

## **BILL ANALYSIS**

Senate Research Center  
78R12356 MI-F

C.S.H.B. 1365  
By: Bonnen (Harris)  
Natural Resources  
4/17/2003  
Committee Report (Substituted)

### **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. C.S.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 1 (Section 366.001(2), Health and Safety Code) and to the comptroller of public accounts in SECTION 18 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. 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 2. 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 3. Amends Section 386.058(d), Health and Safety Code, to require the governor, after consultation with the speaker of the house of representatives, to appoint certain representatives to the advisory board.

SECTION 4. Amends Section 386.101, Health and Safety Code, to redefine “on-road diesel” and “repower.”

SECTION 5. 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; and
  - (8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

SECTION 6. 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 7. Amends Sections 386.104(f), Health and Safety Code, to require 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 8. 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 9. Amends Section 386.106(a), Health and Safety Code, to prohibit TCEQ, except as provided by Section 386.107 and except for infrastructure projects and 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 10. 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 11. Amends Subchapter C, Chapter 386, Health and Safety Code, by adding Section 386.115, 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.

SECTION 12. Amends Section 386.252, 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 in certain percentages to certain programs. 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.

(b) Authorizes up to 25, rather than 15, percent of the money allocated under Subsection (a) to a particular program and not expended under that program by January, rather than March, 1 of the second fiscal year of a fiscal biennium to be used for another program under the plan as determined by TCEQ in consultation with the advisory board.

SECTION 13. 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. Deletes existing text relating to equipment classified as construction equipment.

(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 14. Amends Section 152.0215(a), Tax Code, to provide that a surcharge is imposed on every retail sale, lease, or use of every on-road diesel motor vehicle that is over 14,000 pounds and that is sold, leased, or used in this state. Provides that the amount of the surcharge is two, rather than 2.5, percent of the total consideration. Deletes existing text relating to imposing a surcharge if the vehicle is of a model year 1996 or earlier. Makes nonsubstantive changes.

SECTION 15. 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 or highway funding restrictions.

SECTION 16. Amends Sections 501.138(a) and (b), Transportation Code, as follows:

(a) Increases the fee an applicant for a certificate of title, other than the state or a political subdivision of the state, is required to pay the county assessor-collector from \$13 to \$28.

(b) Requires the county assessor-collector to send \$15 of the fee to the comptroller of public accounts (comptroller) to be deposited to the credit of certain entities on certain dates.

SECTION 17. Amends Section 387.006(a), Health and Safety Code, to require an application for a technology grant under this chapter to show clear and compelling evidence that the technology proposed for funding is likely to be offered for commercial sale in this state as soon as practicable but not later than, rather than within, five years after the date of the application for funding.

SECTION 18. (a) Effective date: upon passage or September 1, 2003, except as provided by Subsection (b).

(b) Provides that Sections 13 and 14 of this Act take 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 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, Sections 13 and 14 of this Act take effect September 1, 2003. Authorizes the comptroller of public accounts to adopt emergency rules for the implementation of Sections 13 and 14 of this Act.