural gas, liquefied petroleum gas, or electric drives  
7 ~~[that are certified by the United States Environmental Protection~~  
8 ~~Agency to meet an emissions standard that is at least as stringent~~  
9 ~~as those provided by Section 386.153]~~ for a purchaser or lessee who  
10 agrees to register [~~the vehicle in this state]~~ and [~~to~~] operate the  
11 vehicle in this state for a minimum period of time to be established  
12 by the commission [~~not less than 75 percent of the vehicle's annual~~  
13 ~~mileage]~~.

14 (c) Only one incentive will be provided for each new  
15 light-duty motor vehicle. The incentive shall be provided to the  
16 lessee and not to the purchaser if the motor vehicle is purchased  
17 for the purpose of leasing the vehicle to another person.

18 Sec. 386.153. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE  
19 INCENTIVE REQUIREMENTS [~~SCHEDULE~~]. (a) A new light-duty motor  
20 vehicle powered by compressed natural gas or liquefied petroleum  
21 gas is eligible for a \$2,500 incentive if the vehicle:

22 (1) has four wheels;

23 (2) was originally manufactured to comply with and has  
24 been certified by an original equipment manufacturer or  
25 intermediate or final state vehicle manufacturer as complying with,  
26 or has been altered to comply with, federal motor vehicle safety  
27 standards, state emissions regulations, and any additional state

1 regulations applicable to vehicles powered by compressed natural  
2 gas or liquefied petroleum gas;

3 (3) was manufactured for use primarily on public  
4 streets, roads, and highways;

5 (4) is rated at not more than 9,600 pounds unloaded  
6 vehicle weight;

7 (5) has a dedicated or bi-fuel compressed natural gas  
8 or liquefied petroleum gas fuel system with a range of at least 125  
9 miles as estimated, published, and updated by the United States  
10 Environmental Protection Agency;

11 (6) has, as applicable, a:

12 (A) compressed natural gas fuel system that  
13 complies with the:

14 (i) 2013 NFPA 52 Vehicular Gaseous Fuel  
15 Systems Code; and

16 (ii) American National Standard for Basic  
17 Requirements for Compressed Natural Gas Vehicle (NGV) Fuel  
18 Containers, commonly cited as "ANSI/CSA NGV2"; or

19 (B) liquefied petroleum gas fuel system that  
20 complies with:

21 (i) the 2011 NFPA 58 Liquefied Petroleum  
22 Gas Code; and

23 (ii) Section VII of the 2013 ASME Boiler and  
24 Pressure Vessel Code; and

25 (7) was acquired on or after September 1, 2013, or a  
26 later date established by the commission, by the person applying  
27 for the incentive under this subsection and for use or lease by that

1 person and not for resale.

2 (b) If the commission determines that an updated version of  
3 a code or standard described by Subdivision (a)(6) is more  
4 stringent than the version of the code or standard described by  
5 Subdivision (a)(6), the commission by rule may provide that a  
6 vehicle for which a person applies for an incentive under  
7 Subsection (a) is eligible for the incentive only if the vehicle  
8 complies with the updated version of the code or standard.

9 (b-1) The incentive under Subsection (a) is limited to 2,000  
10 vehicles for the state fiscal biennium beginning September 1, 2013.

11 (c) A new light-duty motor vehicle powered by electric drive  
12 is eligible for a \$2,500 incentive if the vehicle:

13 (1) has four wheels;

14 (2) was manufactured for use primarily on public  
15 streets, roads, and highways;

16 (3) has not been modified from the original  
17 manufacturer's specifications;

18 (4) is rated at not more than 8,500 pounds unloaded  
19 vehicle weight;

20 (5) has a maximum speed capability of at least 55 miles  
21 per hour;

22 (6) is propelled to a significant extent by an  
23 electric motor that draws electricity from a battery that:

24 (A) has a capacity of not less than four kilowatt  
25 hours; and

26 (B) is capable of being recharged from an  
27 external source of electricity; and

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

5           (d) The incentive under Subsection (c) is limited to 2,000  
6 vehicles for the state fiscal biennium beginning September 1, 2013.  
7 ~~[A new light-duty motor vehicle is eligible for an incentive~~  
8 ~~according to the following schedule:~~

9	<del>[Incentive emissions standard and incentive amount</del>
10	<del>[Model year 2003-2007</del>
11	<del>[Bin 4 — \$1,250</del>
12	<del>[Bin 3 — \$2,225</del>
13	<del>[Bin 2 — \$3,750</del>
14	<del>[Bin 1 — \$5,000]</del>

15           SECTION 7. Section 386.156, Health and Safety Code, is  
16 amended to read as follows:

17           Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On  
18 August 1 each year the commission shall publish ~~[and provide to the~~  
19 ~~comptroller]~~ a list of ~~[the]~~ new model motor vehicles eligible for  
20 inclusion in an incentive under this subchapter as listed for the  
21 commission under Section 386.155. The commission shall publish  
22 ~~[and provide to the comptroller]~~ supplements to that list as  
23 necessary to include additional new vehicle models ~~[listed in a~~  
24 ~~supplement to the original list provided by a manufacturer under~~  
25 ~~Section 386.155]~~.

26           (b) The commission ~~[comptroller]~~ shall publish ~~[distribute]~~  
27 the list of eligible motor vehicles on the commission's Internet

1 website [~~to all new motor vehicle dealers and leasing agents in this~~  
2 ~~state~~].

3 SECTION 8. Subsections (a) and (c), Section 386.158, Health  
4 and Safety Code, are amended to read as follows:

5 (a) A person who purchases or leases a new light-duty motor  
6 vehicle described by Section 386.153 and [~~that has been~~] listed  
7 under Section 386.156(a) [~~386.155~~] is eligible to apply for an  
8 incentive under this subchapter.

9 (c) To receive money under an incentive program provided by  
10 this subchapter, the purchaser or lessee of a new light-duty motor  
11 vehicle who is eligible to apply for an incentive under this  
12 subchapter shall apply for the incentive in the manner provided by  
13 law or by rule of the commission [~~comptroller~~].

14 SECTION 9. Section 386.160, Health and Safety Code, is  
15 amended to read as follows:

16 Sec. 386.160. COMMISSION [~~COMPTROLLER~~] TO ACCOUNT FOR MOTOR  
17 VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission  
18 [~~comptroller~~] by rule shall develop a method to administer and  
19 account for the motor vehicle purchase or lease incentives  
20 authorized by this subchapter and to pay incentive money to the  
21 purchaser or lessee of a new motor vehicle, on application of the  
22 purchaser or lessee as provided by this subchapter.

23 (b) The commission [~~comptroller~~] shall develop and publish  
24 forms and instructions for the purchaser or lessee of a new motor  
25 vehicle to use in applying to the commission [~~comptroller~~] for an  
26 incentive payment under this subchapter. The commission  
27 [~~comptroller~~] shall make the forms available to new motor vehicle

1 dealers and leasing agents. Dealers and leasing agents shall make  
2 the forms available to their prospective purchasers or lessees.

3 (c) In addition to other forms developed and published under  
4 this section, the commission [~~comptroller~~] shall develop and  
5 publish a verification form by which, with information provided by  
6 the dealer or leasing agent, the commission [~~comptroller~~] can  
7 verify the sale of a vehicle covered by this subchapter. The  
8 verification form shall include at least the name of the purchaser,  
9 the vehicle identification number of the vehicle involved, the date  
10 of the purchase, and the name of the new motor dealer or leasing  
11 agent involved in the transaction. At the time of sale or lease of a  
12 vehicle eligible for an incentive under this subchapter, the dealer  
13 or leasing agent shall complete the verification form supplied to  
14 the dealer by the commission [~~comptroller~~]. The purchaser or  
15 lessee shall include the completed verification form as part of the  
16 purchaser's application for an incentive. The dealer shall  
17 maintain a copy of the completed verification form for at least two  
18 years from the date of the transaction.

19 SECTION 10. The heading to Section 386.161, Health and  
20 Safety Code, is amended to read as follows:

21 Sec. 386.161. [~~REPORT TO COMMISSION,~~] SUSPENSION OF  
22 PURCHASE OR LEASE INCENTIVES.

23 SECTION 11. Subsections (b), (c), and (d), Section 386.161,  
24 Health and Safety Code, are amended to read as follows:

25 (b) If the balance available for motor vehicle purchase or  
26 lease incentives falls below 15 percent of the total allocated for  
27 the incentives during that fiscal year, the commission

1 ~~[comptroller]~~ by order shall suspend the incentives until the date  
2 the comptroller can certify that the balance available in the fund  
3 for incentives is an amount adequate to resume the incentives or the  
4 beginning of the next fiscal year, whichever is earlier. If the  
5 commission ~~[comptroller]~~ suspends the incentives, the commission  
6 ~~[comptroller]~~ shall immediately notify ~~[the commission and]~~ all new  
7 motor vehicle dealers and leasing agents that the incentives have  
8 been suspended.

9 (c) The commission ~~[comptroller]~~ shall establish a  
10 toll-free telephone number available to motor vehicle dealers and  
11 leasing agents for the dealers and agents to call to verify that  
12 incentives are available. The commission ~~[comptroller]~~ may provide  
13 for issuing verification numbers over the telephone line.

14 (d) Reliance by a dealer or leasing agent on information  
15 provided by the ~~[comptroller or]~~ commission is a complete defense  
16 to an action involving or based on eligibility of a vehicle for an  
17 incentive or availability of vehicles eligible for an incentive.

18 SECTION 12. Subchapter D, Chapter 386, Health and Safety  
19 Code, is amended by adding Section 386.162 to read as follows:

20 Sec. 386.162. EXPIRATION. This subchapter expires August  
21 31, 2015.

22 SECTION 13. Chapter 386, Health and Safety Code, is amended  
23 by adding Subchapter D-1 to read as follows:

24 SUBCHAPTER D-1. DRAYAGE TRUCK INCENTIVE PROGRAM

25 Sec. 386.181. DEFINITION; RULES. (a) In this subchapter,  
26 "drayage truck" means a truck that transports a load to or from a  
27 seaport or rail yard.

1       (b) The commission may include more specific definitions in  
2 the rules or guidelines developed to implement the program  
3 established by this subchapter in order to reduce emissions in and  
4 around seaports in a nonattainment area.

5       Sec. 386.182. COMMISSION DUTIES. (a) The commission shall  
6 develop a purchase incentive program to encourage owners to replace  
7 drayage trucks with pre-2007 model year engines with newer drayage  
8 trucks and shall adopt guidelines necessary to implement the  
9 program.

10       (b) The commission by rule shall establish criteria for the  
11 models of drayage trucks that are eligible for inclusion in an  
12 incentive program under this subchapter. The guidelines must  
13 provide that a drayage truck owner is not eligible for an incentive  
14 payment under this subchapter unless the truck being replaced  
15 contains a pre-2007 model year engine and the replacement truck's  
16 engine is from model year 2010 or later as determined by the  
17 commission and that the truck operates at a seaport or rail yard.

18       Sec. 386.183. DRAYAGE TRUCK PURCHASE INCENTIVE. (a) To be  
19 eligible for an incentive under this subchapter, a person must:

20               (1) purchase a replacement drayage truck that under  
21 the guidelines adopted by the commission under Section 386.182 is  
22 eligible for inclusion in the program for an incentive under this  
23 subchapter; and

24               (2) agree to:

25                       (A) register the truck in this state;

26                       (B) operate the truck in and within a maximum  
27 distance established by the commission of a seaport or rail yard in

1 a nonattainment area of this state for not less than 50 percent of  
2 the vehicle's annual mileage or hours of operation, as determined  
3 by the commission; and

4 (C) permanently remove a pre-2007 drayage truck  
5 containing a pre-2007 engine owned by the person from operation in a  
6 nonattainment area of this state by destroying the engine and  
7 scrapping the truck after the purchase of the new truck in  
8 accordance with guidelines established by the commission.

9 (b) To receive money under an incentive program provided by  
10 this subchapter, the purchaser of a drayage truck eligible for  
11 inclusion in the program must apply for the incentive in the manner  
12 provided by law, rule, or guideline of the commission.

13 (c) Not more than one incentive may be provided for each  
14 drayage truck purchased.

15 (d) An incentive provided under this subchapter may be used  
16 to fund not more than 80 percent of the purchase price of the  
17 drayage truck.

18 (e) The commission shall establish procedures to verify  
19 that a person who receives an incentive:

20 (1) has operated in a seaport or rail yard and owned or  
21 leased the drayage truck to be replaced for at least two years prior  
22 to receiving the grant; and

23 (2) permanently destroys the engine and scraps the  
24 drayage truck that contained the pre-2007 engine owned or leased by  
25 the person, in accordance with guidelines established by the  
26 commission, after the purchase of the new truck.

27 (f) The commission may modify this program to improve its

1 effectiveness or further the goals of Subchapter B.

2 SECTION 14. The heading to Subchapter E, Chapter 386,  
3 Health and Safety Code, is amended to read as follows:

4 SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION AND COMPTROLLER  
5 ENERGY EFFICIENCY PROGRAMS [~~GRANT PROGRAM~~]

6 SECTION 15. Section 386.205, Health and Safety Code, is  
7 amended to read as follows:

8 Sec. 386.205. EVALUATION OF UTILITY COMMISSION AND  
9 COMPTROLLER [~~STATE~~] ENERGY EFFICIENCY PROGRAMS. In cooperation  
10 with the laboratory, the utility commission shall provide an annual  
11 report to the commission that, by county, quantifies the reductions  
12 of energy demand, peak loads, and associated emissions of air  
13 contaminants achieved from [~~the~~] programs implemented by the state  
14 energy conservation office [~~under this subchapter~~] and from  
15 programs [~~those~~] implemented under Section 39.905, Utilities Code.

16 SECTION 16. Subsection (a), Section 386.252, Health and  
17 Safety Code, as amended by Chapter 28 (S.B. 527), Acts of the 82nd  
18 Legislature, Regular Session, 2011, is amended to read as follows:

19 (a) Money in the fund may be used only to implement and  
20 administer programs established under the plan. Money appropriated  
21 to the commission to be used for the programs under Section  
22 386.051(b) [~~and the total appropriation~~] shall be allocated as  
23 follows:

24 (1) not more than four percent may be used for the  
25 clean school bus program under Chapter 390;

26 (2) not more than three percent [~~not more than 10~~  
27 ~~percent may be used for on-road diesel purchase or lease~~

1 ~~incentives,~~

2           ~~[(3) a specified amount]~~ may be used for the new  
3 technology implementation grant program under Chapter 391, from  
4 which at least \$1 million will ~~[a defined amount may]~~ be set aside  
5 for electricity storage projects related to renewable energy;

6           (3) ~~[(4)]~~ five percent shall be used for the clean  
7 fleet program under Chapter 392;

8           (4) ~~[(5)]~~ not more than ~~[\$7 million shall be allocated~~  
9 ~~in 2012 and 2013 and not more than]~~ \$3 million may ~~[shall]~~ be used by  
10 the commission ~~[allocated in 2014 and in subsequent years]~~ to fund a  
11 regional air monitoring program in commission Regions 3 and 4 to be  
12 implemented under the commission's oversight, including direction  
13 regarding the type, number, location, and operation of, and data  
14 validation practices for, monitors funded by the program through a  
15 regional nonprofit entity located in North Texas having  
16 representation from counties, municipalities, higher education  
17 institutions, and private sector interests across the area;

18           (5) not less than 16 percent shall be used for the  
19 Texas natural gas vehicle grant program under Chapter 394;

20           (6) not more than five percent may be used to provide  
21 grants for natural gas fueling stations under the clean  
22 transportation triangle program under Section 394.010;

23           (7) not more than five percent may be used for the  
24 Texas alternative fueling facilities program under Chapter 393;

25           (8) a specified amount may be used ~~[is to be allocated]~~  
26 each year to support research related to air quality as provided by  
27 Chapter 387;

1           (9) not more than [(7) up to] \$200,000 may be used [is  
2 allocated] for a health effects study;

3           (10) [(8) up to] \$500,000 is to be deposited in the  
4 state treasury to the credit of the clean air account created under  
5 Section 382.0622 to supplement funding for air quality planning  
6 activities in affected counties;

7           (11) at least \$4 million and up to four percent to a  
8 maximum of \$7 million, whichever is greater, is allocated to the  
9 commission for administrative costs;

10           (12) at least two percent and up to five percent of the  
11 fund is to be used by the commission for the drayage truck incentive  
12 program established under Subchapter D-1;

13           (13) not more than five percent may be used for the  
14 light-duty motor vehicle purchase or lease incentive program  
15 established under Subchapter D;

16           (14) [(9)] not more than \$216,000 is allocated to the  
17 commission to contract with the Energy Systems Laboratory at the  
18 Texas Engineering Experiment Station annually for the development  
19 and annual computation of creditable statewide emissions  
20 reductions obtained through wind and other renewable energy  
21 resources for the state implementation plan;

22           (15) [(10) not more than \$3,400,000 is allocated to  
23 the commission for administrative costs incurred by the commission;

24           [(11)] 1.5 percent of the money in the fund is  
25 allocated for administrative costs incurred by the laboratory; and

26           (16) [(12)] the balance is to be used by [is allocated  
27 to] the commission for the diesel emissions reduction incentive

1 program under Subchapter C as determined by the commission.

2 SECTION 17. Section 386.252, Health and Safety Code, is  
3 amended by amending Subsections (b), (c), (d), and (e) and adding  
4 Subsection (e-1) to read as follows:

5 (b) The commission may allocate unexpended money designated  
6 for the clean fleet program under Chapter 392 to other programs  
7 described under Subsection (a) after the commission allocates money  
8 to recipients under the clean fleet program.

9 (c) The commission may allocate unexpended money designated  
10 for the Texas alternative fueling facilities program under Chapter  
11 393 to other programs described under Subsection (a) after the  
12 commission allocates money to recipients under the alternative  
13 fueling facilities program.

14 (d) The commission may reallocate money designated for the  
15 Texas natural gas vehicle grant program under Chapter 394 to other  
16 programs described under Subsection (a) 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 that program will cause the state to be in noncompliance  
20 with the state implementation plan to the extent that federal  
21 action is likely; and

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

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

1        (e-1) Money [~~money~~] allocated under Subsection (a) to a  
2 particular program may be used for another program under the plan as  
3 determined by the commission.

4        [~~(c) Money in the fund may be allocated to the clean school  
5 bus program only if:~~

6            [~~(1) the money is available for that purpose after  
7 money is allocated for the other purposes of the fund as required by  
8 the state implementation plan; or~~

9            [~~(2) the amount of money deposited to the credit of the  
10 fund in a state fiscal year exceeds the amount the comptroller's  
11 biennial revenue estimate shows as the comptroller's estimated  
12 amount to be deposited to the credit of the fund in that year.~~

13        [~~(d) The commission may allocate unexpended money  
14 designated for the clean fleet program to other programs described  
15 under Subsection (a) after the commission allocates money to  
16 recipients under the clean fleet program.~~

17        [~~(e) The commission may allocate unexpended money  
18 designated for the Texas alternative fueling facilities program to  
19 other programs described under Subsection (a) after the commission  
20 allocates money to recipients under the alternative fueling  
21 facilities program.]~~

22        SECTION 18. Subsection (f), Section 386.252, Health and  
23 Safety Code, as added by Chapter 892 (S.B. 385), Acts of the 82nd  
24 Legislature, Regular Session, 2011, is amended to read as follows:

25        (f) Money in the fund may be used by the commission for  
26 programs under Sections 386.051(b)(13), (b)(14), and (b-1) as may  
27 be appropriated for those programs [~~Notwithstanding Subsection~~

1 ~~(a), the commission may reallocate money in the fund if:~~

2 ~~[(1) the commission, in consultation with the governor~~  
3 ~~and the advisory board, determines that the use of the money in the~~  
4 ~~fund for the program established under Chapter 394 will cause the~~  
5 ~~state to be in noncompliance with the state implementation plan to~~  
6 ~~the extent that federal action is likely; and~~

7 ~~[(2) the commission finds that the reallocation of~~  
8 ~~some or all of the funding for the program established under Chapter~~  
9 ~~394 would resolve the noncompliance].~~

10 SECTION 19. Section 386.252, Health and Safety Code, is  
11 amended by amending Subsection (g) and adding Subsection (h) to  
12 read as follows:

13 (g) If the legislature does not specify amounts or  
14 percentages from the total appropriation to the commission to be  
15 allocated under Subsection (a) or (f), the commission shall  
16 determine the amounts of the total appropriation to be allocated  
17 under each of those subsections, such that the total appropriation  
18 is expended while maximizing emissions reductions ~~[Under~~  
19 ~~Subsection (f), the commission may not reallocate more than the~~  
20 ~~minimum amount of money necessary to resolve the noncompliance].~~

21 (h) Subject to the limitations outlined in this section and  
22 any additional limitations placed on the use of the appropriated  
23 funds, money allocated under this section to a particular program  
24 may be used for another program under the plan as determined by the  
25 commission.

26 SECTION 20. Section 391.002, Health and Safety Code, is  
27 amended to read as follows:

1           Sec. 391.002. GRANT PROGRAM. (a) The commission shall  
2 establish and administer a new technology implementation grant  
3 program to assist the implementation of new technologies to reduce  
4 emissions from facilities and other stationary sources in this  
5 state. The commission may establish a minimum capital expenditure  
6 threshold for projects under Subsection (b)(2). Under the program,  
7 the commission shall provide grants or other financial incentives  
8 for eligible projects to offset the incremental cost of emissions  
9 reductions.

10           (b) Projects that may be considered for a grant under the  
11 program include:

12                 (1) advanced clean energy projects, as defined by  
13 Section 382.003;

14                 (2) new technology projects that reduce emissions of  
15 regulated pollutants from point sources [~~and involve capital~~  
16 ~~expenditures that exceed \$500 million~~]; and

17                 (3) electricity storage projects related to renewable  
18 energy, including projects to store electricity produced from wind  
19 and solar generation that provide efficient means of making the  
20 stored energy available during periods of peak energy use.

21           SECTION 21. Subsection (a), Section 392.007, Health and  
22 Safety Code, is amended to read as follows:

23           (a) The amount the commission shall award for each vehicle  
24 being replaced is up to[+]

25                 [~~(1)~~] 80 percent, as determined by the commission, of  
26 the total [~~incremental~~] cost for replacement of a heavy-duty or  
27 light-duty diesel engine[+]

1                   ~~[(A) manufactured prior to implementation of~~  
2 ~~federal or California emission standards; and~~

3                   ~~[(B) not certified to meet a specific emission~~  
4 ~~level by either the United States Environmental Protection Agency~~  
5 ~~or the California Air Resources Board;~~

6                   ~~[(2) 70 percent of the incremental cost for~~  
7 ~~replacement of a heavy-duty diesel engine certified to meet the~~  
8 ~~federal emission standards applicable to engines manufactured in~~  
9 ~~1990 through 1997;~~

10                   ~~[(3) 60 percent of the incremental cost for~~  
11 ~~replacement of a heavy-duty diesel engine certified to meet the~~  
12 ~~federal emission standards applicable to engines manufactured in~~  
13 ~~1998 through 2003;~~

14                   ~~[(4) 50 percent of the incremental cost for~~  
15 ~~replacement of a heavy-duty diesel engine certified to meet the~~  
16 ~~federal emission standards applicable to engines manufactured in~~  
17 ~~2004 and later;~~

18                   ~~[(5) 80 percent of the incremental cost for~~  
19 ~~replacement of a light-duty diesel vehicle;~~

20                   ~~[(A) manufactured prior to the implementation of~~  
21 ~~certification requirements; and~~

22                   ~~[(B) not certified to meet either mandatory or~~  
23 ~~voluntary emission certification standards;~~

24                   ~~[(6) 70 percent of the incremental cost for~~  
25 ~~replacement of a light-duty diesel vehicle certified to meet~~  
26 ~~federal Tier 1 emission standards phased in between 1994 and 1997;~~  
27 ~~and~~

1           ~~[(7) 60 percent of the incremental cost for~~  
2 ~~replacement of a light-duty diesel vehicle certified to meet~~  
3 ~~federal Tier 2 emission standards phased in between 2004 and 2009].~~

4           SECTION 22. Subsection (a), Section 394.007, Health and  
5 Safety Code, as amended by Chapter 892 (S.B. 385), Acts of the 82nd  
6 Legislature, Regular Session, 2011, is amended to read as follows:

7           (a) The commission shall develop a grant schedule that:

8                   (1) assigns a standardized grant in an amount up to  
9 ~~[between 60 and]~~ 90 percent of the incremental cost of a natural gas  
10 vehicle purchase, lease, other commercial finance, or repowering;

11                   (2) is based on:

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

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

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

18           SECTION 23. Section 394.010, Health and Safety Code, as  
19 amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature,  
20 Regular Session, 2011, is amended by amending Subsections (a), (b),  
21 (c), and (d) and adding Subsection (f-1) to read as follows:

22           (a) To ensure that natural gas vehicles purchased, leased,  
23 or otherwise commercially financed or repowered under the program  
24 have access to fuel, and to build the foundation for a  
25 self-sustaining market for natural gas vehicles in Texas, the  
26 commission shall award grants to support the development of a  
27 network of natural gas vehicle fueling stations along the

1 interstate highways connecting Houston, San Antonio, Dallas, and  
2 Fort Worth, and in nonattainment areas and affected counties of the  
3 state. In awarding the grants, the commission shall provide for:

4 (1) strategically placed natural gas vehicle fueling  
5 stations in and between the Houston, San Antonio, and Dallas-Fort  
6 Worth areas, and in nonattainment areas and affected counties of  
7 the state, to enable a natural gas vehicle to travel in those areas  
8 ~~[along that triangular area]~~ relying solely on natural gas fuel;

9 (2) grants to be dispersed through a competitive  
10 bidding process to offset a portion of the cost of installation of  
11 the natural gas dispensing equipment;

12 (3) contracts that require the recipient stations to  
13 meet operational, maintenance, and reporting requirements as  
14 specified by the commission; and

15 (4) a listing, to be maintained by the commission and  
16 made available to the public online, of all natural gas vehicle  
17 fueling stations that have received grant funding, including  
18 location and hours of operation.

19 (b) The commission may not award more than ~~[+~~  
20 ~~[(1) three station grants to any entity, or~~  
21 ~~[(2)]~~ one grant for each station.

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

23 (1) \$400,000 ~~[\$100,000]~~ for a compressed natural gas  
24 station;

25 (2) \$400,000 ~~[\$250,000]~~ for a liquefied natural gas  
26 station; or

27 (3) \$600,000 ~~[\$400,000]~~ for a station providing both

1 liquefied and compressed natural gas.

2 (d) Stations funded by grants under this section must be  
3 publicly accessible [~~and located not more than three miles from an~~  
4 ~~interstate highway system~~]. The commission shall give preference  
5 to:

6 (1) stations providing both liquefied natural gas and  
7 compressed natural gas at a single location; [~~and~~]

8 (2) stations located not more than one mile from an  
9 interstate highway system; and

10 (3) stations located in the triangular area between  
11 the Houston, San Antonio, and Dallas-Fort Worth areas.

12 (f-1) An application for a grant under this section must  
13 include a certification that the applicant complies with laws,  
14 rules, guidelines, and requirements applicable to taxation of fuel  
15 provided by the applicant at each fueling facility owned or  
16 operated by the applicant. The commission may terminate a grant  
17 awarded under this section without further obligation to the grant  
18 recipient if the commission determines that the recipient did not  
19 comply with a law, rule, guideline, or requirement described by  
20 this subsection. This subsection does not create a cause of action  
21 to contest an application or award of a grant.

22 SECTION 24. Section 393.006, Health and Safety Code, as  
23 amended by Chapter 892 (S.B. 385), Acts of the 82nd Legislature,  
24 Regular Session, 2011, is amended to read as follows:

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

1 of:

2 (1) 50 percent of the sum of the actual eligible costs  
3 incurred by the grant recipient within deadlines established by the  
4 commission to construct, reconstruct, or acquire the facility; or

5 (2) \$600,000 [~~\$500,000~~].

6 SECTION 25. The following provisions are repealed:

7 (1) Subsection (c), Section 386.051, Health and Safety  
8 Code;

9 (2) Subdivision (1), Section 386.151, Health and  
10 Safety Code;

11 (3) Section 386.154, Health and Safety Code;

12 (4) Subsection (a), Section 386.161, Health and Safety  
13 Code;

14 (5) Sections 386.201, 386.202, and 386.203, Health and  
15 Safety Code;

16 (6) Section 386.204, Health and Safety Code;

17 (7) Subsection (a), Section 386.252, Health and Safety  
18 Code, as amended by Chapters 589 (Senate Bill No. 20) and 892  
19 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular  
20 Session, 2011;

21 (8) Subsection (f), Section 386.252, Health and Safety  
22 Code, as added by Chapter 589 (Senate Bill No. 20), Acts of the 82nd  
23 Legislature, Regular Session, 2011; and

24 (9) Chapters 393 and 394, Health and Safety Code, as  
25 amended by Chapter 589 (Senate Bill No. 20), Acts of the 82nd  
26 Legislature, Regular Session, 2011.

27 SECTION 26. This Act takes effect immediately if it

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1 receives a vote of two-thirds of all the members elected to each  
2 house, as provided by Section 39, Article III, Texas Constitution.  
3 If this Act does not receive the vote necessary for immediate  
4 effect, this Act takes effect September 1, 2013.

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

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

I hereby certify that S.B. No. 1727 passed the Senate on May 2, 2013, by the following vote: Yeas 29, Nays 1, one present not voting; and that the Senate concurred in House amendments on May 25, 2013, by the following vote: Yeas 28, Nays 2, one present not voting.

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

I hereby certify that S.B. No. 1727 passed the House, with amendments, on May 21, 2013, by the following vote: Yeas 107, Nays 39, two present not voting.

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

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor