

## **BILL ANALYSIS**

C.S.H.B. 4056  
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Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

State law currently provides for manufacturer take-back programs for computer equipment but Texas does not have a similar program for mercury-added thermostats. Many of these thermostats are currently thrown away, ending up in landfills where the mercury can leach out. Mercury is a potent neurotoxin and improper disposal of mercury-added thermostats can potentially lead to mercury contamination of local water supplies. The thermostat industry has been working in partnership with environmental organizations and local governments to advocate for legislation to establish consistent take-back programs across the country that protect our citizens without placing an undue burden on businesses.

C.S.H.B. 4056 establishes a program for the collection, transportation, recycling and disposal of mercury-added thermostats.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

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

#### **SUBCHAPTER Z. MERCURY-ADDED THERMOSTAT COLLECTION PROGRAM**

Section 361.971. DEFINITIONS. Defines "manufacturer," "mercury-added thermostat," "out-of-service mercury-added thermostat," "retailer," "thermostat" and "wholesaler."

Section 361.972. MERCURY-ADDED THERMOSTAT RECYCLING. Requires a person who removes a mercury-added thermostat from service to handle the thermostat in accordance with this subchapter and rules adopted under it and take the thermostat to a point of collection with a collection bin operating in accordance with this subchapter and rules adopted under this subchapter.

Section 361.973. MANUFACTURER PROGRAMS FOR OUT-OF-SERVICE MERCURY-ADDED THERMOSTATS. (a) Requires each manufacturer of mercury-added thermostats sold in this state, individually or collectively with other manufacturers, to establish and maintain a collection and recycling program for out-of-service mercury-added thermostats and to be responsible for collecting, handling, transporting and recycling or disposing of such thermostats through a program in accordance with Subchapter Z and rules adopted under that subchapter. (b) Authorizes a manufacturer or group of manufacturers operating a program collectively to contract with a retailer to provide a point of collection for such thermostats, either in the retailer's place of business or elsewhere.

Section 361.974. COLLECTION BINS. Requires a manufacturer's program established under Section 361.973 to: provide collection bins for out-of-service mercury-added thermostats, at a one-time administrative fee not to exceed \$40, to wholesalers and to a local government that requests a collection bin for use at a household hazardous waste collection facility or event; and arrange for either the contents of such bins to be picked up for proper handling and recycling or

the payment of the costs of shipping such bins for proper handling and recycling in accordance with the program.

Section 361.975. INITIAL PROGRAM EDUCATION AND OUTREACH. (a) Sets forth the educational and outreach efforts required to be included in a manufacturer's program established under Section 361.973 and in accordance with TCEQ rules. (b) Provides that Section 361.975 expires January 1, 2012.

Section 361.976. EDUCATIONAL AND OUTREACH MATERIALS. Sets forth requirements for the educational and other outreach materials a manufacturer's program established under Section 361.973 and in accordance with TCEQ rules, is required to develop, update and make available to participating retailers, wholesalers and household hazardous waste programs.

Section 361.977. COLLECTION INCENTIVES AND EDUCATION. Requires a manufacturer's program established under Section 361.973 to provide nonfinancial incentives and education to contractors and service technicians to encourage the return of out-of-service mercury-added thermostats to established points of collection.

Section 361.978. PROGRESS REPORT. Subsection (a) requires a manufacturer, individually or collectively with other manufacturers through a program established under Section 361.973, to submit to TCEQ and post on the program's Internet website a report containing certain information, on or before April 1 of each year. Subsection (b) requires manufacturers to submit certain information to TCEQ with the first progress report due under Subsection (a). Subsection (c) requires TCEQ to use the progress reports to make certain determinations and authorizes TCEQ to take certain actions. Subsection (d) requires manufacturers to post the progress report on a public Internet website. Subsection (e) requires TCEQ to post progress reports on its Internet website or provide a link to the public Internet website described by Subsection (d). Subsection (f) requires TCEQ by rule to establish a review procedure and sets forth requirements to be included in the procedure. Subsection (g) requires TCEQ to review and consider the progress reports and public comments; requires TCEQ to consider each report's consistency with other manufacturers' collection programs in this state and other states; and authorizes TCEQ to consult with various individuals and groups to solicit additional comments. Subsection (h) authorizes TCEQ to discontinue the requirement for the progress report if it finds, based on diminished returns of thermostats, that mercury-added thermostats no longer pose a threat to the environment and public health in this state.

Section 361.979. COMMISSION'S EDUCATION RESPONSIBILITIES. (a) Authorizes TCEQ to provide outreach to educate consumers regarding the collection and recycling requirement for out-of-service mercury-add thermostats. (b) Requires TCEQ to provide a link on the TCEQ Internet website for a program operated by a manufacturer or group of manufacturers to provide information about the recycling of such thermostats to various individuals and groups.

Section 361.980. THERMOSTAT SALES PROHIBITED; LIST OF NONCOMPLIANT MANUFACTURERS. Subsection (a) prohibits a person from selling or offering for sale in this state a thermostat produced by a manufacturer listed on TCEQ's Internet website as a noncompliant manufacturer for 120 or more consecutive days. Subsection (b) requires TCEQ to post, on its Internet website on January 2 and July 1 of each year a list of manufacturers that are not in compliance with this subchapter. Subsection (c) requires a wholesaler or retailer that distributes or sells thermostats to monitor TCEQ's website to determine whether the sale of a manufacturer's thermostat is in compliance with this subchapter.

Section 361.981. WHOLESALER DUTY: POINT OF COLLECTION. Requires a wholesaler that conducts business from a physical location in this state to provide a point of collection for out-of-service mercury-added thermostats at each of its places of business in this state.

Section 361.982. DISTRIBUTION OF INFORMATION ON POINTS OF COLLECTION. Requires a retailer or wholesaler that distributes new thermostats by mail to buyers in this state to include an Internet website address and toll-free telephone number with instructions on obtaining a prepaid mail-in label a consumer may use to send an out-of-service mercury-added thermostat to a point of collection for such thermostats.

Section 361.983. WHOLESALE DISTRIBUTION OF EDUCATIONAL AND OUTREACH MATERIALS. Requires a wholesaler to distribute the educational and outreach material developed and made available under Section 361.976 to its customers.

Section 361.984. AIR-CONDITIONING AND REFRIGERATION CONTRACTOR RESPONSIBILITIES. (a) Defines "air-conditioning and refrigeration contractor." (b) Requires such a contractor who removes a mercury-added thermostat to handle the thermostat in accordance with Subchapter Z and rules adopted under that subchapter and to take the thermostat to a point of collection with a collection bin operating in accordance with Subchapter Z and rules adopted under the subchapter.

Section 361.985. MANUFACTURER'S COMPLIANCE ASSURANCE. Authorizes TCEQ to require a manufacturer or group of manufacturers operating a program established under Section 361.973 to revise the collection and recycling program and to take other necessary actions to comply with the subchapter.

Section 361.986. AIR-CONDITIONING AND REFRIGERATION CONTRACTOR COMPLIANCE. Subsection (a) defines "air-conditioning and refrigeration contractor." Subsection (b) provides TCEQ is responsible for ensuring compliance with Section 361.984. Subsection (c) requires the Texas Department of Licensing and Regulation (TDLR) to refer to TCEQ any complaints filed with and any other information obtained by TDLR against such a contractor related to a violation of Section 361.984.

Section 361.987. COMMISSION REPORT. Requires TCEQ to compile information from progress reports and comments received under Section 361.978 and to issue an electronic report to the committee in each house of the legislature that has primary jurisdiction over environmental matters, not later than August 1 of each year.

Section 361.988. SIGNAGE ON RECYCLING COLLECTION REQUIREMENT. Requires an operator of a solid waste treatment, processing or disposal facility to notify customers of the requirement under Section 361.972 to take out an out-of-service mercury-added thermostat to a point of collection by posting signs at the facility that clearly note the requirement.

SECTION 2. Provides a manufacturer's program established individually or collectively under Section 361.973, Health and Safety Code, as added by this Act, is required to: provide collection bins as provided by Section 361.974, Health and Safety Code, as added by this Act, only on and after July 1, 2010; to perform the duties provided by Section 361.975, Health and Safety Code, as added by this Act, only on and after July 1, 2010; and to develop, update and make available educational and outreach materials as provided by Section 361.976, Health and Safety Code, as added by this Act, only on and after July 1, 2010. Provides the first progress report required by Section 361.978, Health and Safety Code, as added by this Act, is due April 1, 2011. Provides that TCEQ shall begin posting the list of noncompliant manufacturers as provided by Section 361.980, Health and Safety Code, as added by this Act, on July 1, 2010. Provides TCEQ shall issue the first report required by Section 361.987, Health and Safety Code, as added by this Act, not later than August 1, 2011.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

SECTION 1. C.S.H.B. 4056 differs from the original in Section 361.971 by changing the definition of "mercury-added thermostat" to mean "a thermostat that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air-conditioning equipment in residential, commercial, industrial or other buildings. The term does not include a thermostat used to sense and control temperature as part of a manufacturing process." The original definition of "mercury-added thermostat" was "a thermostat that uses a mercury switch to sense and control room temperature." The substitute also differs from the original by changing the definition of "thermostat" by striking the sentence "The term does not include a thermostat used to sense and control temperature as part of a manufacturing process."

C.S.H.B. 4056 differs from the original by adding provisions not contained in the original and renumbering the subsequent sections accordingly. Section 361.972 (MERCURY-ADDED THERMOSTAT RECYCLING), as added by the substitute, requires a person who removes a mercury-added thermostat from service to handle the thermostat in accordance with Subchapter Z and take the thermostat to a point of collection with a collection bin operating in accordance with the subchapter and rules adopted under the subchapter.

C.S.H.B. 4056 differs from the original in Section 361.973 by striking language in the original requiring a manufacturer to finance and manage a program for the collection, transportation, recycling and disposal of out-of-service mercury-added thermostats. Makes non-substantive changes. The substitute adds that manufacturers may establish programs "individually or with other manufacturers."

C.S.H.B. 4056 differs from the original in Section 361.974 by requiring a manufacturer's program established under Section 361.973 to provide collection bins for out-of-service mercury-added thermostats, at a one-time administrative fee not to exceed \$40, to wholesalers and to a local government that requests a collection bin for use at a household hazardous waste collection facility or event. The original provided the cost to wholesalers could not exceed \$25 and that no cost could be charged to the local government. Makes nonsubstantive changes.

C.S.H.B. 4056 differs from the original in Section 361.975 by changing the heading to read "INITIAL PROGRAM EDUCATION AND OUTREACH" rather than "PROGRAM EDUCATION AND OUTREACH" as in the original. The substitute also differs from the original by striking Subsection (a)(1) in its entirety and renumbering the subsequent subdivisions accordingly. The substitute differs from the original in (a)(3) by requiring a manufacturer's program work with utilities or their contractors in this state participating in demand response programs involving thermostat replacement to encourage the utilities' participation in collection and proper management of out-of-service mercury-added thermostats. The original included only utilities, not their contractors, in this requirement. The substitute differs from the original in (b) by providing that Section 361.975 expires on January 1, 2013, rather than January 1, 2012 as in the original. Makes nonsubstantive changes.

C.S.H.B. 4056 differs from the original in Section 361.976 by adding information on energy-efficient thermostats as replacements for mercury-added thermostats as one of the options required to be included in the educational and outreach materials developed and made available by a manufacturer's program. This provision was not included in the original. Makes nonsubstantive changes.

C.S.H.B. 4056 differs from the original in Section 361.977 by striking "homeowners" from the list of those to whom a manufacturer's program established under Section 361.973 is required to provide nonfinancial incentives, rather than just incentives, and education to encourage the return of out-of-service mercury-added thermostats to established points of collection.

C.S.H.B. 4056 differs from the original by striking the section entitled "PROGRAMMABLE REPLACEMENT THERMOSTATS" from the original in its entirety and numbering subsequent sections accordingly.

C.S.H.B. 4056 differs from the original in Section 361.978 by creating Section 361.978(a) from existing language and renaming the subsequent subsections accordingly. The substitute differs from the original by striking subdivision (4) and renumbering the subsequent subdivisions accordingly and by striking subdivision (12) in its entirety. Makes nonsubstantive changes. The substitute differs from the original by adding Subsections (b) through (h) not contained in the original to: require manufacturers to submit certain information to TCEQ with the first progress report due under Subsection (a); to require TCEQ to use the progress reports to make certain determinations and authorizes TCEQ to take certain actions; to require manufacturers to post the progress report on a public Internet website; to require TCEQ to post progress reports on its Internet website or provide a link to the public Internet website described by Subsection (d); to require TCEQ by rule to establish a review procedure and sets forth requirements to be included in the procedure; to require TCEQ to review and consider the progress reports and public comments, to require TCEQ to consider each report's consistency with other manufacturers'

collection programs in this state and other states and to authorize TCEQ to consult with various individuals and groups to solicit additional comments; and to authorize TCEQ to discontinue the requirement for the progress report if it finds, based on diminished returns of thermostats, that mercury-added thermostats no longer pose a threat to the environment and public health in this state.

C.S.H.B. 4056 differs from the original by adding provisions not contained in the original and renumbering the subsequent sections accordingly. Section 361.979 (COMMISSION'S EDUCATION RESPONSIBILITIES), as added by the substitute, authorizes TCEQ to provide outreach to educate consumers regarding the collection and recycling requirement for out-of-service mercury-add thermostats and requires TCEQ to provide a link on the TCEQ Internet website for a program operated by a manufacturer or group of manufacturers to provide information about the recycling of such thermostats to various individuals and groups.

C.S.H.B. 4056 differs from the original in Section 361.980(b) by changing one of the biennial dates on which TCEQ is to post a list on its Internet website of manufacturers that are not in compliance with this subchapter to January 2 rather than January 1 as provided in the original. The substitute differs from the original in Section 361.980(c) by requiring a wholesaler or retailer that distributes or sells thermostats, rather than mercury-added thermostats as in the original, to monitor TCEQ's website to determine whether the sale of a manufacturer's thermostat is in compliance with this subchapter.

C.S.H.B. 4056 differs from the original in Section 361.984 by changing the heading to read "AIR-CONDITIONING AND REFRIGERATION CONTRACTOR RESPONSIBILITIES" rather than "CONTRACTOR RESPONSIBILITIES" as in the original. The substitute also differs from the original by creating Subsection (a) to add a definition of "air-conditioning and refrigeration contractor" not contained in the original and by naming the subsequent subsection accordingly. The substitute also differs from the original by requiring an air-conditioning and refrigeration contractor who removes a mercury-added thermostat to handle the thermostat in accordance with this subchapter and rules adopted under this subchapter and to take the thermostat to a point of collection with a collection bin operating in accordance with this subchapter and rules adopted under this subchapter. The original required a contractor who installs heating, ventilation and air-conditioning components and who removes a mercury-added thermostat to handle the thermostat in accordance with rules adopted under this subchapter and to take the thermostat to a point of collection with a collection bin operating in accordance with those rules.

C.S.H.B. 4056 differs from the original by striking the section entitled "RESPONSIBILITIES OF PERSON WHO DEMOLISHES BUILDING" from the original in its entirety and numbering subsequent sections accordingly.

C.S.H.B. 4056 differs from the original in Section 361.985 by changing the heading to read "MANUFACTURERS' COMPLIANCE ASSURANCE" rather than "COMMISSION ORDER" as in the original. The substitute differs from the original by authorizing TCEQ to require a manufacturer or group of manufacturers operating a program established under Section 361.973 to revise the collection and recycling program and to take other necessary actions to comply with Subchapter Z. The original authorized TCEQ to order, rather than require, these actions and did not include the references to a program established under Section 361.973 or describe the program as being a collection and recycling program.

C.S.H.B. 4056 differs from the original by striking the section entitled "COMMISSION PERFORMANCE STANDARDS" from the original in its entirety and numbering subsequent sections accordingly.

C.S.H.B. 4056 differs from the original by striking the section entitled "SURVEY REGARDING MERCURY-ADDED THERMOSTATS THAT BECOME WASTE" from the original in its entirety and numbering subsequent sections accordingly.

C.S.H.B. 4056 differs from the original by adding provisions not contained in the original. Section 361.986, entitled "AIR CONDITIONING AND REFRIGERATION CONTRACTOR COMPLIANCE," defines "air-conditioning and refrigeration contractor;" provides TCEQ is

responsible for ensuring compliance with Section 361.984; and requires the Texas Department of Licensing and Regulation (TDLR) to refer to TCEQ any complaints filed with and any other information obtained by TDLR against such a contractor related to a violation of Section 361.984. The original contained no similar provisions.

C.S.H.B. 4056 differs from the original by adding provisions not contained in the original. Section 361.987, entitled "COMMISSION REPORT " requires TCEQ, not later than August 1 of each year, to compile information from progress reports and comments received under Section 361.978 and to issue an electronic report to the committee in each house of the legislature that has primary jurisdiction over environmental matters. The original contained no similar provisions.

C.S.H.B. 4056 differs from the original by adding Section 361.988 not contained in the original. Section 361.988 requires an operator of a solid waste treatment, processing or disposal facility to notify customers of the requirement under Section 361.972 to take out an out-of-service mercury-added thermostat to a point of collection by posting at the facility signs that clearly note the requirement. The original contained no similar provision.

SECTION 2. C.S.H.B. 4056 differs from the original by adding "individually or collectively" to each description of a manufacturer's program established under Section 361.973, Health and Safety Code, as added by this Act. The substitute also differs from the original by requiring TCEQ to issue the first report required by Section 361.987, Health and Safety Code, as added by this Act, not later than August 1, 2011. The original required TCEQ to adopt performance standards and methodology required by Section 361.986, Health and Safety Code, as added by this Act, not later than January 1, 2013.

SECTION 3. No change from the original.