

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: S3/18/03

A Bill

SENATE BILL 938

5 By: Senator Steele
6
7

For An Act To Be Entitled

9 AN ACT RELATING TO THE ARKANSAS AIR QUALITY
10 INCENTIVE PLAN.
11

Subtitle

12 AN ACT RELATING TO THE ARKANSAS AIR
13 QUALITY INCENTIVE PLAN.
14
15

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 *SECTION 1. Arkansas Code Title 8 is amended by adding an additional*
20 *chapter to read as follows:*

CHAPTER 14

Subchapter 1

8-14-101. Intent.

21 *It is the intent of the General Assembly to give the Arkansas*
22 *Department of Environmental Quality additional tools to:*

23 *(1) Assure that the air in this state is safe to breathe and*
24 *meets minimum federal standards established under the federal Clean Air Act,*
25 *42 U.S.C. § 7404;*

26 *(2) Develop multi-pollutant approaches to solving the state's*
27 *environmental problems; and*

28 *(3) Adequately fund research and development that will make the*
29 *state a leader in new technologies that can solve the state's environmental*
30 *problems while creating new business and industry in the state.*
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Subchapter 2

8-14-201. Definitions.

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For purposes of this chapter:

(1) "Advisory board" means the Arkansas Air Quality Incentive Plan Advisory Board;

(2) "Affected county" includes:

(A) Pulaski County;

(B) Saline County;

(C) Lonoke County; and

(D) Faulkner County; and

(3) "Department" means the Arkansas Department of Environmental Quality.

8-14-202. Arkansas Air Quality Incentive Plan.

(a) The Arkansas Department of Environmental Quality, and the Arkansas Air Quality Incentive Plan Advisory Board shall establish and administer the Arkansas Air Quality Incentive Plan in accordance with this chapter.

(b) Under the plan the department and the advisory board shall provide grants or other funding for:

(1) The Clean Fleet Incentive Plan, including for infrastructure projects established under that subchapter; and

(2) The Motor Vehicle Purchase or Lease Incentive Program established under this chapter.

8-14-203. Arkansas Department of Environmental Quality duties.

(a) In administering the plan established under this chapter and in accordance with the requirements of this chapter, the Arkansas Department of Environmental Quality shall:

(1) Manage plan funds and oversee the plan;

(2) Produce guidelines, protocols, and criteria for eligible projects;

(3) Develop methodologies for evaluating project cost-effectiveness;

(4) Prepare reports regarding the progress and effectiveness of the plan; and

(5) Take all appropriate and necessary actions so that emissions reductions achieved through the plan are credited by the United States Environmental Protection Agency to the appropriate emissions reduction

1 objectives in the state implementation plan.

2 (b) Appropriate department objectives include:

3 (1) Achieving maximum reductions in oxides of nitrogen,
4 particulate matter 2.5, and volatile organic compounds to demonstrate
5 compliance with air quality compliance plans;

6 (2) Preventing areas of the state from being in violation of
7 national ambient air quality standards; and

8 (3) Achieving cost-saving and multiple benefits by reducing
9 emissions of pollutants.

10
11 8-14-204. Guidelines and criteria.

12 (a) The Arkansas Department of Environmental Quality shall adopt grant
13 guidelines and criteria consistent with the requirements of this chapter.

14 (b) Guidelines shall include protocols to calculate projected
15 emissions reductions, project cost-effectiveness, and safeguards to ensure
16 that funded projects generate emissions reductions not otherwise required by
17 state or federal law.

18 (c)(1) The department shall make draft guidelines and criteria
19 available to the public and the United States Environmental Protection Agency
20 before the forty-fifth (45th) day preceding the date of final adoption and
21 shall hold at least one (1) public meeting to consider public comments on the
22 draft guidelines and criteria before final adoption.

23 (2) The public meeting shall be held in the affected state
24 implementation plan area, and if the guidelines affect more than one (1)
25 state implementation plan area, a public meeting shall be held in each
26 affected state implementation plan area affected by the guidelines.

27 (d)(1) The department may propose revisions to the guidelines and
28 criteria adopted under this section as necessary to improve the ability of
29 the plan to achieve its goals.

30 (2) Revisions may include, among other changes, adding
31 additional pollutants or adjusting eligible program categories to ensure that
32 incentives established under this chapter achieve the maximum possible
33 emissions reductions.

34 (3) The department shall make a proposed revision available to
35 the public before the forty-fifty (45th) day preceding the date of final
36 adoption of the revision and shall hold at least one (1) public meeting to

1 consider public comments on the proposed revision before final adoption.

2
3 8-14-205. Monitoring process.

4 (a)(1) The Arkansas Department of Environmental Quality shall develop
5 procedures for monitoring whether the emissions reductions projected for
6 projects awarded grants under this chapter are actually achieved.

7 (2) Monitoring procedures may include project reviews and
8 contract requirements that the grant recipient provide information
9 semiannually about the project.

10 (3) If the department requires an annual report, the report
11 shall contain a minimum amount of information required from a recipient and
12 the report format shall be simple and convenient.

13 (b) Monitoring and reviewing procedures shall be sufficient to enable
14 emissions reductions generated by funded projects to be fully credited to air
15 quality plans.

16 (c) The department may revise monitoring and review procedures from
17 time to time as necessary or appropriate to enhance the effectiveness of the
18 plan.

19
20 8-14-206. Availability of emissions reduction credits generally.

21 (a) A project funded under a program established under this chapter
22 may not be used for credit under any state or federal emissions reduction
23 credit averaging, banking, or trading program.

24 (b) An emissions reduction generated by a program established under
25 this chapter:

26 (1) May not be used as a marketable emissions reduction credit
27 or, except as otherwise provided in this chapter, to offset any emissions
28 reduction obligations; and

29 (2) May be used to demonstrate conformity with the state
30 implementation plan.

31 (c) A project involving a new emissions reduction measure that would
32 otherwise generate marketable credits under state or federal emissions
33 reduction credit averaging, banking, or trading programs is not eligible for
34 funding under a program established under this chapter unless:

35 (1) The project includes the transfer of the reductions that
36 would otherwise be marketable credits to the state implementation plan or the

1 owner or operator as provided in this chapter; and

2 (2) The reductions are permanently retired.

3
4 8-14-207. Arkansas Air Quality Incentive Plan Advisory Board.

5 (a) There is created the Arkansas Air Quality Incentive Plan Advisory
6 Board to consist of fourteen (14) members appointed as provided by this
7 section and seven (7) ex officio members as provided by this section.

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

9 (1) A representative of the trucking industry;

10 (2) A representative of regional transportation;

11 (3) A representative of the Arkansas Board on Environmental
12 Technology; and

13 (4) A representative of the Arkansas Chamber of Commerce.

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

15 (1) A representative of the engine manufacturing industry;

16 (2) A representative of air transportation industry;

17 (3) A representative of the environmental community;

18 (4) A representative of the agriculture industry; and

19 (5) A representative of the Central Arkansas Clean Air Task
20 Force.

21 (d) The President Pro Tempore of the Senate shall appoint to the
22 advisory board:

23 (1) A representative of consumer groups;

24 (2) A representative of the construction industry;

25 (3) A representative of the automobile industry;

26 (4) A representative of Central Arkansas Clean Cities; and

27 (5) A representative of the fuel industry.

28 (e)(1) Appointed members of the advisory board serve staggered two-
29 year terms.

30 (2) Initial terms shall be determined by lot.

31 (3) Half of the appointed members terms expire February 1 of
32 each even-numbered year and the terms of the other half expire on February 1,
33 of each odd-numbered year.

34 (4) An appointed member may be reappointed to a subsequent term.

35 (f) Ex officio members of the advisory board are:

36 (1) The Chairperson of the Senate standing committee having

1 primary jurisdiction over matters related to natural resources;

2 (2) The Chairperson of the House standing committee having
3 primary jurisdiction over matters related to environmental regulation;

4 (3) The Director of the Arkansas Department of Environmental
5 Quality or the director's designee;

6 (4) The Director of the Department of Finance and Administration
7 or the director's designee; and

8 (5) A representative of the United States Environmental
9 Protection Agency's Region 6 office, designated by the United States
10 Environmental Protection Agency Region 6 administrator.

11 (g) The advisory board annually shall elect a presiding officer.

12 (h) The advisory board shall review the plan and shall recommend to
13 the Arkansas Department of Environmental Quality changes to revenue sources
14 or financial incentives or any legislative, regulatory, or budgetary changes
15 needed.

16 (i) The Arkansas Department of Environmental Quality shall provide
17 necessary staff support to the advisory board.

18
19 Subchapter 3.

20 8-14-301. Definitions.

21 For purposes of this subchapter:

22 (1) "Cost effectiveness" means the total dollar amount expended
23 divided by the total number of tons of oxides of nitrogen, particulate matter
24 2.5, and volatile organic compound emissions reduction attributable to the
25 expenditure;

26 (2) "Fuel cell" means an electrochemical device that uses fuel
27 and oxidant to continuously generate electricity;

28 (3) "Heavy-duty vehicle" means a vehicle or piece of equipment,
29 excluding a motor vehicle, that is powered by a non-road engine, including:

30 (A) Nonroad, nonrecreational equipment and vehicles;

31 (B) Construction equipment;

32 (C) Locomotives; and

33 (D) Other high emitting diesel engine categories
34 established by the Arkansas Department of Environmental Quality;

35 (4) "Motor vehicle" means a self-propelled device designed for
36 transporting persons or property on a public highway that is required to be

1 registered under the laws of this state;

2 (5) "Nonroad engine" means an internal combustion engine that
3 is:

4 (A) In or on a piece of equipment that is self propelled
5 and performs another function, excluding a vehicle that is used solely for
6 competition;

7 (B) In or on a piece of equipment that is intended to be
8 propelled while performing its function; or

9 (C) Designed to be and capable of being carried or moved
10 from one location to another;

11 (7) "Program" means the Clean Fleet Incentive Plan established
12 under this chapter;

13 (8) "Qualifying fuel" includes any liquid or gaseous fuel or
14 additives registered or verified by the United States Environmental
15 Protection Agency that is ultimately dispensed into a motor vehicle or on-
16 road or heavy-duty vehicle that provides reductions of emissions of oxides of
17 nitrogen, particulate matter 2.5, and volatile organic compounds beyond
18 reductions required by state or federal law;

19 (9) "Repower" means to replace an old engine powering an on-road
20 or heavy-duty vehicle with:

21 (A) A new engine that emits at least thirty percent (30%)
22 less than the oxides of nitrogen, particulate matter 2.5, and volatile
23 organic compounds permitted by federal regulation for the current model year
24 for that engine;

25 (B) An engine manufactured later than 1987 that emits at
26 least thirty percent (30%) less than the oxides of nitrogen, particulate
27 matter 2.5, and volatile organic compounds emitted by a new engine certified
28 to the baseline oxides of nitrogen, particulate matter 2.5, and volatile
29 organic compound emissions standard for that engine; or

30 (C) An engine manufactured before 1988 that emits not more
31 than fifty percent (50%) of the oxides of nitrogen, particulate matter 2.5,
32 and volatile organic compounds by a new engine certified to the baseline
33 oxides of nitrogen, particulate matter 2.5, and volatile organic compound
34 emissions standard for that engine; and

35 (10) "Retrofit" means to equip an engine and fuel system with
36 new emissions reducing parts or technology verified by the United States

1 Environmental Protection Agency after manufacture of the original engine and
2 fuel system.

3
4 8-14-302. Program.

5 (a)(1) The Arkansas Department of Environmental Quality shall
6 establish and administer a program to be known as the Clean Fleet Incentive
7 Plan.

8 (2) Under the program, the department shall provide grants for
9 eligible projects to offset the incremental cost of projects that reduce
10 emissions of oxides of nitrogen, particulate matter 2.5, and volatile organic
11 compounds from high emitting diesel sources in no attainment areas and
12 affected counties of the state.

13 (3) The department shall determine the eligibility of projects.

14 (b) Projects that may be considered for a grant under the program
15 include:

16 (1) Purchase or lease of heavy-duty vehicles;

17 (2) Emissions reducing retrofit projects for on-road or heavy-
18 duty vehicles;

19 (3) Emissions reducing repower projects for on-road or heavy-
20 duty vehicles;

21 (4) Purchase and use of emissions reducing add on equipment for
22 on-road or heavy-duty vehicles;

23 (5) Development and demonstration of practical, low emissions
24 retrofit technologies, repower options, and advanced technologies for on-road
25 or heavy-duty vehicles with lower emissions of oxides of nitrogen,
26 particulate matter 2.5, and volatile organic compounds;

27 (6) Use of qualifying fuel; and

28 (7) Implementation of infrastructure projects.

29 (c)(1) A project listed in subsection (b) is not eligible if it is
30 required by any state or federal law, rule, or regulation, memorandum of
31 agreement, or other legally binding document.

32 (2) This subsection does not apply to:

33 (A) An otherwise qualified project, regardless of the fact
34 that the state implementation plan assumes that the change in equipment,
35 vehicles, or operations will occur, if on the date the grant is awarded, the
36 change is not required by any state or federal law, rule or regulation,

1 memorandum of agreement, or other legally binding document; or

2 (B) The purchase of a heavy-duty vehicle or equipment
3 required only by local law or regulation, or by corporate or controlling
4 board policy of a public or private entity.

5
6 8-14-303. Application for grant.

7 (a) Any person that owns one (1) or more on-road or heavy-duty
8 vehicles that operate primarily within a nonattainment area or affected
9 county of this state or that otherwise contributes to the state inventory of
10 emissions of oxides of nitrogen, particulate matter 2.5, and volatile organic
11 compounds may apply for a grant under the program.

12 (b) An application for a grant under this subchapter shall be made on
13 an application provided by the Arkansas Department of Environmental Quality
14 and shall contain information required by the department, including:

15 (1) A detailed description of the proposed project;

16 (2) Information necessary for the department to determine
17 whether the project meets eligibility requirements for the type of project
18 proposed, including a statement of the amounts of any other public financial
19 assistance the project will receive; and

20 (3) Other information the department may require.

21
22 8-14-304. Eligibility requirements.

23 (a)(1) The Arkansas Department of Environmental Quality shall
24 establish criteria for setting priorities for projects eligible to receive
25 grants under this subchapter.

26 (2) The department shall review and may modify the criteria and
27 priorities as appropriate.

28 (b) A proposed project shall meet the requirements of this section to
29 be eligible for a grant under the program.

30 (c) For a proposed project, not less than seventy-five percent (75%)
31 of vehicle miles traveled or hours of operation projected for the five (5)
32 years immediately following the award of a grant shall be projected to take
33 place in a nonattainment area or affected county of this state.

34 (d) Each proposed project shall meet the cost effectiveness
35 requirements of this chapter.

36 (e) A proposed repower project shall exceed the department

1 requirements relating to baseline emissions levels of the engines being
2 replaced under the project.

3 (f)(1) A proposed retrofit, repower, or add on equipment project shall
4 document, in a manner acceptable to the department, a reduction in emissions
5 of oxides of nitrogen, particulate matter 2.5, and volatile organic compounds
6 of at least thirty percent (30%) compared with the baseline emissions adopted
7 by the department for the relevant engine year and application.

8 (2) After study of available emissions reduction technologies,
9 after public notice and comment, and after consultation with the Arkansas Air
10 Quality Incentive Plan Advisory Board, the department may revise the minimum
11 percentage reduction in emissions of oxides of nitrogen required by this
12 subsection to improve the ability of the program to achieve its goals.

13 (g) If a baseline emissions standard does not exist for on-road or
14 heavy-duty vehicles in a particular category, the department shall establish
15 an appropriate baseline emissions level for comparison purposes.

16 (h)(1) The department may approve payments to offset the incremental
17 cost, over the expected lifetime of the motor vehicle or on-road or heavy-
18 duty vehicle, of the use of qualifying fuel in a motor vehicle or on-road or
19 heavy-duty vehicle if the proposed project as a whole, including the
20 incremental fuel cost, meets the requirements of this subchapter.

21 (2) The department shall develop an appropriate method for
22 converting incremental fuel costs over the lifetime of the motor vehicle or
23 on-road or heavy-duty vehicle into an initial cost for purposes of
24 determining cost effectiveness as required by this subchapter.

25
26 8-14-305. Calculation of cost effectiveness.

27 (a) In calculating cost effectiveness, one time grants of money at the
28 beginning of a project shall be annualized using a time value of public funds
29 or discount rate determined for each project by the Arkansas Department of
30 Environmental Quality, taking into account the interest rate on bonds,
31 interest earned by state funds, and other factors that the department
32 considers appropriate.

33 (b) The department shall establish reasonable methodologies for
34 evaluating project cost effectiveness consistent with subsection (a) and with
35 accepted methods.

36 (c) The department shall develop protocols for calculating oxides of

1 nitrogen, particulate matter 2.5, and volatile organic compounds emissions
2 reductions not otherwise required by state or federal law in non-attainment
3 areas and affected counties of this state from representative project types
4 over the life of the projects.

5 (d) The department may include in cost effectiveness determinations
6 only reductions in oxides of nitrogen, particulate matter 2.5, and volatile
7 organic compounds emissions that are achieved in nonattainment areas and
8 affected counties of this state.

9
10 8-14-306. Cost effectiveness criteria - Determination of grant amount.

11 (a)(1) Except as otherwise provided in this chapter, the Arkansas
12 Department of Environmental Quality may not award a grant for a proposed
13 project the cost effectiveness of which, calculated in accordance with this
14 subchapter and criteria developed under that subchapter, exceeds thirteen
15 thousand dollars (\$13,000) per ton of oxides of nitrogen, particulate matter
16 2.5, and volatile organic compound emissions reduced in the nonattainment
17 area or affected county for which the project is proposed.

18 (2) This subsection does not restrict the department's authority
19 under other law to require emissions reductions with a cost effectiveness
20 that exceeds thirteen thousand dollars (\$13,000) per ton.

21 (b) The department may not award a grant that, net of taxes, provides
22 an amount that exceeds the incremental cost of the proposed project.

23 (c) The department shall adopt guidelines for capitalizing incremental
24 lease costs so those costs may be offset by a grant under this subchapter.

25 (d) In determining the amount of a grant under this subchapter, the
26 department shall reduce the incremental cost of a proposed new purchase,
27 lease, retrofit, repower, or add on equipment project by the value of any
28 existing financial incentive that directly reduces the cost of the proposed
29 project, including tax credits or deductions, other grants, or any other
30 public financial assistance.

31
32 8-14-307. Adjustment to maximum cost effectiveness amount and award
33 amount.

34 After study of available emissions reduction technologies and costs and
35 after public notice and comment, the Arkansas Department of Environmental
36 Quality, in consultation with the Arkansas Air Quality Incentive Plan

1 Advisory Board, may change the values of the maximum grant award criteria to
2 account for inflation or to improve the ability of the program to achieve its
3 goals.

4
5 8-14-308. Infrastructure projects.

6 (a) The Arkansas Department of Environmental Quality shall provide
7 funding under § 8-14-309 for infrastructure projects.

8 (b) To implement the requirement of subsection (a), the department
9 shall:

10 (1) Solicit applications for a balanced mix of projects
11 involving fueling and electrification infrastructure that is linked to motor
12 vehicle and on-road and heavy-duty vehicle projects and consistent with
13 program goals;

14 (2) Coordinate infrastructure projects with motor vehicle and
15 on-road and heavy-duty vehicle projects representing a broad range of fuels,
16 technologies, and applications as appropriate and consistent with the goals
17 of this subchapter;

18 (3) Adopt guidelines and criteria for infrastructure projects to
19 be funded under the program; and

20 (4) Oversee, monitor, and evaluate the use of grants awarded
21 under this program and report on the effectiveness of this grant program in
22 relation to the purposes and goals of this subchapter.

23
24 8-14-309. Eligible infrastructure projects.

25 The Arkansas Department of Environmental Quality may consider for
26 funding under this subchapter:

27 (1) The purchase and installation at a site of equipment that is
28 designed primarily to dispense qualifying fuel, other than standard gasoline
29 or diesel, or the purchase of onsite mobile fueling equipment;

30 (2) Infrastructure projects, including auxiliary power units,
31 designed to dispense electricity to motor vehicles and on-road and heavy-duty
32 vehicles; and

33 (3) A project that involves a technology that allows a vehicle
34 to replace with electric power, while the vehicle is parked, the power
35 normally supplied by the vehicle's internal combustion engine.

36

1 8-14-310. Heavy-duty purchase or lease incentive schedule.

2 A new heavy-duty vehicle is eligible for reimbursement of incremental
 3 costs according to the following schedule:

4 <u>Date of manufacture</u>	<u>Date of manufacture</u>	
5 <u>(2001)</u>	<u>(10/01/02-9/30/06)</u>	
6 <u>2.5 g/bhp-hr NOx</u>	<u>1.2 g/bhp-hr NOx</u>	<u>up to \$15,000</u>
7 <u>1.5 g/bhp-hr NOx</u>	<u>0.5 g/bhp-hr NOx</u>	<u>up to \$25,000</u>
8 <u>0.0 g/bhp-hr NOx</u>	<u>0.0 g/bhp-hr NOx</u>	<u>up to \$25,000</u>

9
 10 8-14-311. Modification of incentive emissions standards.

11 After evaluating new technologies and after public notice and comment,
 12 the Arkansas Department of Environmental Quality, in consultation with the
 13 Arkansas Air Quality Incentive Plan Advisory Board, may change the incentive
 14 emissions standards established under this subchapter to improve the ability
 15 of the program to achieve its goals.

16
 17 Subchapter 4.

18 8-14-401. Definitions.

19 For purposes of this subchapter:

20 (1) "Bin" means a set of emissions standards applicable to
 21 exhaust pollutants measured on the Federal Test Procedure according to 40
 22 C.F.R. § 86.1811-04;

23 (2) "Light-duty motor vehicle" means a motor vehicle with a
 24 gross vehicle weight rating of less than ten thousand (10,000) pounds; and

25 (3) "Motor vehicle" means a self-propelled device designed for
 26 transporting persons or property on a public highway that is required to be
 27 registered under the laws of this state.

28
 29 8-14-402. Regulations necessary to implement the program.

30 (a) The Chief Fiscal Officer of the State and the Arkansas Department
 31 of Environmental Quality shall develop a purchase or lease incentive program
 32 for new light-duty motor vehicles and shall adopt rules necessary to
 33 implement the program.

34 (b) The program shall authorize statewide incentives for the purchase
 35 or lease, according to the schedule provided by this chapter, of new light-
 36 duty motor vehicles that are certified by the United States Environmental

1 Protection Agency to meet an emissions standard that is at least as stringent
2 as those provided by this chapter for a purchaser or lessee who agrees to
3 register the vehicle in this state, and to operate the vehicle in this state
4 for not less than seventy-five percent (75%) of the vehicle's annual mileage.

5 (c)(1) Only one (1) incentive may be provided for each new light-duty
6 motor vehicle.

7 (2) The incentive shall be provided to the lessee and not to the
8 purchaser if the motor vehicle is purchased for the purpose of leasing the
9 vehicle to another person.

10
11 8-14-403. Light duty motor vehicle purchase or lease incentive
12 schedule.

13 A new light-duty motor vehicle is eligible for an incentive according
14 to the following schedule:

<u>Incentive emissions standard and incentive amount</u>			
<u>Model year 2003-2007</u>			
<u>Bin 4</u>	<u>\$1,250</u>	<u>Bin 4 + ILEV</u>	<u>\$2,500</u>
<u>Bin 3</u>	<u>\$2,225</u>	<u>Bin 3 + ILEV</u>	<u>\$3,750</u>
<u>Bin 2</u>	<u>\$3,750</u>	<u>Bin 2 + ILEV</u>	<u>\$5,000</u>
<u>Bin 1</u>	<u>\$5,000</u>	<u>Bin 1 + ILEV</u>	<u>\$6,000</u>

21
22 8-14-404. Modification of incentive emissions standards.

23 After evaluating new technologies and after public notice and comment,
24 the Arkansas Department of Environmental Quality, in consultation with the
25 Arkansas Air Quality Incentive Plan Advisory Board, may change the incentive
26 emissions standards established by this chapter to improve the ability of the
27 program to achieve its goals.

28
29 /s/ Steele
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