

SUBJECT: Revising Texas Emissions Reduction Plan (TERP) funding

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Bonnen, Howard, T. King, Driver, Homer, Kuempel, W. Smith
0 nays

WITNESSES: For — Ramon Alvarez, Environmental Defense; Anne Culver; Shawn Glacken, Association of Electric Companies of Texas; Ron Harris, Collin County and North Texas Clean Air Steering Committee; Bruce LaBoon, Greater Houston Partnership and Texas Environmental Research Consortium; Mary Miksa, Texas Association of Business; Liz Moyer, Texas Instruments; Jennifer Newton, Associated General Contractors of Texas Highway, Heavy, Utilities and Industrial Branch; Amanda Oneacre, Greater Dallas Chamber; Tom "Smitty" Smith, Public Citizen

Against — Renee Green, Bexar County

On — Jim Matthews, North East Texas Air Care; David Schanbacher, Texas Commission on Environmental Quality

BACKGROUND: **State Implementation Plan (SIP).** The SIP is Texas' plan for complying with federal air-quality standards in areas that have been designated as ozone non-attainment or near-non-attainment zones by the U.S. Environmental Protection Agency (EPA). The U.S. Environmental Protection Agency (EPA) designates ozone non-attainment 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 (NOx), a precursor to ozone formation. In the SIP, ozone-producing emissions are measured in tons per day (tpd) of NOx. For each ozone non-attainment area, the state must reduce NOx emissions by a specified number of tons per day to comply with EPA standards.

Texas Emissions Reduction Plan (TERP). 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 non-attainment areas without implementing more stringent regulatory measures. TERP programs earn the state credit in the SIP for reducing NO_x. TERP and its related funding sources are set to expire in 2008.

The primary TERP program that counts toward the SIP is the Texas Commission on Environmental Quality's (TCEQ's) Emissions Reductions Incentive Grant (ERIG) program, which provides grants to reduce NO_x emissions from high-emissions diesel sources in affected counties. The EPA has identified 41 counties in Texas that are eligible to receive TERP Funding. The EPA has classified the Houston/Galveston/Brazoria (HGA) and Dallas/Fort Worth (DFW) areas as non-attainment zones and many other areas as near-non-attainment zones for current air quality standards.

Most TERP funds are generated from a vehicle title transfer fee of \$28 or \$33 attached to the purchase and sale of vehicles. Funds in the TERP account are now allocated as follows:

- 87.5 percent for diesel reductions or ERIG; and
- 9.5 percent for the new technology research and development program; and
- 3 percent for administrative costs.

DIGEST:

HB 2481 would continue TERP until 2013 and current funding allocation patterns until 2008.

Changes in allocation of TERP funds, 2008-2013. HB 2481 would and change the allocation of TERP funding by increasing significantly the portion of TERP funds used for the research and development of new emissions-reducing technologies. After September 1, 2008, TERP funding would be allocated as follows:

- 64 percent used for the diesel emissions or ERIG program; and
- 33 percent used for the new technology research and development program.

ERIG funds. A maximum of 10 percent of the total funds allocated to the ERIG program would be spent on on-road diesel purchase or lease incentives.

New technology research and development. At least 10 percent of the total funds for the new technology research and development program would be directed specifically to support air quality research in the HGA and DFW non-attainment areas. A minimum of 25.5 percent of the funds for air quality research in the HGA and DFW areas would be allocated to a Houston-based nonprofit organization, which would implement and administer the new technology research and development program. The program would identify, test, evaluate, and verify new emissions-reducing technologies that would maximize the state's SIP credits. Program funds would be used for grants to finance promising new technologies.

Additional TERP changes:

- Inclusion of rebate programs in order to streamline TCEQ's emissions reductions grants program;
- elimination of the gross weight limit cap for on-road vehicles of 8,500 lbs;
- replacement of a TERP advisory board member with a representative of the Houston-based technology research non-profit;
- requiring the Energy System Laboratory to assist in calculations of emissions reductions from energy efficiency and renewable energy programs, and the credits associated with those reductions;
- eliminating the Texas Council on Environmental Technology; and
- changing TCEQ administrative requirements for certain reports and meetings.

Texas Department of Transportation (TxDOT) funds transfer:

- **Title transfer fees.** Funds obtained through the title transfer fee would be deposited in the Texas Mobility Fund in fiscal 2008 in order to increase TxDOT's bonding capacity. During fiscal 2008-2010, TxDOT would repay TERP fund the entire amount of funds it received from title transfer fees during this two-year period. Beginning in 2010, money from title transfer fees would flow directly to TxDOT and not be repaid to TERP.

- **Other TERP funding sources.** The cash flow from all other TERP funding sources would be deposited in the Texas Mobility Fund in fiscal 2005. TxDOT would repay TERP the entire amount of money received from TERP fees until 2013.
- **Toll road restriction.** HB 2481 would prohibit TxDOT from using any funds obtained from any TERP funding sources to finance toll projects.

To repay the TERP fund, TxDOT would have to use money from the state highway fund not required to be used for constitutionally dedicated purposes, nor could it use federal congestion mitigation and air quality improvement funds.

Except where otherwise indicated, CSHB 2481 would take effect on September 1, 2005.

**SUPPORTERS
SAY:**

By prioritizing investment in cutting edge-emissions reductions technologies, CSHB 2481 would help Texas comply with stricter EPA standards in upcoming years. The development of new technologies would facilitate the process of meeting EPA standards for reductions in tons of nitrous oxides in the air. Failure to comply with EPA standards could result in Texas losing vital federal highway funding or suffering restrictions on industrial development in major metropolitan areas.

Increasing the state's investment in the development of new emissions-reducing technology has proven to be a cost-effective strategy in combating pollution. State funding for research and air planning activities has yielded optimum results in developing science-based, practical, economically viable state implementation plans for non-attainment areas and air planning activities for near non-attainment areas. The availability of more efficient emissions technologies on the market would save the state money by reducing the cost per ton of emissions reductions. New technologies also would produce regulatory certainty and clean the air faster.

Further reductions in NOx emissions require the development of new technologies that reduce emissions by mobile sources. In the past, the state relied primarily on technology, such as retrofitting plants, to decrease industry emissions as a way to comply with the EPA's one-hour standard. However, in order to comply with the EPA's new eight-hour standard, the state will have to turn its focus to mobile sources in addition to point

sources. Research and development dollars are needed to bring technologies to the market that would increase diesel engine fuel efficiency, improve diesel exhaust systems, and provide new carburetion systems for diesel vehicles.

Texas would become a leader in the nation in the development of new emissions-reducing strategies. Other states trying to reduce emissions could use new, more efficient technologies developed by Texas. HB 2481 would present a valuable opportunity for Texas to gain recognition for its achievements in developing innovative techniques for the improvement of air quality.

CSHB 2481 would increase TxDOT's bonding authority by \$1.4 billion. Providing additional leveraging authority for TxDOT would help relieve the state's current congestion crisis. CSHB 2481 also would include a stipulation that would restrict TxDOT's use of TERP funds on toll roads, ensuring that funds would only be spent on non-toll transportation projects.

Although some may claim that a large piece of the TERP funding pie should be directed to grants for diesel emissions reductions, even granting 100 percent of TERP funds to diesel grants would not bring non-attainment areas into compliance with the EPA's one-hour standard. Air pollution and compliance with federal air quality standards is a long-term problem that necessitates a long-term solution. Using all available revenue for immediate reductions would be a quick fix that would not have the potential to substantially improve the state's air quality in the long term. HB 2481 would provide Texas with the means to further reduce emissions in the future.

The argument that TERP money should be distributed evenly throughout the state does not take into account that the HGA and DFW areas have been identified as non-attainment areas by the EPA. The state must focus its resources on resolving air quality problems in these areas in order to comply with the SIP. Otherwise, the EPA could decide to impose a federally designed emissions reduction plan on Texas — stripping the state of its ability to create a plan that is most beneficial to Texas. Even if the state were to continue to use the current system of directing nearly 90 percent of TERP dollars to emissions reductions, non-attainment areas would not comply with EPA's eight-hour standard. CSHB 2481 would

concentrate state resources in areas that are in the greatest need of emissions reduction in order to comply with the SIP.

OPPONENTS
SAY:

The incremental approach to investment in research and development of new technologies proposed by CSHB 2481 would not be substantial enough to bring Texas into compliance with EPA standards in 2010. Under this bill, funding for research and development would not even be increased until 2008 — leaving little time to develop new emissions-reducing technologies. The state should recognize that EPA deadlines are rapidly approaching and should allocate funds accordingly.

The changes in TERP proposed by CSHB 2481 would be unlikely to bring the HGA into compliance with the EPA's eight-hour ozone standard. Although the EPA retracts highway money from states only in rare instances, Texas could very well be subject to unwanted additional EPA regulations for not complying with the SIP. Texas has already established an unfavorable track record with the EPA in terms of air quality that has been characterized by missed deadlines and non-compliance with standards, and failure to comply with upcoming ozone standards would only worsen Texas' reputation with the EPA.

Given the fact that Texas has a long way to go before meeting EPA standards on air quality, the vast majority of TERP funds should continue to be used to fund emissions reductions. The current allocation formula that concentrates on providing incentives for diesel emissions reductions has proven effective in reducing levels of NOx in the air. The prospect of developing new technologies through investing in research and development is uncertain at best. It would be more practical for the state to err on the side of caution and continue using the strategy that has worked in the past.

CSHB 2481 disproportionately would benefit the HGA and DFW non-attainment zones -- virtually ignoring the air quality concerns of near non-attainment areas. This bill would designate a Houston-based firm responsible for administration of the TERP technology money rather than allowing the state continue to administer the funds. Many near-non attainment areas in Texas, including San Antonio and Austin, have entered into early action compacts with the EPA to decrease emissions. These areas are eligible to receive TERP funding, yet the bulk of the money continues to be directed to HGA and DFW.

NOTES:

The committee substitute differs from the original bill in the following ways:

- changing administrative reporting requirements for TCEQ;
- removing the out-of state-vehicle inspection fee;
- making changes in TERP funding effective in 2008 rather than immediately;
- defining the responsibilities of the Energy Systems Lab;
- clarifying the transfer of funds from the Texas Mobility Fund; and
- adding provisions about the diesel grant program.

The fiscal note for CSHB 2481 estimates that it would cost the State Highway Fund \$141,204,000 in fiscal 2006 and \$160,380,000 in fiscal 2007. The TERP account would lose an estimated \$12,837,000 in fiscal 2006 and \$0 in fiscal 2007. The Texas Mobility Fund would gain \$154,041,000 in fiscal 2006 and \$160,380,000 in fiscal 2007.