

SUBJECT: Vehicle emissions inspection and maintenance program

COMMITTEE: Environmental Regulation — committee substitute recommended

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

WITNESSES: For — Darrell David, Tejas Testing Technology; Jerry Carter, Marta Technologies, Inc; Mary Miksa, Texas Association of Business and Chambers of Commerce; Bernie Allen, Texas Chemical Council; Rick Sharbrough and Glen Young, Automotive Service Association; Mark Daniels, William Watson, Environmental Systems Products; Mark Sherill, David Harris, Anthony Jean

Against — Michael Nowels, C.E. "Ed" Martin, Texas State Inspection Association; Bill Ligon, Texas Service Station Association; Norma Chavez, Community Board of Business Organizations for Clean Air

On — Stan Meiburg, James Davis, Eugene Tierney and Philip A. Lorang, U.S. Environmental Protection Agency; John Hall, John Steib, Dan Pearson and Candice Garrett, Texas Natural Resource Conservation Commission; William T. Johnstone, Wayne Corey, William Hayden, United States Postal Service

BACKGROUND: On January 31, 1995, the Legislature suspended for 90 days the state vehicle emission inspection and maintenance (I/M) program that been scheduled to begin January 2 under federal Clean Air Act requirements.

The 90-day delay was imposed by SB 19 by Whitmire et al, which also appropriated \$8.8 million from the Clean Air Fund to the Texas Natural Resource Conservation Commission (TNRCC). The money was earmarked for the managing contractors and subcontractors responsible for implementing the state vehicle emissions inspection and maintenance program if they proved to TNRCC and the attorney general that they had incurred losses because of the delay. TNRCC would pay for losses up to \$8.8 million. The contractors and subcontractors agreed to repay the state,

without interest, by August 31, 1997, and the contractors released the state from liability resulting from the 90-day delay.

TNRCC has made two payments from the \$8.8 million totaling \$6.145 million, to Tejas Testing Technology Inc., a Dallas-based unit of Systems Control Inc. of Sunnyvale, California, that was hired under contract to run the program for the Houston/Galveston, Dallas/Fort Worth and Beaumont/Port Arthur/Orange areas.

In the 1990 Clean Air Act Amendments Congress required states to comply with federal air pollution standards or risk losing federal funds and control over their environmental regulatory programs. The EPA sets limits for designated air pollutants. Areas in which any pollutants exceed the limits are designated "nonattainment" areas. These areas become subject to an EPA-approved state air quality plan to reduce air pollution, initially by about 15 percent, with further reductions required to offset pollution from increased population and growth.

Nonattainment areas are designated as moderate, serious, severe or extreme. Texas nonattainment areas directed to curb air pollution starting in 1995 are Houston/Galveston (severe); Dallas/Fort Worth (moderate); Beaumont/Port Arthur/Orange (serious); and El Paso (serious).

In 1991 the Legislature authorized state agencies to establish an I/M program to start January 2, 1995, in Houston/Galveston, Dallas/Fort Worth and Beaumont/Port Arthur/Orange, and February 1995 in El Paso. Tejas Testing Technology Inc. was hired under contract to run the programs in the three areas except El Paso. Marta Technologies, Inc., of Tennessee, a subsidiary of The Allen Group Inc., of Beechwood, Ohio, is the contractor for El Paso.

On January 23, 1995, TNRCC formally asked the EPA that the Beaumont/Port Arthur area not be required to implement an I/M program, since mobile sources contribute only about 6 percent of the overall volatile organic compounds (VOC) in the area. TNRCC said the area can achieve the overall requirements of the Clean Air Act without the I/M program. TNRCC also requested that I/M requirements be reexamined for El Paso due to the unique problems that face El Paso because of emissions from

neighboring Ciudad Juarez. The EPA has not yet formally responded to the request.

SB 19 postponed the state program of mandatory vehicle-emissions testing in the four nonattainment areas. The postponed program required all 1968 and newer gasoline-powered vehicles be tested at special emission testing facilities every two years.

Older vehicles, under the postponed program, generally had to satisfy pollution standards in place at the time they were built. Inspection was a prerequisite for renewal of the vehicle license plate, and a vehicle inspection certificate or alternative verification of compliance was needed to prove compliance with the vehicle-emissions program. The test fee ranged from \$15 to \$23. Vehicles manufactured in odd-numbered years were to be tested in odd-numbered years; vehicles manufactured in even-numbered years were to be tested in even-numbered years. Vehicles that did not pass the emissions test had to be repaired. Required repairs were capped by a dollar amount, which, when reached, entitled an owner to a two-year waiver. Low income citizens could be given two years to make repairs.

EPA has amended its position on several testing issues and on April 19, 1995, reiterated that it would be flexible regarding state I/M programs. States may obtain full credit from hybrid programs that allow testing at both centralized and decentralized locations, and the agency will permit the use of other technologies besides I/M-240, an advanced form of vehicle testing favored by the agency, if states include additional pollution measures such as remote sensing devices and technician training programs.

The Clean Air Act requires the Texas nonattainment areas to reduce VOC, the major component of ozone smog. El Paso is also a nonattainment area for two other pollutants: particulate matter (inhalable matter including soot, smoke, dust and industrial emissions), and carbon monoxide. In El Paso, pollution from neighboring Ciudad Juarez, in Mexico, adds to the mix. The pollution reductions required for El Paso County make allowances for this problem. Other areas whose air quality may be approaching nonattainment include Austin, San Antonio, Corpus Christi, Longview/Tyler/Marshall and

Victoria. The following chart shows pollution sources in the four non-attainment areas:

VOC Pollution Sources in Non-Attainment Areas				
Non-attainment areas	motor vehicles	large industry	small business	off-road
Houston/Galveston	15%	45%	22%	18%
Dallas/Fort Worth	38%	12%	32%	18%
Beaumont/Port Arthur/Orange	6%	74%	10%	10%
El Paso	35%	13%	37%	14%

Source: The Texas Natural Resource Conservation Commission (1990 emissions inventory)

Bar-90 and Bar-84 is the type of technology that was used and rated by the California Bureau of Automobile Repair (CBAR) in 1990 and 1984 respectively. Use of Bar-90 equipment is allowed by the EPA for partial reduction credits. Both Bar-90 and Bar-84 utilize a gas analyzer during a vehicle's idle mode, while Bar 90 incorporates a personal computer to collect the data. In Texas Bar 90 and Bar 84 tests are used to perform tests by letting the vehicle idle and measuring tailpipe emissions.

An I/M-240 test is a dynamometer-based test using a five-gas analyzer and a "loaded driving condition" that runs for up to 240 seconds. Dynamometers are devices that allow an automobile to simulate various speeds as the vehicle is standing still. I/M-240 is a more technologically advanced test, than a Bar-90 test.

DIGEST:

CSHB 3036 would repeal the current 90-day suspension of the state's vehicle emissions inspection and maintenance program (I/M) and modify the program. Under the new program, testing would be done at both central and decentralized facilities, and owners of vehicles less than 6 years old could pay a \$10 mitigation fee in lieu of an emission inspection.

The bill would also create a vehicle repair assistance and scrappage program that could be implemented by the county commissioners court in a county with such a program. The bill would take immediate effect if approved by a two-thirds vote of the membership of the House and Senate. TNRCC would adopt emergency rules to implement the program immediately after the bill took effect, and would adopt final rules as soon as practicable.

TNRCC could not impose I/M program requirements more stringent than federal requirements, and a county could be exempted from the program if not prohibited by federal law and TNRCC determined that the county would maintain full attainment credits and required emission reductions.

Hybrid vehicle emissions and inspection program. CSHB 3036 would amend the Health and Safety Code to create a hybrid vehicle emissions inspection and maintenance program, which would require some vehicle owners to have their vehicles tested for emissions every other year.

TNRCC would set a uniform fee for initial testing. Inspection and test and repair facilities could not charge a reinspection fee for a vehicle that was repaired (and thus brought back into compliance) after failing its initial test. They could charge a fee, however, if the vehicle failed both its initial inspection and its post-repair reinspection.

The program would provide that vehicles less than six years old could be tested at a decentralized test-and-repair facility licensed by TNRCC to conduct vehicle emissions inspections. Exemptions from the I/M requirements could be obtained for vehicles less than six years old if the vehicle owner submitted an annual \$10 mitigation fee to the county tax assessor-collector every year when paying for vehicle registration. Rental vehicles less than six years old that are registered in the county for only part of a year could pay a prorated mitigation fee.

Mitigation fees would go to finance county vehicle repair assistance and scrappage programs or would be remitted to the comptroller to be deposited in the clean air fund, which is currently used to pay for a variety of air programs administered by TNRCC.

Vehicles six years and older would have to be tested every other year at a centralized facility. If a repair were necessary, the subsequent reinspection could be at a decentralized test-and repair facility. A vehicle that failed two consecutive inspections would have to be returned to a centralized facility to be retested after repairs had been made.

Between May 2, 1995, and January 1, 1998, the I/M program would be implemented in the following manner unless a county was exempted from the I/M program:

- On May 2, 1995, fleet vehicles (more than 10 vehicles owned by a single entity other than a household) in Tarrant, Dallas, Harris, Galveston, Brazoria, Fort Bend, Montgomery, and El Paso counties would come under the I/M program and on June 1, 1995, the program would apply to all vehicles in those same counties. On January 1, 1996, the program would apply in Jefferson, Orange, Collin and Denton counties.
- Despite other requirements noted above, until January 1, 1996, decentralized test facilities in Tarrant or Dallas County could perform inspections using Bar-90 technology and facilities in El Paso County could use Bar-84 technology.

TNRCC and the Texas Department of Transportation (TxDOT) would, by joint rule, require vehicle emissions inspection and certification (or accept payment of a mitigation fee to verify compliance with the I/M program) as a condition of registering a used vehicle moved into a nonattainment area from outside that area during the previous registration year. Inspection or a mitigation fee would also be required if a vehicle was registered outside the affected county and would be driven inside the affected county more than three times a week.

Vehicle repair assistance and scrappage. TNRCC, TxDOT the Public Safety Commission would, by joint rule, authorize implementation of vehicle repair assistance and scrappage programs by county commissioners courts in nonattainment areas. The programs would be subject to agency oversight that could include periodic audits.

TNRCC would adopt guidelines recommending the minimum and maximum amounts that could be offered for repair assistance or for the scrappage price of a qualified vehicle, as well as criteria for determining who to assist with repairs, taking into account the vehicle owner's income, and fair market value of the vehicle. Vehicles purchased under the program would have to be destroyed. Fleet vehicles would not be eligible for repair assistance and scrappage programs.

A participating county would keep mitigation fees in a separate account to be used only for implementing the county's repair and scrappage program, and could pool fees with another county to implement the program. If the program were discontinued the county could keep the unexpended money to use in clean air programs. If a county ran out of mitigation funds, it would not be required to provide other funds to operate the program.

TNRCC would also adopt rules to provide that a private commercial or business entity could participate in a vehicle repair and scrappage program by purchasing and destroying vehicles in exchange for emissions reduction credits to use against emission requirements of a facility operated or owned by the holder of the credits.

Miscellaneous provisions. TNRCC could purchase or lease remote sensing devices in the affected county to identify vehicles that are grossly polluting, if this would be a cost-effective in obtaining emissions reduction credits for the state. TNRCC could also, by rule, require I/M test and repair facilities to be licensed and staffed by certified repair technicians.

TNRCC, TxDOT and the Public Safety Commission would develop a program to allow a licensed centralized inspection facility or decentralized test-and-repair facility to renew vehicle registrations, perform safety inspections and register vehicles in a county covered by a vehicle emissions inspection and maintenance program. These facilities would renew registrations, and remit mitigation fees to the comptroller or to the county clerk if the county has implemented a vehicle repair assistance and scrappage program.

TNRCC could, by emergency rule, conform the state's I/M program to the most flexible, efficient or economical system including a decentralized I/M program acceptable under federal law.

An approved technology would be defined to mean a technology certified by the commission to significantly contribute to the standards in the state SIP. Fleet vehicles would be a group of more than 10 vehicles owned by a public, commercial or private entity other than a single household.

CSHB 3036 would create an I/M advisory panel that would consist of nine members appointed by the governor, the lieutenant governor and the speaker. Appointees would represent the automotive repair industry, the public and locally affected governments. The panel would meet quarterly, review federal vehicle emission requirements, agency rules and emission programs in other states and advise the commission on federal requirements, possible alternative compliance methods and the effects of compliance on affected groups. Advisory panel members would be entitled to reimbursement for travel expenses.

**SUPPORTERS
SAY:**

CSHB 3036 would create the least stringent and most convenient vehicle emission program that would still attain 100 percent compliance with the federal Clean Air Act. The program could be modified to create the most flexible, efficient and economical system possible upon receipt of new federal guidelines.

On April 19, 1995, the EPA indicated that programs like the one proposed in CSHB 3036, which call for technologies other than I/M 240, a hybrid approach between centralized and decentralized testing sites and the use of remote sensing devices, can be eligible for full pollution reduction credits. Without full credit the full burden of air pollution control may fall on industry. Small businesses like dry cleaners and printers could face huge costs to install emission control equipment, and larger industry would be hard pressed to reduce any more without enormous capital expenses. The state could also lose millions of dollars in federal highway funds if it does not comply with Clean Air Act requirements.

Any delay in actual emission reductions would make it difficult for the Dallas/Fort Worth area to achieve attainment during the 1995, 1996 and

1997 ozone seasons and may cause the area to be redesignated as a serious nonattainment area. A two-year delay would probably mean that no nonattainment area in Texas would be able to meet federal standards within the designated time period and small business and industrial sources would be required to implement even greater reductions.

A major problem with a complete moratorium is that further delay in the testing program would amount to a termination of the contract with the testing company. The Legislature is statutorily and constitutionally prohibited from impairing contracts and taking private property without compensation. It also has a moral and ethical responsibility to honor its contractual obligations. The state could face a barrage of lawsuits if it delays or ends the program now.

Newer cars are less likely to fail an emissions test, and allowing their owners to pay a mitigation fee would fund badly needed programs to buy, or assist in repairs of severely polluting vehicles. This would be a more efficient way of reducing emissions than unnecessary testing of brand new cars. Newer car owners could also have their vehicle test conducted at a convenient decentralized facility if they wished. In general, newer cars make up about half the vehicles in use but account for only 15 percent of the emissions.

CSHB 3036 would also be more convenient for the motoring public who drive cars six years or older because the centralized facilities would be much less crowded. Initial centralized testing of fleet and older model vehicles at test-only sites would also maximize reduction credits. The EPA finds that the separation of testing and repair functions greatly improves program effectiveness since tests and repairs done at the same location often result in vehicles being improperly passed.

CSHB 3036 would use all the technology available for testing in a reasonable and flexible manner. According to the TNRCC, In the Dallas/Fort Worth and Houston/Galveston nonattainment areas approximately 52 percent of vehicles would be tested using I/M 240 technology. Vehicles that failed their initial test could be retested on Bar-90 equipment at test-and-repair facilities. Forty-eight percent of vehicles in the designated areas could, if they wished, escape testing by paying

mitigation fees. The bill would allow time for testing infrastructure to be established. Until 1996 El Paso, Tarrant and Dallas County could use Bar-90 and Bar-84 technology they already have in place to test their vehicles.

I/M-240 technology is more technologically advanced than Bar-90 and Bar-84 in that it provides more specific information about an engine's performance and what kind of pollutants it is emitting. This allows mechanics to identify exactly what needs to be fixed to reduce emissions.

Developing a repair assistance and scrappage program funded by mitigation fees would be the most cost-effective way to reduce emissions and would lessen the burden on low-income motorists who may have older vehicles and hefty repair bills. CSHB 3036 would directly involve local communities in repair assistance and scrappage programs.

Requiring vehicles to be tested if they are registered outside but frequently driven within a nonattainment area, and requiring used vehicles to be tested before they are moved into a nonattainment area would incorporate the vast majority of vehicles that are contributing to emissions in nonattainment areas. It would also prevent vehicle owners from registering their cars outside a nonattainment to avoid the testing requirement.

Allowing reinspection to be done at a test-and-repair facility would eliminate the "ping-pong" (bouncing between test-only and repair-only facilities) about which motorists often complain.

Remote sensing devices would identify grossly polluting vehicles in areas they are likely to travel, and could help the state to gain 100 percent emission reduction credits.

CSHB 3036 would allow counties to be exempted from the program if TNRCC determined that the county would maintain full attainment credits and required emission reductions. This would give the state flexibility in not having to impose an onerous program where it is unnecessary. A state advisory panel would allow for public input and review of program implementation.

OPPONENTS
SAY:

The state should not implement any sort of vehicle emissions testing program until the federal government makes up its mind about what it requires of state I/M programs, and the EPA should not be interfering in the legislative process in Texas, favoring one piece of legislation over another. Congress is likely to modify the Clean Air Act and may eliminate mandatory emissions testing. The Legislature should suspend the state I/M program indefinitely to see what happens on the federal level before implementing any I/M program.

It is a mistake for Texas to put into place an expensive (and already technically outdated program) out of fear of federal sanctions, or in the hope of obtaining 100 percent reduction credits. Once the state adopts a plan that the EPA has indicated it might approve, the federal government is unlikely to further reduce any of its Clean Air Act requirements. If states hang together and defy the EPA, it is likely the agency will capitulate.

Over half the states that have been ordered by the EPA to reduce emission levels are either doing nothing or have passed moratoriums on their emission-testing programs. The EPA rarely imposes sanctions. An I/M review committee should study the rapidly changing technology. The state has lost sight of the most important thing for Texas residents: implementing a program that would be most effective in cleaning up the air.

Allowing owners of newer model vehicles to exempt themselves from testing by paying a \$10 annual mitigation fee would be an unfair advantage to those who happen to own new cars.

It would be very expensive (as well as polluting) for large fleet operators to shuttle all their vehicles back and forth from a central test facility. The U.S. Postal Service, for example, estimates that it would spend about \$190,000 a year in Dallas/Fort Worth to test at centralized facilities. The bill should, at the very least, stipulate that vehicles could be tested at on-site fleet maintenance facilities licensed by TNRCC.

CSHB 3036 would probably require the state to appropriate yet more money to give to Tejas Testing, since the bill would dramatically change the content of the contract agreement. The contract that Tejas has with the

state would require the state to negotiate with Tejas over the extent to which Tejas would be reimbursed because of significant changes made in the contract. CSHB 3036 would almost halve the number of cars that would be tested by Tejas, which would represent a revenue loss for the company.

Study after study has indicated that the I/M 240 testing technology that would be required for the majority of vehicle emission tests in the bill is not more effective in cleaning the air than Bar-90 technology that has been used in Dallas and El Paso for years, and has been readily accepted by the public. The state should use what works well and is already in place (over 1400 Bar-90 stations are ready to resume testing in the Dallas/Fort Worth area). Bar-90 is convenient for consumers and more cost-effective in finding gross polluters than other systems.

OTHER
OPPONENTS
SAY:

The I/M program already in place, not the proposed one, would clean the air most effectively, and its use would release the state from having to reimburse Tejas Technology for more losses and ensure full credit from EPA.

CSHB 3036 should not exempt newer cars from emission tests by allowing them to pay mitigation fees. When a component, like an oxygen sensor, fails on a new vehicle, that vehicle can pollute more than a 1968 model car. Also, a six-year old car is usually no longer under warranty. Testing new cars would ensure that manufacturers would become aware of emission problems and work to fix them.

Counties should be required to use all their mitigation fees collected from vehicle operators for repair and scrappage programs or return the money to the state. The bill should specify that money returned to the state should only be used to fund the state's I/M program, and not be deposited in the clean air fund to be used for any air pollution program.

A \$20 fee paid when purchasing a new car would fund an extensive scrappage and repair program, which would get the worst polluting vehicles off the road.

Under CSHB 3036, if a county program repair and scrappage program is discontinued, the county could use the unexpended funds for other clean air

programs. This is unfair. Money collected from vehicle operators should go to clean up the pollution caused by motor vehicles, not other sources of air pollution. Some of that money needs to go back to fund the program.

According to a recent California study, whether a program is decentralized or centralized is not important in determining an I/M program's effectiveness. Since decentralized locations are more convenient to the public, CSHB 3036 should not require anyone to be tested at a centralized location. Cars should, however, be tested annually.

Bar-90 and Bar-84 technology, based on standards released by the California Bureau of Automotive Repair in 1990 and 1984, is not particularly accurate and will not give the state much in the way of emission credits. CSHB 3036 should not allow these tests to be used in Dallas, Tarrant or El Paso counties.

El Paso should be exempted from centralized emission tests. El Paso is a nonattainment area only because of neighboring Ciudad Juarez in Mexico.

NOTES:

SB 178 by Whitmire, which would suspend the state's vehicle emissions inspection and maintenance program until January 2, 1997, was passed by the Senate (Bivins, Cain and Sibley recorded voting nay) on April 18. As substituted by the House Environmental Regulation Committee on April 20, CSSB 178 is identical to CSHB 3036.

The Senate committee version of SB 178, scrapped by the Senate, would have established an interim vehicle emissions inspection and maintenance program on June 1, 1995, until the governor determined, after negotiation with the EPA, what kind of program was necessary to meet federal requirements. The governor would then have directed TNRCC to implement a new program. The governor could have specified what kind of program should be adopted and could have exempted counties from the program if required.

The Senate committee would have required that the program be implemented in all the nonattainment areas except Beaumont/Port Arthur, Denton and Collin counties until January 1996. Vehicles four years or older would have been tested annually at either central or decentralized facilities

and could not have obtained a state safety inspection sticker without verification of an emissions test. A \$20 fee would be paid upon purchase of a new car. The fees were intended to fund a program that would have been established to provide financial assistance to low income vehicle owners for repairs. Emission tests would cost \$12.

The Senate committee version of CSSB 178 also would have required that only fleet vehicles be tested at centralized test-only inspection stations, although certain fleet vehicles could be tested at on-site fleet maintenance facilities licensed by TNRCC. It would be a misdemeanor with a penalty of up to \$200 to drive a vehicle visibly emitting smoke or fumes for more than 10 seconds. A remote sensing program would also have been established.

As filed, HB 3036 would have exempted vehicles less than four years old from emission tests when mitigation fees were paid, stipulated that vehicles less than four years old could be inspected at decentralized facilities, capped required repairs at \$150 (and \$550 after 1998) after which the vehicle owner would be entitled to a waiver from a vehicle inspection, specified which technologies should be used in inspections, prohibited facilities from charging for any reinspection, and would have required the TNRCC to implement a program to purchase grossly polluting vehicles capping payment for such vehicles at \$1,000.

CSHB 3036 added several provisions not in the filed version including a requirement that if a vehicle failed two tests in a row it would have to be tested at a centralized facility, a requirement that certain rental vehicles newer than six years old would have to be tested, allowing private industry to obtain emission credits by buying old cars, permitting counties to develop vehicle repair and scrappage programs and creating a vehicle emissions advisory panel.