

SUBJECT: Creating the Scrap Tire Enforcement Fund

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 9 ayes — Chisum, Allen, Culberson, Dukes, Howard, Kuempel, Palmer,
Talton, Zbranek

0 nays

WITNESSES: *(on original version:)*

For — Daniel Cardenas, City of San Antonio; James Chatham, Ameri-First Financial Group; Tom Earnshaw, Waste Recovery, Inc.; H.C. Bud Gibson, Gibson Recycling; Quinten Jackson, Recycled Environmental Erosion Protection; Gary Joiner, Texas Farm Bureau; Tom Leath and Steve Rosenbaum, Rubber Recycling Resources; Don Lee, Texas Conference of Urban Counties; Daniel Ibarra III; Scott Holden; Jim Ellis

Against — Raul Alvarez, Sierra Club, Lone Star Chapter; Roger Falk, TechniServ Inc; Delma Perry, Tres Pesetas and Thoshanowasti; Rick Pilger, Texas Tire Dealers Association; Tim Gregorek; Guy Baird

On — Rob Barrett, Harris County Pollution Control; E.D. Hall, Jr., and Daniel Swanson, ACME Tyre Co.; Leigh Ing, Texas Natural Resource Conservation Commission; Ray Parsons, Harris County Mosquito Control and Texas Mosquito; Michael Stewart, Texas Aggregates and Concrete Association; Jeffrey Smith

BACKGROUND: Texans generate about 50,000 waste tires every day, creating a significant disposal problem for the state. In 1991, in an attempt to rid the state of hundreds of illegal tire dumps, the Legislature created a waste tire recycling fund, funded primarily by a \$2 fee on each new tire sold in the state. The fee, which began in 1992, was used to pay qualifying waste tire processors 85 cents per tire — changed to 80 cents per tire for most processors in 1995 — and was intended to stimulate the market for tire-derived products.

Millions of tires were shredded, but the market for shredded rubber did not grow as quickly as expected nor as fast as the piles of tire shreds being produced. Although the program cleaned up more than 600 illegal tire dumps,

millions of tires in shredded form remained stored at various locations across the state. These shreds became a disposal problem in their own right. Tire processors were unable or unmotivated to find ways to recycle all the shreds. In 1995, legislation was enacted to reimburse only those processors who were sending tire shreds and chips to an “end-use” market. End uses included recycling and burning tires and making new products out of tire-derived material. The Legislature allowed the waste tire recycling program and fee to end on December 31, 1997.

One of the quickest ways to dispose of tires is to burn them as fuel in cement kilns, utility boilers, pulp and paper mills, and cogeneration facilities. Waste tire burning, however, is a controversial issue. Many groups say that burning tires cannot be considered reuse or recycling, and they maintain that burning tires creates toxic pollution. Supporters of tire burning cite studies by the Texas Natural Resource Conservation Commission (TNRCC) indicating that the practice is environmentally safe, creates little or no solid waste, and generally burns cleaner and hotter than coal.

TNRCC continues to regulate storage, transportation, and processing of waste tires and registers storage sites, processors, and transporters of waste tires. Generators do not have to register with TNRCC, but they must keep a manifest of scrap tires and track the disposal of the tires.

DIGEST:

CSHB 3132 would create a new Scrap Tire Enforcement Fund, funded by a new scrap tire recycling fee charged to the public by retail tire dealers. Money in the fund could be used only for TNRCC audits required for scrap tire enforcement, for cleaning up illegal scrap tire sites, and for the reasonable and necessary administrative costs of TNRCC and the comptroller in administering the bill’s provisions.

The 25-cent fee would apply to the sale of each new tire that had a rim diameter of at least 12 inches, and not to new tires mounted on a new motor vehicle as original equipment. The bill would not prevent a person from charging a scrap tire disposal fee as a cost of conducting business, but it would prohibit that person from telling customers that the scrap tire disposal fee was mandated by the state.

The scrap tire recycling fee would be remitted to the comptroller and would provide the basis for the Scrap Tire Enforcement Fund that would be created

as a special account in general revenue. The fund would consist of scrap tire enforcement fees, fines and penalties, and interest, gifts, grants, or money received by TNRCC or the comptroller for the fund.

New tire sellers would have to send TNRCC a scrap tire collection report in a manner prescribed by TNRCC rules. TNRCC would, by rule, provide the reporting form, which would include the number of scrap tires the person collected, the fate of those tires no longer in the person's control, the tax identification number assigned to the transporter or other person who removed the scrap tires permanently from the seller's premise, and other information that TNRCC determined to be necessary to track the disposition of scrap tires until they reached their final destination as a waste product or as raw material for recycling. TNRCC could provide for these reports to be made electronically.

Persons who received waste tires as a waste product or raw material for recycling would have to register annually with TNRCC and submit a waste tire disposition report to TNRCC. This would be similar to a collection report, but the disposition report would have to include the number of tires remaining on the person's premises in any form. TNRCC could require a registration fee of up to \$20 for persons who receive waste tires.

A permitted landfill that received shredded, split, or quartered tires could require the person bringing the tires to provide a report of the number of tires brought for disposal.

TNRCC, to the extent practicable and necessary, would have to compare scrap tire collection reports with scrap tire disposition reports to determine if tires were being transported, disposed of, or recycled properly. If TNRCC discovered a discrepancy in the reporting documents, the agency would have to investigate to determine if a reasonable probability existed that scrap tires were discarded illegally.

If TNRCC found that such a probability, the commission would have to institute any civil or criminal enforcement action the executive director deemed necessary and appropriate, including asking the attorney general for enforcement if TNRCC could not determine the location of the illegally discarded tires or asking the county or district attorney for enforcement in the county in which the tires had been discarded illegally.

The state's share of any fine or other penalty collected for violation of CSHB 3132's provisions, the Health and Safety Code litter statutes, or other law involving a site where scrap tires had been discarded illegally would be used, to the extent practicable, to clean up the site. If a penalty or fine could not be used practically to clean up the site, the fines or penalties would be deposited into the Scrap Tire Enforcement Fund.

CSHB 3132 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

CSHB 3132 would give TNRCC a framework and a funding source so the agency could keep track of waste tires and prosecute those who dump them illegally. There is already a growing market for waste tires in Texas, and the state does not need to spend any more money reimbursing processors to recycle them. Some processors who were reimbursed during the last waste tire program collected reimbursements enthusiastically but were unmotivated to find ways to recycle the shreds. At this point, the state no longer needs to subsidize tire processors.

TNRCC estimates that 70 percent of Texas waste tires are being shredded or recycled annually for new products or tire-derived fuel. Forty percent of those tires are being used as fuel in cement kilns, smelters, and other industrial furnaces. Also, tire processors have reduced their shred stockpiles substantially over the past two years.

All tire markets are expanding, and shreds are used increasingly for road construction, land reclamation, and leachate collection systems and as covers for landfills. Legislation enacted to subsidize certain processors at this time would create a conflict with the continuing establishment of the free market for waste tires, which should be allowed to mature and stabilize on its own.

Instead, the state needs to put in place a system of reporting and enforcement so TNRCC can keep track of waste tires and make sure that generators and processors do not dump tires illegally. CSHB 3132 would accomplish both those goals with new reporting and enforcement requirements that would ensure that illegal tire dumpers would be prosecuted swiftly.

It is important to prosecute those who dump tires illegally. Tire dumps are an ideal breeding ground for rats and mosquitos and other disease-carrying insects. Tire dumps also pose a significant fire hazard, and tire fires are

especially hard to extinguish. Often the intense heat of such a fire and the lack of water in rural areas force local firefighters to let the fires burn themselves out, which results in damage to the local environment.

OPPONENTS
SAY:

The state should encourage the growth of waste tire recycling markets, which is the only way to solve Texas' growing waste tire dilemma. Since the waste tire program ended in 1997, as much as 40 percent of waste tires are being dumped illegally, especially in west and south Texas.

Although strengthening TNRCC's enforcement options would be a good idea, the root of the problem is that sufficient markets have not been developed to accommodate current tire generation, let alone assist with the removal of shredded tire piles remaining from tires processed under the previous waste tire program. The City of Brownsville, for example, has noticed a growing problem with illegally dumped tires in the past two years.

To encourage the growth of a free market for waste tires, Texas would need to resume reimbursement payments, encourage grant programs, and take other actions to encourage recycling and end-user markets for tire-derived materials. The state could avoid the problems of the former waste tire program if those payments were made only after the tire reached an end use or had been recycled in some permanent manner.

The state should encourage long-term solutions like the building of pyrolysis plants that heat tires and tire chips to high temperatures to recover steel, hydrocarbons, and carbon. Such plants would help solve Texas' scrap tire problem, but the state would have to show support for the idea by paying for tires to be recycled until companies could recoup some of the multimillion-dollar investments they would have to make to build such plants.

OTHER
OPPONENTS
SAY:

Cities that have undertaken to clean up illegal dump sites at their own cost are now in danger of being fined by TNRCC for illegal storage of scrap tires, since the tires are being stored at landfills. The bill should be amended to stay all current enforcement actions by TNRCC against proactive cities that are attempting to deal with illegal tires.

NOTES:

The original bill differed substantially from the substitute. It would have required a fee of \$1, rather than 25 cents, for the scrap tire program, required the identification of beneficial end uses for tires, and established a procedure

by which a person could apply for an end use to be approved as a beneficial end use. TNRCC would have had to identify distressed areas in Texas that need assistance with waste tires and could have awarded contracts or grants for disposing of or recycling scrap tires. The original bill did not include sections concerning scrap tire collection and disposition reports or commission audits of scrap tire reporting.

A related bill, HB 3483 by Kuempel, would create the Scrap Tire Recycling Act, impose a 75-cent fee on new and used tires, and establish an extensive regulatory framework for scrap tires and scrap tire dumps. Another related bill, HB 1823 by Yarbrough, would create an extensive waste tire recycling program, impose a \$2 fee on new tires, and provide for payments to end users of scrap tires. Both bills were left pending in the House Environmental Regulation Committee on April 12.