

BILL ANALYSIS

C.S.H.B. 1365
By: Bonnen
Environmental Regulation
Committee Report (Substituted)

BACKGROUND 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 legislature, created incentive programs to assist in reaching attainment by 2007. C.S.H.B. 1365 makes statutory adjustment to allow for a more efficient TERP and makes necessary changes to help ensure attainment is reached.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 382.037 (g), Health and Safety Code, by authorizing the Texas Commission on Environmental Quality (TCEQ) to retain fuel standards for gasoline that were in effect before September 1, 2003. The commission may adopt standards for federal ultra-low sulfur diesel vehicle fuel for on-road and off-road use after June 1, 2005.

Amends Section 382.037 (h), Health and Safety Code, by authorizing TCEQ to provide incentives for the production and distribution of certain fuels in the East Texas region.

SECTION 2. Amends Section 386.001(2), Health and Safety Code, by adding Henderson, Hood, and Hunt Counties to "Affected county" list. Gives TCEQ the authority to add affected counties to list as they are identified as affected counties.

SECTION 3. Amends Section 386.053(d), Health and Safety Code, by adding stationary engines or engines used in stationary applications, and adding equipment that use fuels other than diesel.

SECTION 4. Amends Section 386.058(a) and (b), Health and Safety Code, by increasing the number of members appointed to the Texas Emissions Reduction Plan Advisory Board from 15 to 17. One of the members will be a representative of municipal government from a serious nonattainment area and the other will be a representative of a transportation authority from a serious nonattainment area.

SECTION 5. Amends Section 386.101(9), Health and Safety Code, by removing the percentage reduction requirements from the definition of a repower project.

SECTION 6. Amends Section 386.102(b), Health and Safety Code, by adding "on-road" to the projects that may be available for a grant under the Emissions Reduction Incentive Grants Program.

Adds replacement of on-road or non-road diesels with newer on-road or non-road diesels to projects that may be eligible for a grant under the program.

Adds the purchase of qualifying fuel and production and distribution of a fuel as provided by Section 382.037(h) to projects eligible for consideration to the grant program .

SECTION 7. Amends Section 386.103(a), Health and Safety Code, by authorizing TCEQ to adopt guidelines to allow a person other than the owner to apply for and receive a grant under the program.

SECTION 8. Amends Section 386.104(a), Health and Safety Code, by requiring TCEQ to give preference to an applicant that is a political subdivision or that contracts for services with a political subdivision.

Amends Section 386.104(f), Health and Safety Code, to require the use of “replacement” equipment to be documented in a manner acceptable to TCEQ.

SECTION 9. Amends Section 386.105, Health and Safety Code, by authorizing 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, by allowing for infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project to be eligible for a grant.

SECTION 11. Amends Section 386.109, Health and Safety Code, by adding to eligible infrastructure projects a project that involves car pooling, van pooling, telecommuting, or other workforce programs designed to reduce traffic congestion; technology and software that track the resulting reductions in vehicle miles traveled; and 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, by allowing new on-road diesels certified by the California Air Resources Board to be eligible for on-road diesel purchase or lease incentives.

SECTION 13. Amends Subchapter C, Chapter 386, Health and Safety Code, by adding Section 386.115. Authorizes TCEQ to modify vehicle eligibility to include other on-road vehicles, regardless of fuel type used that meet certain criteria for on-road purchase or lease incentive program.

SECTION 14. Amends Section 386.252(a), Health and Safety Code, by removing infrastructure projects funding and provides that infrastructure purchases that are part of a broader repower or retrofit project will not be considered infrastructure projects and, therefore, not subject to the three percent cap, which is changed to five percent for other projects.

Provides that a minimum of five percent of the diesel emissions reduction program be used for programs implemented by political subdivisions. Deletes funding for the motor vehicle purchase or lease program and the energy efficiency program.

Increases percentage of money in the fund for new technology research and development program to eleven and one half percent from seven and one half percent. Provides that a minimum of twenty percent of the new technology research and development money 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.

SECTION 15. Amends Subchapter F, Chapter 386, Health and Safety Code, by adding Section 386.253. A temporary fee is imposed on the delivery of diesel fuel on withdrawal from bulk of that fuel. Each operator of a bulk facility upon withdrawal of diesel fuel shall collect from the person who orders the withdrawal a temporary fee in an amount determined as follows:

- 1) \$75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;
- 2) \$150 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;
- 3) \$225 for each delivery into a cargo tank having capacity of 5,000 gallons or more, but less than 8,000 gallons;
- 4) \$300 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons;
- 5) \$150 for each increment of 5,000 gallons or any part of those gallons delivered into a cargo tank having a capacity of 10,000 gallons or more.

The temporary fee is in addition to and shall 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.

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

SECTION 16. Amends Section 388.003, Health and Safety Code, by adding Subsection (i) requiring that a building certified by a national, state, or local accredited energy efficiency program be considered in compliance.

SECTION 17. Amends Section 388.004, Health and Safety Code, by requiring 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. The builder must provide the owner of the building a copy of any compliance documentation received. Also requires any 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 18. Amends Section 151.0515, Tax Code, by amending Subsections (a), (b), and (c) and adding Subsection (b-1) as follows:

Subsection (a): Mining equipment and drilling equipment used in drilling an oil, gas, or water well are added to the list of "equipment" subject to a surcharge under this section.

Subsection (b): Increase the surcharge imposed on the retail sale, lease, or rental of new or used equipment from one percent to two percent of the sale price or the lease or rental amount.

Subsection (b-1): 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. 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.

Subsection (c): The surcharge shall 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.

SECTION 19. Amends Section 545.353, Transportation Code, by adding Subsections (j). States the Texas transportation commission may not determine or declare, or agree to determine or declare, a prima facie speed limit for environmental purposes on a part of the highway system.

SECTION 20. Repeals Subchapter D, Chapter 386, Health and Safety Code, and Section 382.037(i), Health and Safety Code.

SECTION 21. This Act takes effect on the first day of the first month beginning on or after the earliest date

on which this Act may take effect if it receives two-thirds vote of all members elected to each house. If the Act does not receive the necessary vote for effect on that date, this Act takes effect September 1, 2003.

SECTION 22. 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. 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 23. The repeal of Section 386.158, Health and Safety Code, applies only to the purchase or lease of a light-duty motor vehicle on or after the effective date of this Act. A purchase or lease before that date is governed by the law in effect at the time of the purchase or lease, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

This Act takes effect on the first day of the first month beginning on or after the earliest date on which this Act may take effect if it receives two-thirds vote of all members elected to each house. If the Act does not receive the necessary vote for effect on that date, this Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B 1365 authorizes the TCEQ to retain fuel standards for gasoline and adopt standards for federal ultra-low sulfur diesel vehicle fuel for on-road and off-road use. It also authorizes the commission to provide incentives for the production and distribution of cleaner burning fuels in the East Texas region.

C.S.H.B. 1365 makes stationary engines and vehicles and equipment that use fuels other than diesel eligible for participation in the TERP grant program.

The substitute increases the membership of the TERP Advisory Board to 17 and adds a municipal government representative and a transportation authority representative from a serious nonattainment area.

The substitute requires TCEQ to give preference to applications for grants to political subdivisions or those who contract for services with political subdivisions.

C.S.H.B 1365 authorizes TCEQ to award a grant for infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment projects in excess of \$13,000 per ton of nitrogen oxide emission reduction in the affected county that the project is proposed.

The substitute authorizes the commission to consider funding for projects that involve car pooling, telecommuting, or other workforce programs designed to reduce traffic congestion. Technology and software to be used to track the reductions in vehicle miles traveled and monitors the use of alternative fuels or vehicle add-ons would also be eligible for funding.

The substitute requires that buildings be considered in compliance if they are certified by national, state, or local accredited energy efficiency program. It also considers single-family residential homes built in unincorporated areas of a county in compliance with the code if the construction was completed between September 1, 2001 and August 31, 2002 and the builder is required to keep the original copy of any confirmation of compliance and give a copy of the certificate to the owner of the building.

C.S.H.B. 1365 adds mining equipment and drilling equipment used for drilling an oil, gas, or water well to

the list of equipment subject to a surcharge.

The substitute adds new funding mechanisms for the Texas emissions reduction plan.

The substitute requires that a new speed limit may not be determined based on environmental purposes on any part of a highway system.

C.S.H.B. 1365 requires that the expiration of the temporary diesel delivery fee not affect any fees collected before the date the fee expires. The substitute removes provisions relating to funding for the purchase and lease of light-duty motor vehicle program and provisions relating to federal highway funding not being affected. The removal does not apply to any purchase or lease before the effective date of this Act.