

BILL ANALYSIS

Senate Research Center
83R125 JAM-F

S.B. 645
By: Ellis
Finance
4/19/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recycling rates in Texas lag the national average and have not met the 40 percent goal established over a decade ago. Beverage container recycling in particular remains low and is one of the prevalent types of litter that state and local governments must clean up regularly from roadsides and waterways.

The most proven and effective way to solve this is to incentivize proper recycling of beverage containers through a redeemable deposit. States with redeemable deposit programs have recycling rates of more than double Texas's and they do not have nearly as high expenditures on litter cleanup.

S.B. 645 is based on a modernized, streamlined redeemable deposit system, without creating a new bureaucratic burden on state government. The estimated funds that will be available through unredeemed deposits will be used for helping with recycling infrastructure, redemption center startup, and implementing the state water plan.

As proposed, S.B. 645 amends current law relating to water quality improvement and pollution reduction through beverage container recycling incentives, assesses a fee, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Section 376.003, Health and Safety Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Health and Safety Code, by adding Chapter 376, as follows:

CHAPTER 376. TEXAS BEVERAGE CONTAINER RECYCLING INCENTIVE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 376.001. DEFINITIONS. Defines "beverage," "beverage container," "consortium," "consumer," "distributor," "incentive program," "infant formula," "medical food," "redemption center," "refund," and "retail dealer" in this chapter.

Sec. 376.002. TEXAS BEVERAGE CONTAINER RECYCLING CONSORTIUM. (a) Provides that the Texas Beverage Container Recycling Consortium (consortium) is an association formed to administer the Texas beverage container recycling program established under this chapter (incentive program).

(b) Provides that the consortium consists of nine members appointed by the governor, as follows:

- (1) one distributor of alcoholic beverages;
- (2) one distributor of nonalcoholic beverages;

- (3) one recycler;
- (4) one beverage retailer;
- (5) one representative from the waste industry;
- (6) one redemption center operator;
- (7) one container processor or remanufacturer;
- (8) one representative from the office of the comptroller of public accounts of the State of Texas (comptroller); and
- (9) one representative from the general public.

(c) Provides that the members serve staggered terms of three years with three members' terms expiring June 1 of each year.

(d) Requires the members to appoint an executive director to oversee the consortium's operation.

Sec. 376.003. ADMINISTRATION AND RULES. (a) Requires the consortium, in administering the incentive program, to:

- (1) enter into appropriate agreements approving redemption centers under Section 376.151;
- (2) enforce compliance with the provisions of this chapter;
- (3) develop and implement a marketing plan to provide information and educate consumers about the incentive program;
- (4) conduct any audit of the incentive program the comptroller determines is necessary;
- (5) develop an operating budget for the incentive program;
- (6) ensure the solvency of the incentive program's account;
- (7) develop a system for reimbursement of deposits and refunds and for distribution of handling fees;
- (8) develop a system for monitoring the number of containers sold by distributors and the number of containers returned to redemption centers and curbside recycling centers;
- (9) develop a system to prevent fraudulent use of the incentive program;
- (10) administer an account as provided by Section 376.104;
- (11) adopt procedures and forms necessary to implement this chapter; and
- (12) develop and maintain a publicly accessible website to provide information about the program, including redemption center locations.

(b) Authorizes the comptroller, after consultation with the consortium, to adopt rules necessary to implement this chapter.

Sec. 376.004. CRIMINAL PENALTIES. Provides that a person commits an offense if the person knowingly violates Section 376.051, 376.101, 376.102, 376.201, or 376.204. Provides that an offense under this section is a Class C misdemeanor.

Sec. 376.005. REPORT TO LEGISLATURE. Requires the consortium, not later than November 1 of each year, to submit a report to the governor, lieutenant governor, speaker of the house of representatives, the comptroller, the Texas Commission on Environmental Quality (TCEQ), and the committee in each house of the legislature that has primary jurisdiction over environmental matters about the progress and success of the incentive program.

SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS

Sec. 376.051. REFUND VALUE AND LABEL REQUIRED. (a) Prohibits a person, except as provided by Subsection (b), from distributing, selling, or offering for sale in this state a beverage container unless the container:

(1) has a fluid capacity of less than 24 ounces and a refund value of five cents or a fluid capacity of at least 24 ounces and a refund value of 10 cents; and

(2) is labeled as required by Section 376.052.

(b) Authorizes a person to distribute, sell, or offer for sale in this state a beverage container that does not have a refund value if:

(1) the container has a fluid capacity of more than one gallon; or

(2) the container contains a beverage that consists of milk or of 100 percent fruit or vegetable juice or medical food or infant formula.

Sec. 376.052. LABELING. (a) Requires that a beverage container required to have a refund value under Section 376.051 that is distributed or offered for sale in this state have legibly stamped, labeled, or embossed on the container:

(1) the refund value of the container;

(2) the name "Texas" or the abbreviation "TX"; and

(3) other language as required by the consortium.

(b) Requires that any beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicium.

SUBCHAPTER C. COLLECTION OF DEPOSIT

Sec. 376.101. COLLECTION OF DEPOSIT BY DISTRIBUTOR AND RETAIL DEALER. (a) Requires a distributor to collect a deposit of 5 or 10 cents, as established by Section 376.051, from a retail dealer for each beverage container that the distributor sells to the retail dealer.

(b) Requires a retail dealer to collect a deposit of 5 or 10 cents, as established by Section 376.051, from a consumer for each beverage container that the retail dealer sells to the consumer.

(c) Requires a retail dealer who sells one or more beverage containers to a consumer to list the beverage container deposit paid as separate line item on a receipt given to the consumer. Prohibits the deposit from being included in any sales tax calculation.

Sec. 376.102. REMITTANCE OF DEPOSITS BY DISTRIBUTOR. Requires a distributor, not later than the fifth day of each month, to remit to the consortium the deposits collected by the distributor under Section 376.101 during the preceding month.

Sec. 376.103. MONTHLY REPORT. (a) Requires a distributor who collects a deposit under Section 376.101, not later than the fifth day of each month, to report to the consortium, on a form approved by the consortium:

- (1) the total amount of deposits collected during the preceding month; and
- (2) the number of beverage containers sold during the preceding month separated by deposit amount and material of container.

(b) Authorizes the consortium to require a distributor to include in the report required by Subsection (a) other information the consortium considers necessary.

(c) Provides that the information contained in the report required by this section is confidential and is prohibited from being disclosed by the consortium or an officer or employee of the consortium.

Sec. 376.104. INCENTIVE PROGRAM ACCOUNT. (a) Requires that deposits collected under this chapter be deposited to the credit of an account maintained by the consortium. Authorizes money in the account to be allocated only for:

- (1) reimbursements and handling fees paid to redemption centers or curbside recycling programs, as applicable;
- (2) administration of this chapter;
- (3) providing information and educating consumers about the incentive program;
- (4) the purposes authorized under Subsections (b) and (c); and
- (5) implementation of the state's water infrastructure plan.

(b) Requires that at the end of each state fiscal biennium, two percent of the money in the account that is unencumbered be redistributed to beverage distributors in proportion to the amount that each distributor contributed to the account.

(c) Requires the consortium, on the last day of each fiscal biennium, to send to the comptroller a fee in the amount of two and one-half percent of the unencumbered balance of the account for deposit in the state treasury to the credit of TCEQ. Authorizes money deposited under this subsection to be appropriated only for the purposes of Section 361.014(b). Requires that the money be allocated as provided by that subsection and requires that each planning region include in the biennial report issued under that subsection information detailing how the money is spent. Provides that this subsection expires when the state recycling rate reaches 65 percent, as determined by the comptroller based on information available from the consortium and local governments and regional planning commissions that receive money allocated as provided by Section 361.014(b).

SUBCHAPTER D. REDEMPTION CENTERS

Sec. 376.151. ESTABLISHMENT OF REDEMPTION CENTER AGREEMENTS. (a) Authorizes a retail dealer, local government, or independent entity, to facilitate the return

of empty beverage containers, to establish, own, and operate a redemption center at which empty containers are authorized to be returned for their refund value.

(b) Requires the retail dealer, local government, or independent entity to file an application for approval of a redemption center with the consortium. Requires that the application provide:

- (1) the name, mailing address, telephone number, e-mail address, and title of the person responsible for the establishment and operation of the redemption center;
- (2) the physical address of the redemption center;
- (3) the applicant's federal tax identification number, if applicable; and
- (4) any additional information the consortium requires as necessary or convenient for the implementation of this section.

(c) Requires the consortium to approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers.

(d) Authorizes the consortium at any time to review its approval of a redemption center. Authorizes the consortium, after written notice to the person responsible for the establishment and operation of the redemption center and to each retail dealer located within a two-mile radius of the redemption center, to, after providing the owner or operator an opportunity for a hearing to verify facts and resolve the matter at issue, withdraw approval of a redemption center if the consortium finds the redemption center has violated any terms of the approval of the redemption center.

(e) Requires the consortium and applicant to establish the required hours of operation for a redemption center in the approval under Subsection (c).

(f) Prohibits the consortium from limiting the number of redemption centers within a geographic area.

SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION

Sec. 376.201. USED BEVERAGE CONTAINER REDEMPTION. Requires a redemption center, except as provided by Sections 376.202 and 376.203, to accept a used beverage container that has a refund value as established by Section 376.051 and to pay the refund value of the container in cash to the person presenting the container if the container is stamped, labeled, or embossed with the refund value and the name "Texas" or the abbreviation "TX."

Sec. 376.202. REFUSAL PERMITTED. Authorizes a redemption center to refuse to accept for refund:

- (1) a glass bottle that is broken to the extent that it would present a safety hazard when handled; or
- (2) a used beverage container that contains part of its original contents or other foreign matter to the extent that it could present health or sanitation problems.

Sec. 376.203. REDEMPTION BY WEIGHT. (a) Requires the consortium to establish:

- (1) a procedure for providing a reimbursement based on the weight of the beverage containers presented to be used in circumstances in which the number of containers is so large that counting the containers individually

would be burdensome on a redemption center or curbside recycling program;

(2) a per pound redemption value for containers composed of each material covered by this chapter that are redeemed in the manner described by Subdivision (1);

(3) a per pound redemption value for unsorted containers composed of any material covered by this chapter that are collected as part of a single-stream recycling program and redeemed in the manner described by Subdivision (1);

(4) a per pound handling fee to be paid to redemption centers for containers redeemed in the manner described by Subdivision (1); and

(5) procedures for regulating the accuracy of scales used to weigh containers under this section.

(b) Authorizes the consortium to adjust the per pound rates described by Subsection (a) not more than every six months.

Sec. 376.204. RECYCLING OF BEVERAGE CONTAINERS BY REDEMPTION CENTER AND CURBSIDE RECYCLING PROGRAM. Requires a redemption center or curbside recycling program to recycle the returned used beverage containers by:

(1) selling the material generated by the crushed or shredded used beverage containers to a processor or other end user; or

(2) another method prescribed by the consortium.

Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS BY CONSORTIUM; HANDLING FEE. (a) Requires the consortium, on submission of a completed invoice of refunds paid by a redemption center on a form adopted by the consortium, to pay to the redemption center an amount equal to the redemption value established by Section 376.051 or 376.203, as applicable, plus a handling fee of:

(1) one and one-half cents for each beverage container redeemed by the redemption center under Section 376.201; or

(2) the per pound amount determined under Section 376.203 for beverage containers redeemed in the manner described by that section.

(b) Requires the consortium to reimburse a redemption center under Subsection (a) not later than the fifth working day after the date the consortium receives the invoice submitted by the redemption center.

(c) Authorizes the consortium to adjust a handling fee to account for changes in market conditions. Authorizes the consortium to periodically conduct research to determine if an adjustment is necessary.

Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM BY CONSORTIUM. (a) Requires the consortium, on submission of a completed report, on a form adopted by the consortium, indicating the number or weight, as applicable, of beverage containers collected by a curbside recycling program that are covered under this chapter, to pay to the curbside recycling program an amount equal to the redemption value established by Section 376.203.

(b) Requires the consortium to reimburse a curbside recycling program under Subsection (a) not later than the fifth working day after the date the consortium receives the invoice submitted by the curbside recycling program.

Sec. 376.207. REPORTING REQUIREMENTS. Requires each redemption center and curbside recycling program to submit a report with the submission of the completed invoice required under Sections 376.205 and 376.206, respectively, to the consortium, on a form approved by the consortium, that provides:

- (1) the redemption value of beverage containers collected by the redemption center or curbside recycling program;
- (2) the number or weight of beverage containers collected by the center or curbside recycling program; and
- (3) an invoice or other documentation that provides proof that the collected recycled material was recycled in a manner described under Section 376.204.

Sec. 376.208. NOTICE. Requires the consortium to provide to each redemption center and curbside recycling program, as applicable, written notice at least 30 days before implementation of a change in per pound rates under Section 376.204 or handling fees under Section 376.205.

SECTION 2. Amends Section 151.007(c), Tax Code, to provide that "sales price" or "receipts," if separately identified to the customer by such means as an invoice, billing, sales slip or ticket, or contract, does not include certain discounts, refunds, and other amounts including a beverage container redemption deposit under Chapter 376, Health and Safety Code.

SECTION 3. (a) Requires the comptroller, after consultation with the Texas Beverage Container Recycling Consortium, to adopt any rules necessary to implement Chapter 376, Health and Safety Code, as added by this Act.

(b) Provides that the requirements of and penalties imposed by Chapter 376, Health and Safety Code, as added by this Act, do not apply to any person before January 1, 2015.

SECTION 4. Effective date: September 1, 2013.