

HOUSE BILL REPORT

ESSB 6428

As Reported by House Committee On:
Natural Resources, Ecology & Parks
Appropriations

Title: An act relating to providing electronic product recycling through manufacturer financed opportunities.

Brief Description: Providing for electronic product recycling.

Sponsors: Senate Committee on Water, Energy & Environment (originally sponsored by Senators Pridemore, Esser, Poulsen, Morton, Schmidt, Fairley, Benson, Berkey, Regala, Kohl-Welles, Weinstein, Prentice, Kastama, Johnson, Thibaudeau, Kline, Eide, Shin, Rockefeller, Jacobsen, Haugen, Doumit, Oke, Franklin, Swecker, Carrell, Rasmussen, Spanel, Fraser, McAuliffe, Keiser, Brown, Finkbeiner, Brandland and Benton).

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/16/06, 2/21/06 [DPA];
Appropriations: 2/25/06, 2/27/06 [DPA(APP w/o NREP)s].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Requires manufacturers of covered electronic products (CEPs) offered for sale in Washington to register with the Department of Ecology (DOE) and to implement and finance the collection, transportation, and recycling of CEPs by January 1, 2009.
- Creates the Electronic Products Recycling Account and authorizes the DOE to establish fees to recover the costs to register manufacturers, review plans, and other administrative costs of the new program.
- Creates the Washington Materials Management and Financing Authority as a public entity to develop and implement a collection and recycling program for manufacturers participating in the standard plan.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: Do pass as amended. Signed by 6 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Blake, Dickerson, Hunt and Kagi.

Minority Report: Do not pass. Signed by 4 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Chandler and Orcutt.

Staff: Jeff Olsen (786-7157).

Background:

The Department of Ecology (DOE) estimates that between 2003 and 2010, over 4.5 million computer processing units, 3.5 million cathode ray tube monitors, and 1.5 million flat panel monitors will become obsolete in Washington. These electronic products may contain many different materials, including steel, aluminum, copper, glass, plastic, gold, and lead.

In 2004, the Legislature enacted ESHB 2488 (Chapter 194, Laws of 2004) directing the DOE, in consultation with the Solid Waste Advisory Committee, to research information regarding the collection, recycling, and reuse of covered electronic products (CEPs). Covered electronic products include all computer monitors, personal computers, and televisions sold to consumers for personal use. The DOE report recommends that a system be developed and financed by industry based on product market share. The level of responsibility for each participant would be based on the return share of products being collected. The recommendations include requirements for a license to sell CEPs in Washington, with penalties for noncompliance.

Summary of Amended Bill:

CEPs

Legislative findings conclude that a system financed by manufacturers for the collection, transportation, and recycling of CEPs must be established. Covered electronic products include computer monitors, desktop computers, laptop or portable computers, or televisions that have been used in the state by any household, charity, school district, small business, or small government. Televisions and computer monitors must have screens with a viewable area greater than four inches when measured diagonally.

Labeling Requirements

No person may sell or offer for sale an electronic product in Washington after January 1, 2007, unless a label with the manufacturer's brand is permanently affixed and readily visible. In-state retailers in possession of unlabeled products on January 1, 2007, may exhaust their stock through sales to the public.

Manufacturers, Collectors, and Transporters Registration

By January 1, 2007, manufacturers offering CEPs for sale in Washington must register annually with the DOE. Collectors and transporters of CEPs must also register annually with the DOE. When registering with the DOE, manufacturers must provide the DOE with contact information, the brand names of CEPs sold in the state, the methods of sale, and the manufacturer's preference for participating in the standard plan or an independent plan.

Manufacturers include any person who manufactures a CEP for sale in this state under their own brand name, assembles a CEP using parts manufactured by others for sale under the assembler's brand name, resells under its own brand name a CEP produced by other suppliers, imports a CEP that is sold in this state, or manufactures a co-branded product for sale in this state that carries the name of both the manufacturer and a retailer.

Manufacturer Financed Collection and Recycling Plans

Manufacturers of CEPs offered for sale in Washington must participate in plans to implement and finance the collection, transportation, and recycling of their equivalent share of CEPs by January 1, 2009. Manufacturers must participate in an independent plan or the standard plan operated by the Washington Materials Management and Financing Authority (Authority). Manufacturers must pay for all of the program costs. If program costs are passed on to consumers, manufacturers may not charge a fee at the time an unwanted electronic product is delivered or collected for recycling. Any person acquiring a manufacturer has responsibility for the acquired company's CEPs.

Independent Plans and the Standard Plan

A manufacturer that sells a CEP in Washington must participate in the standard plan, unless the manufacturer obtains approval from the DOE to participate in an independent plan. The standard plan is the plan developed by the Authority on behalf of participating manufacturers. An independent plan may be submitted to the DOE by manufacturers or a group of manufacturers, provided that the plan represents at least 5 percent of the return share of CEPs. Also, to participate in an independent plan a manufacturer may not be a new entrant to the market or a manufacturer of unbranded products. An authorized party is the manufacturer or the entity designated by a group of manufacturers submitting an independent plan.

Plan Review

All independent plans and the standard plan must be submitted to the DOE by February 1, 2008. The DOE must review the plans within 90 days and notify persons with letters of approval. If a plan is rejected, the DOE must provide reasons for rejecting the plan, and the Authority or authorized parties have 60 days to submit a new plan. Plans must be updated at least every five years. If a program fails to meet certain plan requirements, updated plans must be submitted to the DOE describing how program adjustments will be made.

Plans submitted to the DOE must contain contact information and a list of participants, a description of the collection system, methods of collection in both rural and urban areas, a description of plan service to covered entities, a description of recycling processes and facilities, processors used in the plan, how progress will be measured, and public education efforts.

Recycling Program Requirements

Programs established to implement recycling plans must provide for convenient collection services for both urban and rural populations. Programs must provide at least one collection

site or service for any city or town with a population greater than 10,000. Collection sites must be staffed and open to the public at a frequency adequate to meet the needs of the area being served. Programs may limit the number of CEPs accepted per customer per day.

Washington Materials Management and Financing Authority

The Authority is established as a public body and an instrument of Washington. The Authority is governed by a Board of Directors (Board), comprised of 11 members of participating manufacturers appointed by the Director of the DOE. Five Board positions are reserved for representatives from the top 10 brands by return share of CEPs, and six Board positions are reserved for other brands. The Board must have representation from both television and computer manufacturers. The Board must select a chair and create its own bylaws. The Directors of the Department of Community, Trade and Economic Development (DCTED); the Director of the DOE; and the State Treasurer serve as ex-officio members.

The Authority must plan and implement a collection and recycling program for manufacturers participating in the standard plan. The standard plan is responsible for the sum of equivalent shares of participating manufacturers. The Board must adopt a general operating plan of procedures and shall conduct at least one public hearing on the general operating plan. The DOE and the DCTED must provide staff to assist in the creation of the Authority.

Participating manufacturers shall pay the Authority to cover the administrative and collection costs to operate the standard program. The Authority must assess charges to manufacturers participating in the standard plan based on current market share, as determined by the DOE. The Authority must submit its plan for assessing charges to manufacturers to the DOE for review and approval. Manufacturers may appeal the determination of market share or the charges assessed by the Authority to the Director of the DOE. If a manufacturer has not met its financial obligations, the Authority must notify the DOE that the manufacturer is no longer participating in the standard plan.

Return Share and Equivalent Share

The DOE must determine return share based on the percentage of CEPs by weight identified for an individual manufacturer. For the first program year, the DOE must establish the return share based on best available information from other states. In subsequent years, the return share must be based on the most recent sampling of CEPs. Manufacturers may challenge the preliminary return share by written petition to the DOE.

The DOE must determine the equivalent share for each manufacturer by comparing the return share to the total weight in pounds of CEPs collected for that program year. By June 1 of each year, the DOE must notify each manufacturer of their equivalent share for the previous year, and shall bill the Authority or any authorized party that has not attained its equivalent share. By September 1 of each year, the DOE shall pay the Authority or any authorized party that exceeds its equivalent share. Plans using nonprofit organizations for collection services are given a 5 percent credit to be applied towards a plan's equivalent share for pounds that are received for recycling from those organizations.

If a plan collects less than its equivalent share, the Authority or authorized party must pay the DOE an amount to cover the costs of handling those CEPs, plus an administrative fee. Moneys collected by the DOE are deposited in the newly created Electronic Products Recycling Account. If a plan collects more than its equivalent share, the DOE must pay an amount to compensate for the collection of the surplus CEPs.

Plans must finance an auditable, statistically significant sampling of the CEPs entering its program every year. The information collected must include the brand names, product types, weight by brand name, and any additional information needed to assign return share.

Processors, Processing Standards, and Export Reporting Requirements

The Authority and authorized parties must obtain written statements from processors regarding compliance with certain processor requirements. The export of unwanted CEPs is prohibited, except for exports to Organization for Economic Cooperation and Development (OECD) countries, members of the European Community, or other countries that have entered into an agreement with the United States allowing for the exports. Covered electronic products exported to other countries must be tested and labeled as functional or needing certain repairs. No plan or program may use federal or state prison labor for processing a CEP.

The DOE shall establish by rule performance standards for environmentally sound management of processors. These standards must include financial assurances to ensure proper closure of a facility that is consistent with environmental standards. The DOE must establish by rule the allowable percent of non-recycled residual that may be properly disposed of after CEPs have been processed. The DOE may audit processors used to fulfill the requirement of a plan.

Annual Reporting

By March 1 of the second program year, the Authority and authorized parties must submit annual reports to the DOE. Annual reports must include the total weight of CEPs recycled by county, collection services by county, the weight of CEPs processed by each processor, documentation of compliance with processing standards, educational and promotional efforts, sampling results, and any other information deemed necessary by the DOE. The Authority's annual report must provide a list of participating manufacturers that have paid their equivalent share to the Authority. Nonprofit organizations that collect CEPs must report by each plan they participate in the weight of CEPs recycled during the previous program year. Financial and proprietary information submitted to or obtained by the DOE is exempt from public records disclosure requirements.

Education and Outreach Requirements

Plans must inform consumers about where and how to reuse and recycle their CEPs, including web site information or a toll-free telephone number. The DOE shall promote CEP recycling by posting information on its web site, providing a toll-free telephone number, or other activities. Local governments must promote recycling through existing educational methods. Retailers must provide information to consumers describing how to recycle CEPs.

State Purchasing Policies

The Department of General Administration (GA) must adopt purchasing policies that establish a preference for electronic products that meet environmental performance standards relating to the reduction or elimination of hazardous materials. The GA must ensure that certain surplus electronic products are managed only by registered transporters and processors. The GA must ensure that their surplus electronic products are directed to legal secondary material markets by requiring a chain of custody record.

Registration, Plan Review, and Other Fees

The DOE shall establish by rule annual registration and plan review fees to fully recover the costs incurred by the DOE in implementing the program. Fees must be based on factors relating to administering the collection and recycling program and be based on a sliding scale representative of annual sales of CEPs in the state. Fees collected by the DOE must be deposited in the Electronic Products Recycling Account to be used to fulfill their duties in administering the program.

Penalties

Manufacturers may not sell or offer for sale a CEP in Washington unless they register with the DOE, and they are participating in an approved plan to recycle their CEPs. The DOE must send written warnings to manufacturers that do not have an approved plan, giving them notice to participate in an approved plan within 30 days. If manufacturers do not comply, they must be assessed a penalty of up to \$10,000.

If the Authority or an authorized party fails to implement an approved plan, the DOE must assess a penalty of up to \$5,000 upon first infraction. After 30 days, the Authority or authorized parties must be assessed a penalty up to \$10,000 if they still fail to implement their plans.

Persons not complying with manufacturer registration, education and outreach, reporting, labeling, retailer responsibilities, collector and transporter registration, or other requirements must first receive a written warning. After 30 days, a person must be assessed up to \$1,000 for the first violation and \$2,000 for subsequent violations.

Legislative Report

By December 31, 2012, the DOE must provide a report to the Legislature containing the following information: the weight of CEPs recycled by plan, by county, and in total; the performance of each plan; a description of the collection programs; an evaluation of how the program compares to other states; comments from local governments; information on unwanted CEPs exported; and recommendations on how to improve the program.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment requires the Director of the DOE to appoint members to the Board of the Authority. The striking amendment limits the Authority's options for assessing charges to

manufacturers based on equitable methods, requires charges to be based on current market share, and specifies that the Authority may not assess fees or levy taxes directly on the sale or possession of electronic products. The striking amendment directs the DOE to determine current market share for manufacturers participating in the standard plan. The striking amendment specifies that the assignment of shares to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state. The striking amendment requires the Authority to submit its plan for assessing charges on manufacturers participating in the standard plan to the DOE for review and approval along with the standard plan. The striking amendment authorizes manufacturers to appeal charges assessed by the Authority or market share determined by DOE to the Director of the DOE. The striking amendment makes other clarifying and technical changes and corrects internal references.

Appropriation: None.

Fiscal Note: Requested on February 21, 2006.

Effective Date of Amended Bill: The bill takes effect July 1, 2006.

Testimony For: (In support of engrossed substitute) This legislation is the product of an 18 month stakeholder process, and the bill represents the best approach and the broadest range of stakeholder support. The bill does not affect the shipment of goods through Washington ports. While there is disagreement over the financing for this recycling program, this is the best approach. Manufacturers will include the cost of the program into their products, rather than use a consumer tax to finance the program. Some manufacturers will elect to do their own plan. Certain recycling businesses believe that the recycling system established in the bill will comprehensively address electronic waste. A first possession tax will be difficult to administer and will require retailers to track information. Retailers can not sell a product unless it is registered. Nonprofit organizations are experiencing disposal costs due to products being dumped at their sites.

(With concerns on engrossed substitute) Ports are concerned that companies will ship their products through other ports if there are increased costs of shipping to Washington ports.

Testimony Against: (Opposed to engrossed substitute) Manufacturers are willing to adopt a recycling program, but the program needs to be fair. The program established in the bill directs manufacturers to collect other manufacturer's waste and creates an unlevel playing field. Foreign companies may sell products in the state, go out of business, and leave without paying for the costs of recycling their products. This means existing companies will be asked to pay for their competitors' costs. A first possession tax, similar to the hazardous substance tax, will level the playing field. Electronics is a competitive industry, and the Legislature should consider the impacts to employment in Washington if this bill passes. Longshoremen are concerned about jobs if manufacturers look to other areas to ship their products, and they can not afford any cargo diversion. No other state uses the approach being proposed in this bill. The program in California, which uses a consumer fee at retail, is working well and is

being expanded. A similar program in Maine does not accurately capture costs, and not all manufacturers are participating. Manufacturers can not track their sales by state, only retailers are able to do this.

Persons Testifying: (In support of engrossed substitute) Senator Pridemore, prime sponsor; Mo McBroom, Washington Environmental Council; Dan Cantrell, Washington State Recycling Association; Dan Coyne, Hewlett-Packard Company; Jan Gee, Washington Retail Association and King County; Bill Smith, Association of Washington Cities and Northwest Product Stewardship; Tiffany Hatch, Goodwill Industries; Jay Sternoff, Pacific Iron and Metal; Cullen Stephenson, Department of Ecology; Craig Lorch, Total Reclaim; and Mitch Denning, Alliance of Educational Associations.

(With concerns on engrossed substitute) Eric D. Johnson, Washington Public Ports Association.

(Opposed to engrossed substitute) Randy Ray and Bill Alkire, Electronics Manufacturers Association; Bo Bolinger and Dale Swanson, Panasonic; Gordon Baxter and Jeff Davis, International Longshore and Warehouse Union; and Vinay Goel, Apple Computer.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Natural Resources, Ecology & Parks. Signed by 22 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Buri, Cody, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Priest, Schual-Berke, P. Sullivan and Walsh.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Armstrong, Bailey, Chandler, Clements, Hinkle, Pearson and Talcott.

Staff: Alicia Paatsch (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Natural Resources, Ecology & Parks:

The DOE is required to report to the Legislature by April 1, 2010, regarding the amount of orphan products collected. If the amount of orphan products collected exceeds 10 percent of the total covered electronic products collected, the DOE must report to the Legislature within 90 days and provide recommendations describing how to reduce the amount of orphan products collected or alternative methods for financing the collection and recycling of orphan products. Also, a technical error is corrected by changing the placement of a subsection.

Appropriation: None.

Fiscal Note: Requested on February 21, 2006.

Effective Date of Amended Bill: The bill takes effect July 1, 2006.

Testimony For: This bill creates a new program to recycle products such as televisions at no cost to the state and at no cost to small businesses, non-profits, and schools. The revenue for the recycling comes from retailers and manufacturers and is a shared responsibility approach. Currently these products take hundreds of thousands of dollars from our educational programs due to illegal dumping of electronic products in our parking lot and the cost to dispose of them is significant. We were participants in crafting this for the past two years and this bill showed strong bipartisan support by the Senate. It is good public policy to have electronic waste recycling. The cost to manufacturers has been overstated. California has 70 employees working for their program and what we have done here is set up an efficient program that requires manufacturers to take responsibility. We do not agree with the interpretation of the bill by the opposition and believe that this bill will continue to work well for manufacturers and retailers.

Testimony Against: There is no way to assess foreign companies a bill for the recycling of their products. We will have to pick-up their orphan share of products and we need to fix that loophole in this bill. The bill does not allow us to charge a fee for the sale or possession of electronic products, so we want to go back to the Senate version of the bill that deals with this section. The cost to manufactures is \$7 to \$9 million per year, and in California the program has 70 employees with a cost of only \$3 million.

Persons Testifying: (In support) Phil Watkins, Goodwill Industries of Washington; Mo McBroom, Washington Environmental Council; Ted Sturdevant, Department of Ecology; Jan Gee, Washington Retail Association; and Dan Coyne, Hewlett-Packard.

(Opposed) Bill Alkire and Randy Ray, Electronic Manufacturers Coalition.

Persons Signed In To Testify But Not Testifying: None.