

BILL ANALYSIS

Senate Research Center
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S.B. 1239
By: Barrientos
Natural Resources
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DIGEST AND PURPOSE

Currently, businesses that generate 220 pounds or more of obsolete electronic equipment per month are legally required to treat that waste as hazardous material. However, some individuals and small generators store obsolete electronic equipment in basements, garages, offices, and shops, while others dispose of electronics in landfills or illegally dump the equipment, because safe and environmentally responsible recycling programs are very limited. An estimated 50 to 80 percent of electronic waste sent to “recyclers” is actually shipped to developing countries, where the waste is neither recycled nor disposed of properly. As proposed, S.B. 1239 requires electronics producers to be responsible for their products, through recycling and safe disposal of obsolete electronic equipment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 361, Health and Safety Code, by adding Subchapter W, as follows:

SUBCHAPTER W. ELECTRONIC EQUIPMENT

Sec. 361.801. DEFINITIONS. Defines “electronic equipment,” “electronic equipment waste,” “historical waste,” “orphan waste,” “plan,” “producer,” “recycling,” and “reuse.”

Sec. 361.802. COMMISSION POWERS AND DUTIES. Requires the Texas Commission on Environmental Quality (TCEQ) to implement this subchapter and include in its biennial reports under Section 5.178 (Annual Reports; Biennial Appendix), Water Code, any recommendations regarding amendments to this subchapter.

Sec. 361.803. PLAN APPROVAL AND IMPLEMENTATION REQUIRED. Prohibits a producer from selling or reselling electronic equipment in this state unless TCEQ approves a plan submitted by the producer under this subchapter and the producer implements the approved plan.

Sec. 361.804. CONTENTS OF PLAN. Requires the plan for financing the collection, treatment, recovery, reuse, recycling, and disposition of electronic equipment to meet certain standards.

Sec. 361.805. FINANCIAL RESPONSIBILITY OF PRODUCERS. (a) Requires each producer of electronic equipment sold or resold in this state to implement a program that meets certain requirements for financing the environmentally sound collection, treatment, recovery, reuse, recycling, and disposition of electronic equipment.

(b) Authorizes the producer to meet the requirements of this section individually or in cooperation with other producers.

(c) Authorizes the plan to require consumers and other electronic equipment end users to deliver electronic equipment waste into the collection system, although a producer is encouraged to provide in the plan for direct collection or reverse delivery systems.

Sec. 361.806. PRODUCER'S SHARE OF ORPHAN AND HISTORICAL WASTE. (a) Provides that a producer's share of orphan waste and historical waste derived from electronic equipment of a type sold by the producer is proportional to the producer's share of the market for that type of equipment at the time waste management costs are incurred.

(b) Requires TCEQ to determine annually the market share of each producer for this section.

Sec. 361.807. LABELING OF EQUIPMENT. Requires each producer of electronic equipment sold or resold in this state to mark or label the equipment to provide consumers and other end users with certain information.

Sec. 361.808. CONSUMER EDUCATION PLAN. Requires each producer of electronic equipment sold or resold in this state to implement a certain consumer education plan designed to ensure that consumers and other end users of electronic equipment, understand certain issues regarding electronic equipment waste.

Sec. 361.809. DEMONSTRATION OF PUBLIC AWARENESS. (a) Requires the producer, by the second anniversary of the date TCEQ approves a producer's plan, to demonstrate by means of an independent public poll that at least 85 percent of the public is aware of the producer's plan for the collection, treatment, recovery, reuse, recycling, and disposition of the electronic equipment sold by the producer that becomes electronic equipment waste.

(b) Authorizes the producers, in the alternative, to collectively satisfy the requirements of this subsection by means of a single poll that demonstrates that at least 85 percent of the public is aware of a majority of producers' plans for the collection, treatment, recovery, reuse, recycling, and disposition of the electronic equipment waste that is derived from a majority of the types of electronic equipment covered by this subchapter.

(c) Requires the design, protocols, and implementations plan for the polling required by this section to be approved by TCEQ.

Sec. 361.810. PROVISION OF INFORMATION TO RECYCLERS AND PROCESSORS. (a) Requires a producer's plan to require the producer to demonstrate that the producer will take adequate measures to provide information to recyclers and processors of the producer's electronic equipment.

(b) Requires the producer, not later than the first anniversary of the date a producer begins selling or reselling electronic equipment in this state, to provide to recyclers and processors information regarding certain matters for purposes of end-of-life treatment of the equipment.

Sec. 361.811. ENVIRONMENTAL PERFORMANCE REQUIREMENTS. (a) Provides that, for orphan and historical waste, a producer is responsible for certain demonstration requirements.

(b) Provides that for electronic equipment waste other than orphan or historical waste, a producer is responsible for demonstrating a certain level of recycling and reuse.

Sec. 361.812. RESTRICTIONS ON USE OF PRISON LABOR. Prohibits a plan from including a reliance on prison labor unless all incarcerated workers involved in the

processing and recycling of electronic equipment waste are provided with compensation equivalent to market rate wages for work performed and afforded the protections of state occupational safety and health laws, rules, and regulations and the worker safety and health protections required by Section 361.816.

Sec. 361.813. PROHIBITION ON EXPORTING ELECTRONIC EQUIPMENT WASTE. Requires a plan to prohibit the export of electronic equipment waste to any country that is not a member of the Organization for Economic Cooperation and Development.

Sec. 361.814. SUBMISSION, REVIEW, AND APPROVAL OF PLAN. (a) Requires a producer that desires to sell or resell electronic equipment in this state to submit a plan to TCEQ for review. Requires the plan to be accompanied by an application fee in an amount determined by TCEQ to be sufficient to cover the cost of reviewing the plan.

(b) Requires TCEQ to review a plan submitted under this section. Requires TCEQ, if it determines the plan does not meet the requirements of this subchapter, to advise the producer of any necessary amendments to the plan and provide the producer an opportunity to submit an amended plan.

(c) Requires TCEQ to approve a plan that meets the requirements of this subchapter.

Sec. 361.815. RESTRICTIONS ON HAZARDOUS MATERIALS. (a) Prohibits a producer from selling electronic equipment in this state that contains lead, mercury, cadmium, hexavalent chromium, brominated flame retardants, or polyvinyl chloride.

(b) Authorizes TCEQ by order to allow a producer to sell electronic equipment in this state that contains a substance prohibited by Subsection (a) for a period specified by TCEQ if the producer demonstrates that it is not technically possible to produce the type of electronic equipment in question without using that substance.

(c) Authorizes TCEQ to rescind order issued under Subsection (b) if the commission subsequently determines that it is technically possible to produce the type of electronic equipment in question without using the substance in question.

Sec. 361.816. WORKER SAFETY AND HEALTH PROTECTIONS. Requires an owner or operator of a facility used to collect, recover, recycle electronic equipment waste as part of a plan to meet certain standards in order to protect the health and safety of the persons employed at the facility.

Sec. 361.817. STATE PURCHASING AND LEASING. Requires each state agency to adopt policies that meet certain specifications for purchasing and leasing electronic equipment.

Sec. 361.818. REPORTS. (a) Requires each producer to submit an annual report to TCEQ detailing the producer's implementation of the producer's plan and compliance with this subchapter.

(b) Requires the annual report to document that the implementation of the plan has not resulted in the export of electronic equipment waste to any country that is not a member of the Organization for Economic Cooperation and Development.

(c) Requires TCEQ to review the report by the 180th day after the report is submitted. Requires TCEQ, if it determines that the producer is not in compliance with this subchapter, to notify the producer not later than the end of the following quarter. Authorizes TCEQ, if the producer fails to comply with this subchapter by the end of the quarter following the quarter in which the notice is

given, to take an action to enforce this subchapter.

(d) Requires TCEQ to post on its Internet website the annual report required by this section for the current year and the two preceding years and any other report detailing the implementation of the producer's plan for the current year and the two preceding years.

Sec. 361.819. BAN ON INCINERATION OR DISPOSAL IN LANDFILL. (a) Prohibits an electronic equipment and electronic equipment waste from being disposed of in a landfill, incinerator, or cement kiln or used for another form of energy recovery or energy generation dependent on combustion of the waste.

(b) Provides that this section applies to whole units of electronic equipment waste as well as to the constituent components or materials from which the units are made.

Sec. 361.820. IMMUNITY FROM LIABILITY. Provides that an owner or operator of a landfill who disposes of electronic equipment or electronic equipment waste in a landfill is immune from liability, under this code or the Water Code for disposing of the electronic equipment or electronic equipment waste in violation of this subchapter, under certain circumstances.

SECTION 2. Amends Chapter 7E, Water Code, by adding Section 7.1855, as follows:

Sec. 7.1855. KNOWING UNAUTHORIZED DISPOSAL OF ELECTRONIC EQUIPMENT OR ELECTRONIC EQUIPMENT WASTE. (a) Provides that a person commits an offense if the person knowingly disposes of electronic equipment or electronic equipment waste in a manner that violates Chapter 361W, Health and Safety Code.

(b) Provides that an offense under this section is a Class C misdemeanor.

SECTION 3. (a) Establishes that this Act takes effect September 1, 2003, except as otherwise provided by this section.

(b) Requires each producer who is engaged in the sale or resale of electronic equipment in this state to:

1. submit to TCEQ a plan required by Section 361.803, Health and Safety Code, as added by this Act, by March 1, 2004;
2. provide TCEQ a financial guarantee required by Section 361.804(8), Health and Safety Code, as added by this Act, not later than the earlier of September 1, 2004, or the date the producer's plan is approved under Section 361.814(c), Health and Safety Code, as added by this Act;
3. implement a plan required by Section 361.803, Health and Safety Code, as added by this Act, not later than September 1, 2005, except as provided by Subdivision (4); and
4. comply with Sections 361.807 and 361.810(b), Health and Safety Code, as added by this Act, not later than September 1, 2004.

(c) Provides that Section 361.815, Health and Safety Code, as added by this Act, takes effect January 1, 2006.

(d) Requires each state agency to adopt policies under Section 361.817, Health and Safety Code, as added by this Act, not later than March 1, 2004.

(e) Provides that Sections 361.819 and 361.820, Health and Safety Code, and Section 7.1855, Water Code, as added by this Act, take effect September 1, 2005.