

SUBJECT: Administering the vehicle inspection and maintenance program

COMMITTEE: Environmental Regulation— favorable, with amendment

VOTE: 7 ayes — Chisum, Allen, Dukes, Howard, Kuempel, Puente, Talton.

0 nays

2 absent — Jackson, Hirschi

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 28 — 31-0

WITNESSES: None

BACKGROUND : In 1995, the Legislature suspended a vehicle inspection and maintenance (I/M) program required under the federal Clean Air Act and Environmental Protection Agency (EPA) regulations in air quality nonattainment areas. The Legislature put a temporary program in place until the governor could draft a new program. The new I/M program, called Motorist's Choice, started up in July 1996. The program, which operates in Dallas, Tarrant, Harris and El Paso counties, is implemented by the Texas Department of Public Safety (DPS).

Gasoline-powered vehicles 24 years old and newer are tested beginning on their second model year anniversary. Vehicles failing a test have to be repaired and pass a retest or qualify for a waiver. Vehicles are tested annually at a decentralized test-and-repair or test-only facility or biennially at a facility with more advanced equipment. The testing fee is \$13 at annual testing facilities.

A remote sensor is a gun-like device that directs a beam of infrared light at auto tailpipe emissions to evaluate emission contents. The test can be performed from the side of a single lane road as a car passes the sensor.

DIGEST: SB 1856, as amended, would make a number of changes to the Motorist's Choice I/M program required by the EPA, eliminate obsolete statutes left over from defunct I/M programs, strengthen DPS enforcement power for the I/M program, give the state statutory authority to use remote sensing devices

in the program, allow the DPS to suspend a vehicle inspector's certificate prior to a hearing, establish penalties for violation of I/M program rules and requirements, and give the state authority to deny vehicle registration to motorists who fail emissions tests.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership of each house.

**Administration.** The DPS could, by rule, establish an I/M program for vehicles specified by the Texas Natural Resource Conservation Commission (TNRCC) in a county in which TNRCC has adopted a resolution requesting the DPS to establish such a program. Such a program could not include registration-based enforcement unless the county by resolution requested it. A vehicle emissions inspection in such a program would be performed by the same facility that performed safety inspections.

The bill would delete a current statutory provision requiring the DPS to establish an I/M program in a county that did not meet certain national ambient air standards and in which the TNRCC had adopted a resolution requesting that the DPS establish a program.

The DPS could impose an inspection fee based on the costs of producing certificates, providing inspections, and administering the program. The DPS could set a maximum but no minimum fee for inspection.

**I/M enforcement.** SB 1856 would require the DPS to ensure compliance with the I/M program through a sticker-based I/M vehicle inspection program so long as EPA agreed that sticker-based enforcement was more effective than registration-based enforcement. Otherwise, registration-based enforcement would be required.

The bill would prohibit the Texas Department of Transportation (TxDOT) or a county tax assessor-collector from registering a motor vehicle upon notification that vehicle had not passed a required emissions test. County tax assessor-collectors would not be liable for refusing to register a vehicle because of a person's failure to provide verification of successful emission testing.

If a motor vehicle in a nonattainment area where the Motorist's Choice program was in effect was found emitting excessive amounts of various pollutants specified in the bill, the DPS would be required to provide notice of the violation to the registered owner of the vehicle. A vehicle owner would be given a month to pass an emissions test. Noncompliance within this time frame would result in a misdemeanor punishable by a fine of not less than \$1 or more than \$350. Upon subsequent convictions, the punishment would be a fine between \$200 and \$1,000. The DPS could contract with a private person to operate remote sensing equipment to test vehicles' compliance. TxDOT could deny registration of the vehicle if the registered owner had received notification of a grossly polluting vehicle that could not pass an I/M inspection.

The bill would make it an offense for a vehicle operator to display a counterfeit insurance document or inspection certificate for a vehicle that did not warrant it, seek an inspection at a station not certified to perform an emissions inspection if the person knew the vehicle was required to be inspected, and knowingly fail to comply with an emissions inspection requirement. Operating a vehicle displaying a fraudulent inspection certificate would be a Class B misdemeanor (maximum penalty of 180 days in jail and a \$2,000 fine); selling counterfeit inspection certificates would be a third degree felony (two to 10 years in prison and an optional fine of up to \$10,000); and selling such documents with the intent to defraud or harm another person would be a second degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

**Inspection certification.** Stations licensed to conduct I/M inspections would be certified by the DPS. The bill would delete current criteria for suspending or revoking an inspector or inspection station certificate and establish that the DPS could deny, revoke or suspend an inspector's certificate or place a holder of a suspended certificate on probation for a number of reasons. These would include violations of various inspection station rules or requirements, failure to maintain qualifications for certification or pay certificate fees, or upon conviction of various crimes classified as felonies or Class A or B misdemeanors. A certificate suspension would be for a period of not less than six months; a person whose certificate was revoked could not be directly involved with an inspection operation.

The bill would specify requirements under which notice would be given to an inspector or inspection station for denial, revocation or suspension of a certificate, and the DPS would provide that a revocation or suspension would take effect on receipt of a written notice if necessary to protect public health, safety or welfare. Violations that would present a threat to health, safety or welfare would include issuing a certificate with the knowledge that it was in violation of I/M inspection rules, charging an amount greater than the authorized fee, and fraudulently claiming to the vehicle's owner that it must be repaired to pass an inspection.

To obtain an administrative hearing on a denial, suspension or revocation of a certification, a written request would have to be submitted within 20 days of receiving notice of the violation. A hearing would have to be held within 14 days of the date the DPS received the request for hearing.

An administrative law judge would be required to include in the proposal for a decision to deny certification a finding of costs, fees and attorney's fees the state incurred in bringing the proceeding. The executive director of DPS could adopt the finding and make it part of the final order. Proceeds collected from this action would be deposited in general revenue to be appropriated only to the attorney general.

The bill would provide criminal penalties for offenses, including misrepresenting material in an application for an inspector's certificate, knowingly issuing an inspection certificate for a vehicle missing an item to be inspected and charging an amount for an inspection that was greater than the authorized fee.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS  
SAY:**

The changes made by SB 1856 would eliminate obsolete statutes left over from I/M program rules and requirements that are now defunct, strengthen DPS enforcement power for the I/M program, and make legislative changes necessary to ensure that the state would gain federal delegation of the state's I/M program. If the program were not approved, the state could lose federal highway funds, and the EPA could issue restrictions on economic growth

and development in the nonattainment areas covered by the Motorist's Choice I/M program.

In December 1996, the EPA proposed conditional interim approval for the State Implementation Plan (SIP) for bringing air quality into compliance with the requirements of the federal Clean Air Act of 1990. The EPA conditioned interim approval of the Motorist's Choice I/M program on the following changes:

- increased statutory authority for the program;
- methods for identifying and penalizing grossly polluting vehicles;
- statutory authority to deny re-registration of motor vehicles not in compliance with program requirements; and
- a penalty schedule for inspectors and facilities consistent with federal requirements.

SB 1856 would address all of these requirements.

OPPONENTS  
SAY:

The state should not saddle county tax assessor-collectors with the burden of refusing to register vehicles that fail emission tests. Under SB 1856, these officials would bear the brunt of motorist anger at the controversial I/M testing program.