

1 AN ACT

2 relating to air contaminant emissions reductions, including the
3 continuation and provisions of the Texas emissions reduction plan
4 and the use of money currently dedicated to the Texas emissions
5 reduction plan fund.

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

7 SECTION 1. Section 382.0172(c), Health and Safety Code, is
8 amended to read as follows:

9 (c) The commission may authorize or allow substitution of
10 emissions reductions under Subsection (b) only if:

11 (1) reductions in emissions of one air contaminant for
12 which the area has been designated as nonattainment are substituted
13 for reductions in emissions of another air contaminant for which
14 the area has been designated as nonattainment; or [~~and~~]

15 (2) the commission finds that the substitution will
16 clearly result in greater health benefits for the community as a
17 whole than would reductions in emissions at the original facility.

18 SECTION 2. Subchapter B, Chapter 382, Health and Safety
19 Code, is amended by adding Section 382.0173 to read as follows:

20 Sec. 382.0173. ADOPTION OF RULES REGARDING CERTAIN STATE
21 IMPLEMENTATION PLAN REQUIREMENTS AND STANDARDS OF PERFORMANCE FOR
22 CERTAIN SOURCES. (a) The commission shall adopt rules to comply
23 with Sections 110(a)(2)(D) and 111(d) of the federal Clean Air Act
24 (42 U.S.C. Sections 7410 and 7411). In adopting the rules, at a

1 minimum the commission shall adopt and incorporate by reference 40
2 C.F.R. Subparts AA through II and Subparts AAA through III of Part
3 96 and 40 C.F.R. Subpart HHHH of Part 60. The commission shall
4 adopt a state implementation plan in accordance with the rules and
5 submit the plan to the United States Environmental Protection
6 Agency for approval according to the schedules adopted by that
7 agency.

8 (b) The commission may require emissions reductions in
9 conjunction with implementation of the rules adopted under
10 Subsection (a) only for electric generating units. The commission
11 shall make permanent allocations that are reflective of the
12 allocation requirements of 40 C.F.R. Subparts AA through HH and
13 Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of
14 Part 60, as applicable, at no cost to units as defined in 40 C.F.R.
15 Section 51.123 and 60.4102 using the United States Environmental
16 Protection Agency's allocation method as specified by Section
17 60.4142(a)(1)(i), as issued by that agency on May 12, 2005, or 40
18 C.F.R. Section 96.142(a)(1)(i), as issued by that agency on May 18,
19 2005, as applicable with the exception of nitrogen oxides which
20 shall be allocated according to the additional requirements of
21 Subsection (c). The commission shall maintain a special reserve of
22 allocations for new units commencing operation on or after January
23 1, 2001, as defined by 40 C.F.R. Subparts AA through HH and Subparts
24 AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as
25 applicable with the exception of nitrogen oxides which shall be
26 allocated according to the additional requirements of Subsection
27 (c).

1 (c) Additional requirements regarding NOx allocations:

2 (1) The commission shall maintain a special reserve of
3 allocations for nitrogen oxide of 9.5 percent for new units.
4 Beginning with the 2015 control period, units shall be considered
5 new for each control period in which they do not have five years of
6 operating data reported to the commission prior to the date of
7 allocation for a given control period. Prior to the 2015 control
8 period, units that commenced operation on or after January 1, 2001,
9 will receive NOx allocations from the special reserve only.

10 (2) Nitrogen oxide allowances shall be established for
11 the 2009-2014 control periods for units commencing operation before
12 January 1, 2001, using the average of the three highest amounts of
13 the unit's adjusted control period heat input for 2000 through
14 2004, with the adjusted control period heat input for each year
15 calculated as follows:

16 (A) if the unit is coal-fired during the year,
17 the unit's control period heat input for such year is multiplied by
18 90 percent;

19 (B) if the unit is natural gas-fired during the
20 year, the unit's control period heat input for such year is
21 multiplied by 50 percent; and

22 (C) if the fossil fuel fired unit is not subject
23 to Subparagraph (A) or (B) of this paragraph, the unit's control
24 period heat input for such year is multiplied by 30 percent.

25 (3) Before the allocation date specified by EPA for
26 the control period beginning January 1, 2016, and every five years
27 thereafter, the commission shall adjust the baseline for all

1 affected units using the average of the three highest amounts of the
2 unit's adjusted control period heat input for periods one through
3 five of the preceding seven control periods, with the adjusted
4 control period heat input for each year calculated as follows:

5 (A) for units commencing operation before
6 January 1, 2001:

7 (i) if the unit is coal-fired during the
8 year, the unit's control period heat input for such year is
9 multiplied by 90 percent;

10 (ii) if the unit is natural gas-fired
11 during the year, the unit's control period heat input for such year
12 is multiplied by 50 percent; and

13 (iii) if the fossil fuel fired unit is not
14 subject to Subdivision (3)(A)(i) or (3)(A)(ii) of this
15 subparagraph, the unit's control period heat input for such year is
16 multiplied by 30 percent.

17 (B) for units commencing operation on or after
18 January 1, 2001, in accordance with the formulas set forth by USEPA
19 in 40 C.F.R. 96.142 with any corrections to this section that may be
20 issued by USEPA prior to the allocation date.

21 (d) This section applies only while the federal rules cited
22 in this section are enforceable and does not limit the authority of
23 the commission to implement more stringent emissions control
24 requirements.

25 (e) In adopting rules under Subsection (a), the commission
26 shall incorporate any modifications to the federal rules cited in
27 this section that result from a request for rehearing regarding

1 those rules that is filed with the United States Environmental
2 Protection Agency or from a petition for review of those rules that
3 is filed with a court.

4 (f) The commission shall take all reasonable and
5 appropriate steps to exclude the West Texas Region and El Paso
6 Region, as defined by Section 39.264(g), Utilities Code, from any
7 requirement under, derived from, or associated with 40 C.F.R.
8 Sections 51.123, 51.124, and 51.125, including filing a petition
9 for reconsideration with the United States Environmental
10 Protection Agency requesting that it amend 40 C.F.R. Sections
11 51.123, 51.124, and 51.125 to exclude such regions. The commission
12 shall promptly amend the rules it adopts under Subsection (a) of
13 this section to incorporate any exclusions for such regions that
14 result from the petition required under this subsection.

15 (g) The commission shall study the availability of mercury
16 control technology. The commission shall also examine the timeline
17 for implementing the reductions required under the federal rules,
18 the cost of additional controls both to the plant owners and
19 consumers, and the fiscal impact on the state of higher levels of
20 mercury emissions between 2005 and 2018, and consider the impact of
21 trading on local communities. The commission shall report its
22 findings by September 1, 2006.

23 SECTION 3. Section 386.002, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 386.002. EXPIRATION. This chapter expires August 31,
26 2010 [~~2008~~].

27 SECTION 4. Section 386.053(c), Health and Safety Code, is

1 amended to read as follows:

2 (c) The commission shall make draft guidelines and criteria
3 available to the public and the United States Environmental
4 Protection Agency before the 30th [~~45th~~] day preceding the date of
5 final adoption and shall hold at least one public meeting to
6 consider public comments on the draft guidelines and criteria
7 before final adoption. The public meeting shall be held in the
8 affected state implementation plan area, and if the guidelines
9 affect more than one state implementation plan area, a public
10 meeting shall be held in each affected state implementation plan
11 area affected by the guidelines.

12 SECTION 5. Sections 386.058(b) and (e), Health and Safety
13 Code, are amended to read as follows:

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

- 15 (1) a representative of the trucking industry;
16 (2) a representative of the air conditioning
17 manufacturing industry;
18 (3) a representative of the electric utility industry;
19 (4) a representative of regional transportation; and
20 (5) a representative of the nonprofit organization
21 described by Section 386.252(a)(2) [~~the Texas Council on~~
22 ~~Environmental Technology~~].

23 (e) Appointed members of the advisory board serve staggered
24 four-year [~~two-year~~] terms, with the [~~The~~] terms of seven or
25 eight appointed members expiring [~~expire~~] February 1 of each
26 [~~even-numbered year. The terms of eight appointed members expire~~
27 ~~February 1 of each~~] odd-numbered year. An appointed member may be

1 reappointed to a subsequent term.

2 SECTION 6. Section 386.102, Health and Safety Code, is
3 amended by adding Subsection (e) to read as follows:

4 (e) To improve the success of the program the commission:

5 (1) shall establish cost-effective limits for grants
6 awarded under the program to an owner or operator of a locomotive or
7 marine vessel that are lower than the cost-effectiveness limits
8 applied to other emissions reductions grants;

9 (2) shall determine the maximum amount of reductions
10 available from the locomotive and marine sectors and develop
11 strategies to facilitate the maximum amount of reductions in these
12 sectors; and

13 (3) shall include in the report required by Section
14 386.057(b) that is due not later than December 1, 2006, an analysis
15 of the cost-effectiveness of the grants in these sectors.

16 SECTION 7. Section 386.111(a), Health and Safety Code, is
17 amended to read as follows:

18 (a) The commission shall review an application for a grant
19 for a project authorized under this subchapter, including an
20 application for a grant for an infrastructure project, immediately
21 on receipt of the application. If the commission determines that an
22 application is incomplete, the commission shall notify the
23 applicant [~~, not later than the 15th working day after the date on~~
24 ~~which the commission received the application,~~] with an explanation
25 of what is missing from the application. The commission shall
26 [~~record the date and time of receipt of each application the~~
27 ~~commission determines to be complete and shall~~] evaluate the

1 completed application according to the appropriate project
2 criteria. Subject to available funding, the commission shall make
3 a final determination on an application as soon as possible [~~and not~~
4 ~~later than the 60th working day after the date the application is~~
5 ~~determined to be complete~~].

6 SECTION 8. Section 386.116(d), Health and Safety Code, is
7 amended to read as follows:

8 (d) The [~~On or before December 1 of each even-numbered year,~~
9 ~~the~~] commission shall include in the biennial plan report required
10 by Section 386.057(b) a report of commission actions and results
11 under this section [~~to the governor, lieutenant governor, and~~
12 ~~speaker of the house of representatives~~].

13 SECTION 9. Subchapter C, Chapter 386, Health and Safety
14 Code, is amended by adding Section 386.117 to read as follows:

15 Sec. 386.117. REBATE GRANTS. (a) The commission shall
16 adopt a process for awarding grants under this subchapter in the
17 form of rebates to streamline the grant application, contracting,
18 reimbursement, and reporting processes for certain projects. The
19 process adopted under this section must:

20 (1) designate certain types of projects, such as
21 repowers, replacements, and retrofits, as eligible for rebates;

22 (2) project standardized oxides of nitrogen emissions
23 reductions for each designated project type;

24 (3) assign a standardized rebate amount for each
25 designated project type;

26 (4) allow for processing rebates on an ongoing
27 first-come, first-served basis; and

1 (5) consolidate, simplify, and reduce the
2 administrative work for applicants and the commission associated
3 with grant application, contracting, reimbursement, and reporting
4 processes for designated project types.

5 (b) The commission may limit or expand the designated
6 project types as necessary to further the goals of the program.

7 (c) The commission may award rebate grants as a pilot
8 project for a specific region or may award the grants statewide.

9 (d) The commission may administer the rebate grants or may
10 designate another entity to administer the grants.

11 SECTION 10. Section 386.251(c), Health and Safety Code, is
12 amended to read as follows:

13 (c) The fund consists of:

14 (1) the amount of money deposited to the credit of the
15 fund [~~contributions, fees, and surcharges~~] under:

16 (A) Section 386.056;

17 (B) Sections 151.0515 and 152.0215, Tax Code; and

18 (C) Sections 501.138, 502.1675, and 548.5055
19 [~~and 548.256(c)~~], Transportation Code; and

20 (2) grant money recaptured under Section 386.111(d).

21 SECTION 11. Section 386.252(a), Health and Safety Code, is
22 amended to read as follows:

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

26 (1) for the diesel emissions reduction incentive
27 program, 87.5 percent of the money in the fund, of which not more

1 than 10 percent may be used for on-road diesel purchase or lease
2 incentives;

3 (2) for the new technology research and development
4 program, 9.5 percent of the money in the fund, of which up to
5 \$250,000 is allocated for administration, up to \$200,000 is
6 allocated for a health effects study, \$500,000 is to be deposited in
7 the state treasury to the credit of the clean air account created
8 under Section 382.0622 to supplement funding for air quality
9 planning activities in affected counties, [~~and~~] not less than 20
10 percent is to be allocated each year to support research related to
11 air quality for the Houston-Galveston-Brazoria and Dallas-Fort
12 Worth nonattainment areas by a nonprofit organization based in
13 Houston, and the balance is to be allocated each year to that
14 nonprofit organization based in Houston to be used to implement and
15 administer the new technology research and development program
16 under a contract with the commission for the purpose of
17 identifying, testing, and evaluating new emissions-reducing
18 technologies with potential for commercialization in this state and
19 to facilitate their certification or verification; and

20 (3) for administrative costs incurred by the
21 commission and the laboratory, three percent of the money in the
22 fund.

23 SECTION 12. Effective September 1, 2008, Section
24 386.252(a), Health and Safety Code, is amended to read as follows:

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

1 (1) for the diesel emissions reduction incentive
2 program, 64 [~~87.5~~] percent of the money in the fund, of which not
3 more than 10 percent may be used for on-road diesel purchase or
4 lease incentives;

5 (2) for the new technology research and development
6 program, 33 [~~9.5~~] percent of the money in the fund, of which up to
7 \$250,000 is allocated for administration, up to \$200,000 is
8 allocated for a health effects study, \$500,000 is to be deposited in
9 the state treasury to the credit of the clean air account created
10 under Section 382.0622 to supplement funding for air quality
11 planning activities in affected counties, [~~and~~] not less than 10
12 [~~20~~] percent is to be allocated each year to support research
13 related to air quality for the Houston-Galveston-Brazoria and
14 Dallas-Fort Worth nonattainment areas by a nonprofit organization
15 based in Houston, not less than 25.5 percent is to be allocated each
16 year to that nonprofit organization based in Houston to be used to
17 implement and administer the new technology research and
18 development program under a contract with the commission for the
19 purpose of identifying, testing, and evaluating new
20 emissions-reducing technologies with potential for
21 commercialization in this state and to facilitate their
22 certification or verification, not more than \$12,500,000 is to be
23 allocated each year from any excess funds to be administered by the
24 commission to fund a study of regional ozone formation in this
25 state, meteorological and chemical modeling, and issues related to
26 ozone formation by ozone precursors and fine particulate matter
27 formation in this state, and the balance is to be allocated each

1 year to the commission to fund promising new technologies as
2 identified through the new technology research and development
3 program and recommended by that nonprofit organization based in
4 Houston in order to permit obtaining the maximum credits for
5 emissions reductions under the state's air quality state
6 implementation plans; and

7 (3) for administrative costs incurred by the
8 commission and the laboratory, three percent of the money in the
9 fund.

10 SECTION 13. Section 387.003(a), Health and Safety Code, is
11 amended to read as follows:

12 (a) The nonprofit organization described by Section
13 386.252(a)(2), under a contract with the commission as described by
14 that section[, in consultation with the Texas Council on
15 Environmental Technology], shall establish and administer a new
16 technology research and development program as provided by this
17 chapter.

18 SECTION 14. Section 387.005(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) Grants awarded under this chapter shall be directed
21 toward a balanced mix of:

22 (1) retrofit and add-on technologies to reduce
23 emissions from the existing stock of vehicles targeted by the Texas
24 emissions reduction plan;

25 (2) advanced technologies for new engines and vehicles
26 that produce very-low or zero emissions of oxides of nitrogen,
27 including stationary and mobile fuel cells;

1 (3) studies to improve air quality assessment and
2 modeling; and

3 (4) [~~advanced technologies that promote increased~~
4 ~~building and appliance energy performance, and~~

5 [(5)] advanced technologies that reduce emissions
6 from other significant sources.

7 SECTION 15. Section 388.003(e), Health and Safety Code, is
8 amended to read as follows:

9 (e) Local amendments may not result in less stringent energy
10 efficiency requirements in nonattainment areas and in affected
11 counties than the energy efficiency chapter of the International
12 Residential Code or International Energy Conservation Code. Local
13 amendments must comply with the National Appliance Energy
14 Conservation Act of 1987 (42 U.S.C. Sections 6291-6309), as
15 amended. The laboratory, at the request of a municipality or
16 county, shall determine the relative impact of proposed local
17 amendments to an energy code, including whether proposed amendments
18 are substantially equal to or less stringent than the unamended
19 code. For the purpose of establishing uniform requirements
20 throughout a region, and on request of a council of governments, a
21 county, or a municipality, the laboratory may recommend a
22 climatically appropriate modification or a climate zone
23 designation for a county or group of counties that is different from
24 the climate zone designation in the unamended code. The laboratory
25 shall:

26 (1) report its findings to the council, county, or
27 municipality, including an estimate of any energy savings potential

1 above the base code from local amendments; and

2 (2) annually submit a report to the commission:

3 (A) identifying the municipalities and counties
4 whose codes are more stringent than the unamended code, and whose
5 codes are equally stringent or less stringent than the unamended
6 code; and

7 (B) quantifying energy savings and emissions
8 reductions from this program.

9 SECTION 16. Section 389.003, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS
12 REDUCTIONS AND ASSOCIATED CREDITS. (a) The commission shall
13 develop a method to use in computing emissions reductions obtained
14 through energy efficiency initiatives, including renewable energy
15 initiatives, and the credits associated with those reductions.

16 (b) The laboratory shall assist the commission and affected
17 political subdivisions in quantifying, as part of the state
18 implementation plan, credits for emissions reductions attributable
19 to energy efficiency programs, including renewable energy
20 programs.

21 SECTION 17. Section 151.0515(d), Tax Code, is amended to
22 read as follows:

23 (d) This section expires September 30, 2010 [~~2008~~].

24 SECTION 18. Section 152.0215(c), Tax Code, is amended to
25 read as follows:

26 (c) This section expires September 30, 2010 [~~2008~~].

27 SECTION 19. Section 501.138, Transportation Code, is

1 amended by amending Subsections (a) and (b) and adding Subsections
2 (b-1), (b-2), and (b-3) to read as follows:

3 (a) An applicant for a certificate of title, other than the
4 state or a political subdivision of the state, must pay the county
5 assessor-collector a fee of:

6 (1) \$33 if the applicant's residence is a county
7 located within a nonattainment area as defined under Section 107(d)
8 of the federal Clean Air Act (42 U.S.C. Section 7407), as amended,
9 or is an affected county, as defined by Section 386.001, Health and
10 Safety Code;

11 (2) \$28 if the applicant's residence is any other
12 county; or

13 (3) on or after September 1, 2010 [~~2008~~], \$28
14 regardless of the county in which the applicant resides.

15 (b) The county assessor-collector shall send:

16 (1) \$5 of the fee to the county treasurer for deposit
17 in the officers' salary fund;

18 (2) \$8 of the fee to the department:

19 (A) together with the application within the time
20 prescribed by Section 501.023; or

21 (B) if the fee is deposited in an
22 interest-bearing account or certificate in the county depository or
23 invested in an investment authorized by Subchapter A, Chapter 2256,
24 Government Code, not later than the 35th day after the date on which
25 the fee is received; and

26 (3) the following amount to the comptroller at the
27 time and in the manner prescribed by the comptroller:

1 (A) \$20 of the fee if the applicant's residence
2 is a county located within a nonattainment area as defined under
3 Section 107(d) of the federal Clean Air Act (42 U.S.C. Section
4 7407), as amended, or is an affected county, as defined by Section
5 386.001, Health and Safety Code;

6 (B) \$15 of the fee if the applicant's residence
7 is any other county; or

8 (C) on or after September 1, 2010, \$15 regardless
9 of the county in which the applicant resides.

10 (b-1) Fees collected under Subsection (b) [~~this subsection~~]
11 to be sent to the comptroller shall be deposited as follows:

12 (1) [~~(i)~~] before September 1, 2008, to the credit of
13 the Texas emissions reduction plan fund; and

14 (2) on or [~~(ii)~~] after September 1, 2008, to the credit
15 of the Texas Mobility Fund, except that \$5 of each fee imposed under
16 Subsection (a)(1) and deposited on or after September 1, 2008, and
17 before September 1, 2010, shall be deposited to the credit of the
18 Texas emissions reduction plan fund.

19 (b-2) The comptroller shall establish a record of the amount
20 of the fees deposited to the credit of the Texas Mobility Fund under
21 Subsection (b-1). On or before the fifth workday of each month, the
22 department shall remit to the comptroller for deposit to the credit
23 of the Texas emissions reduction plan fund an amount of money equal
24 to the amount of the fees deposited by the comptroller to the credit
25 of the Texas Mobility Fund under Subsection (b-1) in the preceding
26 month. The department shall use for remittance to the comptroller
27 as required by this subsection money in the state highway fund that

1 is not required to be used for a purpose specified by Section 7-a,
2 Article VIII, Texas Constitution, and may not use for that
3 remittance money received by this state under the congestion
4 mitigation and air quality improvement program established under 23
5 U.S.C. Section 149.

6 (b-3) This subsection and Subsection (b-2) expire September
7 1, 2010.

8 SECTION 20. Section 502.1675(c), Transportation Code, is
9 amended to read as follows:

10 (c) This section expires August 31, 2010 [~~2008~~].

11 SECTION 21. Section 548.5055(c), Transportation Code, is
12 amended to read as follows:

13 (c) This section expires August 31, 2010 [~~2008~~].

14 SECTION 22. Sections 386.001(4), 386.057(e), 387.002, and
15 387.010, Health and Safety Code, and Sections 548.256(c) and (d),
16 Transportation Code, are repealed.

17 SECTION 23. The Texas Commission on Environmental Quality
18 shall prepare guidance documents for the rebate grants required by
19 Section 386.117, Health and Safety Code, as added by this Act, not
20 later than January 1, 2006.

21 SECTION 24. (a) As soon as practicable on or after the
22 effective date of this Act, the governor shall appoint to the Texas
23 Emissions Reduction Plan Advisory Board a representative of the
24 nonprofit organization described by Section 386.252(a)(2), Health
25 and Safety Code, as required by Section 386.058(b), Health and
26 Safety Code, as amended by this Act, to replace the representative
27 of the Texas Council on Environmental Technology serving on that

1 board on the effective date of this Act.

2 (b) As soon as practicable on or after the effective date of
3 this Act, the governor, lieutenant governor, and speaker of the
4 house of representatives, by mutual agreement, shall designate the
5 terms of the appointed members of the Texas Emissions Reduction
6 Plan Advisory Board so that the terms of seven appointed members
7 expire on February 1, 2007, and the terms of eight appointed members
8 expire on February 1, 2009, as provided by Section 386.058(e),
9 Health and Safety Code, as amended by this Act.

10 SECTION 25. Except as otherwise provided by this Act, this
11 Act takes effect September 1, 2005.

David Newhurst

President of the Senate

Jim Caddell

Speaker of the House

I certify that H.B. No. 2481 was passed by the House on April 28, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2481 on May 29, 2005, by a non-record vote; and that the House adopted H.C.R. No. 248 authorizing certain corrections in H.B. No. 2481 on May 30, 2005, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 2481 was passed by the Senate, with amendments, on May 20, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 248 authorizing certain corrections in H.B. No. 2481 on May 30, 2005, by a viva-voce vote.

Letsy Spaw

Secretary of the Senate

APPROVED: 18 JUNE '05

Date

Rick Peary

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
12:20 PM, 0'CLOCK

Roger Williams

Secretary of State