

BILL ANALYSIS

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Natural Resources
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DIGEST AND PURPOSE

The federal Clean Air Act authorizes the United States Environmental Protection Agency (EPA) to establish the maximum allowable concentrations of pollutants that can endanger human health, harm the environment, and cause property damage. A significant portion of Texas currently does not meet these standards and is facing severe sanctions if attainment is not reached by 2007. While the Texas Natural Resource Conservation Commission (commission) has submitted a proposed State Implementation Plan (SIP) requiring emissions reductions of sources under their control, there are significant areas of potential emission reductions the commission cannot regulate but which may be realized through incentive programs. As proposed, S.B. 5 establishes programs to encourage emissions reductions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Natural Resource Conservation Commission in SECTION 1 (Sections 386.104, 386.152, and 386.159, Health and Safety Code), and in SECTIONS 24 and 25; and to the comptroller of public accounts in SECTION 1 (Section 386.162, Health and Safety Code), and SECTION 24 and 25 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5C, Health and Safety Code, by adding Chapter 386, as follows:

CHAPTER 386. TEXAS EMISSIONS REDUCTION PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 386.001. DEFINITIONS. Defines "advisory board," "alternative fuel," "alternative fuel vehicle," "commission," "fund," "incremental cost," "near nonattainment area," "nonattainment area," and "plan."

[Sections 386.002-386.050 reserved for expansion]

SUBCHAPTER B. TEXAS EMISSIONS REDUCTION PLAN

Sec. 386.051. TEXAS EMISSIONS REDUCTION PLAN. Requires the Texas Natural Resource Conservation Commission (commission) to establish and administer the Texas emissions reduction plan in accordance with this chapter. Requires the commission, under the plan, to provide grants or other funding for certain purposes. Provides that a project begun before September 1, 2001, is not eligible for a grant or other funding under the plan.

Sec. 386.052. COMMISSION DUTIES. Requires the commission, in administering the plan established under this chapter and in accordance with the requirements of this chapter, to perform certain procedures. Requires appropriate commission objectives for the Houston-Galveston and Dallas-Fort Worth state implementation plans to first ensure that affected entities are able to achieve the required emissions reductions to comply with the alternative plan

requirements to meet the construction shift and the accelerated purchase rules of the respective implementation plans.

Sec. 386.053. **GUIDELINES AND CRITERIA.** Requires the commission to adopt grant guidelines and criteria consistent with the requirements of this chapter. Requires the commission to consider examples of similar programs in other states during the development of guidelines and criteria. Requires the guidelines to include protocols to calculate project cost-effectiveness and safeguards to ensure that funded projects generate surplus emissions reductions. Requires the commission to make draft guidelines and criteria available to the public before the 45th day preceding the date of final adoption and hold at least one public meeting to consider public comments on the draft guidelines and criteria before final adoption. Authorizes the commission to propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Authorizes the revisions to include adding new eligible categories, as appropriate, for the diesel emissions reduction incentive program established under Subchapter C. Requires the commission to make a proposed revision available to the public before the 45th day preceding the date of final adoption of the revision and to hold at least one public meeting to consider public comments on the proposed revision before the final adoption. Provides that the rulemaking requirements of Chapter 2001 (Administrative Procedure), Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

Sec. 386.054. **MONITORING PROCEDURES.** Requires the commission to develop procedures for monitoring whether the emissions reductions projected for projects awarded grants under this chapter are actually achieved. Authorizes monitoring procedures to include project audits and contract requirements that the grant recipient provide information annually about the project. Provides that if the commission requires annual reports, it is required to keep to a minimum the amount of information required from a recipient and to keep the report format simple and convenient. Requires monitoring and auditing procedures to be sufficient to enable emissions reductions generated by funded projects to be fully credited to air quality plans. Authorizes the commission to revise monitoring and audit procedures from time to time as necessary or appropriate to enhance the effectiveness of the plan.

Sec. 386.055. **STAFF AND TECHNICAL SUPPORT.** Requires the commission to provide staff or technical support as needed within available budgetary resources to assist projects awarded grants or other funding under this chapter.

Sec. 386.056. **REPORTING REQUIREMENTS.** Requires the commission, in consultation with the advisory board, to annually review programs established under the plan to publish a report that describes each project funded under the plan, the amount granted for the project, the emissions reductions attributable to the project, and the cost-effectiveness of the project. Requires the commission, not later than December 1, 2002, and not later than December 1 of each subsequent second year through December 1, 2008, to publish and submit to the legislature a biennial plan report. Requires the report to include the information included in the annual reports and specific information for individual programs. Requires the report, for projects funded as part of the fueling infrastructure demonstration program under Subchapter C, to meet certain criteria. Requires the report, for projects funded under the new technology development and research program under Subchapter E, to describe the technical objectives and accomplishments of the project and the progress of the project technology toward commercialization. Requires the report to describe certain information. Requires the commission to request public comment and hold public meetings on each draft biennial report and, in producing a final biennial report, to consider and respond to all significant comments received.

Sec. 386.057. **TEXAS EMISSIONS REDUCTION PLAN ADVISORY BOARD.** Provides that the Texas Emissions Plan Advisory Board consists of certain persons. Requires

appointments to the advisory board to include representatives from certain industries or entities. Provides that members of the advisory board serve staggered two-year terms. Provides that the terms of six members expire February 1 of each even-numbered year. Provides that the terms of seven members expire February 1 of each odd-numbered year. Authorizes a member to be reappointed to a subsequent term. Requires the advisory board to annually elect a presiding officer. Requires the advisory board to review the first biennial report prepared by the commission under Section 386.056 on the implementation of the plan, hold a public hearing on the need for a continuing plan, and prepare and submit a report to certain persons, on or before September 1, 2002, on the desirability of a continuing plan, similar to the plan established under this chapter, that will significantly contribute toward attaining air quality standards in Texas. Requires the advisory board, in the report, to recommend changes to revenue sources for funding financial incentives and any legislative or budget action needed to implement a continuing plan.

Sec. 386.058. EXPIRATION OF CONSTRUCTION SHIFT. Authorizes that part of the state implementation plan that restricts the hours during which construction equipment may be operated in nonattainment or near nonattainment areas expires on the date the commission certifies the achievement of sufficient emissions reductions in nonattainment areas and near nonattainment areas of this state.

[Sections 386.059-386.100 reserved for expansion]

SUBCHAPTER C. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM

Sec. 386.101. DEFINITIONS. Defines “cost-effectiveness,” “covered engine,” “covered source,” “covered vehicle,” “offroad engine,” “offroad equipment,” “offroad vehicle,” “program,” “new vehicle,” “qualifying fuel,” “repower,” “retrofit,” “very-low-emissions vehicle,” “super-ultra-low-emissions vehicle,” “ultra-low-emissions vehicle,” and “zero-emissions vehicle.”

Sec. 386.102. PROGRAM. Requires the commission to establish and administer a diesel emissions reduction incentive program. Requires the commission, under the program, to provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting diesel sources in nonattainment and near nonattainment areas of the state. Requires the commission to determine the eligibility of projects. Authorizes projects that are to be considered for a grant under the program to include certain factors. Provides that a new purchase, lease, retrofit, repower, or add-on equipment project is not eligible for a grant under this subchapter if the new purchase, lease, retrofit, repower, or add-on equipment is required by any local, state, or federal law, rule or regulation, memorandum of agreement, or other legally binding document. Provides that this subsection does not apply to certain projects and purchases.

Sec. 386.103. APPLICATION FOR GRANT. Authorizes any individual, corporate entity, or public agency that owns one or more covered vehicles that operate primarily within a nonattainment area or near nonattainment area of this state or that otherwise contribute substantially to the state inventory of emissions of oxides of nitrogen to apply for a grant under the program. Requires an application for a grant under this subchapter to be made on an application provided by the commission and to contain information required by the commission, including certain other factors.

Sec. 386.104. ELIGIBILITY REQUIREMENTS. Requires a proposed project to meet the requirements of this section to be eligible for a grant under the program. Requires, for a proposed project other than a project involving a marine vessel or engine, not less than 75 percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant to be projected to take place in a nonattainment area or near

nonattainment area of this state. Requires the vessel or engine, for a proposed project involving a marine vessel or engine, to be operated in the intercoastal waterways or bays of a nonattainment area or near nonattainment area of this state for a sufficient amount of time over the lifetime of the project to meet the cost-effectiveness requirements of Section 386.105. Requires each proposed project to meet the cost-effectiveness requirements of Section 386.105 and 386.106. Requires a proposed repower project to meet commission requirements relating to baseline emissions levels of the engines being replaced under the project. Requires a proposed retrofit, repower, or add-on equipment project to document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. Authorizes the commission, after study of available emissions reduction technologies, public notice and comment, and consultation with the advisory board, to revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals. Requires the engines, for a proposed project involving the purchase of new very-low-emissions or zero-emissions offroad equipment, to be certified to an optional low oxides of nitrogen emissions standard established by the commission, except as otherwise provided by this subsection. Requires the project proponent, for a proposed project involving the purchase of a new very-low-emissions or zero-emissions offroad equipment for which the described standard is not available, to document, to the commission's satisfaction, that the very-low-emissions or zero-emissions engine emits not more than 70 percent of the oxides of nitrogen emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine. Requires the commission by rule, if a baseline emissions standard does not exist for new offroad equipment in a particular category, to establish an appropriate baseline emissions level for comparison purposes. Authorizes the commission to approve payments to offset the incremental cost, over the expected lifetime of the vehicle, of alternative fuel used in a vehicle if the proposed project as a whole, including incremental fuel cost, meets the requirements of this subchapter. Requires the commission to develop an appropriate method for converting incremental fuel costs into an initial cost for purposes of determining cost-effectiveness as required by Section 386.105.

Sec. 386.105. CALCULATION OF COST-EFFECTIVENESS. Requires one-time grants of money at the beginning of a project, in calculating cost-effectiveness, to be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate. Requires cost-effectiveness to be calculated by dividing annualized costs by average annual emissions reductions of oxides of nitrogen in the affected area. Requires the commission to establish reasonable methodologies for evaluating project cost-effectiveness consistent with this section and with accepted methods. Requires the commission to develop protocols for calculating surplus oxides of nitrogen emissions reductions in nonattainment and near nonattainment areas of this state from representative project types over the life of the projects.

Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. Prohibits the commission from awarding a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and rules adopted under that section, exceeds \$13,000 per ton of oxides of nitrogen emissions reduced in the nonattainment or near nonattainment area for which the project is proposed. Prohibits the commission from awarding a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project. Requires the commission to adopt guidelines for capitalizing incremental lease costs so those costs may be offset by a grant under this subchapter. Requires the commission, in determining the amount of a grant under this subchapter, to reduce the incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on equipment project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance. Authorizes the commission to establish maximum

grant awards per vehicle or engine replaced for projects that propose to repower offroad equipment.

Sec. 386.107. ADJUSTMENT TO MAXIMUM COST-EFFECTIVENESS AMOUNT AND AWARD AMOUNT. Authorizes the commission, in consultation with the advisory board, after study of available emissions reduction technologies and costs and after public notice and comment, to reduce the values of the maximum grant award criteria established in Section 386.106 to improve the ability of the program to achieve its goals. Authorizes the commission, in consultation with the advisory board, to annually adjust the maximum cost-effectiveness amount established in Section 386.106(a) and any per-project maximum set by the commission under Section 386.106(e), to account for inflation.

Sec. 386.108. AVAILABILITY OF EMISSIONS REDUCTION CREDITS. Prohibits a project funded under this program from being used for credit under any state or federal emissions reduction credit averaging, banking, or trading program. Prohibits an emissions reduction generated by the program, except as provided by Section 386.058, from being used as a marketable emissions reduction credit or to offset any emissions reduction obligation. Provides that a project involving a new emissions reduction measure that would otherwise generate marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs is not eligible for funding under the program unless the project includes the transfer of the marketable credits to the end user and the retirement of the credits. Authorizes an industrial point source located in the Houston-Galveston nonattainment area to use emissions reductions generated by the program to offset the requirements of commission rules relating to control of air pollution from nitrogen compounds if certain conditions are met.

Sec. 386.109. FUELING INFRASTRUCTURE DEMONSTRATION PROJECTS. Requires the commission to provide limited funding from money available for the diesel emissions reduction incentive program for fueling infrastructure demonstration projects to meet certain conditions. Requires the commission, in implementing the requirement of this section, to perform certain procedures.

Sec. 386.110. ELIGIBLE FUELING INFRASTRUCTURE DEMONSTRATION PROJECTS. Authorizes the commission to consider for funding under Section 386.109 certain equipment or projects.

Sec. 386.111. APPLICATION PACKAGE FOR FUELING INFRASTRUCTURE DEMONSTRATION PROJECTS. Requires the commission to develop a simple, standardized application package for fueling infrastructure demonstration project grants under this subchapter. Requires the package to include certain information. Requires the application form to require as much information as the commission determines is necessary to properly evaluate each project but to otherwise minimize the information required. Prohibits the commission from requiring an applicant, as part of the application process, to calculate tons of emissions reduced or cost-effectiveness.

Sec. 386.112. APPLICATION REVIEW PROCEDURES. Requires the commission to review an application for a grant for a project authorized under this subchapter, including an application for a grant for a fueling infrastructure demonstration project, immediately on receipt of the application. Requires the commission, if the commission determines that an application is incomplete, to notify the applicant, not later than the 15th working day after the date of the determination, with an explanation of what is missing from the application. Requires the commission to record the date and time of receipt of each application the commission determines to be complete and evaluate the completed application according to the appropriate project criteria. Requires the commission to approve, as soon as possible and not later than the 60th working day after the date the complete application is received, an application that meets the appropriate project criteria. Requires the commission to make every effort to expedite the

application review process and to award grants to qualified projects in a timely manner. Requires the commission, to the extent possible, to coordinate project review and approval with any timing constraints related to project purchases or instalments to be made by an applicant. Authorizes the commission to deny an application for a project that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter. Requires the commission to award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. Requires the contract to incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions or underachievement in dispensing qualifying fuel compared with the volume of emissions reductions or amount of fuel dispensed that was projected in the grant application. Requires grant money recaptured under the contract provision to be deposited in the fund and reallocated for other projects under this subchapter.

Sec. 386.113. STAFF AND TECHNICAL SUPPORT. Requires the commission to provide staff or technical support as needed within available budgetary resources to assist infrastructure project proponents in addressing issues common to eligible infrastructure projects, including permitting and safety requirements.

Sec. 386.114. TOTAL COST-EFFECTIVENESS CALCULATION. Requires the commission to calculate the total cost-effectiveness of oxides of nitrogen emissions reductions resulting from the use of vehicles that fuel at facilities funded under the fueling infrastructure demonstration program. Requires the total cost-effectiveness calculation to include program funding provided to vehicles and funding provided under the fueling infrastructure demonstration program.

[Section 386.115-386.150 reserved for expansion]

SUBCHAPTER D. LOW-EMISSIONS VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

Sec. 386.151. DEFINITIONS. Defines "heavy light-duty truck," "heavy-duty engine," "heavy-duty vehicle," "light light-duty truck," "light-duty truck," "light-duty vehicle," "medium-duty passenger vehicle," and "open-cargo area."

Sec. 386.152. LOW-EMISSIONS VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM. Requires the commission to develop a low-emission vehicle purchase or lease program in accordance with this subchapter and to adopt rules necessary to implement the program. Requires the program to authorize incentives for the purchase or lease of new low-emissions vehicles according to the schedules provided by Sections 386.153-386.155 and to Section 386.156, to be implemented at the point of sale or lease.

Sec. 386.153. LOW-EMISSIONS VEHICLE PURCHASE OR LEASE INCENTIVE SCHEDULE: LIGHT-DUTY VEHICLES. Provides that a light-duty vehicle or a light light-duty truck is eligible for a low-emissions vehicle purchase or lease incentive according to certain schedules. Provides that a heavy light-duty truck is eligible for a low-emissions vehicle purchase or lease incentive according to certain schedules.

Sec. 386.154. LOW-EMISSIONS VEHICLE PURCHASE OR LEASE INCENTIVE SCHEDULE: MEDIUM-DUTY PASSENGER VEHICLES. Provides that a medium-duty passenger vehicle is eligible for a low-emissions vehicle purchase or lease incentive according to certain schedules.

Sec. 386.155. LOW-EMISSIONS VEHICLE PURCHASE OR LEASE INCENTIVE

SCHEDULE: HEAVY-DUTY VEHICLES. Provides that a heavy-duty vehicle is eligible for a low-emissions vehicle purchase or lease incentive according to certain schedules.

Sec. 386.156. ALTERNATIVE FUEL VEHICLES. Provides that an alternative fuel vehicle purchased or leased for new as a fleet vehicle is eligible under this subchapter for a low-emissions vehicle purchase or lease incentive. Provides that an alternative fuel vehicle purchased or leased wholly or in part with grant money or another incentive awarded under this chapter is not eligible for an incentive under this subchapter. Requires the owner of a dual fuel vehicle that receives a low-emissions vehicle purchase or lease incentive under this section to certify to the commission each year for the first five years following the purchase or lease of the vehicle that the vehicle used an alternative fuel for at least 75 percent of the vehicle miles traveled during the preceding year. Provides that the owner is liable to the commission, for any year in which the certification cannot be made, for an amount equal to the amount of the incentive prorated for the period of time the vehicle could not be certified.

Sec. 386.157. MANUFACTURER'S CERTIFICATION OF LOW-EMISSIONS VEHICLES. Requires a manufacturer of motor vehicles that intends to sell motor vehicles in this state during that model year, at the beginning of but not later than July 1 of each vehicle model year, to certify to the commission the new vehicle models that the manufacturer intends to sell in this state during that model year that meet the incentive emissions standards established by the schedules set out under Sections 386.153-386.155.

Sec. 386.158. LIST OF ELIGIBLE VEHICLES. Provides that on August 1 each year the commission is required to publish a list of the new model low-emissions vehicles that are certified by the manufacturer to meet the incentive emissions standards and are qualified for a low-emissions vehicle purchase or lease incentive under this subchapter on purchases or leases during that model year. Requires the comptroller to distribute the list of certified vehicles to new vehicle dealerships.

Sec. 386.159. VEHICLE EMISSIONS INFORMATION LABEL. Requires the commission by rule, to enable consumers to make informed purchase decisions based on the relative amounts of emissions produced by vehicles within each vehicle class, to require that each new passenger car, light-duty truck, and medium-duty passenger vehicle for sale or lease in this state display a clearly legible label that shows the vehicle's 5-Star Green Vehicle Class Rating under the United States Environmental Protection Agency's 5-star green vehicle class rating system. Requires the label to also contain certain information.

Sec. 386.160. POINT-OF-SALE OR POINT-OF-LEASE INCENTIVE; REPORT TO COMPTROLLER. Provides that a person who purchases or leases during the model year in which it is first offered for sale or lease a new low-emissions vehicle that has been certified under Section 386.157 as eligible for an incentive under this subchapter or an alternative fuel vehicle for use as a fleet vehicle is eligible to receive the incentive at the time and point of sale or lease according to the applicable incentive schedule. Requires a new motor vehicle dealer or leasing agent to credit a purchaser or lessee with the appropriate incentive as part of the sales or lease transaction. Requires the dealer or agent to report to the comptroller, at the beginning of each calendar month and in the manner prescribed by the comptroller, the amount of incentives credited by the dealer or agent during the preceding calendar month.

Sec. 386.161. PUBLIC INFORMATION. Requires the commission in cooperation with the comptroller to develop and implement a program to inform the public about the low-emissions vehicle purchase or lease incentive program. Requires county tax assessor-collectors to insert a notice describing the low-emissions vehicle purchase or lease incentive program with each annual vehicle registration renewal notice. Authorizes a new motor vehicle dealer or leasing agent to retain from the amounts reimbursed by the commission an amount equal to two percent of the amount the dealer or agent invoices to the commission each month.

Sec. 386.162. **COMPTROLLER TO ACCOUNT FOR LOW-EMISSIONS VEHICLE PURCHASE OR LEASE INCENTIVES.** Requires the comptroller by rule to develop a method to administer and account for the low-emissions vehicle purchase or lease incentives authorized by this subchapter, and to administer the fund to timely reimburse new motor vehicle dealers or leasing agents for incentive amounts credited by the dealer. Authorizes the comptroller to develop forms and instructions for new motor vehicle dealers and leasing agents to use in accounting for and reporting low-emissions vehicle purchase and lease incentives and requires the comptroller to provide new motor vehicle dealers and leasing agents with information to assist them in accounting for and reporting the incentives.

Sec. 386.163. **REPORT TO COMMISSION; SUSPENSION OF LEASE INCENTIVES.** Requires the comptroller to report to the commission periodically regarding low-emissions vehicle purchase or lease incentives. Requires the comptroller to inform the commission if at any time during a fiscal year the balance available in the money allocated in the fund for low-emissions vehicle purchase or lease incentives falls below 15 percent of the total amount allocated for the incentives during that fiscal year. Requires the comptroller by order, if the balance available for low-emissions vehicle purchase or lease incentives falls below that amount, to suspend the incentives until the comptroller can certify that the balance available in the fund for incentives is an amount adequate to resume the incentives, but not later than the beginning of the next fiscal year. Requires the comptroller, if the comptroller suspends the incentives, to immediately notify the commission and all new motor vehicle dealers and leasing agents that the incentives have been suspended.

[Sections 386.164-386.200 reserved for expansion]

SUBCHAPTER E. NEW TECHNOLOGY DEVELOPMENT AND RESEARCH PROGRAM

Sec. 386.201. **DEFINITIONS.** Defines “council” and “program.”

Sec. 386.202. **TEXAS COUNCIL ON ENVIRONMENTAL TECHNOLOGY.** Provides that the Texas Council on Environmental Technology consists of 11 members appointed by the governor to represent the academic and nonprofit communities. Requires the governor to designate from the council members a presiding officer of the council. Provides that members of the council serve six-year staggered terms, with the terms of three or four members expiring February 1 of each odd-numbered year. Requires the council to work to enhance the entrepreneurial and inventive spirit of Texans to assist in developing solutions to problems by performing certain criteria. Requires the council offices and projects to be housed at The University of Texas at Austin.

Sec. 386.203. **NEW TECHNOLOGY RESEARCH PROGRAM.** Requires the council to establish and administer a new technology research program as provided by this subchapter. Requires the council, under the program, to provide grants to be used to support developmental of emissions-reducing technologies that are to be used for projects eligible for awards under other provisions of this chapter. Provides that the primary objective of this subchapter is to promote the development of commercialization technologies that will support projects that are authorized to be funded under this chapter.

Sec. 386.204. **SOLICITATION OF NEW TECHNOLOGY PROPOSALS.** Requires the council from time to time to issue specific requests for proposals (RFPs) or program opportunity notices (PONs) for technology projects to be funded under the new technology research program.

Sec. 386.205. **ELIGIBLE PROJECTS; PRIORITIES.** Requires grants awarded under this subchapter to be directed toward a balanced mix of certain technologies. Requires the council to identify and evaluate and the commission to consider making grants for technology projects

that would allow qualifying fuels to be produced from energy resources in this state. Requires the council, in considering projects under this subsection, to give preference to projects involving otherwise unusable energy resources in this state and producing qualifying fuels at prices lower than otherwise available and low enough to make the projects to be funded under the program economically attractive to local businesses in the area for which the project is proposed. Requires the council, in soliciting proposals under Section 386.204 and determining how to allocate grant money available for projects under this subchapter, to give special consideration to advanced technologies and retrofit or add-on projects that provide multiple benefits by reducing emissions or particulates and other air pollutants. Provides that a project that involves a technology that allows an onroad covered vehicle to replace with electric power, while the vehicle is parked, the power normally supplied to the vehicle's internal combustion engine is eligible for funding under this subchapter if the project meets all applicable criteria. Provides that a project that involves publicly or privately owned vehicles or vessels is eligible for funding under this subchapter if the project meets all applicable criteria.

Sec. 386.206. EVIDENCE OF COMMERCIALIZATION POTENTIAL REQUIRED. Requires an application for a technology grant under this subchapter to show clear and compelling evidence that certain conditions will be met. Requires the council to consider specifically, for each proposed technology project application, certain factors.

Sec. 386.207. COST-SHARING. Authorizes the council to require cost-sharing for technology projects funded under this subchapter but prohibits the council from requiring repayment of grant money.

Sec. 386.208. ENVIRONMENTAL RESEARCH FUND. Provides that the environmental research fund is an account in the general revenue fund. Provides that the fund consists of money from gifts, grants, or donations to the fund for designated or general use and from any other source designated by the legislature. Authorizes money in the fund to be used only for the operation and projects of the council.

Sec. 386.209. ADVISORY COMMITTEES. Authorizes the council to appoint advisory committees as necessary or desirable to assist the council in performing its duties. Authorizes an advisory committee to include representatives from various fields and entities. Authorizes any senator or representative desiring to do so to participate on any advisory committee appointed under this section.

[Sections 386.210-386.250 reserved for expansion]

SUBCHAPTER F. TEXAS EMISSIONS REDUCTION PLAN FUND

Sec. 386.251. FUND. Provides that the Texas emissions reduction plan fund is an account in the state treasury. Provides that the fund is administered by the comptroller for the benefit of the Texas emissions reduction plan established under this chapter. Provides that the fund consists of certain fees, surcharges, and payments.

Sec. 386.252. USE OF FUND. Authorizes money in the fund to be used only to implement and administer programs established under the Texas emissions reduction plan and requires it to be allocated for certain purposes. Authorizes up to 15 percent of the money allocated under Subsection (a) to a particular program and not expended under that program by March 1 of the second fiscal year of a fiscal biennium to be used for another program under the Texas emissions reduction plan as determined by the commission in consultation with the advisory board.

SECTION 2. Amends Chapter 151C, Tax Code, by adding Section 151.0515, as follows:

Sec. 151.0515. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE. Defines “construction equipment.” Provides that in each county in this state, a surcharge is imposed on the sale, lease, or rental of new or used construction equipment in an amount equal to 0.25 percent of the sale price or the lease or rental amount, not to exceed a total amount of \$750 for each surcharge. Requires the surcharge to be collected at the same time and in the same manner and be administered and enforced in the same manner as the tax imposed under this subchapter. Requires the comptroller to adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

SECTION 3. Amends Chapter 151H, Tax Code, by adding Sections 151.355-151.357, as follows:

Sec. 151.355. ENERGY-EFFICIENT APPLIANCES. Provides that the sale of a refrigerator, clothes washer, clothes dryer, dishwasher, or room air conditioner is exempt from the tax imposed by this chapter if the refrigerator, clothes washer, clothes dryer, dishwasher, or room air conditioner qualifies under federal law for the “Energy Star” label.

Sec. 151.356. CERTAIN HIGH-EFFICIENT HEATING, COOLING, AND WATER HEATING EQUIPMENT. Provides that the sale of certain heating, cooling, and water heating equipment is exempt from the tax imposed by this chapter.

Sec. 151.357. FUEL-CELL ELECTRIC GENERATING EQUIPMENT. Defines “fuel cell.” Provides that the sale of a new fuel cell is exempt from the tax imposed by this chapter if the fuel cell meets certain criteria.

SECTION 4. Amends Chapter 152B, Tax Code, by adding Section 152.0215, as follows:

Sec. 152.0215. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE. Provides that a surcharge is imposed on every retail sale or lease of every onroad diesel motor vehicle sold or leased in this state. Provides that the amount of the surcharge is one percent of the total consideration. Requires the surcharge to be collected at the same time and in the same manner and be administered and enforced in the same manner as the tax imposed under this subchapter. Requires the comptroller to adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

SECTION 5. Amends Section 153.001(5), Tax Code, to redefine “diesel fuel.”

SECTION 6. Amends Chapter 156B, Tax Code, by adding Section 156.054, as follows:

Sec. 156.054. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE. Provides that in this section, “nonattainment area” and “near nonattainment area” have the meanings assigned by Section 386.001, Health and Safety Code. Provides that in a nonattainment area or a near nonattainment area in this state, a \$1 surcharge is added to the tax imposed on a person under this chapter. Requires the comptroller to adopt procedures for the collection, administration, and enforcement of the surcharge authorized by this section and to deposit all surcharges remitted under this section to the Texas emissions reduction plan fund.

SECTION 7. Amends Chapter 171, Tax Code, by adding Subchapter S, as follows:

SUBCHAPTER S. TAX CREDIT FOR USE OF LIQUIFIED GAS TO FUEL MOTOR VEHICLES

Sec. 171.851. DEFINITIONS. Defines “incremental cost” and “liquefied gas.”

Sec. 171.852. ELIGIBILITY. Provides that a corporation is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitation as provided by this subchapter.

Sec. 171.853. CREDIT FOR INCREMENTAL COST OF USING LIQUEFIED GAS TO FUEL MOTOR VEHICLES. Authorizes a corporation to claim a credit under this subchapter only for the incremental cost of using liquefied gas to fuel motor vehicles.

Sec. 171.854. AMOUNTS; LIMITATIONS. Provides that the amount of the credit is equal to the total incremental cost of using liquefied gas to fuel motor vehicles. Prohibits the total credit under this section from exceeding [amount to be supplied]. Prohibits the total credit claimed under this subchapter for a period from exceeding the amount of franchise tax due for the report after another applicable tax credits. Authorizes a corporation to claim a credit under this subchapter for an expenditure made during an accounting period only against the tax owed for the corresponding reporting period.

Sec. 171.855. APPLICATION FOR CREDIT. Requires a corporation to apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed. Requires the comptroller to adopt a form for the application for the credit. Requires a corporation to use this form in applying for the credit.

Sec. 171.856. ASSIGNMENT PROHIBITED. Prohibits a corporation from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.857. REIMBURSEMENT TO STATE FROM TEXAS EMISSIONS REDUCTION PLAN FUND. Requires the comptroller to reimburse the state for revenue lost through tax credits authorized under this subchapter in the manner provided by Chapter 386, Health and Safety Code.

SECTION 8. Amends Section 224.153, Transportation Code, by adding Subsection (c), to provide that a vehicle displaying the license plate authorized by Section 502.2665 for low-emissions or alternative fuel vehicles is entitled to travel in a professional car pool or high occupancy vehicle lane designated under this section regardless of the number of occupants in the vehicle.

SECTION 9. Amends Section 224.155, Transportation Code, as follows:

Sec. 224.155. New heading: FAILURE OR REFUSAL TO PAY TOLL CHARGES; EXEMPTION FOR LOW-EMISSIONS AND ALTERNATIVE FUEL VEHICLES. Provides that a vehicle displaying the license plate authorized by Section 502.2665 for low-emissions or alternative fuel vehicles is not required to pay a toll under this section.

SECTION 10. Amends Section 361.179, Transportation Code, by adding Subsection (h), to provide that a vehicle displaying the license plate authorized by Section 502.2665 for low-emissions or alternative fuel vehicles is not required to pay a toll imposed by an authority under this section.

SECTION 11. Amends Section 366.173, Transportation Code, by adding Subsection (h), to make a conforming change.

SECTION 12. Amends Section 431.073, Transportation Code, by adding Subsection (d), to provide that a vehicle displaying the license plate authorized by Section 502.2665 for low-emissions or alternative fuel vehicles is entitled to travel in a preferential car pool or high occupancy vehicle lane designated under this section regardless of the number of occupants in the vehicle and without paying a toll.

SECTION 13. Amends Chapter 502D, Transportation Code, by adding Section 502.1675, as follows:

Sec. 502.1675. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE. Provides that in addition to the registration fees charged under Section 502.167, a surcharge is imposed on the registration of a truck-tractor or commercial motor vehicle under that section in an amount to 10 percent of the total fees due for the registration of the truck-tractor or commercial motor vehicle under that section. Requires the county tax assessor-collector to remit the surcharge collected under this section to the comptroller at the time and in the manner prescribed by the comptroller for deposit in the Texas emissions reduction plan fund.

SECTION 14. Amends Chapter 502D, Transportation Code, by adding Section 502.1715, as follows:

Sec. 502.1715. ADDITIONAL FEE FOR TEXAS EMISSIONS REDUCTION PLAN. Requires the Texas Department of Transportation (department), in addition to other registration fees for a license plate, set of license plates or other device used as the registration insignia, to collect a \$1 fee for each motor vehicle registered in a nonattainment area or near nonattainment area in this state. Requires the county tax assessor-collector to remit fees collected under this section to the comptroller for deposit in the Texas emissions reduction plan fund. Provides that in this subsection, “nonattainment area” and “near nonattainment area” have the meanings assigned by Section 386.001, Health and Safety Code.

SECTION 15. Amends Chapter 502F, Transportation Code, by adding Section 502.2665, as follows:

Sec. 502.2665. LOW-EMISSIONS AND ALTERNATIVE FUEL VEHICLES. Requires the department to issue specially designed license plate for a motor vehicle that meets certain criteria. Requires license plates issued under this section to include certain words and be consecutively numbered. Requires the department to issue a license plate under this section without payment of any additional fee to a person who meets certain criteria. Requires the comptroller to reimburse the county treasurer of the county in which the applicant resides a reasonable amount from the Texas emissions reduction plan fund to pay for the costs to the county of administering this section.

SECTION 16. Amends Section 521.421, Transportation Code, by adding Subsection (h), to require the department to collect an additional fee of \$1 in an area of the state that is not a nonattainment area or near nonattainment area and an additional fee of \$3 in a nonattainment area or near nonattainment area in this state to fund the Texas emissions reduction plan established under Chapter 386, Health and Safety Code. Makes conforming changes.

SECTION 17. Amends Chapter 548H, Transportation Code, by adding Section 548.5055, as follows:

Sec. 548.5055. TEXAS EMISSIONS REDUCTION PLAN FEE. Requires the department, in addition to other fees required by this subchapter, to fund the Texas emissions reduction plan established under Chapter 386, Health and Safety Code, to collect, motor vehicles required to be inspected under this chapter, of certain fees. Makes conforming changes.

SECTION 18. Amends Section 643.053, Transportation Code, to require the application, in addition to other fees required by this section, to be accompanied by a Texas emissions reduction plan surcharge in the amount of \$2 per vehicle for an annual registration and \$4 per vehicle for a two-year registration. Makes a conforming change.

SECTION 19. Amends Section 681.009, Transportation Code, by adding Subsection (f), to require a political subdivision or a person who designates five or more parking spaces or a parking area for the exclusive use of vehicles transporting persons with disabilities, in a nonattainment area or near nonattainment area of this state, to designate the same number of parking spaces or a parking area for the exclusive use of vehicles displaying the license plate authorized by Section 502.2665 for a low-

emissions and alternative fuel vehicles. Makes a conforming change.

SECTION 20. Amends Chapter 31B, Parks and Wildlife Code, by adding Section 31.0265, to require each application for an original or renewal certificate of number for a motorboat that will be operated primarily in a nonattainment or near nonattainment area of this state, to be accompanied by a \$3 Texas emissions reduction plan surcharge in addition to any other fee required to be paid to the department. Makes conforming changes.

SECTION 21. Amends Title 132, Revised Statutes, by adding Article 9035, as follows:

Art. 9035. TEXAS EMISSIONS REDUCTION PLAN SURCHARGE ON TAXI FARES

Sec. 1. DEFINITIONS. Defines “alternative fuel,” “alternative fuel vehicle,” “fare,” “nonattainment area,” “taxi,” and “very-low-emissions vehicle.”

Sec. 2. APPLICATION. Provides that this article applies only in a county that is in a nonattainment area or a near nonattainment area of this state.

Sec. 3. IMPOSITION AND COLLECTION OF SURCHARGE. Provides that a surcharge of 50 cents is imposed on each fare collected by the taxi driver for transportation by a taxi. Requires the person who owns the taxi or rents or leases the taxi for the purpose of using the taxi to provide transportation services to others to pay the surcharge imposed by this article. Requires the person required to pay the surcharge to maintain records of the surcharge in the manner prescribed by the comptroller and remit the surcharge to the comptroller at the time in the manner prescribed by the comptroller for deposit to the credit of the Texas emissions reduction plan fund.

Sec. 4. EXEMPTION FROM SURCHARGE. Provides that the surcharge imposed by this article does not apply if the taxi providing the transportation for which the fare is charged is a very-low-emissions vehicle or an alternative fuel vehicle.

Sec. 5. INTEREST AND PENALTIES. Provides that a person is liable for penalties and interest on surcharges that are not remitted when due in the same manner and at the same rate as provided for delinquent taxes by Section 111.060 (Interest on Delinquent Tax) and 111.061 (Penalty on Delinquent Tax or Tax Reports), Tax Code.

Sec. 6. CRIMINAL PENALTY. Provides that a person who violates this article or a rule adopted by the comptroller under this article commits an offense. Provides that an offense under this section is a Class C misdemeanor.

SECTION 22. Requires all new residential and commercial construction begun on or after the effective date of this Act to comply with energy-efficient standards.

SECTION 23. Provides that a Texas emissions reduction plan surcharge is imposed on the sale of fuel to marine vessels moored for an extended or permanently in harbor.

SECTION 24. Requires the commission, not later than the 45th day after the effective date of this Act, to adopt rules establishing the guidelines and criteria required to implement programs established under this Act. Requires the comptroller, not later than the 45th day after the effective date of this Act, to adopt all rules necessary to enable the comptroller to carry out the comptroller’s duties under this Act. Requires the commission, pending final adoption of rules by the commission and the comptroller to implement programs established by this Act, to begin implementation of the programs using guidelines developed by a similar program currently operating in another state, modified as necessary for application in this state.

SECTION 25. Requires the commission and the comptroller, not later than the 45th day after the effective date of this Act, to adopt rules necessary to implement the low-emissions vehicle purchase or lease incentive program established under Chapter 386D, Health and Safety Code, as added by this Act. Requires the commission, not later than the 45th day after the effective date of this Act, to publish the first annual list of vehicles eligible for low-emissions vehicle purchase or lease incentives, as required by Section 386.158, Health and Safety Code, as added by this Act.

SECTION 26. Requires the Texas Department of Public Safety, not later than the 45th day after the effective date of this Act, to make available to the county tax assessor-collector of each county in the state the special license plates authorized by Section 502.2665, Transportation Code, as added by this Act. Requires the county tax assessor-collector of each county in the state to begin issuing the special license plates to persons who qualify for the plates not later than the 10th working day after the date the plates are available.

SECTION 27. Requires the commission, not later than the 30th day after the adoption of rules governing the new technology development and research program established under Chapter 386E, Health and Safety Code, as added by this Act, to issue requests for proposals for projects to be funded under the new technology development and research program.

SECTION 28. Provides that the change in law made by Chapter 171S, Tax Code, as added by this Act, takes effect January 1, 2002.

SECTION 29. Provides that the change in law made by Sections 151.355-151.357, Tax Code, as added by this Act, does not affect tax liability accruing before the effective date of this Act. Provides that liability continues in effect as if the Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 30. Requires the appointing authorities, in making the initial appointments to the Texas Emissions Reduction Plan Advisory Board, as created by Section 386.057, Health and Safety Code, as added by this Act, to designate their appointees so that six members' terms expire February 1, 2002, and seven members' terms expire February 1, 2003.

SECTION 31. Requires the governor, in making the initial appointments to the Texas Council on Environmental Technology, as created by Section 386.202, Health and Safety Code, as added by this Act, to designate the appointees so that three members' terms expire February 1, 2003, four members' terms expire February 1, 2005, and four members' terms expire February 1, 2007.

SECTION 32. Effective date: upon passage or September 1, 2001.