

1-1 By: Bonnen, et al. (Senate Sponsor - Harris) H.B. No. 1365
1-2 (In the Senate - Received from the House April 9, 2003;
1-3 April 10, 2003, read first time and referred to Committee on
1-4 Natural Resources; April 22, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 9, Nays
1-6 0; April 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1365 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the Texas emissions reduction plan.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 386.001(2), Health and Safety Code, is
1-13 amended to read as follows:

1-14 (2) "Affected county" includes:

- 1-15 (A) Bastrop County;
- 1-16 (B) Bexar County;
- 1-17 (C) Caldwell County;
- 1-18 (D) Comal County;
- 1-19 (E) Ellis County;
- 1-20 (F) Gregg County;
- 1-21 (G) Guadalupe County;
- 1-22 (H) Harrison County;
- 1-23 (I) Hays County;
- 1-24 (J) Henderson County;
- 1-25 (K) Hood County;
- 1-26 (L) Hunt County;
- 1-27 (M) Johnson County;
- 1-28 (N) [~~(K)~~] Kaufman County;
- 1-29 (O) [~~(L)~~] Nueces County;
- 1-30 (P) [~~(M)~~] Parker County;
- 1-31 (Q) [~~(N)~~] Rockwall County;
- 1-32 (R) [~~(O)~~] Rusk County;
- 1-33 (S) [~~(P)~~] San Patricio County;
- 1-34 (T) [~~(Q)~~] Smith County;
- 1-35 (U) [~~(R)~~] Travis County;
- 1-36 (V) [~~(S)~~] Upshur County;
- 1-37 (W) [~~(T)~~] Victoria County;
- 1-38 (X) [~~(U)~~] Williamson County; [~~and~~]
- 1-39 (Y) [~~(V)~~] Wilson County; and
- 1-40 (Z) any other county designated as an affected
1-41 county by commission rule because of deteriorating air quality.

1-42 SECTION 2. Section 386.053(d), Health and Safety Code, is
1-43 amended to read as follows:

1-44 (d) The commission may propose revisions to the guidelines
1-45 and criteria adopted under this section as necessary to improve the
1-46 ability of the plan to achieve its goals. Revisions may include,
1-47 among other changes, adding additional pollutants, adding
1-48 stationary engines or engines used in stationary applications,
1-49 adding vehicles and equipment that use fuels other than diesel, or
1-50 adjusting eligible program categories, as appropriate, to ensure
1-51 that incentives established under this chapter achieve the maximum
1-52 possible emissions reductions. The commission shall make a
1-53 proposed revision available to the public before the 45th day
1-54 preceding the date of final adoption of the revision and shall hold
1-55 at least one public meeting to consider public comments on the
1-56 proposed revision before final adoption.

1-57 SECTION 3. Section 386.058(d), Health and Safety Code, is
1-58 amended to read as follows:

1-59 (d) The governor, after consultation with the speaker of the
1-60 house of representatives, shall appoint to the advisory board:

- 1-61 (1) a representative of consumer groups;
- 1-62 (2) a representative of the construction industry;
- 1-63 (3) a representative of the automobile industry;

- 2-1 (4) a representative of the agriculture industry; and
- 2-2 (5) a representative of the fuel industry.

2-3 SECTION 4. Sections 386.101(6) and (9), Health and Safety
2-4 Code, are amended to read as follows:

2-5 (6) "On-road diesel" means an on-road diesel-powered
2-6 motor vehicle that has a gross vehicle weight rating of 8,500
2-7 [~~10,000~~] pounds or more.

2-8 (9) "Repower" means to replace an old engine powering
2-9 an on-road or non-road diesel with a new engine, a used engine, a
2-10 remanufactured engine, or electric motors, drives, or fuel cells~~[+~~

2-11 [~~(A) a new engine that emits at least 30 percent~~
2-12 ~~less than the oxides of nitrogen emissions standard required by~~
2-13 ~~federal regulation for the current model year for that engine;~~

2-14 [~~(B) an engine manufactured later than 1987 that~~
2-15 ~~emits at least 30 percent less than the oxides of nitrogen emissions~~
2-16 ~~standard emitted by a new engine certified to the baseline oxides of~~
2-17 ~~nitrogen emissions standard for that engine;~~

2-18 [~~(C) an engine manufactured before 1988 that~~
2-19 ~~emits not more than 50 percent of the oxides of nitrogen emissions~~
2-20 ~~standard emitted by a new engine certified to the baseline oxides of~~
2-21 ~~nitrogen emissions standard for that engine; or~~

2-22 [~~(D) electric motors, drives, or fuel cells~~].

2-23 SECTION 5. Section 386.102(b), Health and Safety Code, is
2-24 amended to read as follows:

2-25 (b) Projects that may be considered for a grant under the
2-26 program include:

2-27 (1) purchase or lease of on-road or non-road diesels;

2-28 (2) emissions-reducing retrofit projects for on-road
2-29 or non-road diesels;

2-30 (3) emissions-reducing repower projects for on-road
2-31 or non-road diesels;

2-32 (4) purchase and use of emissions-reducing add-on
2-33 equipment for on-road or non-road diesels;

2-34 (5) development and demonstration of practical,
2-35 low-emissions retrofit technologies, repower options, and advanced
2-36 technologies for on-road or non-road diesels with lower emissions
2-37 of oxides of nitrogen;

2-38 (6) use of qualifying fuel; ~~and~~

2-39 (7) implementation of infrastructure projects; and

2-40 (8) replacement of on-road or non-road diesels with
2-41 newer on-road or non-road diesels.

2-42 SECTION 6. Section 386.103(a), Health and Safety Code, is
2-43 amended to read as follows:

2-44 (a) Any person as defined by Section 382.003 that owns one
2-45 or more on-road or non-road diesels that operate primarily within a
2-46 nonattainment area or affected county of this state or that
2-47 otherwise contributes to the state inventory of emissions of oxides
2-48 of nitrogen may apply for a grant under the program. The commission
2-49 may adopt guidelines to allow a person other than the owner to apply
2-50 for and receive a grant in order to improve the ability of the
2-51 program to achieve its goals.

2-52 SECTION 7. Section 386.104(f), Health and Safety Code, is
2-53 amended to read as follows:

2-54 (f) A proposed retrofit, repower, replacement, or add-on
2-55 equipment project must document, in a manner acceptable to the
2-56 commission, a reduction in emissions of oxides of nitrogen of at
2-57 least 30 percent compared with the baseline emissions adopted by
2-58 the commission for the relevant engine year and application. After
2-59 study of available emissions reduction technologies, after public
2-60 notice and comment, and after consultation with the advisory board,
2-61 the commission may revise the minimum percentage reduction in
2-62 emissions of oxides of nitrogen required by this subsection to
2-63 improve the ability of the program to achieve its goals.

2-64 SECTION 8. Section 386.105, Health and Safety Code, is
2-65 amended by adding Subsection (e) to read as follows:

2-66 (e) The commission may allow for the apportionment of
2-67 credits associated with a project between the plan and another
2-68 program or entity if the part of the credit assigned to the program
2-69 that is part of the plan still meets any applicable

3-1 cost-effectiveness criteria.

3-2 SECTION 9. Section 386.106(a), Health and Safety Code, is
3-3 amended to read as follows:

3-4 (a) Except as provided by Section 386.107 and except for
3-5 infrastructure projects and infrastructure purchases that are part
3-6 of a broader retrofit, repower, replacement, or add-on equipment
3-7 project, the commission may not award a grant for a proposed project
3-8 the cost-effectiveness of which, calculated in accordance with
3-9 Section 386.105 and criteria developed under that section, exceeds
3-10 \$13,000 per ton of oxides of nitrogen emissions reduced in the
3-11 nonattainment area or affected county for which the project is
3-12 proposed. This subsection does not restrict commission authority
3-13 under other law to require emissions reductions with a
3-14 cost-effectiveness that exceeds \$13,000 per ton.

3-15 SECTION 10. Section 386.112(b), Health and Safety Code, is
3-16 amended to read as follows:

3-17 (b) The program shall authorize statewide incentives for
3-18 the reimbursement of incremental costs for the purchase or lease,
3-19 according to the schedule provided by Section 386.113, of new
3-20 on-road diesels that are certified by the United States
3-21 Environmental Protection Agency or the California Air Resources
3-22 Board to an emissions standard provided by Section 386.113 if the
3-23 purchaser or lessee of the on-road diesel agrees to register the
3-24 vehicle in this state and to operate the on-road diesel in this
3-25 state for not less than 75 percent of the on-road diesel's annual
3-26 mileage.

3-27 SECTION 11. Subchapter C, Chapter 386, Health and Safety
3-28 Code, is amended by adding Section 386.115 to read as follows:

3-29 Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After
3-30 evaluating the availability of vehicles meeting the emissions
3-31 standards and after public notice and comment, the commission, in
3-32 consultation with the advisory board, may expand the program to
3-33 include other on-road vehicles, regardless of fuel type used, that
3-34 meet the emissions standards, have a gross vehicle weight rating of
3-35 greater than 8,500 pounds, and are purchased or leased in lieu of a
3-36 new on-road diesel.

3-37 SECTION 12. Section 386.252, Health and Safety Code, is
3-38 amended to read as follows:

3-39 Sec. 386.252. USE OF FUND. (a) Money in the fund may be
3-40 used only to implement and administer programs established under
3-41 the plan and shall be allocated as follows:

3-42 (1) for the diesel emissions reduction incentive
3-43 program, 89.5 [72] percent of the money in the fund, of which not
3-44 more than ~~[three percent may be used for infrastructure projects~~
3-45 ~~and not more than]~~ 10 percent may be used for on-road diesel
3-46 purchase or lease incentives;

3-47 (2) ~~[for the motor vehicle purchase or lease incentive~~
3-48 ~~program, 15 percent of the money in the fund,~~

3-49 ~~[(3) for the energy efficiency grant program, 7.5~~
3-50 ~~percent of the money in the fund,~~

3-51 ~~[(4)]~~ for the new technology research and development
3-52 program, 7.5 percent of the money in the fund, of which up to
3-53 \$250,000 is allocated for administration, up to \$200,000 is
3-54 allocated for a health effects study, and \$500,000 is to be
3-55 deposited in the state treasury to the credit of the clean air
3-56 account created under Section 382.0622 to supplement funding for
3-57 air quality planning activities in affected counties; and

3-58 (3) ~~[(5)]~~ for administrative costs incurred by ~~[the~~
3-59 ~~utility commission,~~ the commission~~[, the comptroller,~~ and the
3-60 laboratory, three percent.

3-61 (b) Up to 25 [15] percent of the money allocated under
3-62 Subsection (a) to a particular program and not expended under that
3-63 program by January [March] 1 of the second fiscal year of a fiscal
3-64 biennium may be used for another program under the plan as
3-65 determined by the commission in consultation with the advisory
3-66 board.

3-67 SECTION 13. Section 151.0515, Tax Code, is amended by
3-68 amending Subsections (a), (b), and (c) and adding Subsection (b-1)
3-69 to read as follows:

4-1 (a) In this section, "equipment" includes all off-road,
4-2 heavy-duty diesel equipment [~~classified as construction~~
4-3 ~~equipment~~], other than implements of husbandry used solely for
4-4 agricultural purposes, including:
4-5 (1) pavers;
4-6 (2) tampers/rammers;
4-7 (3) plate compactors;
4-8 (4) concrete pavers;
4-9 (5) rollers;
4-10 (6) scrapers;
4-11 (7) paving equipment;
4-12 (8) surface equipment;
4-13 (9) signal boards/light plants;
4-14 (10) trenchers;
4-15 (11) bore/drill rigs;
4-16 (12) excavators;
4-17 (13) concrete/industrial saws;
4-18 (14) cement and mortar mixers;
4-19 (15) cranes;
4-20 (16) graders;
4-21 (17) off-highway trucks;
4-22 (18) crushing/processing equipment;
4-23 (19) rough terrain forklifts;
4-24 (20) rubber tire loaders;
4-25 (21) rubber tire tractors/dozers;
4-26 (22) tractors/loaders/backhoes;
4-27 (23) crawler tractors/dozers;
4-28 (24) skid steer loaders;
4-29 (25) off-highway tractors; [~~and~~]
4-30 (26) Dumpsters/tenders;
4-31 (27) mining equipment; and
4-32 (28) drilling equipment used in drilling an oil, gas,
4-33 or water well.

4-34 (b) In each county in this state, a surcharge is imposed on
4-35 the retail sale, lease, or rental of new or used equipment in an
4-36 amount equal to two [~~one~~] percent of the sale price or the lease or
4-37 rental amount.

4-38 (b-1) In each county in this state, a surcharge is imposed
4-39 on the storage, use, or other consumption in this state of new or
4-40 used equipment. The surcharge is at the same percentage rate as is
4-41 provided by Subsection (b) on the sales price or the lease or rental
4-42 amount of the equipment.

4-43 (c) The surcharge shall be collected at the same time and in
4-44 the same manner and shall be administered and enforced in the same
4-45 manner as the tax imposed under this chapter [~~subchapter~~]. The
4-46 comptroller shall adopt any additional procedures needed for the
4-47 collection, administration, and enforcement of the surcharge
4-48 authorized by this section and shall deposit all remitted
4-49 surcharges to the credit of the Texas emissions reduction plan
4-50 fund.

4-51 SECTION 14. Section 152.0215(a), Tax Code, is amended to
4-52 read as follows:

4-53 (a) A surcharge is imposed on every retail sale, [~~or~~] lease,
4-54 or use of every on-road diesel motor vehicle that is over 14,000
4-55 pounds [~~and is of a model year 1996 or earlier~~] and that is sold,
4-56 [~~or~~] leased, or used in this state. The amount of the surcharge is
4-57 two [~~2.5~~] percent of the total consideration.

4-58 SECTION 15. Section 224.153, Transportation Code, is
4-59 amended by adding Subsection (d) to read as follows:

4-60 (d) The department may not authorize vehicles addressed in
4-61 Subsection (c) to use a high occupancy vehicle lane if such use
4-62 would violate federal transit or highway funding restrictions.

4-63 SECTION 16. Sections 501.138(a) and (b), Transportation
4-64 Code, are amended to read as follows:

4-65 (a) An applicant for a certificate of title, other than the
4-66 state or a political subdivision of the state, must pay the county
4-67 assessor-collector a fee of \$28 [~~\$13~~].

4-68 (b) The county assessor-collector shall send:
4-69 (1) \$5 of the fee to the county treasurer for deposit

5-1 in the officers' salary fund; ~~and~~
5-2 (2) \$8 of the fee to the department:
5-3 (A) together with the application within the time
5-4 prescribed by Section 501.023; or
5-5 (B) if the fee is deposited in an
5-6 interest-bearing account or certificate in the county depository or
5-7 invested in an investment authorized by Subchapter A, Chapter 2256,
5-8 Government Code, not later than the 35th day after the date on which
5-9 the fee is received; and
5-10 (3) \$15 of the fee to the comptroller to be deposited
5-11 as follows:
5-12 (A) before September 1, 2008, to the credit of
5-13 the Texas emissions reduction fund; and
5-14 (B) beginning September 1, 2008, to the credit of
5-15 the Texas mobility fund.

5-16 SECTION 17. Section 387.006(a), Health and Safety Code, is
5-17 amended to read as follows:

5-18 (a) An application for a technology grant under this chapter
5-19 must show clear and compelling evidence that:

5-20 (1) the proposed technology project has a strong
5-21 commercialization plan and organization; and

5-22 (2) the technology proposed for funding:

5-23 (A) is likely to be offered for commercial sale
5-24 in this state as soon as practicable but no later than ~~within~~ five
5-25 years after the date of the application for funding; and

5-26 (B) once commercialized, will offer
5-27 opportunities for projects eligible for funding under Chapter 386.

5-28 SECTION 18. (a) Except as provided by Subsection (b) of
5-29 this section, this Act takes effect immediately if it receives a
5-30 vote of two-thirds of all the members elected to each house, as
5-31 provided by Section 39, Article III, Texas Constitution. If this
5-32 Act does not receive the vote necessary for immediate effect, this
5-33 Act takes effect September 1, 2003.

5-34 (b) Sections 13 and 14 of this Act take effect on the first
5-35 day of the first month beginning on or after the earliest date on
5-36 which this Act may take effect if it receives a vote of two-thirds
5-37 of all the members elected to each house, as provided by Section 39,
5-38 Article III, Texas Constitution. If this Act does not receive the
5-39 vote necessary for effect before September 1, 2003, Sections 13 and
5-40 14 of this Act take effect September 1, 2003. The comptroller of
5-41 public accounts may adopt emergency rules for the implementation of
5-42 Sections 13 and 14 of this Act.

5-43 * * * * *