

BILL ANALYSIS

C.S.S.B. 12
By: Averitt
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Dallas-Fort Worth and Houston-Galveston-Brazoria areas of the State of Texas do not currently meet air quality standards for ozone, and the largest contributor to the formation of ozone in these two regions are mobile resources, such as personal automobiles and diesel engines found in construction equipment. Because federal law precludes state regulation of emissions from these sources, the State of Texas has developed the Texas Emissions Reduction Program (TERP) and the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), aimed at reducing these emissions. TERP is primarily designed to affect diesel engines, while LIRAP is intended to lessen emissions from personal automobiles. Currently, Texas does not meet the new federal air quality standards effective in 2010.

C.S.S.B. 12 increases the scope of both the TERP and the LIRAP programs to reduce emissions from mobile sources, increases the number of individuals eligible for grants under LIRAP, and increases the amount of the grant for purchase of a new vehicle. C.S.S.B. 12 seeks to reduce statewide emissions from electrical generation units by providing for the updating of building energy codes, encouraging the purchase of efficient appliances, and providing efficiency standards for school districts, institutions of higher education, state agencies, and governmental entities in counties.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality (TCEQ) in SECTIONS 1.04, 1.05, 1.06, 1.12, and 1.14 of this bill and to the State Energy Conservation Office (SECO) in SECTIONS 3.01 and 3.06 of this bill.

ANALYSIS

C.S.S.B. 12 amends the Health and Safety Code to set forth definitions for "hybrid motor vehicle" and "qualifying new motor vehicle". The bill removes the limitation on the vehicle emissions inspection and maintenance program that applies it only to gasoline-powered vehicles, making vehicles that are not gasoline-powered subject to the vehicle emissions inspection and maintenance program. The bill also subjects to the vehicle emissions inspection and maintenance program, vehicles that are newer than model year 1980 rather than those that are less than 25 years old.

The bill prohibits more than 10 percent of funds provided to counties for LIRAP to be spent on administration of the program. The bill prohibits more than 10 percent of LIRAP fees collected in a county that is subject to an early action compact and has a LIRAP program from being used to pay for administration of the program.

The bill provides that if a vehicle is to be retired under LIRAP, the replacement vehicle must be a qualifying motor vehicle. The bill authorizes TCEQ, by rule, to provide monetary or other assistance under LIRAP for the replacement of a vehicle that meets criteria set forth in the bill. The bill sets forth the maximum amounts that may be provided toward the purchase of a qualified replacement vehicle based on the vehicle type and model year. The bill authorizes this money to be used as a down payment for purchase of a replacement vehicle. The bill specifies that a vehicle owner's income cannot exceed 300 percent of the federal poverty level to be eligible for vehicle replacement under LIRAP. The bill requires a participating county to provide an electronic means for distributing LIRAP repair and replacement funds and requires

these funds to be transferred to a participating dealer within five business days. The bill sets forth provisions relating to documentation that will be issued to a person eligible to purchase a replacement vehicle. The bill sets forth provisions relating to the dismantling and scrapping of a retired vehicle. The bill provides that an automobile dealer that is participating in vehicle emissions programs must be located in this state. The bill specifies that participation in these programs is voluntary.

The bill authorizes the appropriation of money for LIRAP local initiative projects only for programs administered in accordance with the Uniform Grants and Contract Management Act. The bill authorizes a participating county to agree to contract with an appropriate entity to implement a vehicle emissions inspection and maintenance program, LIRAP, or LIRAP local initiative project. The bill requires LIRAP local initiative projects to be implemented in consultation with TCEQ and sets forth examples of these local projects. The bill sets forth limits on how these funds may be expended.

The bill adds an amount made available to the consumer under LIRAP for vehicle replacement to the definition of "total consideration" in the Tax Code.

The bill adds violations of provisions of the Texas Clean Air Act relating to vehicle emissions to civil penalties provisions of the Water Code.

The bill repeals Subsection (e), Section 382.0622; Subsections (q) and (r), Section 382.202; and Section 382.217 of the Health and Safety Code.

The bill requires TCEQ to review its current cutpoint levels for nitrogen oxide (NO_x) emissions and determine whether a lower cutpoint standard would best serve the interest of public health and welfare and make necessary adjustment to LIRAP. The bill requires TCEQ to seek to work in partnership with automobile manufacturers and dealers in the state and the steel industry and automobile dismantlers to implement provisions of this bill.

The bill amends the Health & Safety Code to delay the expiration of the TERP program from 2010 to 2013. The bill requires TCEQ in administering TERP to hire staff and consultants needed to implement the TERP program in a timely manner. The bill requires TCEQ to make proposed revisions to TERP grant guidelines available to the public 30 days, rather than 45 days, before the guidelines are adopted. The bill changes the percentage of time or vehicle miles that must be traveled within nonattainment or affected counties from 75 percent to 50 percent. The bill also authorizes TCEQ to allow travel on roads designated by TCEQ that are outside nonattainment or affected counties to count towards this percentage. The bill allows TCEQ to consider a project for a marine vessel that operates within nine miles of a nonattainment area or affected county in addition to existing requirements. The bill increases the maximum cost effectiveness amount for TERP grants from \$13,000 per ton of NO_x emissions reduced to \$15,000 per ton. The bill adds marine vessels to the types of engines eligible for grants for infrastructure projects for auxiliary power units. The bill sets forth provisions related to providing funding for and promoting idle reduction technologies. The bill requires TCEQ to encourage the use of external power units at ports and border crossings. The bill requires TCEQ to set aside funds in the TERP rebate grants program for projects with non-road engines used in construction and ensure that these projects are funded at a level commensurate with their percentage contribution to the nitrogen oxides emissions from mobile sources. The bill requires TCEQ to implement an internet based application process for these grants and notify potential applicants of changes to the program by email and on the TCEQ website. The bill moves the administration of the TERP fund from the comptroller to TCEQ. Changes to the allocation of TERP funds that were set to take effect in 2008 are repealed and previous provisions are reenacted.

The bill makes an institution of higher education based in Houston eligible to administer the New Technology Research and Development Program (NTRD) and authorizes TCEQ to contract with more than one organization to administer the program. The bill sets forth conditions that a non-profit organization under contract with TCEQ to administer the NTRD program is required to meet and sets forth provisions relating to TCEQ oversight of the NTRD program. The bill sets forth provisions relating to the establishment of a testing facility to evaluate new technology that may result in NO_x emissions reductions. The bill removes air quality studies from the list of

eligible NTRD projects. The bill provides that the selection of NTRD grant recipients by a nonprofit organization is subject to the TCEQ's review. The bill prohibits a nonprofit organization from making a grant of TERP funds if TCEQ or executive director of TCEQ does not consent to the grant.

The bill amends the Tax Code to extend the expiration for the TERP fees and surcharges from 2010 to 2013.

Changes to the amount of the fee charged on a certificate of title that were set to take effect in 2008 are repealed from the Transportation Code. The bill provides that the portion of these title fees that are sent to the comptroller and then deposited to the credit of the Texas Mobility fund beginning in 2008 will be deposited directly to the credit of the TERP fund beginning in 2010. The bill provides that the TERP surcharge on certain vehicle registrations expires in 2013 rather than 2010. The bill amends the Health & Safety Code to authorize SECO to adopt new editions of international energy conservation code and sets forth a process for doing so. The bill adds institutions of higher education and state agencies to provisions requiring political subdivisions to implement certain energy efficiency programs. The bill provides for reporting on energy efficiency programs to SECO that would indicate no change from previous reports.

The bill amends the Education Code to require school districts to establish a goal to reduce annual electric consumption by five percent each year for six years. The bill amends the Government Code to require the Texas Building and Procurement Commissions (TBPC) to develop a list of equipment and appliances that meet energy efficiency standards and assist state agencies in selecting products from that list. The bill requires TBPC or another state agency to purchase equipment and appliances that meet the federal Energy Star standards.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the definition of "qualifying motor new vehicle" in the original to "qualifying motor vehicle" and removes the requirements that a replacement vehicle in the LIRAP program be a new motor vehicle and that it be gasoline powered. The substitute adjusts the maximum amounts that can be provided towards the purchase of a replacement vehicle in LIRAP. The substitute removes requirements that the replacement vehicle meet certain emissions standards and that it cost less than \$25,000. The substitute requires a participating county to transfer funds within five days, rather than one day.

The substitute removes the definition of "retail sale". The substitute removes the definition of "total cost". The substitute changes the method for calculating the amount of LIRAP funds that can be used by the county to pay for administration of the program. The substitute adds the requirement that the dismantler scrap the power train of a retired vehicle. The substitute removes the requirement that the participating automobile dealer submit proof that the vehicle has been retired. The substitute authorizes a participating county to contract with an appropriate entity to implement a vehicle inspections and maintenance program, LIRAP, or LIRAP local initiative project. The substitute changes from \$5 million, to \$10 million, the amount that may be used by a county for a LIRAP local initiative project. The substitute also removes the requirement that the county contribute matching funds for this money.

The substitute requires TCEQ to hire staff and consultants needed to implement the TERP program in a timely manner. The substitute allows TCEQ to consider a project for a marine vessel that operates within nine miles of a nonattainment area or affected county in addition to existing requirements. The substitute adds marine vessels to provisions relating to the funding of idle reduction technologies. In provisions that require TCEQ to encourage the use of external power units at ports and border crossings the substitute specifies that this will only be when evaluating a request for funding of an eligible infrastructure project.

The substitute requires TCEQ to set aside funds in the TERP rebate grants program for projects with non-road engines used in construction and ensure that these projects are funded at a level commensurate with their percentage contribution to the nitrogen oxides emissions from mobile sources. The substitute requires TCEQ to implement an internet based application process for these grants and notify potential applicants of changes to the program by email and on the TCEQ website. Changes to the allocation of TERP fund that were set to take effect in 2008 are repealed and previous provisions are reenacted in the substitute.

The substitute makes an institution of higher education based in Houston eligible to administer the New Technology Research and Development Program (NTRD) and authorizes TCEQ to contract with more than one organization to administer the program. The substitute amends the conditions that a non-profit organization under contract with TCEQ to administer the NTRD program is required to meet. The substitute sets forth provisions relating to the establishment of a testing facility to evaluate new technology that may result in NOx emissions reductions. The substitute provides that the selection of NTRD grant recipients by a nonprofit organization is subject to TCEQ's review. The substitute prohibits a nonprofit organization from making a grant of TERP funds if TCEQ or the executive director of TCEQ does not consent to the grant.

The original bill struck "school district" from the definition of "political subdivision" in section 388.005 of the Health & Safety Code. The substitute restores "school district" to this definition. The substitute provides for reporting on energy efficiency programs to SECO that would indicate no change from previous reports.

The substitute removes requirements that allow state agencies and TBPC to purchase equipment and appliances that meet the federal energy conservation standards under the Energy Policy and Conservation Act or any federal regulation adopted under that Act. The substitute retains the requirement that TBPC or another state agency purchase equipment and appliances that meet the federal Energy Star standards.