

Suspending limitations on conference
committee jurisdiction, H.B. No. 2793 (Bonnen/Jackson)

By: Jackson

S.R. No. 1096

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 2793, (relating to the removal and collection of convenience switches from motor vehicles) to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change "375.004" to "375.003" in newly added Subchapter A of Chapter 375, Health and Safety Code, and to omit added Section 375.003, Health and Safety Code:

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

(b) Consistent with the purpose expressed in Subsection (a), the commission may 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:

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

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

Explanation: This change is necessary to eliminate the purpose statement for the chapter and the authority of the Texas Commission on Environmental Quality to amend program procedures.

(2) Senate Rule 12.03(1) is suspended to permit the committee to change added Section 375.101, Health and Safety Code, to read as follows:

Sec. 375.101. REMOVAL AND MANAGEMENT OF CONVENIENCE SWITCHES. (a) A vehicle recycler or scrap metal recycling facility that removes convenience switches from eligible vehicles in accordance with educational materials received under this chapter shall be provided regulatory incentives by the commission under programs implemented pursuant to Section 5.755, Water Code, including on-site technical assistance and compliance history classification adjustments.

(b) In order to qualify for the regulatory incentives

provided by this Section, a vehicle recycler or scrap metal recycling facility must submit a report to the commission by November 15 of each year documenting:

(1) the number of convenience switches collected during the prior 12 months; and

(2) the total number of eligible vehicles processed for recycling during the same time period.

(c) Nothing in this chapter shall be construed to require scrap metal recycling facilities or vehicle recyclers to remove convenience switches or maintain records regarding convenience switches they have not removed, and the commission shall not promulgate regulations that create such requirements.

Explanation: This change is necessary in order for the convenience switch recovery program to be implemented as a voluntary program.

(3) Senate Rule 12.03(2) is suspended to permit the committee to omit the following Sections from newly added Chapter 375, Health and Safety Code, that were included in both the house and senate versions:

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

(1) the number of convenience switches collected;

(2) the total number of end-of-life vehicles processed for recycling; and

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

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

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

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

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

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

Sec. 375.104. HONEST CONVEYANCE; RECEIPT OF VEHICLE.

(a) A person may not represent that a convenience switch has been removed from an end-of-life vehicle being conveyed for recycling or other processing unless that person:

(1) removed the convenience switch; or

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

(b) 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.

Explanation: This change is necessary to eliminate language governing recordkeeping requirements and other obligations of vehicle recyclers and scrap metal recycling facilities and to make other conforming changes necessary to implement the convenience switch recovery program as a voluntary program.

(4) Senate Rule 12.03(1) is suspended to permit the committee to change added Subsection (a), Section 375.151, Health and Safety Code, to read as follows:

Sec. 375.151. ANNUAL IMPLEMENTATION REPORT. (a) On or before December 31 of each year, the commission shall:

(1) publish a report that documents the capture rate achieved through the implementation of this chapter; and

(2) issue recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of each standing committee of the legislature with jurisdiction over environmental issues, which identifies legislative action that may be appropriate to improve

the capture rate referenced in Subsection (a)(1) while promoting vehicle recycling and preventing the export of scrap metal from the state.

Explanation: This change is necessary to change the reporting requirements to reflect the implementation of the convenience switch recovery program as a voluntary program and the elimination of the mandatory recordkeeping requirements for vehicle recyclers and scrap metal recycling facilities.

(5) Senate Rule 12.03(1), is suspended to permit the committee to change "January" to "November" and "calendar year" to "12 months" in added Section 375.152, Health and Safety Code.

Explanation: This change is necessary to ensure that the annual manufacturer's report is provided to the Texas Commission on Environmental Quality before the commission is required to publish its annual implementation report.

(6) Senate Rule 12.03(2) is suspended to permit the committee to omit the following language from newly added Chapter 375, Health and Safety Code, that was included in both the house and senate versions:

SUBCHAPTER E. PENALTIES AND ENFORCEMENT

Sec. 375.201. PENALTIES AND ENFORCEMENT. 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.

Explanation: This change is necessary as a conforming change to reflect the implementation of the convenience switch

recovery program as a voluntary program.

(7) Senate Rule 12.03(2) is suspended to permit the committee to omit the following section of the bill amending Section 386.252, Health and Safety Code, which was included in both the house and senate versions:

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

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

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

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

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

(c) Except as provided by Section 375.003(b), this subsection takes effect only if the attorney general certifies that the United States Environmental Protection Agency has promulgated final regulations under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) 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. If the attorney general's certification is made before September 1, 2006, money collected but not appropriated for any program or activity under Subsection (a) for the fiscal year beginning September 1, 2005, shall be reallocated to the convenience switch recovery account established under Section 375.251 on or before the 90th day after the date of the certification and not later than August 31, 2006, in an amount not to exceed \$24 million. If the attorney general's certification is made on or after September 1, 2006, or the attorney general's certification under Section 375.003 is made on or after January 1, 2007, 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 shall be reallocated to the convenience switch recovery account established under Section 375.251 on or before the 90th day after the date of the certification and not

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later than August 31 of the fiscal year in which the certification occurs in an amount not to exceed \$24 million. If after an attorney general's certification is made, the amount collected and reallocated to the convenience switch recovery account is less than \$24 million, additional reallocations of money collected in excess of the amounts appropriated for any program or activity under Subsection (a) to the convenience switch recovery account shall 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.

Explanation: This change is necessary to eliminate the use of a portion of the unexpended balance of the Texas emissions reduction plan fund to fund the convenience switch recovery program.

President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate