SUBJECT: Prohibiting TNRCC from requiring particular fuel specifications

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 5 ayes — Chisum, Kuempel, Uher, Geren, Howard

0 nays

4 absent — Bonnen, Bosse, Dukes, Zbranek

WITNESSES: For — Ken Rigsbee, Phillips Petroleum Co.; Ben Sebree, Texas Oil and Gas Association and Texas Clean Fuels Alliance; Michael Stewart, Texas Aggregates and Concrete Association; Bill Webb, Texas Motor Transport Association; John Weitzel, Texas Petroleum Marketers and Convenience Store Association

Against — Ramon Alvarez, Environmental Defense Fund; Margot Clarke, League of Conservation Voters Education Fund; Scott Johnson; Fred Richardson, Sierra Club, Lone Star Chapter; George Smith; Tom "Smitty" Smith, Public Citizen

On — Jeff Saitas, Texas Natural Resource Conservation Commission

BACKGROUND: Under current law, the Texas Natural Resource Conservation Commission (TNRCC) may establish vehicle fuel-content standards that differ from those promulgated by the U.S. Environmental Protection Agency (EPA) if specifically authorized by the Legislature. TNRCC also may establish differing standards if it is demonstrated to be necessary to attaining federal ambient air quality standards for ozone, or if a health study in conjunction with the Texas Department of Health determines that differing standards are necessary to protect public health. EPA has announced new fuel guidelines, including a low-sulphur requirement in 2004 and a cleaner engine and cleaner diesel requirement in 2006.

DIGEST: CSHB 2649 would amend the Health and Safety Code to alter the circumstances under which TNRCC could establish vehicle fuel-content standards that differ from those promulgated by EPA.

TNRCC could not establish, before January 1, 2004, vehicle fuel-content standards for any area of the state that were more stringent or restrictive than those promulgated by EPA for that area, unless the fuel specifically was authorized by the Legislature. It would delete the provisions of current law allowing TNRCC to establish such standards if necessary to attain federal ozone standards or to protect public health.

The bill also would prohibit TNRCC from requiring, before February 1, 2005, distribution of Texas low-emission diesel as described in revisions to the federally required State Implementation Plan (SIP) for the control of ozone pollution. TNRCC could consider fuels to achieve equivalent emissions reductions in lieu of Texas low-emission diesel.

The bill would take effect September 1, 2001, and would not apply to fuel standards adopted by TNRCC before September 1, 2000.

SUPPORTERS SAY:

CSHB 2649 would prevent a potential diesel fuel crisis in Texas. Diesel fuel requirements should be national. If each state adopted its own diesel fuel standards and required its own "boutique" fuel, diesel fuel manufacturers would have to determine whose standards to apply state by state. This would reduce the supply of diesel fuel in states with different standards, leading to shortages.

The bill also would prevent gaps in standards within the state. If TNRCC implemented diesel fuel standards that differ from those required by EPA and did not implement those standards on a statewide basis, the resulting gaps in fuel standards would make it difficult for diesel fuel-related businesses to serve different areas in Texas.

CSHB 2649 would prevent a major hike in diesel fuel costs. Texas-specific diesel fuel would raise the price of diesel more than TNRCC predicts. In California, the switch to "boutique" diesel fuel raised the price by between 14 cents and 40 cents per gallon. It would cost a refinery millions of dollars to modify each production line to comply with Texas-specific diesel fuel requirements, in addition to the expenditures necessary to comply with the upcoming federal diesel-fuel rules. Some refineries could choose not to produce Texas-specific diesel fuel; others may not be able to produce enough fuel to meet demand. The result would be price spikes and shortages.

Texas-specific diesel fuel would hurt long-haul truckers, most of whom are small businesses. To avoid the additional cost, trucks, which have very large fuel tanks, would be less likely to buy diesel fuel in Texas. Most truckers would opt to buy diesel fuel before entering Texas and likely could avoid buying special Texas diesel fuel. Requiring use of Texas-specific fuel in all engines operating in Texas in an attempt to avert this problem would cause a severe burden for truckers and other diesel vehicles, as they would have to stop at the state border and change fuels. The trucking industry generally supports the federal requirements for cleaner-burning diesel fuel, but already had filed suit against Texas over the proposed Texas-specific diesel fuel.

Texas-specific diesel fuel would not provide the emissions reductions TNRCC hopes to obtain. Long-haul truckers account for a large percentage of the diesel fuel consumed in Texas. If truckers opt to purchase diesel fuel before entering Texas, they will be burning non-Texas-specific diesel fuel while in Texas, resulting in much lower emissions reductions than expected. Also, when the TNRCC Texas-specific diesel fuel is compared to the federal requirements, all of the air-quality benefits disappear. The federal fuel is designed to work in the required federal diesel engine. Most trucks' engines are replaced every three or four years, so it would not take long to phase in the federal engine. The proposed Texas-specific fuel will not work as well in these engines. Specially designed California fuel actually has caused damage to vehicles using the federal diesel engine.

Texas-specific fuel is not necessary to comply with federal air-quality standards. The revised federal standards take effect in 2007, and the federal diesel-fuel requirement takes effect in 2006. No state ever has failed to have a SIP approved because it used federal fuel standards.

Other pollution-reduction measures could offset any potential SIP losses caused by not using Texas-specific fuel. For example, HB 2841 by Wolens and its companion bill, SB 5 by Brown, would create incentive programs to encourage industry to retrofit facilities and to install better air-pollution control equipment. In addition, Texas could begin to phase in the federal-standard diesel fuel early.

OPPONENTS SAY:

This bill would apply to all gasoline and vehicle fuel, not just diesel, and would take away an important, effective tool by which TNRCC can move the state toward compliance with federal air-quality standards. Texas should not wait until 2006 to require cleaner-burning diesel. Both California and EPA have concluded that diesel fuel is a probable or likely carcinogen. Texas could achieve a significant reduction in air pollution if cleaner diesel fuel was implemented before the federal timetable.

Prohibiting TNRCC-mandated cleaner-burning diesel fuel would cause the SIP to fail. TNRCC estimates that cleaner-burning diesel would save about 3.5 tons of pollutants per day in the Dallas-Fort Worth area, which is not in attainment with federal air-quality standards. The Dallas-Fort Worth portion of the SIP does not allow a margin of error and would have a difficult time reaching attainment even with the cleaner-burning diesel fuel. TNRCC estimates that the Houston nonattainment area would save about 6 tons of pollutants per day.

Prohibiting TNRCC-mandated cleaner-burning diesel fuel would cause EPA to force Texas to change the SIP. Under the current plan, some strategies need to be phased in over time to meet the 2007 air-quality standards. If Texas cannot mandate cleaner-burning diesel fuel, EPA could require earlier implementation of other strategies to compensate for the loss in pollution reductions.

NOTES:

The committee substitute would specify January 1, 2004, as the date before which TNRCC could not adopt more stringent vehicle fuel-content standards, and February 1, 2005, as the date before which TNRCC could not require distribution of Texas low-emission diesel. The substitute also expressly would allow TNRCC to consider other fuels to achieve equivalent emissions reductions.