COMMITTEE SUBSTITUTE FOR H.B. No. 1365

By: Jackson

relating to the Texas emissions reduction plan.

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

SECTION 1. Section 386.001(2), Health and Safety Code, is amended to read as follows:

(2) "Affected county" includes:

(A) Bastrop County;
(B) Bexar County;
(C) Caldwell County;
(D) Comal County;
(E) Ellis County;
(F) Gregg County;
(G) Guadalupe County;
(H) Harrison County;
(I) Hays County;
(J) Henderson County;
(K) Hood County;
(L) Hunt County;
(M) Johnson County;
(N) [ ] Kaufman County;
(O) [ ] Nueces County;
(P) [ ] Parker County;
(Q) [ ] Rockwall County;
(R) [ ] Rusk County;
(S) [ ] San Patricio County;
(T) [ ] Smith County;
(U) [ ] Travis County;
(V) [ ] Upshur County;
(W) [ ] Victoria County;
(X) [ ] Williamson County; [and]
(Y) [ ] Wilson County; and
(Z) any other county designated as an affected county by commission rule because of deteriorating air quality.

SECTION 2. Section 386.053(d), Health and Safety Code, is amended to read as follows:

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may 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. The commission shall make a proposed revision available to the public before the 45th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

SECTION 3. Section 386.058(d), Health and Safety Code, is amended to read as follows:

(d) The governor, after consultation with the speaker of the house of representatives, shall appoint to the advisory board:

(1) a representative of consumer groups;
(2) a representative of the construction industry;
(3) a representative of the automobile industry;
Sections 386.101(6) and (9), Health and Safety Code, are amended to read as follows:

- (6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.
- (9) "Repower" means to replace an old engine powering an on-road or non-road diesel with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells:
  - (A) a new engine that emits at least 30 percent less than the oxides of nitrogen emissions standard required by federal regulation for the current model year for that engine;
  - (B) an engine manufactured later than 1987 that emits at least 30 percent less than the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine;
  - (C) an engine manufactured before 1988 that emits not more than 50 percent of the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine; or
  - (D) electric motors, drives, or fuel cells.

Section 386.102(b), Health and Safety Code, is amended to read as follows:

- Projects that may be considered for a grant under the program include:
  - (1) purchase or lease of on-road or non-road diesels;
  - (2) emissions-reducing retrofit projects for on-road or non-road diesels;
  - (3) emissions-reducing repower projects for on-road or non-road diesels;
  - (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
  - (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower emissions of oxides of nitrogen;
  - (6) use of qualifying fuel; and
  - (7) implementation of infrastructure projects; and
  - (8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

Section 386.103(a), Health and Safety Code, is amended to read as follows:

- Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program. The commission may 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 386.104(f), Health and Safety Code, is amended by adding Subsection (e) to read as follows:

- The commission may 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...
SECTION 9. Section 386.106(a), Health and Safety Code, is amended to read as follows:

(a) 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, the commission may not award 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. This subsection does not restrict commission authority under other law to require emissions reductions with a cost-effectiveness that exceeds $13,000 per ton.

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

(b) The program shall 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. Subchapter C, Chapter 386, Health and Safety Code, is amended by adding Section 386.115 to read as follows:

Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, the commission, in consultation with the advisory board, may 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. Section 386.252, Health and Safety Code, is amended to read as follows:

Sec. 386.252. USE OF FUND. (a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 89.5 percent of the money in the fund, of which not more than 10 percent may be used for infrastructure projects and not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the motor vehicle purchase or lease incentive program, 15 percent of the money in the fund;

(3) for the energy efficiency grant program, 7.5 percent of the money in the fund;

(4) for the new technology research and development program, 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, and $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

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

(b) Up to 25 percent of the money allocated under Subsection (a) to a particular program and not expended under that program by January [March] 1 of the second fiscal year of a fiscal biennium may be used for another program under the plan as determined by the commission in consultation with the advisory board.

SECTION 13. Section 151.0515, Tax Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1) to read as follows:
In this section, "equipment" includes all off-road, heavy-duty diesel equipment [classified as construction equipment], other than implements of husbandry used solely for agricultural purposes, including:

1. Pavers;
2. Tamper/rammers;
3. Plate compactors;
4. Concrete pavers;
5. Rollers;
6. Scrapers;
7. Paving equipment;
8. Surface equipment;
9. Signal boards/light plants;
10. Trenchers;
11. Bore/drill rigs;
12. Excavators;
13. Concrete/industrial saws;
14. Cement and mortar mixers;
15. Cranes;
16. Graders;
17. Off-highway trucks;
18. Crushing/processing equipment;
19. Rough terrain forklifts;
20. Rubber tire loaders;
21. Rubber tire tractors/dozers;
22. Tractors/loaders/backhoes;
23. Crawler tractors/dozers;
24. Skid steer loaders;
25. Off-highway tractors; [and]
26. Dumpsters/tenders;
27. Mining equipment; and
28. Drilling equipment used in drilling an oil, gas, or water well.

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 [one] percent of the sale price or the lease or rental amount.

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.

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 [subchapter]. The comptroller shall adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and shall deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

SECTION 14. Section 152.0215(a), Tax Code, is amended to read as follows:

(a) A surcharge is imposed on every retail sale, [or] lease, or use of every on-road diesel motor vehicle that is over 14,000 pounds [and is of a model year 1996 or earlier] and that is sold, [or] leased, or used in this state. The amount of the surcharge is two [1.5] percent of the total consideration.

SECTION 15. Section 224.153, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The department may not authorize 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. Sections 501.138(a) and (b), Transportation Code, are amended to read as follows:

(a) An applicant for a certificate of title, other than the state or a political subdivision of the state, must pay the county assessor-collector a fee of $28 [14].

(b) The county assessor-collector shall send:

(1) $5 of the fee to the county treasurer for deposit...
(2) $8 of the fee to the department; 
(A) together with the application within the time specified in Section 501.023; or 
(B) if the fee is deposited in an interest-bearing account or certificate in the county depository or invested in an investment authorized by Subchapter A, Chapter 2256, Government Code, not later than the 35th day after the date on which the fee is received; and 
(3) $15 of the fee to the comptroller to be deposited as follows: 
(A) before September 1, 2008, to the credit of the Texas emissions reduction fund; and 
(B) beginning September 1, 2008, to the credit of the Texas mobility fund.

SECTION 17. Section 387.006(a), Health and Safety Code, is amended to read as follows:
(a) An application for a technology grant under this chapter must show clear and compelling evidence that:
(1) the proposed technology project has a strong commercialization plan and organization; and
(2) the technology proposed for funding:
(A) is likely to be offered for commercial sale in this state as soon as practicable but no later than five years after the date of the application for funding; and 
(B) once commercialized, will offer opportunities for projects eligible for funding under Chapter 386.

SECTION 18. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately 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. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

(b) 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. 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. The comptroller of public accounts may adopt emergency rules for the implementation of Sections 13 and 14 of this Act.

***