

BILL ANALYSIS

Senate Research Center

S.B. 1727
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Natural Resources
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Regions of the state continue to have air quality that is out of compliance with current and prior federal ozone standards. The Texas Emissions Reduction Plan (TERP) program provides financial incentives to eligible individuals, businesses, nonprofits, and local governments to reduce emissions from polluting vehicles and equipment.

TERP has a dedicated fund administered by the Texas Commission on Environmental Quality with fees generated from several sources including fees on the purchase of new diesel trucks and machines, statewide vehicle title fees and additional title fees from vehicle registrations in the state's counties in non-attainment areas. When created in 2001 by the legislature, the TERP programs were envisioned to use voluntary incentives to help reduce mobile and stationary sources of pollution that could not be controlled or were difficult to control by state rules and regulations.

S.B. 1727 proposes to make changes to the TERP program that will provide for additional emission reductions and flexibility in implementing the plan.

As proposed, S.B. 1727 amends current law relating to the use of the Texas emissions reduction plan fund.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 386.051, Health and Safety Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires the Texas Natural Resource Conservation Commission (TNRCC) and the comptroller of public accounts of the State of Texas (comptroller), under the plan, to provide grants or other funding for:

(1)-(7) Makes no change to these subdivisions;

(8)-(9) Makes nonsubstantive changes;

(10) the clean fleet program established under Chapter 392 (Texas Clean Fleet Program);

(11) the alternative fueling facilities program established under Chapter 393 (Texas Natural Gas Vehicle Grant Program); and

(12) the natural gas vehicle grants program and clean transportation triangle program established under Chapter 394 (Alternative Fueling Facilities Program).

(b-1) Authorizes TNRCC, under the plan, to establish and administer other programs, including other grants or funding programs, as determined by TNRCC to be necessary or effective in fulfilling its duties and achieving the objectives described under Section 386.052 (Commission Duties). Authorizes TNRCC to apply the criteria and requirements applicable to the programs under Subsection (b) to programs established under this subsection, or authorizes TNRCC to establish separate criteria and requirements as necessary to achieve TNRCC's objectives. Requires the additional programs to be consistent with and comply with all applicable laws, regulations, and guidelines pertaining to the use of state funds, the awarding and administration of grants and contracts, and achieving reductions in emissions of pollutants determined to be of concern. Requires TNRCC, under this subsection, to place a priority on programs that address the following goals:

(1) reduction of emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment, including locomotives and marine vessels, at port facilities in nonattainment areas;

(2) reduction of emissions from the operation of drilling and related heavy-duty non-road equipment in oil and gas production fields where TNRCC determines that the programs can help prevent that area or an adjacent area from being in violation of national ambient air quality standards; and

(3) replacement, repower, or retrofit of heavy-duty on-road vehicles, medium-duty passenger vehicles, and non-road equipment to change from using gasoline or diesel fuel to engines or conversion systems certified under the United States Environmental Protection Agency's heavy-duty on-road or non-road engine emission or light-duty vehicle engine emission certification programs to using cleaner alternative fuels, either dedicated or in conjunction with regular fuel, and, particularly, alternative fuels produced in Texas.

SECTION 2. Amends Section 386.053(a), Health and Safety Code, to require TNRCC to adopt grant guidelines and criteria consistent with the requirements of Subchapter C (Diesel Emissions Reduction Incentive Program), rather than with the requirements of this section.

SECTION 3. Amends Section 386.054(a), Health and Safety Code, to require TNRCC to develop procedures for monitoring whether the emissions reductions projected for projects awarded grants under Subchapter C, rather than under this chapter, are actually achieved.

SECTION 4. Amends, Section 386.252(a), Health and Safety Code, as amended by Chapter 28 (S.B. 527), Acts of the 82nd Legislature, Regular Session, 2011, as follows:

(a) Requires money appropriated to TNRCC to be used for the programs under Section 386.051(b) to be allocated, rather than authorizes money in the fund to be used only to implement and administer programs established under the plan and the total appropriation to be allocated, as follows:

(1) not more than four percent may be used for the clean school bus program under Chapter 390 (Clean School Bus Program);

(2) not more than 10 percent may be used for on-road diesel purchase or lease incentives under Section 386.112 (On-Road Diesel Purchase or Lease Incentive);

(3) a specified amount may be used for the new technology implementation grant program under Chapter 391 (New Technology Implementation for Facilities and Stationary Sources), from which a defined amount may be set aside for electricity storage projects related to renewable energy;

- (4) five percent shall be used for the clean fleet program under Chapter 392;
- (5) up to \$3 million is required to be used by TNRCC, rather than not more than \$7 million is required to be allocated in 2012 and 2013 and not more than \$3 million is required to be allocated in 2014 and in subsequent years, to fund a regional air monitoring program in TNRCC Regions 3 and 4 to be implemented under TNRCC's oversight, including direction regarding the type, number, location, and operation of, and data validation practices for, monitors funded by the program through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area;
- (6) not less than 16 percent is required to be used for the Texas natural gas vehicle grant program under Chapter 394;
- (7) not more than four percent may be used to provide grants for natural gas fueling stations under the clean transportation triangle program under Section 394.010 (Clean Transportation Triangle);
- (8) two percent is authorized to be used for the Texas alternative fueling facilities program under Chapter 393;
- (9) a specified amount may be used, rather than a specified amount is to be allocated, each year to support research related to air quality as provided by Chapter 387 (Air Quality Research Support Program);
- (10) up to \$200,000 may be used, rather than up to \$200,000 is allocated, for a health effects study;
- (11) up to \$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;
- (12) not more than \$216,000 may be used by, rather than not more than \$216,000 is allocated to, TNRCC to contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station annually for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan; and
- (13) the balance is to be used by, rather than the balance is allocated to, the commission for the diesel emissions reduction incentive program under Subchapter C.

Deletes existing Subdivisions (10)-(12) authorizing money in the fund to be used only to implement and administer programs established under the plan and requiring that the total appropriation be allocated in a certain manner including that not more than \$3,400,000 be allocated to TNRCC for administrative costs incurred by TNRCC, and 1.5 percent of the money in the fund be allocated for administrative costs incurred by the laboratory. Makes nonsubstantive changes.

SECTION 5. Amends Sections 386.252(b), (c), (d), and (e), Health and Safety Code, as follows:

- (b) Authorizes TNRCC to allocate unexpended money designated for the clean fleet program under Chapter 392 to other programs described under Subsection (a) (relating to authorizing money in the fund to be used only to implement and administer programs established under the plan and the total appropriation are required to be allocated, as per certain guidelines) after TNRCC allocates money to recipients under the clean fleet program. Deletes existing text authorizing money allocated under Subsection (a) to be a particular program to be used for another program under the plan as determined by TNRCC.

(c) Authorizes TNRCC to allocate unexpended money designated for the Texas alternative fueling facilities program under Chapter 393 to other programs described under Subsection (a) after TNRCC allocates money to recipients under the alternative fueling facilities program.

(d) Authorizes TNRCC to reallocate money designated for the Texas natural gas vehicle grant program under Chapter 394 to other programs described under Subsection (a) if TNRCC, in consultation with the governor and the advisory board, determines that the use of the money in the fund for that program will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and TNRCC finds that the reallocation of some or all of the funding for the program would resolve the noncompliance.

(e) Prohibits TNRCC, under Subsection (d), from reallocating more than the minimum amount of money necessary to resolve the noncompliance.

Deletes existing Subsection (c) authorizing money in the fund to be allocated to the clean school bus program only if the money is available for that purpose after money is allocated for the other purposes of the fund as required by the state implementation plan, or the amount of money deposited to the credit of the fund in a state fiscal year exceeds the amount the comptroller's biennial revenue estimate shows as the comptroller's estimated amount to be deposited to the credit of the fund in that year.

Deletes existing Subsection (d) authorizing TNRCC to allocate unexpended money designated for the clean fleet program to other programs described under Subsection (a) after TNRCC allocates money to recipients under the clean fleet program.

Deletes existing Subsection (e) authorizing TNRCC to allocate unexpended money designated for the Texas alternative fueling facilities program to other programs described under Subsection (a) after TNRCC allocates money to recipients under the alternative fueling facilities program.

SECTION 6. Amends, Section 386.252(f), Health and Safety Code, as added by Chapter 892 (S.B. 385), Acts of the 82nd Legislature, Regular Session, 2011, as follows:

(f) Requires that money appropriated to TNRCC for programs under Section 386.051(c) be allocated to those programs as determined by TNRCC. Deletes existing text authorizing TNRCC, notwithstanding Subsection (a), to reallocate money in the fund if TNRCC, in consultation with the governor and the advisory board, determines that the use of the money in the fund for the program established under Chapter 394 will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and TNRCC finds that the reallocation of some or all of the funding for the program established under Chapter 394 would resolve the noncompliance.

SECTION 7. Amends Section 386.252(g), Health and Safety Code, as follows:

(g) Requires TNRCC, if the legislature does not specify amounts or percentages from the total appropriation to be allocated under Subsection (a) or (f) (relating to authorizing TNRCC to reallocated money in the fund, as per certain guidelines), to determine the amounts of the total appropriation to be allocated under each of those subsections. Deletes existing text prohibiting TNRCC, under Subsection (f), from reallocating more than the minimum amount of money necessary to resolve the noncompliance.

SECTION 8. Amends Section 386.252, Health and Safety Code, by adding Subsections (h), (i), (j), and (k), as follows:

(h) Authorizes the total appropriation to TNRCC from the fund, up to four percent or \$4 million, whichever is greater, unless a specified amount is appropriated for administrative costs, to be used by TNRCC for administrative costs.

(i) Authorizes money allocated under this section to a particular program, subject to the limitations outlined in this section and any additional limitations placed on the use of the appropriated funds, to be used for another program under the plan as determined by TNRCC.

(j) Authorizes up to 1.5 percent of the money in the fund to be used for administrative costs incurred by the laboratory for work required under this chapter.

(k) Requires the specified appropriation percentage or amount, if a specified percentage or amount from the fund is appropriated for a particular program or purpose that differs from the allocation percentage or amount established in this section, to apply.

SECTION 9. Repealer: Section 386.252(a) (relating to authorizing money in the fund to be used only to implement and administer programs established under the plan and requiring the total appropriation to be allocated as per certain guidelines), Health and Safety Code, as amended by Chapters 589 (Senate Bill No. 20) and 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 10. Repealer: Section 386.252(f) (relating to authorizing TNRCC to reallocate money in the fund as per certain guidelines), Health and Safety Code, as added by Chapter 589 (Senate Bill No. 20), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 11. Effective date: September 1, 2013.