

BILL ANALYSIS

Senate Research Center
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H.B. 2793
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Natural Resources
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Vehicle recyclers, scrap metal distributors, and steel manufacturers provide a valuable scrap metal recycling service in Texas as they collect, among other things, end-of-life motor vehicles and ultimately melt them into finished steel products which are used in a number of industries and form the backbone of construction activities in Texas.

Due to the presence of mercury-containing convenience light switches in motor vehicles in Texas, mercury can be emitted to the atmosphere when shredded vehicles are melted in high-temperature processes as part of the steel recycling process. Mercury provides no benefit to steel manufacturing plants and has no role in the manufacture of steel.

Despite commitments by several other vehicle manufacturers over ten years ago to eliminate the use of mercury-containing convenience switches due to these environmental concerns, some vehicle manufacturers continued to use these switches in vehicles manufactured in the United States as late as the year 2003.

Over the next decade, it is estimated that millions of vehicles containing mercury-containing convenience switches will be melted in the Texas, which will result in mercury emissions that cannot be prevented by Texas steel mills because there is no commercially available "end of stack" control technology.

The United States Environmental Protection Agency has made it clear that it will pass regulations this year to require the reduction of mercury emissions and it will recognize state removal programs as a method of compliance, because removing mercury switches from end-of-life vehicles before they are crushed or shredded is the most effective way to reduce mercury emissions into the environment from steel manufacturing facilities. It is impossible to remove mercury switches after the vehicles have been crushed.

Mercury switch collection programs are being established by state legislatures across the country to protect human health and the environment and to ensure that the auto manufacturing industry bears the financial burden of a removing the mercury switches they introduced into the stream of commerce.

H.B. 2793 to establishes a convenience switch removal and collection program to be administered by the Texas Commission on Environmental Quality (TCEQ). H.B. 2793 develops plans for the removal, storage, recycling of mercury-containing switches in end-of-life vehicles in Texas. It also requires record-keeping on the capture rate of the switches.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Sec. 375.055, Health and Safety Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Health and Safety Code, by adding Chapter 375, as follows:

CHAPTER 375. REMOVAL OF CONVENIENCE SWITCHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.001. DEFINITIONS. Defines "capture rate," "commission," "convenience switch," "convenience switch recovery program," "eligible vehicle," "end-of-life vehicle," "executive director," "manufacturer," "scrap metal recycling facility," "vehicle," and "vehicle recycler."

Sec. 375.002. APPLICABILITY OF CHAPTER. Sets forth the entities to which the chapter applies. Provides that the requirements of this chapter do not apply to a manufacturer on or after the 10th anniversary of the date on which the manufacturer last installed a convenience switch in a vehicle sold in this state.

Sec. 375.003. PURPOSE; COMMISSION AUTHORITY TO AMEND PROCEDURES. (a) Sets forth the purpose of this chapter regarding the establishment of a convenience switch recovery program.

(b) Authorizes the Texas Commission on Environmental Quality (TCEQ), consistent with the purpose expressed in Subsection (a), to amend procedures adopted to implement this chapter to include additional program elements paid for from the convenience switch recovery account established under Section 375.251 if, after January 1, 2007, the attorney general certifies that the state will not have a recognized program without implementing those additional elements based on specific information.

Sec. 375.004. EXPIRATION. Provides that this chapter expires August 31, 2015.

[Reserves Sections 375.005-375.050 for expansion.]

SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PROGRAM

Sec. 375.051. MANUFACTURER PROGRAM COMPONENTS. (a) Requires each manufacturer of vehicles sold in this state, individually or as part of a group, to implement a program, not later than January 1, 2006, that provides certain information, educational materials, and methods for the recycling, disposal, and storage relating to convenience switches.

(b) Requires a convenience switch recovery program to use existing end-of-life vehicle infrastructure to the extent possible. Requires the program to include reasons for establishing a separate infrastructure if that infrastructure is not used.

Sec. 375.052. PACKAGING, SHIPPING, AND RECYCLING COSTS. Requires each manufacturer, individually or as part of a group, to pay certain costs relating to the packaging, shipping, and recycling of convenience switches.

Sec. 375.053. COSTS OF EDUCATIONAL MATERIALS. Requires each manufacturer to pay certain financing costs for educational materials relating to convenience switches..

Sec. 375.054. PROVISION OF STORAGE CONTAINERS. Requires each manufacturer, individually or as part of a group, to pay for and provide to each vehicle recycler and scrap metal recycling facility containers suitable for the safe storage of convenience switches, including switches encased in light assemblies from which the switches cannot be removed.

Sec. 375.055. COMPLIANCE BONUS FEE. (a) Provides that this section takes effect if specific conditions are met.

(b) Requires TCEQ to pay a fee not to exceed \$2 per convenience switch to the vehicle recycler or scrap metal recycling facility as compensation for the labor and other costs incurred in the removal of convenience switches.

(c) Requires TCEQ to adopt rules to implement this section.

[Reserves Sections 375.056-375.100 for expansion.]

SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PROGRAM
IMPLEMENTATION

Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES.

(a) Requires a vehicle recycler, in accordance with educational materials received under this chapter, to remove all convenience switches from an end-of-life vehicle that is identified as an eligible vehicle in the applicable convenience switch recovery program before the vehicle recycler can perform specific functions.

(b) Requires the vehicle recycler, if damage to a vehicle makes a convenience switch inaccessible for removal, to note the location of the damage and of the switch on the normal business records of the vehicle recycler. Prohibits a vehicle recycler from delivering a vehicle that contains a convenience switch to a scrap metal recycling facility, except as provided by Subsection (c).

(c) Authorizes a scrap metal recycling facility to accept an end-of-life vehicle that contains a convenience switch if the owner, operator, or other designated individual of the facility agrees to remove the convenience switch before the vehicle is flattened, crushed, shredded, or baled.

(d) Provides that it is a violation of this chapter for a vehicle recycler or scrap metal recycling facility to bring a convenience switch into this state that was removed from a motor vehicle outside this state for the purpose of receiving compensation from TCEQ under Section 375.055(b) or under a procedure amended by TCEQ under Section 375.003(b).

Sec. 375.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING FACILITY RECORDS. (a) Requires a vehicle recycler or scrap metal recycling facility that removes convenience switches under Section 375.101 to maintain records documenting specific information.

(b) Requires a vehicle recycler that removes convenience switches to note specific information on the inventory receipt for surrendered certificates of title or other evidence of ownership required to be maintained under Chapter 2302 (Salvage Vehicle Dealers), Occupations Code.

Sec. 375.103. LIMITATION ON DUTIES OF VEHICLE RECYCLER OR SCRAP METAL RECYCLING FACILITY. (a) Prohibits TCEQ from requiring a vehicle recycler or scrap metal recycling facility to undertake any action beyond the actions reasonably arising from obligations created under this chapter.

(b) Requires a summary of the records required under Section 375.102 to be reported to TCEQ by September 1 of each year.

Sec. 375.104. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a) Prohibits a person from representing that a convenience switch has been removed from an end-of-life vehicle being conveyed for recycling or other processing unless that person followed certain guidelines.

(b) Provides that a scrap metal recycling facility or other person that acquires scrap metal, including scrap metal in the form of an intentionally flattened, crushed, shredded, or baled vehicle, is not considered to be in violation of this subchapter solely because a convenience switch is found in the scrap metal after acquisition.

Sec. 375.105. HANDLING OF CONVENIENCE SWITCHES. Requires a convenience switch, after removal from a vehicle, to be collected, stored, transported, and otherwise handled in accordance with applicable programs and rules.

[Reserves Sections 375.106-375.150 for expansion.]

SUBCHAPTER D. REPORTS

Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. Sets forth requirements for the TCEQ report to be published on or before December 31 of each year. Authorizes the executive director of TCEQ to discontinue the requirement for an annual report under this section upon determining that the convenience switches in end-of-life vehicles no longer pose a significant threat to the environment or to public health.

Sec. 375.152. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT. Requires each manufacturer, individually or as part of a group, on or before January 15 of each year, to report the total number of convenience switches recovered in this state and the total amount of mercury, by weight, recovered from those convenience switches during the preceding calendar year to TCEQ.

[Reserves Sections 375.153-375.200 for expansion.]

SUBCHAPTER E. PENALTIES AND ENFORCEMENT

Sec. 375.201. PENALTIES AND ENFORCEMENT. Provides that a person who violates a provision of this chapter, or a rule or order issued under this chapter, is subject to the penalty and enforcement provisions of Chapter 7 (Enforcement), Water Code.

[Sections 375.202-375.250 reserved for expansion]

SUBCHAPTER F. CONVENIENCE SWITCH RECOVERY ACCOUNT

Sec. 375.251. CONVENIENCE SWITCH RECOVERY ACCOUNT. (a) Provides that this section takes effect only if the attorney general certifies that the United States Environmental Protection Agency has promulgated final regulations that recognize state convenience switch recovery programs as a method of compliance with those final regulations and that require an incentive as provided by Section 375.055 for a program's approval by the United States Environmental Protection Agency, except as provided by Section 375.003(b).

(b) Provides that the convenience switch recovery account is an account in the general revenue fund (fund).

(c) Provides that the account is administered by the comptroller for the benefit of the convenience switch recovery program established under this chapter and is exempt from the application of Section 403.095 (Use of Dedicated Revenue), Government Code.

(d) Sets forth the composition of the fund.

(e) Authorizes money in the fund to be appropriated only to implement and administer the convenience switch recovery program under this chapter. Authorizes TCEQ to spend an amount not to exceed \$3 million for the payment of compliance bonus fees under Section 375.055 or under procedures amended under Section 375.003 and the associated administrative costs each year of the program.

SECTION 2. Amends Section 386.252, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes money in the fund to be used only to implement and administer programs established under the plan. Requires the money to be allocated in a specific manner, except as provided by Subsection (c).

(c) Provides that this subsection takes effect only if the attorney general certifies that the United States Environmental Protection Agency has promulgated final regulations that recognize state convenience switch recovery programs as a method of compliance with those final regulations and that require an incentive as provided by Section 375.055 for a program's approval by the United States Environmental Protection Agency, except as provided by Section 375.003(b). Requires money collected but not appropriated for any program or activity under Subsection (a) for the fiscal year beginning September 1, 2005, if the attorney general's certification is made, to be reallocated to the convenience switch recovery account within a certain timeframe, in an amount not to exceed \$24 million. Requires money collected but not appropriated for any program or activity under Subsection (a) for the fiscal year immediately preceding the fiscal year in which the certification occurs, if the certification is made on or after January 1, 2007, to be reallocated to the convenience switch recovery account within a certain timeframe in an amount not to exceed \$24 million. Requires additional allocations of money collected in excess of the amounts appropriated for any program or activity under Subsection (a), if after the attorney general's certification is made, the amount collected and reallocated to the convenience switch recovery account is less than \$24 million, to occur before November 1 of each fiscal year after the fiscal year of the initial reallocation until the total cumulative amount reallocated equals \$24 million.

SECTION 3. (a) Requires TCEQ to adopt rules not later than March 1, 2006, for regulating a convenience switch, as defined by Section 375.001, Health and Safety Code, as added by this Act, as universal waste under 30 T.A.C. Section 335.261.

(b) Requires TCEQ to regulate a convenience switch, as defined by Section 375.001, Health and Safety Code, as added by this Act, as a universal waste in accordance with 40 C.F.R. Part 273, and as incorporated by reference in 30 T.A.C. Section 335.261, until rules have been adopted and promulgated under Subsection (a) of this section,

SECTION 4. Requires a manufacturer, individually or as part of a group, to provide containers as required by Section 375.054, Health and Safety Code, as added by this Act, to each vehicle recycler and scrap metal recycling facility identified by TCEQ, not later than the 60th day after the effective date of this Act,

SECTION 5. Requires the initial report described by Section 375.151, Health and Safety Code, as added by this Act, to be published as required by that section on or before December 31, 2006.

SECTION 6. Effective date: upon passage or August 29, 2005.