

SUBJECT: Incentives for and the regulation of biofuel production and distribution

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 6 ayes — Miller, Anderson, B. Brown, Aycock, Garcia, Heflin
0 nays
1 absent — Gallego

WITNESSES: For — Debbie Hastings, Texas Oil and Gas Association; Christine Herbert, National Biodiesel Board; Jeff Trucksess, Green Earth Fuels/Biodiesel Coalition of Texas (*Registered, but did not testify*: Charles Fiedler, Biodiesel Industries/Biodiesel Coalition of Texas; Mike Nasi, Biodiesel Coalition of Texas)

Against — Rachel Fischer, Public Citizen

On — Bill Oswald, Texas Oil and Gas Association/Koch Industries; David Schanbacher, Texas Commission on Environmental Quality (*Registered, but did not testify*: Steve Perry, Chevron USA)

BACKGROUND: Under federal law, Texas must comply with U.S. Environmental Protection Agency (EPA) air-quality standards to reduce ground-level ozone in non-attainment and near non-attainment areas. The State Implementation Plan (SIP) outlines Texas' strategy to reach compliance in these areas. Much of the SIP focuses on the reduction of nitrogen oxide (NO_x) emissions, the main component of ozone.

The state's fuel ethanol and biodiesel production incentive program distributes grants amounting to 20 cents for each gallon of fuel ethanol and biodiesel produced. A producer may not receive grants for more than 18 million gallons of fuel ethanol or biodiesel produced. As outlined in ch. 16 of the Agriculture Code, biodiesel is defined as a substance derived from vegetable oils, animal fats or renewable lipids, meeting certain requirements. Fuel ethanol consists of ethyl alcohol with at least 99 percent purity, produced exclusively from agricultural products or by-products or municipal solid waste.

DIGEST: CSHB 3168 would prohibit a state agency from imposing a more stringent rule than federal law to restrict production or distribution of biodiesel or fuel ethanol.

After May 1, 2009, the prohibition would not apply to a rule of the Texas Commission on Environmental Quality (TCEQ) if the commission determined that emissions generated by fuel ethanol or biodiesel jeopardized SIP compliance.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 3168 would promote the continued use of biodiesel but enable future restrictions on its use if studies showed that biodiesel served as a source of NO_x emissions. Biodiesel represents a safe, renewable, and biodegradable fuel source that can be locally produced. Due to its many benefits, certain state programs promote the production and distribution of biodiesel. However, concern exists that biodiesel emissions may increase NO_x levels and reduce the state's ability to comply with its SIP. The bill would seek a balance between these competing concerns.

By prohibiting enactment of more stringent rules over the next two years, CSHB 3168 would promote biodiesel production in the short term. This would be consistent with the state's encouragement of biodiesel production through the fuel ethanol and biodiesel incentive production program. Even with such a program, Texas is falling behind other states in fuel ethanol and biodiesel production. The promotion and distribution of biodiesel should not be curtailed, as this renewable fuel type provides a reliable means of meeting the growing demand for fuel. The reduction of harmful air contaminant emissions, other than NO_x, serves as another benefit of biodiesel over conventional fuel.

If biodiesel emissions proved to have an adverse impact on NO_x levels, TCEQ could regulate accordingly in 2009. Moreover, if the federal government imposed stricter standards on biodiesel or fuel ethanol in the meantime, TCEQ also could adopt more stringent requirements. The EPA believes biodiesel may increase NO_x levels. This poses special concern in near non-attainment and non-attainment areas, where efforts are underway to reduce NO_x emissions. Due to the state's effort to meet its SIP, TCEQ often must impose strict air emissions standards. As the effect of biodiesel

on NOx emissions remains undetermined, testing is underway to determine the impact of biodiesel on NOx levels. Answers are expected within the next two years, coinciding with the date included in CSHB 3168 on which TCEQ would be permitted to regulate biodiesel usage accordingly.

**OPPONENTS
SAY:**

If evidence existed that biodiesel may negatively impact ground-level ozone, its use and the incentives for its production and distribution should be terminated. Complying with SIP requirements is an important state objective that should not be compromised.