

SUBJECT: Air quality enhancement programs, including energy efficiency standards

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Bonnen, Hancock, Driver, Kuempel, West
0 nays
2 absent — Lucio, T. King

SENATE VOTE: On final passage, March 21 — 29-0

WITNESSES: For — Robert Babik, General Motors; Audrey Barrett, Public Citizen; Mike Eastland, North Central Texas Council of Governments/North Texas Clean Air Steering Committee; Rafael “Ralph” Marquez, Greater Houston Partnership/Greater Dallas Chamber of Commerce/Fort Worth Chamber of Commerce/TCAWG; Luke Metzger, Environment Texas; Adele Noel, Travis County; Cyrus Reed, Lone Star Chapter of the Sierra Club; Ken Roche, Gulf States Toyota; Tom “Smitty” Smith, Public Citizen; Michael Vasquez, Texas Conference of Urban Counties; (*Registered, but did not testify*: Ramon Alvarez, Environmental Defense; Walt Baum, Association of Electric Companies of Texas; Jeffery Clark, American Electronics Association; Ron Gafford, Greater Dallas Chamber; Gary Gibbs, American Electric Power; Debbie Hastings, Texas Oil and Gas Association; Sandy Hentges, Greater Austin Chamber of Commerce; Elena Marks, City of Houston; James Mathis, Dupont; James McCarley, Dallas Regional Mobility Coalition; Mary Miksa, Texas Association of Business; Julie W. Moore, Occidental Petroleum Corporation; V.A. Stephens, Texas Association of Manufacturers; Julie Williams, Texas Propane Gas Association; Christina Wisdom, Texas Chemical Council; Greg Dana)

Against — None

On — (*Registered, but did not testify*: David Schanbacher and Glenn Shankle, Texas Commission on Environmental Quality)

BACKGROUND: **SIP.** The State Implementation Plan (SIP) constitutes Texas' plan for complying with federal air-quality standards in areas that have been designated as ozone non-attainment zones by the U.S. Environmental Protection Agency (EPA). Areas not in compliance with EPA's eight-hour ground-level ozone requirements include Houston-Galveston-Brazoria, Dallas-Fort Worth, San Antonio, and Beaumont-Port Arthur. Much of the SIP focuses on reducing emissions of nitrogen oxide (NO_x), a precursor to ozone formation. For each ozone non-attainment area, the SIP outlines the state's plan to reduce NO_x emissions by a specified number of tons per day to comply with EPA standards. Near-non-attainment areas meet current federal standards but are at risk of violating such standards. These areas voluntarily can submit an Early Action Compact (EAC), which is utilized to develop SIP strategies to meet the eight-hour ozone standard.

Texas operates a vehicle emissions inspection program as part of its SIP. The program requires emissions testing of vehicles registered in the state's ozone non-attainment areas. By requiring vehicles in these counties to meet emissions standards, the state earns credit toward emissions reductions required by the SIP.

LIRAP. The 77th Legislature in 2001 created the Low Income Vehicle Assistance, Retrofit and Accelerated Vehicle Replacement Program (LIRAP) through the enactment of HB 2134 by Chisum. Administered by the Texas Commission on Environmental Quality (TCEQ), this program provides financial assistance for low-income vehicle owners who fail the emissions test. Eligible owners must have a household income at or below 200 percent of the federal poverty level. A vehicle is eligible for LIRAP if it:

- failed an emissions test within 30 days of applying for the program;
- has been registered in the county for at least one year;
- can be driven under its own power to the emissions inspection station or disposal facility; and
- passed the vehicle safety inspection.

Near non-attainment areas and non-attainment areas subject to SIP requirements can use LIRAP money to fund projects to improve air quality. The program provides up to \$600 to repair or retrofit a vehicle to bring it into compliance with emissions standards. If repair or retrofit is uneconomical, LIRAP provides between \$600 and \$1,000 toward the purchase of a replacement vehicle.

TERP. The 77th Legislature in 2001 enacted SB 5 by Brown to create the Texas Emissions Reduction Plan (TERP). This incentive-based program is designed to reduce ozone emissions in affected areas without implementing more stringent regulatory measures. Managed by TCEQ, TERP programs earn the state credit in the SIP for reducing NO_x emissions. Counties in non-attainment and near-non-attainment areas are eligible for specific TERP incentive programs under SB 5. TERP and its funding sources are set to expire in 2010.

TERP's primary incentive program is the Emissions Reductions Incentive Grant (ERIG) program. This program provides grants to reduce NO_x emissions from high-emissions diesel sources in affected counties. Grants can be used to fund new purchases, replacements, retrofit technologies, and qualifying fuels. To qualify for the program, a project must spend at least 75 percent of vehicle miles traveled or hours of operation in a non-attainment area or affected county. TCEQ cannot award a grant for a proposed project exceeding the cost-effectiveness of \$13,000 per ton of NO_x emissions reduced in a non-attainment area of an affected county.

NTRD. As a component of TERP, the New Technology Research and Development Program (NTRD) provides financial incentives to support research, development, and commercialization of technologies to reduce pollution. The Texas Environmental Research Consortium (TERC), a non-profit organization based in Houston, is administering the NTRD Program from fiscal 2006 to fiscal 2007 under a contract with TCEQ.

Building energy performance standards. Under SB 5, the 77th Legislature in 2001 adopted the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2001, as Texas' energy code for single-family residential construction. The bill also led to the adoption of the International Energy Conservation Code, as it existed on May 1, 2001, as the state's energy code for all other residential, commercial, and industrial construction.

Under SB 5, each political subdivision in a non-attainment area or in an affected county, other than a school district, must implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Local Government Code, sec. 302.004(b) to reduce electricity consumption. Each political subdivision establishes a goal to reduce electricity consumption by 5 percent each year for five years. Efforts and progress are reported annually to the State

Energy Conservation Office (SECO). A subdivision that does not attain the 5 percent reduction goal must show that it has implemented all available measures.

Electronic products meeting certain federal standards for energy efficiency receive an Energy Star label. Introduced in 1992, the Energy Star program is jointly administered by the EPA and the U.S. Department of Energy.

DIGEST: CSSB 12 would amend various state programs with the objective of enhancing the state's air quality.

LIRAP

CSSB 12 would expand the income level for LIRAP funding eligibility. A vehicle owner with an income level of up to 300 percent of the federal poverty level would qualify for LIRAP funds.

Rules for the purchase of replacement vehicles under LIRAP would be modified. Vehicles purchased through LIRAP could not exceed a gross weight of 10,000 lbs. An eligible replacement vehicle would have to meet current emissions standards. Rules guiding the disbursement of LIRAP funds would be based on vehicle type and model year. The maximum amount of funding distributed under LIRAP could not exceed:

- \$5,000 for a hybrid-powered replacement vehicle made in the current year;
- \$3,000 for a gasoline-powered replacement vehicle made in the current year;
- \$3,500 for a hybrid-powered replacement vehicle made in the last five years;
- \$2,500 for a gasoline-powered replacement vehicle made in the last two years;
- \$2,000 for a gasoline-powered replacement vehicle made in the last three to five years; and
- \$1,500 for a gasoline-powered replacement vehicle made in the last five to 10 years.

Subject to the availability of funds, vehicles to be replaced under LIRAP would have to meet the following criteria:

- the vehicle would have to be at least 10 years old;
- the owner would have to meet applicable financial eligibility criteria;
- the vehicle would have to meet operation and registration requirements;
- the vehicle would be required to have passed a safety inspection or safety and emissions inspection within 15 months prior to submitting the application; and
- the vehicle would be required to have passed the EPA's Start-Up Acceleration Simulation Mode Standards emissions test but have failed the EPA's Final Acceleration Simulation Mode Standards emissions test or some other criterion determined by TCEQ.

CSSB 12 would include requirements for the dismantling of replaced vehicles. Mercury switches would have to be removed from the vehicle in accordance with the law. A dismantler could not allow the vehicle's emissions control equipment, power train, or engine to be resold in Texas. TCEQ would work with the steel industry and auto dismantlers to ensure that replaced vehicles were scrapped and not resold. A dealer who produced a proof-of-vehicle transfer to a dismantler would be exempt from a criminal or civil penalty for improper vehicle dismantlement.

TCEQ would be authorized to review and possibly modify current standards for NOx emissions. If a lower standard better served the state's public health and welfare, a new standard would be adopted, and LIRAP funds would be available to owners of vehicles that did not meet the prior, more stringent emissions standard.

Administrative procedures. Not more than 10 percent of money provided to a county participating in LIRAP could be used for program administration. Participating counties would have to develop an electronic method for distributing vehicle repair or replacement funds.

TCEQ would require qualifying individuals to submit certain documentation to auto dealers when purchasing a vehicle with LIRAP funds. Funding received through LIRAP would be used as a down payment on the replacement vehicle. Program participation by automobile dealers would be voluntary. However, only dealers located in Texas would be eligible to participate. TCEQ would work with participating automobile dealers to publicize information on LIRAP, with funding allocated for this purpose.

Local initiative projects. A county would be authorized to contract with certain entities, such as metropolitan planning organization or a council of governments, when implementing a vehicle emissions inspection program, LIRAP, or a local initiative project.

No more than \$10 million per year would be distributed through LIRAP to fund local initiative projects. A local initiative project would be implemented in consultation with TCEQ and would function in accordance with standards for funding usage and cooperation between local, state, and federal entities, as stipulated by the Uniform Grants and Contract Management Act. Examples of a local initiative project would include:

- AirCheck Texas Repair and Replacement Assistance Program;
- a program to remotely track vehicle emissions and notify the vehicle operator;
- TCEQ's smoking vehicle program;
- a project in coordination with local law enforcement officials to reduce the use of counterfeit state inspection stickers;
- a program to enhance transportation system improvements; and
- new air control strategies to assist local areas meet state and federal air quality standards.

Other LIRAP changes. Current vehicle inspection and maintenance requirements would be modified. A vehicle that was at least two years old and newer than model year 1980 would be subject to inspection and maintenance provisions. Hybrid motor vehicles would be included under such requirements.

The bill would establish civil penalties for a violation of the Texas Clean Air Act, as related to vehicle emissions. The Tax Code would be amended to deduct the monetary compensation distributed under LIRAP from the definition of "total consideration" or amount paid for a motor vehicle.

TERP

CSSB 12 would extend TERP to August 31, 2013. The surcharge imposed on the purchase of off-road, heavy-duty diesel equipment also would be extended to 2013, with certain modifications. Fees currently deposited to the Texas Mobility Fund would be deposited to the TERP fund after September 1, 2010.

CSSB 12 would expand the scope of eligibility for TERP funding to include projects with a maximum cost effective amount of up to \$15,000 per ton of NOx emissions reduced. Also, eligible projects would be required to spend at least 50 percent of the time, instead of 75 percent, in a non-attainment area or an affected county. TERP-funded projects involving vehicles and marine vessels could operate on selected roadways and waterways outside affected areas.

The bill would encourage the distribution of TERP funding for idle reduction technologies, which provide power to stationary vehicles or marine vessels normally supplied by the internal combustion engine of the vehicle or vessel. TCEQ could distribute funding to state agencies for idle reduction technologies. Such projects would involve the lease, purchase, or installation of idle reduction technologies on major highways in affected areas or on certain water routes. State agencies could charge reasonable fees for these services. Projects for non-road engines used in activities such as construction especially would be encouraged, with funding reserved for such projects.

Administrative procedures. TCEQ could hire necessary staff to streamline the grant application, reimbursement, and reporting processes. Under CSSB 12, the TERP fund would be administered by TCEQ instead of the comptroller. The commission would make information on TERP revisions available to the public 30 days, rather than 45 days, prior to the revision's implementation.

The commission would investigate various Internet procedures for submitting applications for rebate grants. An Internet-based application process would have to be implemented by June 1, 2008. Potential applicants would be notified of relevant changes.

NTRD. CSSB 12 would set certain priorities for grant distribution under the NTRD program, including the provision of funding for a testing facility to evaluate retrofits, add-ons, advanced technologies, and fuels. This project would be used to determine the effectiveness of such items in emissions reductions. A nonprofit organization or higher education institution based in Houston would receive funding to operate the testing facility.

Under the bill, TCEQ would supervise a certain nonprofit organization that currently receives NTRD funding. Not more than 10 percent of these

funds could be used for administrative costs by the nonprofit organization. TCEQ could contract certain duties to the nonprofit, which could include issuing and requesting NTRD project proposals. The commission would review the nonprofit organization's selection of grant recipients. CSSB 12 also would include standards for the nonprofit organization's board of directors.

Grants for low-emissions engines no longer would be subject to certain requirements, including TCEQ's air quality research priorities.

ENERGY EFFICIENCY STANDARDS

Buildings. If SECO determined that the latest provisions on energy efficiency in the International Residential Code and the International Energy Conservation Code resulted in improved commercial energy efficiency and air quality, the office would have to adopt the more stringent provisions. Parties with an interest in the adoption of energy efficiency codes — including builders, architects, engineers, government authorities, and environmental groups — would receive the opportunity to comment on the codes under consideration. CSSB 12 would set a timeframe for the implementation of such standards.

Energy efficiency programs for certain political subdivisions would be extended to include higher education institutions and state agencies. In consequence, these entities and school districts would implement measures to reduce electricity consumption by 5 percent each year for six years, beginning September 1, 2007. The bill would include reporting requirements and mandate assistance by SECO.

Equipment and appliances. Contingent upon availability and cost-effectiveness, TCEQ or another state agency would have to purchase equipment and appliances for state use that met or exceeded federal Energy Star standards. Also, TCEQ would assist state agencies in providing information and selecting products that met these standards.

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:

CSSB 12 would enhance various state programs designed to improve air quality in key areas of Texas. The state's deadline to comply with EPA air quality standards is set for 2010. Currently, several areas in Texas remain in noncompliance. In order to not jeopardize the loss of federal funding, the state must implement more aggressive measures to reduce NO_x emissions. By maximizing the potential of air quality programs approved under past legislative sessions, the bill more rapidly would improve the state's air quality, thereby removing non-attainment areas from noncompliance status.

Although LIRAP and TERP hold potential to improve the state's air quality, these programs have been underfunded and underutilized in the past. LIRAP and TERP merit the expansion afforded by CSSB 12. Certain modifications designed to increase program efficacy also are included in the bill. Improvements to these incentive-based programs would benefit both consumers and industry, representing a beneficial outcome for all of Texas.

Through the reduction of NO_x emissions, LIRAP and TERP are meaningful programs to protect the environment and health of Texas residents. Other than smog creation, NO_x emissions can contribute to acid rain, oxygen depletion in bodies of water, and global warming. Also, NO_x emissions result in health problems, such as asthma and emphysema, while also aggravating heart disease and damaging lung tissue. By bolstering LIRAP and TERP, the bill would help reduce future costs to the state in public health and environmental remediation.

Mobile-source emissions constitute an important component of the state's quest for improved air quality. In particular, old cars represent significant sources of NO_x emissions. In order to meet SIP requirements, Texas must accelerate the turnover of its automotive fleet and replace older vehicles with newer, cleaner cars. Older vehicles typically are driven by low-income individuals who cannot afford to purchase newer models. As a result, monetary incentives are needed to achieve the objective of removing old vehicles from the state's roadways. In this regard, LIRAP possibly is the most effective tool available to improve air quality. The bill aims to remove 50,000 polluting vehicles from state roadways by subsidizing Texans for the purchase of newer model vehicles.

Since the inception of LIRAP, program demand generally has been less than the supply of program funding. The bill would increase LIRAP

participation by authorizing TCEQ and participating automobile dealers to publicize information on the program. Other modifications to LIRAP also would serve to entice more vehicle owners to participate in the program. CSSB 12 would increase grant amounts for the purchase of replacement vehicles and expand eligibility requirements to include more vehicle owners in the program. Under the bill, a family of four with a \$60,000 annual income or less could qualify for a grant to buy a new car.

By encouraging more vehicle owners to participate in LIRAP, CSSB 12 would improve the program's effectiveness in reducing NOx emissions from automobiles. Funding currently is available in Clean Air Account no. 151 to carry out the proposed modifications. Since its enactment, LIRAP has brought in more money than it has spent assisting low-income vehicle owners. In fact, TCEQ only received \$11 million from the Clean Air Account No. 151 to facilitate LIRAP in fiscal 2006-07, leaving an account balance of approximately \$88.7 million at the end of fiscal 2007.

CSSB 12 would broaden the field of TERP-eligible projects and extend the TERP deadline to 2013, giving the program more time to achieve emission reductions to meet SIP compliance. Like LIRAP, much of the funding generated for TERP-related programs remains underappropriated and underutilized. The bill would give TCEQ greater authority to distribute TERP funds by transferring control of the fund from the comptroller to the agency. The bill also would expand the program's reach by broadening project eligibility requirements.

The bill reflects the availability of new technology. For instance, down payments on hybrid-powered vehicles would be available for reimbursement under LIRAP. Also, the bill attempts to address the concern of emissions by idling vehicles by prioritizing the installation of idle reduction technology. The technological developments that have occurred in recent years warrant these modifications to LIRAP and TERP.

CSSB 12 also would take important steps in increasing energy efficiency in Texas. New energy efficiency standards for buildings and appliances serve as an important means of reducing NOx emissions, enabling the state meet its reserve margin for energy production, and achieving cost savings for consumers. The bill's inclusion of equipment and appliances that meet federal Energy Star standards would spur the use of more efficient products. The inclusion of higher education and state agencies in

current energy efficiency programs would set an important example for reducing electric consumption.

OPPONENTS
SAY:

This bill promises many important benefits but should not be considered the state's main strategy for meeting compliance with federal air quality standards in non-attainment areas and affected counties. Incentive-based programs would not go far enough to achieve the necessary NO_x emission reductions. Moreover, power generation plants represent an estimated 27 percent of NO_x emissions and should be addressed in this omnibus air quality legislation.

More than just NO_x emissions must be considered in the state's efforts to improve air quality. Currently, El Paso fails to meet federal air quality standards for carbon monoxide and particulate matter. Outside of El Paso, several areas exhibit near-non-attainment status area in particulate matter. The incentive-based programs included under LIRAP and TERP should include carbon monoxide and particulate matter in their scope.

The Senate-passed version of SB 12 would permit SECO to establish minimum energy efficiency standards for certain appliances and prohibited the sale of such appliances until energy efficiency standards were met. It also included product certification and labeling standards for certain appliances. Energy efficiency standards would lead to a significant reduction in electricity consumption, resulting in cost savings for consumers. The establishment of such standards would not pose a fiscal hardship for the state. In fact, energy efficiency standards for certain appliances would help the state meet its reserve margin for energy production, thus reducing the need to build coal plants that negatively impact the state's air quality and public health. Moreover, increasing energy efficiency would create important environmental benefits, including improvements to the state's air and water quality. These provisions on product energy efficiency standards are important and should not be eliminated.

NOTES:

According to the Legislative Budget Board, CSSB 12 would result in a gain to the state of \$1.9 million in general revenue-related funds in fiscal 2008-09.

The House committee substitute would change the Senate-passed version of SB 12 in a number of ways. The committee substitute would:

- eliminate the requirement that a qualifying motor vehicle had not been subject to retail sale;
- establish certain standards for vehicle inspection and maintenance;
- require that counties use only 10 percent of LIRAP funding for program administration;
- amend the grant amounts for a replacement vehicle to \$2,500 for a gasoline-powered replacement vehicle and \$3,500 for a hybrid-powered replacement vehicle;
- repeal the requirement that a replacement vehicle's total cost be less than \$25,000;
- establish rules to prohibit the resale of the vehicle's power train;
- permit a county to contract with appropriate entities to implement a local initiative program;
- exempt dealers with a proof of vehicle transfer from civil or criminal penalties related to vehicle dismantlement;
- change the amount of funding geared to local initiative projects from \$5 million to \$10 million per fiscal year;
- amend requirements on time and location of projects receiving TERP funding;
- include marine vessels in funding provisions for idle reduction technology;
- maintain limits on funding for the Clean School Bus Program and the diesel purchase or lease incentive program;
- allow TCEQ to develop and implement an Internet-based application process for TERP;
- include new provisions pertaining to a certain nonprofit organization and TERP administration;
- set provisions for a certain higher education institution to conduct studies on the efficiency of technology implemented by grant recipients; and
- exempt political subdivisions, higher education institutions, and state agencies from reporting requirements if a subsequent report indicated no change in status.