

SUBJECT: Three-month suspension of the vehicle emissions inspection program

COMMITTEE: Select Committee on SB 19

VOTE: 5 ayes — Davis, Hamric, Harris, Horn, Price

2 nays — Chisum, Gray

2 present, not voting — Saunders, Moreno

SENATE VOTE: On final passage, January 16 — 31-0

WITNESSES: For — Norma Chavez, Independent Garage Station Owners; Jim Terrel, North Texas Mobil Dealers; Michael Nowels, North Texas Mobil Dealers and Independent Repair Shops; Ray Cornett, Texas Assessor Collectors Association.

Against — Bob Miller, Brad Laughlin, Darrell David and David Sokolow, Tejas Testing Technology; Bob Paul, The Allen Group-Marta Technologies; Peggy Roark, operating contractors for Tejas Testing Technology; David Harris, Environmental Testing, Inc.; Rick Lucero, operator-owners of emissions stations in Dallas, Fort Worth and Houston; Wade Thomason, American Lung Association; Ken Kramer, Sierra Club; Robert Williams, Donald Mansfield, Rick Sharbrough, Automobile Service Association of Texas; Bob Marwill, The Cadence Group; Ray Moon, Beechnut Auto Repair, Glenn Young.

On — John Hall, Texas Natural Resource Conservation Commission; Stanley Meiburg, Environmental Protection Agency; James Woodrick, Texas Chemical Council; Jim Sewell, Associated General Contractors; Cindy Morphey, Texas Mid-Continent Oil and Gas Association; Steven Smith, S.A. Smith Contracting, Inc.

BACKGROUND: This month the state began a program of mandatory vehicle-emissions testing in four Texas metropolitan areas identified by the federal Environmental Protection Agency (EPA) as needing to reduce air pollution.

The program requires vehicle owners to have vehicles tested for emissions every other year in order to register the vehicle. The program was designed to conform to requirements of the federal Clean Air Act.

In the 1990 Clean Air Act Amendments Congress required states to comply with federal air pollution standards or risk losing federal funds and control over their environmental regulatory programs. The EPA sets limits for designated air pollutants. Areas in which any pollutants exceed the limits are designated "nonattainment" areas. These areas become subject to an EPA-approved state air quality plan to reduce air pollution, initially by about 15 percent, with further reductions required to offset pollution from increased population and growth.

Nonattainment areas are designated as moderate, serious, severe or extreme. Texas nonattainment areas directed to curb air pollution starting in 1995 are Houston/Galveston (severe); Dallas/Fort Worth (moderate); Beaumont/Port Arthur/Orange (serious); and El Paso (serious).

To meet EPA requirements the Legislature in 1991 authorized state agencies to establish a vehicle inspection and maintenance program to start January 2, 1995, in Houston/Galveston, Dallas/Fort Worth and Beaumont/Port Arthur/Orange, and February 1995 in El Paso. Tejas Testing Technology Inc., a Dallas-based unit of Systems Control Inc. of Sunnyvale, California, was hired under contract to run the programs in three areas. Marta Technologies, Inc., of Tennessee, a subsidiary of The Allen Group Inc., of Beechwood, Ohio, is the contractor for El Paso.

EPA has amended its position on several testing issues. On January 19, 1995, EPA representatives met with Texas lawmakers and announced that the state could suspend implementation of its air emissions program for three months without penalty. Another change, announced in December, may allow states to obtain full Clean Air Act credit for programs that use inspection stations offering services in addition to emission inspections, provided their program includes additional pollution reduction measures. Previously, full credit was extremely difficult to obtain unless inspection-only stations were used.

The Clean Air Act requires the Texas nonattainment areas to reduce

volatile organic compounds (VOC), the major component of ozone smog. El Paso is also a nonattainment area for two other pollutants: particulate matter (inhalable matter including soot, smoke, dust and industrial emissions), and carbon monoxide. In El Paso, pollution from neighboring Ciudad Juarez, in Mexico, adds to the mix. The pollution reductions required for El Paso County make allowances for this problem. Other areas whose air quality approaches nonattainment under the Clean Air Act include Austin, San Antonio, Corpus Christi, Longview/Tyler/Marshall and Victoria. The following chart shows pollution sources in the four non-attainment areas:

VOC Pollution Sources in Non-Attainment Areas				
Non-attainment areas	motor vehicles	large industry	small business	off-road
Houston/Galveston	15%	45%	22%	18%
Dallas/Fort Worth	38%	12%	32%	18%
Beaumont/Port Arthur/ Orange	6%	74%	10%	10%
El Paso	35%	13%	37%	14%

Source: The Texas Natural Resource Conservation Commission (1990 emissions inventory)

The Texas Natural Resource Conservation Commission (TNRCC), which administers the Clean Air Act, has developed a number of pollution control strategies. A severe nonattainment area (like Houston) is required to implement an enhanced emission inspection program and a Stage II vapor recovery program and to use reformulated gasoline. Large employers in Houston were initially required to implement programs to reduce the number of vehicles driven by their employees to work, but the program has become essentially voluntary.

The Texas vehicle emissions testing program requires that all 1968 and newer gasoline-powered vehicles be inspected at special emission testing facilities every two years. Older vehicles generally must satisfy pollution standards in place at the time they were built. Inspection is a prerequisite

for renewal of the vehicle license plate. The test fee may range from \$15 to \$23. Vehicles manufactured in odd-numbered years are tested in odd-numbered years; vehicles manufactured in even-numbered years are tested in even-numbered years. Vehicles that do not pass the emissions test must be repaired. Required repairs are capped by a dollar amount, which, when reached, entitles an owner to a two-year waiver. Low income citizens may be given two years to make repairs.

Vehicle Emissions Test Fees and Waiver Requirements		
Non-attainment areas	Emission test fees	Amount required to be spent on vehicle repair before a two-year waiver can be granted
Houston/Galveston	\$23	\$150 (\$450 by 1998)
Dallas/Fort Worth	\$21	\$150 on 1981 or newer vehicles (\$200 by 1998) \$75 on 1980 or older vehicles
Beaumont/Port Arthur/ Orange	\$15	\$150 on 1981 or newer vehicles (\$200 by 1998) \$75 on 1980 and older vehicles
El Paso	\$22	\$150 (\$450 by 1998)

Source: The Texas Natural Resource Conservation Commission

DIGEST:

SB 19 would prohibit initiation of a state vehicle emissions inspection and maintenance program for 90 days from the date the bill takes effect. State agencies would be required to immediately suspend the operation of such a program. The bill would take immediate effect if approved by a two-thirds vote of the membership of the House and the Senate.

SUPPORTERS SAY:

The Legislature should direct state agencies to delay a cumbersome, ill-conceived emissions testing program for three months so a more rational approach to pollution control can be devised. The current program casts too broad a net, inconveniencing all drivers to catch a few polluters. Preliminary study has shown that only one out of five cars will fail the

emissions test. A delay would not materially affect air pollution in Texas, nor harm Texans who suffer from respiratory illness.

The current program is unlikely to significantly improve air quality. The monetary cap on repairs means that even though car owners are required to spend time and money on repairs, their cars may emit just as much pollution as before, until the next test. Lawmakers need time to devise a solution that will maximize air pollution reduction while minimizing the bother to the motoring public. The EPA has announced that it will delay enforcement during a three-month suspension.

This bill would give immediate relief to motorists with odd-numbered year vehicles whose license tags are expiring in January and who are unsure whether or not they have to comply with the program. Federally mandated clean air measures were recently relaxed in California, and Texas can expect similar treatment. Congress is likely to modify the Clean Air Act and may eliminate mandatory emissions testing. Texas should wait to see what happens on the federal level before implementing this expensive, burdensome program. The EPA rarely imposes sanctions, and suspending the program would allow the state to take full advantage of the flexibility that EPA has recently signaled.

A three-month delay would not terminate or violate the state's contract with the companies hired to do the testing. The contract with Tejas Testing calls for negotiation and mediation in the event of a change that would materially increase or decrease the cost to the managing contractor. A delay would involve payment of only limited compensation, and perhaps only renegotiation at no cost to the state. The bill would not cause a change that "amounts to termination" under the contract.

Even if the contractor sought, and the courts allowed, compensation, the Legislature would still ultimately decide whether or not to appropriate the money. Some TNRCC officials say the contract can be amended, with no penalty to the state, if the change is required by the Legislature, a court or the EPA. An escape clause in the contract with Tejas Testing allows the Legislature to change the contract without liability to the state.

If the Legislature did provide monetary compensation for the contractor, the cost could be offset by use of the firm's assets in future programs. Furthermore, it may be possible to recover any costs from the EPA or the federal government.

The state has to keep the best interests of all citizens in mind, not the interests of a contractor whose program is in need of adjustment. The contractor and its creditors knew changes were possible and decided to take the risk. The potential impact of layoffs is overstated because most of Tejas Testing's employees are part-time only.

The state needs to explore legislation creating alternatives to the current testing scheme, which has vehicle owners in the affected areas up in arms. The inspection fees, up to \$23, are too high. Poor people with old cars are doubly penalized, paying for costly, inefficient repairs and spending a larger share of their income on inspections than others have to spend.

Because inspections are performed at only a few stations, separate from where vehicles are safety-inspected, sold or serviced, long lines and delays have developed. Only 27 testing sites serve all of Houston, and their hours are limited. One of the alternatives that should be studied during the moratorium period would be to establish testing sites at car dealerships, automobile repair shops and sites authorized to do state inspections, as a convenience to drivers.

New technologies could reduce cost and inconvenience. A remote sensing device can measure tailpipe emissions while a vehicle is moving so only those cars that actually pollute are stopped. The Bar 90 program, a precursor testing program established in Dallas, Tarrant and El Paso counties until December of 1994, provided effective annual testing when a car was brought in for safety inspection. The test effectively identified the worst polluters, responsible for a large proportion of the pollution. Many small businesses invested in Bar 90 equipment and are still paying for it.

**OPPONENTS
SAY:**

The state should not back away from a legitimate, carefully planned testing program it devised to save lives and reduce disease. The American Lung Association estimates that nearly 2 million Texans have chronic lung diseases, including bronchitis, emphysema and asthma, that are exacerbated

by air pollution. Pollution causes thousands of unnecessary deaths a year in Texas, especially among the youngest and oldest residents. Children are particularly at risk because they take in more air per pound of body weight and are less able than adults to tolerate poisons. Houston has the second highest level of pollutants among U.S. cities.

There is no reason to suspend emissions testing while considering whether to change the program. Legislators can modify the program without losing the benefits of cleaner air, risking financial penalties and bankrupting small businesses.

The testing program is a step toward solving a huge public health program, and avoiding federal penalties, and should not be suspended. If reductions in air pollution in nonattainment areas are not achieved, the state could face a loss of almost a billion dollars in federal highway funds, and restrictions on state spending for state and local road systems. The EPA may have agreed to defer penalties for three months, but eventually Texas will have to get serious about reaching air pollution reduction goals. The sooner reduction begins, the greater the likelihood the state will escape federal sanctions. Unless Congress raises pollution restrictions, which may not happen, the state must implement emissions testing.

If auto emissions are not curbed, the State Implementation Plans (SIPS) will have to be redrawn, and businesses and industry will bear the brunt of costly regulations to ensure the required reductions in air emissions.

A delay in the testing program at this point would amount to a termination of the contract with the testing company. The Legislature is statutorily and constitutionally prohibited from impairing contracts and taking private property without compensation. It also has a moral and ethical responsibility to honor its contractual obligations. If the testing program is delayed by this bill, the state could face a barrage of expensive liability lawsuits and be forced to appropriate money to compensate Tejas Testing. Failure to meet such an obligation would damage the state's reputation with the business and financial community. The Legislative Budget Board's revised fiscal note for SB 19 warns of the danger of litigation over the contracts.

If the contract is terminated without the fault of the contractor, the contract allows Tejas to recover its start-up costs and other expenses incurred in reliance on the contract. The contract also gives Tejas the opportunity to seek additional compensation representing a return on its investment. Furthermore, a state agency (now TNRCC) contractually obligated itself to "take all necessary steps to request such funding from the Legislature." While the Legislature would ultimately decide whether or not to appropriate the funds for compensation, the need to guard the state's reputation for financial reliability would weigh heavily in such a decision.

The contractors for the tests in progress, and many small subcontractors who are dependent on them, will go bankrupt if the program is suspended for three months. Many of these contractors are HUBS (Historically Underutilized Businesses), and they employ thousands of workers. A delay would cause layoffs and create a need for expensive retraining.

Delaying or terminating the contract would damage the lenders supporting the contractor. Tejas Testing, hired to run programs in the Dallas and Houston areas, reports having spent \$100 million on the project. The firm says it will have to default on its loans if Texas halts the program. The state must guard its own bond rating and avoid contributing to higher interest rates. If TNRCC assumes the contractor's assets, as the contract may require, disposing of them would be difficult in the tangle of lawsuits and bankruptcies that would ensue.

The testing program is by far the most accurate, fraud-resistant, least expensive (per ton of pollutant) program available to greatly reduce vehicle emissions. The program was not ill conceived. It was carefully drafted after numerous hearings and substantial input from legislators, the public and affected industries. It has been held up as a model program by other states. The tests usually take about 10 minutes and cost no more than \$23 every two years. Testing sites are within five miles of 80-90 percent of the population tested.

Experience in other states shows that costs rise when tests and repairs are performed at the same site. Tests performed under the Bar 90 program are not as effective, and there was counterfeiting and fraud associated with

some Bar 90 inspections. The EPA does not give as much credit for the program as for the I/M 240 program used by Tejas Testing.

No more than 20 percent of vehicles tested need repairs, and this program, paid for from user fees, is the best way to find them. Remote sensing devices to measure tailpipe emissions while a vehicle is moving are not capable of identifying many commonly occurring emissions, and studies show they have a high false failure rate. Most required repairs under the current emission program can improve gas mileage by 13 percent, and hardship waivers and extended repair periods are available for the poor. Non-centralized testing at garages or dealerships could lead to questionable charges for a repair whose effect on lowering emissions may often be undetectable by the customer.

NOTES:

Since the House committees for the 74th Legislature have not yet been named, Speaker Laney on January 23 appointed a select committee to hear SB 19. House Rule 1, sec. 16, allows the speaker by proclamation to appoint select committees for special purposes.

A related bill, SB 178 by Whitmire, which would delay operation of the vehicle emissions inspection and maintenance program until January 2, 1997, was referred to the Senate Special Committee on Emissions and Clean Air, named by Lt. Gov. Bullock on January 23. Members are Sens. Whitmire (chair), Brown, Galloway, Leedom and Rosson.