

AN ACT

relating to contracts and grant programs related to the Texas Emissions Reduction Plan; making appropriations.

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

SECTION 1. Section 2155.451(a), Government Code, as added by Section 19, Chapter 1331, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are [that term is] defined by Section 386.001, Health and Safety Code.

SECTION 2. Section 271.907(b), Local Government Code, as added by Section 20, Chapter 1331, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(b) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are [that term is] defined by Section 386.001, Health and Safety Code.

SECTION 3. Sections 386.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The utility commission, the commission, and the comptroller[~~, and the council~~] shall establish and administer the Texas emissions reduction plan in accordance with this chapter.

(b) Under the plan, the commission and[~~]~~ the comptroller[~~]~~

1 ~~and the council]~~ shall provide grants or other funding for:

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

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

7 (3) the new technology research and development
8 program established under Chapter 387.

9 SECTION 4. Section 387.001, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 387.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

12 (1) "Commission" means the Texas Commission on
13 Environmental Quality.

14 (2) "Program" [~~"program"~~] means the new technology
15 research and development program.

16 SECTION 5. Section 387.002(b), Health and Safety Code, as
17 amended by Section 1, Chapter 29, Acts of the 78th Legislature,
18 Regular Session, 2003, is amended to read as follows:

19 (b) The Texas Council on Environmental Technology shall
20 work to enhance the entrepreneurial and inventive spirit of Texans
21 to assist in developing solutions to air, water, and waste problems
22 by:

23 (1) identifying and evaluating new technologies and
24 seeking the approval of the United States Environmental Protection
25 Agency for and facilitating the deployment of those technologies;
26 and

27 (2) assisting the commission and the United States

1 Environmental Protection Agency in the process of ensuring credit
2 for new, innovative, and creative technological advancements[+
3 ~~(3) competing for and managing federal grants and~~
4 ~~funds from other sources available for carrying out the objectives~~
5 ~~of the council, and~~
6 ~~(4) entering into public-private partnerships to~~
7 ~~facilitate development of environmental technology infrastructure~~
8 ~~in this state].~~

9 SECTION 6. Section 387.003, Health and Safety Code, as
10 amended by Section 2, Chapter 29, and Section 13, Chapter 1331, Acts
11 of the 78th Legislature, Regular Session, 2003, is amended to read
12 as follows:

13 Sec. 387.003. NEW TECHNOLOGY RESEARCH AND DEVELOPMENT
14 PROGRAM. (a) The commission, in consultation with the Texas
15 Council on Environmental Technology, shall establish and
16 administer a new technology research and development program as
17 provided by this chapter.

18 (b) Under the program, the commission [~~Texas Council on~~
19 ~~Environmental Technology~~] shall provide grants to be used to
20 support development of emissions-reducing technologies that may be
21 used for projects eligible for awards under Chapter 386 and other
22 new technologies that show promise for commercialization. The
23 primary objective of this chapter is to promote the development of
24 commercialization technologies that will support projects that may
25 be funded under Chapter 386 and this chapter, including advanced
26 technologies such as fuel cells, catalysts, and fuel additives.

27 [~~(c) When making a grant under the program, the Texas~~

1 ~~Council on Environmental Technology may collect a fee from the~~
 2 ~~grant recipient in an amount not to exceed five percent of the~~
 3 ~~amount of the grant to be used by the council only to:~~

4 ~~[(1) monitor project progress,~~

5 ~~[(2) disseminate information about project~~
 6 ~~accomplishments,~~

7 ~~[(3) track technology deployment into the~~
 8 ~~marketplace; and~~

9 ~~[(4) provide estimates of the impact that~~
 10 ~~commercialization of funded projects will have on the environment.]~~

11 SECTION 7. Section 387.004, Health and Safety Code, is
 12 amended to read as follows:

13 Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY PROPOSALS.
 14 The commission [~~Texas Council on Environmental Technology~~] from
 15 time to time shall issue specific requests for proposals (RFPs) or
 16 program opportunity notices (PONs) for technology projects to be
 17 funded under the program.

18 SECTION 8. Sections 387.005(b) and (c), Health and Safety
 19 Code, and Section 387.005(f), Health and Safety Code, as added by
 20 Section 3, Chapter 29, Acts of the 78th Legislature, Regular
 21 Session, 2003, are amended to read as follows:

22 (b) The commission [~~Texas Council on Environmental~~
 23 ~~Technology~~] shall identify and evaluate and may consider making
 24 grants for technology projects that would allow qualifying fuels to
 25 be produced from energy resources in this state. In considering
 26 projects under this subsection, the commission [~~council~~] shall give
 27 preference to projects involving otherwise unusable energy

1 resources in this state and producing qualifying fuels at prices
2 lower than otherwise available and low enough to make the projects
3 to be funded under the program economically attractive to local
4 businesses in the area for which the project is proposed.

5 (c) In soliciting proposals under Section 387.004 and
6 determining how to allocate grant money available for projects
7 under this chapter, the commission [~~Texas Council on Environmental~~
8 ~~Technology~~] shall give special consideration to advanced
9 technologies and retrofit or add-on projects that provide multiple
10 benefits by reducing emissions of particulates and other air
11 pollutants.

12 (f) If a commissioner [~~member of the Texas Council on~~
13 ~~Environmental Technology~~] is an employee or owner of an entity that
14 applies for a grant under this chapter, the commissioner [~~member~~],
15 before a vote on the grant, shall disclose the fact of the
16 commissioner's [~~member's~~] employment or ownership. The disclosure
17 must be entered into the minutes of the meeting. The commissioner
18 [~~member~~] may not vote on or otherwise participate in the awarding of
19 the grant. If the commissioner [~~member~~] does not comply with this
20 subsection, the entity is not eligible for the grant.

21 SECTION 9. Section 387.006(b), Health and Safety Code, is
22 amended to read as follows:

23 (b) The commission [~~Texas Council on Environmental~~
24 ~~Technology~~] shall consider specifically, for each proposed
25 technology project application:

26 (1) the projected potential for reduced emissions of
27 oxides of nitrogen and the cost-effectiveness of the technology

1 once it has been commercialized;

2 (2) the potential for the technology to contribute
3 significantly to air quality goals; and

4 (3) the strength of the commercialization plan.

5 SECTION 10. Section 387.007, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 387.007. COST-SHARING. The commission [~~Texas Council~~
8 ~~on Environmental Technology~~] may require cost-sharing for
9 technology projects funded under this chapter but may not require
10 repayment of grant money, except that the commission [~~council~~]
11 shall require provisions for recapturing grant money for
12 noncompliance with grant requirements. Grant money recaptured
13 under the contract provision shall be deposited in the
14 environmental research fund and reallocated for other projects
15 under this chapter.

16 SECTION 11. Section 387.008, Health and Safety Code, as
17 amended by Section 4, Chapter 29, Acts of the 78th Legislature,
18 Regular Session, 2003, is amended to read as follows:

19 Sec. 387.008. ENVIRONMENTAL RESEARCH FUND. (a) The
20 environmental research fund is an account in the general revenue
21 fund. The fund consists of [~~fees collected under Section~~
22 ~~387.003(c) and~~] money from gifts, grants, or donations to the fund
23 for designated or general use and from any other source designated
24 by the legislature.

25 (b) Money in the environmental research fund may be used
26 only by the commission for operations [~~the operation~~] and projects
27 under this chapter [~~of the Texas Council on Environmental~~

1 ~~Technology~~].

2 (c) Sections 403.095 and 404.071, Government Code, do not
3 apply to the fund. Interest earned on the fund shall be credited to
4 the fund.

5 SECTION 12. Sections 387.009 and 387.010, Health and Safety
6 Code, are amended to read as follows:

7 Sec. 387.009. ADVISORY COMMITTEES. The commission [~~Texas~~
8 ~~Council on Environmental Technology~~] may appoint advisory
9 committees as necessary or desirable to assist the commission
10 [~~council~~] in performing its duties under this chapter. An advisory
11 committee may include representatives of industry, environmental
12 groups, consumer groups, local governments, agriculture, the
13 commission, the General Land Office, and the Railroad Commission of
14 Texas. Any senator or representative desiring to do so may
15 participate on any advisory committee appointed under this section.
16 Members of an advisory committee are not entitled to compensation.

17 Sec. 387.010. REPORTS. (a) Not [~~later than December 1,~~
18 ~~2002, and not~~] later than December 1 of each even-numbered
19 [~~subsequent second~~] year, the commission [~~Texas Council on~~
20 ~~Environmental Technology~~] shall report to the legislature on
21 projects funded under the new technology research and development
22 program, describing the technical objectives and accomplishments
23 of the project and the progress of the project technology toward
24 commercialization. Using sound science, the report shall detail
25 the costs and actual realized benefits of the program and of each
26 project funded under the program.

27 (b) The commission shall ensure that all research reports

1 under the program are accessible to the public, including, as
2 practicable, through the commission's Internet website.

3 SECTION 13. Section 387.002(c), Health and Safety Code, is
4 repealed.

5 SECTION 14. On the effective date of this Act:

6 (1) except as otherwise provided by Chapter 387,
7 Health and Safety Code, as amended by this Act, the functions of the
8 Texas Council on Environmental Technology are transferred to the
9 Texas Commission on Environmental Quality, including:

10 (A) managing of grants approved by the council
11 before the effective date of this Act; and

12 (B) requesting proposals for grants, reviewing
13 grant applications, and awarding grant contracts;

14 (2) any contract or other obligation of the council is
15 transferred to the commission; and

16 (3) the property and records of the council and its
17 predecessor agencies are transferred to the commission.

18 SECTION 15. Section 11.21, Article IX, Chapter 1330, Acts
19 of the 78th Legislature, Regular Session, 2003 (the General
20 Appropriations Act), is amended to read as follows:

21 Sec. 11.21. Appropriations Limited to Revenue Collections:
22 Texas Emissions Reduction Plan. (a) Appropriations made by this
23 section supersede appropriations made by other sections of this Act
24 to the extent of any conflict.

25 (b) Out of the Texas Emissions Reduction Plan (TERP) Account
26 No. 5071, the following amounts are appropriated to the Texas
27 Commission on Environmental Quality (TCEQ) for each year of the

1 state fiscal biennium beginning September 1, 2003:

2 (1) 87.5 percent of the revenues accruing to the
3 account in each state fiscal year (estimated to be \$104,210,750 in
4 fiscal year 2004 and \$127,568,875 in fiscal year 2005) to be used
5 for incentive payments for the Diesel Emissions Reduction Incentive
6 Program established in Subchapter C, Chapter 386, Health and Safety
7 Code;

8 (2) 9.5 percent of the revenues accruing to the
9 account in each state fiscal year (estimated to be \$11,314,310 in
10 fiscal year 2004 and \$13,850,335 in fiscal year 2005) for the New
11 Technology Research and Development Program established in Chapter
12 387, Health and Safety Code; and

13 (3) 1.5 percent of the revenues accruing to the
14 account in each state fiscal year to be used to cover administrative
15 costs associated with the Diesel Emissions Reduction Incentive
16 Program.

17 (c) Of the money appropriated by Subsection (b)(2) of this
18 section:

19 (1) \$500,000 shall be deposited to the Clean Air
20 Account No. 151 for use by the Texas Commission on Environmental
21 Quality (TCEQ) to supplement funding for air quality activities in
22 affected counties, as defined by Section 386.001, Health and Safety
23 Code;

24 (2) the Texas Commission on Environmental Quality
25 (TCEQ) may use not more than \$250,000 for administrative costs of
26 the New Technology Research and Development Program; and

27 (3) not less than 20 percent of the money shall be

1 allocated for use in each state fiscal year to support research
2 related to air quality for the Houston-Galveston-Brazoria and
3 Dallas-Fort Worth nonattainment areas by a nonprofit organization
4 based in Houston as provided by Section 386.252, Health and Safety
5 Code.

6 (d) Of the money appropriated by Subsection (b)(3) of this
7 section, the Texas Commission on Environmental Quality (TCEQ) may
8 use not more than \$606,845 in the state fiscal year ending August
9 31, 2004, for administrative costs associated with the Diesel
10 Emissions Reduction Incentive Program and may use not more than
11 \$551,540 in the state fiscal year ending August 31, 2005, for
12 administrative costs associated with the Diesel Emissions
13 Reduction Incentive Program.

14 (e) Out of the Texas Emissions Reduction Plan (TERP) Account
15 No. 5071, 1.5 percent of revenues accruing to the account in each
16 state fiscal year are appropriated to the Texas Engineering
17 Experiment Station (TEES) for each year of the state fiscal
18 biennium beginning September 1, 2003, to be used for administrative
19 costs associated with the Texas Building Energy Performance
20 Standards under Chapter 388, Health and Safety Code. The Texas
21 Engineering Experiment Station (TEES) may use not more than
22 \$950,421 in the state fiscal year ending August 31, 2004, for
23 administrative costs associated with the Texas Building Energy
24 Performance Standards and may use not more than \$953,616 in the
25 state fiscal year ending August 31, 2005, for administrative costs
26 associated with the Texas Building Energy Performance Standards.

27 (f) ~~Included in the amounts appropriated in this Act are~~

1 ~~revenues accruing to the Texas Emissions Reduction Plan (TERP)~~
2 ~~Account No. 5071 during the 2004-05 biennium (estimated to be~~
3 ~~\$21,402,000 in fiscal year 2004 and \$21,828,000 in fiscal year~~
4 ~~2005) to carry out programs of the TERP.~~

5 ~~[(b) Allocations of TERP revenues included in this Act are~~
6 ~~as follows:~~

7 ~~[(1) For the Texas Commission on Environmental Quality~~
8 ~~(TCEQ), 72 percent of TERP revenues to be used as incentive payments~~
9 ~~for the Diesel Emissions Reduction Program established in~~
10 ~~Subchapter C, Chapter 386, Health and Safety Code (estimated to be~~
11 ~~\$15,409,490 in fiscal year 2004 and \$15,716,160 in fiscal year~~
12 ~~2005) and 0.75 percent of TERP revenues to be used for~~
13 ~~administrative costs incurred by the TCEQ in administering the~~
14 ~~Diesel Emissions Reduction Program (estimated to be \$160,515 in~~
15 ~~fiscal year 2004 and \$163,710 in fiscal year 2005), as provided by~~
16 ~~Section 386.252, Health and Safety Code,~~

17 ~~[(2) For the Public Utility Commission (PUC), 7.5~~
18 ~~percent of TERP revenues to be used for grant payments for the~~
19 ~~Energy Efficiency Grant Program as provided in Subchapter E,~~
20 ~~Chapter 386, Health and Safety Code, (estimated to be \$1,605,150 in~~
21 ~~fiscal year 2004 and \$1,637,100 in fiscal year 2005) and 0.75~~
22 ~~percent of TERP revenues to be used for administrative costs~~
23 ~~incurred by the PUC in administering the Energy Efficiency Grant~~
24 ~~Program (estimated to be \$160,515 in fiscal year 2004 and \$163,710~~
25 ~~in fiscal year 2005), as provided by Section 386.252, Health and~~
26 ~~Safety Code,~~

27 ~~[(3) For the Fiscal Programs - Comptroller of Public~~

1 ~~Accounts, 10 percent of TERP revenues to be used for incentive~~
2 ~~payments for the Motor Vehicle Purchase or Lease Incentive Program~~
3 ~~established in Subchapter D, Chapter 386, Health and Safety Code,~~
4 ~~(estimated to be \$2,140,200 in fiscal year 2004 and \$2,182,800 in~~
5 ~~fiscal year 2005) and 0.75 percent of TERP revenues to be used for~~
6 ~~administrative costs incurred by the Comptroller in administering~~
7 ~~the Motor Vehicle Purchase or Lease Incentive Program (estimated to~~
8 ~~be \$160,515 in fiscal year 2004 and \$163,710 in fiscal year 2005),~~
9 ~~as provided by Section 386.252, Health and Safety Code,~~

10 ~~[(4) For the Texas Engineering Experiment Station~~
11 ~~(TEES), 0.75 percent of TERP revenues to be used for administrative~~
12 ~~costs associated with the Texas Building Energy Performance~~
13 ~~Standards, Chapter 388, Health and Safety Code (estimated to be~~
14 ~~\$160,515 in fiscal year 2004 and \$163,710 in fiscal year 2005), as~~
15 ~~provided by Section 386.252, Health and Safety Code,~~

16 ~~[(5) For the Texas Council on Environmental Technology~~
17 ~~(TCET), 7.5 percent of TERP revenues to be used for grant funding~~
18 ~~and administrative costs associated with the New Technology~~
19 ~~Research and Development Program established in Chapter 387, Health~~
20 ~~and Safety Code (estimated to be \$1,605,149 in fiscal year 2004 and~~
21 ~~\$1,637,099 in fiscal year 2005). The first \$90,000 from the 7.5~~
22 ~~percent of TERP revenues allocated to the Texas Council of~~
23 ~~Environmental Technology in each fiscal year shall be deposited to~~
24 ~~the Clean Air Account No. 151 for use by TCEQ to supplement funding~~
25 ~~for air quality activities in affected counties as defined in~~
26 ~~Section 386.001, Health and Safety Code. Of the remaining amounts~~
27 ~~appropriated to the Texas Council on Environmental Technology, not~~

1 ~~more than \$203,893 in each fiscal year shall be spent on~~
2 ~~administrative costs with remaining funds to be used to make grants~~
3 ~~for new technologies. The amount appropriated for administrative~~
4 ~~costs may increase as provided in Subsection (e), if revenues to the~~
5 ~~TERP Account No. 5071 exceed \$21,402,000 in fiscal year 2004 or~~
6 ~~exceed \$21,828,000 in fiscal year 2005.~~

7 [(e)] It is the intent of the Legislature that fees
8 generated and deposited to the TERP Account No. 5071 cover, at a
9 minimum, the costs of the appropriations made out of the TERP
10 Account No. 5071 by this Act, as well as the "other direct and
11 indirect costs" associated with TERP programs. In the event that
12 actual or projected revenue collections are insufficient to offset
13 the costs identified by this provision, the Legislative Budget
14 Board may direct that the Comptroller reduce the appropriation
15 authority provided above to be within the amount of revenue
16 expected to be available, provided that the reduction is in
17 proportion to each agency's share of TERP funding as allocated
18 above and as provided in Section 386.252, Health and Safety Code.

19 [~~d~~] ~~In the event that the Comptroller makes a finding that~~
20 ~~revenues to the TERP Account No. 5071 will total more than~~
21 ~~\$21,402,000 in fiscal year 2004 or more than \$21,828,000 in fiscal~~
22 ~~year 2005, the Comptroller shall notify the Legislative Budget~~
23 ~~Board of that finding at least 14 days prior to the disbursement of~~
24 ~~such funds. The Comptroller shall include in that notification an~~
25 ~~estimate of the amount expected to be received in excess of those~~
26 ~~amounts and an estimate of the amount of additional funds each~~
27 ~~agency will receive according to the allocation schedule described~~

1 ~~in section (e) below.~~

2 ~~[(e) In addition to amounts appropriated by this section out~~
3 ~~of the TERP Account No. 5071, there is hereby appropriated all~~
4 ~~revenues received by the TERP Account No. 5071 in excess of~~
5 ~~\$21,402,000 in fiscal year 2004 and in excess of \$21,828,000 in~~
6 ~~fiscal year 2005 of the biennium. Such additional amounts shall be~~
7 ~~allocated to each agency according to the following proportions: 72~~
8 ~~percent to TCEQ for incentive payments for the Diesel Emissions~~
9 ~~Reduction Program; 7.5 percent to the PUC for grant payments for the~~
10 ~~Energy Efficiency Grant Program; 10 percent to the Fiscal Programs~~
11 ~~Comptroller of Public Accounts for incentive payments for the~~
12 ~~Motor Vehicle Purchase or Lease Incentive Program; 6.9 percent to~~
13 ~~the TCET for grants and 0.2 percent to the TCET for administrative~~
14 ~~costs; 0.4 percent to be deposited to the Clean Air Account No. 151~~
15 ~~and appropriated to TCEQ to supplement funding for air quality~~
16 ~~activities in affected counties; 2.25 percent to TCEQ for~~
17 ~~administrative costs; 0.35 percent to the Comptroller for~~
18 ~~administrative costs; 0.2 percent to the PUC for administrative~~
19 ~~costs; and 0.2 percent to the TEES for administrative costs.]~~

20 (g) ~~[(f)]~~ Any unexpended balances in the appropriations
21 made by this section out of the TERP Account No. 5071 on August 31,
22 2004, are hereby appropriated for the same purposes for the fiscal
23 year beginning September 1, 2004.

24 (h) ~~[(g) Contingent on the passage of House Bill 638, or~~
25 ~~similar legislation, relating to the Texas emissions reduction plan~~
26 ~~by the Seventy-eighth Legislature.]~~

27 ~~[(1) Notwithstanding other provisions contained in~~

1 ~~this Section, appropriations out of the TERP Account No. 5071 are~~
2 ~~hereby modified according to the allocations of funding contained~~
3 ~~in Health and Safety Code, Section 386.252, as amended.~~

4 ~~[(2) Of amounts appropriated pursuant to Subsection~~
5 ~~(g), additional appropriations to the TCEQ for administrative costs~~
6 ~~shall not exceed \$446,330 in fiscal year 2004 and \$387,830 in fiscal~~
7 ~~year 2005; additional appropriations to the TEES for administration~~
8 ~~shall not exceed \$789,906 in each fiscal year; and additional~~
9 ~~appropriations to the TCET for administration shall not exceed the~~
10 ~~statutory limits for administrative costs contained in Health and~~
11 ~~Safety Code, Section 386.252.~~

12 ~~[(3)]~~ The "Number of Full-Time-Equivalent Positions
13 (FTE)" indicated herein for the TCEQ is hereby increased by 9 each
14 fiscal year of the biennium and[+] the "Number of
15 Full-Time-Equivalent Positions (FTE)" indicated herein for the
16 TEES is hereby increased by 12 each fiscal year of the biennium[+
17 ~~and the "Number of Full-Time-Equivalent Positions (FTE)" indicated~~
18 ~~herein for the TCET is hereby increased by 5 each fiscal year of the~~
19 ~~biennium].~~

20 SECTION 16. Nothing in this Act shall be construed as
21 reducing or redirecting the amounts of funding available through
22 Rider 8 in Article VI of the General Appropriations Act, 78th
23 Legislature.

24 SECTION 17. This Act takes effect immediately if it
25 receives a vote of two-thirds of all the members elected to each
26 house, as provided by Section 39, Article III, Texas Constitution.
27 If this Act does not receive the vote necessary for immediate

1 effect, this Act takes effect on the 91st day after the last day of
2 the legislative session.

David Newkum

President of the Senate

Tom Craddick

Speaker of the House

I certify that H.B. No. 37 was passed by the House on September 17, 2003, by the following vote: Yeas 123, Nays 2, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 37 on October 10, 2003, by the following vote: Yeas 122, Nays 9, 1 present, not voting; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 37 was passed by the Senate, with amendments, on September 24, 2003, by the following vote: Yeas 30, Nays 0; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Ataly Saul
Secretary of the Senate

I certify that the amounts appropriated in the herein H.B. No. 37, 3rd Called Session of the 78th Legislature, are within amounts estimated to be available in the affected fund.

Certified 10/17/2003
Carole Keeton Strayhorn
Comptroller of Public Accounts

APPROVED: 20 OCT 03

Date
Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:30 P.M. O'CLOCK

OCT 20 2003
Geoffrey S. Connor
Secretary of State