

## **BILL ANALYSIS**

Senate Research Center

S.B. 1681  
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### **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 (EPA) 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.

As proposed, S.B. 1681 to establishes a convenience switch removal and collection program to be administered by the Texas Commission on Environment Quality (TCEQ). S.B. 1681 requires auto manufacturers to develop plans for the removal, storage, recycling of mercury-containing switches in end-of-life vehicles in Texas. Automobile manufacturers are required to bear the costs of the program, including a \$5 per switch fee to be paid to vehicle recyclers/scrap recycling facilities for the cost of removing the switches and a \$1 per switch fee to the TCEQ for its costs in administering the program. The bill also requires detailed record-keeping requirements to satisfy EPA capture rate expectations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Section 375.201, Health and Safety Code), 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 plan," "end-of-life vehicle," " executive director," "manufacturer," "scrap metal recycling facility," "vehicle," and " vehicle recycler."

Sec. 375.002. APPLICABILITY OF CHAPTER. Provides that this chapter only applies under specific circumstances.

[Reserves Sections 375.003-375.050 for expansion.]

#### SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PLAN

Sec. 375.051. DEVELOPMENT PLAN. Requires each manufacturer of vehicles sold in this state, as specified, to develop a convenience switch recovery plan in accordance with this subchapter and submit the plan to the executive director for review and approval. Requires the executive director to notify each manufacturer of the requirement to develop a convenience switch recovery plan and submit the plan to the executive director for approval.

Sec. 375.052. CONVENIENCE SWITCH PLAN CONTENTS. Sets forth required items to be included in the convenience switch recovery plan. Requires a convenience switch recovery plan to use existing end-of-life vehicle infrastructure, to the extent possible. Requires the plan to include reasons for establishing a separate infrastructure, if that infrastructure is not used.

Sec. 375.053. FINANCING OF COSTS. Requires that a switch recovery plan provide for financing by the manufacturer of certain actions as specified.

Sec. 375.054. FEE. Requires each manufacturer's convenience switch recovery plan to include a procedure that ensures prompt payment of a fee to certain entities as specified.

Sec. 375.055. PACKAGING, SHIPPING, AN [sic] RECYCLING COSTS. Requires the manufacturer's plan to include financing to pay the cost of specific items.

Sec. 375.056. COSTS OF EDUCATIONAL MATERIALS. Requires the manufacturer's plan to provide financing for the preparation of educational materials required under Section 375.052 and the distribution of those materials to each vehicle recycler and scrap metal recycling facility.

Sec. 375.057. COSTS OF RECORDS MAINTENANCE. Requires the manufacturer's plan to provide financing for the costs of maintaining all record-keeping systems associated with the implementation of this chapter.

Sec. 375.058. FEE INCREASES AS NEEDED. Requires the executive director to increase a fee under Section 375.054 to an appropriate level upon a certain determination by the executive director.

Sec. 375.059. STORAGE AND REIMBURSEMENT. Requires each manufacturer to provide each recycler and scrap metal recycling facility with containers suitable for the safe storage of convenience switches until such time as specified. Entitles a vehicle recycler or scrap metal recycling facility to

reimbursement by the manufacturer of a vehicle for each convenience switch removed from the vehicle as specified.

Sec. 375.060. INDEMNIFICATION OF VEHICLE RECYCLERS AND SCRAP METAL RECYCLING. Requires a manufacturer to indemnify, defend, and hold harmless a vehicle recycler or scrap metal recycling facility from specified liability.

Sec. 375.061. PLAN APPROVAL PROCESS. (a) Requires the executive director to approve or disapprove all or part of the plan or to approve the plan conditionally, within a specified time period. Authorizes the executive director to seek comments or information from interested persons, including representatives of vehicle recyclers and scrap metal recycling facilities.

(b) Requires the manufacturer to begin implementing the plan in the time period specified, if the executive director approves an entire convenience switch recovery plan, unless the manufacturer and the executive director have agreed to a different date to initiate the plan.

(c) Requires the executive director to provide the manufacturer with a list of the convenience plan's deficiencies, if the executive director disapproves an entire plan. Requires the manufacturer to submit a new convenience switch recovery plan within a specified time period.

(d) Requires the manufacturer to implement the approved part as instructed by the executive director and to submit a revised plan within a specified amount of time, if only part of a convenience switch recovery plan is approved.

(e) Requires the executive director to review and approve, partly approve, or disapprove a revised convenience switch recovery plan within a specified period of time.

(f) Authorizes the executive director to complete on behalf of a manufacturer any part of a convenience switch recovery plan not approved, if a plan has not been fully approved within a specified period of time.

(g) Authorizes the executive director to review an approved convenience switch recovery plan and recommend modifications to the plan at any time under certain circumstances.

[Reserves Sections 375.052-375.100 for expansion.]

#### SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PLAN IMPLEMENTATION

Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES.

(a) Requires a vehicle recycler to remove all convenience switches from the vehicle as identified in the applicable convenience switch recovery plan before the vehicle recycler takes certain actions, in accordance with educational materials received under this chapter.

(b) Requires the vehicle recycler to note the locations of the damage and of the switch on the normal business records of the vehicle recycler under specified circumstances. 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 recycling facility to accept an end-of-life vehicle that contains a convenience switch by agreeing to remove the remaining convenience switch in a

accordance with the applicable convenience switch recovery plan before the vehicle is flattened, crushed, shredded, or baled.

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

Sec. 375.103. INACCESSIBLE CONVENIENCE SWITCHERS CONSIDERED IN CAPTURE RATE. Provides that for purposes of computing the capture rate, a convenience switch that is in accessible because of damage to the vehicle is considered to be a convenience switch that was available for inspection or removal but was not inspected or removal but was not inspected or removed.

Sec. 375.104. LIMIT ON DUTIES OF VEHICLE RECYCLER OR SCRAP METAL RECYCLING FACILITY. Prohibits the commission 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. Requires that records required under Sections 375.101 and 375.102 to be made available to the commission for review on request.

Sec. 375.105. HONEST CONVEYANCE; RECEIPT OF VEHICLE. 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 under specific circumstances. Provides that certain entities and persons are not considered to be in violation of this subchapter solely because a convenience switch is found in the scrap metal after acquisition.

Sec. 375.106. HANDLING OF CONVENIENCE SWITCHES. Requires that after removal from a vehicle, a convenience switch to be collected, stored, transported, and otherwise handled as specified.

[Reserves Sections 375.107-375.150 for expansion.]

#### SUBCHAPTER D. REPORTS

Sec. 375.151. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT. Requires each manufacturer to present a report individually or as part of a group to the executive director on the manufacturer's convenience switch recovery plan within a specified time period. Sets forth required information to be included in the report. Authorizes the executive director to discontinue the requirement for an annual report under this section under certain circumstances.

Sec. 375.152. ANNUAL MANUFACTURER'S DESIGN REPORT. Requires a manufacturer to report individually or as part of a group to the executive director concerning steps being taken by the manufacturer to design vehicles and vehicle components for recycling, within a specified time period. Sets forth information to be included in the report. Authorizes the commission to perform specific actions.

[Reserves Sections 375.153-375.200 for expansion.]

#### SUBCHAPTER E. RULES, PENALTIES, AND ENFORCEMENT

Sec. 375.201. RULES. Requires the commission to adopt rules to implement this chapter, including rules governing the removal of a convenience switch under a convenience switch recovery plan. Provides that this chapter does not limit the commission's authority to allow new or modified plans to be submitted and independently financed to facilitate the removal of certain components from end-of-life vehicles. Requires the commission to certain emission reductions as creditable, to the extent authorized by federal law, in the development of emission trading programs.

Sec. 375.202. 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, Water Code.

SECTION 2. Requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules to implement Chapter 375, Health and Safety Code, as added by this Act, not later than March 1, 2006. Requires the rules adopted under this section to include certain provisions as specified. Requires the commission to regulate a convenience switch, as defined by Section 375.001, Health and Safety Code, as added by this Act, as a universal waste as specified, until rules have been adopted and promulgated under Subsection (a) of this section.

SECTION 3. (a) Provides that this section only applies to a manufacturer of a vehicle sold on the state as those terms are defined by Section 375.001.

(b) Requires TCEQ to notify each manufacturer of vehicle sold in this state of the requirement to submit a convenience switch recovery plan in accordance with Subchapter B, Chapter 375, Health and Safety Code, as added by this Act, not later than 30 days after the effective date of this Act.

(c) Requires a manufacturer to provide containers as required by Section 375.059, as added by this Act, to each vehicle recycler and scrap metal recycling facility, not later than 60 days after the effective date of this Act.

(d) Requires each manufacturer to submit a convenience switch recovery plan as required by Section 375.051, as added by this Act, to the executive director of TCEQ, not later than 90 days after the effective date of this Act.

(e) Require the initial reports described by Section 375.151 and 375.152, Health and Safety Code, as added by this Act, to be presented as required by those sections on or before December 31, 2006.

SECTION 4. Effective date: upon passage or September 1, 2005.