

BILL ANALYSIS

Senate Research Center

S.B. 1586
By: Brown
Natural Resources
4-7-97
As Filed

DIGEST

Currently, the Waste Tire Recycling Program (program) was adopted by the 71st Legislature with the intent to eliminate existing illegal tire sites located in Texas and to ensure that no new dumps were created. The ultimate goal of the program, the recycling of all the waste tires generated in Texas, as yet to be met. Additionally, the program promotes the shredding of tires; therefore, there are approximately 1.7 billion pounds of tire shreds on the ground in Texas today. This bill would revise various provisions of the program to make it applicable to scrap tires, to set forth criminal and civil penalties, and to make certain appropriations in regard to the Texas Natural Resource Conservation Commission.

PURPOSE

As proposed, S.B. 1586 revises various provisions of the Waste Tire Recycling Program to make it applicable to scrap tires, to set forth criminal and civil penalties, and to make certain appropriations in regard to the Texas Natural Resource Conservation Commission.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Natural Resource Conservation Commission in SECTIONS 3, 5, 7, 10, 12 and 17 (Sections 361.471(1), 362.4725, 361.477(b), 361.479(f)(2), 361.482(b), and 361.487(a), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 361.112(f) and (g), Health and Safety Code, to prohibit a person from storing more than 500 scrap, rather than used or scrap, tires, or disposing of any quantity of scrap tires unless the tires are shredded, split, or quartered as provided by the Texas Natural Resource Conservation Commission (TNRCC). Provides that the prohibition provided by this subsection regarding storage does not apply to a registered scrap, rather than waste, tire energy recovery facility or a scrap tire energy recovery facility storage site or a person described in Section 361.472(a) who stores not more than 1,000 scrap tires for not more than 30 days. Requires TNRCC to require a person who transports scrap tires for storage, or disposal, or end use to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a disposal facility that is permitted under this section for that purpose, or to a registered end user. Makes conforming changes.

SECTION 2. Amends the heading of Chapter 361P, Health and Safety Code, as follows:

SUBCHAPTER P. New heading: SCRAP TIRE RECYCLING PROGRAM

SECTION 3. Amends Section 361.471, Health and Safety Code, to define "end use," "scrap tire end user," "scrap tire energy recovery facility," "scrap tire generator," "scrap tire facility," "scrap tire processor," "scrap tire recycler," "scrap tire storage facility," "scrap tire transporter," "special authorization priority enforcement list tires," and "tire-derived material." Redefines "fund" and "mobile tire shredder." Deletes definitions of "good used tire" and "weighed tire." Makes conforming changes.

SECTION 4. Amends Section 361.472, Health and Safety Code, as follows:

Sec. 361.472. New heading: SCRAP TIRE RECYCLING FEES. Requires a person in the business of selling new tires, rather than good used tires for use on a vehicle, who sells or offers to sell new tires not for resale to collect at the time and place of sale a certain scrap tire recycling fee for each tire. Prohibits a fee set by TNRCC from exceeding \$2 for each new tire that has rim diameter of 12 inches or more but less than 17.5 inches. Prohibits a fee set by TNRCC from exceeding \$2 for a new motorcycle tire, regardless of the rim diameter. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Section 361.4725, Health and Safety Code, to require a scrap tire end user, scrap tire facility, scrap tire storage facility, scrap tire transporter, scrap tire processor, or scrap tire generator to register with TNRCC in accordance with TNRCC rules and on the forms prescribed by TNRCC. Requires a person who applies to TNRCC to register under this section or applies to renew or amend the registration to pay a fee set by TNRCC not to exceed \$500. Prohibits TNRCC from issuing a registration or from renewing or amending a registration under this subchapter unless the applicant has submitted to TNRCC evidence of financial responsibility as required by this subchapter. Provides that Subsection (c) does not apply to certain entities.

SECTION 6. Amends Sections 361.474 and 361.475, Health and Safety Code, as follows:

Sec. 361.474. DISPOSITION OF FEES AND PENALTIES. Makes a conforming change.

Sec. 361.475. New heading: SCRAP TIRE RECYCLING FUND. (a) Makes a conforming change.

(b) and (c) Makes no change.

(d) Requires the scrap tire recycling fund (fund) to be used only to pay scrap tire end users, rather than waste tire processors, waste tire energy recovery facility owners or operators, or waste tire recyclers, that meet the requirements for payment under Sections 361.477, rather than Sections 361.477, 361.4771, 361.4772, or 361.4773, and rules adopted under that section; pay TNRCC's reasonable and necessary administrative costs of performing its duties under this subchapter as provided by Section 361.4774, rather than in an amount not to exceed six percent of the money annually accruing to the fund; pay the comptroller's reasonable and necessary administrative costs of performing the comptroller's duties under this subchapter as provided by Section 361.4774, rather than in an amount not to exceed two percent of the money annually accruing to the fund; pay for the cleanup of priority enforcement list sites, including special authority priority enforcement list sites; and pay up to \$3 million in grants for research and development to generate new end uses for scrap tires. Deletes text requiring the fund to be used only to provide grants to waste tire energy recovery facility owners or operators to cover equipment capital investment costs and equipment installation costs to enable a facility to use tire shreds as fuels; and to provide grants for recycling facility construction costs, among other items. Makes a conforming change.

(e) Authorizes TNRCC to hire a consultant to advise and assist in developing and evaluating end uses. Requires a grant, for any intellectual property developed using grant money under Subsection (d)(5), to reserve to the state a nonexclusive, transferrable right to use or modify any intellectual property developed using grant money and to authorize others to use or modify the intellectual property.

(f) Requires certain registration fees to be allocated to TNRCC for its reasonable and necessary costs associated with the registration of a person required to register under Section 361.4725. Makes conforming changes.

(g) Prohibits the fund from being used to reimburse burning, rather than shredding or burning, of certain items. Makes conforming changes.

(h)-(i) Deletes text requiring the fund to maintain a certain balance. Makes conforming changes.

SECTION 7. Amends Sections 361.477 and 361.4771, Health and Safety Code, as follows:

Sec. 361.477. New heading: PAYMENTS TO SCRAP TIRE END USERS. (a) Requires TNRCC, each calender quarter, rather than each month, to pay a scrap tire end user, rather than waste processor, that meets the requirements of this section and Section 361.4771 and rules adopted under those sections \$70 per ton for recycling and energy recovery or \$30 per ton for engineering uses for each ton of whole scrap tires, shredded tire pieces, or tire-derived material actually put to end use by the end user during the proceeding calender quarter. Provides that this subsection applies only to whole scrap tires that were collected from generators after September 1, 1997, or shredded tire pieces or tire-derived material that originates from whole scrap tires that were collected from generators after September 1, 1997. Makes conforming changes.

(b) Sets forth the guidelines in regard to TNRCC paying a scrap tire end user that meets the requirements of this section and Section 361.4771 and rules adopted under those sections each calender quarter.

(c) Requires TNRCC to pay an appropriate amount determined by TNRCC to contractors, rather than end users, with whom TNRCC has contracted to remove and transport to end use scrap tires and scrap tire pieces from priority enforcement list sites or storage locations at which special authorization priority enforcement list tires are stored. Authorizes TNRCC to contract with end users on a regional or site-specific basis. Requires the contracts to be procured through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act, Title 10D, Government Code, rather than Article 601b, V.T.C.S., applicable to contracts for services. Deletes text relating to certain payments based on the total number of certain tires being less than 2,500,000. Deletes text relating to certain TNRCC contracts. Deletes existing Subsections (c) and (d), relating to a waste tire processor. Deletes existing Subsection (e), requiring TNRCC, by rule, to adopt application and payment procedures and requirements to implement this section. Makes conforming changes.

(d) Provides that TNRCC, until TNRCC has determined that a scrap tire energy recovery facility owner or operator or a scrap tire recycler, rather than processor, is in compliance with all applicable requirements, may not authorize the scrap tire energy recovery facility owner or operator or the scrap tire recycler to burn, recycle, or store scrap tires or tire pieces at a site at which the scrap tire energy recovery facility owner or operator or the scrap tire recycler burns, recycles, or stores, or intends to burn, recycle, or store, scrap tires or tire pieces. Deletes existing Subsections (g)-(k), regarding waste tire processors.

Sec. 361.4771. New heading: PROCEDURE FOR OBTAINING PAYMENT FOR END USE; RESTRICTIONS; FUND MANAGEMENT. (a) Deletes former Subsection (a), relating to rulemaking authority granted to TNRCC. Requires a scrap tire end user, rather than a waste tire energy recovery facility owner or operator, in order to receive payment under Section 361.477, rather than this section and Section 361.4773, among other requirements, to apply to TNRCC for payment in a manner prescribed and on forms prescribed by commissioner rule; or as a voluntary alternative, by use of a removable storage medium stored in an industry standard file format acceptable to TNRCC; send TNRCC a quarterly report of the number of tons of whole scrap tires, shredded tires, or tire-derived material put to actual end use, subtotaled by weight attributable to each generator number or priority enforcement list number; demonstrate than any, rather than the, energy recovery activities comply with applicable air emission control standards and rules; and submit evidence of financial responsibility in an amount adequate to assure cleanup and closure of the facility, if the person anticipates accepting an amount of whole scrap tires, shredded tire pieces, or tire-derived material for storage that exceeds the facility's supplies. Deletes text relating to illegal waste tire sites. Makes conforming changes.

(b) Prohibits a scrap tire recycler from storing in excess of a 30-day supply of whole scrap tires, shredded tire pieces, or tire-derived material at a site at which the recycler intends

to recycle or store whole scrap tires, shredded tire pieces, or tire-derived material until the facility is registered by TNRCC as a scrap tire recycler storage site. Makes conforming changes.

(c) Prohibits the commission from paying a scrap tire end user for actual end use of whole scrap tires, shredded tire pieces, or tire-derived material, if, among other conditions, the end user does not have appropriate authorization from TNRCC to perform scrap tire energy recovery at the energy recovery facility site if the end user is a scrap tire energy recovery facility owner or operator; or recycle scrap tires, shredded tire pieces, or tire-derived material at the recycling site if the end user is a scrap tire recycler; or the end user is not physically capable of performing a scrap tire energy recovery, if the end user is a scrap tire energy recovery facility owner or operator; or scrap tire recycling, if the end user is a scrap tire recycler. Makes conforming changes.

(d) Deletes text relating to reimbursements and payments from the fund by the TNRCC. Makes a conforming change.

(e) Defines "30-day supply." Requires a facility in operation less than six months to submit for commission review, evaluation, and approval an estimate of a 30-day supply.

SECTION 8. Amends Sections 361.4772 and 361.4773, Health and Safety Code, as follows:

Sec. 361.4772. New heading: **SCRAP TIRE PROCESSORS; AUTHORIZATION TO OPERATE.** Prohibits TNRCC, until TNRCC has determined that a scrap tire processor is in compliance with all applicable requirements, from authorizing the processor to process or store scrap tires at a site at which the processor processes or stores or intends to process or store scrap tires. Deletes existing text relating to recycling facility construction grants.

Sec. 361.4773. New heading: **STORED TIRES: TRANSPORT TO END USER REQUIRED.** Requires a scrap tire storage facility to send to an end user 100 percent of the whole scrap tires or shredded tire pieces collected or processed by the facility in a calendar quarter. Deletes existing Subsection (a), relating to payment for shredded waste tire energy recovery facility by TNRCC. Requires a scrap tire storage facility that does not meet the requirement of Subsection (a) for any calendar quarter to immediately cease accepting additional whole scrap tires or shredded tire pieces. Deletes existing Subsection (b), relating to receipt of payment under this section.

SECTION 9. Amends Section 361.4774, Health and Safety Code, as follows:

Sec. 361.4774. New heading: **ADMINISTRATIVE EXPENSES.** Authorizes the comptroller, for performing duties related to the scrap tire program, to expend an amount equal to no more than two percent of the money annually accruing to the scrap tire recycling fund. Authorizes TNRCC, for administering the scrap tire recycling program, to expend an amount equal to no more than six percent of the amount annually accruing to the scrap tire recycling fund for the administration and operation of the scrap tire recycling program. Deletes existing Subsections (c)-(h), relating to limited use of the waste tire fund, grants, and reimbursements.

SECTION 10. Amends Section 361.479, Health and Safety Code, to require a person required to register under Section 361.4725, rather than a waste tire storage facility registered by TNRCC or a waste tire facility that accepts shredded scrap tires for storage or for processing for recycling, reuse, or energy recovery, to submit to TNRCC and to maintain evidence of financial responsibility in an amount adequate to assure proper cleanup and closure of the facility. Provides that this subsection does not apply to a person listed under Section 361.4725(d).

(b) and (c) Makes conforming changes.

(d) Authorizes TNRCC to periodically audit a facility subject to this section and to increase the amount for which the facility is required to provide evidence of financial responsibility.

Authorizes TNRCC to suspend the registration of, or payments under Section 361.477 to, a facility that does not provide evidence of financial responsibility for an increased amount required under this section.

(e) Authorizes evidence of financial responsibility to be in the form of, among other forms, a surety bond acceptable to TNRCC that is from a financial institution, a trust fund, or insurance for a privately owned facility. Makes a conforming change.

(f) Requires a person who files an application or amended application for registration under this subchapter on or after September 1, 1997, to provide evidence of certain financial responsibility.

SECTION 11. Amends Chapter 361P, Health and Safety Code, by adding Sections 361.4791 and 361.4792, as follows:

Sec. 361.4791. LIEN. Provides that all remediation costs incurred by TNRCC for the cleanup and closure of a site for which insufficient financial assurance has been provided constitute a lien in favor of the state on the property on which the site is located and any other real or personal property of the owner or operator in the state. Provides that a lien arises and attaches on the date a TNRCC affidavit is filed with the county clerk in the county in which the real property is located or, for personal property, in the county in which the principal place of business is located. Sets forth the contents of the affidavit. Requires the county clerk to file an affidavit relating to real property in the real property records of the county in which the property is located. Provides that the lien is subordinate to the rights of prior bona fide purchasers of or lienholder on the property.

Sec. 361.4792. NOTICE OF BANKRUPTCY. Requires a scrap tire processor, scrap tire end user, or scrap tire transporter to deliver to the bankruptcy program department of TNRCC in Austin written notice of the entity's filing of a petition in bankruptcy stating certain information and by a certain date. Requires the scrap tire processor, scrap tire end user, or scrap tire transporter to deliver to the bankruptcy program department of TNRCC a copy of certain items by a certain date.

SECTION 12. Amends Sections 361.481 and 361.482, Health and Safety Code, as follows:

Sec. 361.481. PROHIBITION ON OUT-OF-STATE TIRES; PENALTY. Deletes text prohibiting a waste tire processor from claiming payment under Section 361.477 for shredding out-of-state tires. Prohibits a scrap tire energy recovery facility owner or operator from claiming payment under Section 361.477, rather than Sections 361.4771 or 361.4773, for burning out-of-state tires. Prohibits a scrap tire recycler from claiming payment under Section 361.477, rather than 361.4772, for recycling out-of-state tires. Provides that a scrap tire generator that TNRCC determines has used a manifest and TNRCC generator number to pass out-of-state tires is subject to an administrative, civil, or criminal enforcement action, rather than is not eligible for certain tire collections. Makes conforming changes. Deletes text relating to certain penalties. Requires TNRCC to treat whole scrap tires and shredded tire pieces generated in Texas, removed from Texas, and subsequently reintroduced into Texas as out-of-state scrap tires for the purposes of this subchapter. Makes conforming changes.

Sec. 361.482. New heading: PROHIBITION ON DISPOSAL OF TIRES IN LANDFILL. Prohibits a person, except as provided by Subsection (b), from disposing of in-state or out-of-state whole used tires, scrap tires or shredded tire pieces in a landfill. Authorizes TNRCC, by emergency order, if a scrap tire generator cannot locate an end user for its scrap tires, to permit landfill disposal of the generator's scrap tires at one generator's expense. Authorizes the order to apply to one or more generators in geographic area. Makes conforming changes.

SECTION 13. Amends Chapter 361P, Health and Safety Code, by adding Section 361.4825, as follows:

Sec. 361.4825. INTENTIONAL BURNING PROHIBITED; DUMPING PROHIBITED; CRIMINAL PENALTY. Provides that a person commits a second degree felony if the person starts a fire with the intent to destroy or damage whole scrap tires, tire pieces, or tire-derived products. Sets forth an exception to the application of Subsection (a)(3). Provides that a person commits a second degree felony if the person disposes of more than 100 whole tires or an equivalent amount of scrap tire pieces at a site that is not authorized by TNRCC to accept whole tires or scrap tire pieces. Provides that a person who commits an offense under this section is subject to a civil penalty under Section 361.483.

SECTION 14. Amends Sections 361.483(a) and (c), Health and Safety Code, to provide that a person who violates this subchapter or a rule adopted or order issued under this subchapter is liable for a civil penalty of no less than \$100 or more than \$25,000 for each violation and for each day of a continuing violation. Makes a conforming change.

SECTION 15. Amends Section 361.4832, Health and Safety Code, to authorize TNRCC, under certain conditions, to assess against a person an administrative penalty under Section 361.252 in an amount not to exceed \$10,000 for each act of violation and for each day of violation; or order the person to take a corrective action. Authorizes TNRCC to suspend a registration issued under this subchapter and to suspend payment under Section 361.477 to a scrap tire recycling facility or scrap tire energy recovery facility under certain conditions. Makes conforming changes.

SECTION 16. Amends Section 361.485(b), Health and Safety Code, to make conforming changes.

SECTION 17. Amends Section 361.487, Health and Safety Code, as follows:

Sec. 361.487. New heading: PAYMENTS TO OUT-OF-STATE END USERS. Requires TNRCC, by rule, to provide for payments under Section 361.477 to an end user in another state. Deletes text relating to reimbursement restrictions. Requires the rules to require an out-of-state end user to demonstrate that whole scrap tires, shredded tire pieces, or tire-derived products for which payment is requested were generated and collected in this state; transported out of this state; and actually put to end use by the out-of-state end user. Deletes text relating to reimbursement restrictions.

SECTION 18. Amends Sections 361.489(a) and (e), Health and Safety Code, to make conforming changes.

SECTION 19. Amends Section 361.490, Health and Safety Code, to delete text referring to authorized processors or their subcontractors. Deletes text entitling an authorized processor or subcontractor to enter property only if TNRCC directs the processor or subcontractor to enter the property. Deletes text prohibiting authorized processors and their subcontractors from being considered agents of the state and are solely responsible for their actions. Makes conforming changes.

SECTION 20. Amends Sections 361.494-361.498, Health and Safety Code, as follows:

Sec. 361.494. APPEAL. Makes conforming changes.

Sec. 361.495. New heading: COMPLIANCE AUDITS. Authorizes, rather than requires, TNRCC to biennially perform a compliance, rather than fiscal, audit of each person receiving reimbursements under Section 361.477, rather than each waste tire processor, waste tire recycling facility, and waste tire energy recovery facility owner or operator, to ensure fiscal responsibility and accountability regarding reimbursements made under Section 361.477, rather than Sections 361.4771 and 361.4773. Authorizes TNRCC to offset an amount owed against any future reimbursements to be paid to the processor or end user if TNRCC determines that TNRCC is due a refund of some of the money paid to a scrap tire processor or scrap tire end user out of the scrap tire fund.

Sec. 361.496. NEW OR EXPANDED PROCESSING OPERATION. Makes conforming

changes.

Sec. 361.497. EXPIRATION. Provides that this subchapter expires December 31, 2001, rather than December 1, 1997.

Sec. 361.498. COMMUNITY SERVICE. Makes a conforming change.

SECTION 21. Repealers: Sections 361.478, 361.480, 361.486, 361.4865, 361.488, and 361.499, Health and Safety Code (Evaluation of Recycling and Energy, Recovery Activities, Certification for Payment; Tire Collection Fee Prohibited; Recycling Efforts; Grant Program for Energy Recovery Facility Retrofitting; Generator Change for Scrap Tires Prohibited; and Priority for Carryover Credit Payments, respectively).

SECTION 22. Requires TNRCC, as soon as possible after September 1, 1997, to inventory the amount and location of shredded tire pieces in the state; and whole scrap tires in priority enforcement list sites in the state. Requires TNRCC to adopt rules necessary to implement Chapter 361P, as amended by this Act, by December 1, 1997.

SECTION 23. (a) Effective date: September 1, 1997.

(b) Provides that Section 361.4725(c), Health and Safety Code, as added by this Act, applies to an application for a new registration or an application to renew or amend an existing registration that is pending before TNRCC on September 1, 1997, or that is submitted to TNRCC on or after that date.

(c) Makes application of Sections 361.477 and 361.4771, Health and Safety Code, as amended by this Act, prospective to January 1, 1998.

(d) Makes application of Section 361.4825, Health and Safety Code, as added by this Act, prospective.

SECTION 24. Requires a person who on August 31, 1997, is required under Chapter 361P, Health and Safety Code, or rules adopted under that subchapter, to be registered by TNRCC or to provide evidence of financial responsibility in a certain amount or maintain financial assurance in a certain amount to maintain the registration and the financial assurance after that date and until the facility for which the registration or financial assistance is required has been properly cleaned and closed or until TNRCC determines that the registration or financial assurance is no longer necessary.

SECTION 25. Emergency clause.