

SUBJECT: Creating Texas Emissions Reduction Plan trust fund, extending fees

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 6 ayes — Lozano, Kuempel, Morrison, Reynolds, J. Turner, Zwiener
0 nays
3 absent — E. Thompson, Blanco, Kacal

WITNESSES: For — Kathy Barber, Caterpillar Inc.; Cyrus Reed, Lone Star Chapter Sierra Club; Sam Gammage, Texas Chemical Council; (*Registered, but did not testify*: June Deadrick, CenterPoint Energy; Christine Wright, City of San Antonio; Daniel LeFevers, Gas Technology Institute; Mark Vane, Husch Blackwell Strategies; Adrian Shelley, Public Citizen; Mia Hutchens, Texas Association of Business; Mark Vickery, Texas Association of Manufacturers; Windy Johnson, Texas Conference of Urban Counties; Vanessa MacDougal; Elisa Saslavsky)

Against — None

On — Elizabeth Sifuentez-Koch, Texas Commission on Environmental Quality; (*Registered, but did not testify*: Donna Huff, Texas Commission on Environmental Quality)

BACKGROUND: In 2001, the 77th Legislature created the Texas Emissions Reduction Plan (TERP) to provide financial incentives to eligible individuals, businesses, and government entities to reduce emissions from vehicles and equipment and help the state achieve federal Environmental Protection Agency air quality standards, or "attainment."

SB 1731 by Birdwell, enacted in 2017 by the 85th Legislature, extended TERP from August 31, 2019, to the last day of the fiscal biennium in which the state attained compliance with federal ambient air quality standards for ground-level ozone.

According to the Legislative Budget Board, the TERP account is estimated to have a balance of \$1.7 billion at the end of fiscal 2019 after receiving an estimated \$486.8 million in revenue in fiscal 2018-19.

The account is funded from certain fees and surcharges, including:

- a surcharge on certain off-road, heavy-duty diesel equipment, under Tax Code sec. 151.0515;
- a surcharge on the sale or use of an on-road diesel motor vehicle over 14,000 pounds, under Tax Code sec. 152.0215;
- an amount equal to certain revenue from vehicle title fees in nonattainment areas, transferred from the State Highway Fund to the TERP account under Transportation Code sec. 501.138;
- a surcharge on the registration of a truck-tractor or commercial motor vehicle, under Transportation Code sec. 502.358; and
- a fee for the inspection of a commercial motor vehicle, under Transportation Code sec. 548.5055.

The above surcharges and fees expire August 31, 2019.

DIGEST: CSHB 3745 would extend the assessment of surcharges and fees for the Texas Emissions Reduction Plan (TERP) and create the TERP trust fund.

Continuation of surcharges and fees. The bill would extend the expiration date of TERP surcharges and fees from September 1, 2019, to the last day of the fiscal biennium in which the state attained compliance with federal ambient air quality standards for ground-level ozone.

TERP trust fund. The bill would create the Texas Emissions Reduction Plan Fund as a trust fund outside the state treasury held by the comptroller and administered by the Texas Commission on Environmental Quality (TCEQ) as trustee. Money in the fund could be spent without legislative appropriation and used only to implement and administer TERP programs according to current law. Interest and other earnings on the balance of the fund would be credited to the fund.

The TERP fund would consist of:

- funds paid for nitrous oxide emissions in certain nonattainment areas;
- surcharges and fees assessed for TERP; and
- grant money recaptured under the Diesel Emissions Reduction Incentive Program and the New Technology Implementation Grant Program.

TCEQ would have to transfer the unencumbered balance of the TERP fund to the credit of the TERP account within 30 days after the end of each fiscal biennium.

The bill would not affect the balance of the TERP account remaining on September 1, 2019. The bill would make certain conforming changes to specify that the TERP account was labeled as an "account" in existing statutes, rather than as a "fund."

Effective date. Except as otherwise provided, the bill would take effect September 1, 2019.

SUPPORTERS
SAY:

CSHB 3745 would ensure that the full amount of the fees paid by Texans to the Texas Emissions Reduction Plan (TERP) were correctly used under state law. TERP provides funding for certain programs intended to improve air quality in regions designated as "nonattainment" areas by the federal Environmental Protection Agency (EPA), including Dallas, El Paso, Houston, and San Antonio. As the EPA continues to impose stricter ozone standards for ambient air quality, more areas of the state are considered to be in nonattainment, furthering the need for TERP.

TERP is funded by the collection of certain fees and surcharges on vehicle titles, heavy-duty vehicles and equipment, and the registration and inspection of commercial vehicles, which are deposited into a dedicated account. Appropriations are made from the dedicated account to each TERP program at the Legislature's discretion during the budgeting process. Because more funds are collected for TERP than are

appropriated, the TERP dedicated account has ballooned while certain TERP programs do not receive necessary funds and regions remain in nonattainment.

CSHB 3745 would ensure the continuation of TERP by extending the surcharges and fees dedicated to TERP until the end of the biennium in which every region of the state attained federal air quality standards. The bill also would end the funding gap between TERP revenue and appropriations by creating a new trust fund outside the state treasury and directing future TERP fees and surcharges to this fund. The balance of the trust fund could pay for TERP authorized programs without legislative appropriation. At the end of each biennium, unencumbered balances in the trust fund would be transferred to the dedicated account and would be available for certification of the budget.

Concerns that the bill could take money away from transportation projects are unfounded. Transfers from the State Highway Fund already are made to TERP; the bill simply would continue that funding stream until the state had gained attainment in all regions and the program expired. Further, while funds are required to be transferred from the State Highway Fund, an equal amount of revenue from the collection of certain vehicle title fees are directed to the Texas Mobility Fund and may be used for transportation projects.

**OPPONENTS
SAY:**

CSHB 3745 would extend the diversion of funds which could be used for necessary transportation projects in the state away from the State Highway Fund (SHF) to TERP. Between fiscal 2009 and 2017, about \$860 million was transferred from the SHF to TERP, and the yearly contribution from the fund will continue to grow annually based on historical patterns. The extension of this funding mechanism until the state attains national ambient air quality standards could mean that the diversion of SHF funds would continue indefinitely. Certain nonattainment areas of the state, such as El Paso, have air quality issues caused by an increasing population rather than existing manufacturing operations. There is no evidence that TERP programs will be able curb emissions given the state's rapidly increasing population, meaning that some areas of the state may never

reach attainment and the transfer of SHF funds to TERP would continue in perpetuity. If the bill passes, a total of \$1.4 billion could be transferred to TERP in the next 10 fiscal years, funds that have already been planned to be used for certain projects in the state's Unified Transportation Program.