

## CHAPTER 128

## S.B. No. 513

## AN ACT

relating to regional organizations to promote the coexistence of air quality improvement and economic development in nonattainment areas of the state.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 384 to read as follows:

**CHAPTER 384. AREA EMISSION REDUCTION CREDIT ORGANIZATIONS**

*Sec. 384.001. DEFINITIONS. In this chapter:*

- (1) "Board" means the Texas Air Control Board or its successor agency.*
- (2) "Emission reduction credit" means a credit recognized by the Texas Air Control Board and the United States Environmental Protection Agency for reductions in emissions of air pollutants.*
- (3) "Nonattainment area" means an area so designated within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).*
- (4) "Organization" means an area emission reduction credit organization in this state.*
- (5) "Regional council of governments" means a council of governments designated as the metropolitan planning organization or a metropolitan planning organization in the event the council of governments is not so designated.*

*Sec. 384.002. PURPOSE. The purpose of an area emission reduction credit organization shall be to promote the coexistence of the improvement of air quality and economic development within the region through the acquisition and distribution of emission reduction credits. Its activities may include the use of emission reduction credits to help meet federal reasonable further progress requirements as well as using emission reduction credits to facilitate the issuance of permits.*

**Sec. 384.003. ESTABLISHMENT OF ORGANIZATION.** A regional council of governments whose area of jurisdiction contains a nonattainment area may establish an organization on approval by the board of its creation petition as provided by Section 384.015.

**Sec. 384.004. FUNCTIONS; ORGANIZATION.** An organization created under this chapter shall:

- (1) represent all counties within a nonattainment area;
- (2) have a board of directors appointed in accordance with the provisions of this chapter;
- (3) have the power, authority, and limitations provided by this chapter; and
- (4) have bylaws setting forth its organization and procedures, including provisions for conflicts of interest.

**Sec. 384.005. OFFSET REQUIREMENTS.** All transactions of an organization involving emission reduction credits shall be subject to the offset requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

**Sec. 384.006. LOCATION RESTRICTION.** There shall not be more than one organization within a metropolitan statistical area or consolidated metropolitan statistical area.

**Sec. 384.007. STAFF.** The regional council of governments may provide staff to an organization created under this chapter.

**Sec. 384.008. BOARD OF DIRECTORS.** (a) The board of directors of an organization shall consist of not less than six and not more than 21 appointed members, provided, however, that the number of appointed members is divisible by three. The appointed members are appointed by and may be removed for cause by the governing body of the regional council of governments. The appointed members serve three-year terms, with one-third of the members' terms expiring each year. In order to stagger the terms, the initial appointees of a board of directors shall draw lots to determine which one-third serves for one year, which one-third serves for two years, and which one-third serves for three years. In addition, the board of directors shall have one ex officio nonvoting member from the board, designated by the executive director of the board to act as a liaison between the board and the area emission reduction credit organization.

(b) The appointed members of the board of directors shall represent the general public, large industrial sources of emissions, small regulated businesses, and environmental and economic development interests. Each county in the nonattainment area shall be represented on the board of directors, and other areas in the region shall be represented in a manner that reflects the relative contributions of each area to total emissions or potential emission reductions.

**Sec. 384.009. REMOVAL FOR CAUSE.** The regional council of governments appointing a member of the board of directors of an organization may remove such member for cause if the member:

- (1) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or
- (2) is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the board of directors.

**Sec. 384.010. CONFLICT OF INTEREST.** A member of a board of directors may not vote on a matter in which the member or the member's employer has a direct financial interest.

**Sec. 384.011. AUTHORITY.** The board of directors of an organization shall have independent decision-making authority and shall not be required to have its decisions reviewed by the governing body of the regional council of governments. A regional council of governments shall not have any liability under any contracts entered into by an organization.

**Sec. 384.012. POWERS AND DUTIES.** An organization shall have the authority to:

- (1) receive and use funds;

(2) have an account at the Texas Air Control Board Air Emission Reduction Credit Bank;

(3) acquire emission reduction credits through purchase, donation, or other means;

(4) transfer emission reduction credits by sale or other means;

(5) identify, evaluate, promote, initiate, and facilitate potential projects and strategies to generate emission reduction credits;

(6) provide financial assistance for projects to generate emission reduction credits;

(7) employ staff;

(8) enter into contracts; and

(9) consider sustainability of projects.

**Sec. 384.013. PROHIBITIONS.** An organization created under this chapter shall have no regulatory or taxing authority.

**Sec. 384.014. ANNUAL REPORT.** By March 1 of each year each area organization shall file with the board and the regional council of governments an annual report for the preceding calendar year. The annual report shall contain a financial accounting, an accounting of emission reduction credits, and a listing of all emission reduction credit transactions entered into by the organization.

**Sec. 384.015. PROCEDURE FOR FILING AND APPROVAL OF PETITION.** (a) A regional council of governments may authorize by resolution the submission of a petition to the board requesting the creation of an organization under this chapter.

(b) The petition shall contain sufficient information to permit a determination of compliance with the provisions of this chapter and shall include a copy of the proposed bylaws and a plan for ensuring compliance with the requirements of this chapter.

(c) The board shall review the petition for compliance with this chapter and hold a hearing in the region to obtain public comment on the petition.

(d) The board shall approve the petition and creation of the organization if, after hearing, it finds that the requirements of this chapter are met and that such creation would be in the public interest.

**Sec. 384.016. AUDIT.** The board shall have the authority to audit any organization created under this chapter.

**Sec. 384.017. WITHDRAWAL OF APPROVAL.** The board shall have the authority to withdraw its approval of an organization created under this chapter and to dissolve such organization if it finds, after notice and hearing, that the organization has failed to comply with the provisions of this chapter.

**Sec. 384.018. DISSOLUTION.** An organization created under this chapter shall be dissolved by the board 12 years after its creation unless the board approves a petition, submitted and approved in accordance with Section 384.015, for an additional 12-year term. The board may continue to approve successive 12-year terms for the organization as long as the need for the organization exists.

**SECTION 2.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 6, 1993: Yeas 30, Nays 0; passed the House on April 30, 1993: Yeas 128, Nays 0, two present not voting.

Approved May 11, 1993.

Effective May 11, 1993.