ATTACHMENT 3

Bill Number: TX79RHB 2481 Date: 05-31-2005

ENROLLED

AN ACT

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

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

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

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

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

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

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

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

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

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

(c) Additional requirements regarding NOx allocations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

amended to read as follows:

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

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

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

(1) a representative of the trucking industry;

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

(3) a representative of the electric utility industry;

(4) a representative of regional transportation; and

(5) a representative of the nonprofit organization described by Section 386.252(a)(2) [~~the Texas Council on Environmental Technology~~].

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

reappointed to a subsequent term.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The fund consists of:

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

(A) Section 386.056;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) [~~advanced technologies that promote increased building and appliance energy performance; and~~]

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

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

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

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

above the base code from local amendments; and

(2) annually submit a report to the commission:

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

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

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

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

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

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

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

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

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

SECTION 19. Section 501.138, Transportation Code, is

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

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

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

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

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

(b) The county assessor-collector shall send:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

board on the effective date of this Act.

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

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

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President of the Senate 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.

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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.

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Secretary of the Senate

APPROVED: _____

Date

_____

Governor