
SENATE BILL 6428

State of Washington

59th Legislature

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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

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1 AN ACT Relating to providing electronic product recycling through
2 manufacturer financed opportunities; amending RCW 42.56.270; adding a
3 new section to chapter 43.19 RCW; adding a new chapter to Title 70 RCW;
4 creating a new section; prescribing penalties; and providing an
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

6 (3) "Board" means the board of directors of the Washington
7 materials management and financing authority created under section 29
8 of this act.

9 (4) "Collector" means an entity licensed to do business in the
10 state that gathers unwanted covered electronic products from
11 households, small businesses, school districts, small governments, and
12 charities for the purpose of recycling.

13 (5) "Contract for services" means an instrument executed by the
14 authority and one or more persons or entities that delineates
15 collection, transportation, and recycling services, in whole or in
16 part, that will be provided to the citizens of the state within service
17 areas as described in the approved standard plan.

18 (6) "Covered electronic product" includes a computer monitor, a
19 desktop computer, a laptop or a portable computer, or a television sold
20 or given to any household, charity, school district, small business, or
21 small government located in the state. Televisions and computer
22 monitors include both cathode ray tubes and flat screens having a
23 viewable area greater than four inches when measured diagonally.
24 "Covered electronic product" does not include: (a) A motor vehicle or
25 aircraft, or any computer, computer monitor, or television that is
26 contained within, and is not separate from, the motor vehicle or
27 aircraft; (b) monitoring and control instruments or systems; (c)
28 medical devices; (d) products including materials intended for use as
29 ingredients in those products as defined in the federal food, drug, and
30 cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act
31 of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under
32 those acts; (e) equipment used in the delivery of patient care in a
33 health care setting; or (f) a computer, computer monitor, or television
34 that is contained within a clothes washer, clothes dryer, refrigerator,
35 refrigerator and freezer, microwave oven, conventional oven or range,
36 dishwasher, room air conditioner, dehumidifier, or air purifier.

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

1 (8) "Department" means the department of ecology.

2 (9) "Electronic product" includes a cathode ray tube or flat panel
3 computer monitor; a desktop computer; a laptop or a portable computer;
4 or a cathode ray tube or flat screen television. Televisions and
5 computer monitors include both cathode ray tubes and flat screens
6 having a viewable area greater than four inches when measured
7 diagonally.

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

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

14 (12) "Independent plan" means a plan for the collection,
15 transportation, and recycling of unwanted covered electronic products
16 that is developed, implemented, and financed by an individual
17 manufacturer or by an authorized party.

18 (13) "Manufacturer" means any person who, either as of the
19 effective date of this section or thereafter, and irrespective of the
20 selling technique used, including by means of distance or remote sale:

21 (a) Manufactures a covered electronic product under its own brand
22 names for sale in this state;

23 (b) Assembles a covered electronic product that uses parts
24 manufactured by others for sale in this state under the assembler's
25 brand names;

26 (c) Resells in this state under its own brand names a covered
27 electronic product produced by other suppliers, including retail
28 establishments that sell covered electronic products under their own
29 brand names;

30 (d) Imports or exports a covered electronic product into the United
31 States that is sold in this state. However, if a company from whom an
32 importer purchases the merchandise has a presence or assets in the
33 United States, that company is deemed to be the manufacturer; or

34 (e) Manufactures a cobranded product that carries the name of both
35 the manufacturer and a retailer.

36 (14) "New entrant" means a manufacturer of televisions that have
37 been sold in the state for less than ten years, and a manufacturer of

1 desktop computers, laptop and portable computers, or computer monitors
2 that have been sold in the state for less than five years.

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

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

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

12 (18) "Program" means the collection, transportation, and recycling
13 activities conducted to implement an independent plan or the standard
14 plan.

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

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

24 (21) "Program year" means each full calendar year after the program
25 has been initiated.

26 (22) "Recycling" means transforming or remanufacturing waste
27 materials into usable or marketable materials for use other than
28 landfill disposal or incineration. "Recycling" does not include energy
29 recovery or energy generation by means of combusting electronic waste
30 with or without other waste. Smelting of electronic wastes to recover
31 metals for reuse in conformance with all applicable laws and
32 regulations is not considered disposal or energy recovery.

33 (23) "Retailer" means a person who offers covered electronic
34 products for sale at retail through any means including, but not
35 limited to, remote offerings such as sales outlets, catalogs, or the
36 internet, but does not include a sale that is a wholesale transaction
37 with a distributor or a retailer.

1 (24) "Return share" means the percentage of covered electronic
2 products by weight identified for an individual manufacturer, as
3 determined by the department under section 19 of this act.

4 (25) "Reuse" means any operation by which an electronic product or
5 a component of a covered electronic product changes ownership and is
6 used for the same purpose for which it was originally purchased.

7 (26) "Small business" means a business employing less than fifty
8 people in the state.

9 (27) "Small government" means a city in the state with a population
10 less than fifty thousand, a county in the state with a population less
11 than one hundred twenty-five thousand, and special purpose districts in
12 the state.

13 (28) "Standard plan" means the plan for the collection,
14 transportation, and recycling of unwanted covered electronic products
15 developed, implemented, and financed by the authority on behalf of
16 manufacturers participating in the authority.

17 (29) "Transporter" means an entity that transports covered
18 electronic products from collection sites to processors or other
19 locations for the purpose of recycling, but does not include any entity
20 or person that hauls their own unwanted electronic products.

21 (30) "Unwanted electronic product" means a covered electronic
22 product that has been discarded or is intended to be discarded by its
23 owner.

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

29 NEW SECTION. **Sec. 3.** (1) A manufacturer whose covered electronic
30 products are offered for sale in or into the state must participate in
31 an independent plan or the standard plan to implement and finance the
32 collection, transportation, and recycling of its equivalent share of
33 covered electronic products.

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

36 (3) The manufacturers participating in an approved plan are
37 responsible for covering all administrative and operational costs

1 associated with the collection, transportation, and recycling of their
2 plan's equivalent share of covered electronic products. If costs are
3 passed on to consumers, it must be done without any fees at the time
4 the unwanted electronic product is delivered or collected for
5 recycling.

6 (4) Manufacturers are encouraged to collaborate with electronic
7 product retailers, certificated waste haulers, processors, recyclers,
8 charities, and local governments in the development and implementation
9 of their plans.

10 NEW SECTION. **Sec. 4.** (1) By January 1, 2007, and annually
11 thereafter, each manufacturer whose covered electronic products are
12 offered for sale in or into the state must register with the
13 department.

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

18 (3) The department shall review a registration and notify the
19 manufacturer if their registration does not meet the requirements of
20 this section. Within thirty days of receipt of such a notification
21 from the department, the manufacturer must file with the department a
22 revised registration addressing the requirements noted by the
23 department.

24 (4) The registration may only include the following information:

25 (a) The name and contact information of the manufacturer submitting
26 the registration;

27 (b) The manufacturer's brand names of covered electronic products,
28 including all brand names sold in the state by that manufacturer in the
29 past and all brand names currently being sold in the state;

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

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

33 (5) The registrant shall submit any changes to the information
34 provided in the registration to the department within fourteen days of
35 such change.

36 (6) The department shall determine, using all reasonable means,
37 manufacturers that are in business or that are no longer in business

1 but that have a successor in interest by examining best available
2 return share data and other pertinent data. The department shall
3 notify manufacturers that have been identified and for whom an address
4 has been found of the requirements of this chapter, including
5 registration and plan requirements under this section and section 5 of
6 this act.

7 NEW SECTION. **Sec. 5.** (1) A manufacturer whose covered electronic
8 products are offered for sale in or into the state must participate in
9 the standard plan administered by the authority, unless the
10 manufacturer obtains department approval for an independent plan for
11 the collection, transportation, and recycling of unwanted electronic
12 products.

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

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

17 (b) No manufacturer may participate in an independent plan if they
18 are a new entrant or a white box manufacturer.

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

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

25 (b) Each group of manufacturers submitting an independent plan must
26 designate a party authorized to file the plan with the department on
27 their behalf. A letter of certification from each of the manufacturers
28 designating the authorized party must be submitted to the department
29 together with the plan.

30 (5) Each manufacturer in the standard plan or in an independent
31 plan retains responsibility and liability under this chapter in the
32 event that the plan fails to meet the manufacturer's obligations under
33 this chapter.

34 NEW SECTION. **Sec. 6.** (1) All initial independent plans and the
35 initial standard plan required under section 5 of this act must be

1 submitted to the department by February 1, 2008. The department shall
2 review each independent plan and the standard plan.

3 (2) The authority submitting the standard plan and each authorized
4 party submitting an independent plan to the department must pay a fee
5 to the department to cover the costs of administering and implementing
6 this chapter. The department shall set the fees as described under
7 section 23 of this act.

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

11 (4) Within ninety days after receipt of a plan, the department
12 shall determine whether the plan complies with this chapter. If the
13 plan is approved, the department shall send a letter of approval. If
14 a plan is rejected, the department shall provide the reasons for
15 rejecting the plan to the authority or authorized party. The authority
16 or authorized party has sixty days after receipt of the letter of
17 disapproval to submit a new plan.

18 (5) An independent plan and the standard plan must contain the
19 following elements:

20 (a) Contact information for the authority or authorized party and
21 a comprehensive list of all manufacturers participating in the plan and
22 their contact information;

23 (b) A description of the collection, transportation, and recycling
24 systems and service providers used;

25 (c) The method or methods for the convenient collection of covered
26 electronic products in rural and urban areas throughout the state,
27 including how the plan will provide for collection services in each
28 county of the state and for a minimum of one collection site for each
29 city or town with a population greater than ten thousand;

30 (d) A description of how the plan will provide service to small
31 businesses, small governments, charities, and school districts in
32 Washington state;

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

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

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

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

5 (i) The public information campaign to inform consumers about how
6 to recycle their covered electronic products at the end of the
7 product's life.

8 (6) All transporters and collectors used to fulfill the
9 requirements of this section must be registered as described in section
10 24 of this act.

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

14 (a) If the program fails to provide service in each county in the
15 state or meet other plan requirements, the authority or authorized
16 party shall submit to the department within sixty days of failing to
17 provide service an updated plan addressing how the program will be
18 adjusted to meet program geographic coverage and collection service
19 requirements.

20 (b) The authority or authorized party shall notify the department
21 of any modification to the plan. If the department determines that the
22 authority or authorized party has significantly modified the program
23 described in the plan, the authority or authorized party shall submit
24 a revised plan describing the changes to the department within sixty
25 days of notification by the department.

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

34 (3) The authority or authorized parties may buy and sell weight of
35 covered electronic products with other plans without submitting a plan
36 revision for review.

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

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

7 (3) A manufacturer participating in the standard plan wishing to
8 implement or participate in an independent plan may do so by complying
9 with rules adopted by the department under section 23 of this act.

10 NEW SECTION. **Sec. 9.** (1) A program must provide for collection
11 services for covered electronic products that are convenient and
12 available to all citizens of the state residing within its geographic
13 boundaries, including both rural and urban populations. Each program
14 must provide collection service in every county of the state. In
15 counties with a small and widely dispersed population, a program may
16 provide collection service jointly with another plan or plans.

17 (a) Each program shall provide collection service at a minimum of
18 one collection site for any city or town with a population greater than
19 ten thousand.

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

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

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

31 (3) A program may provide collection services in forms different
32 than collection sites if those alternate services provide equal or
33 better convenience to citizens and equal or increased recovery of
34 unwanted covered electronic products.

35 (4) A program may provide service to rural areas without commercial
36 centers or areas with widely dispersed population by providing

1 collections at the nearest commercial centers or solid waste sites,
2 collection events, mail-back systems, or a combination of these
3 options.

4 (5) A program may provide alternate services for small businesses,
5 small governments, charities, and school districts for large quantities
6 of covered electronic products that cannot be handled at collection
7 sites. At a minimum, a program must provide for processing of these
8 large quantities of covered electronic products at no charge to the
9 small businesses, small governments, charities, and school districts.

10 NEW SECTION. **Sec. 10.** Any person acquiring a manufacturer has the
11 responsibility for the acquired company's covered electronic products,
12 including covered electronic products manufactured prior to the
13 effective date of this section, unless that responsibility remains with
14 the other entity per the purchase agreement. Cobranding manufacturers
15 may negotiate with retailers for responsibility for those products.

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, through
18 already 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 shall collaborate in the development and
29 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 operating in the state in the prior program year and
30 the parties who operated them;

31 (c) A list of processors used, the weight of covered electronic
32 products processed by each 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 complete list of all subcontractors who
36 further processed all materials listed in section 25(1)(b) of this act,

1 including facility locations and the total weight sent to each
2 facility;

3 (d) For each processor used by the plan, documentation of
4 compliance with processing standards, including audits, as established
5 under section 25 of this act;

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

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

13 (g) Any other information deemed necessary by the department.

14 (3) The authority shall also include in its annual report to the
15 department the list of manufacturers that are participating in the
16 standard plan and that have fully paid their equivalent share to the
17 authority in the preceding year as required under section 22 of this
18 act.

19 (4) The department shall review each report within ninety days of
20 its submission and shall notify the authority or authorized party of
21 any need for additional information or documentation, or any deficiency
22 in its program.

23 (5) All reports submitted to the department must be available to
24 the general public through the internet. Proprietary information
25 submitted to the department under this chapter is exempt from public
26 disclosure under RCW 42.56.270.

27 NEW SECTION. **Sec. 15.** Nonprofit charitable 501(c)3 organizations
28 that are primarily engaged in the business of reuse and resale and that
29 are used by a plan to collect covered electronic products shall file a
30 report with the department by March 1st of the second program year and
31 each program year thereafter. The report must indicate and document
32 the weight of covered electronic products sent for recycling during the
33 previous program year attributed to each plan that the charitable
34 organization is participating in.

35 NEW SECTION. **Sec. 16.** (1) Beginning July 1, 2006, no person may

1 sell or offer for sale an electronic product to any person in the state
2 unless the electronic product is labeled with the manufacturer's brand.
3 The label must be permanently affixed and readily visible.

4 (2) In-state retailers in possession of unlabeled products on July
5 1, 2006, may exhaust their stock through sales to the public.

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

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

20 (a) The names of the manufacturers and the manufacturer's brands
21 that are registered with the department under section 3 of this act;

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

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

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

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

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

32 NEW SECTION. **Sec. 19.** (1) The department shall determine the
33 return share percentage for each manufacturer of covered electronic
34 products by dividing the weight of covered electronic products
35 identified for each manufacturer by the total weight of covered

1 electronic products identified for all manufacturers participating in
2 the standard or an independent plan, then multiplying the quotient by
3 one hundred.

4 (2) For the first program year, the percentage of covered
5 electronic products identified for an individual manufacturer must be
6 based on best available information regarding return share data from
7 other states.

8 (3) For the second and each subsequent program year, the percentage
9 of covered electronic products identified for an individual
10 manufacturer must be based on the most recent sampling of covered
11 electronic products conducted in the state under section 11 of this
12 act. The department may also examine data from other states to inform
13 its decision.

14 NEW SECTION. **Sec. 20.** (1) The department shall determine the
15 total equivalent share for each manufacturer of covered electronic
16 products by dividing the return share percentage for each manufacturer
17 by one hundred, then multiplying the quotient by the total weight in
18 pounds of covered electronic products collected for that program year.

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

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

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

31 (3) Plans that utilize the collection services of nonprofit
32 charitable 501(c)3 organizations that are primarily engaged in the
33 business of reuse and resale must be given an additional five percent
34 credit to be applied towards a plan's equivalent share for pounds that
35 are received for recycling from those organizations. The department
36 may adjust the percentage of credit annually.

1 NEW SECTION. **Sec. 21.** (1) By September 1, 2006, the department
2 shall notify each manufacturer of its preliminary return share of
3 covered 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 November 1, 2006, preceding the first program year and by
25 August 1st of the second and each subsequent program year, the
26 department shall publish the final return shares for use in the coming
27 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 the administrative fee. Moneys collected by
36 the 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) The department may adopt rules as necessary for the purpose of
37 implementing, administering, and enforcing this chapter.

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

7 NEW SECTION. **Sec. 25.** (1)(a) The authority and each authorized
8 party shall ensure that each processor used to fulfill the requirements
9 of their respective standard plan or independent plan is in and remains
10 in compliance with the requirements of this section. If the department
11 determines that a processor used in the standard plan or an independent
12 plan does not meet the requirements of this section, the department
13 shall require that the authority or authorized party change the plan or
14 demonstrate that the processor has come into compliance with the
15 requirements.

16 (b) Processors shall perform due diligence and have documentation
17 of the chain of custody for any of the following equipment or materials
18 destined for repair or reuse not meeting the requirements in (d) of
19 this subsection, recycling, or disposal: Whole electronic products,
20 cathode ray tubes and circuit boards, whole, shredded, or in part or
21 any devices containing them, glass cullet, lead, cadmium, selenium and
22 selenium compounds, beryllium and beryllium compounds, mercury, and
23 mercury-containing devices such as switches and lamps.

24 (c) All shipments of the equipment, components, or materials listed
25 in (b) of this subsection destined for recycling, disposal, or repair
26 or reuse not meeting the requirements in (d) of this subsection must
27 comply with all federal laws, all applicable laws of recipient
28 countries, and all applicable international laws and agreements.
29 Whenever export occurs, processors must have copies of all relevant
30 import permits provided to facilities in recipient countries by their
31 governments including the consents required under relevant
32 international laws and agreements for receiving such wastes from the
33 United States.

34 (d) Any electronic product or component of an electronic product
35 exported into a reuse market must be tested and certified and labeled
36 as fully functional or specifying the need for only minor repairs that

1 will not result in the removal or replacement of hazardous components
2 or materials listed in (b) of this subsection.

3 (2) The department shall establish by rule performance standards
4 for environmentally sound management for processors used to fulfill the
5 requirements of an independent plan or the standard plan. Performance
6 standards must include financial assurances to ensure proper closure of
7 facilities consistent with environmental standards.

8 (3) The department shall establish by rule the allowable percent of
9 nonrecycled residual that may be properly disposed after covered
10 electronic products have been processed.

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

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

15 NEW SECTION. **Sec. 26.** (1) The department shall send a written
16 warning to a manufacturer that does not have an approved plan or is not
17 participating in an approved plan as required under section 5 of this
18 act. The written warning must inform the manufacturer that it must
19 participate in an approved plan within ninety days of the notice. Any
20 infraction after the initial written warning shall be assessed a
21 penalty of up to ten thousand dollars upon the first citation of
22 infraction along with notification that the manufacturer must
23 participate in an approved plan within ninety days of the citation.
24 After ninety days, a manufacturer not in compliance with this section
25 is prohibited from offering an electronic product for sale in this
26 state.

27 (2) If the authority or any authorized party fails to implement
28 their approved plan, the department must assess a penalty of up to five
29 thousand dollars upon first citation of infraction along with
30 notification that the authority or authorized party must implement its
31 plan within ninety days of the citation. After ninety days, the
32 authority or any authorized party failing to implement their approved
33 plan must be assessed a penalty of up to ten thousand dollars upon the
34 second and each subsequent citation of infraction.

35 (3) Any person that does not comply with manufacturer registration
36 requirements under section 4 of this act, education and outreach
37 requirements under section 12 of this act, reporting requirements under

1 section 14 of this act, labeling requirements under section 16 of this
2 act, retailer responsibility requirements under section 17 of this act,
3 collector or transporter registration requirements under section 24 of
4 this act, or processing standards under section 25 of this act, must
5 first receive a written warning including a copy of the requirements
6 under this chapter and ninety days to correct the violation. After
7 ninety days, a person must be assessed a penalty of up to one thousand
8 dollars upon first citation of infraction and up to two thousand
9 dollars upon the second and each subsequent citation of infraction.

10 (4) All penalties levied under this section must be deposited into
11 the electronic products recycling account created under section 13 of
12 this act.

13 (5) The department shall enforce this section.

14 NEW SECTION. **Sec. 27.** By December 31, 2012, the department shall
15 provide a report to the legislature that includes the following
16 information:

17 (1) For each of the preceding program years, the weight of covered
18 electronic products recycled in the state by plan, by county, and in
19 total;

20 (2) The performance of each plan in meeting its equivalent share,
21 and payments received from and disbursed to each plan from the
22 electronic products recycling account;

23 (3) A description of the various collection programs used to
24 collect covered electronic products in the state;

25 (4) An evaluation of how the pounds per capita recycled of covered
26 electronic products in the state compares to programs in other states;

27 (5) Comments received from local governments and local communities
28 regarding satisfaction with the program, including accessibility and
29 convenience of services provided by the plans; and

30 (6) Recommendations on how to improve the statewide collection,
31 transportation, and recycling system for convenient, safe, and
32 environmentally sound recycling of electronic products.

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

1 (2) The authority shall plan and implement a collection,
2 transportation, and recycling program for manufacturers that have
3 registered with the department their intent to participate in the
4 standard program as required under section 5 of this act.

5 (3) Membership in the authority is comprised of registered
6 participating manufacturers. Any manufacturer who does not qualify or
7 is not approved to submit an independent plan, or whose independent
8 plan has not been approved by the department, is a member of the
9 authority.

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

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

18 (6) The authority shall accept into the standard program covered
19 electronic products from any registered collector who meets the
20 requirements of this chapter and the terms of the standard plan. The
21 authority shall compensate registered collectors for the reasonable
22 costs associated with collection.

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

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

29 NEW SECTION. **Sec. 29.** (1)(a) The authority is governed by a board
30 of directors. The initial board of directors is comprised of eleven
31 participating manufacturers, elected by the membership of the
32 authority. Five board positions are reserved for representatives of
33 the top ten brand owners by return share of covered electronic
34 products, and six board positions are reserved for representatives of
35 other brands, including at least one board position reserved for a
36 manufacturer who is also a retailer selling their own private label.

1 (b) The board must have representation from both television and
2 computer manufacturers.

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

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

6 (4) The directors of the department of community, trade, and
7 economic development and the department of ecology, and the state
8 treasurer serve as ex officio members. The state agency directors and
9 the state treasurer serving in ex officio capacity may each designate
10 an employee of their respective departments to act on their behalf in
11 all respects with regard to any matter to come before the authority.
12 Ex officio designations must be made in writing and communicated to the
13 authority director.

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

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

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

23 NEW SECTION. **Sec. 30.** (1) Participating manufacturers shall pay
24 the authority to cover all administrative and operational costs
25 associated with the collection, transportation, and recycling of
26 covered electronic products within the state of Washington incurred by
27 the standard program operated by the authority.

28 (2)(a) The initial fee collected from the participating
29 manufacturers by the authority must be determined by the board and may
30 be not less than four dollars and not more than ten dollars per unit of
31 covered electronic product sold in or into the state by manufacturers
32 for the first year of operation.

33 (b) Thereafter, the authority shall set annual fees, assess charges
34 to participating manufacturers, and collect fees directly to fund the
35 activities of the standard program. The authority shall adjust the
36 fees as necessary in order to ensure that all costs associated with the
37 identified activities are covered.

1 NEW SECTION. **Sec. 31.** (1) Except as provided in subsection (2) of
2 this section, the authority shall use any funds legally available to it
3 for any purpose specifically authorized by this chapter to:

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

7 (b) Pay for the expenses of the authority including, but not
8 limited to, salaries, benefits, operating costs and consumable
9 supplies, equipment, office space, and other expenses related to the
10 costs associated with operating the authority;

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

15 (d) Pay the department for the fees for submitting the standard
16 plan and any plan revisions.

17 (2) No funds available to the authority may be used to duplicate
18 the infrastructure already available through private industry in the
19 state.

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

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

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

29 (4) The authority may receive grants, contributions, and other
30 sources of funding that do not obligate the state to secure debt except
31 as described in subsection (1) of this section.

32 (5) All funds collected by the authority under this chapter,
33 including interest, dividends, and other profits, are and must remain
34 under the complete control of the authority and its board of directors
35 and be fully available to achieve the intent of this chapter.

36 NEW SECTION. **Sec. 32.** (1) The board shall adopt a general
37 operating plan of procedures for the authority. The board shall also

1 adopt operating procedures for collecting fees from participating
2 covered electronic manufacturers and for providing funding for
3 contracted services. These operating procedures must be adopted by
4 resolution prior to the authority operating the applicable programs.

5 (2) The general operating plan must include, but is not limited to:
6 (a) Appropriate minimum reserve requirements to secure the authority's
7 financial stability; and (b) appropriate standards for contracting for
8 services.

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

13 (4) The general operating plan must be adopted by resolution of the
14 board no later than April 1, 2007. The board may periodically update
15 the general operating plan as necessary, but must update the plan no
16 less than once every four years. The general operating plan or updated
17 plan must include a report on authority activities conducted since the
18 commencement of authority operation or since the last reported general
19 operating plan, whichever is more recent, including a statement of
20 results achieved under the purposes of this chapter and the general
21 operating plan. Upon adoption, the authority shall conduct its
22 programs in observance of the objectives established in the general
23 operating plan.

24 NEW SECTION. **Sec. 33.** (1) The authority shall employ a chief
25 executive officer, appointed by the board, and a chief financial
26 officer, as well as professional, technical, and support staff,
27 appointed by the chief executive officer, necessary to carry out its
28 duties.

29 (2) Employees of the authority are not classified employees of the
30 state. Employees of the authority are exempt from state service rules
31 and may receive compensation only from the authority at rates
32 competitive with state service.

33 (3) The authority must retain its own legal counsel.

34 (4) If requested by the authority, the departments of ecology and
35 community, trade, and economic development shall provide start-up
36 support staff to the authority for its first twelve months of
37 operation, or part thereof, to assist in the quick establishment of the

1 authority. Staff expenses must be paid through fees and funds
2 collected by the authority and must be reimbursed to the departments
3 from the authority's financial resources within the first twenty-four
4 months of operation.

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

7 (a) Maintain an office or offices;

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

12 (c) Make expenditures as appropriate for paying the administrative
13 costs and expenses of the authority in carrying out the provisions of
14 this chapter;

15 (d) Give assistance to private and public bodies contracted to
16 provide collection, transportation, and recycling services by providing
17 information, guidelines, forms, and procedures for implementing their
18 programs;

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

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

24 NEW SECTION. **Sec. 34.** This chapter is void upon the establishment
25 of a national system for covered electronic products established
26 through an act of congress that substantially meets the scope and
27 intent of this chapter, including the creation of a financing mechanism
28 for collection, transportation, and recycling of all covered electronic
29 products from households, small businesses, school districts, small
30 governments, and charities.

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

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

1 (2) The department of general administration shall ensure that
2 their surplus electronic products, other than those sold individually
3 to private citizens, are managed only by registered transporters and by
4 processors meeting the requirements of section 25 of this act.

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

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

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

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

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

23 (3) Financial and commercial information and records supplied by
24 private persons pertaining to export services provided under chapters
25 43.163 and 53.31 RCW, and by persons pertaining to export projects
26 under RCW 43.23.035;

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

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

36 (6) Financial and commercial information supplied to the state
37 investment board by any person when the information relates to the

1 investment of public trust or retirement funds and when disclosure
2 would result in loss to such funds or in private loss to the providers
3 of this information;

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

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

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

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

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

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

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

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

37 (b) When developed by the department of community, trade, and

1 economic development based on information as described in (a)(i) of
2 this subsection, any work product is not exempt from disclosure;

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

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

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

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

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

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

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

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