

BILL ANALYSIS

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By: Ellis
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 382.0205 (Special Problems Related to Air Contaminant Emissions), Health and Safety Code, authorizes the Texas Commission on Environmental Quality (TCEQ) by rule to control air contaminants as necessary to protect against adverse effects related to acid deposition, stratospheric changes, including depletion of ozone, and climatic changes, including global warming.

There is virtual consensus among leading scientists that global warming is real, is caused by man-made greenhouse gas pollution, and is occurring more rapidly than climate scientists previously predicted. Currently, Texas leads the nation in pollution caused by greenhouse gas emissions. In fact, if Texas was its own separate country, it would rank seventh in the world in carbon dioxide emissions. Yet, at a crucial time in history, when other states and power companies are moving forward with modern strategies to decrease harmful greenhouse gas emissions and the effects of global warming, this state is still considering enlisting old polluting technology in order to meet modern energy needs. It is integral for this state to adopt an integrated energy plan that provides for the state's electricity generation needs, while at the same time, ensuring we reduce emissions from greenhouse gases and protecting the health and safety of this state's residents.

As proposed, S.B. 945 requires TCEQ to develop and implement a comprehensive plan (plan) consisting of a regulatory framework of emission reduction measures to track and reduce greenhouse gas emissions that cause air pollution and global warming. This bill also requires TCEQ to develop a statewide greenhouse gas emissions cap for the electric power, industrial, and commercial sectors through regulations in an economically efficient manner that would reduce emissions to 1990 levels by 2021. This bill requires TCEQ to establish a mandatory emissions reporting system to track and monitor greenhouse gas emission levels to ensure compliance with the plan. This bill authorizes the governor to adjust certain deadlines in the case of an emergency or significant economic harm. Finally, this bill includes safeguards to prevent large windfall profits for private businesses, that industries or companies which have acted previously to reduce greenhouse gas emissions are not penalized, and that disproportionate impacts to consumers do not result. This bill also establishes two advisory committees to assist TCEQ in developing the plan.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Sections 391.010, 391.051, 391.151, 391.152, 391.154, 391.201, and 391.202, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 5, Health and Safety Code, by adding Chapter 391, as follows:

CHAPTER 391. TEXAS GLOBAL WARMING SOLUTIONS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 391.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Global Warming Solutions Act.

Sec. 391.002. DEFINITIONS. Defines, "allowance," "alternative compliance mechanism," "carbon dioxide equivalent," "commission," "cost-effective," "direct emission reduction," "electric utility," "emissions reduction measure," "greenhouse gas," "greenhouse gas emissions limit," "greenhouse gas emission source" or "source," "market-based compliance mechanism," "municipally owned utility," "retail electric provider," "statewide greenhouse gas emissions," and "statewide greenhouse gas emissions limit" or "statewide emissions limit."

Sec. 391.003. ROLE OF COMMISSION. Requires the Texas Commission on Environmental Quality (TCEQ) to monitor and regulate greenhouse gas emission sources that cause global warming in order to reduce those emissions.

Sec. 391.004. ROLE OF OTHER STATE AGENCIES. Requires each state agency to consider and implement strategies to reduce greenhouse gas emissions generated by the agency.

Sec. 391.005. AUTHORITY OF PUBLIC UTILITY COMMISSION; OBLIGATION OF ELECTRIC UTILITIES. Provides that this chapter does not affect the authority of the Public Utility Commission of Texas (PUC) or the obligation of an electric utility to provide customers with safe and reliable electric service.

Sec. 391.006. CONSTRUCTION OF CHAPTER. Provides that this chapter does not relieve a person from complying with other applicable federal, state, or local laws or regulations. Provides that this chapter does not preclude, prohibit, or restrict the construction of a new facility, as defined by Section 382.003, or the expansion of an existing facility subject to regulation under this chapter if the facility meets all applicable requirements and is in compliance with rules adopted under this chapter. Provides that this chapter does not limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures. Provides that this chapter does not relieve any state entity of its legal obligation to comply with an existing law, rule, or regulation.

Sec. 391.007. EFFECT OF CHAPTER ON OTHER PROGRAMS. Provides that this chapter does not confer authority on TCEQ to alter programs administered by other state agencies for the reduction of greenhouse gas emissions.

Sec. 391.008. ADJUSTMENT OF DEADLINES. (a) Authorizes the governor to adjust a deadline established under this chapter in the event of extraordinary circumstances, a catastrophic event, or the threat of significant economic harm, to the earliest feasible date after that deadline.

(b) Prohibits the deadline adjustment period from exceeding one year unless the governor makes an additional deadline adjustment under Subsection (a).

(c) Requires the governor to provide written notification to each member of the legislature of the adjustment not later than the 10th day after the date the governor invokes a deadline adjustment under Subsection (a).

(d) Provides that this section does not affect the powers and duties established under Chapter 418 (Emergency Management), Government Code.

Sec. 391.009. CONSULTATION WITH OTHER GOVERNMENTAL ENTITIES. Requires TCEQ, in developing its plans to reduce greenhouse gas emissions under this chapter, to consult with other states, the federal government, and other nations to identify the most effective strategies and methods for reducing greenhouse gases, managing greenhouse gas control programs, and facilitating the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs.

Sec. 391.010. ALTERNATIVE RULES TO CONTROL CERTAIN GREENHOUSE GAS EMISSIONS. Requires TCEQ by rule to implement alternative rules for controlling mobile sources of greenhouse gas emissions in order to achieve equivalent or

greater reductions compared to those achieved under Chapter 386 (Texas Emissions Reduction Plan), if that chapter is repealed or expires.

[Reserves Sections 391.011-391.050 for expansion.]

SUBCHAPTER B. GREENHOUSE GAS EMISSIONS REPORTING

Sec. 391.051. RULES FOR REPORTING AND VERIFICATION OF GREENHOUSE GAS EMISSIONS. (a) Requires TCEQ by rule, not later than January 1, 2009, to require the reporting and verification of statewide greenhouse gas emissions and begin to monitor and enforce compliance with this section.

(b) Requires TCEQ to adopt certain rules relating to tracking greenhouse gas emissions.

Sec. 391.052. REVIEW AND UPDATE OF REPORTING REQUIREMENTS. Requires the commission to periodically review and update the emissions reporting requirements described by this subchapter, as necessary, review existing and proposed international, federal, and state greenhouse gas emissions reporting programs and make reasonable efforts to promote consistency among the programs established under this subchapter and other programs, and streamline reporting requirements on greenhouse gas emission sources.

[Reserves Sections 391.053-391.100 for expansion.]

SUBCHAPTER C. STATEWIDE GREENHOUSE GAS EMISSIONS LIMIT

Sec. 391.101. PROCEDURE FOR ESTABLISHING GREENHOUSE GAS EMISSIONS LIMIT. (a) Requires TCEQ, not later than January 1, 2009, to determine the amount of greenhouse gas emissions in the state in 1990 and approve a statewide greenhouse gas emissions limit that is equivalent to that amount. Requires the limit to be achieved by 2021.

(b) Requires TCEQ to hold at least one public workshop and provide an opportunity for all interested parties to comment on the determinations made by TCEQ under Subsection (a). Requires TCEQ to approve the statewide greenhouse gas emissions limit at a public hearing. Requires TCEQ to provide public notice of the public workshop and hearing.

(c) Requires TCEQ, to ensure the most accurate determinations feasible under Subsection (a), to evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 amount of greenhouse gas emissions.

Sec. 391.102. USE OF STATEWIDE LIMIT. Requires TCEQ to use the statewide greenhouse gas emissions limit to maintain and continue reductions in emissions of greenhouse gases after 2021.

Sec. 391.103. RECOMMENDATIONS. Requires TCEQ to periodically make recommendations to the governor and the legislature on how to continue reducing greenhouse gas emissions after 2021.

[Reserves Sections 391.104-391.150 for expansion.]

SUBCHAPTER D. GREENHOUSE GAS EMISSIONS REDUCTIONS

Sec. 391.151. MAXIMUM GREENHOUSE GAS EMISSIONS REDUCTIONS. Requires TCEQ in an open public process to adopt rules, subject to the criteria and schedules established under this subchapter, that facilitate achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources.

Sec. 391.152. EARLY ACTIONS TO REDUCE GREENHOUSE GAS EMISSIONS.

(a) Requires TCEQ, not later than June 30, 2008, to publish and make available to the public a list of early actions that can be implemented to reduce greenhouse gas emissions before the measures and limits adopted under Section 391.154 are implemented.

(b) Requires TCEQ to adopt rules to implement the actions identified on the list under Subsection (a) before January 1, 2011.

(c) Requires the rules adopted by TCEQ under this section to make it possible to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources in furtherance of achieving the statewide greenhouse gas emissions limit established under Section 391.101.

(d) Requires TCEQ, not later than January 1, 2011, to begin enforcing the rules adopted under this section.

Sec. 391.153 COMPREHENSIVE PLAN. (a) Requires TCEQ, not later than January 1, 2010, to prepare and approve a comprehensive plan (plan) for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources by 2021.

(b) Requires TCEQ to consult with each state agency having jurisdiction over sources, including PUC, on all elements of the plan that pertain to certain energy-related matters to ensure that the greenhouse gas reductions activities to be adopted and implemented by TCEQ are complementary, nonduplicative, and capable of being implemented in an efficient and cost-effective manner.

(c) Requires the plan to identify and make recommendations on direct emission reduction measures, alternative compliance mechanisms, market-based mechanisms, and potential monetary and nonmonetary incentives for sources that TCEQ finds are necessary or desirable to facilitate the achievement of the maximum feasible and cost-effective reductions of greenhouse gas emissions by 2021.

(d) Requires TCEQ, in making the determinations required by Subsection (c), to consider all relevant information pertaining to greenhouse gas emissions reduction programs in other states, localities, and nations.

(e) Requires TCEQ to evaluate the potential costs and total potential economic and noneconomic benefits of the plan for reducing greenhouse gases to this state's economy, environment, and public health, using the best available economic models, emission estimation techniques, and other scientific methods.

(f) Sets forth certain requirements for TCEQ to follow in developing the plan.

(g) Requires TCEQ to conduct a series of public workshops to give interested parties an opportunity to comment on the plan. Requires TCEQ to conduct some of the workshops in regions of the state that have the most significant exposure to air pollutants, including communities with large minority and low-income populations.

(h) Requires TCEQ to update the plan at least once every five years in order to achieve the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions.

Sec. 391.154. SOURCE GREENHOUSE GAS EMISSIONS LIMITS AND EMISSIONS REDUCTION MEASURES. (a) Requires TCEQ by rule, not later than January 1, 2012, to adopt greenhouse gas emissions limits and emissions reduction measures for sources or categories of sources to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of

achieving the statewide greenhouse gas emissions limit established under Section 391.101.

(b) Requires TCEQ to follow certain guidelines, to the extent feasible, in adopting rules under this section and Subchapter E.

(c) Authorizes TCEQ by rule to establish a system of market-based declining annual aggregate emissions limits for greenhouse gas emission sources, applicable from January 1, 2013, to December 31, 2021, that TCEQ determines will aggregately achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from those sources. Requires the initial adoption of rules under this subsection to be completed on or before January 1, 2012.

(d) Requires any rule adopted under this subchapter or Subchapter E to ensure certain standards.

(e) Requires TCEQ to rely upon the best available economic and scientific information and TCEQ's assessment of existing and projected technological capabilities when adopting the rules required by this section.

(f) Requires TCEQ to consult with PUC in the development of the rules as they affect electricity and natural gas providers in order to minimize duplicative or inconsistent regulatory requirements.

(g) Authorizes TCEQ to revise rules adopted under this section and adopt additional rules to further the provisions of this chapter after January 1, 2012.

(h) Provides that a rule adopted under this section on or before January 1, 2012, takes effect January 1, 2013.

Sec. 391.155. EARLY IMPLEMENTATION OF CHAPTER. Provides that this chapter does not restrict TCEQ from adopting greenhouse gas emissions limits or emissions reduction measures for sources or categories of sources before January 1, 2012, enforcing those limits or measures before January 1, 2013, or providing early reduction credit where appropriate.

Sec. 391.156. PUBLIC AND PRIVATE INVESTING. Requires TCEQ, to the extent feasible and applicable, to ensure that the greenhouse gas emissions reduction rules, programs, mechanisms, and incentives under its jurisdiction direct public and private investment toward the most disadvantaged communities in this state and provide an opportunity for small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.

[Reserves Sections 391.157-391.200 for expansion]

SUBCHAPTER E. MARKET-BASED COMPLIANCE MECHANISMS

Sec. 391.201. OPTIONAL RULES FOR MARKET-BASED COMPLIANCE MECHANISMS. (a) Authorizes TCEQ to include the use of market-based compliance mechanisms in the rules adopted under Section 391.154.

(b) Requires TCEQ, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit established under Section 391.101, to take certain actions before including market-based compliance mechanisms in the rules adopted under Section 391.154.

(c) Requires TCEQ to adopt rules governing how regulated entities subject to greenhouse gas emissions limits and mandatory emissions reporting requirements

may use market-based compliance mechanism to achieve compliance with greenhouse gas emissions limits.

Sec. 391.202. ADOPTION OF METHODOLOGIES. (a) Requires TCEQ to adopt methodologies for the quantification of voluntary greenhouse gas emissions reductions and rules to verify any voluntary greenhouse gas emissions reductions that are authorized by TCEQ for use in complying with greenhouse gas emissions limits established by TCEQ.

(b) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to the adoption of the methodologies described by Subsection (a).

[Reserves Sections 391.203-391.250 for expansion.]

SUBCHAPTER F. ENFORCEMENT

Sec. 391.251. MONITORING AND ENFORCEMENT. Requires TCEQ to monitor compliance with and enforce any rule, order, emissions limitation, emissions reduction measure, or market-based compliance mechanism adopted by TCEQ under this chapter.

[Reserves Sections 391.252-391.300 for expansion.]

SUBCHAPTER G. GREENHOUSE GAS EMISSIONS CONTROL ACCOUNT; FEES

Sec. 391.301. GREENHOUSE GAS EMISSIONS CONTROL ACCOUNT. (a) Provides that the greenhouse gas emissions control account (account) is a separate account in the general revenue fund.

(b) Provides that the account consists of transfers to the account, interest earned on the account, fees collected under this subchapter, penalties paid under this chapter, and grants and donations accepted for the account.

(c) Authorizes money in the account to be used only to administer programs under this chapter.

(d) Provides that any money in the account not used in a fiscal year remains in the account. Exempts the account from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

Sec. 391.302. FEES. (a) Requires TCEQ, not later than June 30, 2009, to impose on the owner of a greenhouse gas emission source an annual fee.

(b) Requires TCEQ by rule to determine the amount of the fee, including the cost of monitoring compliance with rules under this chapter and the cost of enforcing those rules, and prohibits the fee from exceeding the source's fair share of the annual cost to implement programs under this chapter.

[Reserves Sections 391.303-391-350 for expansion.]

SUBCHAPTER H. ADVISORY COMMITTEES

Sec. 391.351. ENVIRONMENTAL JUSTICE ADVISORY COMMITTEE. (a) Requires TCEQ to convene an Environmental Justice Advisory Committee (justice advisory committee), not later than January 1, 2008, to advise TCEQ in developing the plan under Section 391.153 and in implementing this chapter.

(b) Requires the justice advisory committee to consist of at least three members who represent communities in the state with the most significant exposure to air pollution caused by the emission of greenhouse gases, including communities with large minority or low-income population.

(c) Requires TCEQ to appoint the justice advisory committee members from nominations received from environmental justice organizations and community groups.

(d) Requires TCEQ to provide a reasonable per diem for attendance at justice advisory committee meetings by advisory committee members from nonprofit organizations.

Sec. 391.352. ECONOMIC AND TECHNOLOGICAL ADVANCEMENT ADVISORY COMMITTEE. (a) Requires TCEQ to appoint an Economic and Technological Advancement Advisory Committee (advancement advisory committee) to advise TCEQ on certain activities that will facilitate investment in and implementation of technological research and development opportunities for the purpose of assisting in the reduction of greenhouse gas emissions.

(b) Authorizes the advancement advisory committee to advise TCEQ on state, regional, national, and international economic and technological developments related to greenhouse gas emissions reductions.

SECTION 2. Effective date: September 1, 2007.