

SUBJECT: Restricting the Texas Clean Fleet Program

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 8 ayes — Chisum, Jackson, Allen, Dukes, Howard, Kuempel, Puente, Talton

0 nays

1 absent — Hirschi

SENATE VOTE: On final passage, April 1 — 26-3 (Ellis , Shapleigh, Truan); 1 present, not voting (Moncrief)

WITNESSES: For — John Bartosiewicz, Fort Worth Transit Authority; John Duerr, Engine Manufacturers Association; Patrick O'Conner, National Association of Fleet Administrators and Federal Express Corporation; Charles Ratliff, Frito Lay Company; Anne Culver, Metropolitan Transit Authority; Shanna Igo, Texas Municipal League; Mary Miksa, Texas Association of Business and Chambers of Commerce; Mike Plaster, Texas Transit Association

Against — Susan Pitman, The Chemical Connection

BACKGROUND
:

The Environmental Protection Agency (EPA) designates certain areas as “nonattainment” areas when various pollutant levels in those areas exceed federal standards. Nonattainment areas are designated as moderate, serious, severe, or extreme for designated air pollutants. Nonattainment areas in Texas are Houston/Galveston (severe); Dallas/Fort worth (moderate); Beaumont/Port Arthur (moderate) and El Paso (serious).

In 1990, the federal Clean Air Act required nonattainment areas to implement a low emission vehicle (LEV) program for centrally fueled fleets. States could implement their own program if it would achieve equivalent emission reductions. In 1994, Texas adopted a state program to achieve emission reductions equivalent to federal requirements. The program required transit authorities, state agencies, and school district fleets to use specified alternative fuels and to meet federal LEV standards using the approved fuels, beginning September 1998. Local government and private

fleets in designated nonattainment areas were required to meet LEV standards by 1998 but with the fuel of their choice.

In 1995, the 74th Legislature enacted SB 200 by Armbrister that revamped the alternative fuels program, replacing fuel-based standards requiring the use of specific fuels (such as natural gas) with emission-based standards allowing any fuel/vehicle combination as long as it satisfied federal LEV standards. The 74th Legislature also removed all alternative fuel use requirements for independent school districts.

The Texas Clean Fleet (TCF) program created by SB 200 is phasing in LEV standards for transit authorities in all four nonattainment areas in Texas and LEV use for private and local government fleets in the two serious and severe nonattainment areas. LEV use will eventually be required for private and local government fleets in all nonattainment areas.

Certain transit authorities are required to have 50 percent of their total fleet at or above LEV standards; new purchases must all be LEV vehicles. These authorities are located in nonattainment and near nonattainment areas and include Metropolitan Transit of Harris County; Dallas Area Rapid Transit; Fort Worth Transit Authority; Sun Metro, El Paso; Capital Metro, Austin; Corpus Christi Regional Transportation Authority; VIA Metropolitan Transit, San Antonio; and Laredo Municipal Transit Authority.

Most transit authorities in near attainment areas may exempt themselves from these fleet requirements if they meet certain criteria; transit authorities in nonattainment areas can exempt themselves only from purchasing requirements and must be granted Texas Natural Resource Conservation Commission (TNRCC) approval in order to be exempted from the 50 percent requirement. Austin's Capitol Metro is the only transit authority in a near nonattainment area that must seek TNRCC exemptions from the 50 percent requirement.

The TCF program also contains two separate emission credit-trading programs: the Texas Mobile Emissions Credit (MERC) program, which complies with federal EPA requirements, and a separate system of compliance credits. Both kinds of credits may be acquired by mass transit authorities, local governments, and private fleets to offset fleet requirements.

DIGEST:

SB 681 would narrow the focus of the TCF program to two nonattainment areas and ease certain restrictions and deadlines by which private and local government fleets would have to comply with LEV standards. Current provisions concerning the types of vehicles that count towards LEV requirements for private and local fleets and mass transit authorities would also be changed.

General provisions. LEV requirements would apply only to serious, severe or extreme nonattainment areas with populations of 350,000 or more, currently the Houston/Galveston and El Paso nonattainment areas.

The TNRCC would be allowed to establish TCF programs in other counties if the county and its biggest city made a formal request for such a program. The request could only be made by a city or county declared in violation of federal air standards or seeking to avoid being declared in violation of those standards.

The bill would require urban buses owned or operated by mass transit authorities to comply with TCF requirements. Exempted from LEV requirements would be vehicles used in maintenance or repairs of underground mass transit facilities required by law to operate on diesel fuel.

SB 681 would specify that program compliance credits would not be available to vehicles acquired by state fleets. The bill would also delete a provision requiring rules for the Texas MERC program to comply with certain federal requirements.

Mass transit authorities. Certain vehicles that transit authorities acquired before September 1, 1999, and operated on a fuel required by any state fuel or fleet program before September 1, 1995, could be counted towards compliance of fleet percentage requirements as long as they met certain federal emission standards. Percentage requirements also could be met through acquisition of program compliance credits or MERC credits. The bill would delete past deadlines for using alternative fuels in mass transit fleets.

SB 681 would allow mass transit authorities an additional criteria under which they could exempt themselves from current requirements if LEV vehicles were not available from original equipment manufacturers.

Mass transit law enforcement and emergency vehicles would be exempt from TCF LEV requirements.

Private and local government fleets. The bill would eliminate requirements that private and local government fleets have at least 20 percent of their total fleet vehicles at LEV standards by September 1, 2000. The bill would require that 70 percent of light duty fleet vehicles and 50 percent of heavy duty vehicles purchased after September 1, 2002, be at or above LEV standards, instead of 90 percent, as required under current law. If alternative fuel vehicles accounted for 70 percent or more, rather than 90 percent, of a fleet, the TNRCC could not require a local government or private person to purchase fleet vehicles operating at or above LEV standards.

TCF requirements could be waived for private and local government fleets if an alternative fuel that met the normal requirements of the principal business of the affected entity was not be available in the area where the vehicles were to be operated. The bill would eliminate current language allowing TNRCC to exempt vehicles from program requirements if the commission determined that vehicles are operating in an area that did not have adequate refueling for alternative fuels.

The bill also would revision provisions for exceptions to rules due to the cost of switching to alternative fuels and establish that costs could not be expected to exceed comparable outlays for operating conventional vehicles.

SB 681 would delete current criteria directing the kind and percentage of vehicles that could be grandfathered in by private and local fleets to count towards compliance goals. It would establish that those vehicles capable of operating on a power source recognized by any state fleet fuel program and purchased prior to September 1, 1995, could be counted towards compliance with fleet percentage requirements.

The TNRCC could make exceptions to rules concerning TCF requirements if EPA-certified clean fuel vehicles that would meet the entity's normal business requirements and practices were not available from an original equipment manufacturer.

TCF requirements for private and local government fleets could be met by converting currently owned or newly purchased gas or diesel-fueled vehicles to operate on alternative fuel.

SB 681 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 681 would reduce pollution in the state by making it easier for private and local government fleets as well as mass transit authorities to comply with Texas clean fuel requirements. The bill would narrow the focus of the program to where it is needed most: the serious and severe nonattainment areas of El Paso and Houston/Galveston. In other areas of Texas, the program contributes only minimal reductions in air pollution, while costs associated with its implementation far outweigh the emission reductions actually achieved.

Fleet owners are finding that some of the fleet percentage requirements of the TCF program are impossible to meet — LEV vehicles are not currently available in sufficient numbers to satisfy these requirements. SB 681 would ease, but not eliminate, fleet requirements so both businesses and local governments could comply with the TCF program. Existing fleet percentage requirements disrupt normal vehicle purchase patterns by requiring vehicles to be replaced before the end of their anticipated useful lives.

Waiving requirements for private and local government fleets if an alternative fuel that met the normal requirements of the principal business were not available in the area would remedy problems businesses face when the nearest available alternative fueling stop is 50 miles away.

Texas could still meet its federal clean air commitment under SB 681. The bill would not jeopardize the state program nor keep it from achieving equivalent emission reductions with the federal program.

OPPONENTS
SAY:

SB 681 would dismantle a long-standing schedule for converting private and local government fleets to less polluting vehicles. This would be a step backward for Texas, because vehicle emissions from these fleets can harm the health and safety of the public. High mileage fleet vehicles log more than twice as many miles and cause twice the pollution as passenger cars. They have had plenty of warning about approaching program deadlines, and should be required to convert to clean burning fuels on this schedule.

SB 681 could cause the state to be out of compliance with the federal Clean Air Act, since the Texas program might no longer be able to achieve equivalent emission reductions with federal clean fuel requirements. Limiting the program to only the Houston/Galveston and El Paso nonattainment areas would allow polluting fleets to run unchecked in other areas. Areas like Dallas/Fort Worth, which are in moderate nonattainment at this time, would particularly benefit from clean fuel requirements that could keep them from becoming classified as serious or severe nonattainment areas in the future. Near nonattainment areas like Austin, San Antonio, and Corpus Christi also would benefit by the clean fuel provisions. If they edge into nonattainment, the resultant federal clamp down on air emissions could squelch economic growth in these areas.

SB 681 would put into statute ambiguous language waiving requirements for private and local government fleets if an alternative fuel that met the normal requirements of the principal business were not available in the area. Businesses could use this broad permission to unreasonably claim waivers from all clean fuel requirements.

OTHER
OPPONENTS
SAY:

The bill should be amended to provide that all vehicles over 26,000 pounds, including buses, would be exempt from clean fuel requirements since there are no vehicles of this size that meet LEV standards. Engine manufacturers cannot afford to produce a specialized engine for such a small market. Federal clean fuel rules do not require vehicles over 26,000 pounds to meet LEV requirements. Texas is the only state program that includes vehicles of this size.

The bill also should be amended to remove a provision allowing local entities to opt into a clean fuel program even if they do not have serious nonattainment status. Private companies must plan for capital purchases

years in advance, and having to revise equipment purchase plans every time a local community opted into the program would be very disruptive to the process of doing business in the state.

SB 681 should allow transit authorities to count all their alternatively fueled vehicles towards compliance. A good portion of the transit authorities have tried to comply with past program requirements and purchased vehicles under those programs. All alternative fuel vehicles purchased under previous state mandates should be counted towards compliance.

It would be unfair to allow different compliance standards for mass transit authorities and private and local government fleets. Both kinds of fleets should have to comply with the same requirements on grandfathered vehicles.