

CHAPTER 899

S.B. No. 1051

AN ACT

relating to the reduction of solid waste by creating markets for recycled materials and otherwise promoting recycling and the use of recycled materials and by municipal solid waste management.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. RECYCLING

SECTION 1.01. Chapter 481, Government Code, is amended by adding Subchapter AA to read as follows:

SUBCHAPTER AA. RECYCLING MARKET DEVELOPMENT

Sec. 481.371. PURPOSE. The purpose of this subchapter is to develop and diversify the economy of this state and develop and expand commerce in this state through sustaining and promoting recycling enterprises.

Sec. 481.372. DEFINITIONS. In this subchapter, "enterprise zone" and "governing body" have the meanings assigned by the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

Sec. 481.373. DESIGNATION AS RECYCLING MARKET DEVELOPMENT ZONE. On application by the governing body of an enterprise zone, the department may designate

the enterprise zone as a recycling market development zone for the development of local business and industry in the zone to recycle materials that have served their intended use or that are scrapped, discarded, used, surplus, or obsolete by collecting, separating, or processing the materials for use in the production of new products.

Sec. 481.374. RECYCLING MARKET DEVELOPMENT LOANS AND GRANTS. (a) The department may make a loan or grant to the governing body of an enterprise zone designated as a recycling market development zone to fund an activity that sustains or increases recycling efforts.

(b) A grant recipient under this section must match the amount of the state grant with an equal amount of money from another source.

(c) A grant under this section may not exceed \$30,000.

(d) The department may make loans or grants from appropriated funds or from any special fund.

Sec. 481.375. RULEMAKING. The department shall adopt necessary rules to implement and administer this subchapter in accordance with the purposes of this subchapter, including rules on:

- (1) criteria for designating a recycling market development zone;*
- (2) designation applications, loan applications, and grant applications;*
- (3) the minimum and maximum amount of a loan made under this subchapter;*
- (4) application fees; and*
- (5) operational guidelines for loan and grant disbursement.*

SECTION 1.02. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.33 to read as follows:

Sec. 3.33. STATE AGENCY EXPENDITURES FOR RECYCLED MATERIALS. A state agency shall expend a minimum of five percent of its consumable procurement budget in fiscal year 1994 and eight percent of its consumable procurement budget for each fiscal year thereafter for materials, supplies, and equipment that have recycled material content or are remanufactured or environmentally sensitive, as those terms are defined by the commission. A report of the total expenditures in these areas and the amount expended in each category for the previous fiscal year shall be delivered to the governor, the Legislative Budget Board, the lieutenant governor, and the speaker of the house of representatives not later than January 1 of each year.

SECTION 1.03. Article 11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 11.07 to read as follows:

Sec. 11.07. INTERSTATE COMPACTS AND COOPERATIVE AGREEMENTS FOR PROCUREMENT OF RECYCLED PRODUCTS. The commission shall enter into compact and cooperative agreements with other states and government entities for the procurement of products made of recycled materials.

SECTION 1.04. Section 382.002, Local Government Code, is amended to read as follows:

Sec. 382.002. PURPOSE. The primary purpose of this chapter is to create county research and development authorities to promote scientific research and development and commercialization of research in affiliation with public and private institutions of research, higher education, or health science centers. *Research to be promoted, developed, and commercialized includes research in recycling processes and recyclable materials.*

SECTION 1.05. Subsection (a), Section 481.078, Government Code, is amended to read as follows:

(a) The department may develop and plan programs for the purpose of promoting and encouraging the location and expansion of major industrial, [and] manufacturing, and recycling enterprises within this state and may coordinate, with the consent of local governments, the activities of the local governments related to the programs, including financing options available under existing law and this section for that purpose.

SECTION 1.06. Subdivision (10), Section 2, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(10) "Project" shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of development and expansion of manufacturing and industrial facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, *recycling facilities*, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, and facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the department, irrespective of whether in existence or required to be identified, acquired, or constructed thereafter. As used in this Act, the term "development areas" shall mean any area or areas of a city that the city finds and determines, after a public hearing, should be developed in order to meet the development objectives of the city. In addition, in blighted or economically depressed areas, development areas or federally assisted new communities located within a home-rule city or a federally designated economically depressed county of less than 50,000 persons according to the last federal decennial census, a project may include the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of commercial development and expansion and in furtherance of the public purposes of this Act, or for use by commercial enterprises, all as defined in the rules of the department, irrespective of whether in existence or required to be acquired or constructed thereafter. As used in this Act, the term blighted or economically depressed areas shall mean those areas and areas immediately adjacent thereto within a city which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, or which suffer from a high relative rate of unemployment, or which have been designated and included in a tax incremental district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes), or any combination of the foregoing, the city finds and determines, after a hearing, substantially impair or arrest the sound growth of the city, or constitute an economic or social liability and are a menace to the public health, safety, or welfare in their present condition and use. The department shall adopt guidelines that describe the kinds of areas that may be considered to be blighted or economically depressed. The city shall consider these guidelines in making its findings and determinations. Notice of the hearing at which the city considers establishment of a development area or an economically depressed or blighted area shall be posted at the city hall before the hearing.

"Federally assisted new communities" shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.

SECTION 1.07. Subdivision (2), Subsection (a), Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) "Project" means land, buildings, equipment, facilities, and improvements included in the definition of that term under Section 2 of this Act, *including recycling facilities*, and land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, learning centers, parks and park facilities, open space improvements, municipal buildings, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items.

SECTION 1.08. Section 361.013, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a) Except as provided by Subsection (e), the department shall charge a fee on solid waste that is disposed of within this state. The fee is \$1.25 [~~the greater of 50 cents~~] per ton *received for disposal at a landfill if the solid waste is measured by weight. If the solid waste is measured by volume, the fee [~~is~~]* for compacted solid waste is 40[~~50~~] cents per cubic yard

or, for uncompacted solid waste, 25 [40] cents per cubic yard received for disposal at a landfill. The department shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The department may charge comparable fees for other means of solid waste disposal that are used.

(f) *The department may not charge a fee under Subsection (a) for source separated yard waste materials that are composted at a composting facility, including a composting facility located at a permitted landfill site. The department shall credit any fee payment due under Subsection (a) for any material received and converted to compost or product for composting through a composting process. Any compost or product for composting that is not used as compost and is deposited in a landfill is not exempt from the fee.*

(g) *The department shall allow a home-rule municipality that has enacted an ordinance imposing a local environmental protection fee for disposal services as of January 1, 1993, to offer disposal or environmental programs or services to persons within its jurisdiction, from the revenues generated by said fee, as such services are required by state or federal mandates. If such services or programs are offered, the home-rule municipality may require their use by those persons within its jurisdiction.*

SECTION 1.09. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0135 to read as follows:

Sec. 361.0135. **COMPOSTING REFUND.** (a) *The operator of a public or privately owned municipal solid waste facility is entitled to a refund of 15 percent of the solid waste fees collected by the facility under Section 361.013(a) if:*

- (1) *the refunds are used to lease or purchase and operate equipment necessary to compost yard waste;*
- (2) *composting operations are actually performed; and*
- (3) *the finished compost material produced by the facility is returned to beneficial reuse.*

(b) *The amount of the refund authorized by this section increases to 20 percent of the solid waste fees collected by the facility if, in addition to composting the yard waste, the operator of the facility voluntarily bans the disposal of yard waste at the facility.*

(c) *In order to receive a refund authorized by this section, the operator of the facility must submit a composting plan to the commission. The commission by rule may set a fee for reviewing a composting plan in an amount not to exceed the costs of review.*

(d) *The operator is entitled to a refund of fees collected by the facility under Section 361.013(a) on or after the date on which the commission approves the composting plan. The refund is collectable beginning on the date that the first composting operations occur in accordance with the approved plan. The commission may allow the refund to be applied as a credit against fees required to be collected by the facility under Section 361.013(a).*

(e) *In this section, the terms "compost," "composting," and "yard waste" have the meanings assigned by Section 361.421.*

(f) *This section expires September 1, 1999, if the commission on or before that date determines that a market in composting materials has developed sufficiently to ensure that composting activities will continue without the incentives provided by this section.*

SECTION 1.10. Section 361.014, Health and Safety Code, is amended to read as follows:

Sec. 361.014. **USE OF SOLID WASTE FEE REVENUE.** Revenue received by the commission [department] under Section 361.013 shall be deposited in the state treasury to the credit of the commission [department]. At least half the revenue is dedicated to the commission's [department's] municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

- (1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund

established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) *conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;*

(3) provision of technical assistance to local governments concerning solid waste management;

(4) ~~[(3)]~~ establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(5) ~~[(4)]~~ provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(6) ~~[(5)]~~ conduct of a statewide public awareness program concerning solid waste management;

(7) ~~[(6)]~~ provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) ~~[(7)]~~ conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) ~~[(8)]~~ creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; ~~[and]~~

(10) *provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling on local governments;*

(11) *provision of funds for the conduct of research by a public or private entity to assist the state in developing new technologies and methods to reduce the amount of municipal waste disposed of in landfills; and*

(12) ~~[(9)]~~ provision of funds for other programs that the *commission* ~~[board of health]~~ may consider appropriate to further the purposes of this chapter.

SECTION 1.11. Subdivision (5), Section 361.421, Health and Safety Code, is amended to read as follows:

(5) "Recyclable material" means material that has been recovered or diverted from the non-hazardous 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. 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.

SECTION 1.12. Section 361.423, Health and Safety Code, is amended to read as follows:

Sec. 361.423. *RECYCLING MARKET DEVELOPMENT BOARD* ~~[STUDY]~~ AND IMPLEMENTATION PROGRAM. (a) ~~The commissioner of the General Land Office~~, ~~in cooperation with the department~~, ~~the chairman of the Texas Water Commission, the executive director of the General Services~~ ~~[Railroad]~~ Commission ~~[of Texas]~~, and ~~the executive director of the Texas Department of Commerce~~, shall constitute the *Recycling Market Development Board*. *The commissioner of the General Land Office serves as presiding officer of the Recycling Market Development Board for the first year, and after that year the members of the Recycling Market Development Board shall, in the order listed in this subsection, rotate as the presiding officer for terms of one year. The Recycling Market Development Board may designate chief executives of additional agencies as members of the*

board if it identifies the agencies as agencies needed to assist the board in performing its duties as outlined in Subsection (b). The Recycling Market Development Board shall provide support to and coordinate the recycling activities of member agencies and shall pursue ~~initiate, coordinate, and conduct a comprehensive market development study that quantifies the potential benefits and costs of recycling in order to provide the groundwork for~~ an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The *Recycling Market Development Board*, on an ongoing basis, [study] shall:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies; [and]

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;

(5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and

(6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section [preparing the study], the responsible agencies may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) The General Land Office shall provide ongoing research and assistance to the Recycling Market Development Board in carrying out its responsibilities ~~develop and carry out a program designed to implement the comprehensive statewide strategy established pursuant to Subsection (b)(4)].~~

SECTION 1.13. Section 361.428, Health and Safety Code, is amended to read as follows:

Sec. 361.428. COMPOSTING PROGRAM. (a) ~~[The Municipal Solid Waste Management and Resource Recovery Advisory Council of the department shall develop recommendations for the 73rd Legislature regarding the development of a state composting program. In developing these recommendations, the council shall, at a minimum, consider:~~

- ~~(1) the development of local yard waste separation programs;~~
- ~~(2) the commercial application of composting activities;~~
- ~~(3) the potential beneficial uses of compost; and~~
- ~~(4) the necessary changes to existing law and regulations required to facilitate conversion of yard waste to compost.~~

~~[(b)] The commission [department] shall put in place incentives for a composting program that is capable of achieving at least a 15 percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.~~

~~(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial reuse of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards and a definition of beneficial reuse. The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards. Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.~~

~~(c) A composting facility may not accept mixed municipal solid waste from a governmental unit for composting purposes at that facility unless residents have reasonable access to household hazardous waste collection and source-separated recycling programs in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section.~~

SECTION 1.14. Section 361.452, Health and Safety Code, is amended to read as follows:

Sec. 361.452. COLLECTION FOR RECYCLING. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this state shall:

(1) accept from ~~each customer [customers]~~, if offered, at least one but not more than three ~~[the point of transfer, used]~~ lead-acid batteries for recycling ~~[of the type and in a quantity at least equal to the number of new batteries purchased]~~; and

(2) post written notice, which must be at least 8½ inches by 11 inches in size, containing the universal recycling symbol and the following language:

(A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";

(B) "Recycle your used batteries."; and

(C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling ~~[in exchange for new batteries purchased]."~~

SECTION 1.15. Section 361.454, Health and Safety Code, is amended to read as follows:

Sec. 361.454. LEAD-ACID BATTERY WHOLESALERS. Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries for recycling ~~[of the type and in a quantity at least equal to the number of new batteries purchased]~~, if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

SECTION 1.16. Section 63.071, Agriculture Code, is amended by adding Subsection (h) to read as follows:

(h) A person is not required to pay an inspection fee on compost as defined by Section 361.421, Health and Safety Code.

SECTION 1.17. Section 481.295, Government Code, is amended by adding Subsection (c) to read as follows:

(c) *The department and the advisory board may make a loan or a loan guarantee to the governing body of an enterprise zone designated as a recycling market development zone under Subchapter AA to fund an activity that sustains or increases recycling efforts.*

SECTION 1.18. The Texas Natural Resource Conservation Commission shall adopt the rules required by Subsection (b), Section 361.428, Health and Safety Code, as added by this article, not later than six months after the effective date of this Act.

ARTICLE 2. MUNICIPAL SOLID WASTE MANAGEMENT

SECTION 2.01. The legislature finds that:

(1) the reduction of municipal solid waste by encouraging affordable alternatives to disposal is an important strategy in state-local waste management policy;

(2) improving all the municipal solid waste management techniques is necessary to achieve the goal of reducing the municipal solid waste stream;

(3) waste reduction efforts should focus on waste stream components that are highest in volume;

(4) a municipal solid waste infrastructure that encourages the reduction of waste through environmentally and economically sound waste management incentives and the use of source reduction, reuse, recycling, composting, and resource recovery processes should be developed;

(5) flexible and effective means of implementing and enforcing municipal solid waste laws should be provided;

(6) incentives for businesses to use recycled materials should be created; and

(7) the actual cost of municipal solid waste disposal should be imposed by municipalities on those that place municipal solid waste in the solid waste stream in order to pay for infrastructure development and to encourage waste reduction from landfills.

SECTION 2.02. Subsections (a), (b), (d), (e), and (f), Section 361.020, Health and Safety Code, are amended to read as follows:

(a) *The commission [department] shall develop a strategic state solid waste plan for all solid waste under its jurisdiction. The commission shall develop a strategic [state solid waste] plan for the reduction of solid waste [under its jurisdiction. The state agencies shall coordinate the solid waste plans developed].*

(b) *A strategic plan shall, ~~for the kinds of waste under the jurisdiction of the agency preparing the plan,~~ identify both short-term and long-term waste management problems, set short-term objectives as steps toward meeting long-term goals, and recommend specific actions to be taken within stated [state] times designed to address the identified problems and to achieve the stated objectives and goals. A plan shall reflect the state's preferred waste management methods as stated in Section 361.022 or 361.023 [for the kinds of waste under the jurisdiction of the agency preparing the plan]. A strategic plan shall describe the total estimated generation of solid waste in the state over a five-year and a 10-year period and shall list existing and proposed solid waste management facilities to manage that waste.*

(d) *The commission in developing a comprehensive statewide [Each agency in preparing its] strategic plan shall:*

(1) consult with:

(A) ~~[(1)]~~ the agency's waste minimization, recycling, or reduction division;

(B) *the municipal solid waste management and resource recovery advisory council;*

(C) ~~[(2)]~~ the waste reduction advisory committee; ~~[and]~~

(D) ~~[(3)]~~ the interagency coordinating council; *and*

(E) *local governments, appropriate regional and state agencies, businesses, citizen groups, and private waste management firms;*

(2) *hold public hearings in different regions of the state; and*

(3) *publish the proposed plan in the Texas Register.*

(e) *A strategic plan shall be updated every two years. The commission [Each agency] continually shall collect and analyze data for use in its next updated plan and systematically*

shall monitor progress toward achieving existing plan objectives and goals. In preparing its updated plan, an agency shall examine previously and newly identified waste management problems, reevaluate its plan objectives and goals, and review and update its planning documents.

(f) Before the ~~[department or the]~~ commission adopts its strategic plan or makes significant amendments to the plan, the Texas Air Control Board must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency.

SECTION 2.03. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0201 to read as follows:

Sec. 361.0201. COMPREHENSIVE MUNICIPAL SOLID WASTE MANAGEMENT STRATEGIC PLAN. (a) The comprehensive municipal solid waste management strategic plan developed under Section 361.020 shall identify the components of the municipal solid waste stream that are highest in volume and shall set priorities according to those findings.

(b) The plan shall:

(1) describe the capacity in the state to manage municipal waste through existing treatment or disposal facilities and identify all existing municipal solid waste management facilities in the state, their capacity, and their projected remaining useful life; and

(2) analyze the state's capacity requirements over the planning periods specified in Section 361.020(c).

(c) The analysis of capacity requirements under Subsection (b) shall:

(1) examine the type and amount of each municipal solid waste stream that can reasonably be expected to be generated in the state or accepted from other states, using information on existing and past levels of waste and representative receipts from other states, and shall include information on the sources, characteristics, and current patterns of waste management of those waste streams; and

(2) estimate the amount of the total municipal solid waste identified under this subsection that is reasonably expected to be:

(A) recycled annually, according to previous rates and projected increases from those rates;

(B) transported annually to another state or imported into this state for treatment or other disposition according to previous rates and projected increases from those rates; and

(C) disposed of or incinerated annually within the state.

(d) The plan shall set a goal for overall reduction in the amount of municipal solid waste consistent with Section 361.422 using 1991 as the base year for computing the reduction. The commission may adjust this goal if it determines that it is not necessary given the state's disposal capacity, is not economically or technologically feasible, or is not feasible given the state's projected population growth.

(e) The plan shall ensure that source reduction, reuse, recycling, composting, and resource recovery are all addressed.

(f) The plan shall include a program of public education developed under Section 361.0202.

(g) The plan may not allow the commission to require a local government to perform any act not specifically required by state law or commission rule.

SECTION 2.04. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0202 to read as follows:

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:

(1) a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and

(2) a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.

(b) As part of the program, the commission may:

(1) advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and

(2) sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.

SECTION 2.05. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0219 to read as follows:

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) The office of waste exchange is an office of the commission.

(b) The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials, and may act as broker for exchanges of the materials if private brokers are not available.

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange and shall report to the legislature on the plan and on the state's participation in any regional or national waste exchange program. Annually the office of waste exchange shall report to the legislature on progress in implementing this section, including information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state.

SECTION 2.06. Section 361.024, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) Rules shall be adopted as provided by the Administrative Procedure and Texas Register Act (Article 6252-19a, Vernon's Texas Civil Statutes). As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

SECTION 2.07. Subsection (a), Section 361.034, Health and Safety Code, is amended to read as follows:

(a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed industrial solid waste and hazardous waste fees authorized under Subchapter D and related activities to determine the appropriateness of the fee structures;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023;

(3) projections of the volume of waste by type of waste, disposition of waste, and remaining capacity or capacity used for the treatment and disposal of the waste; [and]

(4) projections of the availability of adequate capacity in this state for the management of all types of hazardous waste generated within the state and a report of the amounts, types, and sources of hazardous waste imported into and exported from the state in the previous year;

(5) an evaluation of the progress made and activities engaged in consistent with the state's municipal solid waste management plan, in particular the progress toward meeting the waste reduction goal established by Section 361.0201(d);

(6) an evaluation of the progress made by local governments under the solid waste management plans;

(7) the status of state procurement under Section 361.426 of products made of recycled materials or that are reusable, including documentation of any decision not to purchase those products;

(8) the status of the governmental entity recycling program established under Section 361.425, including the status of collection and storage procedures and program evaluations required by that section;

(9) the status of the public education program described in Section 361.0202; and

(10) recommendations to the governor and to the legislature for improving the management of municipal solid waste in the state.

SECTION 2.08. Section 361.111, Health and Safety Code, is amended to read as follows:

Sec. 361.111. **COMMISSION SHALL [DEPARTMENT MAY] EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES.** (a) The commission shall [~~department may~~] exempt from permit requirements a municipal solid waste management facility that[;

[~~(1)~~] is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality [~~service area~~] with a population of less than 50,000;

(2) a county with a population of less than 85,000;

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted Type I landfill not farther than 50 miles from the materials recovery facility.

(b) The facility shall comply [~~5,000 to a solid waste processing or disposal site; and~~

[~~(2) complies~~] with design and operational requirements established by commission [~~board of health~~] rule that are necessary to protect the public's health and the environment.

(c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.

SECTION 2.09. Section 363.062, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each planning region shall report to the department on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The department may not require a planning region to submit to the department information previously submitted to the department by the planning region in an earlier plan or report.

(e) If the department determines that a regional solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the planning region of each aspect of the plan that must be changed to conform to board requirements. After the changes have been made in the plan as provided by the department, the department shall submit the plan to the board for approval.

(f) [~~(e)~~] The board by rule shall adopt an approved regional solid waste management plan.

SECTION 2.10. Section 363.063, Health and Safety Code, is amended by adding a new Subsection (d) and relettering existing Subsections (d) and (e) to read as follows:

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each local government shall report to the department on the progress of its municipal solid waste management program and recycling activities implemented under this section. The department may not require a local government to submit

to the planning region or to the department information previously submitted to the planning region or department by the local government in an earlier plan or report.

(e) If the department determines that a local solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the local government of each aspect of the plan that must be changed to conform to board requirements. After changes are made in the plan as requested by the department, the department shall submit the plan to the board for approval.

(f) [(e)] The board by rule shall adopt an approved local solid waste management plan.

SECTION 2.11. Section 363.064, Health and Safety Code, is amended to read as follows:

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments *and private industry* in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; [and]

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;[.]

(8) [(7)] establish recycling rate goals appropriate to the area covered by the plan; [and]

(9) [(8)] recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) *assess the need for new waste disposal capacity;*

(11) *include a public education program; and*

(12) *include waste reduction in accordance with the goal established under Section 361.0201(d), to the extent that funds are available.*

SECTION 2.12. The office of waste exchange created by Section 361.0219, Health and Safety Code, as added by this article, shall adopt the plan required by that section not later than September 1, 1994.

SECTION 2.13. The change in law made by Section 361.024, Health and Safety Code, as amended by this article, applies to rules in effect on or adopted on or after the effective date of this Act.

ARTICLE 3. TIRE RECYCLING

SECTION 3.01. Sections 361.471 and 361.472, Health and Safety Code, are amended to read as follows:

Sec. 361.471. DEFINITIONS. In this subchapter:

(1) "Fund" means the waste tire recycling fund.

(2) "Green tire" means the casing form of a tire that has not been cured or does not have a tread or marking of any kind.

(3) "Manufacturer reject tire" means a tire rendered defective in the manufacturing process, whether the tire is determined to be defective before or after consumer purchase.

(4) "Mobile tire shredder" means equipment mounted on wheels or skid-mounted and hauled from place to place to split, shred, or quarter used or scrap tires.

(5) ~~[(3)]~~ "Scrap tire" has the meaning assigned by Section 361.112.

(6) ~~[(4)]~~ "Waste tire facility" means a facility registered ~~[permitted]~~ by the commission ~~[department]~~ under Section 361.477 ~~[361.112]~~ at which scrap tires are collected ~~[or deposited]~~ and shredded to facilitate the future extraction of useful materials for recycling, reuse, or energy recovery and are stored in a waste tire storage facility or a facility that recycles, reuses, or recovers the energy from the shredded tire pieces.

(7) ~~[(5)]~~ "Waste tire processor" means:

(A) a waste tire facility; or

(B) a mobile tire shredder that splits, shreds, or quarters tires and deposits the split, shredded, or quartered tires for eventual recycling, reuse, or energy recovery at:

(i) a waste tire storage facility registered by the commission ~~[department]~~ under Section 361.112; or

(ii) a waste tire facility.

(8) "Waste tire storage facility" means a facility registered by the commission under Section 361.477 at which whole used or scrap tires or shredded tire pieces are collected and stored to facilitate the future extraction of useful material for recycling, reuse, or recovery. The term does not include a marine dock, rail yard, or trucking facility used to store tires that are awaiting shipment to a person for recycling, reuse, or energy recovery for 30 days or less.

(9) ~~[(6)]~~ "Waste tire transporter" means a person who collects and transports used or scrap tires or scrap tire pieces for storage or disposal.

(10) ~~[(7)]~~ "Weighed tire" means a unit of weight for shredded scrap tires that is equal to 18.7 pounds.

Sec. 361.472. WASTE TIRE RECYCLING FEES. (a) A wholesale or retail tire dealer who sells or offers to sell new tires not for resale shall collect at the time and place of sale a waste tire recycling fee ~~[of \$2]~~ for each new ~~[automobile, van, bus, truck, trailer, semitrailer, truck tractor and semitrailer combination, or recreational vehicle]~~ tire sold as follows:

(1) \$2 for each tire that has a rim diameter of ~~[equal to or greater than]~~ 12 inches but less than 17.5 ~~[26]~~ inches;

(2) \$3.50 for each tire that has a rim diameter of 17.5 inches but less than 25 inches; and

(3) \$2 for a motorcycle tire, regardless of the rim diameter.

(b) The sale of a tire as original equipment in the manufacture of a new vehicle is a sale for resale.

(c) A fee may not be assessed for a bicycle tire.

~~(d) [A dealer required to collect a fee under this section may retain 2 1/2 cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.]~~

~~[(e)]~~ A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (e) ~~[(d)]~~, on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(e) ~~[(d)]~~ A person required to collect a fee under this section who collects less than \$50 for a calendar month or less than \$150 for a calendar quarter is not required to file a monthly

report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day of the month following the end of the calendar quarter.

(f) [(e)] An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be open for inspection by the comptroller at all reasonable times.

(g) [(f)] The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(h) *A waste tire recycling fee is imposed on the storage, use, or consumption in this state of a new tire at the same rate as provided by Subsection (a), except when purchased for the purpose of resale.*

(i) *A person storing, using, or consuming a new tire in this state is liable for the waste tire recycling fee as defined in this section and is responsible for reporting and paying the fee to the comptroller in the same manner as a person required to collect this fee, as provided in Subsections (d)(2) and (e).*

(j) *A person storing, using, or consuming a new tire in this state is not further liable for the waste tire recycling fee imposed by Subsection (a) if the person pays the fee to a wholesaler or retailer engaged in business in this state or another person authorized by the comptroller to collect the fee and receives from the wholesaler, retailer, or other person a purchaser's receipt.*

SECTION 3.02. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Section 361.4725 to read as follows:

Sec. 361.4725. REGISTRATION; FEE. A person who applies to the commission to register a waste tire storage facility or a fixed or mobile tire processor, or to renew or amend the registration, must pay a fee of \$500.

SECTION 3.03. Sections 361.475, 361.476, and 361.477, Health and Safety Code, are amended to read as follows:

Sec. 361.475. WASTE TIRE RECYCLING FUND. (a) The waste tire recycling fund is a special account in the general revenue fund.

(b) The *commission* [department] shall administer the fund.

(c) The fund consists of fees and penalties collected under this subchapter, interest on money in the fund, and money from gifts, grants, or any other source intended to be used for the purposes of this subchapter.

(d) The fund may be used only to pay:

(1) waste tire processors that meet the requirements for payment under Section 361.477 and rules adopted under that section;

(2) the *commission's* [department's] reasonable and necessary administrative costs of performing its duties under this subchapter in an amount not to exceed six percent of the money annually accruing to the fund; and

(3) the comptroller's reasonable and necessary administrative costs of performing the comptroller's duties under this subchapter in an amount not to exceed two percent of the money annually accruing to the fund.

(e) *Registration fees received under Section 361.4725 shall be allocated to the commission for its reasonable and necessary costs associated with reviewing applications for registration of and with registering fixed and mobile tire processing facilities and storage sites.*

(f) *The fund may not be used to reimburse shredding of:*

(1) *innertubes;*

(2) *scrap rubber products;*

(3) *green tires;*

(4) *industrial solid waste, excluding waste tires;*

(5) oversized tires, as defined by commission rule, unless the oversized tires are collected from a priority enforcement list site; or

(6) manufacturer reject tires.

(g) The commission may classify special authorization tires, as defined by commission rule, as priority enforcement list tires.

(h) The fund shall maintain a balance of not less than \$500,000.

(i) If the commission has reason to believe that the fund balance will fall below \$500,000, the commission may:

(1) suspend the requirement to reimburse priority enforcement list tires shredded in excess of the minimum percentage identified in Section 361.477(c)(3)(C); or

(2) limit the number of waste tires for which a processor will be reimbursed.

(j) The revenues obtained from the waste tire recycling fees shall be deposited to the credit of the waste tire recycling fund and may be used only to pay for those activities and costs identified in Subsection (d) or (e).

Sec. 361.476. PRIORITY ENFORCEMENT LIST. The commission [department] shall identify scrap [unauthorized] tire sites [dumps] that present an existing or potential threat to public health and safety or to the environment and shall prepare an enforcement list of those sites [dumps], giving priority to sites [dumps] for which the commission cannot locate a person who:

(1) is the property owner of record, the site operator, or the depositor of the scrap tires on the site;

(2) has benefitted financially from the disposition of the scrap tires on the site; and

(3) is financially capable of paying all or part of the total or partial cleanup of the site, considering the costs of the cleanup as the commission determines [a responsible party cannot be located].

Sec. 361.477. PAYMENTS TO WASTE TIRE PROCESSORS. (a) The commission [department] each month shall pay a waste tire processor that shreds scrap tires and meets the requirements of this section and rules adopted under this section an amount equal to 85 cents for each weighed tire shredded by the processor during the preceding calendar month.

(b) If the total number of used or scrap tires or tire pieces contained in illegal scrap tire sites that are identified on the priority enforcement list is below 500,000 tires, the commission may pay more than 85 cents for each weighed tire to processors with whom the commission has contracted to remove and shred scrap tires and scrap tire pieces from priority enforcement list sites. The 500,000 tire limit does not include those tires contained in sites under commission enforcement or attorney general action or that require corrective action or remedial action in response to a release or threat of release of hazardous substances. In acting under this subsection, the commission may contract with processors on a regional or site-specific basis. The contracts shall be procured through a competitive bid process conducted in accordance with the provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) applicable to contracts for services. The commission may elect not to enter into contracts under this subsection. The contracts may be only for the removal and shredding of tires from priority enforcement list sites.

(c) A waste tire processor that desires to receive payment under this section for tires shredded by the processor during a calendar month must:

(1) apply to the commission for registration [department] in accordance with forms prescribed by the commission [department];

(2) apply to the commission for payment on forms prescribed by the commission or, on a voluntary basis, apply by a removable storage medium stored in an industry standard file format acceptable to the commission;

(3) demonstrate as required by rules adopted under this section that:

(A) all tires for which payment is sought have been shredded to a particle size not larger than nine square inches; [and]

(B) not less than 25 percent of those tires were collected from generators; and

(C) if the total number of used or scrap tires or tire pieces contained in illegal waste tire sites that are identified on the priority enforcement list exceeds 500,000 tires for more than 30 consecutive days, not less than 15 [25] percent and not more than 30 percent of those tires were collected from scrap tire sites [dumps] listed on the [department's] priority enforcement list;

(4) [(3)] provide any other information the commission [department] determines is needed to accomplish the purposes of this subchapter, including a monthly report of scrap tires or tire pieces shredded, subtotaled by tire count or weight, for each generator number and priority enforcement list number; [and]

(5) [(4)] demonstrate that energy recovery activities in the state are in compliance with applicable air emission control rules and standards as adopted by the Texas Air Control Board; and

(6) provide financial assurance deemed adequate by the commission that corresponds to:

(A) the payment appropriate for the number of scrap tires the processor anticipates shredding in the next calendar month; or

(B) the number of scrap tires the waste tire storage site owner or operator anticipates accepting for storage in the next calendar month.

(d) [(e)] A waste tire processor that in any month exceeds the [25-percent] minimum requirement of Subsection (c)(3)(C) [(4)(2)] shall receive a credit for the amount in excess of the requirement [25-percent] that may be used to meet the minimum requirement during a later month. The commission [board of health] by rule may prescribe the method of applying credits accrued under this subsection.

(e) [(d)] The commission [board of health] by rule shall adopt application and payment procedures and requirements to implement this section.

(f) Until the commission has determined that a waste tire processor is in compliance with all applicable requirements, the commission may not authorize 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.

(g) Notwithstanding Section 361.486, the commission may reimburse a processor for shredded scrap tires if the processor has a binding* agreement to deliver the shredded scrap tires to a person to recycle or reuse or to use for energy recovery within 180 days after the date of reimbursement.

(h) The commission may not pay a waste tire processor for processing scrap tires if the commission determines that the processor:

(1) has not provided adequate financial assurance;

(2) does not have adequate fire protection; or

(3) is causing an imminent danger to public health or welfare.

(i) The commission shall issue to an applicant all processing and storage registrations necessary to begin operations and obtain reimbursement from the fund if the applicant, on or before March 10, 1993:

(1) had an application pending for a new processing facility that was reviewed by the commission and found to be in general technical compliance;

(2) had an application pending for a new storage facility with a total capacity in excess of 7 million waste tire units; and

(3) had expended or committed in excess of \$1 million in total project costs.

(j) The commission shall adopt rules to manage payments from the fund to prevent depletion of the fund. Rules adopted under this subsection shall consider:

(1) appropriate payments to reflect the varying amounts of money available in the fund;

(2) a waste tire processor's monthly average number of tires for which the processor has been reimbursed historically;

(3) a waste tire processor's shredding and storage capacity; and

(4) the date the waste tire processor was registered.

(k) If a waste tire processor does not fully use its monthly allocation for reimbursement, the commission may assign the unused portion of the allocation to another waste tire processor who can demonstrate having underutilized shredding and storage capacity available for service to rural counties in this state.

(l) A person receiving payment from the fund may only receive more than 85 cents per waste tire unit under Subsection (b).

~~[(e) A permitted Type VIII tire monofill approved under board of health rules may qualify as a waste tire processor and is eligible to receive payment under this section if the Type VIII tire monofill complies with all the provisions of this subchapter and rules of the board of health.]~~

SECTION 3.04. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Sections 361.4771, 361.4772, and 361.4773 to read as follows:

Sec. 361.4771. *PAYMENT FOR SHREDDING OUTSIDE OF STATE.* Effective September 1, 1994, the commission may reimburse a registered waste tire processor for shredding tires generated in this state and shredded outside this state if the processor:

(1) meets all requirements that apply to a waste tire processor who shreds tires within this state;

(2) monthly reimburses the state for reasonable and necessary costs incurred by an agency of the state for such related to the out-of-state facility regulatory activities as are deemed necessary by such agency;

(3) voluntarily submits to the commission's enforcement authority as necessary to ensure compliance with this subchapter; and

(4) agrees to maintain evidence of financial responsibility under Section 361.479 in an amount equal to twice the amount that would be required of an in-state waste tire processor.

Sec. 361.4772. *PAYMENT FOR BALING TIRES.* Effective March 1, 1994, a registered waste tire processor who bales whole tires for energy recovery purposes is eligible for reimbursement at a rate of 25 cents for each tire if the processor meets the requirements of this subchapter that apply to a waste tire processor including provisions for financial assurance for such baled tires. The commission shall adopt rules to determine the amount of financial assurance required under this section to apply to baled tires or whole tires stored for baling. A processor seeking reimbursement under this section for baling tires may not, directly or indirectly, receive additional reimbursement from the fund for the shredding of such baled tires.

Sec. 361.4773. *PAYMENT FOR RECYCLING TIRES INTO PRODUCT.* The commission by rule may establish a program to reimburse from the fund a waste tire recycler no more than 25 cents for each weighed tire the waste tire recycler processes to make useful products.

SECTION 3.05. Sections 361.478 and 361.479, Health and Safety Code, are amended to read as follows:

Sec. 361.478. *EVALUATION OF RECYCLING AND ENERGY RECOVERY ACTIVITIES; CERTIFICATION FOR PAYMENT.* (a) Beginning January 1, 1996 ~~[June 1, 1995]~~, and every two ~~[five]~~ years after that date, the commission ~~[department]~~ shall evaluate according to standards adopted by commission ~~[board of health]~~ rule the recycling and energy recovery activities of each waste tire processor that received payment from the waste tire recycling fund ~~[under Section 361.477 during the preceding five years]~~.

(b) After evaluation, the commission ~~[department]~~ shall certify as eligible for payment under this subchapter ~~[Section 361.477]~~ during the next two ~~[five]~~ years a waste tire processor that has conducted or provided for recycling of or energy recovery from tires for which the processor received payment during the preceding period of operation ~~[five years]~~.

(c) A waste tire processor that receives payment under this subchapter ~~[Section 361.477]~~ during any two-year ~~[five-year]~~ period and that after evaluation is not certified by the commission ~~[department]~~ under Subsection (b) as eligible for payment under this subchapter

[Section 361.477] may not receive payment under *this subchapter* [~~that section~~] for the next ~~two~~ ~~[five]~~ years.

(d) The *commission* [~~board of health~~] by rule may establish a procedure by which a waste tire processor can reestablish eligibility for payment under *this subchapter* [Section 361.477].

Sec. 361.479. EVIDENCE OF FINANCIAL RESPONSIBILITY. (a) A waste tire storage facility registered by the *commission* [~~department~~] under Section 361.112 or a waste tire facility that accepts shredded *scrap* tires for storage or for processing for recycling, reuse, or energy recovery shall submit to the *commission* [~~department~~] evidence of financial responsibility in an amount adequate to assure proper cleanup *and* [~~or~~] closure of the facility.

(b) A facility subject to Subsection (a) shall submit to the *commission* [~~department~~] an estimate of the total amount of shredded *scrap* tires *and* *tire pieces* measured by weighed tire that the facility will store or process, *the maximum number of out-of-state tires the facility will store*, and the estimated cost, using that total amount, of cleaning up *and* [~~or~~] closing the facility.

(c) The *commission* [~~department~~] shall evaluate and may amend an estimate submitted under Subsection (b) and [~~by order~~] shall determine for each facility the amount for which evidence of financial responsibility is required.

(d) Evidence of financial responsibility may be in the form of:

(1) a performance bond *or* [,] a letter of credit *acceptable to the commission that is from a* [~~recognized~~] financial institution, a trust fund, or insurance for a privately owned facility; *or*

(2) *a self-insurance test designed by the commission* [, *or a resolution by the commissioners court or the city council, as appropriate,*] for a publicly owned facility. *A person who makes an initial request for reimbursement from the waste tire recycling fund on or after September 1, 1993, must provide evidence of financial responsibility for the full amount determined under Subsection (c).*

SECTION 3.06. Sections 361.482 and 361.483, Health and Safety Code, are amended to read as follows:

Sec. 361.482. PROHIBITION ON DISPOSAL OF SHREDDED TIRES IN LANDFILL. A waste tire processor may not dispose of shredded *scrap* tires in a landfill if the processor has received payment under Section 361.477 for *shredding* the tires.

Sec. 361.483. CIVIL PENALTY. (a) A person who violates *this subchapter or a rule adopted or order issued under this subchapter* [Section 361.481 *or* 361.482] is liable for a civil penalty of up to \$10,000 for each violation *and for each day of a continuing violation*.

(b) The attorney general or the prosecuting attorney in the county in which the alleged violation occurs may bring suit to recover the civil penalty imposed under Subsection (a).

(c) A penalty collected under this section shall be deposited to the credit of the waste tire recycling fund.

SECTION 3.07. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Sections 361.4831 and 361.4832 to read as follows:

Sec. 361.4831. INJUNCTION FOR CORRECTIVE ACTION. (a) *The attorney general or the prosecuting attorney in a county in which the violation occurs may bring suit for an injunction to compel a person who violates this subchapter or a rule adopted or order issued under this subchapter to take corrective action.*

(b) *The suit may be brought independently of or in conjunction with a suit under Section 382.483.*

Sec. 361.4832. ADMINISTRATIVE PENALTY AND ORDER FOR CORRECTIVE ACTION. *If a person violates this subchapter or a rule adopted or order issued under this subchapter the commission may:*

- (1) *assess against the person an administrative penalty under Section 361.252; or*
- (2) *order the person to take a corrective action.*

SECTION 3.08. Sections 361.484 and 361.485, Health and Safety Code, are amended to read as follows:

Sec. 361.484. RULES. The *commission* [~~board of health~~] may adopt rules reasonably necessary to implement this subchapter.

Sec. 361.485. REPORT. Not later than February 1 of each odd-numbered year, the *commission* [~~department~~] shall report to the governor and the legislature on the administration of the program established under this subchapter and its effectiveness in cleaning up existing *scrap tire sites* [~~dumps~~] and in preventing new *scrap tire sites* [~~dumps~~].

SECTION 3.09. Subchapter P, Chapter 361, Health and Safety Code, is amended by adding Sections 361.486 through 361.495 to read as follows:

Sec. 361.486. RECYCLING EFFORTS. (a) *On and after January 1, 1996, for all new, amended, and renewal processing registration applications, the processor must identify those persons who will accept the processor's shredded scrap tire pieces for recycling or reuse or to use the shredded scrap tires for energy recovery. The commission shall reimburse a processor for only those shredded tires that the commission determines are committed to a legitimate end user.*

(b) *The commission may disapprove of the use a person identified by the processor has for the tire pieces unless the person identified is authorized by the state to use tire-derived fuel for energy recovery.*

(c) *The commission by rule shall define recycling for purposes of this subchapter.*

(d) *On or before January 1, 1994, and on a semiannual basis thereafter, registered processors and storage site owners and operators shall report their recycling, reuse, and energy recovery activities to the commission. The commission by rule shall prescribe the form and other requirements of the report.*

(e) *A person who, in this state, recycles or recovers the energy from shredded tire pieces shall register with the commission in accordance with the rules and on the forms prescribed by the commission.*

Sec. 361.487. REIMBURSEMENT RESTRICTIONS. (a) *A processor seeking reimbursement under Section 361.477 shall process and store the scrap tires or scrap tire pieces in the state.*

(b) *The commission shall treat scrap tires and scrap tire pieces generated in Texas, removed from Texas, and subsequently reintroduced to Texas as out-of-state scrap tires for the purposes of this subchapter.*

(c) *Scrap tires and scrap tire pieces that are shredded and for which a person is reimbursed may not be disposed of in a Type VIII-S tire monofill.*

Sec. 361.488. GENERATOR CHARGE FOR SCRAP TIRES PROHIBITED. *A scrap tire generator may not receive remuneration in exchange for scrap tires.*

Sec. 361.489. IMMEDIATE REMOVAL AND REMEDIAL ACTION BY COMMISSION. (a) *The commission may, with the funds available to the commission from the waste tire recycling fund, undertake immediate remediation of a site if, after investigation, the commission finds:*

(1) *that there exists a situation caused by the illegal dumping of scrap tires that is causing or may cause imminent and substantial endangerment to the public health and safety or the environment; and*

(2) *the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order.*

(b) *If a person ordered to eliminate an imminent and substantial danger to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement a remedial program for the site.*

(c) *The commission may bring suit against a potentially responsible party to recover reasonable expenses incurred in undertaking immediate removal under Subsection (a) or in implementing a remedial action order under Subsection (b). For purposes of this subsection, the commission shall employ the following three criteria to determine whether a person is a potentially responsible party:*

(1) the person must be the property owner of record, the site operator, or the depositor of the scrap tires on the site;

(2) the person must have benefitted financially from the disposition of the scrap tires on the site; and

(3) the person must be financially capable of paying all or part of the costs of the total or partial cleanup of the site, considering the costs of the cleanup as determined by the commission.

(d) The commission shall file the suit to recover costs not later than one year after the date removal or remedial measures are completed.

(e) Money collected in a suit to recover costs shall be deposited to the credit of the waste tire recycling fund.

(f) The commission, in lieu of bringing suit to recover costs incurred under this section, may file a lien against the property on which the site is located. The lien shall state the name of the owner of the property, the amount owed, and the legal description of the property. The lien arises and attaches on the date the lien is filed in the real property records of the county in which the property is located. The lien is subordinate to the rights of prior bona fide purchasers or lienholders on the property.

Sec. 361.490. **ACCESS TO PRIORITY ENFORCEMENT LIST SITE.** (a) Members of the commission, employees or agents of the commission, and authorized processors or their subcontractors are entitled to enter any public or private property at any reasonable time for the purpose of inspecting, investigating, or remediating any condition related to illegal dumping of scrap tires. An authorized processor or subcontractor is entitled to enter property only if the commission directs the processor or subcontractor to enter the property. The executive director shall give notice of intent to enter private property for those purposes by certified mail to the last known address indicated in the current county property records at least 10 days before a commission member, commission employee or agent, or authorized processor or subcontractor enters the property. A commission member, commission employee or agent, or authorized processor or subcontractor who, acting under this subsection, enters private property shall:

(1) observe the establishment's rules concerning safety, internal security, and fire protection; and

(2) if the property has management in residence, make a reasonable attempt to notify the management or person in charge of the entry and exhibit credentials.

(b) Authorized processors and their subcontractors may not be considered agents of the state and are solely responsible for their actions.

Sec. 361.491. **INJUNCTION TO RESTRAIN VIOLATION.** If it appears that a person has violated, is violating, or is threatening to violate this subchapter or a rule, permit, or order adopted or issued under this subchapter, the executive director may bring suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

Sec. 361.492. **NEW TIRE WHOLESALERS AND RETAILERS.** A person selling new tires as described in Section 361.472(a) shall accept from customers, without charge, used tires of the type and in a quantity at least equal to the number of new tires purchased.

Sec. 361.493. **CONFIDENTIALITY.** Information submitted to the commission in accordance with Section 361.477(g) or Section 361.486(a) or (d), and any report generated by the commission based on the information, is confidential and is not subject to disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the commission shall protect the information accordingly.

Sec. 361.494. **APPEAL.** The commission shall establish a process by which a registered waste tire processor who is adversely affected by an agency decision affecting reimbursement may appeal that decision to the executive director or the commission.

Sec. 361.495. **ENSURING CAPACITY.** Not later than October 1 of each odd-numbered year, the commission shall determine the total shredding capacity of all registered waste tire processors. If the commission determines that the shredding capacity is less than the previous year's reimbursed waste tire units, the commission may issue registrations to

waste tire processors until the anticipated shredding capacity equals the previous year's reimbursed waste tire units. If the commission determines that the shredding capacity exceeds the previous year's reimbursed waste tire units, the commission may not issue a registration to a new waste tire processor until the next capacity assessment is completed.

SECTION 3.10. Section 361.014, Health and Safety Code, is amended to read as follows:

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. (a) Revenue received by the department under Section 361.013 shall be deposited in the state treasury to the credit of the department. At least half the revenue is dedicated to the department's municipal solid waste permitting and enforcement programs and related support activities, and the balance of the revenue is dedicated to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) provision of technical assistance to local governments concerning solid waste management;

(3) establishment of a solid waste resource center in the department and an office of waste minimization and recycling;

(4) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes);

(5) conduct of a statewide public awareness program concerning solid waste management;

(6) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(7) conduct of research to promote the development and stimulation of markets for recycled waste products;

(8) creation of a state municipal solid waste superfund for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup; and

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(9) provision of funds for other programs that the board of health may consider appropriate to further the purposes of this chapter.

(b) Revenue derived from fees charged under Section 361.013(c) to a transporter of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling fund.

SECTION 3.11. Section 361.112, Health and Safety Code, is amended by adding Subsection (m) to read as follows:

(m) The commission may adopt rules to regulate the storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days.

SECTION 3.12. Section 363.041, Health and Safety Code, is amended to read as follows:

Sec. 363.041. COMPOSITION OF ADVISORY COUNCIL. The Municipal Solid Waste Management and Resource Recovery Advisory Council is composed of the following 17 [15] members appointed by the board:

(1) an elected official from a municipality with a population of 750,000 or more;

(2) an elected official from a municipality with a population of 100,000 or more but less than 750,000;

- (3) an elected official from a municipality with a population of 25,000 or more but less than 100,000;
- (4) an elected official from a municipality with a population of less than 25,000;
- (5) two elected officials of separate counties, one of whom is from a county with a population of less than 150,000;
- (6) an official from a municipality or county solid waste agency;
- (7) a representative from a private environmental conservation organization;
- (8) a representative from a public solid waste district or authority;
- (9) a representative from a planning region;
- (10) a representative of the financial community;
- (11) a representative from a solid waste management organization composed primarily of commercial operators;
- (12) a board member; ~~and~~
- (13) two persons representing the public who would not otherwise qualify as members under this section;
- (14) *a registered, fixed waste tire processor; and*
- (15) *a registered, mobile waste tire processor.*

SECTION 3.13. (a) The Texas Natural Resource Conservation Commission may not register a waste tire processor until after the commission makes its initial determination of the capacity of registered waste tire processors as provided by Section 361.495, Health and Safety Code, as added by this article.

(b) If this article takes immediate effect, notwithstanding the date provided by Section 361.495, Health and Safety Code, as added by this article, the Texas Natural Resource Conservation Commission shall make the initial determination of the capacity of registered waste tire processors not later than 30 days after the effective date of this article.

SECTION 3.14. The changes in the waste tire recycling fee made by Section 361.472, Health and Safety Code, as amended by this article, take effect October 1, 1993.

ARTICLE 4. USED OIL, RECYCLING, AND WASTE REDUCTION

SECTION 4.01. Section 361.421, Health and Safety Code, is amended to read as follows:
Sec. 361.421. DEFINITIONS. In this subchapter:

(1) "Compost" is the disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that *is put to beneficial reuse [can serve]* as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of *determining [comparing]* the total equivalent costs and benefits of using products over their lifetimes or over any other period of time. *These costs and benefits are all associated costs and all associated benefits of each product over the time under consideration and include initial costs, annual operating costs, annual savings, future costs, and residual (salvage) values. The use of this method permits exact comparisons of these total costs and benefits to determine the most cost-effective product [based on initial maintenance costs which include the initial cost, maintenance costs, and other related expenses].*

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that has been recovered or diverted from the ~~[non-hazardous]~~ 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.

(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.

(7) "Recycled product" means a product which meets the requirements for recycled material content as prescribed by the rules established by the department 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 in the production of new products. *Recycling* ~~[Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, 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.

(9) "Source reduction" means an activity or process that avoids the creation of municipal solid waste in the state by reducing waste at the source and includes:

(A) redesigning a product or packaging so that less material is ultimately disposed of;

(B) changing a process for producing a good or providing a service so that less material is disposed of; or

(C) changing the way a material is used so that the amount of waste generated is reduced.

(10) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) ~~[(10)]~~ "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(12) ~~[(11)]~~ "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

SECTION 4.02. Section 361.422, Health and Safety Code, is amended to read as follows:

Sec. 361.422. STATE SOURCE REDUCTION AND RECYCLING GOAL. (a) It is the state's goal to reduce ~~[achieve]~~ by January 1, 1994, ~~[the recycling of at least 40 percent of]~~ the amount of ~~[state's total]~~ municipal solid waste disposed of in this state by at least 40 percent through source reduction and recycling ~~[stream]~~.

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) ~~The [By January 1, 1992, the]~~ department shall establish rules and reporting requirements through which progress toward achieving the established *source reduction and recycling* goals can be measured. The rules may take into consideration those ongoing community *source reduction and recycling* programs where substantial progress has already been achieved. The department may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

(d) *For the purpose of measuring progress toward the municipal solid waste reduction goal, the department shall use the weight of the total municipal solid waste stream in 1991 as a baseline for comparison. To compute progress toward the municipal solid waste reduction goal for a year, the department shall compare the total number of tons disposed in the year under comparison, either by landfilling or by other disposal methods, to the total number of tons disposed in the base year, adjusting for changes in population, tons of solid waste imported and exported, and other relevant changes between the baseline year and the comparison year.*

(e) *Before January 1, 1994, the commission shall determine whether the goal established in Subsection (a) is being achieved. If the commission finds that the goal is not being achieved, it shall convene an advisory task force consisting of representatives of the commission, the General Land Office, local governments, the Municipal Solid Waste Management and Resource Recovery Advisory Council, and the commercial solid waste disposal industry and may recommend to the legislature a phased-in ban on the disposal of yard waste in a landfill. The task force may recommend a plan to the legislature for implementing the ban after considering how the ban will:*

- (1) *affect the state's disposal capacity;*
- (2) *affect the economy of the state;*
- (3) *affect local governments; and*
- (4) *be accepted and adhered to by the citizens of the state.*

SECTION 4.03. Section 361.425, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

(1) in cooperation with the ~~[State Purchasing and]~~ General Services Commission or the department establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, *steel containers, aseptic packaging and polycoated paperboard cartons*, high-grade office paper, and corrugated cardboard;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

(d) *In this section, "recyclable materials" includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.*

SECTION 4.04. The heading to Subchapter N, Chapter 361, Health and Safety Code, is amended to read as follows:

SUBCHAPTER N. WASTE REDUCTION [RECYCLING]
PROGRAMS; DISPOSAL FEES

SECTION 4.05. Subdivision (1), Section 371.003, Health and Safety Code, is amended to read as follows:

(1) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck. *The term includes oil that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications.*

SECTION 4.06. Section 371.061, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The fund is exempt from the application of Sections 403.094(h) and 403.095, Government Code.

SECTION 4.07. Subchapter B, Chapter 371, Health and Safety Code, is amended by adding Sections 371.0245 and 371.0246 to read as follows:

Sec. 371.0245. REIMBURSEMENT OF COLLECTION CENTER. (a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered public used oil collection center for costs associated with the collection center's disposal of:

(1) do-it-yourself (DIY) used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes;

(2) used oil collected by the collection center that has been commingled with DIY oils described in Subdivision (1) and is unsuitable for recycling; or

(3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered public used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

(1) the center has established procedures to minimize the risk that the used oil the center generates or collects from the public will not be mixed with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than five gallons of used oil from any person at any one time; and

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during a period by:

(A) providing a process by which all individuals leaving do-it-yourself (DIY) used oil at the center are required to log their names, addresses, and the approximate amounts of used oil brought to the collection center and ensuring that all do-it-yourself (DIY) used oil collected is kept in a separate sealed and labeled container placed on an impermeable surface; or

(B) another method approved by the commission.

(c) For the purpose of Subsection (b)(2), the owner or operator of a registered public used oil collection center may presume that a quantity of not more than five gallons of used oil collected from a member of the public is not mixed with a hazardous substance, if the owner or operator acts in good faith and in the belief the oil is generated from the individual's personal activity.

(d) In any state fiscal year, a registered public used oil collection center may not be reimbursed for more than \$5,000 in total eligible disposal costs, subject to Section 371.0246(d).

(e) A reimbursement made under this section may be paid out of the used oil recycling fund not to exceed an aggregate amount of \$500,000 each fiscal year.

Sec. 371.0246. PROCEDURES FOR REIMBURSEMENT. (a) An owner or operator of a registered public used oil collection center may apply for reimbursement from the commission.

(b) *An application for reimbursement shall be filed on a form approved or provided by the commission.*

(c) *An application must contain:*

- (1) *the name, address, and telephone number of the applicant;*
- (2) *the name, mailing address, location address, and commission registration number of the registered public used oil collection center from which the contaminated oil was removed;*
- (3) *the name, address, telephone number, and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;*
- (4) *a copy of the signed uniform hazardous waste manifest;*
- (5) *a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full, which may be in the form of:*
 - (A) *canceled checks;*
 - (B) *business receipts from the person who performed the work; or*
 - (C) *other documentation approved by the commission;*
- (6) *a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for disposal; and*
- (7) *any other information that the executive director may reasonably require.*

(d) *All claims for reimbursement filed under this section and Section 371.0245 are subject to the availability of money in the used oil recycling fund and to Section 371.0245(e). This subchapter does not create an entitlement to money in the used oil recycling fund or any other fund.*

SECTION 4.08. Subchapter D, Chapter 371, Health and Safety Code, is amended by adding Section 371.063 to read as follows:

Sec. 371.063. ANNUAL REPORTING REQUIREMENT. The commission shall monitor the balance of the used oil recycling fund and shall provide a detailed report of all income, expenditures, and programs funded to the Texas Legislature on an annual basis.

SECTION 4.09. Section 371.062, Health and Safety Code, is amended to read as follows:

Sec. 371.062. FEE ON SALE OF AUTOMOTIVE OIL. (a) In this section:

(1) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer. The term does not include the sale of automotive oil exported from this state to a location outside this state for the purpose of sale or use outside this state. This term does not include sales of automotive oils for resale to or use by vessels *exclusively* engaged in foreign or interstate commerce.

(2) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or consumption.

(3) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. *The term includes any person packaging or repackaging automotive oil.*

(b) An oil manufacturer [~~or importer~~] who makes a first sale of automotive oil is liable for a fee.

(c) *An oil importer who imports or causes to be imported automotive oil is liable for the fee at the time the oil is received.*

(d) *An oil distributor or retailer who exports from this state to a location outside this state oil on which the automotive oil fee has been paid may request from his supplier a refund or credit of the fee paid on the exported oil. The supplier or oil manufacturer and the importer may in turn request a refund of the fee paid to the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.*

(e) *An oil manufacturer, importer, distributor, or retailer who makes a sale to a vessel or a sale for resale to a vessel of automotive oil on which the automotive oil fee has been paid may file with the comptroller a request for refund of the fee paid on the oil or, where applicable, may request a refund or credit from the supplier to whom the fee was paid. The supplier may in turn request a refund from the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.*

(f) Each oil manufacturer or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale or, *in the case of an importer, the first receipt in Texas* of automotive oil by the person and the price received;

(2) retain the invoice or a copy of the invoice or other appropriate record of the sale or receipt for four years from the date of sale or receipt; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(g) [(d)] Records required to be maintained under Subsection (f) [(e)] shall be available for inspection by the comptroller at all reasonable times.

(h) [(e)] The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(i) [(f)] Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(j) [(g)] The fee imposed under this section is two cents per quart or eight cents per gallon of automotive oil. The department shall monitor the unobligated balance of the used oil recycling fund and shall adjust the fee rate to meet expenditure requirements of the used oil recycling program and to maintain an appropriate fund balance. The fee imposed under this section may not exceed five cents per quart or 20 cents per gallon of automotive oil. On or before September 1 of each year, the department and the comptroller jointly shall issue notice of the effective fee rate for the next fiscal year.

(k) [(h)] A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(l) [(i)] The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the used oil recycling fund.

SECTION 4.10. The change in law made by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article, applies only to costs incurred by an eligible registered public used oil collection center on or after September 1, 1993.

SECTION 4.11. Not later than December 1, 1993, the Texas Water Commission or its successor shall adopt any rules necessary to administer the reimbursement program established by Sections 371.0245 and 371.0246, Health and Safety Code, as added by this article.

SECTION 4.12. (a) Except as provided by Subsection (b), this article takes effect October 1, 1993.

(b) Sections 4.07 and 4.08 take effect September 1, 1993.

ARTICLE 5. MISCELLANEOUS

SECTION 5.01. This Act does not affect the transfer of powers, duties, rights, and obligations made by Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991.

SECTION 5.02. Except as otherwise provided by this Act, this Act takes effect immediately.

SECTION 5.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 22, 1993, by the following vote: Yeas 29, Nays 0; May 27, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 1993, House granted request of the Senate; May 30, 1993, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 1; passed the House, with amendments, on May 25, 1993, by a non-record vote; May 28, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by the following vote: Yeas 78, Nays 59, two present not voting.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment, except Sections 4.07 and 4.08, effective Sept. 1, 1993, and the remainder of Article 4, effective Oct. 1, 1993.