

## **BILL ANALYSIS**

C.S.S.B. 329  
By: Watson  
Environmental Regulation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It is estimated that there are approximately 100 million televisions in United States households that are no longer in use. This massive amount of electronic waste threatens to overwhelm available landfill space. Additionally, there is growing concern that components of electronic waste, such as mercury and lead, threaten the environment and public health. C.S.S.B. 329 seeks to address the electronic waste issue by establishing the television equipment recycling program, requiring television manufacturers to take back and recycle a percentage of their Texas market-share and providing consumers with convenient alternatives to the disposal of televisions in Texas landfills and incinerators.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill and to the Texas Commission on Environmental Quality in SECTION 3 of this bill.

### **ANALYSIS**

C.S.S.B. 329 amends the Health and Safety Code to set out the legislative findings and the purpose of its provisions as establishing a television equipment recycling program. The bill prohibits a person from offering for sale in Texas new covered television equipment unless the equipment includes a manufacturer's brand label that is readily visible and has been permanently affixed by the manufacturer. The bill makes its provisions applicable only to covered television equipment that is offered for sale or sold to a consumer in Texas or used by a consumer in Texas and returned for recycling and sets out a list of equipment to which the bill is inapplicable.

C.S.S.B. 329 requires a manufacturer of covered television equipment to register with the Texas Commission on Environmental Quality (TCEQ) and pay a registration fee of \$2,500. The bill requires a registered television manufacturer to renew the registration and pay the fee on or before January 31 of each year and requires the registration or registration renewal to include a list of all brands the television manufacturer uses on covered television equipment regardless of whether the television manufacturer owns or is licensed to use the brand and contact information for the person TCEQ may contact regarding the television manufacturer's activities to comply with the bill's provisions.

C.S.S.B. 329 requires, not later than January 31 of each year, each registered television manufacturer to report to TCEQ the total weight, or amount, as applicable, of covered television equipment for which the television manufacturer is responsible that was sold during the preceding calendar year and the total weight of covered television equipment the manufacturer collected and recycled during the preceding calendar year. The bill provides that such a report is not required to be prepared or submitted for the first time before January 31, 2013. The bill requires collected fees to be deposited to the credit of the television recycling account established as an account in the general revenue fund that consists of television manufacturer's registration fees and interest earned on the money in the account. The bill authorizes money in the account to be appropriated only to TCEQ to be used by TCEQ to maintain a public Internet

website and toll-free telephone number that provide consumers with information about covered television equipment recycling opportunities in Texas.

C.S.S.B. 329 requires each manufacturer of covered television equipment sold in Texas, not later than the first January 31 that occurs after the date the television manufacturer first registers with TCEQ, individually or as a member of a group of television manufacturers, to submit to TCEQ a recovery plan to collect, reuse, and recycle covered television equipment. The bill requires such an individual or group that submits a recovery plan, beginning with the individual's or group's, as appropriate, second year of registration, to collect, reuse, and recycle the quantity of covered television equipment computed by TCEQ as the individual's or group's, as appropriate, market share allocation. The bill establishes that the recovery plan is not required to be prepared and submitted for the first time before January 31, 2013.

C.S.S.B. 329 requires a recovery plan to include at a minimum a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its program individually or in partnership with other television manufacturers; beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the television manufacturer during the preceding year; and collection methods that allow a consumer to recycle television equipment without paying a separate fee at the time of recycling.

C.S.S.B. 329 requires TCEQ to review the recovery plan for satisfaction of the requirements of the bill's provisions and, if the registration and recovery plan are complete, the bill requires TCEQ to include the television manufacturer on TCEQ's Internet website listing. The bill authorizes TCEQ to reject the recovery plan if it does not meet all the bill's requirements. The bill makes requirements relating to a recovery plan inapplicable to a television manufacturer that participates in a recycling leadership program.

C.S.S.B. 329 authorizes a group of television manufacturers to establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment. The bill requires a recycling leadership program to provide at least 200 individual collection sites or programs in Texas where a consumer may return covered television equipment for reuse or recycling. The bill prohibits a television manufacturer from charging a separate fee at the time of recycling unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer and sets out collection methods that may be used by a recycling leadership program.

C.S.S.B. 329 establishes that a television manufacturer of covered television equipment sold in Texas that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to the registration fees and renewal fees and reporting requirements of the bill's provisions. The bill requires each recycling leadership program, not later than January 31 of each year, to provide to TCEQ a list of the television manufacturers participating in the program for that year. The bill requires a television manufacturer that participates in a recycling leadership program to individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist for covered television equipment and sets out requirements for the public education program.

C.S.S.B. 329 requires a television manufacturer that is participating in a recycling leadership program, not later than January 31 of every other year beginning with the television manufacturer's second year of registration, to individually or as a member of the recycling leadership program, submit to TCEQ a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment. The bill sets out the required and authorized contents of the collection report. The bill authorizes the inventory of covered television equipment collection, reuse, and recycling opportunities to be submitted in the form of a map noting the location of the opportunities. The bill provides that a collection report is not

required to be prepared and submitted for the first time before January 31, 2015.

C.S.S.B. 329 authorizes a retailer to order and sell only products from a television manufacturer that is included on the published list that identifies manufacturers whose recovery plans have been approved by TCEQ. The bill requires a person who is a retailer of covered television equipment to provide to consumers in writing the information published by TCEQ regarding the legal disposition and recycling of television equipment, included with the sales receipt or as part of the packaging of the equipment or through a toll-free telephone number and address of an Internet website provided to consumers. The bill clarifies that it does not require a retailer to collect covered television equipment for recycling.

C.S.S.B. 329 requires a person who is engaged in the business of recycling covered television equipment to register with TCEQ and certify compliance with the standards adopted in provisions of the bill relating to the management of collected television equipment; renew registration on or before January 31 of each year and certify continued compliance; recycle all covered television equipment accepted for recycling; maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment; and annually report to TCEQ the total weight of covered television equipment received and recycled in the preceding 12 months. The bill makes these provisions inapplicable to a television manufacturer.

C.S.S.B. 329 provides that a television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled and clarifies that the bill's provisions do not exempt a person from liability under other law.

C.S.S.B. 329 requires TCEQ to publish on a publicly accessible Internet website a list of television manufacturers who are in compliance with the registration and fee requirements of the bill, whose recovery plans have been approved by TCEQ, and whose public education programs are in full compliance with the bill's provisions.

C.S.S.B. 329 requires TCEQ, not later than April 1, 2013, to prepare and post for the first time the required list. The bill requires TCEQ to remove manufacturers no longer in compliance from the website once each fiscal quarter and to educate consumers regarding the collection and recycling of covered television equipment.

C.S.S.B. 329 requires TCEQ to host or designate another person to host an Internet website and to provide a toll-free telephone number to provide consumers with specified information, including links to information relating to the recycling of covered television equipment. The bill clarifies that information about collection and recycling provided on a television manufacturer's publicly available Internet website and through a toll-free telephone number does not constitute a determination by TCEQ that the manufacturer's recovery plan or actual practices are in compliance with the bill's provisions or other law.

C.S.S.B. 329 requires TCEQ, not later than November 1 of each year, to establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in Texas by television manufacturers submitting a recovery plan to the total weight of covered television equipment sold by television manufacturers submitting a recovery plan during the preceding year. The bill requires TCEQ, not later than December 1 of each year, to compute and provide to each registered television manufacturer submitting a recovery plan the manufacturer's market share allocation for collection, reuse, and recycling for that year, equaling the weight of the television manufacturer's covered television equipment sold in Texas during the preceding calendar year multiplied by the state recycling rate.

C.S.S.B. 329 requires TCEQ, not later than November 1, 2013, to establish for the first time the state recycling rate and, not later than December 1, 2013, to provide for the first time to each

applicable television manufacturer the television manufacturer's market share allocation.

C.S.S.B. 329 requires TCEQ, in any year in which more than one recycling leadership program is implemented, to review all active recycling leadership programs established to ensure the programs are operating in a manner consistent with the goals of the bill's provisions, including a balanced recycling effort. The bill authorizes TCEQ, based on the review, to make recommendations to the legislature on ways to improve the balance of the recycling effort. The bill requires TCEQ to provide, in writing, to each county and municipality in Texas information regarding the legal disposal and recycling of covered television equipment.

C.S.S.B. 329 authorizes TCEQ to conduct audits and inspections to ensure compliance with the bill's provisions and rules adopted under its provisions. The bill requires TCEQ and the attorney general, as appropriate, to enforce the bill's provisions and take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment. The bill authorizes the executive director of TCEQ or the attorney general to institute a suit to enjoin an activity related to the sale of covered television equipment in violation of the bill's provisions. The bill requires TCEQ to issue a warning notice to a person on the person's first violation, who must comply not later than the 60th day after the date the warning notice is issued and requires a retailer who receives a warning notice from TCEQ that the retailer's inventory includes covered television equipment from a television manufacturer that is not in compliance must bring the inventory into compliance not later than the 60th day after the date the warning notice is issued.

C.S.S.B. 329 exempts financial or proprietary information submitted to TCEQ under the bill's provisions from public disclosure.

C.S.S.B. 329 requires TCEQ 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 even-numbered year and sets out the information that must be included in the report. The bill establishes that TCEQ is not required to prepare or submit for the first time the legislative report before March 1, 2014. The bill clarifies that its provisions do not authorize TCEQ to impose a fee, including a recycling fee, on a consumer, television manufacturer, retailer, or person who recycles covered television equipment and requires TCEQ to use collected registration fees or costs only to implement the bill's provisions.

C.S.S.B. 329 provides that a consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled and encourages a consumer to learn about recommended methods for the recycling of covered television equipment that has reached the end of its useful life. The bill requires covered television equipment collected to be disposed of or recycled in a manner that complies with federal, state, and local law. The bill requires TCEQ to adopt as standards for recycling covered television equipment in Texas standards approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., or other standards from a comparable nationally recognized organization.

C.S.S.B. 329 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 the bill's provisions and requires a state agency that purchases or leases covered television equipment to require a prospective bidder to certify the bidder's compliance before the agency may accept the prospective bidder's bid. The bill requires a state agency, in considering bids for a contract for covered television equipment, to give special preference to a manufacturer that collects more than its market share allocation through its recovery plan or provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month. The bill requires the comptroller of public accounts to adopt rules to implement the bill's provisions regarding procurement requirements.

C.S.S.B. 329 authorizes TCEQ, if federal law establishes a national program for the collection and recycling of covered television equipment and TCEQ determines that the federal law substantially meets the purposes of the bill, to adopt an agency statement that interprets the federal law as preemptive and provides that the bill's provisions expire on the date TCEQ issues such a statement.

C.S.S.B. 329 amends the Water Code, in a provision relating to setting a maximum penalty of \$10,000 for the second violation or \$25,000 for each subsequent violation assessed against a manufacturer that does not label its computer equipment or adopt and implement a recovery plan, to make that provision applicable to covered television equipment and to make conforming changes.

C.S.S.B. 329 requires TCEQ to adopt any rules required to implement the bill's provisions not later than May 1, 2012, and prohibits the bill from being enforced before July 1, 2012. The bill provides that a retailer of television equipment may sell television equipment inventory that the retailer acquired before September 1, 2012, without incurring a penalty and that a retailer of covered television equipment is not required to provide consumer information required by the bill's provisions before the date on which TCEQ rules implementing the bill's provisions take effect.

C.S.S.B. 329 defines "consumer," "covered television equipment," "market share allocation," "recycling," "retailer," "television," and "television manufacturer"; defines "brand" by reference; and defines "state agency" by reference to the Government Code to mean a department, commission, board, office, or other agency that is in the executive or legislative branch of state government and that was created by the constitution or a statute, including an institution of higher education or the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council or another agency in the judicial branch of state government.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 329 differs from the original by establishing the payment deadline for a registration fee paid to the Texas Commission on Environmental Quality (TCEQ) by a television manufacturer of covered television equipment as January 31 of each year, whereas the original sets the payment deadline as July 1 of each year.

C.S.S.B. 329 differs from the original by establishing the deadline for a report submitted to TCEQ by a television manufacturer of covered television equipment relating to the weight of sold television equipment as January 31 of each year, whereas the original sets the report deadline as July 1 of each year.

C.S.S.B. 329 contains provisions not included in the original establishing the television recycling account as an account in the general revenue fund, providing for its composition and authorized use, and requiring registration fees paid by a television manufacturer to TCEQ be deposited to the credit of the account.

C.S.S.B. 329 differs from the original by requiring a television manufacturer's recovery plan to be submitted not later than the first January 31 that occurs after the date the television manufacturer first registers with TCEQ, whereas the original does not specify a deadline.

C.S.S.B. 329 omits a provision included in the original requiring a recycling leadership program

to include television manufacturers that cumulatively represent at least five percent of the television equipment industry in terms of the total amount of television equipment sold in Texas.

C.S.S.B. 329 contains a provision not included in the original requiring each recycling leadership program to provide to TCEQ a list of the television manufacturers participating in the program for that year not later than January 31 of each year.

C.S.S.B. 329 contains provisions not included in the original requiring a public education program required of certain covered television equipment manufacturers to use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center the provides specified information.

C.S.S.B. 329 differs from the original by requiring a television manufacturer participating in the recycling leadership program to submit a collection report to TCEQ, whereas the original requires the collection report to be submitted to TCEQ and the committee in each house of the legislature that has primary jurisdiction over environmental matters. The substitute differs from the original by setting the deadline for the report as not later than January 31 of every other year beginning with the television manufacturer's second year of registration, whereas the original sets the deadline as not later than March 1 of each year.

C.S.S.B. 329 differs from the original by requiring the collection report to include the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding years, whereas the original authorizes the inclusion in the report of information on the weight collected in the preceding year. The substitute differs from the original by requiring additional information in the report relating to certain compliance documentation. The substitute omits a provision included in the original specifying additional information about the weight of covered television equipment that the collection report may include.

C.S.S.B. 329 contains a provision not included in the original specifying that provisions relating to responsibilities of a television equipment recycler do not apply to a television manufacturer.

C.S.S.B. 329 differs from the original by requiring TCEQ to publish on an Internet website a list of television manufacturers whose recovery plans have been approved by the commission, whose public education programs are in full compliance with the bill's provisions, and who are in compliance with the registration and fee requirements of the bill, whereas the original required the publication of a list of television manufacturers who have registered with TCEQ and a list of television manufacturers who are in full compliance with the bill's provisions.

C.S.S.B. 329 differs from the original by requiring TCEQ to remove television manufacturers no longer in compliance from the Internet website once each fiscal quarter, rather than once each calendar quarter as in the original.

C.S.S.B. 329 differs from the original by establishing the deadline for TCEQ to establish the state recycling rate as November 1 of each year, rather than February 15 of each year as in the original.

C.S.S.B. 329 differs from the original by establishing the deadline for TCEQ to provide to each registered television manufacturer submitting a recovery plan the television manufacturer's market share allocation for collection, reuse, and recycling for that year as December 1 of each year, rather than March 1 of each year as in the original.

C.S.S.B. 329 differs from the original by requiring a report compiled by TCEQ containing information from television manufacturers to be issued to certain legislative committees not later than March 1 of each even-numbered year, whereas the original sets that date not later than March 1 of each year.

C.S.S.B. 329 omits provisions included in the original relating to a required progress report pertaining to television recycling efforts submitted by TCEQ to certain legislative officers and committees.

C.S.S.B. 329 differs from the original by requiring TCEQ to adopt a certain set of standards or comparable standards for recycling or reuse of covered television equipment in Texas, whereas the original requires a television manufacturer to follow certain other standards or unspecified recycling standards adopted by the commission or to use a recycler that follows those standards.

C.S.S.B. 329 differs from the original by establishing that a manufacturers' report submitted by a television manufacturer to TCEQ is not required to be prepared or submitted before January 31, 2013, rather than before July 1, 2013, as in the original.

C.S.S.B. 329 differs from the original by establishing that a required recovery plan submitted by a television manufacturer to TCEQ is not required to be prepared or submitted before January 31, 2013, rather than before July 1, 2013, as in the original.

C.S.S.B. 329 omits a provision included in the original requiring a television manufacturer to provide documentation to TCEQ that the manufacturer is participating in a program before January 1, 2013, to qualify as a member of a recycling leadership program for 2013.

C.S.S.B. 329 differs from the original by establishing that a collection report submitted by a television manufacturer to TCEQ is not required to be prepared or submitted before January 31, 2015, rather than before March 1, 2013, as in the original.

C.S.S.B. 329 differs from the original by establishing that TCEQ is required to post the required list of television manufacturers in compliance with the bill's provisions not later than April 1, 2013, rather than not later than September 1, 2013, as in the original.

C.S.S.B. 329 contains provisions not included in the original requiring TCEQ, not later than November 1, 2013, to establish for the first time the state recycling rate and, not later than December 1, 2013, to provide for the first time to each applicable television manufacturer the television manufacturer's market share allocation.

C.S.S.B. 329 differs from the original by establishing that a retailer of television equipment may sell television equipment inventory that the retailer acquired before September 1, 2012, without incurring a penalty, rather than inventory acquired before September 1, 2013, as in the original.