

SUBJECT: Creating the Texas Emissions Reduction Plan

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Chisum, Kuempel, Uher, Bosse, Dukes, Geren, Howard
2 nays — Bonnen, Zbranek

SENATE VOTE: On final passage, April 17 — 28-1-2 (Ogden nay; Madla present, not voting)

WITNESSES: For — David Balfour, Greater Austin Chamber of Commerce; George Beatty, Greater Houston Partnership; Pamela Berger, City of Houston; Gregg Cooke, U.S. Environmental Protection Agency; Gary Gibbs, Association of Electric Companies of Texas; Kyle Gilley, Lennox International; Donna D. Halstead, Dallas Citizen’s Council; Ron Harris, Texas Clean Air Working Group; Amy Husted, Texas Waterway Operators Association; Rod Johnson, ASARCO/Texas Industries; Donald Lee, Texas Conference of Urban Counties; Mary Miksa, Texas Association of Business and Chambers of Commerce; Jim Moore, Transtar Energy Co. and Texas Campaign for Clean Transportation; Michael Myers, Ecotective Solutions and Sustainable Living Alliance; Tom “Smitty” Smith, Public Citizen; Vic Suhm, North Texas Commission; Ellen Tredway, Texas Automobile Dealers Association; Bill Webb, Texas Motor Transportation Association

Against — Andrew Bensabat, La Quinta Inns; Gregory Dana, Alliance of Automobile Manufacturers; Scott Joslove, Texas Hotel and Motel Association; Hannah Riddering, Austin Area Cab Drivers Association; Geoffrey E. Rohde; Paul Serff, Texas Travel Industry Association

On — George Alva; Tracy L. Arambula, Sierra Club, Lone Star Chapter; Rudolph H. Bruhns, Texas Taxicab Association; John A. Bryant, Energy Systems Laboratory; Richard E. Cowan, City Cab Service; Dan Eden, Texas Natural Resource Conservation Commission; Tom Fitzpatrick, Texas Building Energy Institute; Ed Martin, Texas State Inspection Association; Jim Matthews, Northeast Texas Air Care; David Mintz, Texas Apartment Association; David Orf, Rush Enterprises; Tracy Thompson, Dallas/Fort Worth International Airport

BACKGROUND: The federal Clean Air Act authorizes the U.S. Environmental Protection Agency (EPA) to establish maximum allowable concentrations of air pollutants. These maximum concentrations are known as the National Ambient Air Quality Standards (NAAQS). Areas where pollutants do not meet NAAQS are designated as nonattainment areas. Texas has four nonattainment areas — Houston-Galveston, Dallas-Fort Worth, Beaumont-Port Arthur, and El Paso — and three near-nonattainment areas, containing 70 percent of the state population. If these areas do not comply with the NAAQS by 2007, Texas faces a variety of consequences, including loss of federal highway funds and a federally imposed compliance plan.

The Texas Natural Resource Conservation Commission (TNRCC) has submitted to EPA a state implementation plan (SIP) for regulating emissions in nonattainment areas with the goal of bringing them into compliance. Some of the SIP requirements have been highly controversial, prompting a number of lawsuits.

DIGEST: CSSB 5 would create the Texas Emissions Reduction Plan, including several grant programs to support programs aimed at reducing nitrogen oxide (NO_x) emissions in nonattainment areas and affected counties; establish the Texas Council on Environmental Technology (TCET) and a Texas Emissions Reduction Plan Advisory Board; impose new surcharges on sale, lease, and rental of heavy-duty diesel construction equipment and on-road diesel motor vehicles and a new surcharge on hotel charges in nonattainment areas and affected counties; add a surcharge to current motor-vehicle inspection fees; and require cities and counties to establish procedures for administering and enforcing energy-efficient building codes.

TNRCC, TCET, the Public Utility Commission (PUC), and the comptroller would have to establish and administer the Texas Emissions Reduction Plan, the provisions for which would expire August 31, 2008. TNRCC, TCET, and the comptroller would have to provide grants or other funding for programs established under the plan. Equipment purchased before September 1, 2001, would be ineligible for funding.

In addition to current nonattainment areas, counties designated as “affected counties” under the plan would include Bastrop, Bexar, Caldwell, Comal, Ellis, Gregg, Guadalupe, Harrison, Hays, Johnson, Kaufman, Nueces, Parker,

Rockwall, Rusk, San Patricio, Smith, Travis, Upshur, Victoria, Williamson, and Wilson counties.

TNRCC duties. TNRCC would have to oversee the plan and manage plan funds; produce eligibility guidelines and criteria; develop methodologies for evaluating cost-effectiveness; prepare reports regarding plan progress and effectiveness; and take all appropriate and necessary actions so that EPA credited all emissions reductions achieved through the plan to the appropriate objectives in the SIP. The bill would define appropriate TNRCC objectives to include achieving maximum reductions in nitrogen oxides (NO_x) to demonstrate compliance with the SIP, preventing areas of Texas from becoming nonattainment areas, and achieving cost saving and multiple benefits by reducing emissions of other pollutants.

TNRCC would have to adopt grant guidelines and criteria, including protocols to calculate projected emissions reductions and cost-effectiveness, and safeguards to ensure that funded projects generated emissions reductions not otherwise required by state or federal law. TNRCC could propose revisions such as adding additional pollutants or adjusting eligible program categories to ensure that the incentives achieved maximum emissions reductions. TNRCC would have to provide draft guidelines and criteria and proposed revisions to the public and to EPA before the 45th day preceding the date of final adoption and would have to hold at least one public meeting before final adoption.

TNRCC and the comptroller could adopt emergency rules with abbreviated notice to carry out any rulemaking necessary to implement the plan.

TNRCC would have to develop procedures for monitoring and reviewing whether funded projects achieved reductions. The procedures would have to be sufficient to enable emissions reductions generated by funded projects to be credited to the SIP. TNRCC could revise procedures as necessary to enhance plan effectiveness.

Availability of emissions-reduction credits. CSSB 5 would prohibit use of a funded project for credit under any state or federal emissions reduction program. It also would prohibit an emissions reduction generated by a program established under the Texas Emissions Reduction Plan from use as

a marketable emissions-reduction credit, to offset any emissions-reduction obligation, or to demonstrate SIP conformity. A project that otherwise would generate marketable credits under state or federal programs would be ineligible for funding under the plan unless the project included transfer of the reductions that otherwise would be marketable credits to the SIP and the reductions were retired permanently.

An owner or operator of a site in the Houston-Galveston or Dallas-Fort Worth nonattainment areas could use emissions reductions generated by a program to offset TNRCC requirements relating to control of NO_x air pollution if:

- ! the site owner/operator contributed \$75,000 to the fund for each ton of emissions used, not to exceed 25 tons annually and not to exceed one-half ton per day;
- ! the site owner/operator demonstrated to TNRCC's satisfaction that the site would be in full compliance with TNRCC emissions-reduction rules within five years of the date on which the reductions otherwise would be required;
- ! site emissions were reduced by at least 80 percent from the established baseline; and
- ! TNRCC approved a petition by the owner/operator demonstrating that it was technically infeasible to comply with TNRCC emissions-reduction requirements above 80 percent.

TNRCC would have to verify that emissions reductions generated from collected funds occurred in the nonattainment area in which the site using the emissions reductions was located. TNRCC also would have to ensure that emissions reductions used to offset TNRCC requirements would benefit the community in which the site using the emissions reductions was located, but if there were no eligible projects within the community, TNRCC could authorize projects in an adjacent community. "Community" would mean a justice of the peace precinct.

Review and reporting. TNRCC, in conjunction with the Texas Emissions Reduction Plan Advisory Board, would have to review programs annually, including each project funded, grant amount, emissions reductions, and cost-effectiveness. TNRCC would have to submit a biennial plan report to

the Legislature. For funded infrastructure projects, the report would have to describe and evaluate funded infrastructure facilities, the degree to which funded facilities were supporting on-road or non-road diesel projects, the amount of fuel or electricity dispensed for each facility, and associated emissions reductions and cost-effectiveness. The report also would have to make a finding regarding the need for additional appropriations to improve each program's ability to achieve its goals.

TNRCC would have to request public comment and hold a public meeting on each draft biennial report and, in producing a final report, would have to consider and respond to all significant comments received.

Texas Emissions Reduction Plan Advisory Board. CSSB 5 would create a 15-member advisory board with an additional seven *ex officio* members. The governor, lieutenant governor, and House speaker would have to appoint members as follows:

- ! governor's appointments: representatives of the trucking, air-conditioning manufacturing, and electric utility industries, regional transportation, and TCET;
- ! lieutenant governor's appointments: representatives of the engine manufacturing, air transportation, fuel cell, and energy-efficient construction industries and the environmental community; and
- ! speaker's appointments: representatives of consumer groups and the construction, automobile, agriculture, and fuel industries.

The advisory board would have to review the plan and recommend to TNRCC changes to revenue sources or financial incentives or any legislative, regulatory, or budgetary changes needed. TNRCC would have to provide staff support to the advisory board. The board would have to be appointed not later than July 1, 2001, if the bill took immediate effect, or otherwise not later than the bill's effective date.

Diesel emissions reduction incentive program (DERIP). TNRCC would have to establish and administer this program to provide grants to offset the incremental cost of projects that reduced NO_x emissions from high-emitting diesel sources in nonattainment areas and affected counties. TNRCC would have to determine eligibility of projects, which would have to include:

- ! purchase or lease of non-road diesels;
- ! emissions-reducing retrofit and repower projects for diesels;
- ! purchase and use of emissions-reducing add-on equipment for diesels;
- ! development and demonstration of retrofit technologies, repower options, and advanced technologies for diesels with lower NO_x emissions;
- ! use of qualifying fuel; and
- ! implementation of infrastructure projects.

Any person who owned one or more on-road or non-road diesels that operated primarily within a nonattainment area or affected county or that otherwise contributed to the NO_x emissions inventory could apply for a grant. TNRCC would have to develop a grant application including a detailed description of the proposed project; information necessary for TNRCC to determine whether the project met eligibility requirements, including a statement of any other public financial assistance the project would receive; and any other information TNRCC might require.

TNRCC would have to establish criteria for setting priorities for projects eligible to receive grants. A proposed project, other than one involving a marine vessel or engine, would have to be operated primarily in a nonattainment area or affected county. A project involving a marine vessel or engine would have to be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county.

A proposed repower project would have to exceed TNRCC requirements relating to baseline emissions levels of the engines to be replaced. A proposed retrofit, repower, or add-on equipment project would have to document a reduction in NO_x emissions of at least 30 percent compared with baseline emissions. TNRCC could revise the minimum percentage reduction in NO_x emissions to improve the program's ability to achieve its goals after public notice and comment and advisory board consultation.

TNRCC could approve payments to offset the incremental cost, over the expected lifetime of the motor vehicle or on-road or non-road diesel, of the use of qualifying fuel if the proposed project as a whole met the bill's requirements. TNRCC would have to develop a method for converting incremental fuel costs over the life of the vehicle or diesel into an initial cost for purposes of determining cost-effectiveness.

Cost-effectiveness and determination of grant amount. All proposed projects would have to meet cost-effectiveness requirements. TNRCC would have to establish methodologies for evaluating cost-effectiveness according to a methodology specified by the bill and would have to develop protocols for calculating NO_x emissions reductions from representative project types. TNRCC could include in these determinations only emissions reductions achieved in nonattainment areas and affected counties.

TNRCC could not award a grant for a proposed project if its cost-effectiveness exceeded \$13,000 per ton of NO_x emissions reduced in the nonattainment area or affected county, except that, in consultation with the advisory board, TNRCC could change the values of the maximum grant award criteria to account for inflation or to improve the program's ability to meet its goals, after public notice and comment. The bill would not affect TNRCC's authority under other law to require emissions reductions with a cost-effectiveness that exceeded \$13,000 per ton. TNRCC could not award a grant that, net of taxes, exceeded the incremental cost of the project. TNRCC would have to adopt guidelines for capitalizing incremental lease costs so they could be offset by grant money. In determining the amount of a grant, TNRCC would have to reduce the incremental cost of a proposed project by the value of any existing financial incentive that directly reduced the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Infrastructure projects. TNRCC would have to provide funding for infrastructure projects, following procedures specified by the bill. TNRCC could consider funding for:

- ! purchase and installation of equipment designed primarily to dispense qualifying fuel, other than standard gasoline or diesel, or purchase of on-site mobile fueling equipment;
- ! infrastructure projects, including auxiliary power units, designed to dispense electricity to motor vehicles and diesels; and
- ! a project that involved a technology that allowed a vehicle to replace with electric power, while the vehicle was parked, the power normally supplied by its internal combustion engine.

TNRCC would have to develop a simple application package for

infrastructure project grants that would require sufficient information to evaluate each project properly, while minimizing the information required. TNRCC could not require an applicant to calculate emissions reductions or cost-effectiveness as part of the application process. The bill would set forth requirements for reviewing applications.

TNRCC would have to award a grant in conjunction with the execution of a contract obligating the recipient to perform the actions described in the grant application and incorporating grant-money recapture provisions. Recaptured grant money would have to be deposited in the fund and reallocated for other projects. An applicant could seek reimbursement for qualifying equipment installed after the effective date of the program.

On-road diesel purchase or lease incentive program. TNRCC would have to develop a purchase/lease incentive program for new on-road diesels and would have to adopt rules necessary to implement the program and to reimburse a purchaser/lessee of a new on-road diesel that was eligible for reimbursement of incremental costs. The program would have to authorize statewide incentives for reimbursement of incremental costs, according to the schedule in the bill, of new on-road diesels certified by EPA to an emissions standard provided by the schedule if the purchaser/lessee agreed to register the vehicle in Texas and to operate it in the state for not less than 75 percent of the on-road diesel's annual mileage. The bill would limit each new on-road diesel to one incentive.

The bill would provide a schedule for reimbursing incremental costs and would allow TNRCC, in consultation with the advisory board, to change incentive emissions standards to improve the program's ability to achieve its goals, after public notice and comment.

TNRCC and the comptroller would have to adopt rules necessary to implement the DERIP by August 1, 2001, if the bill took immediate effect, or otherwise by the bill's effective date.

Motor vehicle purchase or lease incentive program. This incentive would be limited to the sale/lease of a vehicle that occurred on or after January 1, 2002. The comptroller and TNRCC would have to develop a purchase/lease

incentive program for new light-duty motor vehicles and would have to adopt rules necessary to implement it.

The program would have to authorize statewide incentives for the purchase/lease of new light-duty motor vehicles certified by EPA to meet an emissions standard at least as stringent as that provided by the schedule specified in the bill for a purchaser or lessee who agreed to register the vehicle in Texas and operate the vehicle in Texas for not less than 75 percent of the vehicle's annual mileage. The bill would limit each new light-duty motor vehicle to one incentive, to be provided to the lessee and not to the purchaser if the motor vehicle was purchased for the purpose of leasing the vehicle.

The bill would provide a schedule for eligibility for the new light-duty motor vehicle incentive. A motor-vehicle manufacturer would have to provide to TNRCC a list of new vehicle models the manufacturer intended to sell in Texas during that model year that met the schedule's incentive emissions standards at the beginning of each year preceding the vehicle model year. TNRCC would have to publish and provide to the comptroller a list of the new model motor vehicles annually on August 1. The comptroller would have to distribute it to all new motor-vehicle dealers and leasing agents in Texas, who would have to make the list available to prospective purchasers or lessees.

TNRCC, in consultation with the advisory board, could change incentive emissions standards to improve the program's ability to achieve its goals, after public notice and comment.

Motor vehicle manufacturers or distributors would have to affix on each new light-duty motor vehicle for sale or lease in Texas a label showing the vehicle's rating under the EPA's vehicle class rating system. TNRCC could designate another rating system, developed by EPA, that would give consumers similar emissions information by vehicle class.

A person who purchased or leased a new light-duty motor vehicle on the manufacturer's report would be eligible for an incentive, prorated for a new light-duty motor vehicle based on a four-year lease term. TNRCC and the comptroller would have to develop and implement a program to inform the

public and dealers about this incentive program, and the Texas Department of Transportation (TxDOT) would have to insert a notice describing the program with each annual vehicle registration renewal notice.

The comptroller would have to develop a method to administer and account for the purchase/lease incentives and to pay incentive money to the purchaser or lessee of a new motor vehicle. The comptroller would have to develop incentive application forms and make them available to dealers, who, in turn, would have to make them available to prospective purchasers.

The comptroller would have to make an annual report to TNRCC regarding motor-vehicle purchase/lease incentives. If the balance available for motor-vehicle purchase/lease incentives fell below 15 percent of the total allocated for incentives during a fiscal year, the comptroller would have to suspend incentives until the comptroller could certify that the available fund balance was adequate to resume incentives, or until the beginning of the next fiscal year, whichever was earlier. The comptroller would have to notify TNRCC and all dealers immediately if the incentives were suspended.

The comptroller would have to establish a toll-free telephone number for dealers to call to verify incentive availability. A dealer's reliance on information provided by the comptroller or TNRCC would be a complete defense to an action involving eligibility of a vehicle for an incentive or availability of vehicles eligible for an incentive.

TNRCC and the comptroller would have to adopt rules to implement this program by August 1, 2002. TNRCC would have to publish the first annual list of vehicles eligible for incentives by August 1, 2002.

Energy efficiency grant program. The PUC would have to develop an energy efficiency grant program for projects that included retirement, replacement, and recycling of materials and appliances that contribute to peak energy demand. The purpose would be to reduce energy demand, peak loads, and associated emissions of air contaminants.

Utilities would have to administer money allocated by the PUC for the grant program. Participating utilities would be reimbursed for administrative costs of not more than 10 percent of the entity's total program budget before

January 1, 2003, and for not more than 5 percent of the entity's total program budget on or after that date.

The bill would obligate utilities to administer only funding allocated by the PUC. It would prohibit use of emissions reductions achieved by the program to satisfy an obligation to reduce air-contaminant emissions under a state or federal law or regulatory program. The PUC would have to submit an annual report to TNRCC quantifying reductions of energy demand, peak loads, and associated emissions of air contaminants achieved by projects implemented under the program.

Texas Emissions Reduction Plan Fund. CSSB 5 would create this fund in the treasury, administered by the comptroller. The fund would consist of money from fees and other amounts charged and collected as surcharges on certain truck-tractors or commercial motor vehicles and vehicle registration fees; the surcharge on the sale, lease, or rental of new or used construction equipment; and surcharges collected on on-road diesels and hotels.

The fund could be used only to implement and administer programs created under the Texas Emissions Reduction Plan. The bill would require allocation of 67 percent of the fund for the DERIP; 15 percent for the motor-vehicle purchase/lease incentive program; 7.5 percent for the energy efficiency grant program; 7.5 percent for the new technology research and development program; and 3 percent for administrative costs.

Up to 15 percent of the money allocated to a particular program, if not expended under that program by March 1 of the second year of a fiscal biennium, could be used for another program as determined by TNRCC in consultation with the advisory board.

TCET and the new technology research and development program. CSSB 5 would create an 11-member Texas Council on Environmental Technology (TCET), appointed by the governor from academic and nonprofit communities. TCET members would serve six-year staggered terms, expiring February 1 of each odd-numbered year. TCET would have to help develop solutions to air, water, and waste problems by identifying and evaluating new technologies and by seeking EPA approval for and facilitating development of those technologies. It would have to assist TNRCC and EPA in ensuring

credit for new, innovative, and creative technological advancements. TCET offices and projects would be housed at University of Texas at Austin.

TCET would have to establish and administer the new technology research and development program, under which TCET would provide grants to support development of emissions-reducing technologies that could be used for projects eligible for awards under the Texas Emissions Reduction Plan, and other technologies with potential for commercialization.

TCET would have to issue requests for proposals for projects to be funded under the new technology research and development program within 30 days after adopting rules governing the program. The grants would have to be awarded to a balanced mix of:

- ! retrofit and add-on technologies to reduce emissions from the existing stock of vehicles targeted by the Texas Emissions Reduction Plan;
- ! advanced technologies for new engines and vehicles that produce very-low or zero NO_x emissions, including stationary and mobile fuel cells;
- ! studies to improve air-quality assessment and modeling consistent with research priorities identified by TNRCC;
- ! advanced technologies that promote increased building and appliance energy performance; and
- ! advanced technologies that reduce emissions from other significant sources.

TCET would have to identify and evaluate and consider making grants for technology projects that would allow qualifying fuels to be produced from energy resources in Texas. TCET would have to give preference to projects involving otherwise unusable energy resources and producing qualifying fuels at prices lower than otherwise available and low enough to make the funded projects economically attractive to businesses in the area for which the project was proposed. TCET would have to give special consideration to advanced technologies and retrofit or add-on projects that provided multiple benefits by reducing emissions of particulates and other air pollutants. A project involving publicly or privately owned vehicles or vessels would be eligible for funding if the project met all applicable criteria.

An application for a technology grant would have to show clear evidence that the project had a strong commercialization plan and organization and that the technology proposed for funding was likely to be offered for commercial sale in Texas within five years after the date of the application. TCET would have to consider each application for:

- ! projected potential for reduced NO_x emissions and the cost-effectiveness of the technology once it had been commercialized;
- ! potential for the technology to contribute significantly to air-quality goals; and
- ! strength of the commercialization plan.

TCET could require cost sharing for projects but could not require repayment of grant money.

CSSB 5 would create the environmental research fund (ERF) as a general revenue account consisting of money from gifts, grants, donations, and any other source designated by the Legislature. ERF money could be used only for TCET operation and projects.

TCET could appoint advisory committees, including representatives of industry, environmental groups, consumer groups, local governments, agriculture, TNRCC, the General Land Office, and the Railroad Commission of Texas, and any senator or representative desiring to participate. Members of an advisory committee would not be entitled to compensation.

TCET would have to report to the Legislature biennially on projects funded under the new technology research and development program, describing each project's objectives and accomplishments and its progress toward commercialization.

Building energy performance standards. CSSB 5 would adopt the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2001, as Texas' energy code for single-family residential construction. It would adopt the International Energy Conservation Code, as it existed on May 1, 2001, as the state's energy code for all other residential, commercial, and industrial construction. A city or county would have to establish procedures for administering and enforcing the codes and to ensure that inspectors were code-certified. A city or county could establish procedures

to adopt local amendments to the codes, but local amendments could not result in less stringent energy efficiency requirements in nonattainment areas and in affected counties. Local amendments would have to comply with the National Appliance Energy Conservation Act of 1987.

Upon request of a city or county, the Energy Systems Laboratory at the Texas Engineering Experiment Station would have to determine the impact of proposed amendments, including whether they were substantially equal to or less stringent than the code. For the purpose of setting uniform requirements throughout a region, and on request of a council of governments, a county, or a city, the laboratory could recommend an appropriate modification or a climate-zone designation for a county or group of counties that was different from the climate-zone designation in the code. The laboratory would have to report annually to TNRCC the cities and counties whose codes were more stringent than, equally stringent, or less stringent than the code, and would have to quantify energy savings from this program. The laboratory could set and collect fees to perform tasks in support of the requirements to enforce energy standards outside a city, to distribute information and technical assistance, and to develop an energy rating program.

A building certified by an accredited energy efficiency program or a building inspected by private code-certified inspectors using the adopted codes would be considered in compliance. A builder without access to either of these methods would have to certify compliance using a form provided by the laboratory, enumerating the building's code-compliance features.

Each political subdivision in a nonattainment area or in an affected county, other than a school district, would have to implement all energy efficiency measures that met the standards established for a contract for energy conservation measures under Local Government Code, sec. 302.004(b) to reduce electricity consumption.

Each political subdivision would have to establish a goal to reduce electricity consumption by 5 percent each year for five years, beginning January 1, 2002. Each subdivision would have to report annually to the State Energy Conservation Office (SECO) on its efforts and progress. A subdivision that did not attain the 5 percent reduction goal would have to show that it had implemented all available measures. The SECO would have

to help political subdivisions meet these goals and would have to make an annual report to TNRCC evaluating the effectiveness of state and political subdivisions' energy efficiency programs.

The laboratory would have to provide builders, designers, engineers, and architects with materials explaining requirements of the adopted codes and methods of compliance. The laboratory could help local jurisdictions implement and enforce the codes.

The laboratory would have to develop a standardized report format for home energy ratings, designed to give potential buyers information on a structure's energy performance. This information would have to cover insulation, windows, heating and cooling equipment, water heating equipment, additional energy conserving features, results of performance measurements of building tightness and forced air distribution, and an overall rating of probable energy efficiency relative to the minimum requirements of the adopted codes. The laboratory would have to establish a public information program regarding home energy ratings. The home energy ratings program would have to be implemented by September 1, 2002.

Using information derived from the reports related to state energy efficiency programs and building energy efficiency performance standards, and from the SECO evaluation, TNRCC would have to take all necessary actions so that EPA credited all emissions reductions achieved through the Texas Emissions Reduction Plan and the building energy performance standards to the appropriate emissions-reduction objectives in the SIP.

New surcharges. CSSB 5 would impose a surcharge of 0.5 percent on the retail sale, lease, or rental of new or used off-road, heavy-duty diesel equipment classified as construction equipment, other than implements of husbandry used solely for agricultural purposes. It also would impose a 5 percent surcharge on every retail sale or lease of every on-road diesel motor vehicle that weighed more than 14,000 pounds and was of a model year 1996 or earlier.

Hotels in a nonattainment area or an affected county would have to collect a \$1 surcharge on daily hotel charges, except from permanent hotel residents

(those staying more than 30 consecutive days), religious, charitable, and educational groups, and state and federal government employees.

The comptroller would have to adopt procedures to collect, administer, and enforce these surcharges and would have to deposit all remitted surcharges to the credit of the Texas Emissions Reduction Plan Fund. These surcharges would expire September 30, 2008.

CSSB 5 also would establish a surcharge on the registration of a truck-tractor or commercial motor vehicle in an amount equal to 10 percent of the total registration fee due. This surcharge would expire August 31, 2008.

Low-emission vehicle insignia. TxDOT would have to issue a specially designed insignia for a motor vehicle that met qualifications for the light-duty motor-vehicle purchase/lease incentives at the time of registration or reregistration. TxDOT would have to issue the insignia, with no additional fee, to a person who applied to the department and submitted proof that the vehicle being registered was a low-emissions vehicle. A motor vehicle displaying the insignia could travel in a preferential carpool or high-occupancy vehicle lane regardless of the number of occupants. These provisions would expire August 31, 2008.

TNRCC would have to sponsor a design contest for Texas public school students to select the insignia design and would have to provide a contest packet with rules and criteria to each school by January 1, 2002. County tax assessor-collectors would have to begin issuing the insignia by the 10th working day after the date the insignia were available.

Inspection fees. For inspections required for vehicles brought into Texas by a person other than a manufacturer or importer, a vehicle inspection station would have to collect a fee of \$60 for each inspection. These fees would be deposited in the Texas Emissions Reduction Plan Fund.

TxDOT would have to collect an additional fee for every motor vehicle required to be inspected. The bill would set the fee at \$5 if the vehicle was registered in a nonattainment area or an affected county, or at \$1 if the vehicle was registered elsewhere. These fees would be deposited in the

Texas Emissions Reduction Plan Fund. The additional fee for inspections would expire August 31, 2008.

Effective date. CSSB 5 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

TNRCC would have to adopt all necessary rules required to implement the bill within 45 days after the effective date. The comptroller and TNRCC would have to adopt all necessary rules required to carry out their duties within the same period. A city or county required to establish procedures for adoption of building energy efficiency performance standards would have to do so by September 1, 2002.

**SUPPORTERS
SAY:**

SB 5 would support the SIP. Texas needs CSSB 5 to support its State Implementation Plan. According to TNRCC, the Houston-Galveston nonattainment area portion of the SIP is about 57 tons of NO_x short of the necessary emissions reductions to bring the area into compliance with the NAAQS. In addition, the Dallas-Fort Worth nonattainment area portion of the SIP has an extremely narrow margin for error. Without additional air-quality programs, Texas very likely will not be able to bring the entire state into attainment with the NAAQS.

CSSB 5 would give TNRCC authority to implement additional programs to support the SIP. During SIP formation, TNRCC stated that it could make more effective emissions reductions but did not have the statutory authority to do so. This bill would provide much of that authority. The emissions reductions in this bill would be sufficient to allow removal of the construction ban portion of the SIP, which would prohibit operation of diesel construction equipment before noon.

Diesel engines. CSSB 5 would provide significant incentives and programs to reduce diesel engine emissions. Diesel engines are the largest untapped source of potential NO_x emissions reductions, as well as potential reductions of carcinogenic and particulate matter emissions. New diesel engines bought today will last at least 10 years, and some diesel engines receiving light use, such as school bus engines, may last 20 years or more. The oldest diesel engines are the most polluting, and they tend to wind up in urban areas. New

diesel-engine trucks are used for long-haul trucking and then are retired to regional use because they are more likely to break down and thus are less suitable for long-haul trucking. After regional use, most diesel trucks are further retired to single location use, such as a shipyard or port. Other significant sources of diesel-engine pollution emissions include diesel engines used in freight-lifting equipment and diesel engines used to pump water, particularly those for agricultural water and those in rural areas where electric engines may not be available or feasible, such as in rice fields.

CSSB 5 would provide incentives and programs to replace or retrofit older diesel equipment. Newer diesel technology provides almost a 90 percent reduction in diesel-engine emissions between the 1980s and the 1990s. Implementation of newer diesel technology would provide significant emissions reductions by retiring the older diesel engines.

The bill could provide more emissions reductions than the construction ban would have provided. The current SIP would permit operation of construction equipment in morning hours if the equipment had retrofitted diesel engines. More emissions reductions could be obtained if the construction equipment was replaced with new diesel engines, instead of retrofitting them with pollution-control equipment. This also could be a more cost-effective means of reducing emissions.

By addressing NO_x emissions reductions from diesel engines, CSSB 5 also would reduce emissions of fine particulate matter, another criteria pollutant regulated by NAAQS. While the current focus is on decreasing NO_x emissions to prevent formation of ground-level ozone pollution, particulate matter is almost certain to be Texas' next problem, particularly as traffic increases. This bill would allow Texas to begin reducing particulate matter emissions before they present an air-quality crisis.

Low-emission vehicle labels. CSSB 5 would mandate labeling for low-emission vehicles, resulting in more informed consumer choices. The current labels, required by federal law, are tiny, difficult to understand, and inconspicuous — they actually are under the hood, where few vehicle purchasers or lessees will see them. Other states, such as Maine and Vermont, have adopted a similar labeling system and have not reported any problems. Labeling would not be expensive or onerous. The labels could be

affixed by vehicle manufacturers. In any case, labeling would not require extensive work or cost.

Building codes. CSSB 5's building code program would be an innovative way to obtain emissions-reduction credits. EPA only recently has determined that states may use building codes to show emissions reductions to bring them into NAAQS attainment. EPA released information about use of building codes in January 2001. Texas would be the first state to use building codes to obtain emissions-reduction credits. Dallas is already in the process of obtaining NO_x reduction credits for adopting a building code. In addition to providing creditable emissions reductions, building codes would result in energy savings.

Point sources. CSSB 5 would provide pollution point sources with an additional means of reducing emissions. The bill would permit point sources technologically unable to make required emissions reductions to buy emissions-reduction credits by paying money into the fund. This money would be used to fund emissions-reductions in the same geographic area, so that the point source would, in effect, be paying for another source to make reductions that the point source could not make.

Fees. The bill's fee provisions would be fair and reasonable. Because they are broad-based, they would provide for many sources of emissions to shoulder the burden of reducing air pollution.

OPPONENTS
SAY:

Diesel engines generally. Diesel engines that emit fewer air pollutants also use more fuel. With rising fuel costs and anticipated future price increases due to new Texas and federal diesel-fuel requirements, it will become even more expensive to replace older diesel engines with new lower-emitting diesel engines. The hardest-hit diesel engine-using population would be the independent truck driver who owns a single truck. Individual truck owners do not have the clout to negotiate contract provisions covering increased fuel prices.

CSSB 5's target parameters for diesel-engine NO_x emissions reductions are unattainable. Engine manufacturers already are struggling to meet the federal requirements that will take effect in 2004. Emerging diesel technology exists but is not yet widely available for purchase. If Texas imposes requirements

that differ from the federal requirements, most or all engine manufacturers are going to conform to the federal engine standards, causing a shortage of Texas-compliant diesel equipment and further increasing prices. The NO_x emissions reductions also would be unfair and unreasonable because the bill would penalize truck owners, who have no control over their engines' emissions.

Taken as a whole, the bill's diesel engine requirements would harm the trucking industry more than any other diesel engine-dependent group. In addition to rising fuel costs, truckers face continually decreasing freight rates. According to an industry group, repossessions and bankruptcies among truckers in Texas, especially independent contractors, have risen dramatically in the past few years. A fair and reasonable incentive program would help to retire older diesel engines, particularly those manufactured before 1994, when diesel manufacturing technology began to improve significantly.

Low-emission vehicle labels. Requiring labels for low-emission vehicles would be unduly expensive, burdensome, and duplicative. All vehicles already have federally required emissions labels; federal requirements may legally preempt state requirements. An additional, different label could confuse consumers. Vehicle dealers regularly trade stock to obtain a unit in another color, or with different options, for a purchaser. Requiring a label would burden this trade between a Texas dealer and a dealer in another state, possibly resulting in an unconstitutional restriction on interstate commerce. If trades were restricted, dealers would be forced to carry more inventory, which would raise overhead costs, could drive smaller vehicle dealers out of business, and ultimately would result in increased vehicle prices, increasing the likelihood that Texans would buy vehicles out of state.

Fees. CSSB 5 would harm the Texas economy through the diesel engine surcharges, which would harm the trucking industry in particular. The proposed purchase surcharge is nothing more than a diesel engine penalty that would make Texas diesel truck prices less competitive. The sale of diesel trucks in Texas is already subject to a significant sales tax, and diesel truck sales have low profit margins. New diesel trucks are identical, fungible goods, and truck owners are not concerned with where they buy their trucks. As a result, diesel truck purchasers will be even more likely to buy their

trucks elsewhere. Many Texas diesel truck owners already are registering their trucks in Oklahoma instead of in Texas because Oklahoma's registration fees are lower. An interstate register system company allows truck owners to maintain their registrations in Oklahoma and Illinois, the states with the lowest fees.

CSSB 5 would harm the Texas economy and tourist industry, because diesel engine surcharges would apply to airport equipment. The Dallas-Fort Worth Airport, for example, is located in a nonattainment area and is expanding. Increased fees on diesel equipment would delay airport construction and increase construction costs.

The bill should not impose a hotel surcharge. Hotels already face increased utility costs. Additional surcharges annoy hotel customers and drive up hotel room costs, with the potential to reduce Texas' tourism and convention business. Surcharges should be placed on the greatest users of electricity and shared equally across all businesses, instead of singling out the hotel industry, which makes up less than 10 percent of business utility use, according to the commission.

OTHER
OPPONENTS
SAY:

CSSB 5 should require the return of the construction ban, after a period of time, if the construction industry does not or cannot reduce emissions sufficiently to replace the emissions reductions lost by elimination of the construction ban.

NOTES:

The fiscal note for CSSB 5 estimates that it would cost the state \$5 million in general revenue in fiscal 2002-03 and that annual costs would rise to more than \$10 million by fiscal 2006. The comptroller estimates that newly created and increased taxes and fees would generate \$155 million in revenues for the dedicated Texas Energy Reduction Plan Fund in fiscal 2002, with annual collections rising to \$189 million by fiscal 2006, to be used for the emissions reduction incentive plans.

Major changes made by the committee substitute to the Senate engrossed version of SB 5 include:

- ! removing the requirement that TNRCC develop the local government grant program to encourage retirement and replacement of inefficient

residential cooling equipment, household appliances, and high-emitting noncommercial lawn and garden equipment, and the weatherization of residences, and replacing this requirement with the charge to develop the energy efficiency grant program;

- ! increasing the membership of the advisory board to 15 members from 13 and modifying the composition and terms of board members;
- ! modifying provisions of the diesel emissions reduction incentive program in regard to grant eligibility and grant amounts;
- ! authorizing TNRCC to modify the incentive emissions standards of the on-road diesel purchase/lease incentive program to improve the ability of the program to achieve its goals;
- ! modifying the allocation of the Texas Emissions Reduction Plan Fund money;
- ! modifying project eligibility for the new technology research and development program;
- ! requiring a city or a county to establish certain procedures to enforce and administer energy-efficient building codes;
- ! deleting the requirement for a city in a nonattainment area or an affected county to develop an energy efficiency and weatherization program for existing buildings;
- ! requiring TNRCC to take appropriate and necessary actions to ensure that EPA credits emissions reductions under the Texas Emissions Reduction Plan and building energy performance standards to the appropriate objectives in the SIP;
- ! increasing the proposed surcharge on the retail sale, lease, or rental, of new or used equipment and the surcharge on the retail sale or lease of on-road diesel motor vehicles;
- ! requiring an inspection station to collect a \$60 fee for inspecting a motor vehicle brought into Texas;
- ! removing provisions imposing a surcharge for original or renewal applications for motorboat certificates; and
- ! removing provisions for a \$1 surcharge on taxi fares for transportation to and from an airport in a county in a nonattainment area or affected county and removing provisions for a surcharge of 25 cents per gallon on the sale of bunker fuel by a petroleum refining facility.