

SUBJECT: Allowing electric vehicles to use HOV lanes and vehicle mileage fee pilot

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Bonnen, Y. Davis, Harper-Brown, McClendon,  
Rodriguez

1 nay — Lavender

4 absent — Darby, Fletcher, Martinez, Pickett

SENATE VOTE: On final passage, May 5— 29-1 (Hegar)

WITNESSES: *(On House companion bill, HB 3308:)*

For — Dan Frakes, General Motors; Russ Keene, Plug-In Texas; Bradley Smith, NRG Energy/eVgo (*Registered, but did not testify*: Robert Braziel, Texas Automobile Dealers Association; Robert Peeler, Ford Motor Company; Kate Robertson, Environmental Defense Fund; Alejandro Savransky, Environment Texas; Chris Shields, Toyota Manufacturing; David Weinberg, Texas League of Conservation Voters)

Against — Terri Hall, Texas TURF, Texans for Accountable Government, Central Texas Republican Liberty Caucus; Don Dixon

On — Vincent Obregon, METRO

BACKGROUND: Transportation Code, sec. 224.153 allows the Texas Department of Transportation (TxDOT) to designate high-occupancy vehicle lanes on the state highway system. High-occupancy lanes are designated lanes where a bus or other vehicle occupied by a specified number of people is given preference over other vehicles moving in the general stream of highway traffic.

TxDOT also can authorize a motorcycle or another low-emissions vehicle to use a high-occupancy vehicle lane regardless of the number of persons on the motorcycle or occupants in the vehicle, unless doing so would violate federal transit or highway funding restrictions.

**DIGEST:** CSSB 1742 would allow a motor vehicle displaying a “plug-in electric vehicle” insignia to use a high-occupancy vehicle (HOV) lane regardless of the number of occupants in the vehicle, unless doing so would violate federal transit or highway funding restrictions. This privilege would expire January 1, 2013.

**Plug-in electric vehicle insignia.** The bill would require the Texas Department of Motor Vehicles (TxDMV) to issue the plug-in electric vehicle insignia to a participant in the motor vehicle mileage fee pilot program it established for a vehicle that:

- was made by a manufacturer primarily for public highways;
- had not been modified from original manufacturer specifications;
- was rated at not more than 8,500 pounds unloaded gross vehicle weight;
- was acquired for use or lease by a consumer and not for resale;
- could reach speeds of at least 65 miles per hour;
- was propelled to a significant extent by an electric motor that drew electricity from a battery that could be recharged from an external source of electricity and had a capacity of at least four kilowatt hours.

Recreational vehicles that drew power for purposes other than propulsion, such as a camper or motor home, would not be eligible.

TxDMV would have to issue the insignia to a person who submitted an application and proof of eligibility. The department could charge a fee for issuing the insignia of no more than \$20 per vehicle.

**Vehicle miles traveled pilot.** CSSB 1742 would require TxDMV to adopt rules establishing:

- the administrative framework to implement a system for assessing a motor vehicle mileage fee; and
- a pilot program to gather data regarding the feasibility of such a program using the established mileage framework.

The program would have to begin by January 1, 2012, and could last no longer than July 15, 2012. TxDMV would submit a report with recommendations on assessing a motor vehicle mileage fee by October, 2012.

The program would provide for optional participation for those who own electric or plug-in hybrid vehicles registered in counties in federal air quality non-attainment areas. Participants would be issued an insignia as provided in the bill, but could not be charged a fee for participating. Mileage would be based on an odometer reading. TxDMV would consider a number of factors in the bill when assessing the feasibility of implementing a vehicle mileage fee.

**Effective date.** 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, 2011.

SUPPORTERS  
SAY:

CSSB 1742 would provide a small but important incentive for drivers who registered to participate in a motor vehicle mileage fee pilot program in the most heavily congested metropolitan areas of the state, specifically, Houston and Dallas, to purchase plug-in electric vehicles.

These vehicles are distinguished from other hybrid and fuel-efficient vehicles by a battery that is recharged through an adapted electrical socket. Nissan and General Motors recently introduced plug-in electric vehicles, the Nissan *Leaf* and the Chevy *Volt*, and Ford and Toyota are planning to release electric models in the near future. There currently are a very small number — fewer than 300 by some estimates — plug-in electric vehicles on the road in Texas. This number is expected to increase very gradually, reaching perhaps 5,000 by the end of the upcoming biennium.

The bill would have an impact only in Dallas and Houston, since currently those are the only municipalities that have designated HOV lanes. This incentive would make particular sense for those areas, since both are in federal air quality non-attainment zones and suffer from severe traffic congestion. Encouraging residents in these areas to buy electric cars would reinforce decisions that improved air quality and protected the environment.

The committee substitute for SB 1742 added some key improvements over its House companion bill, HB 3308, which the House considered earlier. The committee substitute is narrowly restricted to apply only to those drivers who participated in the vehicle miles traveled fee pilot. Vehicle miles traveled fees, which have received increasing attention in recent years, make particular sense for electric vehicles, which do not pay a tax on gasoline. The bill would accomplish two separate objectives by

combining these objectives — encouraging electric vehicles and studying means to make taxes more equitable for conventional and electric vehicles. It would be a temporary program that would sunset on January 1, 2013.

Taking steps to study the possibility of a vehicle miles traveled tax is necessary since the state motor fuels tax, which has not been raised since 1991, is inefficient and incapable of providing the revenue necessary to maintain the state's transportation network in the long-term. Projected increases in fleetwide fuel efficiency undermine the ability of the motor fuels tax to keep up with costs from wear and tear on the state's roads. The possibility of charging drivers based on the number of miles they travel, as opposed to the gallons of fuel they consume, is worth studying as a possible future alternative. A study would not result in any additional taxes on Texas drivers, would not involve a separate cost according to the Legislative Budget Board, and would help ascertain the viability of such a tax for lawmakers to deliberate in the future.

OPPONENTS  
SAY:

CSSB 1742 would put in place a measure, however limited, that is contrary to the intended purpose of HOV lanes. The bill would take the dubious measure of carving electric vehicles out of occupancy requirements for HOV lanes. The chief purpose of HOV lanes is to move a greater number of people — such as those in buses, carpools, and vanpools — efficiently and quickly. Allowing operators of electric vehicles to use these lanes, irrespective of the number of people in the vehicle, would be counter to this purpose. Setting the precedent of allowing even a few electric vehicles to use these lanes could create a “slippery slope.” Why should this privilege be confined to electric vehicles and not hybrid vehicles, or low-emission vehicles more generally? Access to HOV lanes should be based exclusively on the number of vehicle occupants and not the type of vehicle someone drives.

In addition, TxDOT already has the authority through current law to implement a policy permitting low-emission vehicles to use HOV lanes. The department, and not the Legislature, should be the ultimate arbiter over what vehicles may use the HOV lanes. If allowing electric vehicles to use HOV lanes is important, interested parties should work with TxDOT to accomplish this administratively.

Studying the vehicle miles traveled tax with taxpayer money would not be the best use of valuable highway-related funds because such a fee's basic structure is not ideal for implementation in Texas. The virtues of a mileage

based tax are greatly outweighed by the overwhelming privacy concerns and other implementation difficulties such a tax likely would pose.

**OTHER  
OPPONENTS  
SAY:**

The bill includes unclear language about a vehicle miles traveled tax. The bill would require TxDMV to adopt rules to “establish the administrative framework needed to implement a system for assessing a motor vehicle mileage fee.” This provision sounds as though it would authorize TxDMV to take steps to implement a vehicle miles traveled fee, while the bill’s apparent intent is only to authorize a pilot program..

**NOTES:**

The House committee substitute to the Senate-passed version of the bill. added provisions to establish a vehicle miles traveled pilot program.

The companion bill, HB 3308 by Rodriguez, passed the House by 78-67 on second reading, but on third reading was postponed by the author until September 27, 2011.