

SUBJECT: Revising the Texas Emissions Reduction Plan and creating a new fee

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Bonnen, Kuempel, Crownover, Chisum, Flores, W. Smith, West
0 nays

WITNESSES: For — Ramon Alvarez, Environmental Defense; Harless Benthol, Houston Construction Industry Coalition; Pamela Berger, Houston Mayor’s Office; Trek English, Northeast Action Group; Jon Fisher, Texas Chemical Council; Tommy Foltz, Southwest Alliance for Advanced Transportation; Gary Gibbs, Association of Electric Companies of Texas; Renee Green, Office of Judge Nelson Wolff of Bexar County; Ron Harris, Texas Clean Air Working Group, Dallas Regional Mobility Coalition, and North Texas Clean Air Steering Committee; Donald Hill, City of Dallas; Kelly Horoson and Tom “Smitty” Smith, Public Citizen; Katy Hubener, Blue Skies Alliance; Malcolm Jacobson, Fuel Cells Texas Inc. and Fuel Cell Energy Inc.; Tim Keleher, Metro 8 Chamber of Commerce; Bruce Laboon, Greater Houston Partnership and Texas Environmental Research Consortium; Edith Lowery, Metropolitan Transit Authority of Harris County; Glen Maxey, American Lung Association of Texas; Mary Miksa, Texas Association of Business; Cyrus Reed, Texas Center for Policy Studies; Mark Rhea; Theodore Wickersham, Jr. Mobile Emissions Reduction Coalition and Holt Co.; John Wilson, Galveston-Houston Association for Smog Prevention; *(Registered but did not testify:)* Mike Albrecht; Becky Bornhorst, Downwinders at Risk; Jay Dyer, Texas Association of Builders; Scott Forbes, Port of Houston Authority; Karen Hadden, Sustainable Energy and Economic Development; Russell Hamlgy, Associated Builders and Contractors of Greater Houston; Steve Hazelwood, Dow Chemical; Howard Hicks and Peter Holt, Holt Co.; Jim Holcomb; Lara Keel, Office of Judge Robert Eckels of Harris County; Pat Kiley and Lance Lively, Associated General Contractors; James McCarley, Dallas Regional Mobility Commission; Cindy McCauley, Lyondell Chemical Co.; Dean McWilliams, Applied LNG Technologies and Jack B. Kelley, Inc.; Mike Merony, Huntsman LLC; Nelson Nease, Cardinal Glass Industries; Carrie Norton, Teletrips; Lawrence Olsen, Texas Good Roads/Transportation Association; Amanda Oneacre, Greater Dallas Chamber of Commerce; Bill Oswald, Koch Industries and Flint Hills Resources; Ben Sebree, Texas Oil

and Gas Association; Brian Sledge, Solid Waste Association of North America, Lone Star Chapter; Andrew Smith, San Antonio Water System; Bob Stout, The Woodlands Operating Co.; Vic Suhm, North Texas Commission; Michael Vasquez, Texas Conference of Urban Counties; Kathryn Wood, Greater Houston Builders Association

Against — Charissa Barnes, Texas State Inspection Association; Pat Stout, Texas State Inspection Association, Texas Clean Air Working Group, and Lone Star Lubrication; Bill Williams, Meton Management, U.S. Automotive Concept, Express Sticker LTD, and Miller Oil and Gas Operator

On — Robert Burroughs, Texas Department of Public Safety; Robert Huston, Texas Commission on Environmental Quality

BACKGROUND: The State Implementation Plan (SIP) is Texas' plan for complying with federal air-quality standards in Dallas/Fort Worth (DFW), Houston/Galveston (HGA), and other so-called nonattainment areas. The DFW and HGA areas violate federal standards for emissions of ground-level ozone and have submitted plans to achieve compliance by 2007. The U.S. Environmental Protection Agency (EPA) designates ozone nonattainment areas pursuant to the federal Clean Air Act of 1990.

The SIP is a detailed plan by which the state agrees to implement specific measures or strategies to reduce ozone-producing emissions enough to meet EPA standards by certain deadlines. Much of the SIP focuses on reducing emissions of nitrous oxides (NO_x), a precursor to ozone formation. In the SIP, ozone-producing emissions are measured in tons per day (tpd) of NO_x. For each ozone nonattainment area, the state must reduce NO_x emissions to a specific number of tons per day to comply with EPA standards.

The 77th Legislature in 2001 enacted SB 5 by Brown, creating the Texas Emissions Reduction Plan (TERP), a set of incentive-based programs intended to reduce ozone-producing emissions enough to satisfy EPA requirements in DFW and HGA without implementing more stringent regulatory measures.

TERP programs earn the state credit in the SIP for reducing NO_x. "Affected counties" include counties in which air quality is near nonattainment status for

ozone. These counties are eligible for specific TERP incentive programs under SB 5. The primary TERP program that counts toward the SIP is the diesel emissions-reduction incentive grants program, which provides grants to reduce NOx emissions from high-emissions diesel sources in affected counties. Other TERP components include:

- a statewide heavy-duty vehicle purchase or lease incentive program that provides reimbursement funds for buying or leasing a heavy-duty diesel vehicle that meets specific emissions standards;
- a similar purchase or lease incentive program for light-duty vehicles;
- an energy-efficiency grant program that provides grants to electric utilities for energy-efficiency programs;
- a new technology research and development program that provides grants to support development of new emissions-reducing technologies; and
- implementation of Texas building energy performance standards to achieve energy efficiency in residential construction.

The programs receive money from the TERP fund according to an allocation formula. Fund revenue comes from five new fees or surcharges, including a \$225 inspection fee for registering an out-of-state vehicle and a 1 percent surcharge on the sale, lease, or rental of construction equipment.

The out-of-state vehicle inspection fee was expected to generate the majority of TERP funding. In April 2002, however, a state district court ruled the fee unconstitutional. With this largest funding source invalidated, TERP revenue in fiscal 2002 came in 85 percent below projections. The shortfall has forced state agencies to scale back implementation of TERP programs, hindering the state's ability to reduce NOx emissions to levels established in the SIP. The Texas Commission on Environmental Quality (TCEQ) estimates that it would cost \$189 million per year to restore TERP fully.

Recognizing the effect of the court decision, EPA in August 2002 issued preliminary findings that could require the agency to impose sanctions on the DFW and HGA areas, including restrictions on new industrial facilities and a loss of federal highway money. EPA has stated that it will not finalize these findings until September 2003 so that any laws enacted by the 78th Legislature may take effect.

If sanctions were imposed on either DFW or HGA, EPA first would impose a 2:1 offset ratio on the nonattainment area found to be deficient. This would require an operator building a new industrial facility or modifying an old one to reduce emissions in the area by two tons for every one ton of emissions the new or modified facility would produce. If the state did not correct the deficiency within six months after the offset sanction was imposed, highway sanctions would begin to apply. The sanctions would prohibit the state from receiving federal highway funds in the nonattainment area, except for certain safety or air-quality projects.

For additional background on TERP and its funding, see House Research Organization Focus Report Number 78-7, *Paying for Clean Air: New Funding Options*, February 18, 2003.

DIGEST:

CSHB 1365 would amend the TERP and would create new funding sources. Significant changes proposed by the bill include:

- creating a temporary fee on delivery of diesel fuel;
- increasing and expanding the construction equipment surcharge;
- changing the allocation formula for distributing money from the TERP fund;
- amending TCEQ's authority to adopt diesel fuel standards;
- eliminating the light-duty vehicle purchase or lease incentive program; and
- prohibiting TCEQ from declaring a speed limit for environmental purposes.

Programmatic, administrative, and technical changes proposed by CSHB 1365 would affect TERP administration, the diesel emissions-reduction incentive grants program, the heavy-duty diesel vehicle purchase or lease incentive program, and building energy performance standards.

Temporary diesel fuel fee. CSHB 1365 would impose a fee on the delivery of diesel fuel from a bulk distribution facility, such as a pipeline or refinery terminal, to a cargo tank used for transporting, hauling, or delivering liquids. The fee would expire August 31, 2008. The amount of the fee would depend on the size of the cargo tank, as follows:

- \$75 for delivering diesel fuel into a cargo tank with a capacity of less than 2,500 gallons;
- \$150 for a tank with a capacity between 2,500 and 5,000 gallons;
- \$225 for a tank with a capacity between 5,000 and 8,000 gallons;
- \$300 for a tank with a capacity between 8,000 and 10,000 gallons; and
- \$150 for every 5,000 gallons delivered into a tank with a capacity of 10,000 gallons or more.

The fee would be in addition to the petroleum product delivery fee that current law imposes on the delivery of diesel fuel from a bulk distribution facility. The new fee would be administered, reported, collected, and enforced in the same manner but would not require an additional permit. Fee revenue and any penalties or interest collected by the comptroller would go into the TERP fund, except for 2 percent that would go into general revenue as the state's charge for services.

Construction equipment surcharge. CSHB 1365 would increase the surcharge on construction equipment to 2 percent of the retail sale, lease, or rental cost of new or used equipment. It also would extend the surcharge to storage, use, or consumption in Texas of new or used equipment purchased outside the state. It would amend the application of the surcharge by:

- eliminating the specification that the surcharge applies to certain off-road heavy-duty diesel equipment only if it was classified as construction equipment; and
- adding mining and drilling equipment to the list of equipment subject to the surcharge.

TERP allocation formula. CSHB 1365 would amend the allocation formula for distributing money from the TERP fund, as follows:

- an unspecified percentage, rather than 72 percent, would go to the diesel emissions-reduction incentive program, at least 5 percent of which would be reserved for programs implemented by political subdivisions. (A floor amendment would increase the percentage allocation for this program to 87.5 percent.);
- 11.5 percent, rather than 7.5 percent, would go to the new technology research and development program, at least 20 percent of which would

- be allocated annually to air-quality research performed by a Houston-based nonprofit organization; and
- no money would be allocated to the light-duty vehicle purchase or lease incentive program or the energy-efficiency grant program, which now receive 15 percent and 7.5 percent, respectively.

Fuel standards. CSHB 1365 would prohibit TCEQ from adopting vehicle fuel-content standards that were more stringent than EPA standards, unless the Legislature specifically authorized the fuel. It would eliminate a current exception from this prohibition for Texas low-emission diesel fuel. TCEQ could adopt federal standards for ultra-low sulfur diesel fuel after June 1, 2005. TCEQ could retain any gasoline fuel standards that were in effect before September 1, 2003.

TCEQ could provide grants through the diesel emissions-reduction incentive program for production and distribution of Texas low-emission diesel fuel and of cleaner-burning fuels in counties east of I-35 or I-37 or in Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

TERP changes. CSHB 1365 would add to the list of “affected” counties Henderson, Hood, and Hunt counties or any other county designated as an affected county by TCEQ because of deteriorating air quality. It would add two new members to the TERP advisory board: a municipal government representative from a serious nonattainment area and a transportation authority representative from a serious nonattainment area. TCEQ could propose revisions to TERP guidelines and criteria regarding the addition to the plan of stationary engines, engines used in stationary applications, or vehicles or equipment that use fuels other than diesel.

Diesel emissions-reduction incentive grants program. CSHB 1365 would change this program in a number of ways. It would redefine “repower” to mean replacing an old diesel engine with a new or used engine or with electric motors, drives, or fuel cells. It would authorize TCEQ to adopt guidelines to allow someone other than the owner to apply for and receive a grant. In setting priorities for projects eligible to receive a grant, TCEQ would have to give preference to an applicant that was a political subdivision or that contracted for services with a political subdivision. The bill would add to the list of projects that could be considered for a grant:

- purchase or lease of on-road diesel vehicles;
- purchase of qualifying fuel;
- production and distribution of Texas low-emission diesel fuel; and
- replacement of on-road or nonroad diesel vehicles with newer diesel vehicles.

TCEQ could allow the sharing of emissions-reduction credits associated with a project between TERP and another program if the portion of the credits assigned to TERP met the cost-effectiveness criteria established in TERP. The bill would create an additional exception from certain cost-effectiveness criteria for infrastructure purchases that were part of a broader retrofit, repower, replacement, or add-on equipment project.

The bill would add to the list of infrastructure projects eligible for a grant:

- a project involving car pooling or other workforce programs designed to reduce traffic congestion that included technology capable of tracking the resulting reductions in vehicle-miles traveled; and
- a project involving technology that monitored in real time the use of alternative fuels or vehicle add-ons.

Heavy-duty vehicle purchase or lease incentive program. CSHB 1365 would make heavy-duty on-road diesel vehicles certified by the California Air Resources Board to meet a certain emissions standard eligible for purchase or lease under this program. After evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, TCEQ could expand the program to make eligible other heavy-duty on-road vehicles that met the emissions standards, regardless of fuel type.

Building energy performance standards. The bill would specify that a building certified by a national, state, or local accredited energy-efficiency program complies with the state's building energy performance standards. Any single-family residence built in the unincorporated area of a county that was completed between September 1, 2001, and August 31, 2002, would be considered in compliance. A builder would have to keep for three years the original copy of any documentation establishing compliance for a building constructed outside the jurisdiction of a municipality.

Light-duty vehicle purchase or lease incentive program. CSHB 1365 would eliminate this program.

Speed limit. CSHB 1365 would prohibit TCEQ from declaring a speed limit for environmental purposes on part of the state highway system.

Effective date. This bill would take effect on the first day of the month beginning on or after the earliest date on which the bill could take effect if finally passed by a two-thirds record vote of the membership of each house (immediate effect). Otherwise, it would take effect September 1, 2003. The comptroller could adopt emergency rules to implement the bill. Expiration of the temporary fee on diesel fuel delivery would not affect a fee imposed or an obligation incurred before August 31, 2008. Any vehicle purchased or leased under the light-duty vehicle incentive program before the bill's effective date would be governed by the law in effect at the time of the purchase.

SUPPORTERS
SAY:

CSHB 1365 would restore funding to TERP so that Texas could avoid losing vital federal highway funding or suffering restrictions on industrial development in the state's two largest metropolitan areas. The bill also would help improve Texas' air quality by bringing the state into compliance with EPA standards under the Clean Air Act. It would increase the state's investment in developing new emissions-reducing technology that could result in far-reaching benefits in the future. It would achieve these goals in a cost-effective manner by concentrating on TERP programs that earn credits for emissions reductions in the SIP and by incorporating TCEQ suggestions to improve TERP operations.

CSHB 1365 focuses on three areas to ensure that TERP can help the state comply with EPA standards in a cost-effective manner:

- creating funding sources to restore TERP;
- eliminating programs that do not count toward emissions reductions in the SIP, amending the Texas diesel fuel program, and prohibiting environmental speed limits; and
- making administrative, programmatic, and technical changes to improve the TERP's effectiveness and efficiency.

Funding sources. CSHB 1365 would impose a wholesale diesel-fuel delivery fee to fund TERP because diesel fuel users are the primary recipients of TERP incentives. Diesel users receive more than 70 percent of TERP money through the diesel emissions-reduction incentive grants program. A floor amendment to the bill would increase that program's allocation from the TERP fund to 87.5 percent. Diesel users can receive grants or reimbursement funds for a variety of projects, including replacing a diesel engine with a lower-emission model or alternative-fuel engine or buying or leasing a heavy-duty vehicle certified to meet low-emission standards. A temporary fee on the wholesale delivery of diesel fuel would be an appropriate funding source for an incentive program aimed primarily at diesel fuel users.

The temporary fee would be administered, collected, and enforced in the same manner as the petroleum product delivery fee authorized by current law. With the TERP having been stalled since its creation because it imposed an unconstitutional fee, the legality of any new fee is an important consideration. The petroleum product delivery fee has been in place for more than 10 years and has not been overturned by a court.

CSHB 1365 would amend the construction equipment surcharge to reflect the intentions of the 77th Legislature. SB 5 by Brown inadvertently failed to impose the surcharge on construction equipment bought outside the state for use within Texas. Also, the comptroller has had difficulty enforcing the fee because of the definition used in current law. For instance, some purchasers of construction equipment have avoided paying the fee by claiming that their purchase should not be classified as construction equipment because it was to be used for personal or other purposes. The bill would clear up this confusion so that the construction equipment surcharge would be assessed as the 77th Legislature intended.

Increasing the construction equipment surcharge would be an appropriate way to increase TERP funding. Heavy-duty off-road construction equipment on which the surcharge would be assessed is eligible for TERP grants through the diesel emissions-reduction program and purchase or lease incentives.

A number of industries would feel the impact of the new and increased fees, including diesel fuel producers and the construction industry. Many who would be affected feel that the fee would be a small price to pay to avert the

impact on the Texas economy of a loss of highway funding or other punitive restrictions on industrial development in the state's biggest cities.

According to the comptroller, the temporary wholesale diesel delivery fee and increased and expanded construction equipment surcharge would generate for the TERP fund about \$109 million in 2004, increasing to about \$150 million annually by 2008.

Eliminating programs. CSHB 1365 would eliminate the light-duty vehicle purchase or lease incentive program. Although encouraging consumers to buy low-emissions vehicles is a worthy goal, the program has not put any clean cars on the road. Because of the TERP revenue shortfall, the program has been put on hold, and no incentives have been paid. The program receives 15 percent of the TERP fund but earns the state no emissions-reduction credit in the SIP. Considering the current condition of the Texas economy, the state's budget crisis, and the importance of achieving enough credited emissions reductions to forestall federal sanctions, the state should not be spending money on this program.

Similarly, the energy-efficiency grants program is an important method for improving the state's air quality, but it does not earn the state emissions-reduction credit in the SIP. A floor amendment to the bill would require TCEQ and the Public Utility Commission (PUC) to conduct a study on how to translate energy-efficiency grants into emissions reductions that could be counted in the SIP. The study would be funded out of the allocation for administrative costs that the PUC receives from the TERP fund. In the meantime, however, CSHB 1365 would remove the grants program from the TERP allocation formula to direct TERP money to programs that earn the state credit in the SIP.

The bill would eliminate TCEQ's authority to require Texas low-emission diesel fuel, because only a few manufacturers now can produce the fuel. Instead of allowing TCEQ to require Texas diesel, CSHB 1365 would make production and distribution of Texas diesel eligible for TERP incentives to encourage production. By providing incentives for production of Texas diesel, the state still could earn some emissions-reduction credits in the SIP. Moreover, CSHB 1365 would allow TCEQ to adopt federal ultra-low diesel

fuel standards one year earlier than the federal government has scheduled them to take effect.

CSHB 1365 would eliminate TCEQ's authority to adopt speed limits for environmental purposes. Such measures are very unpopular among residents of areas where they have been applied. Prohibiting environmental speed limits might not cause the state to lose as large a volume of emissions reductions in the SIP as some claim. EPA has found that vehicles on the road today are cleaner than had been thought. With the implementation of a new mobile-source emissions model, the actual emissions reductions from environmental speed limits may be worth only a few tons per day of NOx.

Administrative, programmatic, and technical changes. CSHB 1365 would adjust the TERP as recommended by TCEQ, the TERP advisory board, and other groups. Many of the changes are detailed in TCEQ's report to the 78th Legislature on TERP. For instance, TCEQ recommended amending the definition of "repower" used in the diesel emissions-reduction incentive grants program because the detailed definition in current law duplicated requirements of a repower project specified in another section of the law. The new definition would give TCEQ flexibility to set requirements for repower projects to meet the program's goals better.

Henderson, Hood, and Hunt counties are part of Texas' near-nonattainment areas but inadvertently were omitted from the list of affected counties in SB 5. CSHB 1365 would add these counties to the list of affected counties and would allow TCEQ to designate affected counties so that the Legislature would not have to revisit the issue every time more counties were included under federal ozone designations.

**OPPONENTS
SAY:**

HB 1365 unfairly would place the burden of restoring TERP funding on the backs of the trucking industry and convenience store owners. These groups should not have to bear such a disproportionately large share of the TERP's cost. That responsibility should be shared equitably by all beneficiaries.

The bill would increase the cost of diesel fuel for the trucking industry by about 3 cents per gallon. For a truck driver who logs 100,000 miles per year, the new fee could amount to a \$500 increase in annual fuel costs. Such an increase would be especially hard on smaller operators, for whom fuel cost is

regularly one of their largest operating expenses.

Truckers may not be able to pass along the new fee to their customers. Some truckers would have to absorb the full cost of the fee because of an existing or long-term contract. For example, a trucking operation may have put in a bid more than a year ago to bring materials into a highway construction project. The operation cannot now increase the price of a contract that the general contractor already has accepted.

The new fee would come at a bad time for the trucking industry. The industry has just made it through a crisis period when the price of diesel fuel reached \$1.70 per gallon. Although diesel fuel no longer is at its peak price, truckers still are paying uncommonly high prices for diesel fuel. Imposing a fee on diesel fuel on the heels of record-high fuel prices could send the industry back into a crisis.

Adding a new fee to diesel fuel sold in Texas could encourage some long-haul truckers to avoid buying fuel in the state, especially when diesel fuel is cheaper in nearby states. For instance, taxes on diesel fuel sold in Oklahoma already are about 7 cents cheaper than in Texas. This bill would add 3 cents to the price discrepancy. With some trucks getting eight to 10 miles per gallon and having 300- to 400-gallon tanks, many truckers could wait until arriving in the next state to fill up.

Imposing a new fee on diesel fuel would squeeze convenience stores already operating on thin profit margins, especially “mom and pop” stores. With new corporate entrants to the retail fuel business like Walmart and grocery store chains, convenience stores have come under enormous competitive pressure. The nontraditional retail fuel sellers can undercut convenience stores on fuel prices because they make up for it with healthy profit margins in other areas of their business. Convenience stores already struggling to survive in this competitive environment would have to eat the cost of the fee instead of passing it along at the pump, because they cannot afford to lose any more business to the new corporate players in the retail fuel market.

**OTHER
OPPONENTS
SAY:**

While CSHB 1365 would restore funding to TERP so the state could comply with EPA requirements, it also would eliminate some valuable programs that contribute greatly to improving air quality in Texas. Providing full funding

for TERP is important, but the state must not lose sight of the overall goal of improving air quality. The state should not focus on simply complying with bureaucratic regulations but also on developing a long-term solution to Texas' air-quality problems.

CSHB 1365 would eliminate the light-duty vehicle purchase or lease incentive program. The bill's supporters justify eliminating this program by noting that it does not earn the state any emissions-reduction credit in the SIP. However, the 11.5 percent of the TERP fund that CSHB 1365 would allocate to new technology research and development would not earn such credit either. Investing in new technology development could result in reducing emissions in the future. If operated properly, the light-duty vehicle program could encourage the development of a public fueling infrastructure for natural gas vehicles. This would be of enormous benefit to the state's efforts to improve air quality, because it would make it more feasible for consumers and industry to buy cleaner natural gas vehicles.

Instead of scrapping this program, the state could earn credit for it in the SIP by amending it to mirror the heavy-duty vehicle purchase or lease program. Light-duty vehicles will not yield emissions reductions as large as those for heavy-duty vehicles, so the TERP cost-effectiveness criteria would have to be scaled down to an appropriate level. However, with emissions-reduction credits likely to become more difficult to obtain in the future, an amended light-duty vehicle program could provide much-needed reductions.

CSHB 1365 would eliminate funding for the energy-efficiency grants program, even though electricity generating plants are a major source of NO_x emissions in Texas. By providing grants to electric utilities to reduce peak energy demand and associated emissions, this program could produce significant emissions-reduction credits in the SIP. TCEQ already has made significant progress in working with EPA to develop a methodology to translate energy-efficiency grant projects into emissions-reduction credits. CSHB 1365 prematurely would eliminate this promising program.

The bill also would eliminate TCEQ's authority to require Texas low-emission diesel in 2005, as the state agreed to do in the SIP. Because Texas low-emissions diesel contains special additives that make it cleaner than the federal standards for diesel scheduled to take effect in 2006, the state earns

emissions-reduction credit in the SIP. However, the bill would prevent TCEQ from requiring Texas diesel and instead would make Texas diesel projects eligible for TERP incentives. Incentivizing the production of Texas diesel would divert precious TERP funds from emissions-reduction projects to the major refineries that produce Texas diesel.

CSHB 1365 would eliminate TCEQ's authority to adopt speed limits for environmental reasons. Although unpopular, environmental speed limits earn credit in the SIP. If TCEQ could not adopt environmental speed limits, the state would have to make up the credited reductions some other way. In addition, speed limits are a tool that TCEQ may need in the future to achieve some last-minute reductions credits to forestall punitive federal sanctions. The state should not eliminate this option permanently.

Although CSHB 1365 would provide additional funding for TERP, the assumptions used to calculate the cost of restoring the program may underestimate its actual operating cost. TCEQ based its estimate of the cost to restore TERP on an average cost of \$5,000 per ton of NOx reduced, but the record of TERP-funded projects so far suggests that this may be unrealistic. TCEQ has funded 43 projects through the diesel emissions-reduction grants program at an average cost of \$5,389 per ton of NOx reduced. However, most of the money went to a single project to retrofit transit buses, with an average cost per ton reduced of \$4,000. Excluding this project, the average cost per ton of NOx reduced for the other 42 projects was \$9,238.

NOTES:

The committee substitute expanded substantially the original version of HB 1365. The filed version would have made the same changes as the substitute would make to:

- the list of affected counties;
- the definition of "repower";
- the list of projects eligible for diesel emissions-reduction incentive grants, except that the original would not have added the purchase of qualifying fuel;
- the sharing of a project's emissions-reduction credit between TERP and another program; and
- TCEQ's authority to make additional vehicles eligible for the heavy-duty vehicle purchase or lease incentive program.

These provisions of the original bill do not appear in the substitute:

- allowing TCEQ to propose revisions to TERP guidelines and criteria regarding the addition to the plan of vehicles and equipment that do not use diesel fuel, and
- specifying that a certified low-emission vehicle could travel in a high-occupancy vehicle lane only if federal highway funding would not be affected negatively.

The fiscal note for CSHB 1365 estimates that it would generate \$2.5 million in general revenue during fiscal 2004-05 but would cost the state \$8.3 million in general revenue during fiscal 2006-08 because of “dynamic” feedback effects created by the proposed new fee and increased surcharge. These measures would generate \$109 million for the TERP fund in fiscal 2004 and \$135 million in fiscal 2005, increasing to \$150 million by fiscal 2008. The fiscal note estimates that the fee and surcharge would increase costs for the Texas Department of Transportation by about \$9.8 million annually, with a one-time cost in 2004 of \$572,000 to change speed-limit signs.