

BILL ANALYSIS

Senate Research Center

C.S.S.B. 12
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Natural Resources
3/15/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Dallas-Fort Worth and Houston-Galveston-Brazoria areas of the State of Texas do not currently meet air quality standards for ozone, and the largest contributor to the formation of ozone in these two regions are mobile resources, such as personal automobiles and diesel engines found in construction equipment. Because federal law precludes state regulation of emissions from these sources, the State of Texas has developed the Texas Emissions Reduction Program (TERP) and the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), aimed at reducing these emissions. TERP is primarily designed to affect diesel engines, while LIRAP is intended to lessen emissions from personal automobiles. Currently, Texas does not meet federal air quality standards effective in 2010.

C.S.S.B. 12 increases the scope of both the TERP and the LIRAP programs to reduce emissions from mobile sources, increases the funding gap for grants under TERP, increases the number of individuals eligible for grants under LIRAP, and increases the amount of the grant for purchase of a new vehicle. C.S.S.B. 12 seeks to reduce statewide emissions from electrical generation units by providing for the updating of building energy codes, adopting appliance standards, and provide efficiency standards for school districts, institutions of higher education, state agencies, and governmental entities in counties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1.02 (Section 382.209, Health and Safety Code), SECTION 1.04 (Section 382.213, Health and Safety Code) and SECTION 1.10 of this bill.

Rulemaking authority is expressly granted to the State Energy Conservation Office in SECTION 3.01 (Section 388.003, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 1.03 (Section 382.210, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality (TCEQ) as the successor agency to TNRCC.]

ARTICLE 1. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

SECTION 1.01. Amends Section 382.003, Health and Safety Code, by adding Subdivisions (7-a), (9-a), (9-b), (10-a), and (10-b), to define "hybrid motor vehicle," "motor vehicle," "new motor vehicle," "qualifying new motor vehicle," and "retail sale."

SECTION 1.02. Amends Section 382.209, Health and Safety Code, by amending Subsections (b), (e), and (g), and adding Subsections (i) and (j), as follows:

(b) Provides that not more than 10 percent of the money provided to a local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (program) under this section may be used for the administration of the program, including program costs. Makes a nonsubstantive change.

(e) Provides that a vehicle is ineligible to participate in the program unless the replacement vehicle is a qualifying new motor vehicle, if the vehicle is to be retired under this subsection and Section 382.213 (Disposition of a Retired Vehicle), Health and Safety Code. Makes conforming changes.

(g) Deletes existing text authorizing the participating counties to agree to contract with any appropriate entity, including the regional metropolitan planning organization or council of governments, to implement a program under Section 382.217 (Use of Unexpended Vehicle Repair Assistance, Retrofit, and Retirement Money).

(i) Authorizes TCEQ by rule to provide monetary or other compensatory assistance under the program, if funds are available, for the replacement of a vehicle if the vehicle is gasoline-powered and is at least 10 years old, the vehicle owner meets applicable financial eligibility criteria, the vehicle meets the requirements provided by Subsections (e)(1) and (2), and the vehicle has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within 15 months before the application is submitted, notwithstanding the vehicle replacement requirements provided by Subsection (d)(2).

(j) Authorizes TCEQ to provide monetary or other compensatory assistance under the program for a replacement vehicle or replacement assistance for a vehicle with a model year earlier than 1996 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 Start-Up Acceleration Simulation Mode Standards emissions test or some other criterion determined by TCEQ, provided that a replacement vehicle under this subsection is required to be a qualifying new motor vehicle.

SECTION 1.03. Amends Section 382.210, Health and Safety Code, as follows:

Sec. 382.210. New heading: IMPLEMENTATION GUIDELINES AND REQUIREMENTS. (a) Requires TCEQ, by rule, to adopt guidelines to assist a participating county in implementing a program authorized under Section 382.209, and requires that the guidelines recommend a minimum and maximum amount toward purchase price of a replacement vehicle qualified for the accelerated retirement program, with the maximum amount not to exceed \$2,500 or, if the replacement vehicle is a hybrid motor vehicle, \$3,500. Requires the guidelines to recommend criteria for determining eligibility taking into account the vehicle owner's income not in excess of 300 percent of the federal poverty level.

(b) Requires that a replacement vehicle described by Subsection (a)(2), except as provided by Subsection (c), be 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, have a gross vehicle weight rating of less than 10,000 pounds, and be a vehicle the total cost of which does not exceed \$25,000.

(c) Authorizes TCEQ to adopt any revisions made by the federal government to emissions standards described by Subsection (b)(1).

(d) Requires a participating county to provide an electronic means for distributing vehicle repair or replacement funds once all program criteria with regard to the repair or replacement have been met. Requires the county to ensure that funds are transferred to a participating dealer under this section not later than one business day after the date of sale of the replacement vehicle.

(e) Requires TCEQ, in rules adopted under this section, to require a mandatory procedure that provides certain information to a person eligible to purchase a new vehicle under this chapter and a participating dealer.

(f) Defines "total cost."

SECTION 1.04. Amends Section 382.213, Health and Safety Code, by amending Subsection (a) and adding Subsections (d) through (i), as follows:

(a) Requires an automobile dealer who takes possession of a vehicle retired under an accelerated retirement program to submit proof that the vehicle has been retired, in a manner adopted by TCEQ, to the program administrator, subject to the provisions of Subsection (i).

(d) Requires the dismantler of a vehicle to scrap the emissions control equipment and engine, notwithstanding Subsection (a)(3). Requires the dismantler to certify that the equipment and engine have been scrapped and not resold into the marketplace. Provides that a person who causes, suffers, allows, or permits a violation of this subsection or of a rule adopted under this section is subject to a civil penalty for each violation under Subchapter D, Chapter 7, Water Code. Provides that for purposes of this subsection, a separate violation occurs with each fraudulent certification or prohibited resale.

(e) Authorizes vehicle parts unrelated to emissions control equipment or the engine to be resold in any state, notwithstanding Subsection (d).

(f) Requires any dismantling of vehicles or salvaging of steel under this section to be performed at a facility located in the State of Texas.

(g) Requires the dismantler to remove any mercury switches in accordance with state and federal law in dismantling a vehicle under this section.

(h) Requires TCEQ to adopt rules defining "emissions control equipment" and "engine" for the purposes of this section.

(i) Provides that a dealer is not civilly or criminally liable if the dealer produces proof of the transfer of the replaced vehicle by the dealer to a dismantler, notwithstanding any other provisions of this section. Provides that the defense provided by this subsection is not available to a dealer who knowingly and intentionally conspires to violate this subsection.

SECTION 1.05. Amends Subchapter G, Chapter 382, Health and Safety Code, by adding Section 382.219, as follows:

Sec. 382.219. PURCHASE OF REPLACEMENT VEHICLE; AUTOMOBILE DEALERSHIPS. (a) Authorizes an amount described by Section 382.210(a)(2) to be used as a down payment for the purchase of a replacement vehicle.

(b) Requires a participating automobile dealer to be a dealer located in the State of Texas. Provides that no dealer is required to participate in the procedures and programs provided by this chapter.

SECTION 1.06. Amends Subchapter G, Chapter 382, Health and Safety Code, by adding Section 382.220, as follows:

Sec. 382.220. USE OF FUNDING FOR LOCAL INITIATIVE PROJECTS. (a) Authorizes money made available to affected or participating counties under Section 382.202(g) and 382.302 to be appropriated only for programs administered in accordance with Chapter 783, Government Code, to improve air quality.

(b) Requires a program under this section to be implemented in consultation with TCEQ and authorizes the program to include certain items.

(c) Prohibits money made available under Subsection (b) from being expended for call center management, application oversight, invoice analysis, education outreach, or advertising purposes.

(d) Authorizes fees collected under Section 382.202 and 382.302 to be used for projects described by Subsection (b), not to exceed \$5 million per fiscal year. Requires the fees to be made available on a matching basis to counties participating in the vehicle retirement program.

SECTION 1.07. Amends Section 152.002(b), Tax Code, to provide that "total consideration" does not include an amount made available to the customer under Subchapter G, Chapter 382, Health and Safety Code.

SECTION 1.08. Amends Section 7.102, Water Code, as follows:

Sec. 7.102. MAXIMUM PENALTY. Includes Subchapter G, Chapter 382, Health and Safety Code, in the list of statutes for which a certain penalty is assessed if a violation occurs.

SECTION 1.09. Repealer: Section 382.0622(e) (regarding deposit of certain clean air account fees), Sections 382.202(q) and (r) (regarding appropriation of certain fees deposited to a subaccount of the clean air account), and Section 382.217 (Use of Unexpended Vehicle Repair Assistance, Retrofit, and Retirement Money), Health and Safety Code.

SECTION 1.10. Requires TCEQ to review its current cut-point levels for nitrogen oxide emissions and determine whether a lower cut-point standard best serves the interest of the public health and welfare. Requires the determination to be made by rule no later than January 1, 2008. Requires TCEQ to make the program available to owners of vehicles that did not meet the prior and more stringent standard, if TCEQ adopts a lower cutpoint standard.

SECTION 1.11. (a) Requires TCEQ to seek to work in partnership with automobile manufacturers and dealers in the state to increase public awareness of and participation in the program.

(b) Requires funding for the partnership described by Subsection (a) of this section to be used only for the purpose of publicizing the program.

SECTION 1.12. (a) Requires TCEQ to seek to work in partnership with the steel industry and automobile dismantlers to ensure that vehicles being replaced are scrapped and that proof of scrapping is provided to TCEQ.

(b) Requires TCEQ to adopt procedures for certifying that emissions control equipment and vehicle engines have been scrapped and not resold into the marketplace, and by rule to define "emissions control equipment" and "engine," as required by Section 382.213, Health and Safety Code, as amended by this article, not later than January 1, 2008.

ARTICLE 2. TEXAS EMISSIONS REDUCTION PLAN

SECTION 2.01. Amends Section 386.002, Health and Safety Code, as follows:

Sec. 386.002. EXPIRATION. Extends the expiration of this chapter (Expiration) from August 31, 2010, to August 31, 2013.

SECTION 2.02. Amends Section 386.053(d), Health and Safety Code, to require TCEQ to make a proposed revision available to the public before the 30th day, rather than the 45th day, preceding the date of final adoption of the revision to the guidelines and criteria adopted under this section (Guidelines and Criteria).

SECTION 2.03. Amends Section 386.104(c), Health and Safety Code, to authorize TCEQ to allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated

by TCEQ and located outside of a nonattainment area or affected county to count toward the percentage of use requirement in this subsection.

SECTION 2.04. Amends Section 386.106(a), Health and Safety Code, as follows:

(a) Prohibits TCEQ from awarding a grant for a proposed project that exceeds \$15,000, rather than \$13,000, per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed, except as provided by Section 386.107 and except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project. Makes a conforming change.

SECTION 2.05. Amends Section 386.109, Health and Safety Code, as follows:

(a) Creates this subsection from existing text.

(b) Authorizes TCEQ to provide funding to other state agencies to implement projects that involve a technology that allows a vehicle to replace with electric power while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine, including funding for the purchase and installation of idle reduction technologies and facilities at public facilities on major highway transportation routes located in areas eligible for funding. Authorizes funding under this subsection to include reasonable operational costs determined by TCEQ to be needed for the initial start-up and proper operation of idle reduction technologies. Authorizes, but does not require, the state agency leasing, owning, or operating the idle reduction facility constructed with funds provided under this subsection to charge fees for the provision services only if those fees are used to offset the cost of providing the services.

(c) Requires TCEQ to encourage the use of a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine at the state's ports and boarder crossings in affected areas.

SECTION 2.06. Amends Section 386.117, Health and Safety Code, by adding Subsection (e), to require TCEQ or its designee to notify potential applicants of any changes to the rebate grant process by its email list service and posting those changes on its Internet website at least 30 days before the changes become effective.

SECTION 2.07. Amends Section 386.251(b), Health and Safety Code, to provide that the Texas emissions plan fund is administered by TCEQ, rather than the comptroller of public accounts (comptroller), for the benefit of the plan established under this chapter.

SECTION 2.08. Amends Section 387.003, Health and Safety Code, by adding Subsections (c) through (f), as follows:

(c) Requires TCEQ to provide oversight for grants provided to the nonprofit organization under the new technology research and development program (technology program).

(d) Requires the nonprofit organization to submit to TCEQ a budget for the disposition of funds granted under the technology program for approval.

(e) Requires TCEQ to limit the use of grants for administrative costs sustained by the nonprofit organization to an amount not in excess of 10 percent of funding provided to the nonprofit organization under the technology program.

(f) Provides that the nonprofit organization that receives grants from TCEQ under the technology program is subject to Chapter 551 (Open Meetings) and Chapter 552 (Public Information), Government Code.

SECTION 2.09. Amends Section 387.005, Health and Safety Code, as follows:

Sec. 387.005. ELIGIBLE PROJECTS; PRIORITIES. (a) Requires grants awarded under this chapter to be directed toward a balanced mix of retrofit, add-on technologies, and other advanced technologies that reduce emissions from the existing stock of engines and vehicles targeted by the Texas emissions reduction plan. Deletes existing text requiring grants to be directed toward studies to improve air quality assessment and modeling, and toward advanced technologies that reduce emissions from other significant sources.

(b)-(d) Makes no changes.

(e) Deletes existing Subsection (e) requiring studies authorized under Subsection (a)(3) to be consistent with air quality research priorities identified by TCEQ and conducted in an independent and objective manner. Redesignates existing Subsection (f) as Subsection (e).

SECTION 2.10. Amends Section 151.0515(d), Tax Code, to extend the expiration of this section to August 31, 2013, from September 30, 2010.

SECTION 2.11. Amends Section 152.0215(c), Tax Code, to extend the expiration date of this section to August 31, 2013 from September 30, 2010.

SECTION 2.12. Amends Sections 501.138(a), (b), and (b-1), Transportation Code, as follows:

(a) Deletes existing text requiring an applicant for a certificate of title, other than the state or a political subdivision of the state, to pay the county assessor-collector on or after September 1, 2010, a \$28 fee regardless of the county in which the applicant resides.

(b) Deletes existing text requiring the county assessor-collector to send an amount of \$15 to the comptroller of public accounts (comptroller) at the time and in the manner prescribed by the comptroller on or after September 1, 2010, regardless of the county in which the applicant resides.

(b-1) Requires fees collected under Subsection (b) to be sent to the comptroller to be deposited on or after September 1, 2008, and before September 1, 2010, to the credit of the Texas Mobility Fund, with the exception that \$5 of each fee imposed under Subsection (a)(1) be deposited between September 1, 2008, and September 1, 2010, to the credit of the Texas emissions reduction plan fund, and on or after September 1, 2010, the fees be deposited to the credit of the Texas emissions reduction plan fund.

SECTION 2.13. Amends Section 502.1675(c), Transportation Code, to extend the expiration of this section to August 31, 2013, from August 31, 2010.

SECTION 2.14. Amends Section 548.5055(c), Transportation Code, to extend the expiration of this section to August 31, 2013, from August 31, 2010.

SECTION 2.15. Repealer: Section 12, Chapter 1125, Acts of the 79th Legislature, Regular Session, 2005, amending Section 386.252(a) (Allocation of Money in the Fund), Health and Safety Code.

ARTICLE 3. ENERGY EFFICIENCY

SECTION 3.01. Amends Section 388.003, Health and Safety Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Requires the State Energy Conservation Office (office) to adopt, by rule, more stringent standards and substitute them for the standards described by Subsection (a) or (b) if the office determines, based on a recommendation from the Energy Systems Laboratory, that more recent versions of the energy efficiency standards of the International Residential Code or the International Energy Conservation Code exist that improve residential or commercial energy efficiency and air quality more than the ones adopted under Subsection (a) or (b). Requires the rule to establish an effective date for

the new standards not earlier than one year after the date of adoption. Requires the laboratory to make its recommendations not later than six months after the date of publication of the most recent full edition of the International Residential Code and International Energy Conservation Code.

(b-2) Requires the State Energy Conservation Office to establish, by rule, a procedure for persons who have an interest in the adoption of energy efficiency standards under Subsection (b-1), including certain persons, to have an opportunity to comment on the standards under consideration and to have the commentary considered by the laboratory in developing its recommendations.

SECTION 3.02. Amends Section 388.005, Health and Safety Code, as follows:

Sec. 388.005. ENERGY EFFICIENCY PROGRAMS IN CERTAIN POLITICAL SUBDIVISIONS. (a) Defines "institution of higher education" and "state agency." Redefines "political subdivision."

(b) Requires each institution of higher education or state agency, in addition to each political subdivision, to implement energy efficiency measures that meet the standards established for a contract for energy conservation measures under Section 302.004(b), Local Government Code, to reduce electricity consumption by the existing facilities of the entity.

(c) Requires each institution of higher education or state agency, in addition to each political subdivision, to establish a goal to reduce the electric consumption by the entity by five percent each year for six years beginning September 1, 2007, rather than for five years, beginning January 1, 2002.

(d) and (e) Make conforming changes.

SECTION 3.03. Amends Section 2155.068(d), Government Code, as follows:

(d) Requires TCEQ to develop and update a list of equipment and appliances that meet the energy efficiency standards of Section 2158.301 and assist state agencies in selecting products under that section as appropriate.

SECTION 3.04. Amends Chapter 2158, Government Code, by adding Subchapter F, as follows:

SUBCHAPTER F. ENERGY AND EFFICIENCY STANDARDS FOR EQUIPMENT AND APPLIANCES

Sec. 2158.310. ENERGY CONSERVATION. Requires TCEQ or another state agency to purchase equipment and appliances for state use that meet or exceed certain federal standards, if they are available and cost effective.

SECTION 3.05. Requires the State Energy Conservation Office to adopt rules implementing a procedure for stakeholder participation as required under Section 388.003(b-2), Health and Safety Code, as soon as practicable after the effective date of this Act.

SECTION 3.06. (a) Makes application of the energy conservation standards for equipment and appliances under Section 2158.301, Government Code, prospective.

(b) Requires the Texas Building and Procurement Commission to adopt a list of equipment and appliances under Section 2155.068, Government Code, as soon as practicable after the effective date of this Act.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Effective date: upon passage or September 1, 2007.