

BILL ANALYSIS

Senate Research Center

C.S.H.B. 638
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Natural Resources
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Committee Report (Substituted)

DIGEST AND PURPOSE

In 2001, the Texas Legislature adopted a program for the mandatory permitting of all grandfathered facilities in Texas. Generally, grandfathered facilities are required to file applications for permits and install pollution abatement equipment by certain dates depending on whether the facility is located in east or west Texas. Should owners and operators of grandfathered reciprocating internal combustion engines that are connected to a pipeline have to comply with these general permitting standards, they will lose a significant amount of their pipeline capacity and deliverability of natural gas will be dramatically impaired.

Accordingly, the legislature adopted a special permit called the Pipeline Facilities Permit applicable to grandfathered reciprocating internal combustion engines that are a part of processing, treating, compression, or pumping facilities connected to or a part of a gathering or transmission pipeline. Under that permit a grandfathered reciprocating internal combustion engine is required to achieve up to a 20 percent reduction in its hourly emissions of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, if the engine is located in west Texas, and a 50 percent reduction of its hourly emissions of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, if the engine is located in east Texas. In this manner the legislature protects the pipeline's capacity, permits the engine and achieves a reduction in the engine's hourly emissions rate.

To help defray the costs of achieving emissions reductions for east Texas grandfathered pipeline engines and in the context of a settlement of a lawsuit over the provisions of the Houston-Galveston state implementation plan, the legislature created an emissions reductions incentives program and a related account, the proceeds from which will be used to provide a partial reimbursement for the cost of achieving reductions of emissions of nitrogen oxides that exceed 30 percent but do not exceed 50 percent of the engine's hourly emissions before modification.

The Texas Commission on Environmental Quality (TCEQ) was given the authority to develop the remaining criteria for eligibility for reimbursement from the Account. The TCEQ rules developed included a concept that was considered and rejected by the legislature in the development of the Pipeline Facilities Permit. C.S.H.B. 638 would clarify legislative intent.

The account will be funded in three separate installments. Because those installments will not be made in the same biennium, this bill also dedicates the proceeds and interest in the account to its statutory purpose and protects it from being put to use for some other purpose.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 15 (Section 386.116, Health and Safety Code) and to the comptroller of public accounts in SECTION 30 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 382.051865(a), (c), and (d), Health and Safety Code, as follows:

- (a) Requires, rather than authorizes, the Texas Commission on Environmental Quality

(TCEQ), by rule, to develop a program for the reduction of emissions of nitrogen oxides from reciprocating internal combustion engines associated with pipelines that are required by this subchapter to reduce the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour, by at least 50 percent.

(c) Requires, rather than authorizes, the emissions reduction program to include incentives as developed by TCEQ for nitrogen oxides emissions reduction projects for reciprocating internal combustion engines described by Subsection (a), including a partial reimbursement for the capital cost of installing technology to reduce the emissions. Makes conforming changes.

(d) Prohibits rules adopted under this section from requiring more stringent emissions reduction criteria than those specified in this subsection for determining eligibility for an emissions reduction project incentive under the program. Requires a facility, to be eligible under the criteria, to meet certain conditions. Deletes existing text relating to requiring rules adopted under this section to include certain criteria. Makes a nonsubstantive change.

SECTION 2. Amends Section 78(b), Chapter 1158, Acts of the 77th Legislature, Regular Session, 2001, by transferring it to Subchapter C, Chapter 382, Health and Safety Code, and redesignating it as Section 382.051866, as follows:

Sec. 382.051866. EMISSIONS REDUCTIONS INCENTIVES ACCOUNT. (a) Defines “affiliate.”

(b) Requires the comptroller of public accounts to establish an account within the clean air account, rather than the clean air account no. 151, to be known as the emissions reductions incentives account.

(c) Created from existing text. Provides that the emissions reductions incentives account consists of money from certain sources.

(d) Created from existing text. Authorizes money in the emissions reductions incentives account to be appropriated only to pay for emissions reduction project incentives under a program developed under Section 382.051865 and administrative expenses associated with providing the incentives or the incentive program established under that section. Deletes existing text relating to authorizing TCEQ to use money in the emissions reductions incentives account for certain purposes. Makes a nonsubstantive change.

(e) Provides that a person or an affiliate of a person who pays or contributes money to the emissions reductions incentives account is ineligible to receive money from the account under a program developed under Section 382.051865.

(f) Created from existing text.

SECTION 3. Amends Section 382.05186, Health and Safety Code, by adding Subsection (j) to provide that a reciprocating internal combustion engine that is subject to this section and to a mass emissions cap as established by TCEQ rule is considered permitted under this section with respect to all air contaminants if the facility meets certain conditions.

SECTION 4. Amends Section 386.001(2), Health and Safety Code, redefine “affected county.”

SECTION 5. Amends Section 386.053(d), Health and Safety Code, to include adding stationary engines or engines used in stationary applications and adding vehicles and equipment that use fuels other than diesel to the list of revisions TCEQ may propose to the guidelines and criteria adopted under this section.

SECTION 6. Amends Section 386.058(d), Health and Safety Code, to require the governor, after

consultation with the speaker of the house, to appoint certain persons to the advisory board.

SECTION 7. Amends Sections 386.101(6) and (9), Health and Safety Code, as follows:

(6) Redefines “on-road diesel.”

(9) Redefines “repower.”

SECTION 8. Amends Section 386.102(b), Health and Safety Code, to authorize certain projects to be considered for a grant under the program.

SECTION 9. Amends Section 386.103(a), Health and Safety Code, to authorize TCEQ to adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

SECTION 10. Amends Section 386.104(f), Health and Safety Code, to add a proposed replacement project to the list of projects required to document, in a certain manner, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emission adopted by TCEQ for the relevant engine year and application.

SECTION 11. Amends Section 386.105, Health and Safety Code, by adding Subsection (e) to authorize TCEQ to allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

SECTION 12. Amends Section 386.106(a), Health and Safety Code, to add infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project as an exemption from a certain prohibition on TCEQ.

SECTION 13. Amends Section 386.112(b), Health and Safety Code, to add the California Air Resources Board to the list of entities which certify new on-road diesels to a certain emissions standard under certain conditions.

SECTION 14. Amends Subchapter C, Chapter 386, Health and Safety Code, by adding Section 386.115, as follows:

Sec. 386.115. **MODIFICATION OF VEHICLE ELIGIBILITY.** Authorizes TCEQ, in consultation with the advisory board, after evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, to expand the program to include other on-road vehicles, regardless of fuel type used, that meet the emissions standards, have a gross vehicle weight rating of greater than 8,500 pounds, and are purchased or leased in lieu of a new on-road diesel.

SECTION 15. Amends Chapter 368, Health and Safety Code, by adding Section 386.116, as follows:

Sec. 386.116. **SMALL BUSINESS INCENTIVES.** (a) Defines “small business.”

(b) Requires TCEQ, by rule, to develop a method of providing fast and simple access to grants under this subchapter for a small business.

(c) Requires TCEQ to publicize and promote the availability of grants under this section to encourage the use of vehicles that produce fewer emissions.

(d) Requires TCEQ, on or before December 1 of each even-numbered year, to report TCEQ actions and results under this section to certain persons.

SECTION 16. Amends Section 386.202(b), Health and Safety Code, to require programs approved under this subchapter and other energy efficiency programs administered by the utility

commission to include energy conservation programs for the retirement of materials and appliances that contribute to energy consumption or peak energy demand to ensure the reduction of consumption, energy demand, or peak loads, and associated emissions of air contaminants.

SECTION 17. Amends Section 386.252, Health and Safety Code, as follows:

(a) Authorizes money in the Texas emissions reduction plan fund (fund) to be used only to implement and administer programs established under the plan and requires money in the fund to be allocated to certain programs in certain percentages.

(b) Authorizes up to 25 percent, rather than 15 percent, of the money allocated under Subsection (a) to a particular program and not expended under that program by January, rather than March, 1 of the second fiscal year of a fiscal biennium to be used for another program under the plan as determined by TCEQ in consultation with the advisory board.

SECTION 18. Amends Section 387.003(b), Health and Safety Code, to provide that the primary objective of this chapter is to promote the development of commercialization technologies that will support projects that may be funded under Chapter 386 and this chapter, including advanced technologies such as fuel cells, catalysts, and fuel additives.

SECTION 19. Amends Section 387.006(a), Health and Safety Code, to require an application for a technology grant under this chapter to show clear and compelling evidence that the proposed technology project has a strong commercialization plan and organization and the technology proposed for funding is likely to be offered for commercial sale in this state as soon as practicable but not later than, rather than within, five years after the date of the application for funding and once commercialized, will offer opportunities for projects eligible for funding under Chapter 386.

SECTION 20. Amends Section 388.003, Health and Safety Code, by adding Subsection (i) to require a building certified by a national, state, or local accredited energy efficiency program to be considered in compliance.

SECTION 21. Amends Section 388.004, Health and Safety Code, as follows:

(a) Created from existing text.

(b) Requires a builder to retain until the third anniversary of the date on which compliance is achieved the original copy of any documentation that establishes compliance under this section. Requires the builder on receipt of any compliance documentation to provide a copy to the owner of the building.

(c) Requires a single-family residence built in the unincorporated area of a county the construction of which was completed on or after September 1, 2001, but not later than August 31, 2002, to be considered in compliance.

SECTION 22. Amends Chapter 388, Health and Safety Code, by adding Sections 388.009 and 388.010, as follows:

Sec. 388.009. ENERGY-EFFICIENT BUILDING PROGRAM. (a) Defines “National Housing Act.”

(b) Authorizes the General Land Office (GLO), in consultation with certain entities, to develop an energy-efficient building accreditation program for buildings that exceed the building energy performance standards under Section 388.003 by 15 percent or more.

(c) Requires GLO, if GLO adopts a program under this section, in consultation with certain entities, to update the program on or before December 1 of each even-numbered year using the best available energy-efficient building practices.

(d) Requires the program, if GLO adopts a program under this section, to use a checklist system to produce an energy-efficient building scorecard to help home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act and communities qualify for certain emissions reduction credits.

(e) Authorizes GLO to establish a public information program to inform homeowners, sellers, buyers, and others regarding energy-efficient building ratings.

(f) Requires the laboratory, if GLO adopts a program under this section, to establish a system to measure the reduction in energy and emissions produced under the energy-efficient building program and report those savings to TCEQ.

Sec. 388.010. OUTREACH TO NEAR-NONATTAINMENT AREAS. Requires TCEQ to conduct outreach to near-attainment areas and affected counties on the benefits of implementing efficiency initiatives, including the promotion of energy-efficient building programs and urban heat island mitigation techniques, as a way to meet air quality attainment goals under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

SECTION 23. Amends Chapter 389, Health and Safety Code, by adding Section 389.003, as follows:

Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS REDUCTIONS. Requires TCEQ to develop a method to use in computing emissions reductions obtained through energy efficiency initiatives.

SECTION 24. Amends Section 151.0515, Tax Code, by amending Subsections (a), (b), and (c) and adding Subsection (b-1), as follows:

(a) Redefines “equipment.”

(b) Provides that in each county in this state, a surcharge is imposed on the retail sale, lease, or rental of new or used equipment in an amount equal to two, rather than one, percent of the sale price or the lease or rental amount.

(b-1) Provides that in each county in this state, a surcharge is imposed on the storage, use, or other consumption in this state of new or used equipment. Provides that the surcharge is at the same percentage rate as is provided by Subsection (b) on the sales price or the lease or rental amount of the equipment.

(c) Requires the surcharge to be collected at the same time and in the same manner and to be administered and enforced in the same manner as the tax imposed under this chapter, rather than subchapter.

SECTION 25. Amends Section 152.0215(a), Tax Code, to provide that a surcharge is imposed on every retail sale, lease, or use of every on-road diesel motor vehicle that is over 14,000 pounds, rather than every on-road diesel motor vehicle that is over 14,000 pounds and is of a model year 1996 or earlier, and that is sold, leased, or used in this state. Provides that the amount of the surcharge is two, rather than 2.5, percent of the total consideration. Makes nonsubstantive changes.

SECTION 26. Amends Section 224.153, Transportation Code, by adding Subsection (d) to prohibit the Texas Department of Transportation from authorizing vehicles addressed in Subsection (c) to use a high occupancy vehicle lane if such use would violate federal transit or highway funding restrictions.

SECTION 27. Amends Sections 501.138(a) and (b), Transportation Code, as follows:

(a) Requires an applicant for a certificate of title, other than the state or a political subdivision of the state, to pay the county assessor-collector a fee in one of two certain amounts.

(b) Requires the county assessor-collector to send a certain amount to the comptroller of public accounts (comptroller) at the time and in the manner prescribed by the comptroller.

SECTION 28. Amends Section 545.353, Transportation Code, by adding Subsection (j) to prohibit the Texas Transportation Commission, except on issuance of an executive order by the governor, from determining or declaring, or agreeing to determine or declare, a prima facie speed limit for environmental purposes on a part of the highway system.

SECTION 29. Repealer: Section 386.157 (Vehicle Emissions Information Brochure), Health and Safety Code, and Section 386.159 (Public Information), Health and Safety Code.

SECTION 30. (a) Effective date: upon passage or September 1, 2003, except as provided by Subsection (b) of this section.

(b) Provides that Sections 24 and 25 of this Act take effect on the first day of the first month beginning on or after the earliest date on which this Act may take effect if passed by a two-thirds vote of both houses or on September 1, 2003. Authorizes the comptroller to adopt emergency rules for the implementation of Sections 24 and 25 of this Act.

SECTION 31. Effective date: upon passage or September 1, 2003.