

HOUSE BILL REPORT

ESB 5699

As Reported by House Committee On:
Environment

Title: An act relating to electronic product recycling.

Brief Description: Concerning electronic product recycling.

Sponsors: Senators Ericksen and Kline.

Brief History:

Committee Activity:

Environment: 3/20/13, 3/21/13 [DPA].

Brief Summary of Engrossed Bill
(As Amended by Committee)

- Directs that electronic waste recycling programs allocate the responsibilities of participating manufacturers based on the manufacturers' sales volumes of covered electronic products, rather than based on the volumes of their electronic products that are collected.
- Amends the definition of manufacturer under the Electronic Waste Recycling law so that an entity may register in lieu of, and assume the recycling program participation responsibilities of, a manufacturer.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass as amended. Signed by 11 members: Representatives Upthegrove, Chair; McCoy, Vice Chair; Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Farrell, Fey, Kagi, Liias, Morris, Nealey and Tharinger.

Minority Report: Without recommendation. Signed by 1 member: Representative Overstreet.

Staff: Jacob Lipson (786-7196).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Since 2009 Washington's electronic waste recycling program, or E-Cycle, has allowed for the recycling of electronic waste at no direct cost to consumers. Electronic products covered by the Electronic Waste Recycling law (E-Cycle law) include televisions, monitors, computers, laptops, and tablets. Accessories such as computer keyboards are not recyclable through E-Cycle.

Manufacturer Responsibilities.

Under the E-Cycle law, manufacturers of covered electronic products are required to participate in an electronics recycling program. A manufacturer is defined as a person that, under its own brand name, previously or currently:

- manufactures an electronic product for sale in Washington;
- assembles an electronic product for sale in Washington using parts manufactured by others;
- resells a product produced by other suppliers under their own brand name;
- imports an electronic product from someone who does not conduct business in the United States; or
- sells an electronic product acquired from an importer and registers in the importer's stead.

Manufacturers of co-branded products are also considered manufacturers under the E-Cycle law.

E-Cycle Recycling Programs.

The E-Cycle law allows for, but does not require, the establishment of multiple electronics recycling programs. However, to date, the only electronics recycling program that has been established is the standard plan operated by the Washington Materials Management and Financing Authority (WMMFA), a public body governed by a board of directors and whose creation was required by the E-Cycle law. If developed, an independent plan alternative to the WMMFA's standard plan would need to meet certain requirements, including that its membership be made up of manufacturers responsible for at least 5 percent of collected electronics.

The Department of Ecology (DOE) oversees certain electronic waste recycling activities, including reviewing program plans and operations, identifying manufacturers of covered electronic products, providing certain notices and information to manufacturers, and enforcing provisions of the E-Cycle law. The WMMFA and any other entities which operate electronics recycling programs under the E-Cycle law must file an annual report with the DOE.

E-Cycle Program Financing.

The E-Cycle law provides the WMMFA with multiple options for how plan operations may be funded. The WMMFA may apportion costs by using:

- the percentage by weight of electronic products sold in the state ("market share");
- the percentage by weight of electronic products collected through E-Cycle ("return share");
- some combination of market share and return share; or
- any other equitable method.

Under the operational plan that the WMMFA is currently implementing, manufacturers fund the WMMFA operations through payments based on a combination of market share and return share. The relative weighting of manufacturers' market shares in financing the WMMFA operations is scheduled to increase with each coming year, and starting in 2016, manufacturers' responsibility for financing program operations will be based entirely on market share.

In the event that manufacturers establish an independent alternative electronic waste recycling program, the WMMFA program and the independent program would each be responsible for collecting a percentage of the state's overall electronic waste. Each recycling program would be assigned an "equivalent share" by the DOE, based on the cumulative return share of the manufacturers participating in each recycling program. If a recycling program does not collect its assigned equivalent share of all collected electronics, the DOE will inventory the under-collecting program, and correspondingly compensate the over-collecting program.

To determine the "return share" attributable to each manufacturer participating in the program, the E-Cycle law establishes a sampling mechanism designed to produce statistically significant information regarding the brand names collected for each type of electronic product, the number of electronic products collected by product type, and the weight of electronic products by brand name and product type.

Summary of Amended Bill:

Manufacturer and Program Responsibilities Based on Market Share.

Beginning in the 2016 program year, certain aspects of manufacturer responsibilities and the structure of the recycling program will be based on manufacturers' market shares, rather than based on a combination of manufacturers' market shares and return shares. In advance of this change, certain definitions, sampling requirements, and other aspects of the E-Cycle law will begin changing after the 2014 program year.

Specific changes related to this transition to a market-share based recycling law include:

- the DOE is to determine manufacturers' market shares based on manufacturer-submitted information, which will be exempt from public disclosure;
- beginning in program year 2016, the apportionment of costs to manufacturers participating in the WMMFA program is to be based solely on market share, rather than a combination of market share, return share, or other equitable methods;
- if independent recycling programs are formed as an alternative to the WMMFA program, each program's equivalent share is to be calculated based on the total market share of manufacturers participating in each program, rather than the return share;
- after the 2014 program year, the DOE will no longer be required to conduct sampling of the brands of collected covered electronic products; and
- five of the 11 memberships on the WMMFA's governing board are allocated to the top 10 brand owners by market share, rather than by return share.

Other Changes to E-Cycle.

Beginning in program year 2016, the statutory definition of manufacturer is amended so that an entity may register in lieu of, and assume the recycling program participation responsibilities of, another entity that meets the definition of manufacturer.

Recycling programs are required to provide collection services for covered electronic products, regardless of manufacturer.

The DOE is authorized to identify manufacturers and their successors in interest using product advertisements, in addition to return share and other data.

Amended Bill Compared to Engrossed Bill:

First, the striking amendment amends the dates for certain changes to E-cycle activities during the interim period before the transition to the market-share based system in 2016.

Second, the striking amendment provides additional options, beyond manufacturer-submitted data, for how the DOE may calculate a manufacturer's market share. The DOE may instead use a combination of manufacturer-supplied sales data, retailer-supplied sales data, and generally available market research data. The striking amendment also specifies that market share be calculated by dividing a manufacturer's total pounds of covered electronic products sold in the state by the sum total poundage of covered electronic products sold in Washington by all manufacturers.

Third, the striking amendment clarifies that the ability for an entity to assume the responsibility of another manufacturer beginning in 2016 also includes the ability to register in lieu of that entity with the DOE.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 21, 2013.

Effective Date of Amended Bill: The bill takes effect on January 1, 2014.

Staff Summary of Public Testimony:

(In support) Manufacturers, who are all currently participating in the WMMFA program, initially came together at the outset of the E-Cycle program and deemed, as exemplified in the WMMFA's adopted plan, that market share is a fair way to allocate producer responsibility. The whole idea of product stewardship is for manufacturers who are bringing products to market to take responsibility for recycling their products, which is precisely what this bill accomplishes. This bill remedies an unintended inequity between the DOE's allocation of equivalent share based on collection volumes, and the allocation of individual plan responsibility based on market share. Without this change, if a manufacturer with a low return share were to exit the WMMFA program, it would leave every remaining member with potentially large increases in costs to fund that program. The risk of this happening gets higher and higher as the WMMFA gradually transitions to a market share system. The

original law's intention was to allow for competition among plans that provide the best and most cost-effective recycling services, but not to allow manufacturers to venue shop whichever plan allows them to minimize their responsibility. This plan will also minimize the DOE's need to audit recycling programs collections, and will give them a stronger hammer to enforce manufacturer compliance since market share is more straightforward to keep track of than return share.

(With concerns) The transition to market share helps avert a challenging loophole in the current law, and is a good idea overall. The standard plan and independent plans will be on a more level playing field with this bill, and will continue to support the success of the E-Cycle program. There are concerns that, in the form that the bill passed the Senate, if a few individual manufacturers fail to meet the requirement to report their market share data, it could throw the whole program-wide allocation of costs into disarray. Some specific concerns, which would be addressed by language agreed to by stakeholders, will give the DOE a more workable way of determining manufacturers' market share, and will tweak the dates of certain activities in advance of the 2016 change to a market share system.

(Opposed) None.

Persons Testifying: (In support) John Friedrich, Washington Materials Management Financing Authority; and Meggan Ehret and Jim Henrick, Technicolor.

(With concerns) Laurie Davies, Department of Ecology; and Suellen Mele, Zero Waste Washington.

Persons Signed In To Testify But Not Testifying: None.