

## **BILL ANALYSIS**

Senate Research Center  
80R15426 SGA-D

C.S.S.B. 1324  
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Natural Resources  
4/28/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2005, it was estimated that 2.6 million tons of electronic waste (e-waste) was generated in the municipal solid waste stream, making this the fastest growing municipal waste stream in the United States. Most electronic equipment contains toxic substances that need to be disposed of properly, but only a small fraction of e-waste is recycled. Currently, firms are not held responsible for the e-waste they help to produce.

C.S.S.B. 1324 provides for e-waste recycling in a manner that seeks to combine the important principles of manufacturer responsibility, consumer convenience, accountability, transparency, education, and enforcement into a simple, effective, and efficient information technology collection and recovery system.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Building and Procurement Commission and the Department of Information Resources under SECTION 1 (Section 361.965, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality under SECTION 4 of this bill.

### **SECTION BY SECTION ANALYSIS**

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

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

#### **SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM**

Sec. 361.951. **SHORT TITLE.** Authorizes this subchapter to be cited as the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.

Sec. 361.952. **DEFINITIONS.** Defines "brand," "computer equipment," "manufacturer," and "television."

Sec. 361.953. **LEGISLATIVE FINDINGS AND PURPOSE.** (a) Provides that computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. Provides that many of those products can be refurbished and reused, and many contain valuable components that can be recycled.

(b) Provides that the purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has reached the end of its useful life. Provides that the program is based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Sec. 361.954. APPLICABILITY. Provides that the collection, recycling, and reuse provisions of this subchapter apply to computer equipment used and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility. Sets forth certain equipment to which this subchapter does not apply.

Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Sets forth certain conditions a manufacturer must meet before the manufacturer is authorized to offer computer equipment for sale in this state.

(b) Requires the recovery plan to enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and sets forth certain provisions that the recovery plan must include.

(c) Sets forth that the collection of computer equipment provided under the recovery plan must meet certain requirements.

(d) Sets forth certain examples of collection methods that alone or combined meet the convenience requirements of this section.

(e) Authorizes collection services under this section to use existing collection and consolidation infrastructure for handling computer equipment and is authorized to include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations.

(f) Provides that the recovery plan must include information for the consumer on how and where to return the manufacturer's computer equipment. Sets forth certain actions the manufacturer is required and authorized to undertake.

(g) Provides that information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the Texas Natural Resource Conservation Commission (commission) that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(h) Requires each manufacturer to submit a report to the commission by January 31 each year that includes certain information.

(i) Provides that if more than one person is a manufacturer of a certain brand of computer equipment as defined by Section 361.952, any of those persons is authorized to assume responsibility for and satisfy the obligations of a manufacturer under this subchapter for that brand. Authorizes the commission to consider any of those persons to be the responsible manufacturer for purposes of this subchapter if none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand.

(j) Provides that the obligations under this subchapter of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extends to all computer equipment bearing that brand regardless of its date of manufacture.

Sec. 361.956. RETAILER RESPONSIBILITY. (a) Prohibits a person who is a retailer of computer equipment from selling or offering to sell computer equipment in this state unless the equipment is labeled with the manufacturer's label and the manufacturer is included on the commission's list of manufacturers that have recovery plans.

(b) Provides that a retailer is not required to collect computer equipment for recycling or reuse under this subchapter.

Sec. 361.957. **LIABILITY.** Provides that a manufacturer or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this subchapter. Provides that this subchapter does not exempt a person from liability under other law.

Sec. 361.958. **COMMISSION'S EDUCATION RESPONSIBILITIES.** (a) Requires the Texas Natural Resources Conservation Commission (commission) to educate consumers regarding the collection, recycling, and reuse of computer equipment.

(b) Requires the commission to host or designate another person to host an Internet site providing consumers with information about the recycling and reuse of computer equipment, including information about and links to information on certain activities.

(c) Provides that inclusion on the commission's Internet site under Subsection (b) does not constitute a determination by the commission that the manufacturer's recovery plan or practices are in compliance with this subchapter or other law.

Sec. 361.959. **ENFORCEMENT.** (a) Authorizes the commission to conduct audits and inspections to determine compliance with this subchapter.

(b) Requires the commission and the attorney general, as appropriate, to enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against any manufacturer, retailer, or person who recycles or reuses computer equipment for failure to comply with this subchapter.

(c) Authorizes the attorney general to file suit under Section 7.032 (Injunctive Relief), Water Code, to enjoin an activity related to the sale of computer equipment in violation of this subchapter.

(d) Requires the commission to issue a warning notice to a person on the person's first violation of this subchapter. Provides that the person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) Provides that a retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes computer equipment from a manufacturer that has not submitted the recovery plan required by Section 361.955 must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Sec. 361.960. **FINANCIAL AND PROPRIETARY INFORMATION.** Provides that financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552 (Public Information), Government Code.

Sec. 361.961. **ANNUAL REPORT TO LEGISLATURE.** Requires the commission to compile information from manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each year.

Sec. 361.962. **FEES NOT AUTHORIZED.** Provides that this subchapter does not authorize the commission to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

Sec. 361.963. **CONSUMER RESPONSIBILITIES.** Provides that a consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused. Provides that a consumer is encouraged to learn about recommended methods for recycling and reuse of computer equipment that has

reached the end of its useful life by visiting the commission's and manufacturers' Internet sites.

Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. Provides that all computer equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) Requires the commission to adopt as standards for recycling or reuse of computer equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Instituted for Scrap Recycling Industries, Inc., April 25, 2006, or other standards from a comparable nationally recognized organization.

Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) Defines "state agency."

(b) Provides that a person who submits a bid for a contract with a state agency for the purchase or lease of computer equipment must be in compliance with this subchapter.

(c) Requires a state agency that purchases or leases computer equipment to require each prospective bidder to certify the bidder's compliance with this subchapter. Provides that failure to provide that certification renders the prospective bidder ineligible to participate in the bidding.

(d) Requires the state to give special preference to a manufacturer that has a program to recycle the computer equipment of other manufacturers, including collection events, recycling grants, and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand in considering bids for a contract for computer equipment.

(e) Requires the Texas Building and Procurement Commission and the Department of Information Resources to adopt rules to implement this section.

Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. Provides that if federal law establishes a national program for the collection and recycling of computer equipment and the commission determines that the federal law substantially meets the purposes of this subchapter the commission is authorized to adopt an agency statement that interprets the federal law as preemptive of this subchapter. Provides that this subchapter expires on the date the commission issues a statement under this section.

SECTION 2. Amends Section 7.052, Water Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Prohibits the amount of the penalty assessed against a manufacturer that does not label its computer equipment or adopt and implement a recovery plan as required by Section 361.955, Health and Safety Code, from exceeding \$10,000 for the second violation or \$25,000 for each subsequent violation. Provides that a penalty under this subsection is in addition to any other penalty that is authorized to be assessed for a violation of Subchapter Y, Chapter 361, Health and Safety Code.

(b-2) Prohibits the amount of the penalty for a violation of Subchapter Y, Chapter 361, Health and Safety Code, from exceeding \$1,000 for the second violation or \$2,000 for each subsequent violation, except as provided by Subsection (b-1). Provides that a penalty under this subsection is in addition to any other penalty that is authorized to be assessed for a violation of Subchapter Y, Chapter 361, Health and Safety Code.

SECTION 3. Amends Section 7.069, Water Code, as follows:

Sec. 7.069. DISPOSITION OF PENALTY. (a) Creates this subsection from existing text. Creates an exception as provided by Subsection (b).

(b) Requires a penalty collected under Section 7.052(b-1) or (b-2) to be paid to the commission and deposited to the credit of the waste management account.

SECTION 4. (a) Requires the Texas Commission on Environmental Quality to adopt any rules required to implement this Act not later than May 1, 2008.

(b) Prohibits this Act from being enforced prior to September 1, 2008.

(c) Provides that the reports required under Sections 361.955 and 361.961, Health and Safety Code, as added by this Act, are not required to be prepared or submitted for the first time before the dates specified by those sections in 2010.

(d) Authorizes a retailer to sell any inventory accrued before the effective date of this Act without incurring a penalty, notwithstanding the 60-day limit under Section 361.959(d) or (e), Health and Safety Code, as added by this Act.

SECTION 5. Effective date: September 1, 2007.