

By: Bonnen, Ritter

H.B. No. 1365

Substitute the following for H.B. No. 1365:

By: Smith of Harris

C.S.H.B. No. 1365

A BILL TO BE ENTITLED

AN ACT

relating to the Texas emissions reduction plan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 382.037(g) and (h), Health and Safety Code, are amended to read as follows:

(g) The commission may not establish[~~, before January 1, 2004,~~] 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 [~~except as provided in Subsection (h)~~] unless the fuel is specifically authorized by the legislature. The commission may retain fuel standards for gasoline that were in effect before September 1, 2003. After June 1, 2005, the commission may adopt standards for federal ultra-low sulfur diesel vehicle fuel for on-road and off-road use.

(h) The commission may provide incentives for the production and [~~not require the~~] 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 [~~prior to February 1, 2005~~].

SECTION 2. Section 386.001(2), Health and Safety Code, is

1 amended to read as follows:

2 (2) "Affected county" includes:

3 (A) Bastrop County;

4 (B) Bexar County;

5 (C) Caldwell County;

6 (D) Comal County;

7 (E) Ellis County;

8 (F) Gregg County;

9 (G) Guadalupe County;

10 (H) Harrison County;

11 (I) Hays County;

12 (J) Henderson County;

13 (K) Hood County;

14 (L) Hunt County;

15 (M) Johnson County;

16 (N) [~~(K)~~] Kaufman County;

17 (O) [~~(L)~~] Nueces County;

18 (P) [~~(M)~~] Parker County;

19 (Q) [~~(N)~~] Rockwall County;

20 (R) [~~(O)~~] Rusk County;

21 (S) [~~(P)~~] San Patricio County;

22 (T) [~~(Q)~~] Smith County;

23 (U) [~~(R)~~] Travis County;

24 (V) [~~(S)~~] Upshur County;

25 (W) [~~(T)~~] Victoria County;

26 (X) [~~(U)~~] Williamson County; [~~and~~]

27 (Y) [~~(V)~~] Wilson County; and

1 (Z) any other county designated as an affected
2 county by commission rule because of deteriorating air quality.

3 SECTION 3. Section 386.053(d), Health and Safety Code, is
4 amended to read as follows:

5 (d) The commission may propose revisions to the guidelines
6 and criteria adopted under this section as necessary to improve the
7 ability of the plan to achieve its goals. Revisions may include,
8 among other changes, adding additional pollutants, adding
9 stationary engines or engines used in stationary applications,
10 adding vehicles and equipment that use fuels other than diesel, or
11 adjusting eligible program categories, as appropriate, to ensure
12 that incentives established under this chapter achieve the maximum
13 possible emissions reductions. The commission shall make a
14 proposed revision available to the public before the 45th day
15 preceding the date of final adoption of the revision and shall hold
16 at least one public meeting to consider public comments on the
17 proposed revision before final adoption.

18 SECTION 4. Sections 386.058(a) and (b), Health and Safety
19 Code, are amended to read as follows:

20 (a) The Texas Emissions Reduction Plan Advisory Board
21 consists of 17 [~~15~~] members appointed as provided by this section
22 and seven ex officio members as provided by this section.

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

- 24 (1) a representative of the trucking industry;
25 (2) a representative of the air conditioning
26 manufacturing industry;
27 (3) a representative of the electric utility industry;

- 1 (4) a representative of regional transportation;
2 ~~[and]~~
- 3 (5) a representative of the Texas Council on
4 Environmental Technology;
- 5 (6) a representative of municipal government from a
6 serious nonattainment area; and
- 7 (7) a representative of a transportation authority
8 from a serious nonattainment area.

9 SECTION 5. Section 386.101(9), Health and Safety Code, is
10 amended to read as follows:

11 (9) "Repower" means to replace an old engine powering
12 an on-road or non-road diesel with a new engine, a used engine, or
13 electric motors, drives, or fuel cells[+]

14 ~~[(A) a new engine that emits at least 30 percent~~
15 ~~less than the oxides of nitrogen emissions standard required by~~
16 ~~federal regulation for the current model year for that engine;~~

17 ~~[(B) an engine manufactured later than 1987 that~~
18 ~~emits at least 30 percent less than the oxides of nitrogen emissions~~
19 ~~standard emitted by a new engine certified to the baseline oxides of~~
20 ~~nitrogen emissions standard for that engine;~~

21 ~~[(C) an engine manufactured before 1988 that~~
22 ~~emits not more than 50 percent of the oxides of nitrogen emissions~~
23 ~~standard emitted by a new engine certified to the baseline oxides of~~
24 ~~nitrogen emissions standard for that engine; or~~

25 ~~[(D) electric motors, drives, or fuel cells].~~

26 SECTION 6. Section 386.102(b), Health and Safety Code, is
27 amended to read as follows:

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

3 (1) purchase or lease of on-road or non-road diesels;

4 (2) emissions-reducing retrofit projects for on-road
5 or non-road diesels;

6 (3) emissions-reducing repower projects for on-road
7 or non-road diesels;

8 (4) purchase and use of emissions-reducing add-on
9 equipment for on-road or non-road diesels;

10 (5) development and demonstration of practical,
11 low-emissions retrofit technologies, repower options, and advanced
12 technologies for on-road or non-road diesels with lower emissions
13 of oxides of nitrogen;

14 (6) purchase and use of qualifying fuel; ~~and~~

15 (7) implementation of infrastructure projects;

16 (8) production and distribution of a fuel as provided
17 by Section 382.037(h); and

18 (9) replacement of on-road or non-road diesels with
19 newer on-road or non-road diesels.

20 SECTION 7. Section 386.103(a), Health and Safety Code, is
21 amended to read as follows:

22 (a) Any person as defined by Section 382.003 that owns one
23 or more on-road or non-road diesels that operate primarily within a
24 nonattainment area or affected county of this state or that
25 otherwise contributes to the state inventory of emissions of oxides
26 of nitrogen may apply for a grant under the program. The commission
27 may adopt guidelines to allow a person other than the owner to apply

1 for and receive a grant in order to improve the ability of the
2 program to achieve its goals.

3 SECTION 8. Sections 386.104(a) and (f), Health and Safety
4 Code, are amended to read as follows:

5 (a) The commission shall establish criteria for setting
6 priorities for projects eligible to receive grants under this
7 subchapter. The commission shall review and may modify the
8 criteria and priorities as appropriate. The commission shall give
9 preference to an applicant that is a political subdivision or that
10 contracts for services with a political subdivision.

11 (f) A proposed retrofit, repower, replacement, or add-on
12 equipment project must document, in a manner acceptable to the
13 commission, a reduction in emissions of oxides of nitrogen of at
14 least 30 percent compared with the baseline emissions adopted by
15 the commission for the relevant engine year and application. After
16 study of available emissions reduction technologies, after public
17 notice and comment, and after consultation with the advisory board,
18 the commission may revise the minimum percentage reduction in
19 emissions of oxides of nitrogen required by this subsection to
20 improve the ability of the program to achieve its goals.

21 SECTION 9. Section 386.105, Health and Safety Code, is
22 amended by adding Subsection (e) to read as follows:

23 (e) The commission may allow for the apportionment of
24 credits associated with a project between the plan and another
25 program or entity if the part of the credit assigned to the program
26 that is part of the plan still meets any applicable
27 cost-effectiveness criteria.

1 SECTION 10. Section 386.106(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) Except as provided by Section 386.107 and except for
4 infrastructure purchases that are part of a broader retrofit,
5 repower, replacement, or add-on equipment project, the commission
6 may not award a grant for a proposed project the cost-effectiveness
7 of which, calculated in accordance with Section 386.105 and
8 criteria developed under that section, exceeds \$13,000 per ton of
9 oxides of nitrogen emissions reduced in the nonattainment area or
10 affected county for which the project is proposed. This subsection
11 does not restrict commission authority under other law to require
12 emissions reductions with a cost-effectiveness that exceeds
13 \$13,000 per ton.

14 SECTION 11. Section 386.109, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 386.109. ELIGIBLE INFRASTRUCTURE PROJECTS. The
17 commission may consider for funding under Section 386.108:

18 (1) the purchase and installation at a site of
19 equipment that is designed primarily to dispense qualifying fuel,
20 other than standard gasoline or diesel, or the purchase of on-site
21 mobile fueling equipment;

22 (2) infrastructure projects, including auxiliary
23 power units, designed to dispense electricity to motor vehicles and
24 on-road and non-road diesels; ~~and~~

25 (3) a project that involves a technology that allows a
26 vehicle to replace with electric power, while the vehicle is
27 parked, the power normally supplied by the vehicle's internal

1 combustion engine;

2 (4) a project that involves:

3 (A) car pooling, van pooling, telecommuting, or
4 other workforce programs designed to reduce traffic congestion; and

5 (B) technology and software that track the
6 resulting reductions in vehicle miles traveled; and

7 (5) a project that involves technology and software
8 that monitor in real time the use of alternative fuels or vehicle
9 add-ons.

10 SECTION 12. Section 386.112(b), Health and Safety Code, is
11 amended to read as follows:

12 (b) The program shall authorize statewide incentives for
13 the reimbursement of incremental costs for the purchase or lease,
14 according to the schedule provided by Section 386.113, of new
15 on-road diesels that are certified by the United States
16 Environmental Protection Agency or the California Air Resources
17 Board to an emissions standard provided by Section 386.113 if the
18 purchaser or lessee of the on-road diesel agrees to register the
19 vehicle in this state and to operate the on-road diesel in this
20 state for not less than 75 percent of the on-road diesel's annual
21 mileage.

22 SECTION 13. Subchapter C, Chapter 386, Health and Safety
23 Code, is amended by adding Section 386.115 to read as follows:

24 Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After
25 evaluating the availability of vehicles meeting the emissions
26 standards and after public notice and comment, the commission, in
27 consultation with the advisory board, may expand the program to

1 include other on-road vehicles, regardless of fuel type used, that
2 meet the emissions standards, have a gross vehicle weight rating of
3 10,000 pounds or more, and are purchased or leased in lieu of a new
4 on-road diesel.

5 SECTION 14. Section 386.252(a), Health and Safety Code, is
6 amended to read as follows:

7 (a) Money in the fund may be used only to implement and
8 administer programs established under the plan and shall be
9 allocated as follows:

10 (1) for the diesel emissions reduction incentive
11 program, ~~[72]~~ percent of the money in the fund, of which not
12 less ~~[more]~~ than five ~~[three]~~ percent shall ~~[may]~~ be used for
13 programs implemented by political subdivisions ~~[infrastructure~~
14 ~~projects]~~ and not more than 10 percent may be used for on-road
15 diesel purchase or lease incentives;

16 (2) ~~[for the motor vehicle purchase or lease incentive~~
17 ~~program, 15 percent of the money in the fund,~~

18 ~~[(3) for the energy efficiency grant program, 7.5~~
19 ~~percent of the money in the fund,~~

20 ~~[(4)]~~ for the new technology research and development
21 program, 11.5 ~~[7.5]~~ percent of the money in the fund, of which up to
22 \$250,000 is allocated for administration, up to \$200,000 is
23 allocated for a health effects study, ~~[and]~~ \$500,000 is to be
24 deposited in the state treasury to the credit of the clean air
25 account created under Section 382.0622 to supplement funding for
26 air quality planning activities in affected counties, and not less
27 than 20 percent is to be allocated each year to support research

1 related to air quality for the Houston-Galveston-Brazoria and
2 Dallas-Fort Worth nonattainment areas by a nonprofit organization
3 based in Houston; and

4 (3) [~~5~~] for administrative costs incurred by the
5 utility commission, the commission, the comptroller, and the
6 laboratory, three percent.

7 SECTION 15. Subchapter F, Chapter 386, Health and Safety
8 Code, is amended by adding Section 386.253 to read as follows:

9 Sec. 386.253. TEMPORARY FEE ON DELIVERY OF DIESEL FUEL. (a)
10 In this section, "bulk facility," "cargo tank," and "withdrawal
11 from bulk" have the meanings assigned by Section 26.3574, Water
12 Code.

13 (b) A temporary fee is imposed on the delivery of diesel
14 fuel on withdrawal from bulk of that fuel as provided by this
15 subsection. Each operator of a bulk facility on withdrawal from
16 bulk of diesel fuel shall collect from the person who orders the
17 withdrawal a temporary fee in an amount determined as follows:

18 (1) \$75 for each delivery into a cargo tank having a
19 capacity of less than 2,500 gallons;

20 (2) \$150 for each delivery into a cargo tank having a
21 capacity of 2,500 gallons or more but less than 5,000 gallons;

22 (3) \$225 for each delivery into a cargo tank having a
23 capacity of 5,000 gallons or more but less than 8,000 gallons;

24 (4) \$300 for each delivery into a cargo tank having a
25 capacity of 8,000 gallons or more but less than 10,000 gallons; and

26 (5) \$150 for each increment of 5,000 gallons or any
27 part of those gallons delivered into a cargo tank having a capacity

1 of 10,000 gallons or more.

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

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

13 SECTION 16. Section 388.003, Health and Safety Code, is
14 amended by adding Subsection (i) to read as follows:

15 (i) A building certified by a national, state, or local
16 accredited energy efficiency program shall be considered in
17 compliance.

18 SECTION 17. Section 388.004, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF
21 MUNICIPALITY. (a) For construction outside of the local
22 jurisdiction of a municipality:

23 (1) a building certified by a national, state, or
24 local accredited energy efficiency program shall be considered in
25 compliance;

26 (2) a building with inspections from private
27 code-certified inspectors using the energy efficiency chapter of

1 the International Residential Code or International Energy
2 Conservation Code shall be considered in compliance; and

3 (3) a builder who does not have access to either of the
4 above methods for a building shall certify compliance using a form
5 provided by the laboratory, enumerating the code-compliance
6 features of the building.

7 (b) A builder shall retain until the third anniversary of
8 the date on which compliance is achieved the original copy of any
9 documentation that establishes compliance under this section. The
10 builder on receipt of any compliance documentation shall provide a
11 copy to the owner of the building.

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

16 SECTION 18. Section 151.0515, Tax Code, is amended by
17 amending Subsections (a), (b), and (c) and adding Subsection (b-1)
18 to read as follows:

19 (a) In this section, "equipment" includes all off-road,
20 heavy-duty diesel equipment [~~classified as construction~~
21 ~~equipment~~], other than implements of husbandry used solely for
22 agricultural purposes, including:

- 23 (1) pavers;
- 24 (2) tampers/rammers;
- 25 (3) plate compactors;
- 26 (4) concrete pavers;
- 27 (5) rollers;

- 1 (6) scrapers;
- 2 (7) paving equipment;
- 3 (8) surface equipment;
- 4 (9) signal boards/light plants;
- 5 (10) trenchers;
- 6 (11) bore/drill rigs;
- 7 (12) excavators;
- 8 (13) concrete/industrial saws;
- 9 (14) cement and mortar mixers;
- 10 (15) cranes;
- 11 (16) graders;
- 12 (17) off-highway trucks;
- 13 (18) crushing/processing equipment;
- 14 (19) rough terrain forklifts;
- 15 (20) rubber tire loaders;
- 16 (21) rubber tire tractors/dozers;
- 17 (22) tractors/loaders/backhoes;
- 18 (23) crawler tractors/dozers;
- 19 (24) skid steer loaders;
- 20 (25) off-highway tractors; ~~and~~
- 21 (26) Dumpsters/tenders;
- 22 (27) mining equipment; and
- 23 (28) drilling equipment used in drilling an oil, gas,
- 24 or water well.

25 (b) In each county in this state, a surcharge is imposed on
26 the retail sale, lease, or rental of new or used equipment in an
27 amount equal to two ~~one~~ percent of the sale price or the lease or

1 rental amount.

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

7 (c) The surcharge shall be collected at the same time and in
8 the same manner and shall be administered and enforced in the same
9 manner as the tax imposed under this chapter [~~subchapter~~]. The
10 comptroller shall adopt any additional procedures needed for the
11 collection, administration, and enforcement of the surcharge
12 authorized by this section and shall deposit all remitted
13 surcharges to the credit of the Texas emissions reduction plan
14 fund.

15 SECTION 19. Section 545.353, Transportation Code, is
16 amended by adding Subsection (j) to read as follows:

17 (j) The commission may not determine or declare, or agree to
18 determine or declare, a prima facie speed limit for environmental
19 purposes on a part of the highway system.

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

22 SECTION 21. This Act takes effect on the first day of the
23 first month beginning on or after the earliest date on which this
24 Act may take effect if it receives a vote of two-thirds of all the
25 members elected to each house, as provided by Section 39, Article
26 III, Texas Constitution. If this Act does not receive the vote
27 necessary for effect before September 1, 2003, this Act takes

1 effect September 1, 2003. The comptroller of public accounts may
2 adopt emergency rules for the implementation of this Act.

3 SECTION 22. The expiration of Section 386.253, Health and
4 Safety Code, as added by this Act, does not affect a fee imposed or
5 an obligation incurred before the date on which that provision
6 expires. A fee imposed or an obligation incurred before the
7 expiration of that provision is governed by the law in effect on the
8 date the fee was imposed or the obligation was incurred, and that
9 law is continued in effect for purposes of the liability for and
10 collection of that fee or obligation.

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