

ESSB 6428 - H COMM AMD
By Committee on Appropriations

ADOPTED 03/02/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that a convenient,
4 safe, and environmentally sound system for the collection,
5 transportation, and recycling of covered electronic products must be
6 established. The legislature further finds that the system must
7 encourage the design of electronic products that are less toxic and
8 more recyclable. The legislature further finds that the responsibility
9 for this system must be shared among all stakeholders, with
10 manufacturers financing the collection, transportation, and recycling
11 system.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Authority" means the Washington materials management and
15 financing authority created under section 28 of this act.

16 (2) "Authorized party" means a manufacturer who submits an
17 individual independent plan or the entity authorized to submit an
18 independent plan for more than one manufacturer.

19 (3) "Board" means the board of directors of the Washington
20 materials management and financing authority created under section 29
21 of this act.

22 (4) "Collector" means an entity licensed to do business in the
23 state that gathers unwanted covered electronic products from
24 households, small businesses, school districts, small governments, and
25 charities for the purpose of recycling and meets minimum standards that
26 may be developed by the department.

27 (5) "Contract for services" means an instrument executed by the
28 authority and one or more persons or entities that delineates

1 collection, transportation, and recycling services, in whole or in
2 part, that will be provided to the citizens of the state within service
3 areas as described in the approved standard plan.

4 (6) "Covered electronic product" includes a cathode ray tube or
5 flat panel computer monitor having a viewable area greater than four
6 inches when measured diagonally, a desktop computer, a laptop or a
7 portable computer, or a cathode ray tube or flat panel television
8 having a viewable area greater than four inches when measured
9 diagonally that has been used in the state by any covered entity
10 regardless of original point of purchase. "Covered electronic product"
11 does not include: (a) A motor vehicle or replacement parts for use in
12 motor vehicles or aircraft, or any computer, computer monitor, or
13 television that is contained within, and is not separate from, the
14 motor vehicle or aircraft; (b) monitoring and control instruments or
15 systems; (c) medical devices; (d) products including materials intended
16 for use as ingredients in those products as defined in the federal
17 food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-
18 serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations
19 issued under those acts; (e) equipment used in the delivery of patient
20 care in a health care setting; (f) a computer, computer monitor, or
21 television that is contained within a clothes washer, clothes dryer,
22 refrigerator, refrigerator and freezer, microwave oven, conventional
23 oven or range, dishwasher, room air conditioner, dehumidifier, or air
24 purifier; or (g) hand-held portable voice or data devices used for
25 commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

26 (7) "Covered entity" means any household, charity, school district,
27 small business, or small government located in Washington state.

28 (8) "Curbside service" means a collection service providing
29 regularly scheduled pickup of covered electronic products from
30 households or other covered entities in quantities generated from
31 households.

32 (9) "Department" means the department of ecology.

33 (10) "Electronic product" includes a cathode ray tube or flat panel
34 computer monitor having a viewable area greater than four inches when
35 measured diagonally; a desktop computer; a laptop or a portable
36 computer; or a cathode ray tube or flat screen television having a
37 viewable area greater than four inches when measured diagonally.

1 (11) "Equivalent share" means the weight in pounds of covered
2 electronic products for which an individual manufacturer is responsible
3 under this chapter as determined by the department under section 20 of
4 this act.

5 (12) "Household" means a single detached dwelling unit or a single
6 unit of a multiple dwelling unit and appurtenant structures.

7 (13) "Independent plan" means a plan for the collection,
8 transportation, and recycling of unwanted covered electronic products
9 that is developed, implemented, and financed by an individual
10 manufacturer or by an authorized party.

11 (14) "Manufacturer" means any person, in business or no longer in
12 business but having a successor in interest, who, irrespective of the
13 selling technique used, including by means of distance or remote sale:

14 (a) Manufactures or has manufactured a covered electronic product
15 under its own brand names for sale in or into this state;

16 (b) Assembles or has assembled a covered electronic product that
17 uses parts manufactured by others for sale in or into this state under
18 the assembler's brand names;

19 (c) Resells or has resold in or into this state under its own brand
20 names a covered electronic product produced by other suppliers,
21 including retail establishments that sell covered electronic products
22 under their own brand names;

23 (d) Imports or has imported a covered electronic product into the
24 United States that is sold in or into this state. However, if a
25 company from whom an importer purchases or has purchased the
26 merchandise performs activities conducted under the standards
27 established for interstate commerce under the commerce clause of the
28 United States Constitution, that company is deemed to be the
29 manufacturer; or

30 (e) Manufactures or manufactured a cobranded product for sale in or
31 into this state that carries the name of both the manufacturer and a
32 retailer.

33 (15) "New entrant" means: (a) A manufacturer of televisions that
34 have been sold in the state for less than ten years; or (b) a
35 manufacturer of desktop computers, laptop and portable computers, or
36 computer monitors that have been sold in the state for less than five
37 years. However, a manufacturer of both televisions and computers or a

1 manufacturer of both televisions and computer monitors that is deemed
2 a new entrant under either only (a) or (b) of this subsection is not
3 considered a new entrant for purposes of this chapter.

4 (16) "Orphan product" means a covered electronic product that lacks
5 a manufacturer's brand or for which the manufacturer is no longer in
6 business and has no successor in interest.

7 (17) "Plan's equivalent share" means the weight in pounds of
8 covered electronic products for which a plan is responsible. A plan's
9 equivalent share is equal to the sum of the equivalent shares of each
10 manufacturer participating in that plan.

11 (18) "Plan's return share" means the sum of the return shares of
12 each manufacturer participating in that plan.

13 (19) "Premium service" means services such as at-location system
14 upgrade services provided to covered entities and at-home pickup
15 services offered to households. "Premium service" does not include
16 curbside service.

17 (20) "Processor" means an entity engaged in disassembling,
18 dismantling, or shredding electronic products to recover materials
19 contained in the electronic products and prepare those materials for
20 reclaiming or reuse in new products in accordance with processing
21 standards established by this chapter and by the department. A
22 processor may also salvage parts to be used in new products.

23 (21) "Product type" means one of the following categories:
24 Computer monitors; desktop computers; laptop and portable computers;
25 and televisions.

26 (22) "Program" means the collection, transportation, and recycling
27 activities conducted to implement an independent plan or the standard
28 plan.

29 (23) "Program year" means each full calendar year after the program
30 has been initiated.

31 (24) "Recycling" means transforming or remanufacturing unwanted
32 electronic products, components, and byproducts into usable or
33 marketable materials for use other than landfill disposal or
34 incineration. "Recycling" does not include energy recovery or energy
35 generation by means of combusting unwanted electronic products,
36 components, and byproducts with or without other waste. Smelting of
37 electronic materials to recover metals for reuse in conformance with

1 all applicable laws and regulations is not considered disposal or
2 energy recovery.

3 (25) "Retailer" means a person who offers covered electronic
4 products for sale at retail through any means including, but not
5 limited to, remote offerings such as sales outlets, catalogs, or the
6 internet, but does not include a sale that is a wholesale transaction
7 with a distributor or a retailer.

8 (26) "Return share" means the percentage of covered electronic
9 products by weight identified for an individual manufacturer, as
10 determined by the department under section 19 of this act.

11 (27) "Reuse" means any operation by which an electronic product or
12 a component of a covered electronic product changes ownership and is
13 used for the same purpose for which it was originally purchased.

14 (28) "Small business" means a business employing less than fifty
15 people.

16 (29) "Small government" means a city in the state with a population
17 less than fifty thousand, a county in the state with a population less
18 than one hundred twenty-five thousand, and special purpose districts in
19 the state.

20 (30) "Standard plan" means the plan for the collection,
21 transportation, and recycling of unwanted covered electronic products
22 developed, implemented, and financed by the authority on behalf of
23 manufacturers participating in the authority.

24 (31) "Transporter" means an entity that transports covered
25 electronic products from collection sites or services to processors or
26 other locations for the purpose of recycling, but does not include any
27 entity or person that hauls their own unwanted electronic products.

28 (32) "Unwanted electronic product" means a covered electronic
29 product that has been discarded or is intended to be discarded by its
30 owner.

31 (33) "White box manufacturer" means a person who manufactured
32 unbranded covered electronic products offered for sale in the state
33 within ten years prior to a program year for televisions or within five
34 years prior to a program year for desktop computers, laptop or portable
35 computers, or computer monitors.

36 NEW SECTION. **Sec. 3.** (1) A manufacturer must participate in an

1 independent plan or the standard plan to implement and finance the
2 collection, transportation, and recycling of covered electronic
3 products.

4 (2) An independent plan or the standard plan must be implemented
5 and fully operational no later than January 1, 2009.

6 (3) The manufacturers participating in an approved plan are
7 responsible for covering all administrative and operational costs
8 associated with the collection, transportation, and recycling of their
9 plan's equivalent share of covered electronic products. If costs are
10 passed on to consumers, it must be done without any fees at the time
11 the unwanted electronic product is delivered or collected for
12 recycling. However, this does not prohibit collectors providing
13 premium or curbside services from charging customers a fee for the
14 additional collection cost of providing this service, when funding for
15 collection provided by an independent plan or the standard plan does
16 not fully cover the cost of that service.

17 (4) Nothing in this chapter changes or limits the authority of the
18 Washington utilities and transportation commission to regulate
19 collection of solid waste in the state of Washington, including
20 curbside collection of residential recyclable materials, nor does this
21 chapter change or limit the authority of a city or town to provide such
22 service itself or by contract pursuant to RCW 81.77.020.

23 (5) Manufacturers are encouraged to collaborate with electronic
24 product retailers, certificated waste haulers, processors, recyclers,
25 charities, and local governments within the state in the development
26 and implementation of their plans.

27 NEW SECTION. **Sec. 4.** (1) By January 1, 2007, and annually
28 thereafter, each manufacturer must register with the department.

29 (2) A manufacturer must submit to the department with each
30 registration or annual renewal a fee to cover the administrative costs
31 of this chapter as determined by the department under section 23 of
32 this act.

33 (3) The department shall review the registration or renewal
34 application and notify the manufacturer if their registration does not
35 meet the requirements of this section. Within thirty days of receipt
36 of such a notification from the department, the manufacturer must file

1 with the department a revised registration addressing the requirements
2 noted by the department.

3 (4) The registration must include the following information:

4 (a) The name and contact information of the manufacturer submitting
5 the registration;

6 (b) The manufacturer's brand names of covered electronic products,
7 including all brand names sold in the state in the past, all brand
8 names currently being sold in the state, and all brand names for which
9 the manufacturer has legal responsibility under section 10 of this act;

10 (c) The method or methods of sale used in the state; and

11 (d) Whether the registrant will be participating in the standard
12 plan or submitting an independent plan to the department for approval.

13 (5) The registrant shall submit any changes to the information
14 provided in the registration to the department within fourteen days of
15 such change.

16 (6) The department shall identify, using all reasonable means,
17 manufacturers that are in business or that are no longer in business
18 but that have a successor in interest by examining best available
19 return share data and other pertinent data. The department shall
20 notify manufacturers that have been identified and for whom an address
21 has been found of the requirements of this chapter, including
22 registration and plan requirements under this section and section 5 of
23 this act.

24 NEW SECTION. **Sec. 5.** (1) A manufacturer must participate in the
25 standard plan administered by the authority, unless the manufacturer
26 obtains department approval for an independent plan for the collection,
27 transportation, and recycling of unwanted electronic products.

28 (2) An independent plan may be submitted by an individual
29 manufacturer or by a group of manufacturers, provided that:

30 (a) Each independent plan represents at least a five percent return
31 share of covered electronic products; and

32 (b) The manufacturer is not a new entrant or a white box
33 manufacturer.

34 (3) An individual manufacturer submitting an independent plan to
35 the department is responsible for collecting, transporting, and
36 recycling its equivalent share of covered electronic products.

1 (4)(a) Manufacturers collectively submitting an independent plan
2 are responsible for collecting, transporting, and recycling the sum of
3 the equivalent shares of each participating manufacturer.

4 (b) Each group of manufacturers submitting an independent plan must
5 designate a party authorized to file the plan with the department on
6 their behalf. A letter of certification from each of the manufacturers
7 designating the authorized party must be submitted to the department
8 together with the plan.

9 (5) Each manufacturer in the standard plan or in an independent
10 plan retains responsibility and liability under this chapter in the
11 event that the plan fails to meet the manufacturer's obligations under
12 this chapter.

13 NEW SECTION. **Sec. 6.** (1) All initial independent plans and the
14 initial standard plan required under section 5 of this act must be
15 submitted to the department by February 1, 2008. The department shall
16 review each independent plan and the standard plan.

17 (2) The authority submitting the standard plan and each authorized
18 party submitting an independent plan to the department must pay a fee
19 to the department to cover the costs of administering and implementing
20 this chapter. The department shall set the fees as described under
21 section 23 of this act.

22 (3) The fees in subsection (2) of this section apply to the initial
23 plan submission and plan updates and revisions required in section 7 of
24 this act.

25 (4) Within ninety days after receipt of a plan, the department
26 shall determine whether the plan complies with this chapter. If the
27 plan is approved, the department shall send a letter of approval. If
28 a plan is rejected, the department shall provide the reasons for
29 rejecting the plan to the authority or authorized party. The authority
30 or authorized party must submit a new plan within sixty days after
31 receipt of the letter of disapproval.

32 (5) An independent plan and the standard plan must contain the
33 following elements:

34 (a) Contact information for the authority or authorized party and
35 a comprehensive list of all manufacturers participating in the plan and
36 their contact information;

1 (b) A description of the collection, transportation, and recycling
2 systems and service providers used, including a description of how the
3 authority or authorized party will:

4 (i) Seek to use businesses within the state, including retailers,
5 charities, processors, and collection and transportation services; and

6 (ii) Fairly compensate collectors for providing collection
7 services;

8 (c) The method or methods for the reasonably convenient collection
9 of all product types of covered electronic products in rural and urban
10 areas throughout the state, including how the plan will provide for
11 collection services in each county of the state and for a minimum of
12 one collection site or alternate collection service for each city or
13 town with a population greater than ten thousand. A collection site
14 for a county may be the same as a collection site for a city or town in
15 the county;

16 (d) A description of how the plan will provide service to small
17 businesses, small governments, charities, and school districts in
18 Washington;

19 (e) The processes and methods used to recycle covered electronic
20 products including a description of the processing that will be used
21 and the facility location;

22 (f) Documentation of audits of each processor used in the plan and
23 compliance with processing standards established under section 25 of
24 this act;

25 (g) A description of the accounting and reporting systems that will
26 be employed to track progress toward the plan's equivalent share;

27 (h) A timeline describing startup, implementation, and progress
28 towards milestones with anticipated results;

29 (i) A public information campaign to inform consumers about how to
30 recycle their covered electronic products at the end of the product's
31 life.

32 (6) The standard plan shall address how it will incorporate and
33 fairly compensate registered collectors providing curbside or premium
34 services such that they are not compensated at a lower rate for
35 collection costs than the compensation offered other collectors
36 providing drop-off collection sites in that geographic area.

37 (7) All transporters and collectors used to fulfill the

1 requirements of this section must be registered as described in section
2 24 of this act.

3 NEW SECTION. **Sec. 7.** (1) An independent plan and the standard
4 plan must be updated at least every five years and as required in (a)
5 and (b) of this subsection.

6 (a) If the program fails to provide service in each county in the
7 state or meet other plan requirements, the authority or authorized
8 party shall submit to the department within sixty days of failing to
9 provide service an updated plan addressing how the program will be
10 adjusted to meet the program geographic coverage and collection service
11 requirements established in section 9 of this act.

12 (b) The authority or authorized party shall notify the department
13 of any modification to the plan. If the department determines that the
14 authority or authorized party has significantly modified the program
15 described in the plan, the authority or authorized party shall submit
16 a revised plan describing the changes to the department within sixty
17 days of notification by the department.

18 (2) Within sixty days after receipt of a revised plan, the
19 department shall determine whether the revised plan complies with this
20 chapter. If the revised plan is approved, the department shall send a
21 letter of approval. If the revised plan is rejected, the department
22 shall provide the reasons for rejecting the plan to the authority or
23 authorized party. The authority or authorized party must submit a new
24 plan revision within sixty days after receipt of the letter of
25 disapproval.

26 (3) The authority or authorized parties may buy and sell collected
27 covered electronic products with other programs without submitting a
28 plan revision for review.

29 NEW SECTION. **Sec. 8.** (1) A manufacturer participating in an
30 independent plan may join the standard plan by notifying the authority
31 and the department of its intention at least five months prior to the
32 start of the next program year.

33 (2) Manufacturers may not change from one plan to another plan
34 during a program year.

35 (3) A manufacturer participating in the standard plan wishing to

1 implement or participate in an independent plan may do so by complying
2 with rules adopted by the department under section 23 of this act.

3 NEW SECTION. **Sec. 9.** (1) A program must provide collection
4 services for covered electronic products of all product types that are
5 reasonably convenient and available to all citizens of the state
6 residing within its geographic boundaries, including both rural and
7 urban areas. Each program must provide collection service in every
8 county of the state. A program may provide collection services jointly
9 with another plan or plans.

10 (a) For any city or town with a population of greater than ten
11 thousand, each program shall provide a minimum of one collection site
12 or alternate collection service described in subsection (3) of this
13 section or a combination of sites and alternate service that together
14 provide at least one collection opportunity for all product types. A
15 collection site for a county may be the same as a collection site for
16 a city or town in the county.

17 (b) Collection sites may include electronics recyclers and repair
18 shops, recyclers of other commodities, reuse organizations, charities,
19 retailers, government recycling sites, or other suitable locations.

20 (c) Collection sites must be staffed, open to the public at a
21 frequency adequate to meet the needs of the area being served, and on
22 an on-going basis.

23 (2) A program may limit the number of covered electronic products
24 or covered electronic products by product type accepted per customer
25 per day or per delivery at a collection site or service. All covered
26 entities may use a collection site as long as the covered entities
27 adhere to any restrictions established in the plans.

28 (3) A program may provide collection services in forms different
29 than collection sites, such as curbside services, if those alternate
30 services provide equal or better convenience to citizens and equal or
31 increased recovery of unwanted covered electronic products.

32 (4) For rural areas without commercial centers or areas with widely
33 dispersed population, a program may provide collection at the nearest
34 commercial centers or solid waste sites, collection events, mail-back
35 systems, or a combination of these options.

36 (5) For small businesses, small governments, charities, and school
37 districts that may have large quantities of covered electronic products

1 that cannot be handled at collection sites or curbside services, a
2 program may provide alternate services. At a minimum, a program must
3 provide for processing of these large quantities of covered electronic
4 products at no charge to the small businesses, small governments,
5 charities, and school districts.

6 NEW SECTION. **Sec. 10.** Any person acquiring a manufacturer, or who
7 has acquired a manufacturer, shall have all responsibility for the
8 acquired company's covered electronic products, including covered
9 electronic products manufactured prior to the effective date of this
10 section, unless that responsibility remains with another entity per the
11 purchase agreement and the acquiring manufacturer provides the
12 department with a letter from the other entity accepting responsibility
13 for the covered electronic products. Cobranding manufacturers may
14 negotiate with retailers for responsibility for those products and must
15 notify the department of the results of their negotiations.

16 NEW SECTION. **Sec. 11.** (1) An independent plan and the standard
17 plan must implement and finance an auditable, statistically significant
18 sampling of covered electronic products entering its program every
19 program year. The information collected must include a list of the
20 brand names of covered electronic products by product type, the number
21 of covered electronic products by product type, the weight of covered
22 electronic products that are identified for each brand name or that
23 lack a manufacturer's brand, the total weight of the sample by product
24 type, and any additional information needed to assign return share.

25 (2) The sampling must be conducted in the presence of the
26 department or a third-party organization approved by the department.
27 The department may, at its discretion, audit the methodology and the
28 results.

29 (3) After the fifth program year, the department may reassess the
30 sampling required in this section. The department may adjust the
31 frequency at which manufacturers must implement the sampling or may
32 adjust the frequency at which manufacturers must provide certain
33 information from the sampling. Prior to making any changes, the
34 department shall notify the public, including all registered
35 manufacturers, and provide a comment period. The department shall
36 notify all registered manufacturers of any such changes.

1 NEW SECTION. **Sec. 12.** (1) An independent plan and the standard
2 plan must inform covered entities about where and how to reuse and
3 recycle their covered electronic products at the end of the product's
4 life, including providing a web site or a toll-free telephone number
5 that gives information about the recycling program in sufficient detail
6 to educate covered entities regarding how to return their covered
7 electronic products for recycling.

8 (2) The department shall promote covered electronic product
9 recycling by:

10 (a) Posting information describing where to recycle unwanted
11 covered electronic products on its web site;

12 (b) Providing information about recycling covered electronic
13 products through a toll-free telephone service; and

14 (c) Developing and providing artwork for use in flyers and signage
15 to retailers upon request.

16 (3) Local governments shall promote covered electronic product
17 recycling, including listings of local collection sites and services,
18 through existing educational methods typically used by each local
19 government.

20 (4) A retailer who sells new covered electronic products shall
21 provide information to consumers describing where and how to recycle
22 covered electronic products and opportunities and locations for the
23 convenient collection or return of the products. This requirement can
24 be fulfilled by providing the department's toll-free telephone number
25 and web site. Remote sellers may include the information in a visible
26 location on their web site as fulfillment of this requirement.

27 (5) Manufacturers, state government, local governments, retailers,
28 and collection sites and services shall collaborate in the development
29 and implementation of the public information campaign.

30 NEW SECTION. **Sec. 13.** (1) The electronic products recycling
31 account is created in the custody of the state treasurer. All payments
32 resulting from plans not reaching their equivalent share, as described
33 in section 22 of this act, shall be deposited into the account. Any
34 moneys collected for manufacturer registration fees, fees associated
35 with reviewing and approving plans and plan revisions, and penalties
36 levied under this chapter shall be deposited into the account.

1 (2) Only the director of the department or the director's designee
2 may authorize expenditures from the account. The account is subject to
3 allotment procedures under chapter 43.88 RCW, but an appropriation is
4 not required for expenditures.

5 (3) Moneys in the account may be used solely by the department for
6 the purposes of fulfilling department responsibilities specified in
7 this chapter and for expenditures to the authority and authorized
8 parties resulting from plans exceeding their equivalent share, as
9 described in section 22 of this act. Funds in the account may not be
10 diverted for any purpose or activity other than those specified in this
11 section.

12 NEW SECTION. **Sec. 14.** (1) By March 1st of the second program year
13 and each program year thereafter, the authority and each authorized
14 party shall file with the department an annual report for the preceding
15 program year.

16 (2) The annual report must include the following information:

17 (a) The total weight in pounds of covered electronic products
18 collected and recycled, by county, during the preceding program year
19 including documentation verifying collection and processing of that
20 material. The total weight in pounds includes orphan products. The
21 report must also indicate and document the weight in pounds received
22 from each nonprofit charitable organization primarily engaged in the
23 business of reuse and resale used by the plan. The report must
24 document the weight in pounds that were received in large quantities
25 from small businesses, small governments, charities and school
26 districts as described in section 9(5) of this act;

27 (b) The collection services provided in each county and for each
28 city with a population over ten thousand including a list of all
29 collection sites and services operating in the state in the prior
30 program year and the parties who operated them;

31 (c) A list of processors used, the weight of covered electronic
32 products processed by each direct processor, and a description of the
33 processes and methods used to recycle the covered electronic products
34 including a description of the processing and facility locations. The
35 report must also include a list of subcontractors who further processed
36 or recycled unwanted covered electronic products, electronic

1 components, or electronic scrap described in section 25(1)(b) of this
2 act, including facility locations;

3 (d) Other documentation as established under section 25(1)(d) of
4 this act;

5 (e) Educational and promotional efforts that were undertaken;

6 (f) The results of sampling and sorting as required in section 11
7 of this act, including a list of the brand names of covered electronic
8 products by product type, the number of covered electronic products by
9 product type, the weight of covered electronic products that are
10 identified for each brand name or that lack a manufacturer's brand, and
11 the total weight of the sample by product type;

12 (g) The list of manufacturers that are participating in the
13 standard plan; and

14 (h) Any other information deemed necessary by the department.

15 (3) The department shall review each report within ninety days of
16 its submission and shall notify the authority or authorized party of
17 any need for additional information or documentation, or any deficiency
18 in its program.

19 (4) All reports submitted to the department must be available to
20 the general public through the internet. Proprietary information
21 submitted to the department under this chapter is exempt from public
22 disclosure under RCW 42.56.270.

23 NEW SECTION. **Sec. 15.** Nonprofit charitable organizations that
24 qualify for a taxation exemption under section 501(c)(3) of the
25 internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are
26 primarily engaged in the business of reuse and resale and that are used
27 by a plan to collect covered electronic products shall file a report
28 with the department by March 1st of the second program year and each
29 program year thereafter. The report must indicate and document the
30 weight of covered electronic products sent for recycling during the
31 previous program year attributed to each plan that the charitable
32 organization is participating in.

33 NEW SECTION. **Sec. 16.** (1) Beginning January 1, 2007, no person
34 may sell or offer for sale an electronic product to any person in the
35 state unless the electronic product is labeled with the manufacturer's
36 brand. The label must be permanently affixed and readily visible.

1 (2) In-state retailers in possession of unlabeled products on
2 January 1, 2007, may exhaust their stock through sales to the public.

3 NEW SECTION. **Sec. 17.** No person may sell or offer for sale a
4 covered electronic product to any person in this state unless the
5 manufacturer of the covered electronic product has filed a registration
6 with the department under section 4 of this act and is participating in
7 an approved plan under section 5 of this act. A person that sells or
8 offers for sale a covered electronic product in the state shall consult
9 the department's web site for lists of manufacturers with registrations
10 and approved plans prior to selling a covered electronic product in the
11 state. A person is considered to have complied with this section if on
12 the date the product was ordered from the manufacturer or its agent,
13 the manufacturer was listed as having registered and having an approved
14 plan on the department's web site.

15 NEW SECTION. **Sec. 18.** (1) The department shall maintain on its
16 web site the following information:

17 (a) The names of the manufacturers and the manufacturer's brands
18 that are registered with the department under section 4 of this act;

19 (b) The names of the manufacturers and the manufacturer's brands
20 that are participating in an approved plan under section 5 of this act;

21 (c) The names and addresses of the collectors and transporters that
22 are listed in registrations filed with the department under section 24
23 of this act;

24 (d) The names and addresses of the processors used to fulfill the
25 requirements of the plans;

26 (e) Return and equivalent shares for all manufacturers.

27 (2) The department shall update this web site information promptly
28 upon receipt of a registration or a report.

29 NEW SECTION. **Sec. 19.** (1) The department shall determine the
30 return share for each manufacturer in the standard plan or an
31 independent plan by dividing the weight of covered electronic products
32 identified for each manufacturer by the total weight of covered
33 electronic products identified for all manufacturers in the standard
34 plan or an independent plan, then multiplying the quotient by one
35 hundred.

1 (2) For the first program year, the department shall determine the
2 return share for such manufacturers using all reasonable means and
3 based on best available information regarding return share data from
4 other states and other pertinent data.

5 (3) For the second and each subsequent program year, the department
6 shall determine the return share for such manufacturers using all
7 reasonable means and based on the most recent sampling of covered
8 electronic products conducted in the state under section 11 of this
9 act.

10 NEW SECTION. **Sec. 20.** (1) The department shall determine the
11 total equivalent share for each manufacturer in the standard plan or an
12 independent plan by dividing the return share percentage for each
13 manufacturer by one hundred, then multiplying the quotient by the total
14 weight in pounds of covered electronic products collected for that
15 program year, allowing as needed for the additional credit authorized
16 in subsection (3) of this section.

17 (2)(a) By June 1st of each program year, the department shall
18 notify each manufacturer of the manufacturer's equivalent share of
19 covered electronic products to be applied to the previous program year.
20 The department shall also notify each manufacturer of how its
21 equivalent share was determined.

22 (b) By June 1st of each program year, the department shall bill any
23 authorized party or authority that has not attained its plan's
24 equivalent share as determined under section 22 of this act. The
25 authorized party or authority shall remit payment to the department
26 within sixty days from the billing date.

27 (c) By September 1st of each program year, the department shall pay
28 any authorized party or authority that exceeded its plan's equivalent
29 share.

30 (3) Plans that utilize the collection services of nonprofit
31 charitable organizations that qualify for a taxation exemption under
32 section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.
33 501(c)(3)) that are primarily engaged in the business of reuse and
34 resale must be given an additional five percent credit to be applied
35 toward a plan's equivalent share for pounds that are received for
36 recycling from those organizations. The department may adjust the
37 percentage of credit annually.

1 NEW SECTION. **Sec. 21.** (1) By June 1, 2007, the department shall
2 notify each manufacturer of its preliminary return share of covered
3 electronic products for the first program year.

4 (2) Preliminary return share of covered electronic products must be
5 announced annually by June 1st of each program year for the next
6 program year.

7 (3) Manufacturers may challenge the preliminary return share by
8 written petition to the department. The petition must be received by
9 the department within thirty days of the date of publication of the
10 preliminary return shares.

11 (4) The petition must contain a detailed explanation of the grounds
12 for the challenge, an alternative calculation, and the basis for such
13 a calculation, documentary evidence supporting the challenge, and
14 complete contact information for requests for additional information or
15 clarification.

16 (5) Sixty days after the publication of the preliminary return
17 share, the department shall make a final decision on return share,
18 having fully taken into consideration any and all challenges to its
19 preliminary calculations.

20 (6) A written record of challenges received and a summary of the
21 bases for the challenges, as well as the department's response, must be
22 published at the same time as the publication of the final return
23 share.

24 (7) By August 1, 2007, the department shall publish the final
25 return shares for the first program year. By August 1st of each
26 program year, the department shall publish the final return shares for
27 use in the coming program year.

28 NEW SECTION. **Sec. 22.** (1) For an independent plan and the
29 standard plan, if the total weight in pounds of covered electronic
30 products collected during a program year is less than the plan's
31 equivalent share of covered electronic products for that year, then the
32 authority or authorized party shall submit to the department a payment
33 equal to the weight in pounds of the deficit multiplied by the
34 reasonable collection, transportation, and recycling cost for covered
35 electronic products and an administrative fee. Moneys collected by the
36 department must be deposited in the electronic products recycling
37 account.

1 (2) For an independent plan and the standard plan, if the total
2 weight in pounds of covered electronic products collected during a
3 program year is more than the plan's equivalent share of covered
4 electronic products for that year, then the department shall submit to
5 the authority or authorized party, a payment equal to the weight in
6 pounds of the surplus multiplied by the reasonable collection,
7 transportation, and recycling cost for covered electronic products.

8 (3) For purposes of this section, the initial reasonable
9 collection, transportation, and recycling cost for covered electronic
10 products is forty-five cents per pound and the administrative fee is
11 five cents per pound.

12 (4) The department may annually adjust the reasonable collection,
13 transportation, and recycling cost for covered electronic products and
14 the administrative fee described in this section. Prior to making any
15 changes in the fees described in this section, the department shall
16 notify the public, including all registered manufacturers, and provide
17 a comment period. The department shall notify all registered
18 manufacturers of any changes to the reasonable collection,
19 transportation, and recycling cost or the administrative fee by January
20 1st of the program year in which the change is to take place.

21 NEW SECTION. **Sec. 23.** (1) The department shall adopt rules to
22 determine the process for manufacturers to change plans under section
23 8 of this act.

24 (2) The department shall establish annual registration and plan
25 review fees for administering this chapter. An initial fee schedule
26 must be established by rule and be adjusted no more often than once
27 every two years. All fees charged must be based on factors relating to
28 administering this chapter and be based on a sliding scale that is
29 representative of annual sales of covered electronic products in the
30 state. Fees must be established in amounts to fully recover and not to
31 exceed expenses incurred by the department to implement this chapter.

32 (3) The department shall establish an annual process for local
33 governments and local communities to report their satisfaction with the
34 services provided by plans under this chapter. This information must
35 be used by the department in reviewing plan updates and revisions.

36 (4) Fees assessed to the authority and manufacturers participating

1 in the standard plan must include the costs associated with the
2 department's determination of market share as described in section 30
3 of this act.

4 (5) The department may adopt rules as necessary for the purpose of
5 implementing, administering, and enforcing this chapter.

6 NEW SECTION. **Sec. 24.** Each collector and transporter of covered
7 electronic products in the state must register annually with the
8 department. The registration must include all identification
9 requirements for licensure in the state and the geographic area of the
10 state that they serve. The department shall develop a single form for
11 registration of both collectors and transporters.

12 NEW SECTION. **Sec. 25.** (1)(a) The authority and each authorized
13 party shall ensure that each processor used directly by the authority
14 or the authorized party to fulfill the requirements of their respective
15 standard plan or independent plan has provided the authority or the
16 authorized party a written statement that the processor will comply
17 with the requirements of this section.

18 (b) The international export of any unwanted covered electronic
19 products or electronic components or electronic scrap derived from such
20 products destined for disposal or recycling that are capable of
21 leaching lead, cadmium, mercury, hexavalent chromium, or selenium or
22 selenium compounds in concentrations above the limits listed in 40
23 C.F.R. Sec. 261.24 as of the effective date of this act shall be
24 prohibited except for exports to:

25 (i) Countries that are members of the organization for economic
26 cooperation and development;

27 (ii) Countries that are members of the European community; or

28 (iii) Countries that have entered into an agreement with the United
29 States that allows for such exports.

30 (c) Any unwanted electronic products or electronic components
31 derived from such products that are capable of leaching lead, cadmium,
32 mercury, hexavalent chromium, or selenium or selenium compounds in
33 concentrations exceeding the levels established in 40 C.F.R. Sec.
34 261.24 as of the effective date of this act and exported to countries
35 that are not members of the organization for economic cooperation and
36 development or the European community or with whom the United States

1 has not entered into an agreement for such export for reuse, must be
2 tested and labeled as fully functional or needing only repairs that do
3 not result in the replacement of components capable of leaching these
4 substances in concentrations exceeding the levels established in 40
5 C.F.R. Sec. 261.24 as of the effective date of this act.

6 (d) The department shall establish rules to implement this section,
7 including any requirements necessary to ensure that full compliance is
8 adequately documented.

9 (2) The department shall establish by rule performance standards
10 for environmentally sound management for processors directly used to
11 fulfill the requirements of an independent plan or the standard plan.
12 Performance standards may include financial assurance to ensure proper
13 closure of facilities consistent with environmental standards.

14 (3) The department shall establish by rule guidelines regarding
15 nonrecycled residual that may be properly disposed after covered
16 electronic products have been processed.

17 (4) The department may audit processors that are utilized to
18 fulfill the requirements of an independent plan or the standard plan.

19 (5) No plan or program required under this chapter may include the
20 use of federal or state prison labor for processing.

21 NEW SECTION. **Sec. 26.** (1) No manufacturer may sell or offer for
22 sale a covered electronic product in or into the state unless the
23 manufacturer of the covered electronic product is participating in an
24 approved plan. The department shall send a written warning to a
25 manufacturer that does not have an approved plan or is not
26 participating in an approved plan as required under section 5 of this
27 act. The written warning must inform the manufacturer that it must
28 participate in an approved plan within thirty days of the notice. Any
29 violation after the initial written warning shall be assessed a penalty
30 of up to ten thousand dollars for each violation.

31 (2) If the authority or any authorized party fails to implement
32 their approved plan, the department must assess a penalty of up to five
33 thousand dollars for the first violation along with notification that
34 the authority or authorized party must implement its plan within thirty
35 days of the violation. After thirty days, the authority or any
36 authorized party failing to implement their approved plan must be

1 assessed a penalty of up to ten thousand dollars for the second and
2 each subsequent violation.

3 (3) Any person that does not comply with manufacturer registration
4 requirements under section 4 of this act, education and outreach
5 requirements under section 12 of this act, reporting requirements under
6 section 14 of this act, labeling requirements under section 16 of this
7 act, retailer responsibility requirements under section 17 of this act,
8 collector or transporter registration requirements under section 24 of
9 this act, or requirements under section 25 of this act, must first
10 receive a written warning including a copy of the requirements under
11 this chapter and thirty days to correct the violation. After thirty
12 days, a person must be assessed a penalty of up to one thousand dollars
13 for the first violation and up to two thousand dollars for the second
14 and each subsequent violation.

15 (4) All penalties levied under this section must be deposited into
16 the electronic products recycling account created under section 13 of
17 this act.

18 (5) The department shall enforce this section.

19 NEW SECTION. **Sec. 27.** (1) By December 31, 2012, the department
20 shall provide a report to the appropriate committees of the legislature
21 that includes the following information:

22 (a) For each of the preceding program years, the weight of covered
23 electronic products recycled in the state by plan, by county, and in
24 total;

25 (b) The performance of each plan in meeting its equivalent share,
26 and payments received from and disbursed to each plan from the
27 electronic products recycling account;

28 (c) A description of the various collection programs used to
29 collect covered electronic products in the state;

30 (d) An evaluation of how the pounds per capita recycled of covered
31 electronic products in the state compares to programs in other states;

32 (e) Comments received from local governments and local communities
33 regarding satisfaction with the program, including accessibility and
34 convenience of services provided by the plans;

35 (f) Recommendations on how to improve the statewide collection,
36 transportation, and recycling system for convenient, safe, and
37 environmentally sound recycling of electronic products; and

1 (g) An analysis of whether and in what amounts unwanted electronic
2 products and electronic components and electronic scrap exported from
3 Washington have been exported to countries that are not members of the
4 organization for economic cooperation and development or the European
5 union, and recommendations for addressing such exports.

6 (2) By April 1, 2010, the department shall provide a report to the
7 appropriate committees of the legislature regarding the amount of
8 orphan products collected as a percent of the total amount of covered
9 electronic products collected. If the orphan products collected exceed
10 ten percent of the total amount of covered electronic products
11 collected, the department shall report to the appropriate committees of
12 the legislature within ninety days describing the orphan products
13 collected and include recommendations for decreasing the amount of
14 orphan products or alternative methods for financing the collection,
15 transportation, and recycling of orphan products.

16 NEW SECTION. **Sec. 28.** (1) The Washington materials management and
17 financing authority is established as a public body corporate and
18 politic, constituting an instrumentality of the state of Washington
19 exercising essential governmental functions.

20 (2) The authority shall plan and implement a collection,
21 transportation, and recycling program for manufacturers that have
22 registered with the department their intent to participate in the
23 standard program as required under section 4 of this act.

24 (3) Membership in the authority is comprised of registered
25 participating manufacturers. Any manufacturer who does not qualify or
26 is not approved to submit an independent plan, or whose independent
27 plan has not been approved by the department, is a member of the
28 authority.

29 (4) The authority shall act as a business management organization
30 on behalf of the citizens of the state to manage financial resources
31 and contract for services for collection, transportation, and recycling
32 of covered electronic products.

33 (5) The authority's standard plan is responsible for collecting,
34 transporting, and recycling the sum of the equivalent shares of each
35 participating manufacturer. All new entrants and white box
36 manufacturers must participate in the standard plan.

1 (6) The authority shall accept into the standard program covered
2 electronic products from any registered collector who meets the
3 requirements of this chapter. The authority shall compensate
4 registered collectors for the reasonable costs associated with
5 collection, but is not required to compensate nor restricted from
6 compensating the additional collection costs resulting from the
7 additional convenience offered to customers through premium and
8 curbside services.

9 (7) Except as specifically allowed in this chapter, the authority
10 shall operate without using state funds or lending the credit of the
11 state or local governments.

12 (8) The authority shall develop innovative approaches to improve
13 materials management efficiency in order to ensure and increase the use
14 of secondary material resources within the economy.

15 NEW SECTION. **Sec. 29.** (1)(a) The authority is governed by a board
16 of directors. The board of directors is comprised of eleven
17 participating manufacturers, appointed by the director of the
18 department. Five board positions are reserved for representatives of
19 the top ten brand owners by return share of covered electronic
20 products, and six board positions are reserved for representatives of
21 other brands, including at least one board position reserved for a
22 manufacturer who is also a retailer selling their own private label.
23 The return share of covered electronic products used to determine the
24 top ten brand owners for purposes of electing the board must be
25 determined by the department by January 1, 2007.

26 (b) The board must have representation from both television and
27 computer manufacturers.

28 (2) The board shall select from its membership the chair of the
29 board and such other officers as it deems appropriate.

30 (3) A majority of the board constitutes a quorum.

31 (4) The directors of the department of community, trade, and
32 economic development and the department of ecology, and the state
33 treasurer serve as ex officio members. The state agency directors and
34 the state treasurer serving in ex officio capacity may each designate
35 an employee of their respective departments to act on their behalf in
36 all respects with regard to any matter to come before the authority.

1 Ex officio designations must be made in writing and communicated to the
2 authority director.

3 (5) The board shall create its own bylaws in accordance with the
4 laws of the state of Washington.

5 (6) Any member of the board may be removed for misfeasance,
6 malfeasance, or willful neglect of duty after notice and a public
7 hearing, unless the notice and hearing are expressly waived in writing
8 by the affected member.

9 (7) The members of the board serve without compensation but are
10 entitled to reimbursement, solely from the funds of the authority, for
11 expenses incurred in the discharge of their duties under this chapter.

12 NEW SECTION. **Sec. 30.** (1) Manufacturers participating in the
13 standard plan shall pay the authority to cover all administrative and
14 operational costs associated with the collection, transportation, and
15 recycling of covered electronic products within the state of Washington
16 incurred by the standard program operated by the authority to meet the
17 standard plan's equivalent share obligation as described in section
18 28(5) of this act.

19 (2) The authority shall assess charges on each manufacturer
20 participating in the standard plan and collect funds from each
21 participating manufacturer for the manufacturer's share of the costs in
22 subsection (1) of this section. Such shares must be based on current
23 market share as determined by the department. The department shall use
24 statistically valid methodologies to determine market share for those
25 participating in the standard plan. The department shall include the
26 cost of determining current market share in the fees charged to the
27 authority and manufacturers participating in the standard plan as
28 described in section 23(4) of this act. The authority's assignment of
29 shares to manufacturers participating in the standard plan may not
30 include nor be based on electronic products imported through the state
31 and subsequently exported outside the state. Charges assessed under
32 this section must not be formulated in such a way as to create
33 incentives to divert imported electronic products to ports or
34 distribution centers in other states. The authority shall adjust the
35 charges to manufacturers participating in the standard plan as
36 necessary in order to ensure that all costs associated with the
37 identified activities are covered.

1 (3) Any manufacturer participating in the standard plan may appeal
2 the determination of current market share by written petition to the
3 director of the department. The petition must be received by the
4 director of the department within thirty days of the publication of
5 market share and must contain a detailed explanation and documentary
6 evidence of the grounds for the appeal. Within sixty days of the
7 publication of market share, the director of the department or the
8 director's designee, shall review all appeals and shall make a final
9 determination of market share having fully taken into consideration any
10 and all challenges to its initial determination.

11 (4) Nothing in this section authorizes the authority to assess fees
12 or levy taxes directly on the sale or possession of electronic
13 products.

14 (5) If a manufacturer has not met its financial obligations as
15 determined by the authority under this section, the authority shall
16 notify the department that the manufacturer is no longer participating
17 in the standard plan.

18 (6) The authority shall submit its plan for assessing charges on
19 manufacturers participating in the standard plan to the department for
20 review and approval along with the standard plan as provided in section
21 6 of this act.

22 (7) Any manufacturer participating in the standard plan may appeal
23 an assessment of charges levied by the authority under this section to
24 the director of the department. The director of the department or the
25 director's designee shall review all appeals and shall reverse any
26 assessments of charges if the director finds that the authority's
27 determination was an arbitrary administrative decision or an abuse of
28 administrative discretion. If the director of the department reverses
29 an assessment of charges, the authority must redetermine the
30 assessment.

31 NEW SECTION. **Sec. 31.** (1) The authority shall use any funds
32 legally available to it for any purpose specifically authorized by this
33 chapter to:

34 (a) Contract and pay for collecting, transporting, and recycling of
35 covered electronic products and education and other services as
36 identified in the standard plan;

1 (b) Pay for the expenses of the authority including, but not
2 limited to, salaries, benefits, operating costs and consumable
3 supplies, equipment, office space, and other expenses related to the
4 costs associated with operating the authority;

5 (c) Pay into the electronic products recycling account amounts
6 billed by the department to the authority for any deficit in reaching
7 the standard plan's equivalent share as required under section 22 of
8 this act; and

9 (d) Pay the department for the fees for submitting the standard
10 plan and any plan revisions.

11 (2) If practicable, the authority shall avoid creating new
12 infrastructure already available through private industry in the state.

13 (3) The authority may not receive an appropriation of state funds,
14 other than:

15 (a) Funds that may be provided as a one-time loan to cover
16 administrative costs associated with start up of the authority, such as
17 electing the board of directors and conducting the public hearing for
18 the operating plan, provided that no appropriated funds may be used to
19 pay for collection, transportation, or recycling services; and

20 (b) Funds received from the department from the electronic products
21 recycling account for exceeding the standard plan's equivalent share.

22 (4) The authority may receive additional sources of funding that do
23 not obligate the state to secure debt.

24 (5) All funds collected by the authority under this chapter,
25 including interest, dividends, and other profits, are and must remain
26 under the complete control of the authority and its board of directors,
27 be fully available to achieve the intent of this chapter, and be used
28 for the sole purpose of achieving the intent of this chapter.

29 NEW SECTION. **Sec. 32.** (1) The board shall adopt a general
30 operating plan of procedures for the authority. The board shall also
31 adopt operating procedures for collecting funds from participating
32 covered electronic manufacturers and for providing funding for
33 contracted services. These operating procedures must be adopted by
34 resolution prior to the authority operating the applicable programs.

35 (2) The general operating plan must include, but is not limited to:

36 (a) Appropriate minimum reserve requirements to secure the authority's

1 financial stability; and (b) appropriate standards for contracting for
2 services.

3 (3) The board shall conduct at least one public hearing on the
4 general operating plan prior to its adoption. The authority shall
5 provide and make public a written response to all comments received by
6 the public.

7 (4) The general operating plan must be adopted by resolution of the
8 board. The board may periodically update the general operating plan as
9 necessary, but must update the plan no less than once every four years.
10 The general operating plan or updated plan must include a report on
11 authority activities conducted since the commencement of authority
12 operation or since the last reported general operating plan, whichever
13 is more recent, including a statement of results achieved under the
14 purposes of this chapter and the general operating plan. Upon
15 adoption, the authority shall conduct its programs in observance of the
16 objectives established in the general operating plan.

17 NEW SECTION. **Sec. 33.** (1) The authority shall employ a chief
18 executive officer, appointed by the board, and a chief financial
19 officer, as well as professional, technical, and support staff,
20 appointed by the chief executive officer, necessary to carry out its
21 duties.

22 (2) Employees of the authority are not classified employees of the
23 state. Employees of the authority are exempt from state service rules
24 and may receive compensation only from the authority at rates
25 competitive with state service.

26 (3) The authority may retain its own legal counsel.

27 (4) The departments of ecology and community, trade, and economic
28 development shall provide staff to assist in the creation of the
29 authority. If requested by the authority, the departments of ecology
30 and community, trade, and economic development shall also provide
31 start-up support staff to the authority for its first twelve months of
32 operation, or part thereof, to assist in the quick establishment of the
33 authority. Staff expenses must be paid through funds collected by the
34 authority and must be reimbursed to the departments from the
35 authority's financial resources within the first twenty-four months of
36 operation.

1 (5) In addition to accomplishing the activities specifically
2 authorized in this chapter, the authority may:

3 (a) Maintain an office or offices;

4 (b) Make and execute all manner of contracts, agreements, and
5 instruments and financing documents with public and private parties as
6 the authority deems necessary, useful, or convenient to accomplish its
7 purposes;

8 (c) Make expenditures as appropriate for paying the administrative
9 costs and expenses of the authority in carrying out the provisions of
10 this chapter;

11 (d) Give assistance to private and public bodies contracted to
12 provide collection, transportation, and recycling services by providing
13 information, guidelines, forms, and procedures for implementing their
14 programs;

15 (e) Delegate, through contract, any of its powers and duties if
16 consistent with the purposes of this chapter; and

17 (f) Exercise any other power the authority deems necessary, useful,
18 or convenient to accomplish its purposes and exercise the powers
19 expressly granted in this chapter.

20 NEW SECTION. **Sec. 34.** This chapter is void if a federal law, or
21 a combination of federal laws, takes effect that establishes a national
22 program for the collection and recycling of covered electronic products
23 that substantially meets the intent of this chapter, including the
24 creation of a financing mechanism for collection, transportation, and
25 recycling of all covered electronic products from households, small
26 businesses, school districts, small governments, and charities in the
27 United States.

28 NEW SECTION. **Sec. 35.** A new section is added to chapter 43.19 RCW
29 to read as follows:

30 (1) The department of general administration shall establish
31 purchasing and procurement policies that establish a preference for
32 electronic products that meet environmental performance standards
33 relating to the reduction or elimination of hazardous materials.

34 (2) The department of general administration shall ensure that
35 their surplus electronic products, other than those sold individually

1 to private citizens, are managed only by registered transporters and by
2 processors meeting the requirements of section 25 of this act.

3 (3) The department of general administration shall ensure that
4 their surplus electronic products are directed to legal secondary
5 materials markets by requiring a chain of custody record that documents
6 to whom the products were initially delivered through to the end use
7 manufacturer.

8 **Sec. 36.** RCW 42.56.270 and 2005 c 274 s 407 are each amended to
9 read as follows:

10 The following financial, commercial, and proprietary information is
11 exempt from disclosure under this chapter:

12 (1) Valuable formulae, designs, drawings, computer source code or
13 object code, and research data obtained by any agency within five years
14 of the request for disclosure when disclosure would produce private
15 gain and public loss;

16 (2) Financial information supplied by or on behalf of a person,
17 firm, or corporation for the purpose of qualifying to submit a bid or
18 proposal for (a) a ferry system construction or repair contract as
19 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
20 or improvement as required by RCW 47.28.070;

21 (3) Financial and commercial information and records supplied by
22 private persons pertaining to export services provided under chapters
23 43.163 and 53.31 RCW, and by persons pertaining to export projects
24 under RCW 43.23.035;

25 (4) Financial and commercial information and records supplied by
26 businesses or individuals during application for loans or program
27 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
28 or during application for economic development loans or program
29 services provided by any local agency;

30 (5) Financial information, business plans, examination reports, and
31 any information produced or obtained in evaluating or examining a
32 business and industrial development corporation organized or seeking
33 certification under chapter 31.24 RCW;

34 (6) Financial and commercial information supplied to the state
35 investment board by any person when the information relates to the
36 investment of public trust or retirement funds and when disclosure

1 would result in loss to such funds or in private loss to the providers
2 of this information;

3 (7) Financial and valuable trade information under RCW 51.36.120;

4 (8) Financial, commercial, operations, and technical and research
5 information and data submitted to or obtained by the clean Washington
6 center in applications for, or delivery of, program services under
7 chapter 70.95H RCW;

8 (9) Financial and commercial information requested by the public
9 stadium authority from any person or organization that leases or uses
10 the stadium and exhibition center as defined in RCW 36.102.010;

11 (10) Financial information, including but not limited to account
12 numbers and values, and other identification numbers supplied by or on
13 behalf of a person, firm, corporation, limited liability company,
14 partnership, or other entity related to an application for a liquor
15 license, gambling license, or lottery retail license;

16 (11) Proprietary data, trade secrets, or other information that
17 relates to: (a) A vendor's unique methods of conducting business; (b)
18 data unique to the product or services of the vendor; or (c)
19 determining prices or rates to be charged for services, submitted by
20 any vendor to the department of social and health services for purposes
21 of the development, acquisition, or implementation of state purchased
22 health care as defined in RCW 41.05.011; (~~and~~)

23 (12)(a) When supplied to and in the records of the department of
24 community, trade, and economic development:

25 (i) Financial and proprietary information collected from any person
26 and provided to the department of community, trade, and economic
27 development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

28 (ii) Financial or proprietary information collected from any person
29 and provided to the department of community, trade, and economic
30 development or the office of the governor in connection with the
31 siting, recruitment, expansion, retention, or relocation of that
32 person's business and until a siting decision is made, identifying
33 information of any person supplying information under this subsection
34 and the locations being considered for siting, relocation, or expansion
35 of a business;

36 (b) When developed by the department of community, trade, and
37 economic development based on information as described in (a)(i) of
38 this subsection, any work product is not exempt from disclosure;

1 (c) For the purposes of this subsection, "siting decision" means
2 the decision to acquire or not to acquire a site;

3 (d) If there is no written contact for a period of sixty days to
4 the department of community, trade, and economic development from a
5 person connected with siting, recruitment, expansion, retention, or
6 relocation of that person's business, information described in (a)(ii)
7 of this subsection will be available to the public under this chapter;
8 and

9 (13) Financial and proprietary information submitted to or obtained
10 by the department of ecology or the authority created under chapter
11 70.-- RCW (sections 1 through 34 of this act) to implement chapter
12 70.-- RCW (sections 1 through 34 of this act).

13 NEW SECTION. Sec. 37. This act must be liberally construed to
14 carry out its purposes and objectives.

15 NEW SECTION. Sec. 38. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. Sec. 39. This act takes effect July 1, 2006.

20 NEW SECTION. Sec. 40. Sections 1 through 34 of this act
21 constitute a new chapter in Title 70 RCW."

ESSB 6428 - H COMM AMD
By Committee on Appropriations

ADOPTED 03/02/2006

22 On page 1, line 2 of the title, after "opportunities;" strike the
23 remainder of the title and insert "amending RCW 42.56.270; adding a new
24 section to chapter 43.19 RCW; adding a new chapter to Title 70 RCW;
25 creating a new section; prescribing penalties; and providing an
26 effective date."

--- END ---