86R4538 JRR-F

By:  Watson S.B. No. 1070

A BILL TO BE ENTITLED

AN ACT

relating to certain programs under the Texas Clean Air Act that reduce vehicle emissions and improve air quality; authorizing a fee.

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

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

(4)  "Participating county" means an affected county in which the commissioners court by resolution has chosen to implement a local initiatives [~~low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement~~] program authorized by Section 382.2085 [~~382.209~~].

(4-a)  "Purchase" means a transaction in which a person:

(A)  buys a vehicle; or

(B)  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.  Section 382.202, Health and Safety Code, is amended by adding Subsection (g-1) to read as follows:

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

SECTION 3.  Section 382.205(f), Health and Safety Code, is amended to read as follows:

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

SECTION 4.  Section 382.220, Health and Safety Code, is transferred to Subchapter G, Chapter 382, Health and Safety Code, redesignated as Section 382.2085, Health and Safety Code, and amended to read as follows:

Sec. 382.2085. [~~382.220.  USE OF FUNDING FOR~~] LOCAL INITIATIVES PROGRAM [~~INITIATIVE PROJECTS~~]. (a) The commission and the Public Safety Commission by joint rule shall establish and authorize the commissioners court of an affected county to implement a local initiatives program subject to agency oversight that may include reasonable periodic commission audits.

(b)  The local initiatives program must be funded with available money collected under Section 382.202 or 382.302 or other designated and available money. The program shall be [~~Money that is made available to participating counties under Section 382.202(g) or 382.302 may be appropriated only for programs~~] administered in accordance with Chapter 783, Government Code[~~, to improve air quality~~].

(c)  A participating county may 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[~~, 382.209,~~] or this section.

(d) [~~(b)~~]  A program under this section must be approved by the commissioners court of the county in which the program is located [~~implemented in consultation with the commission~~] and may include a program to:

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

(2)  develop and implement programs or systems that remotely determine vehicle emissions and notify the vehicle's operator;

(3)  develop and implement projects to implement the commission's smoking vehicle program;

(4)  develop and implement projects in consultation with the director of the Department of Public Safety for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia, temporary registration plates, 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 and to carry out appropriate actions;

(5)  develop and implement programs to enhance transportation system improvements; [~~or~~]

(6)  develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations;

(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)  [~~(c)  Money that is made available for the implementation of a program under Subsection (b) may not be expended for local government fleet or vehicle acquisition or replacement, call center management, application oversight, invoice analysis, education, outreach, or advertising purposes.~~

[~~(d)~~]  Fees collected under Sections 382.202 and 382.302 may be used by participating counties [~~in an amount not to exceed $7 million per fiscal year for projects described by Subsection (b), of which $2 million may be used~~] only for projects described by Subsection (d) [~~(b)(4)~~].

(f)  The commissioners court of a participating county may adopt a resolution to end fee collection for the local initiatives program in the county. The commissioners court shall submit the resolution to the commission and to the county tax assessor-collector. The resolution must 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 county. The date must be:

(1)  the first day of a month; and

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

(g)  On receipt of a resolution under Subsection (f), the commission shall notify in writing the Texas Department of Motor Vehicles, the Department of Public Safety, and the Legislative Budget Board that 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 county after the date established under Subsection (f). [~~The remaining $5 million may be used for any project described by Subsection (b).  The fees shall 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 the commission provides money to a county in the same amount that the county dedicates to a project authorized by Subsection (b).  The commission may 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 insignia and vehicle inspection reports.~~]

SECTION 5.  Section 382.209, Health and Safety Code, is amended to read as follows:

Sec. 382.209.  [~~LOW-INCOME~~] VEHICLE REPAIR AND REPLACEMENT INCENTIVE [~~ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT~~] PROGRAM. (a) The commission and the Public Safety Commission by joint rule shall establish and authorize the commissioners court of a participating county to implement a [~~low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program subject to agency oversight that may include reasonable periodic commission audits.

(b)  A participating county shall administer a vehicle repair and replacement incentive program established under this section [~~The commission shall 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. The programs shall be administered~~] in accordance with Chapter 783, Government Code. Program costs may include call center management, application oversight, invoice analysis, education, outreach, and advertising. Not more than 10 percent of the money used for a [~~provided to a local low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program [~~under this section~~] may be used for the administration of the program [~~programs~~], including program costs.

(c)  The rules adopted under Subsection (a) must 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)  registered under Section 504.501 or 504.502, Transportation Code; and

(2)  not regularly used for transportation during the normal course of daily activities.

(d)  Subject to the availability of funds, a [~~low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program established under this section shall provide monetary or other compensatory assistance for:

(1)  repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements;

(2)  a replacement vehicle or replacement assistance for a vehicle that has failed a required emissions test and for which the cost of repairs needed to bring the vehicle into compliance is uneconomical; and

(3)  installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed under Subdivision (1).

(d-1)  The commission and the Department of Public Safety of the State of Texas shall establish standards and specifications for retrofit equipment that may be used under this section.

(e)  A vehicle is not eligible to participate in a [~~low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program established under this section unless:

(1)  the vehicle is capable of being operated;

(2)  the [~~registration of the~~] vehicle:

(A)  is registered in a county implementing the program [~~current~~]; or [~~and~~]

(B)  [~~reflects that the vehicle~~] has been registered in a [~~the~~] county implementing the program for at least 12 of the 15 months preceding the application for participation in the program;

(3)  the commissioners court of the county administering the program determines that the vehicle meets the eligibility criteria adopted by the commission, the Texas Department of Motor Vehicles, and the Public Safety Commission;

(4)  if the vehicle is to be repaired, the repair is done by a repair facility recognized by the Department of Public Safety, which may be an independent or private entity licensed by the state; and

(5)  if the vehicle is to be retired under this subsection and Section 382.213, the replacement vehicle is a qualifying motor vehicle.

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

(g)  A participating county may contract with any appropriate entity, including the regional council of governments or the metropolitan planning organization in the appropriate region, or with another county for services necessary to implement the participating county's [~~low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program. The participating counties in a nonattainment region or counties participating in an early action compact under Subchapter H may agree to have the money collected in any one county be used in any other participating county in the same region.

(h)  Participation by an affected county in a [~~low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program is not mandatory. To the extent allowed by federal law, any emissions reductions attributable to a [~~low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program in a county that are attained during a period before the county is designated as a nonattainment county shall be considered emissions reductions credit if the county is later determined to be a nonattainment county.

(i)  Notwithstanding the vehicle replacement requirements provided by Subsection (d)(2), the commission by rule may provide monetary or other compensatory assistance under the [~~low-income~~] vehicle repair and replacement incentive [~~assistance, retrofit, and accelerated vehicle retirement~~] program, subject to the availability of funds, for the replacement of a vehicle that meets the following criteria:

(1)  the vehicle is gasoline-powered and is at least 10 years old;

(2)  the vehicle owner meets applicable financial eligibility criteria;

(3)  the vehicle meets the requirements provided by Subsections (e)(1) and (2); and

(4)  the vehicle has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(j)  The commissioners court of a participating county [~~commission~~] may provide monetary or other compensatory assistance under the [~~low-income~~] vehicle repair and replacement incentive [~~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 the commission; provided, however, that a replacement vehicle under this subsection must be a qualifying motor vehicle.

SECTION 6.  Sections 382.210(a), (b), and (f), Health and Safety Code, are amended to read as follows:

(a)  The commission by rule shall adopt guidelines to assist a participating county in implementing a [~~low-income~~] vehicle repair [~~assistance, retrofit,~~] and replacement incentive [~~accelerated vehicle retirement~~] program authorized under Section 382.209. The guidelines at a minimum shall recommend:

(1)  a minimum and maximum amount for repair assistance;

(2)  a minimum and maximum amount toward 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 [~~$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 [~~$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 [~~$3,500~~] for a replacement vehicle of the current model year or the previous three model years that:

(i)  is a hybrid vehicle, electric vehicle, or natural gas vehicle; or

(ii)  has been certified to meet federal Tier 2, Bin 3 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

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

(A)  [~~the vehicle owner's income, which may not exceed 300 percent of the federal poverty level;~~

[~~(B)~~]  the fair market value of the vehicle; and

(B) [~~(C)~~]  any other relevant considerations;

(4)  safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

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

(A)  the amount of money the vehicle owner has spent on repairs; and

(B)  [~~the vehicle owner's income; and~~

[~~(C)~~]  any other relevant factors.

(b)  A replacement vehicle described by Subsection (a)(2) must:

(1)  except as provided by Subsection (c), be a vehicle in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(2)  have a gross vehicle weight rating of less than 10,000 pounds;

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

(4)  be a vehicle the total purchase price [~~cost~~] of which does not exceed:

(A)  for a vehicle described by Subsection (a)(2)(A) or (B), $35,000; or

(B)  for a vehicle described by Subsection (a)(2)(C), $45,000.

(f)  For the purposes of Subsection (b), a reference to the total purchase price of a motor vehicle that is sold [~~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 the Texas Department of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.

SECTION 7.  Section 382.211(a), Health and Safety Code, is amended to read as follows:

(a)  The commissioners court of a participating county may 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 [~~low-income~~] vehicle repair [~~assistance, retrofit,~~] and replacement incentive [~~accelerated vehicle retirement~~] program, including the identification of a vehicle make or model with intrinsic value as an existing or future collectible.

SECTION 8.  Section 382.212(b), Health and Safety Code, is amended to read as follows:

(b)  To the extent allowable under federal law, the commission by rule shall 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 [~~low-income~~] vehicle repair [~~assistance, retrofit,~~] and replacement incentive [~~accelerated vehicle retirement~~] program;

(2)  the transferability of an assigned emissions reduction credit;

(3)  the use of emissions reduction credit by the holder of the credit against any state or federal emissions requirements applicable to a facility owned or operated by the holder of the credit;

(4)  the assignment of a percentage of emissions reduction credit, on the retirement of a fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle, to the owner or lessor of the vehicle; and

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

SECTION 9.  Section 382.213(a), Health and Safety Code, is amended to read as follows:

(a)  Except as provided by Subsection (c) and Subdivision (5) of this subsection, a vehicle retired under a vehicle repair and replacement incentive program established under [~~an accelerated vehicle retirement program authorized by~~] Section 382.209 may not be resold or reused in its entirety in this or another state. Subject to the provisions of Subsection (i), the automobile dealer who takes possession of the vehicle must submit to the program administrator proof, in a manner adopted by the commission, that the vehicle has been retired. The vehicle must be:

(1)  destroyed;

(2)  recycled;

(3)  dismantled and its parts sold as used parts or used in the program;

(4)  placed in a storage facility of a program established under Section 382.209 and subsequently destroyed, recycled, or dismantled and its parts sold or used in the program; or

(5)  repaired, brought into compliance, and used as a replacement vehicle under Section 382.209(d)(2).

SECTION 10.  Section 382.214, Health and Safety Code, is amended to read as follows:

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

(b)  Sale of a vehicle described by Subsection (a) [~~in an accelerated vehicle retirement program~~] includes:

(1)  sale of the vehicle to retire the vehicle under the program; and

(2)  sale of a vehicle purchased for retirement under the program.

SECTION 11.  Section 382.216, Health and Safety Code, is amended to read as follows:

Sec. 382.216.  INCENTIVES FOR VOLUNTARY PARTICIPATION IN VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. The commission, the Texas Department of Transportation, and the Public Safety Commission may, subject to federal limitations:

(1)  encourage counties likely to exceed federal clean air standards to implement voluntary:

(A)  motor vehicle emissions inspection and maintenance programs; and

(B)  [~~low-income~~] vehicle repair [~~assistance, retrofit,~~] and replacement incentive [~~accelerated vehicle retirement~~] programs;

(2)  establish incentives for counties to voluntarily implement motor vehicle emissions inspection and maintenance programs and [~~low-income~~] vehicle repair [~~assistance, retrofit,~~] and replacement incentive [~~accelerated vehicle retirement~~] programs; and

(3)  designate a county that voluntarily implements a motor vehicle emissions inspection and maintenance program or a [~~low-income~~] vehicle repair [~~assistance, retrofit,~~] and replacement incentive [~~accelerated vehicle retirement~~] program as a "Clean Air County" and give preference to a county designated as a Clean Air County in any federal or state clean air grant program.

SECTION 12.  Section 382.302(e), Health and Safety Code, is amended to read as follows:

(e)  A participating county may participate in a local initiatives [~~the~~] program established under Section 382.2085 [~~382.209~~].

SECTION 13.  Section 382.202(g), Health and Safety Code, is repealed.

SECTION 14.  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.  As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality and the Public Safety Commission shall:

(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.  This Act takes effect September 1, 2019.