

BILL ANALYSIS

C.S.H.B. 821
By: Leibowitz
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

With the digital transition coming in June 2009, millions of old tube televisions will be discarded as Texans buy new high definition televisions. Old tube televisions can contain several pounds of lead and toxic flame retardants. There is a significant risk of dangerous substances getting released into the environment if old televisions are not properly recycled. Several other states already require the recycling of televisions by manufacturers and six manufacturers already take back their old products.

C.S.H.B. 821 adds a Subchapter Z to Chapter 361 of the Health and Safety Code. The bill creates the Television Equipment Recycling Program. It requires television manufacturers to recycle their market share of the televisions recycled in Texas, regardless of the brand of television.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Comptroller of Public Accounts and to the Texas Commission on Environmental Quality in SECTION 1 of this bill.

ANALYSIS

SECTION 1. Creates Subchapter Z, Chapter 361, Health and Safety Code.

SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

Sec. 361.971 DEFINITIONS. Defines "brand," "consumer," "covered television equipment," "market share allocation," "recycling," "retailer," "television," and "television manufacturers."

Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. Provides that the purpose of this subchapter is to establish a collection and recycling program for television equipment based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government.

Sec. 361.973. APPLICABILITY. (a) Provides that this subchapter only applies to television equipment that meets certain criteria, except as provided by Sections 361.973 and 361.988.

(b) Provides that this subchapter does not apply to certain items.

Sec. 361.974. SALES PROHIBITION. Prohibits a person from offering for sale new covered television equipment that has not been labeled, in compliance with Section 361.975.

Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. (a) Provides that manufacturers may only sell covered television equipment that has a permanently affixed, readily available manufacturer's label.

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING. (a) Requires manufacturers of covered television equipment (manufacturers) to register with the Texas Commission on Environmental Quality (TCEQ) and pay a \$2,500 fee. Manufacturers must pay

the fee and renew their registration by January 31 of each year. Sets forth requirements of the registration or registration renewal.

(b) Requires registered manufacturers to report the weight of covered television equipment sold and the weight of covered television equipment that was collected and recycled by January 31 of each year.

Sec. 361.977. MANUFACTURER'S RECOVERY PLAN AND RELATED

RESPONSIBILITIES. (a) Requires each manufacturer, individually or as a member of a group of manufacturers, to submit a plan to collect, transport, and recycle covered televisions to TCEQ.

(b) Requires each manufacturer that submits a recovery plan to collect, transport, and recycle covered television equipment. Beginning the second year of manufacturer registration, each manufacturer is required to collect, transport, and recycle their market share allocation of television equipment computed by TCEQ.

(c) Requires a group of manufacturers that submit a recovery plan to collect, transport, and recycle covered television equipment. Beginning the second year of manufacturer registration, the group is required to collect, transport, and recycle a quantity of television equipment equal to the sum of each manufacturer's market share allocation computed by TCEQ.

(d) Sets forth the minimum requirements for a recovery plan.

(e) Requires TCEQ to review all submitted recovery plans. Requires TCEQ to include manufacturers with complete registration and recovery plans on an Internet website listing as provided by Section 361.981(a). Authorizes TCEQ to reject recovery plans that do not meet the specified requirements.

Sec. 361.978. RETAILER RESPONSIBILITY. (a) Prohibits retailers from ordering or selling products from a television manufacturer not included on the TCEQ list of manufacturers published under Section 361.981(a). Requires retailers to consult the list prior to ordering covered television equipment. Provides that retailers are compliant with this subsection if, on the date the television equipment was ordered, the manufacturer was on the TCEQ list of manufacturers with approved recovery plans.

(b) Sets forth requirements for a retailer to provide consumers written information published by TCEQ regarding the legal disposition and recycling of television equipment.

(c) Provides that this chapter does not require retailers to collect television equipment for recycling.

Sec. 361.979. RECYCLER RESPONSIBILITIES. (a) Requires a person who is engaged in the business of recycling covered television equipment (recycler) to register with TCEQ; renew their registration annually; recycle televisions in accordance with the standards adopted under Section 361.987; maintain a written log of the weight of television equipment received and the disposition of that equipment; obtain and retain documentation that equipment received was last used by a consumer in Texas; and report the weight of equipment received and recycled to TCEQ.

(b) Authorizes TCEQ to impose a registration fee under this section.

Sec. 361.980. LIABILITY. (a) Provides that manufacturers, retailers, and recyclers are not liable for information left on covered television equipment that is collected or recycled under this subchapter.

(b) Provides that this subchapter does not exempt a person from liability under other law.

Sec. 361.981. COMMISSION RESPONSIBILITIES. (a) Requires TCEQ to publish a list of registered manufactures and a list of manufacturers in compliance with this subchapter on a publicly accessible Internet website.

(b) Requires TCEQ to quarterly remove manufacturers that are no longer compliant from the Internet website.

(c) Requires TCEQ to educate consumers regarding the collection and recycling of covered television equipment.

(d) Requires TCEQ to host or designate another person to host an Internet website and to provide a toll-free telephone number to provide consumers specific information about the recycling of covered television equipment.

(e) Provides that information about television collection and recycling provided on a publically available website and through a toll-free telephone number is not a determination that a manufacturer's recovery plan or actual practices are in compliance with Subchapter Z or other law.

(f) Requires TCEQ, not later than February 15 of each year, to establish the state recycling rate based on the weight of total returns of covered television equipment and the total weight of equipment sold in this state in the preceding year.

(g) Requires TCEQ to compute and provide each registered manufacturer their market share allocation for collection, recycling, and transportation not later than March 1 of each year. A manufacturer's market share allocation equals the weight of covered television equipment sold by the manufacturer multiplied by the state recycling rate determined under Subsection (f).

(h) Requires TCEQ to provide, in writing, information regarding the disposal and recycling of covered television equipment to each county and municipality of this state.

Sec. 361.982. ENFORCEMENT. (a) Authorizes TCEQ to conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) Requires TCEQ and the attorney general, as appropriate, to enforce this subchapter and take enforcement action against a manufacturer, a retailer, or a recycler, except as provided by Section 361.982.

(c) Authorizes the executive commissioner of TCEQ or the attorney general to institute a suit under Section 7.032, Water Code, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) Requires TCEQ to issue a warning notice to a person that violates this subchapter for their first violation. This subsection also requires the person to comply within 60 days of the issuance of the warning notice.

(e) Requires retailers that receive a warning notice due to inventory not in compliance with this subchapter to bring the inventory into compliance not later than 60 days after the date the warning notice was issued.

Sec. 361.983. FINANCIAL AND PROPRIETARY INFORMATION. Provides that financial and proprietary information submitted to TCEQ under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Sec. 361.984. ANNUAL REPORT TO THE LEGISLATURE. (a) Requires TCEQ to issue a report with complied manufacturer information to each committee in each house of the legislature with jurisdiction over environmental matters not later than March 1 of each year.

(b) Sets forth the information required in the report.

Sec. 361.985. FEES. (a) Provides that this subchapter does not authorize TCEQ to impose a fee on a consumer, a manufacturer, a retailer, or a recycler, except as provided by Sections 361.976(a) and 361.979.

(b) Provides that fees or costs collected under this subchapter may only be used implementing this subchapter.

Sec. 361.986. CONSUMER RESPONSIBILITIES. (a) Provides that a consumer is responsible for any information left on covered television equipment collected or recycled.

(b) Provides that consumers are encouraged to learn about recommended methods for recycling covered television equipment by visiting TCEQ's and television manufacturer's Internet websites or calling their toll-free telephone numbers.

Sec. 361.987. MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT. (a) Requires televisions collected under this subchapter to comply with all federal, state, and local law regarding disposal or recycling.

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

Sec. 361.988. STATE PROCUREMENT REQUIREMENTS. (a) Defines "state agency."

(b) Requires a person who submits a bid for a contract with a state agency for the purchase or lease of covered television equipment to be in compliance with this subchapter.

(c) Requires state agencies to require prospective bidders to certify that they are in compliance prior to the state agency accepting a bid for the sale or lease of covered television equipment.

(d) Provides that the state shall give special preference to manufacturers that meet certain criteria.

(e) Requires the comptroller to adopt rules to implement this section.

Sec. 361.989. FEDERAL PREEMPTION; EXPIRATION. (a) Provides that if a national program for collecting and recycling television equipment is established under federal law and TCEQ determines that the federal law substantially meets the purposes of this subchapter, TCEQ may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) Provides that Subchapter Z expires on the date TCEQ issues a statement under this section.

Sec. 361.990. PROHIBITION ON LAND DISPOSAL OR INCINERATION. (a) Requires TCEQ by rule to prohibit a person from knowingly or intentionally disposing of covered television equipment in a municipal solid waste landfill or incinerator.

(b) Prohibits an owner or operator of a municipal solid waste landfill or incinerator permitted on or after January 1, 2010, from knowingly or intentionally accepting covered television equipment.

(c) Provides that the owner or operator of a municipal solid waste landfill or incinerator is not in violation of this section under certain circumstances.

SECTION 2. Amends Sections 7.052 (b-1) and (b-2) of the Water Code.

(b-1) Provides that the amount of the penalty assessed against a manufacturer that does not label covered television equipment or adopt and implement a recovery plan may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation. These

penalties may be assessed in addition to other penalties assessed for a violation of Subchapter Z, Chapter 361, Health and Safety Code.

(b-2) Provides that the amount of the penalty for a violation under Subchapter Z, Chapter 361, Health and Safety Code, may not exceed \$1,000 for a second violation or \$2,000 for each subsequent violation. Provides that a penalty assessed under this subsection is in addition to any other penalty that may be assessed under Subchapter Z, Chapter 361, Health and Safety Code, except as provided by subsection (b-1).

SECTION 3. (a) Requires TCEQ to adopt rules required to implement this Act not later than May 1, 2010.

(b) Prohibits enforcement of this Act prior to September 1, 2010.

(c) Provides that a report required under Section 361.976, Health and Safety Code, is not required to be prepared or submitted for the first time prior to the date specified by that section in 2012.

(d) Provides that a retailer may sell inventory acquired before the effective date of this Act without incurring a penalty, notwithstanding Section 361.982, Health and Safety Code.

(e) Provides that retailers are not required to provide the information about the collection and recycling process prior to the date on which TCEQ rules implementing this Act take effect.

SECTION 4. Effective date.

EFFECTIVE DATE

This Act takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. The original amended Subchapter Y, Chapter 361, Health and Safety Code, by adding televisions to the existing computer recycling statute. C.S.H.B. 821 differs from the original by striking all language in the original that amended Subchapter Y, Chapter 361, Health and Safety Code and renumbering the remaining sections accordingly. The substitute differs from the original by adding Subchapter Z, Chapter 361, Health and Safety Code, creating the television equipment recycling program.

SECTION 2. C.S.H.B. 821 differs from the original regarding Section 7.052(b-1), Water Code, by referring to "covered television equipment" instead of just "televisions." The substitute also adds a reference to Section 361.977, Health and Safety Code, that was not present in the original. The substitute also references Subchapter Z, which was not part of the original bill.

C.S.H.B. 821 amends Section 7.052(b-2), Water Code, to include two references to Subchapter Z, whereas the original did not amend subsection (b-2).

SECTION 3. C.S.H.B. 821 differs from the original by striking (a) in its entirety and renumbering the remaining subdivisions accordingly and by striking language in (b) referring to amendments to Subchapter Y, Chapter 361, Health and Safety Code. C.S.H.B. 821 differs from the original in (c) by providing a report required under Section 361.976, Health and Safety Code, as added by this Act, is not required to be prepared or submitted for the first time before the date specified by that section in 2012. The original provided the reports required under Section 361.955, Health and Safety Code, as amended by H.B. 821 and Section 361.961, Health and Safety Code., to the extent that they apply to televisions, were not required to be prepared or submitted for the first time before the dates specified by those sections in 2012. C.S.H.B. 821 differs from the original in (d) by providing, notwithstanding Section 361.982, Health and Safety Code, as added by this Act, a retailer of television equipment may sell television equipment inventory that the retailer acquired before the effective date of this Act without incurring a

penalty. The original provided, notwithstanding the 60-day limit under Section 361.959(d) or (e), Health and Safety Code, as amended by H.B. 821, a retailer was authorized to sell any television inventory accrued before the effective date of H.B. 821 without incurring a penalty. C.S.H.B. 821 differs from the original by adding (e) to provide a retailer of covered television equipment is not required to provide the information described by Section 361.978(b), Health and Safety Code, as added by this Act, before the date on which TCEQ rules implementing this Act take effect. The original contained no similar provision.

SECTION 4. No change from the original.