

BILL ANALYSIS

C.S.H.B. 405
By: Quintanilla
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current regulations impact the dumping of tires in many areas of the state, but have not stopped the intentional dumping of tires on public and privately owned land. There is concern that regulatory agencies do not monitor the large number of tires unlawfully dumped in areas that are maintained by cities, counties, or local political subdivisions. This issue is compounded when one considers that transporters are able to easily divert tires intended for lawful disposal and that criminal consequences for such dumping are insufficient for the worst offenders.

C.S.H.B. 405 seeks to address these issues by changing the manifest system to ensure that tires are transported to an appropriate facility, requiring a political subdivision to disclose instances of tire dumping, and imposing criminal penalties for the most egregious acts to increase the punishment for unlawfully dumping tires.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 2 and 7 of this bill.

ANALYSIS

C.S.H.B. 405 amends the Health and Safety Code to require the Texas Commission on Environmental Quality (TCEQ) to prohibit a person from storing more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with TCEQ. The bill establishes that the prohibition does not apply to the storage, protection, or production of agricultural commodities or the temporary storage of used or scrap tires for eventual recycling, reuse, or energy recovery if the storage is approved by TCEQ. The bill authorizes TCEQ to register a site to store more than 500 used or scrap tires. The bill requires TCEQ by rule to adopt application forms and procedures for the registration and permitting processes authorized under the bill's provisions.

C.S.H.B. 405 prohibits a person from storing more than 500 used or scrap tires unless the tires are shredded, split, or quartered as provided by TCEQ rule. The bill authorizes TCEQ to grant an exception to this requirement if TCEQ finds that circumstances warrant the exception. The bill establishes that the prohibition does not apply to a registered waste tire energy recovery facility or a waste tire energy recovery facility storage site or a person who, for eventual recycling, reuse, or energy recovery, temporarily stores used or scrap tires in a designated recycling collection area at a landfill permitted by TCEQ or licensed by a county or by a certain political subdivision or at another location approved by TCEQ for the temporary storage of used or scrap tires.

C.S.H.B. 405 authorizes TCEQ to adopt rules to regulate the storage of used, scrap, or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days. The bill prohibits a transporter from transporting used or scrap tires without registering with TCEQ, except as provided by TCEQ rule. The bill authorizes a generator to register as a transporter and

prohibits a transporter from transporting reusable tires together with scrap tires unless the reusable and scrap tires are collected from a generator and transported directly to a tire processor, as defined by TCEQ rule. The bill authorizes TCEQ by rule to exempt a type of transporter from such requirements if TCEQ finds that circumstances support the exemption.

C.S.H.B. 405 requires a transporter who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate documentation system as provided by TCEQ rule to ensure that those tires are transported to: a registered storage site; a permitted disposal facility for that purpose; a used tire dealer or other generator, if the tire is a reusable tire; or another location allowed by TCEQ rule. The bill requires a transporter who transports used or scrap tires for storage or disposal to file with TCEQ the manifest or other appropriate documentation system used as required by the bill's provisions. The bill authorizes TCEQ by rule to exempt a type of transporter from such requirements if TCEQ finds that circumstances support the exemption. The bill requires TCEQ by rule to authorize the transportation of used or scrap tires to a facility that will reuse the tires beneficially for purposes such as energy recovery, tire-derived fuel, septic drain fields, rubber mulch, crumb rubber, or reclamation projects.

C.S.H.B. 405 prohibits a person from disposing of used or scrap tires in a facility that is not permitted by TCEQ for that purpose. The bill authorizes TCEQ to issue a permit for a facility for the disposal of used or scrap tires. The bill authorizes TCEQ to amend, extend, transfer, or renew such a permit as provided by the bill's provisions and TCEQ rule. The bill makes the notice and hearing procedures described in provisions relating to permits for the purposes of the Solid Waste Disposal Act applicable to a permit issued, amended, extended, transferred, or renewed under the bill's provisions. The bill authorizes TCEQ to revoke or amend a permit issued under the bill's provisions for good cause for a reason concerning public health, air or water pollution, land use, or a violation of the bill's provisions.

C.S.H.B. 405 prohibits a person from disposing of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by TCEQ rule. The bill authorizes TCEQ to grant an exception to the requirement if TCEQ finds that circumstances warrant the exception. The bill specifies that its provisions do not prohibit a person from storing used or scrap tires temporarily for eventual recycling, reuse, or energy recovery in a designated recycling collection area at a landfill permitted by TCEQ or licensed by a county or by a certain political subdivision. The bill requires a political subdivision to submit, at the time and in the form and manner required by TCEQ, a report notifying TCEQ of used or scrap tires disposed of at a location where the disposal is not authorized by permit. The bill requires TCEQ, not later than May 1, 2012, to adopt rules as required by the bill's provisions relating to the storage, transportation, and disposal of used or scrap tires. The bill defines "commission," "generator," "reusable tire," "scrap tire," and "transporter."

C.S.H.B. 405 amends the Water Code to make it a Class A misdemeanor offense for a person who recklessly violates certain requirements and prohibitions under provisions relating to the storage, transportation, and disposal of used or scrap tires or an order, permit, or exemption issued, or rule adopted, under those provisions. The bill makes it a state jail felony offense for a person who knowingly or intentionally violates those requirements and prohibitions under provisions relating to the storage, transportation, and disposal of used or scrap tires or an order, permit, or exemption issued, or rule adopted, under those provisions.

C.S.H.B. 405 makes provisions relating to grounds for revocation or suspension of a permit or exemption and grounds for revocation or suspension of a license, certificate, or registration applicable to a permit or exemption or a license, certificate, or registration issued by TCEQ under provisions relating to the storage, transportation, and disposal of used or scrap tires.

C.S.H.B. 405 repeals the following provisions:

- Section 361.112, Health and Safety Code, relating to the storage, transportation, and

disposal of used or scrap tires

- Section 7.304, Water Code, relating to the suspension of registration or reimbursement payment issued under the waste tire recycling program

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 405 omits provisions in the original defining "commercial tire" and "passenger tire." The substitute contains a provision not included in the original defining "transporter" and makes conforming changes.

C.S.H.B. 405 differs from the original by requiring the Texas Commission on Environmental Quality (TCEQ) by rule to adopt application forms and procedures for the authorized registration and permitting processes, whereas the original requires TCEQ by rule to adopt application forms and procedures for the authorized registration, permitting, and reimbursement processes.

C.S.H.B. 405 contains a provision not included in the original making provisions relating to a registration requirement for the storage of used or scrap tires inapplicable to the temporary storage of used or scrap tires for eventual recycling, reuse, or energy recovery if the storage is approved by TCEQ. The substitute contains a provision not included in the original making the prohibition against a person storing more than 500 used or scrap tires unless the tires are shredded, split, or quartered inapplicable to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores used or scrap tires at another location approved by TCEQ for the temporary storage of used or scrap tires.

C.S.H.B. 405 differs from the original by prohibiting a transporter from transporting reusable tires together with scrap tires unless the reusable and scrap tires are collected from a generator and transported directly to a tire processor, as defined by TCEQ rule, whereas the original prohibits a person from transporting reusable tires together with scrap tires.

C.S.H.B. 405 contains provisions not included in the original authorizing TCEQ by rule to exempt a type of transporter from the requirements of registering with TCEQ and maintaining records and using a manifest or other appropriate documentation system if TCEQ finds that circumstances support the exemption.

C.S.H.B. 405 differs from the original by requiring a political subdivision to submit, at the time and in the form and manner required by TCEQ, a report notifying TCEQ of used or scrap tires disposed of at a location where the disposal is not authorized by permit, whereas the original requires a political subdivision to notify TCEQ on becoming aware of used or scrap tires disposed of at a location where the disposal is not authorized by permit.

C.S.H.B. 405 omits provisions included in the original relating to the reimbursement for proper disposal or storage of scrap tires and the collection of certain fees.

C.S.H.B. 405 differs from the original by requiring TCEQ, not later than May 1, 2012, to adopt rules as required by provisions relating to the storage, transportation, and disposal of used or scrap tires, whereas the original requires TCEQ by rule, not later than May 1, 2012, to adopt application forms and procedures for the authorized registration and permitting processes. The substitute differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions and making clarifying changes and technical corrections.