

1-1 By: Bonnen (Senate Sponsor - Jackson) H.B. No. 2793
1-2 (In the Senate - Received from the House May 16, 2005;
1-3 May 17, 2005, read first time and referred to Committee on Natural
1-4 Resources; May 20, 2005, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the removal and collection of convenience switches from
1-9 motor vehicles; providing penalties.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subtitle B, Title 5, Health and Safety Code, is
1-12 amended by adding Chapter 375 to read as follows:

1-13 CHAPTER 375. REMOVAL OF CONVENIENCE SWITCHES

1-14 SUBCHAPTER A. GENERAL PROVISIONS

1-15 Sec. 375.001. DEFINITIONS. In this chapter:

1-16 (1) "Capture rate" means the annual number of
1-17 convenience switches removed, collected, and recovered, expressed
1-18 as a percentage of the number of convenience switches estimated to
1-19 be available for removal in that year from end-of-life vehicles.

1-20 (2) "Commission" means the Texas Commission on
1-21 Environmental Quality.

1-22 (3) "Convenience switch" means a capsule, commonly
1-23 known as a bullet, that:

1-24 (A) is part of a convenience light switch
1-25 assembly; and

1-26 (B) because of its mercury content, is the type
1-27 of switch subject to work practice standards promulgated by the
1-28 United States Environmental Protection Agency under Section 112 of
1-29 the federal Clean Air Act (42 U.S.C. Section 7412).

1-30 (4) "Convenience switch recovery program" means a
1-31 program for removing, collecting, and recovering convenience
1-32 switches from end-of-life vehicles in accordance with Subchapter B.

1-33 (5) "Eligible vehicle" means a vehicle identified by
1-34 information provided by the manufacturer to the commission under
1-35 Section 375.051 as a vehicle that might contain a convenience
1-36 switch.

1-37 (6) "End-of-life vehicle" means a vehicle that:

1-38 (A) has not been intentionally flattened,
1-39 crushed, shredded, or baled; and

1-40 (B) is sold, given, or otherwise conveyed to a
1-41 vehicle recycler or scrap metal recycling facility for the purpose
1-42 of recycling.

1-43 (7) "Executive director" means the executive director
1-44 of the commission.

1-45 (8) "Manufacturer" means:

1-46 (A) a person who is the last entity in the
1-47 production or assembly process of a new vehicle; or

1-48 (B) the importer or domestic distributor of the
1-49 vehicle, in the case of an imported vehicle.

1-50 (9) "Scrap metal recycling facility" means a facility
1-51 at a fixed location that uses equipment to process and refabricate
1-52 scrap metal into prepared grades and principally produces scrap
1-53 iron, scrap steel, or nonferrous metallic scrap for sale.

1-54 (10) "Vehicle" means any automobile, station wagon,
1-55 truck, van, or sport utility vehicle with a gross vehicle weight
1-56 rating of less than 12,000 pounds.

1-57 (11) "Vehicle recycler" means a person engaged in the
1-58 business of acquiring, dismantling, or preparing for recycling six
1-59 or more end-of-life vehicles in a calendar year for the primary
1-60 purpose of reselling the vehicles' parts. The term includes a
1-61 salvage vehicle dealer licensed under Chapter 2302, Occupations
1-62 Code.

1-63 Sec. 375.002. APPLICABILITY OF CHAPTER. (a) This chapter
1-64 applies only to:

2-1 (1) a manufacturer of vehicles sold in this state that
 2-2 contain or contained convenience switches; and

2-3 (2) a vehicle recycler or scrap metal recycling
 2-4 facility in this state.

2-5 (b) The requirements of this chapter do not apply to a
 2-6 manufacturer on or after the 10th anniversary of the date on which
 2-7 the manufacturer last installed a convenience switch in a vehicle
 2-8 sold in this state.

2-9 Sec. 375.003. PURPOSE; COMMISSION AUTHORITY TO AMEND
 2-10 PROCEDURES. (a) It is the purpose of this chapter to establish a
 2-11 convenience switch recovery program for this state that is
 2-12 recognized by the United States Environmental Protection Agency as
 2-13 a method of compliance with regulations promulgated under Section
 2-14 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to the
 2-15 extent that the regulations recognize state convenience switch
 2-16 recovery programs as a method of compliance.

2-17 (b) Consistent with the purpose expressed in Subsection
 2-18 (a), the commission may amend procedures adopted to implement this
 2-19 chapter to include additional program elements paid for from the
 2-20 convenience switch recovery account established under Section
 2-21 375.251 if, after January 1, 2007, the attorney general certifies
 2-22 that the state will not have a recognized program without
 2-23 implementing those additional elements based on:

2-24 (1) information included in the annual implementation
 2-25 report required under Section 375.151; and

2-26 (2) a final written guidance document or rule,
 2-27 including a preamble to the guidance document or rule, developed
 2-28 for Section 112 of the federal Clean Air Act (42 U.S.C. Section
 2-29 7412) and provided by the United States Environmental Protection
 2-30 Agency.

2-31 Sec. 375.004. EXPIRATION. This chapter expires August 31,
 2-32 2015.

2-33 [Sections 375.005-375.050 reserved for expansion]

2-34 SUBCHAPTER B. CONVENIENCE SWITCH RECOVERY PROGRAM

2-35 Sec. 375.051. MANUFACTURER PROGRAM COMPONENTS. (a) Each
 2-36 manufacturer of vehicles sold in this state, individually or as
 2-37 part of a group, shall, not later than January 1, 2006, implement a
 2-38 program that provides the following:

2-39 (1) information identifying that manufacturer's
 2-40 eligible vehicles, including:

2-41 (A) a description of the convenience switches
 2-42 used by the manufacturer;

2-43 (B) the location on each vehicle of each
 2-44 convenience switch;

2-45 (C) the safe and environmentally sound methods
 2-46 for removing a convenience switch from an end-of-life vehicle; and

2-47 (D) the estimated number of convenience switches
 2-48 available, for purposes of computing the capture rate;

2-49 (2) educational materials to assist a vehicle recycler
 2-50 or scrap metal recycling facility in following a safe and
 2-51 environmentally sound method to remove convenience switches from
 2-52 end-of-life vehicles, including educational materials on hazards
 2-53 presented by the content of a convenience switch and the proper
 2-54 handling of that content;

2-55 (3) methods for recycling or disposing of the
 2-56 manufacturer's convenience switches, including the method of
 2-57 packaging and shipping a convenience switch to an authorized
 2-58 recycling, storage, or disposal facility; and

2-59 (4) methods for the storage of a convenience switch
 2-60 collected and recovered from an end-of-life vehicle if
 2-61 environmentally appropriate recycling or disposal technologies are
 2-62 not available.

2-63 (b) To the extent possible, a convenience switch recovery
 2-64 program must use existing end-of-life vehicle infrastructure. If
 2-65 that infrastructure is not used, the program must include reasons
 2-66 for establishing a separate infrastructure.

2-67 Sec. 375.052. PACKAGING, SHIPPING, AND RECYCLING COSTS.
 2-68 Each manufacturer, individually or as part of a group, shall pay the
 2-69 costs of:

3-1 (1) packaging and shipping of the manufacturer's
 3-2 convenience switches to recycling, storage, or disposal
 3-3 facilities; and

3-4 (2) recycling, storing, or disposing of the
 3-5 manufacturer's removed convenience switches.

3-6 Sec. 375.053. COSTS OF EDUCATIONAL MATERIALS. Each
 3-7 manufacturer shall provide financing for:

3-8 (1) the preparation of educational materials required
 3-9 under Section 375.051; and

3-10 (2) the distribution of those materials at workshops
 3-11 that the commission is required to conduct as part of the
 3-12 commission's technical assistance.

3-13 Sec. 375.054. PROVISION OF STORAGE CONTAINERS. Each
 3-14 manufacturer, individually or as part of a group, shall pay for and
 3-15 provide to each vehicle recycler and scrap metal recycling facility
 3-16 containers suitable for the safe storage of convenience switches,
 3-17 including switches encased in light assemblies from which the
 3-18 switches cannot be removed.

3-19 Sec. 375.055. COMPLIANCE BONUS FEE. (a) This section takes
 3-20 effect only if the attorney general certifies that the United
 3-21 States Environmental Protection Agency has promulgated final
 3-22 regulations under Section 112 of the federal Clean Air Act (42
 3-23 U.S.C. Section 7412) that recognize state convenience switch
 3-24 recovery programs as a method of compliance with those final
 3-25 regulations and that require an incentive as provided by this
 3-26 section for a program's approval by the United States Environmental
 3-27 Protection Agency.

3-28 (b) The commission shall pay a fee not to exceed \$2 per
 3-29 convenience switch to the vehicle recycler or scrap metal recycling
 3-30 facility as compensation for the labor and other costs incurred in
 3-31 the removal of convenience switches.

3-32 (c) The commission shall adopt rules to implement this
 3-33 section.

3-34 [Sections 375.056-375.100 reserved for expansion]

3-35 SUBCHAPTER C. CONVENIENCE SWITCH RECOVERY PROGRAM IMPLEMENTATION

3-36 Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE
 3-37 SWITCHES. (a) In accordance with educational materials received
 3-38 under this chapter, a vehicle recycler shall remove all convenience
 3-39 switches from an end-of-life vehicle that is identified as an
 3-40 eligible vehicle in the applicable convenience switch recovery
 3-41 program before the vehicle recycler:

3-42 (1) crushes, flattens, bales, or shreds the vehicle;
 3-43 or

3-44 (2) sells, gives, or otherwise conveys ownership of
 3-45 the vehicle to:

3-46 (A) a scrap metal recycling facility for
 3-47 recycling; or

3-48 (B) any other person for purposes of crushing or
 3-49 other similar processing.

3-50 (b) If damage to a vehicle makes a convenience switch
 3-51 inaccessible for removal, the vehicle recycler shall note the
 3-52 location of the damage and of the switch on the normal business
 3-53 records of the vehicle recycler. Except as provided by Subsection
 3-54 (c), a vehicle recycler may not deliver a vehicle that contains a
 3-55 convenience switch to a scrap metal recycling facility.

3-56 (c) A scrap metal recycling facility may accept an
 3-57 end-of-life vehicle that contains a convenience switch if the
 3-58 owner, operator, or other designated individual of the facility
 3-59 agrees to remove the convenience switch before the vehicle is
 3-60 flattened, crushed, shredded, or baled.

3-61 (d) It is a violation of this chapter for a vehicle recycler
 3-62 or scrap metal recycling facility to bring a convenience switch
 3-63 into this state that was removed from a motor vehicle outside this
 3-64 state for the purpose of receiving compensation from the commission
 3-65 under Section 375.055(b) or under a procedure amended by the
 3-66 commission under Section 375.003(b).

3-67 Sec. 375.102. VEHICLE RECYCLER AND SCRAP METAL RECYCLING
 3-68 FACILITY RECORDS. (a) A vehicle recycler or scrap metal recycling
 3-69 facility that removes convenience switches under Section 375.101

4-1 shall maintain records documenting:

4-2 (1) the number of convenience switches collected;
4-3 (2) the total number of end-of-life vehicles processed
4-4 for recycling; and

4-5 (3) the number of convenience switches that were
4-6 inaccessible because of damage to the end-of-life vehicle.

4-7 (b) A vehicle recycler that removes convenience switches
4-8 shall note on the inventory receipt for surrendered certificates of
4-9 title or other evidence of ownership required to be maintained
4-10 under Chapter 2302, Occupations Code, the following additional
4-11 information:

4-12 (1) whether a vehicle for which title or other
4-13 evidence of ownership was surrendered was an eligible vehicle; and

4-14 (2) a certification that all identified convenience
4-15 switches were recovered and placed in containers specified by the
4-16 applicable convenience switch recovery program.

4-17 Sec. 375.103. LIMITATION ON DUTIES OF VEHICLE RECYCLER OR
4-18 SCRAP METAL RECYCLING FACILITY. (a) The commission may not require
4-19 a vehicle recycler or scrap metal recycling facility to undertake
4-20 any action beyond the actions reasonably arising from obligations
4-21 created under this chapter.

4-22 (b) A summary of the records required under Section 375.102
4-23 must be reported to the commission by September 1 of each year.

4-24 Sec. 375.104. HONEST CONVEYANCE; RECEIPT OF VEHICLE. (a) A
4-25 person may not represent that a convenience switch has been removed
4-26 from an end-of-life vehicle being conveyed for recycling or other
4-27 processing unless that person:

4-28 (1) removed the convenience switch; or

4-29 (2) has good cause to believe that another person
4-30 removed the convenience switch.

4-31 (b) A scrap metal recycling facility or other person that
4-32 acquires scrap metal, including scrap metal in the form of an
4-33 intentionally flattened, crushed, shredded, or baled vehicle, is
4-34 not considered to be in violation of this subchapter solely because
4-35 a convenience switch is found in the scrap metal after acquisition.

4-36 Sec. 375.105. HANDLING OF CONVENIENCE SWITCHES. After
4-37 removal from a vehicle, a convenience switch shall be collected,
4-38 stored, transported, and otherwise handled in accordance with:

4-39 (1) the applicable convenience switch recovery
4-40 program; and

4-41 (2) the applicable solid waste rules of the
4-42 commission.

4-43 [Sections 375.106-375.150 reserved for expansion]

4-44 SUBCHAPTER D. REPORTS

4-45 Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. (a) On or
4-46 before December 31 of each year, the commission shall publish a
4-47 report that must include:

4-48 (1) documentation of the capture rate achieved,
4-49 consistent with the principle that a convenience switch should be
4-50 recovered unless damage to the vehicle makes the switch
4-51 inaccessible and in consideration of the anticipated
4-52 two-to-three-year period required to fully implement a program for
4-53 the recovery of switches;

4-54 (2) an evaluation of the number of convenience
4-55 switches identified in the records required to be maintained under
4-56 Section 375.102 compared to the information reported under Section
4-57 375.152;

4-58 (3) the number of convenience switches collected, the
4-59 number of end-of-life vehicles containing convenience switches,
4-60 and the number of end-of-life vehicles processed for recycling; and

4-61 (4) a description of how the convenience switches
4-62 collected were managed.

4-63 (b) The executive director may discontinue the requirement
4-64 for an annual report under this section if the executive director
4-65 determines that the convenience switches in end-of-life vehicles no
4-66 longer pose a significant threat to the environment or to public
4-67 health.

4-68 Sec. 375.152. ANNUAL MANUFACTURER'S IMPLEMENTATION REPORT.
4-69 On or before January 15 of each year, each manufacturer,

5-1 individually or as part of a group, shall report to the commission
 5-2 the total number of convenience switches recovered in this state
 5-3 and the total amount of mercury, by weight, recovered from those
 5-4 convenience switches during the preceding calendar year.

5-5 [Sections 375.153-375.200 reserved for expansion]

5-6 SUBCHAPTER E. PENALTIES AND ENFORCEMENT

5-7 Sec. 375.201. PENALTIES AND ENFORCEMENT. A person who
 5-8 violates a provision of this chapter, or a rule or order issued
 5-9 under this chapter, is subject to the penalty and enforcement
 5-10 provisions of Chapter 7, Water Code.

5-11 [Sections 375.202-375.250 reserved for expansion]

5-12 SUBCHAPTER F. CONVENIENCE SWITCH RECOVERY ACCOUNT

5-13 Sec. 375.251. CONVENIENCE SWITCH RECOVERY ACCOUNT. (a)
 5-14 Except as provided by Section 375.003(b), this section takes effect
 5-15 only if the attorney general certifies that the United States
 5-16 Environmental Protection Agency has promulgated final regulations
 5-17 under Section 112 of the federal Clean Air Act (42 U.S.C. Section
 5-18 7412) that recognize state convenience switch recovery programs as
 5-19 a method of compliance with those final regulations and that
 5-20 require an incentive as provided by Section 375.055 for a program's
 5-21 approval by the United States Environmental Protection Agency.

5-22 (b) The convenience switch recovery account is an account in
 5-23 the general revenue fund.

5-24 (c) The account is administered by the comptroller for the
 5-25 benefit of the convenience switch recovery program established
 5-26 under this chapter. The fund is exempt from the application of
 5-27 Section 403.095, Government Code.

5-28 (d) The fund consists of:

5-29 (1) transfers of unexpended and unobligated amounts
 5-30 from the Texas emissions reduction plan fund as provided by Section
 5-31 386.252(c);

5-32 (2) interest earned on money in the account;

5-33 (3) penalties collected under Section 375.201;

5-34 (4) any amounts appropriated by the legislature for
 5-35 the account; and

5-36 (5) grants and gifts to the account.

5-37 (e) Money in the fund may be appropriated only to implement
 5-38 and administer the convenience switch recovery program under this
 5-39 chapter. Each year of the program, the commission may spend an
 5-40 amount not to exceed \$3 million for the payment of compliance bonus
 5-41 fees under Section 375.055 or under procedures amended under
 5-42 Section 375.003 and the associated administrative costs.

5-43 SECTION 2. Section 386.252, Health and Safety Code, is
 5-44 amended by amending Subsection (a) and adding Subsection (c) to
 5-45 read as follows:

5-46 (a) Except as provided by Subsection (c), money [~~Money~~]
 5-47 in the fund may be used only to implement and administer programs
 5-48 established under the plan and shall be allocated as follows:

5-49 (1) for the diesel emissions reduction incentive
 5-50 program, 87.5 percent of the money in the fund, of which not more
 5-51 than 10 percent may be used for on-road diesel purchase or lease
 5-52 incentives;

5-53 (2) for the new technology research and development
 5-54 program, 9.5 percent of the money in the fund, of which up to
 5-55 \$250,000 is allocated for administration, up to \$200,000 is
 5-56 allocated for a health effects study, \$500,000 is to be deposited in
 5-57 the state treasury to the credit of the clean air account created
 5-58 under Section 382.0622 to supplement funding for air quality
 5-59 planning activities in affected counties, and not less than 20
 5-60 percent is to be allocated each year to support research related to
 5-61 air quality for the Houston-Galveston-Brazoria and Dallas-Fort
 5-62 Worth nonattainment areas by a nonprofit organization based in
 5-63 Houston; and

5-64 (3) for administrative costs incurred by the
 5-65 commission and the laboratory, three percent.

5-66 (c) Except as provided by Section 375.003(b), this
 5-67 subsection takes effect only if the attorney general certifies that
 5-68 the United States Environmental Protection Agency has promulgated
 5-69 final regulations under Section 112 of the federal Clean Air Act (42

6-1 U.S.C. Section 7412) that recognize state convenience switch
6-2 recovery programs as a method of compliance with those final
6-3 regulations and that require an incentive as provided by Section
6-4 375.055 for a program's approval by the United States Environmental
6-5 Protection Agency. If the attorney general's certification is made
6-6 before September 1, 2006, money collected but not appropriated for
6-7 any program or activity under Subsection (a) for the fiscal year
6-8 beginning September 1, 2005, shall be reallocated to the
6-9 convenience switch recovery account established under Section
6-10 375.251 on or before the 90th day after the date of the
6-11 certification and not later than August 31, 2006, in an amount not
6-12 to exceed \$24 million. If the attorney general's certification is
6-13 made on or after September 1, 2006, or the attorney general's
6-14 certification under Section 375.003 is made on or after January 1,
6-15 2007, money collected but not appropriated for any program or
6-16 activity under Subsection (a) for the fiscal year immediately
6-17 preceding the fiscal year in which the certification occurs shall
6-18 be reallocated to the convenience switch recovery account
6-19 established under Section 375.251 on or before the 90th day after
6-20 the date of the certification and not later than August 31 of the
6-21 fiscal year in which the certification occurs in an amount not to
6-22 exceed \$24 million. If after an attorney general's certification
6-23 is made, the amount collected and reallocated to the convenience
6-24 switch recovery account is less than \$24 million, additional
6-25 reallocations of money collected in excess of the amounts
6-26 appropriated for any program or activity under Subsection (a) to
6-27 the convenience switch recovery account shall occur before November
6-28 1 of each fiscal year after the fiscal year of the initial
6-29 reallocation until the total cumulative amount reallocated equals
6-30 \$24 million.

6-31 SECTION 3. (a) The Texas Commission on Environmental
6-32 Quality shall adopt rules not later than March 1, 2006, for
6-33 regulating a convenience switch, as defined by Section 375.001,
6-34 Health and Safety Code, as added by this Act, as universal waste
6-35 under 30 T.A.C. Section 335.261.

6-36 (b) Until rules have been adopted and promulgated under
6-37 Subsection (a) of this section, the Texas Commission on
6-38 Environmental Quality shall regulate a convenience switch, as
6-39 defined by Section 375.001, Health and Safety Code, as added by this
6-40 Act, as a universal waste in accordance with 40 C.F.R. Part 273, and
6-41 as incorporated by reference in 30 T.A.C. Section 335.261.

6-42 SECTION 4. Not later than the 60th day after the effective
6-43 date of this Act, individually or as part of a group, a manufacturer
6-44 shall provide containers as required by Section 375.054, Health and
6-45 Safety Code, as added by this Act, to each vehicle recycler and
6-46 scrap metal recycling facility identified by the Texas Commission
6-47 on Environmental Quality.

6-48 SECTION 5. The initial report described by Section 375.151,
6-49 Health and Safety Code, as added by this Act, shall be published as
6-50 required by that section on or before December 31, 2006.

6-51 SECTION 6. This Act takes effect immediately if it receives
6-52 a vote of two-thirds of all the members elected to each house, as
6-53 provided by Section 39, Article III, Texas Constitution. If this
6-54 Act does not receive the vote necessary for immediate effect, this
6-55 Act takes effect August 29, 2005.

6-56 * * * * *