

SUBJECT: Suspending the Houston area employer trip reduction program

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Chisum, Jackson, Howard, Kuempel, Saunders, Stiles, Talton,
0 nays
2 absent — Dukes, Yost

SENATE VOTE: On final passage, February 1 — 30-0

WITNESSES: For — Jon Fisher, Texas Chemical Council; G.C. Chip Gill, Vastar Resources; Bob Stout, Mitchell Energy and Development Corporation; Michael White, The Greater Houston Partnership; Clay Pope, City of Houston; Mary Miksa, Texas Association of Business

Against — None

BACKGROUND: The state's Houston Employee Trip Reduction Plan requires employers with 100 or more employees at a single work site in the Houston/Galveston region to increase the average passenger occupancy per employee vehicle. Average occupancy must increase by 25 percent for vehicles that are used by employees commuting between their residence and place of employment during peak travel periods. Texas Natural Resources Conservation Commission rules establish peak travel periods as 6 a.m. to 10 a.m.

Eligible employers were required to submit individual ETR plans to the TNRCC by November 1994. Employers were to begin implementing their plan to achieve a target average passenger occupancy by 1996. Failure to reach the goal could result in civil penalties of up to \$25,000 per day per violation or administrative penalties of \$10,000 per day per violation.

The plan was required by the 1990 federal Clean Air Act amendments, which called for a revised state implementation plan (SIP) to be submitted to the Environmental Protection Agency. A trip reduction plan was required for the Houston/Galveston area, which is the only region in Texas that the EPA has classified as a severe nonattainment area.

DIGEST: CSSB 290 would suspend implementation of the Texas employee trip reduction (ETR) plan for 180 days from the date the bill would take effect. The bill would take immediate effect if approved by a two-thirds vote of the membership of each house.

The governor could extend the suspension of the program for 45 days beyond the original suspension, by executive order, with the consent (by resolution) of both the House and the Senate. Additional successive 45-day suspensions could be ordered by the governor.

Employees could be exempted from the ETR program, despite TNRCC rules to the contrary, if they submit a letter to their employer stating that they commute 30 miles or less one-way or they spend an hour or less travelling one way, from their residence to their job site.

Employers would still be required to submit an employer trip reduction (ETR) plan, but not to comply with the program for the 180-day suspension. Employers making good faith efforts to comply with TNRCC rules governing the ETR program would be considered in compliance with those rules. TNRCC could not take any enforcement action or impose a penalty against an employer who had submitted an ETR plan. The governor, but not TNRCC, could ask EPA for waivers of federal enforcement and compliance deadlines.

SUPPORTERS SAY: The EPA has indicated that it will not sanction states that do not enforce ETR programs, and Texas should take advantage of this to employ a 180-day suspension of the ETR program and fully assess the program's value. The enormous costs of implementing the program now appear to far outweigh any possible benefits.

In 1994 the EPA indicated that implementation of ETR programs could be voluntary. In January 1995, in a letter to U.S. Rep. Donald Manzullo of Illinois, the EPA said it did not intend "to enforce against individual employers, as this is the state's responsibility, or to look over the shoulder of the states as they implement the program." The EPA added: "Failure to meet trip reduction goals will not trigger action against states." Soon afterwards TNRCC announced that it supported making the ETR program

as voluntary as possible, but since the agency could not waive federal requirements, employers still needed to submit ETR plans.

The ETR program, an unfunded federal mandate, was an ill-conceived notion that would result in negligible emission reductions, but would be very expensive and inconvenient for the businesses it would affect. Houston, the only city in the state subject to the mandate, would be economically handicapped by the bill, and Houston businesses would be put at a competitive disadvantage. To comply with ETR requirements businesses would be forced to impose penalties and costly incentives to get employees to ride-share. This would damage productivity and morale.

ETR contributions to emission reductions would be minimal. The ETR program does not specify that commuter vehicles must comply with federal low emission standards. Three car-pooling employees sharing an old diesel-fueled vehicle might pollute more than three commuters each driving a vehicle propelled by a clean-burning fuel.

The program would amount to an intrusive mandate to change people's driving behaviors, inconveniencing commuters who would be without personal vehicles on some days and therefore be unable to respond quickly if, for example, their child became suddenly sick or another emergency arose.

Confusion remains even though TNRCC has informally announced that it regards the program as more or less voluntary and that the agency would not enforce penalties (a possible \$25,000 per day in fines) if companies made an adequate effort to comply. TNRCC rules were promulgated before both the EPA and the TNRCC changed their position, and businesses that signed commitments to implement ETR plans are now unsure of what their liability is.

Allowing the governor to seek waivers of federal enforcement and compliance deadlines for the ETR program, would ensure that the state can seek to gain a concrete commitment from the EPA that it will not sanction the state in the future. Although the EPA has indicated it will not sanction states that do not enforce the ETR program, the vagaries of federal policy

make it wise for Texas to have a way to ensure that the EPA will keep its promise.

OPPONENTS
SAY:

It would be unwise to suspend a program designed to help clean up the air in Houston. The fact that the EPA has indicated that states will not be penalized if they fail to meet the reduction goals laid out in their ETR program does nothing to improve Houston air quality or safeguard the public health.

Houston has the second highest level of air pollutants among U.S. cities. The American Lung Association estimates that 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. 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.

The bill not only would suspend the ETR program, it essentially would eliminate it by exempting almost all commuters from ETR provisions, and specifying that any employer who submitted a plan to TNRCC (considered a "good faith" effort), would escape any enforcement action.

Auto emissions have to be reduced; EPA may have agreed to back off the ETR program, but eventually Texas has to get serious about reaching the overall air pollution reduction goals of the Clean Air Act. The sooner these reductions begin, and the more comprehensive they are, the greater the likelihood the state will escape federal sanctions in the future.

Air pollution is lessened when fewer cars are on the road. Ozone levels shoot up during peak hours of travel, the time periods the ETR program would affect. An ETR program would also reduce traffic congestion, a major problem in Houston that is projected to become much worse soon.

The Legislature recently suspended its EPA-approved emission inspection and maintenance program for three months when it enacted SB 19 by Whitmire et al. Now under CSSB 290 the ETR program would be suspended as well. The longer these programs to reduce harmful emissions from motor vehicles are suspended or delayed, the heavier the burden will

be on stationary sources such as industry and small businesses to reduce their share of air pollution. Blocking programs to reduce vehicle emissions also could make it more likely that the EPA will reclassify Texas nonattainment areas into stricter categories, bringing even more onerous requirements for everyone.

NOTES: HCR 12 by Talton, urging Congress to exempt school districts from ETR plans, was adopted by the House by nonrecord vote on March 8 and referred to the Senate Natural Resources Committee.