

BILL ANALYSIS

C.S.H.B. 695
By: Allen
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Mercury is a potent neurotoxin, and improper disposal of mercury-added thermostats can potentially lead to mercury contamination of local water supplies. Interested parties note that Texas does not have a collection and recycling program for mercury-added thermostats and report that many of these thermostats are thrown away and taken to landfills where the mercury can leach out. Industry actors have reportedly been working in partnership with environmental organizations and local governments to advocate for legislation to establish consistent collection and recycling programs across the country that protect citizens without placing an undue burden on businesses. C.S.H.B. 695 seeks to establish 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

C.S.H.B. 695 amends the Health and Safety Code to create a mercury-added thermostat collection program. The bill requires each manufacturer of mercury-added thermostats that have been sold in Texas to establish and maintain, individually or collectively with other manufacturers, a collection and recycling program for out-of-service mercury-added thermostats and provides that each manufacturer, individually or collectively with other manufacturers, is responsible for collecting, handling, transporting, and recycling or disposing of out-of-service mercury-added thermostats through a program in accordance with the bill's provisions and rules adopted under the bill's provisions. The bill authorizes a manufacturer or a group of manufacturers operating a program collectively to contract with a thermostat retailer to provide a point of collection for out-of-service mercury-added thermostats, either in the retailer's place of business or elsewhere. The bill requires a retailer participating in a manufacturer's program by providing a point of collection for out-of-service mercury-added thermostats to post at the collection site prominent, easily visible signs that provide information about the collection and recycling of out-of-service mercury-added thermostats. The bill prohibits a manufacturer from selling, offering for sale, or distributing in this state any thermostats unless the manufacturer complies with the bill's provisions and the rules adopted under the bill's provisions.

C.S.H.B. 695 requires a manufacturer's thermostat collection and recycling program to provide collection bins for out-of-service mercury-added thermostat collection, 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 a household hazardous waste event and requires the program to arrange for either the pickup of the contents of the collection bins for proper handling and recycling or the payment of the costs of shipping the collection bins for proper handling and recycling in accordance with the program. The bill requires a person who removes a mercury-added thermostat from service to handle the thermostat in accordance with the bill's provisions and rules adopted under the bill, to take the

thermostat to a point of collection with a collection bin operating in accordance with the bill and rules adopted under the bill, and dispose of the thermostat only by recycling the thermostat in a manner described by the bill's provisions.

C.S.H.B. 695 adds a temporary provision, set to expire January 1, 2014, to require a manufacturer's program, in accordance with rules adopted by the Texas Commission on Environmental Quality (TCEQ), to establish and provide to TCEQ the address of a public Internet website through which visitors can easily download templates of educational materials; undertake to engage other stakeholders, including waste, demolition, heating, ventilation, and air-conditioning organizations, and appropriate state agencies in an effort to encourage greater participation in the proper management of out-of-service mercury-added thermostats in Texas; encourage wholesalers to support and participate in educating customers on the proper management of out-of-service mercury-added thermostats; and encourage retailers to support and participate in educating consumers on the proper management of out-of-service mercury-added thermostats.

C.S.H.B. 695 requires a manufacturer's program, in accordance with TCEQ rules, to develop, update as necessary, and make available to participating retailers, participating wholesalers, and participating household hazardous waste programs educational and other outreach materials for heating, ventilation, and air-conditioning contractors, demolition contractors, and associations of those contractors; local governments that provide household hazardous waste programs; and homeowners. The bill requires the educational and outreach materials to include at least one of the following: signs designed for prominent, easily visible display for viewing by consumers and contractors; or written materials or templates of materials for reproduction by participating retailers and participating wholesalers to be provided to the consumer at the time of purchase or delivery of a thermostat that include certain information relating to the disposal, handling, recycling, and proper management of out-of-service mercury-added thermostats.

C.S.H.B. 695 requires a manufacturer, on or before April 1 of each year, through a manufacturer's program established under the bill's provisions, to submit to TCEQ and post on the program's Internet website a program progress report and sets out provisions describing the specific data and information relating to the manufacturer's program that is required to be contained in the progress report. The bill requires a manufacturer, individually or collectively with other manufacturers, to submit to TCEQ with the first progress report collection goals that ensure an increase in the number of mercury-added thermostats collected each year until 2018 or until a time TCEQ determines that the number of in-service mercury-added thermostats is steadily declining as a result of the ban on sales and installation of mercury-added thermostats. The bill requires TCEQ to use the progress reports to determine whether collection goals are being met and authorizes TCEQ, if collection goals are not met, to require modifications to a manufacturer's collection plans in an attempt to improve collection rates. The bill requires the manufacturer or group of manufacturers operating a program to post the progress report on a public Internet website and requires TCEQ to post submitted progress reports on the commission's Internet website or to provide a link to the Internet website on which the manufacturer or group of manufacturers post the progress report.

C.S.H.B. 695 requires TCEQ by rule to establish a review procedure that includes notice of the review procedure and timeline, including notice of the opportunity for public comment to be posted on the commission's Internet website, and a period for public comment that extends at least 90 days from the date TCEQ posts submitted manufacturer progress reports. The bill requires TCEQ to review and consider the submitted progress reports and the public comments and requires TCEQ to consider each progress report's consistency with other thermostat manufacturers' collection programs in Texas and in other states. The bill authorizes TCEQ to consult with thermostat manufacturers, thermostat wholesalers, thermostat technicians, thermostat retailers, environmental interest groups, and local governments to solicit additional comments and authorizes TCEQ to discontinue the requirement for the annual progress report and educational and outreach materials if TCEQ finds, based on diminished returns of

thermostats, that additional education and reporting requirements would result in only a minimis number of out-of-service mercury-added thermostats being returned in Texas.

C.S.H.B. 695 authorizes TCEQ to provide outreach to educate consumers regarding the collection and recycling requirement for out-of-service mercury-added thermostats and requires TCEQ to provide a link on the commission's Internet website for a program operated by a manufacturer or group of manufacturers by which consumers, contractors, retailers, and wholesalers are provided information about the recycling of out-of-service mercury-added thermostats. The bill requires TCEQ, on January 2 and July 1 of each year, to post a list on the commission's Internet website of manufacturers that are not in compliance with the bill's provisions and prohibits a person, including a manufacturer, wholesaler, or retailer, from selling, offering for sale, or distributing in Texas a mercury-added thermostat or a thermostat that is produced by a manufacturer that has been listed on the commission's Internet website as a noncompliant manufacturer for 120 or more consecutive days. The bill requires a wholesaler or retailer that distributes or sells thermostats to monitor the commission's Internet website to determine whether the sale of a manufacturer's thermostat is in compliance with the bill's provisions. The bill prohibits a person from installing a mercury-added thermostat.

C.S.H.B. 695 prohibits a wholesaler from selling, offering for sale, or distributing in Texas any thermostats unless the wholesaler provides at each of its places of business in Texas a point of collection for out-of-service mercury-added thermostats if the wholesaler conducts business from a physical location in Texas; participates as a collection site in a manufacturer's collection program; or otherwise collects out-of-service mercury-added thermostats in accordance with applicable state and federal law. The bill requires a wholesaler that provides a collection site to post at the collection site prominent, easily visible signs that provide information about the collection and recycling of out-of-service mercury-added thermostats.

C.S.H.B. 695 requires a retailer or wholesaler that distributes new thermostats by mail to buyers in Texas to include with the sale of the new thermostat an Internet website address and toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a point of collection for mercury-added thermostats. The bill requires a wholesaler to distribute the educational and outreach materials developed and made available by a manufacturer's program to the wholesaler's customers.

C.S.H.B. 695 requires an air-conditioning and refrigeration contractor who removes a mercury-added thermostat to handle the thermostat in accordance with the bill's provisions and rules adopted under the bill's provisions, and to take the thermostat to a point of collection with a collection bin operating in accordance with the bill's provisions and rules adopted under the bill's provisions. The bill authorizes TCEQ to require a manufacturer or group of manufacturers operating a collection and recycling program to revise the collection and recycling program and to take other necessary actions to comply with the bill's provisions. The bill makes TCEQ responsible for ensuring the compliance of an air-conditioning and refrigeration contractor with provisions establishing the contractor's responsibilities relating to the removal of a mercury-added thermostat and requires the Texas Department of Licensing and Regulation (TDLR) to refer to TCEQ any complaints filed with TDLR and any other information obtained by TDLR against an air-conditioning and refrigeration contractor related to a violation of such provisions.

C.S.H.B. 695 requires TCEQ, not later than August 1 of each year, to compile information from the progress reports and public comments relating to a manufacturer's thermostat collection and recycling program and to issue an electronic report to the committee in each house of the legislature that has primary jurisdiction over environmental matters.

C.S.H.B. 695 establishes that an owner or operator of a solid waste treatment, processing, or disposal facility is not in violation of the bill's provisions or a rule adopted under the bill's provisions if the owner or operator posts in a conspicuous location a sign stating that mercury-added thermostats are not accepted at the facility and must be taken to a point of collection and

notifies in writing at least once each calendar year until December 31, 2014, each solid waste collector who has contracted to dispose of waste at the facility that mercury-added thermostats are not accepted for disposal in a solid waste treatment, processing, or disposal facility. The bill establishes that a commercial transporter of solid waste who transports waste to a solid waste treatment, processing, or disposal facility is not in violation of the bill's provisions or a rule adopted under the bill's provisions if the transporter notifies in writing at least once each year until December 31, 2014, each person who has contracted directly with the transporter for the transportation of solid waste that mercury-added thermostats are not accepted for disposal in a solid waste treatment, processing, or disposal facility.

C.S.H.B. 695 defines "manufacturer," "mercury-added thermostat," "out-of-service mercury-added thermostat," "retailer," "thermostat," and "wholesaler" and provides for the meaning of "air-conditioning and refrigeration contractor" by reference to the Occupations Code.

C.S.H.B. 695 requires a manufacturer's program to, only on and after July 1, 2012, provide collection bins, perform duties relating to initial program education and outreach, and develop, update, and make available educational and outreach materials. The bill establishes the due date for the first program progress report as April 1, 2013, and requires TCEQ to begin posting the commission's list of noncompliant manufacturers on July 1, 2012. The bill requires TCEQ to issue the first electronic report to each legislative committee having primary jurisdiction over environmental matters not later than August 1, 2013.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 695 differs from the original by defining "out-of-service mercury-added thermostat" as a mercury-added thermostat that is removed from service in this state and that is intended to be discarded, whereas the original defines "out-of-service mercury-added thermostat" as a mercury-added thermostat that is removed from a building in this state and is intended to be discarded.

C.S.H.B. 695, in a bill provision setting out requirements for a person who removes a mercury-added thermostat from service, differs from the original by including a requirement that the person dispose of the thermostat only by recycling the thermostat in a manner described by the bill's provisions, whereas the original does not include this requirement.

C.S.H.B. 695 contains provisions not included in the original requiring a retailer participating in a manufacturer's program by providing a point of collection for out-of-service mercury-added thermostats to post at the collection site prominent, easily visible signs that provide information about the collection and recycling of out-of-service mercury-added thermostats and prohibiting a manufacturer from selling, offering for sale, or distributing in Texas any thermostats unless the manufacturer complies with the bill's provisions and the rules adopted under the bill's provisions.

C.S.H.B. 695 differs from the original by omitting local governments from the stakeholders a manufacturer's program is required to undertake to engage to encourage greater participation in the proper management of out-of-service mercury-added thermostats in Texas, whereas the original includes local governments among such stakeholders.

C.S.H.B. 695 omits provisions included in the original requiring a manufacturer's program to work with utilities or the utilities' contractors in Texas that are participating in certain demand response programs involving thermostat replacement to encourage the utilities' participation in the collection and proper management of out-of-service mercury-added thermostats; to encourage utilities to include an educational insert in a customer's utility bill; and to undertake other educational or outreach efforts required by TCEQ rule.

C.S.H.B. 695 differs from the original by omitting utilities from the entities for which a manufacturer's program is required to develop, update as necessary, and make available to participating retailers, participating wholesalers, and participating household hazardous waste programs educational and other outreach materials, whereas the original includes utilities among those entities.

C.S.H.B. 695 differs from the original by omitting information on prohibited generator methods of disposing of mercury-added thermostats and energy-efficient thermostats as replacements for mercury-added thermostats from the information included with the written materials or templates of materials for reproduction by participating retailers and participating wholesalers to be provided to the consumer at the time of purchase or delivery of a thermostat that may be included with the educational and outreach materials.

C.S.H.B. 695 differs from the original by omitting advertising or promotional materials that inform about out-of-service mercury-added thermostat collection opportunities and materials to be used in direct communications with the consumer and contractor at the time a thermostat is purchased from the material that may be included with the educational and outreach materials.

C.S.H.B. 695 omits a provision included in the original requiring a manufacturer's program 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.

C.S.H.B. 695 differs from the original by requiring the total number of out-of-service mercury-added thermostats collected to be included with a manufacturer's progress report, whereas the original requires the number of out-of-service mercury-added thermostats collected at each point of collection to be included with a manufacturer's progress report.

C.S.H.B. 695 differs from the original by authorizing TCEQ to discontinue the requirement for the annual progress report and educational and outreach materials if TCEQ finds, based on diminished returns of thermostats, that additional education and reporting requirements would result in only a de minimis number of out-of-service mercury-added thermostats being returned in Texas, whereas the original authorizes TCEQ to discontinue the requirement for the annual progress report if TCEQ finds, based on diminished returns of thermostats, that mercury-added thermostats no longer pose a threat to the environment and public health in Texas.

C.S.H.B. 695 contains a provision not included in the original prohibiting a person from installing a mercury-added thermostat.

C.S.H.B. 695 differs from the original by prohibiting a wholesaler from selling, offering for sale, or distributing in Texas any thermostats unless the wholesaler provides at each of its places of business in Texas a point of collection for out-of-service mercury-added thermostats if the wholesaler conducts business from a physical location in Texas; participates as a collection site in a manufacturer's collection program; or otherwise collects out-of-service mercury-added thermostats in accordance with applicable state and federal law, whereas the original requires a wholesaler that conducts business from a physical location in Texas to provide at each of the wholesaler's places of business in Texas a point of collection for out-of-service mercury-added thermostats.

C.S.H.B. 695 contains a provision not included in the original requiring a wholesaler that provides a collection site to post at the collection site prominent, easily visible signs that provide information about the collection and recycling of out-of-service mercury-added thermostats.

C.S.H.B. 695 differs from the original by providing that an owner or operator of a solid waste treatment, processing, or disposal facility is not in violation of the bill's provisions or a rule

adopted under the bill's provisions if the owner or operator posts a specified sign or notifies specified entities that mercury-added thermostats are not accepted for disposal in such a disposal facility, whereas the original requires an operator of such a disposal facility to notify the facility's customers by posting a sign at the facility of the requirement to take an out-of-service mercury-added thermostat to a point of collection.

C.S.H.B. 695 contains a provision not included in the original establishing that a commercial transporter of solid waste who transports waste to a solid waste treatment, processing, or disposal facility is not in violation of the bill's provisions or a rule adopted under the bill's provisions if the transporter meets specified notification requirements.