HOUSE
RESEARCH
ORGANIZATION bill analysis 5/20/2013

SB 1727
Deuell, et al.
(Isaac, et al.)

SUBJECT: Use of the Texas Emissions Reduction Plan funding

COMMITTEE: Environmental Regulation — favorable, without amendment

VOTE: 8 ayes — Harless, Isaac, Kacal, Lewis, Reynolds, E. Thompson, C. Turner, Villalba

0 nays

1 absent — Márquez

SENATE VOTE: On final passage, May 2 — 19-1-1 (Hancock, nay; Fraser, present, not voting)

WITNESSES: For — Laura Blackburn, League of Women Voters of Texas; Hillary Corgey, Air Alliance Houston; Cyrus Reed, Lone Star Chapter - Sierra Club; James Terrell, Select Milk Producers, Inc.; Michael Vasquez, Texas Conference of Urban Counties; Theodore "Tod" Wickersham, Jr., Public Citizen; (*Registered, but did not testify*: Mark Borskey, General Electric; Thure Cannon, Texas Pipeline Association; Kippy Caraway, City of Houston; Steve Carr, Republic Services; Teddy Carter, Texas Independent Producers and Royalty Owners Association; Tristan Castaneda, Jr., Corpus Christi Regional Transit Authority; June Deadrick, CenterPoint Energy; Jennifer Emerson, Port of Houston Authority; Gene Fisseler, EVGO; Mark Gipson, Devon Energy; Karen Hadden, SEED Coalition; Russ Keene, (Plug-in Texas Electric Vehicle Coalition; Doug Lewin, South-central Partnership for Energy Efficiency as a Resource; Chris Macomb, (Waste Management of Texas Inc.; Annie Mahoney, Texas Conservative Coalition; Kelly McBeth, Gas Processors Association; Luke Metzger, Environment Texas; Stephen Minick, Texas Association of Business; Michael Myers, U.S.Green Building Council Texas Chapters; Stephanie Newell, NRG Energy; Robert Peeler, Ford Motor Company; Steve Perry, Chevron USA; Clay Pope, Section 185 Fee Working Group; Celina Romero, Texas Pipeline Association; Susan Ross, Texas Renewable Energy Industries Association; Robin Schneider, Texas Campaign for the Environment; Chris Shields, Toyota Motor Manufacturing Texas Inc.; Barbara Waldon, General Motors; David Weinberg, Texas League of Conservation Voters; Shayne Woodard, Texas

Association of Dairymen)

Against — None

On — David Brymer, Texas Commission on Environmental Quality

BACKGROUND: The Health and Safety Code allocates 100 percent of the Texas Emission Reduction Plan (TERP) funding to various programs, including program support to reduce air emissions in 42 TERP-eligible counties, which includes nonattainment counties and affected counties (near non-attainment counties).

Total appropriations to TERP for fiscal 2012–13 totaled $132.4 million. The TERP fund is estimated to have a balance of $664.9 million on August 31, 2013. The House version of the general appropriations bill recommends $65,163,876 in TERP appropriations each year in fiscal 2014-15. (The appropriations conference committee report recommending TERP appropriations for fiscal 2014-15 has not yet been released.)

Most TERP funds are generated from a vehicle title transfer fee of $28 or $33 attached to the purchase and sale of vehicles. Since its inception in 2001, TERP funds have been used to support a number of programs. The TERP program that has yielded the most emission reductions associated with mobile sources is TCEQ’s Emissions Reductions Incentive Grant (ERIG) program, which provides grants to reduce nitrogen oxides (ozone forming chemicals) emissions from high-emissions diesel sources in nonattainment and affected counties. TERP has funded other efforts including:

- alternative fueling stations;
- energy efficiency programs; and
- air emission studies.

The Light-Duty Motor Vehicle Purchase or Lease Incentive (LDPLI) Program, part of TERP, exists in statute but has never operated. The statewide program is designed to provide financial incentives or rebates for the purchase or lease of an eligible new car and light truck meeting certain air emission standards.

SB 385 by Williams, enacted in 2011, established the Clean Transportation Triangle, a network of natural gas vehicle fueling stations along the interstate highways connecting Houston, San Antonio, Dallas, and Fort Worth. TCEQ was authorized to use TERP funds to award grants for the construction of publicly accessible natural gas fueling stations.

DIGEST:

SB 1727 would amend the current TERP statute to add programs, making them eligible for TERP funding. The bill would establish funding levels for certain TERP programs and change funding caps. It would grant TCEQ limited authority to move funds among certain TERP-eligible programs. The bill would make revisions to conform to changes resulting from the enactment of SB 20 and SB 385 in 2011, both of which address TERP-related issues.

List of eligible grant and funding programs. SB 1727 would amend Health and Safety Code, sec 386.051 to add the current TERP programs and grants found elsewhere in statute or created through TCEQ's statutory grant making authority, to the list of TERP programs eligible for grants.

The bill would amend existing statute to explicitly state that TCEQ has the authority to develop and fund other programs that lead to reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds in a nonattainment area or an affected county.

Amended authority. The bill would create new TERP programs and make them eligible for grant funding including:

- programs that support congestion mitigation to reduce mobile source ozone precursor emissions; and
- a drayage truck incentive program created by SB 1727 (and described on page 6 of this analysis).

SB 1727 would provide that TCEQ could establish and administer other programs, including other grants or funding programs, as necessary to meet TERP objectives.

Priority programs. TCEQ could place priority on programs that address the following goals:

- reduction of emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment — including drayage vehicles, locomotives, and marine vessels — at port facilities or servicing port facilities in nonattainment areas;

- reduction of emissions from the operation of drilling and related heavy-duty on-road vehicles or non-road equipment in oil and gas production fields where the commission determined that the programs could help prevent that area or an adjacent area from being in violation of national ambient air quality standards; and
- replacement, repower, or retrofit of heavy-duty on-road vehicles, medium-duty passenger vehicles, and non-road equipment to change from using gasoline or diesel fuel to engines using cleaner fuels, including the use of conversion systems using alternative fuels produced in Texas.

TERP funding by program. The bill would maintain, amend, or otherwise modify Health and Safety Code, sec. 386.252 to provide that programs funded under TERP were funded as follows:

- Clean School Bus Program - 4 percent;
- New Technology Grant Program - not more than 3 percent, with at least $1 million set aside for electricity storage projects;
- Clean Fleet Program - 5 percent;
- regional air monitoring in Dallas and Fort Worth and around the Barnett Shale area - not more than $3 million;
- Texas Natural Gas Vehicle Grants - at least 16 percent;
- Government Building Energy Efficiency Grants - 2 percent;
- Clean Transportation Triangle Natural Gas Fueling Stations - not more than 5 percent;
- Alternative Fueling Facilities air nonattainment areas - not more than 5 percent;
- air quality research - an unnamed “specified amount” could be used;
- health effects study - not more than $200,000;
- air quality planning in affected (near nonattainment) counties - $500,000
- TCEQ administrative costs for TERP - at least $4 million and up to four percent to a maximum of $7 million, whichever is greater;
- Drayage Truck Incentive Program - at least 2 percent and up to 5 percent;
- light-duty motor vehicle purchase and lease incentive program - not more than 5 percent;
- Texas A&M University - Energy Systems Laboratory creditable statewide emission reductions study - $216,000

- Texas A&M University - Energy Systems Laboratory administrative costs - 1.5 percent of TERP fund;
- Diesel emission reduction incentive - all remaining unallocated TERP funds.

TCEQ would be authorized to use funds for other programs that the agency developed to reduce emissions, support congestion mitigation, and other programs TCEQ determined necessary to meet TERP objectives if those funds were appropriated by the Legislature.

The bill would authorize TCEQ to determine the amounts allocated to a particular program if the Legislature failed to specify amounts or percentages in the total appropriation to the commission.

The bill would remove the $15,000 cap for cost per ton of nitrogen emission reductions for certain programs, thus allowing the TCEQ to set cost per benefit ratios.

Reallocation of funds. The bill would authorize TCEQ to reallocate unexpended balances in the clean fleet program and alternative fueling facilities program if program needs fell below authorized amounts.

TCEQ, in consultation with the governor and the TERP advisory board, could reallocate money from the natural gas vehicle grant program if the program allocation might cause the state to become noncompliant with federal requirements under the state implementation plan. TCEQ would be required to find that the reallocation would resolve the issuance of potential noncompliance. TCEQ could not reallocate more funds than were necessary to resolve noncompliance.

The bill would allow TCEQ to reallocate funds from one TERP program to another subject to certain limitations, such as the provision limiting the reallocation of funds from the natural gas vehicle program.

TCEQ could establish a minimum capital expenditure threshold for projects for new technology implementation grants. The bill would remove the requirement that new technology grants for point source pollution have a capital expenditure exceeding $500 million.

Light-Duty Motor Vehicle Purchase or Lease Incentive (LDPLI). The bill would amend the LDPLI program within TERP to create a new authorization for certain alternatively fueled light-duty vehicles.

The bill would authorize a total of $10 million apportioned into incentives of $2,500 for:

- 2,000 qualifying vehicles fueled by compressed natural gas or liquefied petroleum gas; and
- 2,000 qualifying vehicles powered to a significant extent by electric motors.

Only vehicles purchases on or after September 1, 2013 would be eligible for the incentive. This program would expire August 31, 2015.

The bill would remove references to EPA emission standards and a requirement that motor vehicle companies provide a list of vehicles to TCEQ that conform with the requirements of the LDPLI program. The bill would remove the comptroller's administrative responsibilities for the program.

Drayage Truck Incentive Program. The bill would require TCEQ to establish a drayage truck program. A "drayage truck" is a truck that transports a load to or from a port, distribution center, or rail yard. TCEQ would be required to develop a purchase incentive program to encourage owners to replace drayage trucks with pre-2007 model year engines with newer drayage trucks. The agency would be required to develop guidelines to implement the program.

TCEQ, by rule, would establish criteria for the models of drayage trucks that were eligible for inclusion in an incentive program. The guidelines would provide that a drayage truck owner was not eligible for an incentive payment under this subchapter unless the truck being replaced contained a pre-2007 model year engine, the replacement truck's engine was from model year 2010 or later, and the truck operated at a port, distribution center, or rail yard.

To be eligible for an incentive under the program, a person would have to:

- purchase a replacement drayage truck under TCEQ's guidelines;
- register the truck in Texas;
- operate the truck in and within a maximum distance established by TCEQ of a port, distribution center, or rail yard in a nonattainment

area or affected county for not less than 50 percent of the vehicle's annual mileage or hours of operation; and
- permanently remove a pre-2007 drayage truck containing a pre-2007 engine from operation by destroying the engine and scrapping the truck.

An incentive could not fund more than 80 percent of the purchase price of the drayage truck. Not more than one incentive would be provided for each drayage truck purchased.

TCEQ would have to establish procedures to verify that a person who received an incentive:

- had operated in a port, distribution center, or rail yard and owned or leased the drayage truck to be replaced for at least two years prior to receiving the grant; and
- permanently destroyed the engine and scrapped the drayage truck that contained the pre-2007 engine owned or leased by the person.

Energy efficiency grants. TCEQ and the comptroller would be required to establish an energy efficiency grant program for governmental buildings. Eligible entities would be state agencies, political subdivisions, cities, counties, any kind of district, or institutions of higher education.

The agency would be required to award grants that improved the operational energy efficiency of buildings or facilities or that retired materials and appliances that contribute to energy consumption or peak energy demand to ensure the reduction of energy consumption, energy demand, or peak loads, and associated emissions of air contaminants.

Evaluation of state Energy Efficiency Program. The comptroller's state energy conservation office, in coordination with the Public Utility Commission and the Texas A&M University - Energy Systems Laboratory, would be required to provide an annual report to the TCEQ that quantified the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved by county from the projects implemented under energy efficiency goals of Utilities Code, sec. 39.905.

Financial requirements for diesel and natural gas engine replacements. The bill would allow TCEQ to reimburse up to 80 percent of the total cost of a heavy-duty or light-duty diesel engine. The bill would remove statute providing a graduated reimbursement schedule based on the age of an engine.

It would strike “60 percent of incremental costs” as the minimal amount that can be paid for a natural gas vehicle purchase, lease, commercial financing, or repowering.

Natural gas fueling stations. SB 1727 would amend the current criteria for natural gas fueling stations to allow for natural gas vehicle fueling stations to be built in all nonattainment areas and affected areas. In awarding the grants, the TCEQ would be required to give preference to areas within a triangle formed by San Antonio, Dallas-Fort Worth, and Houston at each corner.

The bill would remove the limit that no more than three station grants could be made to one entity. The bill would raise the grant limits for the new stations so that:

- a compressed natural gas station would qualify for $400,000, up from $100,000;
- a liquefied natural gas station would qualify for $400,000, up from $250,000; and
- a station providing both types of fuels would qualify for $600,000, up from $400,000.

The bill would raise the grant limit for a fueling station constructed under the Clean Transportation Triangle program to $600,000, up from $500,000.

Other provisions. The bill would make conforming changes and address codification issues created when two TERP- and alternative fuel related bills containing similar provisions were enacted in 2011 (SB 20 by Williams and SB 385 by Williams).

The bill 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, 2013.

SUPPORTERS SAY:

SB 1727 would significantly improve the TERP program and modify funding priorities to address the state’s emerging needs, while maintaining strong programs to remove aging diesel engines from service. Those engines contribute significantly to ozone-forming chemicals and are one reason behind the air quality issues in the state's nonattainment areas.

SB 1727 would place new emphasis on the emerging issues and address them with TERP funding. The bill would give TCEQ clear authority to use TERP funding to address fine particulates, a carcinogen, by creating a drayage truck program. Drayage trucks, which typically operate on port property to move cargo, tend to be older trucks that emit significant amounts of fine particulate. The operation of such trucks in Houston threatens to push the city into nonattainment due to the high level of fine particulates in the air. SB 1727 would help keep the Houston region within air quality standards for fine particulates.

SB 1727 would further the successful commercialization of natural gas, liquefied petroleum gas, and electric vehicles by providing incentives for the purchase of alternatively fueled light-duty vehicle fleets. By promoting alternative forms of energy, SB 1727 would help reduce greenhouse gas emissions and petroleum dependence, and would further the attainment of the state's environmental objectives. This next generation of advanced technology vehicles could bring benefits to Texas, including significant emission reductions, energy independence and job creation. The program would be a time-limited effort to bolster the amount of alternatively fueled vehicles in the state.

The bill would expand incentives to build natural gas fueling stations. It also would expand the area in which natural gas fueling stations would be built to include nonattainment and affected counties, and within the triangle formed by San Antonio, Dallas-Fort Worth, and Houston.

The bill would provide clarity to current law and update statute by removing references to outdated emission standards for engines.

The TERP program and incentives under SB 1727 would be a small investment in Texas' future, given that TERP is expected to have a balance of $664.9 million on August 31, 2013. SB 1727 would put TERP funds to work for the benefit of the Texas economy and the environment.

OPPONENTS SAY:

SB 1727 needlessly would expand government, creating new programs for special interests such as those maintaining light-duty vehicle fleets and drayage trucks. Those programs and the others outlined in SB 1727 would result in a $25.6 million increase in government spending over current levels. The bill would add 10 more employees to the state payroll. The focus of the Legislature should be on reducing spending, not increasing it.

TERP is yet another example of government collecting money from one group of individuals and redistributing to benefit others. Like the other large funds carrying a fund balance, the TERP program should end and the expected balance of $664.9 million should be returned to the taxpayers in the form of a rebate.

OTHER OPPONENTS SAY:

While emission reduction is a worthy goal, subsidizing alternatively fueled light-duty vehicles would not result in emission reductions. New gasoline-powered engines burn as efficiently as new natural gas powered engines. No emission reductions should be expected. Instead, SB 1727 tilts the market to favor certain technologies and companies over others. The marketplace, not government, should be making that decision.

The argument that electric light-duty vehicles would have a positive impact on emissions is true only in part. Electric light-duty vehicles must use other sources of energy to recharge, which could be a high-emissions fuel source such as coal. This bill could result in the state paying to trade emissions from gasoline for an increase in coal emissions. Similarly, air emissions from new natural gas-powered engines would not be a significant improvement over the emissions from new gasoline-powered engines.

NOTES:

According to the fiscal note, the bill would not affect general revenue. The bill would increase spending from the TERP fund by $25.6 million per year and add 10 FTEs to the state payroll beginning in fiscal 2014.

The House companion, HB 3658 by Reynolds, was heard in committee and left pending on April 23.

HB 3110 by Hilderbran contained similar provisions related to TERP funding and incentives for light-duty trucks. The bill was placed on the May 9 General State Calendar but was not considered.