

## **BILL ANALYSIS**

Senate Research Center

H.B. 1365  
By: Bonnen (Harris)  
Natural Resources  
4/15/2003  
Engrossed

### **DIGEST AND PURPOSE**

The federal Clean Air Act authorizes the United States Environmental Protection Agency (EPA) to establish the maximum allowable concentrations of pollutants that have been shown to endanger human health, harm the environment, and cause property damage. The Texas Emissions Reduction Plan (TERP), as established by S.B. 5 of the 77th Texas Legislature, created incentive programs to assist in reaching attainment by 2007. H.B. 1365 makes statutory adjustment to allow for a more efficient TERP and makes changes to help ensure attainment is reached.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 2 (Section 366.001(2), Health and Safety Code), SECTION 13 (Section 386.116, Health and Safety Code), SECTION 17 (Section 388.003, Health and Safety Code), and in SECTION 26 of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 28 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 382.037(g) and (h), Health and Safety Code, as follows:

(g) Deletes language specifying January 1, 2004, as the date before which the Texas Commission on Environmental Quality (TCEQ) may not establish vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive than those standards promulgated by the United States Environmental Protection Agency applicable to that area unless the fuel is specifically authorized by the legislature. Authorizes TCEQ to retain fuel standards for gasoline that were in effect before September 1, 2003. Authorizes TCEQ to adopt standards for federal ultra-low sulfur diesel vehicle fuel for on-road and off-road use not later than June 1, 2005. Deletes an exception provided by Subsection (h).

(h) Authorizes TCEQ to provide incentives for the production and distribution:

(1) of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution; and

(2) in the East Texas region as defined by Section 382.05181(c), of cleaner-burning fuels, as provided by Subsection (i).

Deletes text prohibiting TCEQ from requiring distribution of low-emission diesel prior to February 1, 2005.

SECTION 2. Amends Section 386.001(2), Health and Safety Code, to include in the list of affected counties Henderson County, Hood County, Hunt County, and any other county designated as an affected county by TCEQ rule because of deteriorating air quality.

SECTION 3. Amends Section 386.053(d), Health and Safety Code, as follows:

(d) Authorizes TCEQ to propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Authorizes revisions to include, among other changes, adding additional pollutants, adding stationary engines or engines used in stationary applications, adding vehicles and equipment that use fuels other than diesel, or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions.

SECTION 4. Amends Sections 386.058(a) and (b), Health and Safety Code, as follows:

(a) Provides that the Texas Emissions Reduction Plan Advisory Board consists of 17 rather than 15 members appointed as provided by this section and seven ex officio members as provided by this section.

(b) Requires the governor to appoint to the advisory board certain individuals, including a representative of municipal government from a serious nonattainment area, and a representative of a transportation authority from such an area.

SECTION 5. Amends Sections 386.101(6) and (9), Health and Safety Code, as follows:

(6) Changes the meaning of "on-road diesel" to mean an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of greater than 8,500, rather than 10,000, pounds or more.

(9) Changes the meaning of "repower" to include replacing an old engine powering an on-road or non-road diesel with a new engine, a used engine, an original equipment manufacturer's remanufactured engine, or electric motors, drives, or fuel cells. Deletes previous definition of "repower."

SECTION 6. Amends Section 386.102(b), Health and Safety Code, as follows:

(b) Provides that projects that may be considered for a grant include:

- (1) purchase or lease of on-road or non-road diesels;
- (6) purchase and use of qualifying fuel;
- (8) production and distribution of a fuel as provided by Section 382.037(h); and
- (9) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

SECTION 7. Amends Section 386.103(a), Health and Safety Code, to authorize TCEQ to adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

SECTION 8. Amends Sections 386.104(a) and (f), Health and Safety Code, as follows:

(a) Requires TCEQ to give preference to a grant applicant that is a political subdivision or that contracts for services with a political subdivision. Provides that if a person that contracts for service with a political subdivision receives a grant under this subchapter, the person may spend the grant money only for equipment or a vehicle used to carry out the contract with the political subdivision.

(f) Requires a proposed retrofit, repower, replacement, or add-on equipment project to document, in a manner acceptable to TCEQ, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by TCEQ for the relevant engine year and application.

SECTION 9. Amends Section 386.105, Health and Safety Code, by adding Subsection (e) to

authorize TCEQ to allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

SECTION 10. Amends Section 386.106(a), Health and Safety Code, to prohibit TCEQ, except as provided by Section 386.107 and except for infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, from awarding a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and criteria developed under that section, exceeds \$13,000 per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed.

SECTION 11. Amends Section 386.109, Health and Safety Code, as follows:

Sec. 386.109. **ELIGIBLE INFRASTRUCTURE PROJECTS.** Authorizes TCEQ to consider for funding under Section 386.108 a project that involves: car pooling, van pooling, telecommuting, or other workforce programs designed to reduce traffic congestion; and technology and software that track the resulting reductions in vehicle miles traveled; and a project that involves technology and software that monitor in real time the use of alternative fuels or vehicle add-ons.

SECTION 12. Amends Section 386.112(b), Health and Safety Code, to add diesels certified by the California Air Resources Board to the provisions of this subsection requiring the program to authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency or the California Air Resources Board to an emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

SECTION 13. Amends Subchapter C, Chapter 386, Health and Safety Code, by adding Sections 386.115 and 386.116, as follows:

Sec. 386.115. **MODIFICATION OF VEHICLE ELIGIBILITY.** Authorizes TCEQ, after evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, in consultation with the advisory board, to expand the program to include other on-road vehicles, regardless of fuel type used, that meet the emissions standards, have a gross vehicle weight rating of greater than 8,500 pounds, and are purchased or leased in lieu of a new on-road diesel.

Sec. 386.116. **SMALL BUSINESS INCENTIVES.** (a) Defines "small business."

(b) Requires TCEQ by rule to develop a method of providing fast and simple access to grants under this subchapter for a small business.

(c) Requires TCEQ to publicize and promote the availability of grants under this section to encourage the use of vehicles that produce fewer emissions.

(d) Requires TCEQ, on or before December 1 of each even-numbered year, to report TCEQ actions and results under this section to certain state officials.

SECTION 14. Amends Section 386.205, Health and Safety Code, as follows:

Sec. 386.205. **EVALUATION OF STATE ENERGY EFFICIENCY PROGRAMS.** (a) Creates subsection from existing text.

(b) Requires TCEQ to compute energy efficiency credits based on the energy savings incentive programs under Section 39.905, Utilities Code.

(c) Requires TCEQ to include the new energy efficiency credits described by

Subsection (b) in the state implementation plan.

SECTION 15. Amends Section 386.252(a), Health and Safety Code, as follows:

(a) Authorizes money in the fund to be used only to implement and administer programs established under the plan and requires it to be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5, rather than 72, percent of the money in the fund, of which not less rather than more than five rather than three percent shall, rather than may, be used for programs implemented by political subdivisions, rather than infrastructure projects, and 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, rather than 7.5 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;

(3) notwithstanding Subdivisions (1) and (2), for the energy efficiency grant program, any available money that remains in the fund after other programs established under the plan are fully funded; and

(4) for administrative costs incurred by the utility commission, TCEQ, the comptroller, and the laboratory, three percent. [Text redesignated from Subdivision 5.]

Deletes text relating to the motor vehicle purchase or lease incentive program, 15 percent of the money in the fund; and for the energy efficiency grant program, 7.5 percent of the money in the fund.

SECTION 16. Amends Subchapter F, Chapter 386, Health and Safety Code, by adding Section 386.253, as follows:

Sec. 386.253. TEMPORARY FEE ON DELIVERY OF UNDYED DIESEL FUEL. (a) Defines "bulk facility," "cargo tank," and "withdrawal from bulk."

(b) Sets forth legislative findings and declarations.

(c) Provides that a temporary fee is imposed on the delivery of undyed diesel fuel on withdrawal from bulk of that fuel as provided by this subsection. Requires each operator of a bulk facility on withdrawal from bulk of undyed diesel fuel to collect from the person who orders the withdrawal a temporary fee in certain amounts

(d) Provides that the temporary fee is in addition to and is required to be administered, reported, collected, and enforced in the same manner as the fee imposed under Section 26.3574, Water Code, except that a person who has a permit issued under Section 26.3574, Water Code, is not required to obtain an additional permit under this section.

(e) Requires the comptroller to deduct two percent of the amount collected under this section as the state's charge for its services and to credit that amount to the general revenue fund. Requires the balance of the temporary fees and the penalties and interest collected by the comptroller under this section to be deposited to the credit of the Texas emissions reduction plan fund.

(f) Authorizes money deposited under this section to the credit of the Texas emissions reduction plan fund to be used only to fund the diesel emissions reduction incentive program under Subchapter C.

SECTION 17. Amends Section 388.003, Health and Safety Code, by amending Subsection (d) and adding Subsections (i), (j), and (k), as follows:

(d) Authorizes a municipality or county to establish procedures to adopt: (1) local amendments to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code; or (2) local building codes that meet or exceed the green building standards under Section 388.009.

(i) Requires a building certified by a national, state, or local accredited energy efficiency program to be considered in compliance.

(j) Requires TCEQ, as required by Section 389.002, to report the energy savings identified under Subsection (e)(2) to the United States Environmental Protection Agency and to periodically revise the state implementation plan to reflect the emissions reductions achieved.

(k) Requires TCEQ, by rule, to designate a method by which a municipality, county, builder, or other person can estimate:

(1) the energy savings and emissions reductions that would be generated by the adoption of a code, the implementation of a standard under this chapter, or the construction of a project that implements the code or standards; and

(2) the emissions reduction credits that the municipality or county could accrue toward attainment under the state implementation plan as reported by TCEQ under Section 389.002.

SECTION 18. Amends Section 388.004, Health and Safety Code, as follows:

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. (a) New subsection created from existing text.

(b) Requires a builder to retain until the third anniversary of the date on which compliance is achieved the original copy of any documentation that establishes compliance under this section. Requires the builder on receipt of any compliance documentation to provide a copy to the owner of the building.

(c) Requires a single-family residence built in the unincorporated area of a county the construction of which was completed on or after September 1, 2001, but not later than August 31, 2002, to be considered in compliance.

SECTION 19. Amends Chapter 388, Health and Safety Code, by adding Sections 388.009 and 388.010, as follows:

Sec. 388.009. GREEN BUILDING PROGRAM. (a) Defines "National Housing Act."

(b) Authorizes the General Land Office (GLO), in consultation with the laboratory, TCEQ, and an advisory committee appointed by the GLO, to develop a green building accreditation program for buildings that exceed the building energy performance standards under Section 388.003 by 15 percent or more.

(c) Requires GLO, if the General Land Office adopts a program under this section, in consultation with the laboratory, to update the program on or before

December 1 of each even-numbered year using the best available green building practices.

(d) Requires the program, if GLO adopts a program under this section, to use a checklist system to produce a green building scorecard to help:

(1) home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act; and

(2) communities qualify for emissions reduction credits by adopting codes that meet or exceed the green building or energy performance standards established under this chapter.

(e) Requires GLO, if it adopts a program under this section, to base green building standards for commercial buildings on federal agency programs.

(f) Authorizes GLO to establish a public information program to inform homeowners, sellers, buyers, and others regarding green building ratings.

(g) Requires the laboratory, if GLO adopts a program under this section, to establish a system to measure the reduction in energy and emissions produced under the green building program and report those savings to TCEQ.

Sec. 388.010. **OUTREACH TO NEAR-NONATTAINMENT AREAS.** Requires TCEQ to conduct outreach to near-nonattainment areas and affected counties on the benefits of implementing energy efficiency initiatives, including the promotion of green building programs and urban heat island mitigation techniques, as a way to meet air quality attainment goals under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

SECTION 20. Amends Chapter 389, Health and Safety Code, by adding Section 389.003, as follows:

Sec. 389.003. **COMPUTING ENERGY EFFICIENCY CREDITS.** Requires TCEQ to develop a method to use in computing the credits received for emissions reductions obtained through energy efficiency initiatives.

SECTION 21. Amends Subchapter H, Chapter 2155, Government Code, by adding Section 2155.451, as follows:

Sec. 2155.451. **VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.**

(a) Provides that this section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(b) Authorizes TCEQ and state agencies procuring goods or services to:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

SECTION 22. Amends Subchapter Z, Chapter 271, Local Government Code, by adding Section 271.907, as follows:

Sec. 271.907. **VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.**

(a) Defines "governmental agency."

(b) Provides that this section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(c) Authorizes a governmental agency procuring goods or services to:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

SECTION 23. Amends Section 151.0515, Tax Code, by amending Subsections (a), (b), and (c) and adding Subsection (b-1), as follows:

(a) Redefines "equipment" to include all off-road, heavy-duty diesel equipment other than implements of husbandry used solely for agricultural purposes, including: mining equipment; and drilling equipment used in drilling an oil, gas, or water well.

(b) Provides that in each county in this state, a surcharge is imposed on the retail sale, lease, or rental of new or used equipment in an amount equal to two, rather than one, percent of the sale price or the lease or rental amount.

(b-1) Provides that in each county in this state, a surcharge is imposed on the storage, use, or other consumption in this state of new or used equipment. Provides that the surcharge is at the same percentage rate as is provided by Subsection (b) on the sales price or the lease or rental amount of the equipment.

(c) Requires the surcharge to be collected at the same time and in the same manner and shall be administered and enforced in the same manner as the tax imposed under this chapter, rather than subchapter.

SECTION 24. Amends Section 224.153, Transportation Code, by adding Subsection (d) to prohibit the Texas Department of Transportation from authorizing vehicles addressed in Subsection (c) to use a high occupancy vehicle lane if such use would violate federal transit funding restrictions.

SECTION 25. Amends Section 545.353, Transportation Code, by adding Subsection (j) to prohibit TCEQ from determining or declaring, or agreeing to determine or declare, a prima facie speed limit for environmental purposes on a part of the highway system.

SECTION 26. Requires TCEQ, not later than December 1, 2003, to adopt rules needed to implement Sections 388.010 and 389.003, Health and Safety Code, as added by this Act; and to develop a method for computing energy efficiency credits, as required by Section 389.003, Health and Safety Code, as added by this Act.

SECTION 27. (a) Requires TCEQ to compose a report that identifies the emissions reduction strategies likely to be required to achieve the eight-hour ozone standard component of the National Ambient Air Quality Standards throughout this state.

(b) Requires TCEQ to submit the report to certain state officials on the earlier of the following dates: January 1, 2004, or the date on which TCEQ proposes a mid-course review state implementation plan for the one-hour ozone component of the National Ambient Air Quality Standards for the Houston-Galveston nonattainment area or the Dallas-Fort Worth nonattainment area.

SECTION 28. Effective date: the first day of the first month beginning on or after the earliest date on which this Act may take effect if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. Provides that if this Act does not receive the vote necessary for effect before September 1, 2003, this Act takes effect September 1, 2003. Authorizes the comptroller of public accounts to adopt emergency rules for the implementation of this Act.

SECTION 29. Provides that the expiration of Section 386.253, Health and Safety Code, as added by this Act, does not affect a fee imposed or an obligation incurred before the date on which that provision expires. Provides that a fee imposed or an obligation incurred before the expiration of that provision is governed by the law in effect on the date the fee was imposed or the obligation was incurred, and that law is continued in effect for purposes of the liability for and collection of that fee or obligation.

SECTION 30. Requires TCEQ, not later than the first anniversary of the effective date of this Act, to develop a method for computing energy efficiency credits as required by Section 386.205(b), Health and Safety Code, as added by this Act.