

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The original purpose of the Low Income Vehicle Repair Assistance Program (LIRAP) was to provide financial assistance to low-income vehicle owners who fail emissions testing, as well as to help counties remove high-emitting vehicles from the road and uncover fraudulent vehicle inspections. Counties with emissions and maintenance inspections could voluntarily opt-in to the program, which was funded in part by fees collected for vehicle registration. However, LIRAP funding was not fully appropriated after the 82nd and 83rd Legislatures, and participation in the program has ceased.

Before its end, however, portions of LIRAP-generated revenue had gone to the Local Initiatives Program (LIP), which gave counties the flexibility and control to address air quality on the local level through mobility and transpiration projects.

This bill would expand LIP and eliminate LIRAP, with the goal of improving air quality through local transportation and mobility projects for eligible counties that choose to opt-in. Fees would continue to be collected by participating counties, but revenue would now remain with the counties in a separate account (expected loss of state revenue is between \$75 and \$100 million for the biennium). All previously-eligible LIP projects would remain eligible for the new, modernized program, which includes projects that focus on regional data collection efforts, alternative fuel refueling infrastructure, and freeway incident management. Additionally, a new, voluntary, local vehicle repair and replacement incentive program—without an income component—would become an eligible project through the LIP program for counties that choose to opt-in.

As proposed, S.B. 1070 amends current law relating to certain programs under the Texas Clean Air Act that reduce vehicle emissions and improve air quality, and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality (TCEQ) and the Public Safety Commission jointly in SECTION 4 (Section 382.2085, Health and safety Code) of this bill.

Rulemaking authority previously granted to TCEQ and the Public Safety Commission is modified in SECTION 5 (Section 382.209, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 382.201, Health and Safety Code, by amending Subdivision (4) and adding Subdivision (4-a) as follows:

(4) Redefines "participating county" as an affected county in which the commissioners court by resolution has chosen to implement a local initiatives program authorized by Section 382.2085, rather than implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Section 382.209 (Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program).

(4-a) Defines "purchase" as a transaction in which a person buys a vehicle or leases a vehicle for a period of at least three years under an agreement that allows the vehicle to be driven at least 12,000 miles a year without a penalty.

SECTION 2. Amends Section 382.202, Health and Safety Code, by adding Subsection (g-1), as follows:

(g-1) Authorizes the commissioners court of a participating county by order to impose an additional fee, not to exceed \$6, for a vehicle inspected in the county. Authorizes a fee imposed under this subsection to take effect and be removed in accordance with the requirements of Section 382.2085. Requires the additional fee to be collected for a vehicle at the same time other fees imposed under this chapter are collected. Requires the revenue collected to be retained by the county in a separate account to be used only for the purposes specified by Section 382.2085.

SECTION 3. Amends Section 382.205(f), Health and Safety Code, as follows:

(f) Requires rules and procedures under this section to ensure that approved repair facilities participating in a vehicle repair and replacement incentive program, rather than participating in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, established under Section 382.209 have access to adequate testing equipment.

SECTION 4. Transfers Section 382.220, Health and Safety Code, to Subchapter G, Chapter 382, Health and Safety Code, redesignates it as Section 382.2085, Health and Safety Code, and amends it as follows:

Sec. 382.2085. New heading: LOCAL INITIATIVES PROGRAM. (a) Requires the Texas Commission on Environmental Quality (TCEQ) and the Public Safety Commission by joint rule to establish and authorize the commissioners court of an affected county to implement a local initiatives program subject to agency oversight that is authorized to include reasonable periodic TCEQ audits.

(b) Requires the local initiatives program to be funded with available money collected under Section 382.202 (Vehicle Emissions Inspection and Maintenance Programs) or 382.302 (Inspection and Maintenance Program) or other designated and available money. Requires the program to be administered in accordance with Chapter 783 (Uniform Grant and Contract), Government Code. Deletes existing text authorizing money that is made available to participating counties under Section 382.202(g) (relating to requiring TCEQ to use part of the inspection fee to fund low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs and distribute available funding to participating counties in reasonable proportion to the amount of fees collected in those counties or in the regions in which those counties are located) or 382.302 to be appropriated only for programs to improve air quality.

(c) Creates this subsection from existing text and authorizes a participating county to agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments, to implement a program under Section 382.202, rather than Section 382.202 and 382.209, or this section.

(d) Redesignates existing Subsection (b) as Subsection (d). Requires a program under this section to be approved by the commissioners court of the county in which the program is located, rather than be implemented in consultation with TCEQ, and authorizes the program to include a program to:

(1) develop and implement projects supporting freeway incident management and associated first responders, rather than expand and enhance the AirCheck Texas Repair and Replacement Assistance Program;

(2)–(3) makes no changes to these subdivisions;

(4) develop and implement projects in consultation with the director of the Department of Public Safety of the State of Texas (DPS) for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia, temporary registration plates, and vehicle inspection reports, rather than reduce the use of counterfeit registration on insignia and vehicle inspection reports, by providing local law enforcement officials with funds to identify vehicles with counterfeit registration insignia, temporary registration plates, and vehicle inspection reports, rather than counterfeit registration insignia and vehicle inspection reports, and to carry out appropriate actions;

(5)–(6) makes nonsubstantive changes;

(7) develop and implement a local vehicle repair and replacement incentive program under Section 382.209;

(8) develop and implement regional data collection efforts for air quality and multimodal transportation data to improve efficiency of transportation systems; or

(9) establish publicly accessible refueling infrastructure for alternative fuel vehicles.

(e) Deletes text of existing Subsection (c) prohibiting money that is made available for the implementation of a program under Subsection (b) from being expended for local government fleet vehicle acquisition or replacement, call center management, application oversight, invoice analysis, education, outreach, or advertising purposes. Redesignates existing Subsection (d) as Subsection (c). Authorizes fees collected under Sections 382.202 and 382.302 to be used by participating counties only for projects described by Subsection (d), rather than in an amount not to exceed \$7 million per fiscal year for projects described by Subsection (b), of which \$2 million is authorized to be used only for projects described by Subsection (b)(4).

(f) Authorizes the commissioners court of a participating county to adopt a resolution to end fee collection for the local initiatives program in the county. Requires the commissioners court to submit the resolution to TCEQ and to the county tax assessor-collector. Requires the resolution to include a date after which a fee may not be imposed under Section 382.202 or 382.302 for the purposes of the county's local initiatives program on vehicles being inspected or registered in the country. Requires the date to be:

(1) the first day of a month; and

(2) at least 90 days after the date the resolution is submitted to TCEQ.

(g) Requires TCEQ, on receipt of a resolution under Subsection (f), to notify in writing the Texas Department of Motor Vehicles (TxDMV), DPS, and the Legislative Budget Board (LBB) that a fee is prohibited from being imposed under Section 382.202 or 382.302 for the purposes of the county's local initiatives program on vehicles being inspected or registered in the county after the date established under Subsection (f). Deletes existing text authorizing the remaining \$5 million to be used for any project described by Subsection (b). Deletes existing text requiring the fees to be made available only to counties participating in the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209 and only on a matching basis, whereby TCEQ provides money to a county in the same amount that the county dedicates

to a project authorized by Subsection (b). Authorizes TCEQ to reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs, including the use of remote sensing technology for coordinating with law enforcement officials to detect, prevent, and prosecute the use of counterfeit registration insignias and vehicle inspection reports.

SECTION 5. Amends Section 382.209, Health and Safety Code, as follows:

Sec. 382.209. New heading: VEHICLE REPAIR AND REPLACEMENT INCENTIVE PROGRAM. (a) Requires TCEQ and the Public Safety Commission by joint rule to establish and authorize the commissioners court of a participating county to implement a vehicle repair and replacement incentive program subject to agency oversight that is authorized to include reasonable periodic TCEQ audits.

(b) Requires a participating county to administer a vehicle repair and replacement incentive program established under this section in accordance with Chapter 783, Government Code. Deletes text requiring TCEQ to provide funding for local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs with available funds collected under Section 382.202, 382.302, or other designated and available funds. Deletes text requiring the programs to be administered in accordance with Chapter 783 (Government Code). Authorizes not more than 10 percent of the money used for a vehicle repair and replacement incentive program, rather than provided to a local low-income assistance, retrofit, and accelerated vehicle retirement program, to be used for the administration of the program, including program costs.

(c) Requires the rules adopted under Subsection (a) to provide procedures for ensuring that a vehicle repair and replacement incentive program implemented under authority of that subsection does not apply to a vehicle that is:

(1)–(2) makes no changes to these subdivisions.

(d) Requires a vehicle repair and replacement incentive program established under this section, rather than a low-income assistance, retrofit, and accelerated vehicle retirement program established under this section, subject to the availability of funds, established under this section to provide monetary or other compensatory assistance for:

(1)–(3) makes no changes to these subdivisions;

(d-1) Creates this section from existing text and makes no further changes to this subsection.

(e) Provides that a vehicle is not eligible to participate in a vehicle repair and replacement incentive program established under this section, rather than a low-income assistance, retrofit, and accelerated vehicle retirement program established under this section, unless:

(1) makes no change to this subdivision;

(2) the vehicle is registered in a county implementing the program, or has been registered in a county implementing the program for at least 12 of the 15 months preceding the application for participation in the program; rather than the registration of the vehicle is current and has been registered in the county implementing the program for at least 12 of the 15 months preceding the application for participation only programs;

(3)–(5) makes no changes to these subdivisions;

(f) Provides that a fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle is not eligible to participate in a vehicle repair and replacement incentive program established and implemented under this section, rather than a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established and implemented under this section.

(g)-(i) Makes conforming changes.

(j) Authorizes the commissioners court of a participating county, rather than TCEQ, to provide monetary or other compensatory assistance under the vehicle repair and replacement incentive program, rather than the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, for a replacement vehicle or replacement assistance for a pre-1996 model year replacement vehicle that passes the required United States Environmental Protection Agency Start-Up Acceleration Simulation Mode Standards emissions test but that would have failed the United States Environmental Protection Agency Final Acceleration Simulation Mode Standards emissions test or failed to meet some other criterion determined by TCEQ; provided, however, that a replacement vehicle under this subsection must be a qualifying motor vehicle.

SECTION 6. Amends Sections 382.210(a), (b), and (f), Health and Safety Code, as follows:

(a) Requires TCEQ by rule to adopt guidelines to assist a participating county in implementing a vehicle repair and replacement incentive program authorized under Section 382.209, rather than a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. Requires the guidelines at a minimum to recommend:

(1) makes no change to this subdivision;

(2) a minimum and maximum amount toward the purchase price of a replacement vehicle, rather than the purchase price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) \$4,000, rather than \$3,000, for a replacement car of the current model year or the previous three model years, except as provided by Paragraph (C);

(B) \$4,000, rather than \$3,000, for a replacement truck of the current model year or the previous two model years, except as provided by Paragraph (C); and

(C) \$4,500, rather than \$3,500, for a replacement vehicle of the current model year or the previous three model years that:

(i)-(ii) makes no changes to these subparagraphs;

(3) criteria for determining eligibility, taking into account:

(A) deletes existing criteria including the vehicle's owner's income, which prohibited from exceeding 300 percent of the federal poverty level. Creates Paragraph (A) from Paragraph (B). Creates Paragraph (B) from Paragraph (C);

(4) makes no changes to this subdivision;

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) makes a nonsubstantive change:

(B) deletes text referring to the vehicle's owner's income. Redesignates Paragraph (c) as Paragraph (B).

(b) Requires a replacement vehicle described by Subsection (a)(2) to:

(1)–(2) makes no changes to these subdivisions;

(3) have an odometer reading of not more than 85,000, rather 70,000 miles; and

(4) be a vehicle the total purchase price, rather than cost, of which does not exceed certain prices.

(f) Provides that for purposes of Subsection (b), a reference to the total purchase price of a motor vehicle that is sold means, rather than in this section "total cost" means, the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by TxDMV.

SECTION 7. Amends Section 382.211(a), Health and Safety Code, as follows:

(a) Authorizes the commissioners court of a participating county to appoint one or more local advisory panels consisting of representatives of automobile dealerships, the automotive repair industry, safety inspection facilities, the public, antique and vintage car clubs, local nonprofit organizations, and locally affected governments to advise the county regarding the operation of the county's vehicle repair and replacement incentive program, rather than the county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, including the identification of a vehicle make or model with intrinsic value as an existing or future collectible.

SECTION 8. Amends Section 382.212(b), Health and Safety Code, as follows:

(b) Requires TCEQ, to the extent allowable under federal law, to authorize:

(1) the assignment of a percentage of emissions reduction credit to a private, commercial, or business entity that purchases, for accelerated retirement, a qualified vehicle under a vehicle repair and replacement incentive program, rather than a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program;

(2)–(4) makes no changes to these subdivisions;

(5) other actions relating to the disposition or use of emissions reduction credit that TCEQ determines will benefit the implementation of vehicle repair and replacement incentive programs established under Section 382.209, rather than low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs established under Section 382.209.

SECTION 9. Amends Section 382.213(a), Health and Safety Code, as follows:

(a) Provides that except as provided by Subsection (c) (relating to authorizing the sale of a vehicle identified by a local advisory panel as an existing or future collectible vehicle under Section 382.211 to an individual) and Subdivision (5) of this subsection, a vehicle retired under a vehicle repair and replacement incentive program established under Section 382.209, rather than an accelerated vehicle retirement program authorized by Section 382.209, is prohibited from being resold or reused in its entirety in this or another state. Requires the automobile dealer who takes possession of the vehicle, subject to the provisions of Subsection (i), to submit to the program administrator proof, in a manner adopted by TCEQ, that the vehicle has been retired.

SECTION 10. Amends Section 382.214, Health and Safety Code, as follows:

Sec. 382.214. SALE OF VEHICLE WITH INTENT TO DEFRAUD. (a) Provides that a person who with intent to defraud sells a vehicle that is retired under a vehicle repair and replacement incentive program, rather than sells a vehicle in an accelerated vehicle retirement program, established under Section 382.209 commits an offense that is a third degree felony.

(b) Provides that the sale of vehicle described by Subsection (a) includes, rather than the sale of a vehicle in an accelerated vehicle refinement program includes, sale of the vehicle to retire the vehicle under the program and sale of a vehicle purchased for retirement under the program.

SECTION 11. Amends Section 382.216, Health and Safety Code, as follows:

Sec. 382.216. INCENTIVES FOR VOLUNTARY PARTICIPATION IN VEHICLE EMISSIONS INSPECTIVE AND MAINTENANCE PROGRAM. Authorizes TCEQ, the Texas Department of Transportation, and the Public Safety Commission to encourage counties likely to exceed federal clean air standards to implement voluntary vehicle repair and replacement incentive programs. Makes conforming changes.

SECTION 12. Amends Section 382.302(e), Health and Safety Code, to authorize a participating county to participate in a local initiatives program established under Section 382.2085, rather than to authorize a county to participate in the program established under Section 382.209.

SECTION 13. Repealer: Section 382.202(g) (relating to requiring TCEQ to take certain actions with the fee assessed for vehicle emissions-related inspections), Health and Safety Code.

SECTION 14. Provides that on the effective date of this Act, each low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under Section 382.209, Health and Safety Code, is abolished.

SECTION 15. Requires TCEQ and the Public Safety Commission, as soon as practicable after the effective date of this Act, to:

(1) adopt the joint rules required by Sections 382.2085, Health and Safety Code, as transferred, redesignated, and amended by this Act, and 382.209, Health and Safety Code, as amended by this Act; and

(2) adopt or modify any rules necessary to implement the changes in law made by this Act.

SECTION 16. Effective date: September 1, 2019.