By:  Thompson of Brazoria H.B. No. 1953

A BILL TO BE ENTITLED

AN ACT

relating to relating to reducing the volume of wastes disposed of in landfills by promoting the beneficial conversion of plastics and other recoverable materials using pyrolysis and gasification processes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 361.003, Health and Safety Code, is amended by amending Subsection (35) and adding Subsections (40) through (45) to read as follows:

(35)  This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A)  does not include:

(i)  solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii)  soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii)  waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B)  does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.; or

(iv)  post-use polymers or recoverable feedstocks processed through pyrolysis or gasification.

(40)  "Gasification" means a process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw, intermediate and final products including, but not limited to plastic, monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil, and other fuels, including ethanol and transportation fuel. Gasification shall not be considered "processing" or "incineration."

(41)  "Gasification facility" means a facility that receives, separates, stores and converts post-use polymers and recoverable feedstocks using gasification. The commission may not consider a gasification facility to be a "solid waste facility," "solid waste management facility" or "incinerator."

(42)  "Recoverable feedstocks" means one or more of the following materials, derived from recoverable waste, that has been processed so that it may be used as feedstock in a gasification facility:

(a)  Post-use polymers;

(b)  Materials, including but not limited to municipal solid waste that contains post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the federal Environmental Protection Agency has made a non-waste determination under 40 CFR 241.3(c) or otherwise determined are not waste or for which the Board has made a non-waste determination. Recoverable feedstocks do not include coal refuse.

(43)  "Post-use polymers" means plastic polymers that derive from any household, industrial, community, commercial or other sources of operations or activities which might otherwise become a waste if not converted into valuable raw, intermediate and final products including, but not limited to plastic, monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil, and other fuels, including ethanol and transportation fuel. Post-use polymers as defined in this Section may contain incidental contaminants or impurities such as paper labels or metal rings. Post-use polymers are not mixed with solid waste, medical waste, hazardous waste, e-waste, tires or construction demolition debris. Post-use polymers as described in this Section are not "solid wastes."

(44)  "Pyrolysis" means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted, and thermally decomposed, and are then cooled, condensed and converted into valuable raw, intermediate and final products including, but not limited to plastic, monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil, and other fuels, including ethanol and transportation fuel. Pyrolysis shall not be considered "processing" or "incineration."

(45)  "Pyrolysis facility" means a manufacturing facility that receives, separates, stores and converts post-use polymers using pyrolysis. The commission may not consider a pyrolysis facility to be a "solid waste facility," "solid waste management facility" or "incinerator."

SECTION 2.  Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Subsection 361.045 to read as follows:

Sec. 361.045.  TREATMENT OF POST-USE POLYMER AND RECOVERABLE FEEDSTOCKS AS SOLID WASTE. The commission may not consider post-use polymers and recoverable feedstocks as solid waste if they are converted using pyrolysis or gasification into valuable raw, intermediate and final products including, but not limited to plastic, monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil, and other fuels, including ethanol and transportation fuel.

SECTION 3.  Section 361.119, Health and Safety Code, is amended by adding a new Subsection (d) and renumbering Subsections (d), (e), and (f) to read as follows:

Sec. 361.119.  REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES.

(d)  A facility that reuses or converts recyclable materials, including post-use polymers and recoverable feedstocks, in a pyrolysis or gasification process, and the operations conducted and materials handled at the facility, are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1)  the primary function of the facility is to convert materials that have a resale value greater than the cost of converting the materials for subsequent beneficial use; and

(2)  all the solid waste generated from converting the materials is disposed of in a solid waste facility authorized under this chapter, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(d) (e)  A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste is not subject to regulation or requirements for financial assurance under rules adopted under this section.

(e) (f)  A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section.

(f) (g)  The commission shall adopt rules to ensure that the owner or operator of a recycling facility, including a composting or mulching facility, has in place sufficient financial assurance conditioned on satisfactorily operating and closing the facility and consistent with the requirements of Section 361.085 for a solid waste facility other than a facility for the disposal of hazardous waste. This subsection applies only to an owner or operator of a recycling facility:

(1)  at which combustible material is stored outdoors; or

(2)  that poses a significant risk to public health and safety as determined by the commission.

SECTION 4.  Section 361.421, Health and Safety Code, is amended by amending Subsections (5), (6) and (8) to read as follows:

SUBCHAPTER N. WASTE REDUCTION PROGRAMS; DISPOSAL FEES

Sec. 361.421.  DEFINITIONS. In this subchapter:

(5)  "Recyclable material" means material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material. For purposes of this subchapter, the term includes post-use polymers and recoverable feedstocks provided the materials are converted using pyrolysis or gasification into valuable raw, intermediate and final products including, but not limited to plastic, monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil, and other fuels, including ethanol and transportation fuel.

(6)  "Recycled material" means materials, goods, or products that consist of recyclable material or materials derived from postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product. When used in a pyrolysis or gasification process, the term "recycled materials" includes post-use polymers and recoverable feedstocks.

(8)  "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes:

(A)  the composting process if the compost material is put to beneficial reuse as defined by the commission; and

(B)  the application to land, as organic fertilizer, of processed sludge or biosolids from municipal wastewater treatment plants and other organic matter resulting from poultry, dairy, livestock, or other agricultural operations.; and

(C)  the conversion of post-use polymers and recoverable feedstocks using a pyrolysis or gasification process.

SECTION 5.  Subchapter N, Chapter 361, Health and Safety Code, is amended by adding Subsection 361.430 to read as follows:

Sec. 361.430.  ALTERNATIVES AND INNOVATIVE TECHNOLOGIES. (a) In developing and implementing the state solid waste management strategies and plans, the commission and the controller shall utilize the pollution prevention advisory committee as set out in Section 361.0215 of the Health and Safety Code to promote Sustainable Materials Management (SMM) and the development and use of pyrolysis and gasification processes to divert recoverable polymers and other materials away from landfills and toward conversion into valuable raw, intermediate and final products including, but not limited to plastic, monomers, chemicals, waxes, lubricants, chemical feedstocks, crude oil, diesel, gasoline, diesel and gasoline blendstocks, home heating oil, and other fuels, including ethanol and transportation fuel, by reducing unnecessary and inappropriate barriers to the siting, permitting and operation of facilities utilizing such technologies.

(b)  Definitions.  In this Subsection:

(1)  Engineered Fuel.  The term "engineered fuel" means a solid fuel that is manufactured from recoverable constituents of municipal solid waste or other secondary materials.

(2)  Feedstock.  The term "feedstock" means raw material that is used in a machine or industrial process."

(3)  Sustainable Materials Management.  The term "sustainable materials management" means a systematic approach to using and reusing materials more productively over their entire life cycle, taking into account life-cycle cost benefit analysis considerations.

(c)  Study.  With respect to post-use polymers and recoverable feedstocks that are often deposited in landfills, the commission shall conduct a study to: (a) evaluate recycling and recovery based on the energy and water savings and greenhouse gas reductions achieved by improving material recovery from the solid waste stream, including by measuring certain environmental benefits of waste prevention; and (b) determine the manner in which the State and local government officials can promote and make progress toward sustainable materials management and a cost-effective system (including with respect to environmental issues), through the use of pyrolysis, gasification, and other innovative technologies such as engineered fuels, to convert post-use polymers, alone or in combination with other recoverable feedstocks, into materials that can be used as plastic, monomers, chemicals and chemical feedstocks or to generate energy or fuels.

(d)  Completion of Study.  Not later than 2 years after the date of enactment of this Act, the commission and controller shall complete the study described in subsection (c) and submit to the Governor and General Assembly a report providing findings and recommendations developed through the study."

SECTION 6.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.