88R4398 DRS-F

By:  Hancock S.B. No. 2044

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of recycling and recycled products.

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

SECTION 1.  Sections 361.003(10-a), (10-b), (25-a), (25-b), and (27), Health and Safety Code, are amended to read as follows:

(10-a)  "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 [~~a~~] valuable raw materials or valuable[~~,~~] intermediate[~~,~~] or final products [~~product~~], including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks and other basic hydrocarbons [~~a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel~~]. The term does not include incineration.

(10-b)  "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 hazardous waste management facility, a solid waste management facility, or an incinerator.

(25-a)  "Pyrolysis" means a manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere [~~until melted and thermally decomposed and then cooled, condensed,~~] and converted into [~~a~~] valuable raw materials or valuable[~~,~~] intermediate[~~,~~] or final products [~~product~~], including plastic monomers, chemicals, naphtha, waxes, or plastic and chemical feedstocks and other basic hydrocarbons [~~a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel~~]. The term does not include incineration.

(25-b)  "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 hazardous waste management facility, a solid waste management facility, or an incinerator.

(27)  "Recycling" has the meaning assigned by Section 361.421 [~~means the legitimate use, reuse, or reclamation of solid waste~~].

SECTION 2.  Section 361.0151, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c)  Notwithstanding any other law, the commission or another political subdivision of this state that establishes goals or requirements for recycling or the use of recycled material must base those goals or requirements on the definitions and principles established by Subchapter N. This subsection does not apply to a program described by Subchapter Y or Z.

SECTION 3.  Section 361.041(a), Health and Safety Code, is amended to read as follows:

(a)  The commission may not consider post-use polymers or recoverable feedstock to be solid waste if they are converted using pyrolysis or gasification into [~~a~~] valuable raw materials or valuable[~~,~~] intermediate[~~,~~] or final products [~~product~~], including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks and other basic hydrocarbons [~~a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel~~].

SECTION 4.  Section 361.119(c-1), Health and Safety Code, is amended to read as follows:

(c-1)  A facility that reuses or converts recyclable materials through pyrolysis or gasification, 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 into products for subsequent beneficial use 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 hazardous solid waste management facility or a solid waste facility authorized under this chapter, as appropriate, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

SECTION 5.  Section 361.421, Health and Safety Code, is amended by amending Subdivisions (5), (6), (7), and (8) and adding Subdivision (6-a) to read as follows:

(5)  "Recyclable material" means material that can be or 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. The term includes post-use polymers and recoverable feedstocks that are converted through pyrolysis or gasification into valuable raw materials or valuable[~~,~~] intermediate[~~,~~] and final products. 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.

(6)  "Recycled material" means materials, goods, or products that consist of recyclable material or materials derived from post-use polymers or postconsumer waste[~~, industrial waste, or hazardous waste~~] which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a mass balance attribution system identified by the commission under Section 361.4215. The term includes recycled plastics [~~post-use polymers and recoverable feedstocks used in pyrolysis or gasification~~].

(6-a)  "Recycled plastics" means products that are produced from:

(A)  mechanical recycling of post-use polymers; or

(B)  nonmechanical recycling of post-use polymers certified under a mass balance attribution system identified by the commission under Section 361.4215.

(7)  "Recycled product" means a product that is eligible to be considered a recycled product under [~~which meets the requirements for recycled material content as prescribed by~~] the rules established by the commission under [~~described in~~] Section 361.427.

(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 or feedstocks used in the production of new products. The term does not include incineration of plastics or waste-to-energy processes. Recycling includes:

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

(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 through pyrolysis or gasification.

SECTION 6.  Subchapter N, Chapter 361, Health and Safety Code, is amended by adding Section 361.4215 to read as follows:

Sec. 361.4215.  MASS BALANCE ATTRIBUTION. The commission by rule shall identify third-party certification systems for mass balance attribution that may be used for the purposes of Sections 361.421(6) and (6-a), such as the International Sustainability and Carbon Certification system.

SECTION 7.  Section 361.427(b), Health and Safety Code, is amended to read as follows:

(b)  The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be postconsumer waste or post-use polymer.

SECTION 8.  As soon as practicable after the effective date of this Act, the Texas Commission on Environmental Quality shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 9.  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 September 1, 2023.