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ENGROSSED SENATE BILL 5699

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Billig, Ericksen, and Kline

Read first time 02/11/13. Referred to Committee on Energy,  
Environment & Telecommunications.

1 AN ACT Relating to electronic product recycling; amending RCW  
2 70.95N.020, 70.95N.040, 70.95N.050, 70.95N.090, 70.95N.110, 70.95N.140,  
3 70.95N.180, 70.95N.190, 70.95N.200, 70.95N.210, 70.95N.230, 70.95N.290,  
4 70.95N.300, and 42.56.270; and providing an effective date.

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

6 **Sec. 1.** RCW 70.95N.020 and 2006 c 183 s 2 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Authority" means the Washington materials management and  
11 financing authority created under RCW 70.95N.280.

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

15 (3) "Board" means the board of directors of the Washington  
16 materials management and financing authority created under RCW  
17 70.95N.290.

18 (4) "Collector" means an entity licensed to do business in the  
19 state that gathers unwanted covered electronic products from

1 households, small businesses, school districts, small governments, and  
2 charities for the purpose of recycling and meets minimum standards that  
3 may be developed by the department.

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

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

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

33 (8) "Curbside service" means a collection service providing  
34 regularly scheduled pickup of covered electronic products from  
35 households or other covered entities in quantities generated from  
36 households.

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

1 (10) "Electronic product" includes a cathode ray tube or flat panel  
2 computer monitor having a viewable area greater than four inches when  
3 measured diagonally; a desktop computer; a laptop or a portable  
4 computer; or a cathode ray tube or flat screen television having a  
5 viewable area greater than four inches when measured diagonally.

6 (11) "Equivalent share" means the weight in pounds of covered  
7 electronic products identified for an individual manufacturer under  
8 this chapter as determined by the department under RCW 70.95N.200.

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

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

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

18 (a) Manufactures or has manufactured a covered electronic product  
19 under its own brand names or under a brand it is licensed to use for  
20 sale in or into this state;

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

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

28 (d) Manufactures or manufactured a cobranded product for sale in or  
29 into this state that carries the name of both the manufacturer and a  
30 retailer;

31 (e) Imports or has imported a covered electronic product into the  
32 United States that is sold in or into this state. However, if the  
33 imported covered electronic product is manufactured by any person with  
34 a presence in the United States meeting the criteria of manufacturer  
35 under (a) through (d) of this subsection, that person is the  
36 manufacturer. For purposes of this subsection, "presence" means any  
37 person that performs activities conducted under the standards

1 established for interstate commerce under the commerce clause of the  
2 United States Constitution; (~~(e)~~)

3 (f) Sells at retail a covered electronic product acquired from an  
4 importer that is the manufacturer as described in (e) of this  
5 subsection, and elects to register in lieu of the importer as the  
6 manufacturer for those products; or

7 (g) Assumes the responsibilities of a manufacturer under this  
8 section. In the event the entity who assumes responsibility fails to  
9 comply, the manufacturer as defined under (a) through (f) of this  
10 subsection remains fully responsible.

11 (15) "New entrant" means: (a) A manufacturer of televisions that  
12 have been sold in the state for less than ten years; or (b) a  
13 manufacturer of desktop computers, laptop and portable computers, or  
14 computer monitors that have been sold in the state for less than five  
15 years. However, a manufacturer of both televisions and computers or a  
16 manufacturer of both televisions and computer monitors that is deemed  
17 a new entrant under either only (a) or (b) of this subsection is not  
18 considered a new entrant for purposes of this chapter.

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

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

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

28 (19) "Premium service" means services such as at-location system  
29 upgrade services provided to covered entities and at-home pickup  
30 services offered to households. "Premium service" does not include  
31 curbside service.

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

1 (21) "Product type" means one of the following categories:  
2 Computer monitors; desktop computers; laptop and portable computers;  
3 and televisions.

4 (22) "Program" means the collection, transportation, and recycling  
5 activities conducted to implement an independent plan or the standard  
6 plan.

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

9 (24) "Recycling" means transforming or remanufacturing unwanted  
10 electronic products, components, and by-products into usable or  
11 marketable materials for use other than landfill disposal or  
12 incineration. "Recycling" does not include energy recovery or energy  
13 generation by means of combusting unwanted electronic products,  
14 components, and by-products with or without other waste. Smelting of  
15 electronic materials to recover metals for reuse in conformance with  
16 all applicable laws and regulations is not considered disposal or  
17 energy recovery.

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

23 (26) "Return share" means the percentage of covered electronic  
24 products by weight identified for an individual manufacturer, as  
25 determined by the department under RCW 70.95N.190.

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

29 (28) "Small business" means a business employing less than fifty  
30 people.

31 (29) "Small government" means a city in the state with a population  
32 less than fifty thousand, a county in the state with a population less  
33 than one hundred twenty-five thousand, and special purpose districts in  
34 the state.

35 (30) "Standard plan" means the plan for the collection,  
36 transportation, and recycling of unwanted covered electronic products  
37 developed, implemented, and financed by the authority on behalf of  
38 manufacturers participating in the authority.

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

5 (32) "Unwanted electronic product" means a covered electronic  
6 product that has been discarded or is intended to be discarded by its  
7 owner.

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

13 (34) "Market share" means the percentage of covered electronic  
14 products by weight identified for an individual manufacturer, as  
15 determined by the department under RCW 70.95N.190.

16 (35) "Plan's market share" means the sum of the market shares of  
17 each manufacturer participating in that plan.

18 **Sec. 2.** RCW 70.95N.040 and 2006 c 183 s 4 are each amended to read  
19 as follows:

20 (1) By January 1, 2007, and annually thereafter, each manufacturer  
21 must register with the department.

22 (2) A manufacturer must submit to the department with each  
23 registration or annual renewal a fee to cover the administrative costs  
24 of this chapter as determined by the department under RCW 70.95N.230.

25 (3) The department shall review the registration or renewal  
26 application and notify the manufacturer if their registration does not  
27 meet the requirements of this section. Within thirty days of receipt  
28 of such a notification from the department, the manufacturer must file  
29 with the department a revised registration addressing the requirements  
30 noted by the department.

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

32 (a) The name and contact information of the manufacturer submitting  
33 the registration;

34 (b) The manufacturer's brand names of covered electronic products,  
35 including all brand names sold in the state in the past, all brand  
36 names currently being sold in the state, and all brand names for which  
37 the manufacturer has legal responsibility under RCW 70.95N.100;

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

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

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

7 (6) The department shall identify, using all reasonable means,  
8 manufacturers that are in business or that are no longer in business  
9 but that have a successor in interest by examining best available  
10 return share data, product advertisements, and other pertinent data.  
11 The department shall notify manufacturers that have been identified and  
12 for whom an address has been found of the requirements of this chapter,  
13 including registration and plan requirements under this section and RCW  
14 70.95N.050.

15 **Sec. 3.** RCW 70.95N.050 and 2006 c 183 s 5 are each amended to read  
16 as follows:

17 (1) A manufacturer must participate in the standard plan  
18 administered by the authority, unless the manufacturer obtains  
19 department approval for an independent plan for the collection,  
20 transportation, and recycling of unwanted electronic products.

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

23 (a) For program years 2009 through 2014, each independent plan  
24 represents at least a five percent return share of covered electronic  
25 products. For program year 2015 and all subsequent program years, each  
26 independent plan represents at least a five percent market share of  
27 covered electronic products; and

28 (b) No manufacturer may participate in an independent plan if it is  
29 a new entrant or a white box manufacturer.

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

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

36 (b) Each group of manufacturers submitting an independent plan must  
37 designate a party authorized to file the plan with the department on

1 their behalf. A letter of certification from each of the manufacturers  
2 designating the authorized party must be submitted to the department  
3 together with the plan.

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

8 **Sec. 4.** RCW 70.95N.090 and 2006 c 183 s 9 are each amended to read  
9 as follows:

10 (1) A program must provide collection services for covered  
11 electronic products of all product types and produced by any  
12 manufacturer that are reasonably convenient and available to all  
13 citizens of the state residing within its geographic boundaries,  
14 including both rural and urban areas. Each program must provide  
15 collection service in every county of the state. A program may provide  
16 collection services jointly with another plan or plans.

17 (a) For any city or town with a population of greater than ten  
18 thousand, each program shall provide a minimum of one collection site  
19 or alternate collection service described in subsection (3) of this  
20 section or a combination of sites and alternate service that together  
21 provide at least one collection opportunity for all product types. A  
22 collection site for a county may be the same as a collection site for  
23 a city or town in the county.

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

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

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

35 (3) A program may provide collection services in forms different  
36 than collection sites, such as curbside services, if those alternate



1 services provide equal or better convenience to citizens and equal or  
2 increased recovery of unwanted covered electronic products.

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

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

14 **Sec. 5.** RCW 70.95N.110 and 2006 c 183 s 11 are each amended to  
15 read as follows:

16 (1) For program years 2009 through 2014, an independent plan and  
17 the standard plan must implement and finance an auditable,  
18 statistically significant sampling of covered electronic products  
19 entering its program every program year. The information collected  
20 must include a list of the brand names of covered electronic products  
21 by product type, the number of covered electronic products by product  
22 type, the weight of covered electronic products that are identified for  
23 each brand name or that lack a manufacturer's brand, the total weight  
24 of the sample by product type, and any additional information needed to  
25 assign return share.

26 (2) For program years 2009 through 2014, the sampling must be  
27 conducted in the presence of the department or a third-party  
28 organization approved by the department. The department may, at its  
29 discretion, audit the methodology and the results.

30 (3) After the fifth program year through the 2014 program year, the  
31 department may reassess the sampling required in this section. The  
32 department may adjust the frequency at which manufacturers must  
33 implement the sampling or may adjust the frequency at which  
34 manufacturers must provide certain information from the sampling.  
35 Prior to making any changes, the department shall notify the public,  
36 including all registered manufacturers, and provide a comment period.

1 The department shall notify all registered manufacturers of any such  
2 changes.

3 **Sec. 6.** RCW 70.95N.140 and 2006 c 183 s 14 are each amended to  
4 read as follows:

5 (1) By March 1st of the second program year and each program year  
6 thereafter, the authority and each authorized party shall file with the  
7 department an annual report for the preceding program year.

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

9 (a) The total weight in pounds of covered electronic products  
10 collected and recycled, by county, during the preceding program year  
11 including documentation verifying collection and processing of that  
12 material. For program years 2009 through 2014, the report must also  
13 include the total weight in pounds, ~~((includes)) including~~ orphan  
14 products. The report must also indicate and document the weight in  
15 pounds received from each nonprofit charitable organization primarily  
16 engaged in the business of reuse and resale used by the plan. The  
17 report must document the weight in pounds that were received in large  
18 quantities from small businesses, small governments, charities and  
19 school districts as described in RCW 70.95N.090(5);

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

24 (c) A list of processors used, the weight of covered electronic  
25 products processed by each direct processor, and a description of the  
26 processes and methods used to recycle the covered electronic products  
27 including a description of the processing and facility locations. The  
28 report must also include a list of subcontractors who further processed  
29 or recycled unwanted covered electronic products, electronic  
30 components, or electronic scrap ~~((described in section 26(1) of this~~  
31 ~~act)), including facility locations;~~

32 ~~((Other documentation as established under section 26(3) of~~  
33 ~~this act;~~

34 ~~(e))~~ Educational and promotional efforts that were undertaken;

35 ~~((f))~~ (e) For program years 2009 through 2014, the results of  
36 sampling and sorting as required in RCW 70.95N.110, including a list of  
37 the brand names of covered electronic products by product type, the

1 number of covered electronic products by product type, the weight of  
2 covered electronic products that are identified for each brand name or  
3 that lack a manufacturer's brand, and the total weight of the sample by  
4 product type;

5 ~~((g))~~ (f) The list of manufacturers that are participating in the  
6 standard plan; and

7 ~~((h))~~ (g) Any other information deemed necessary by the  
8 department.

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

13 (4) All reports submitted to the department must be available to  
14 the general public through the internet. Proprietary information  
15 submitted to the department under this chapter is exempt from public  
16 disclosure under RCW 42.56.270.

17 **Sec. 7.** RCW 70.95N.180 and 2006 c 183 s 18 are each amended to  
18 read as follows:

19 (1) The department shall maintain on its web site the following  
20 information:

21 (a) The names of the manufacturers and the manufacturer's brands  
22 that are registered with the department under RCW 70.95N.040;

23 (b) The names of the manufacturers and the manufacturer's brands  
24 that are participating in an approved plan under RCW 70.95N.050;

25 (c) The names and addresses of the collectors and transporters that  
26 are listed in registrations filed with the department under RCW  
27 70.95N.240;

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

30 (e) For program years 2009 through 2015, return and equivalent  
31 shares for all manufacturers.

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

34 **Sec. 8.** RCW 70.95N.190 and 2006 c 183 s 19 are each amended to  
35 read as follows:

36 (1) For program years 2009 through 2014, the department shall

1 determine the return share for each manufacturer in the standard plan  
2 or an independent plan by dividing the weight of covered electronic  
3 products identified for each manufacturer by the total weight of  
4 covered electronic products identified for all manufacturers in the  
5 standard plan or an independent plan, then multiplying the quotient by  
6 one hundred.

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

11 (3) For ~~((the second and each subsequent program year))~~ 2014, the  
12 department shall determine the return share for such manufacturers  
13 using all reasonable means and based on the most recent sampling of  
14 covered electronic products conducted in the state under RCW  
15 70.95N.110.

16 (4) For program year 2015 and all subsequent program years, the  
17 department shall determine market share for all manufacturers using  
18 data reported by manufacturers under (a) of this subsection and  
19 publicly available data.

20 (a) By March 1st of each program year, each manufacturer must  
21 report to the department either:

22 (i) The total weight of covered electronic products sold by that  
23 manufacturer nationwide in the prior program year; or

24 (ii) The total weight of covered electronic products sold by that  
25 manufacturer within the state of Washington in the prior program year.

26 (b) The department shall determine each manufacturer's percentage  
27 of market share as follows:

28 (i) Multiply the total weight reported by each manufacturer under  
29 (a)(i) of this subsection by the quotient of Washington's population  
30 divided by the total population of the United States;

31 (ii) Add the result determined in (b)(i) of this subsection plus  
32 the total weight under (a)(ii) of this subsection; and

33 (iii) Divide both the weight in (a)(ii) of this subsection and the  
34 weight in (b)(i) of this subsection by the number calculated under  
35 (b)(ii) of this subsection.

36 (5) Data reported by manufacturers under subsection (4) of this  
37 section is exempt from public disclosure under chapter 42.56 RCW.

1       **Sec. 9.** RCW 70.95N.200 and 2006 c 183 s 20 are each amended to  
2 read as follows:

3       (1) For program years 2009 through 2015, the department shall  
4 determine the total equivalent share for each manufacturer in the  
5 standard plan or an independent plan by dividing the return share  
6 percentage for each manufacturer by one hundred, then multiplying the  
7 quotient by the total weight in pounds of covered electronic products  
8 collected for that program year, allowing as needed for the additional  
9 credit authorized in subsection (3) of this section. For program year  
10 2016 and all subsequent program years, the department shall determine  
11 the total equivalent share for each manufacturer in the standard plan  
12 or an independent plan by dividing the market share percentage for each  
13 manufacturer by one hundred, then multiplying the quotient by the total  
14 weight in pounds of covered electronic products collected for that  
15 program year, allowing as needed for the additional credit authorized  
16 in subsection (3) of this section.

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

22       (b) By June 1st of each program year, the department shall bill any  
23 authorized party or authority that has not attained its plan's  
24 equivalent share as determined under RCW 70.95N.220. The authorized  
25 party or authority shall remit payment to the department within sixty  
26 days from the billing date.

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

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

1       **Sec. 10.** RCW 70.95N.210 and 2006 c 183 s 21 are each amended to  
2 read as follows:

3       (1) By June 1, 2007, the department shall notify each manufacturer  
4 of its preliminary return share of covered electronic products for the  
5 first program year.

6       (2) For program years 2009 through 2014, preliminary return share  
7 of covered electronic products must be announced annually by June 1st  
8 of each program year for the next program year. For the 2015 program  
9 year and all subsequent program years, preliminary market share of  
10 covered electronic products must be sent out to each individual  
11 manufacturer annually by June 1st of each program year for the next  
12 program year.

13       (3) Manufacturers may challenge the preliminary return or market  
14 share by written petition to the department. The petition must be  
15 received by the department within thirty days of the date of  
16 publication of the preliminary return or market shares.

17       (4) The petition must contain a detailed explanation of the grounds  
18 for the challenge, an alternative calculation, and the basis for such  
19 a calculation, documentary evidence supporting the challenge, and  
20 complete contact information for requests for additional information or  
21 clarification.

22       (5) Sixty days after the publication of the preliminary return or  
23 market share, the department shall make a final decision on return or  
24 market share, having fully taken into consideration any and all  
25 challenges to its preliminary calculations.

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

30       (7) By August 1, 2007, the department shall publish the final  
31 return shares for the first program year. For program years 2009  
32 through 2014, by August 1st of each program year, the department shall  
33 publish the final return shares for use in the coming program year.  
34 For the 2015 program year and all subsequent program years, by August  
35 1st of each program year, the department shall notify each manufacturer  
36 of its final market shares for use in the coming program year.

1           **Sec. 11.** RCW 70.95N.230 and 2006 c 183 s 23 are each amended to  
2 read as follows:

3           (1) The department shall adopt rules to determine the process for  
4 manufacturers to change plans under RCW 70.95N.080.

5           (2) The department shall establish annual registration and plan  
6 review fees for administering this chapter. An initial fee schedule  
7 must be established by rule and be adjusted no more often than once  
8 every two years. All fees charged must be based on factors relating to  
9 administering this chapter and be based on a sliding scale that is  
10 representative of annual sales of covered electronic products in the  
11 state, either by weight or unit, or by representative market share.  
12 Fees must be established in amounts to fully recover and not to exceed  
13 expenses incurred by the department to implement this chapter.

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

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

20           **Sec. 12.** RCW 70.95N.290 and 2008 c 79 s 1 are each amended to read  
21 as follows:

22           (1)(a) The authority is governed by a board of directors. The  
23 board of directors is comprised of eleven participating manufacturers,  
24 appointed by the director of the department. For program years 2009  
25 through 2014, five board positions are reserved for representatives of  
26 the top ten brand owners by return share of covered electronic  
27 products, and six board positions are reserved for representatives of  
28 other brands, including at least one board position reserved for a  
29 manufacturer who is also a retailer selling their own private label.  
30 The return share of covered electronic products used to determine the  
31 top ten brand owners for purposes of electing the board must be  
32 determined by the department by January 1, 2007. For program years  
33 2015 and beyond, five board positions are reserved for representatives  
34 of the top ten brand owners by market share of covered electronic  
35 products, and six board positions are reserved for representatives of  
36 other brands, including at least one board position reserved for a  
37 manufacturer who is also a retailer selling its own private label. The

1 market share of covered electronic products used to determine the top  
2 ten brand owners for purposes of electing the board must be determined  
3 by the department by October 1, 2015.

4 (b) The board must have representation from both television and  
5 computer manufacturers.

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

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

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

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

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

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

25 **Sec. 13.** RCW 70.95N.300 and 2006 c 183 s 31 are each amended to  
26 read as follows:

27 (1) Manufacturers participating in the standard plan shall pay the  
28 authority to cover all administrative and operational costs associated  
29 with the collection, transportation, and recycling of covered  
30 electronic products within the state of Washington incurred by the  
31 standard program operated by the authority to meet the standard plan's  
32 equivalent share obligation as described in RCW 70.95N.280(5).

33 (2) The authority shall assess charges on each manufacturer  
34 participating in the standard plan and collect funds from each  
35 participating manufacturer for the manufacturer's portion of the costs  
36 in subsection (1) of this section. For program years 2009 through  
37 2015, such apportionment (~~shall~~) must be based on return share,



1 market share, any combination of return share and market share, or any  
2 other equitable method. For the 2016 program year and all subsequent  
3 program years, such apportionment must be based on market share. The  
4 authority's apportionment of costs to manufacturers participating in  
5 the standard plan may not include nor be based on electronic products  
6 imported through the state and subsequently exported outside the state.  
7 Charges assessed under this section must not be formulated in such a  
8 way as to create incentives to divert imported electronic products to  
9 ports or distribution centers in other states. The authority shall  
10 adjust the charges to manufacturers participating in the standard plan  
11 as necessary in order to ensure that all costs associated with the  
12 identified activities are covered.

13 (3) The authority may require financial assurances or performance  
14 bonds for manufacturers participating in the standard plan, including  
15 but not limited to new entrants and white box manufacturers, when  
16 determining equitable methods for apportioning costs to ensure that the  
17 long-term costs for collecting, transporting, and recycling of a  
18 covered electronic product are borne by the appropriate manufacturer in  
19 the event that the manufacturer ceases to participate in the program.

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

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

27 (6) For program years 2009 through 2015, the authority shall submit  
28 its plan for assessing charges and apportioning cost on manufacturers  
29 participating in the standard plan to the department for review and  
30 approval along with the standard plan as provided in RCW 70.95N.060.

31 (7)(a) Any manufacturer participating in the standard plan may  
32 appeal an assessment of charges or apportionment of costs levied by the  
33 authority under this section by written petition to the director of the  
34 department. The director of the department or the director's designee  
35 shall review all appeals within timelines established by the department  
36 and shall reverse any assessments of charges or apportionment of costs  
37 if the director finds that the authority's assessments or apportionment  
38 of costs was an arbitrary administrative decision, an abuse of

1 administrative discretion, or is not an equitable assessment or  
2 apportionment of costs. The director shall make a fair and impartial  
3 decision based on sound data. If the director of the department  
4 reverses an assessment of charges, the authority must redetermine the  
5 assessment or apportionment of costs.

6 (b) Disputes regarding a final decision made by the director or  
7 director's designee may be challenged through arbitration. The  
8 director shall appoint one member to serve on the arbitration panel and  
9 the challenging party shall appoint one other. These two persons shall  
10 choose a third person to serve. If the two persons cannot agree on a  
11 third person, the presiding judge of the Thurston county superior court  
12 shall choose a third person. The decision of the arbitration panel  
13 shall be final and binding, subject to review by the superior court  
14 solely upon the question of whether the decision of the panel was  
15 arbitrary or capricious.

16 **Sec. 14.** RCW 42.56.270 and 2011 1st sp.s. c 14 s 15 are each  
17 amended to read as follows:

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

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

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

29 (3) Financial and commercial information and records supplied by  
30 private persons pertaining to export services provided under chapters  
31 43.163 and 53.31 RCW, and by persons pertaining to export projects  
32 under RCW 43.23.035;

33 (4) Financial and commercial information and records supplied by  
34 businesses or individuals during application for loans or program  
35 services provided by chapters 43.325, 43.163, 43.160, 43.330, and  
36 43.168 RCW, or during application for economic development loans or  
37 program services provided by any local agency;

1 (5) Financial information, business plans, examination reports, and  
2 any information produced or obtained in evaluating or examining a  
3 business and industrial development corporation organized or seeking  
4 certification under chapter 31.24 RCW;

5 (6) Financial and commercial information supplied to the state  
6 investment board by any person when the information relates to the  
7 investment of public trust or retirement funds and when disclosure  
8 would result in loss to such funds or in private loss to the providers  
9 of this information;

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

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

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

18 (10)(a) Financial information, including but not limited to account  
19 numbers and values, and other identification numbers supplied by or on  
20 behalf of a person, firm, corporation, limited liability company,  
21 partnership, or other entity related to an application for a horse  
22 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor  
23 license, gambling license, or lottery retail license;

24 (b) Internal control documents, independent auditors' reports and  
25 financial statements, and supporting documents: (i) Of house-banked  
26 social card game licensees required by the gambling commission pursuant  
27 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes  
28 with an approved tribal/state compact for class III gaming;

29 (11) Proprietary data, trade secrets, or other information that  
30 relates to: (a) A vendor's unique methods of conducting business; (b)  
31 data unique to the product or services of the vendor; or (c)  
32 determining prices or rates to be charged for services, submitted by  
33 any vendor to the department of social and health services for purposes  
34 of the development, acquisition, or implementation of state purchased  
35 health care as defined in RCW 41.05.011;

36 (12)(a) When supplied to and in the records of the department of  
37 commerce:

1 (i) Financial and proprietary information collected from any person  
2 and provided to the department of commerce pursuant to RCW  
3 43.330.050(8); and

4 (ii) Financial or proprietary information collected from any person  
5 and provided to the department of commerce or the office of the  
6 governor in connection with the siting, recruitment, expansion,  
7 retention, or relocation of that person's business and until a siting  
8 decision is made, identifying information of any person supplying  
9 information under this subsection and the locations being considered  
10 for siting, relocation, or expansion of a business;

11 (b) When developed by the department of commerce based on  
12 information as described in (a)(i) of this subsection, any work product  
13 is not exempt from disclosure;

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

16 (d) If there is no written contact for a period of sixty days to  
17 the department of commerce from a person connected with siting,  
18 recruitment, expansion, retention, or relocation of that person's  
19 business, information described in (a)(ii) of this subsection will be  
20 available to the public under this chapter;

21 (13) Financial and proprietary information submitted to or obtained  
22 by the department of ecology or the authority created under chapter  
23 70.95N RCW to implement chapter 70.95N RCW;

24 (14) Financial, commercial, operations, and technical and research  
25 information and data submitted to or obtained by the life sciences  
26 discovery fund authority in applications for, or delivery of, grants  
27 under chapter 43.350 RCW, to the extent that such information, if  
28 revealed, would reasonably be expected to result in private loss to the  
29 providers of this information;

30 (15) Financial and commercial information provided as evidence to  
31 the department of licensing as required by RCW 19.112.110 or  
32 19.112.120, except information disclosed in aggregate form that does  
33 not permit the identification of information related to individual fuel  
34 licensees;

35 (16) Any production records, mineral assessments, and trade secrets  
36 submitted by a permit holder, mine operator, or landowner to the  
37 department of natural resources under RCW 78.44.085;

1 (17)(a) Farm plans developed by conservation districts, unless  
2 permission to release the farm plan is granted by the landowner or  
3 operator who requested the plan, or the farm plan is used for the  
4 application or issuance of a permit;

5 (b) Farm plans developed under chapter 90.48 RCW and not under the  
6 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to  
7 RCW 42.56.610 and 90.64.190;

8 (18) Financial, commercial, operations, and technical and research  
9 information and data submitted to or obtained by a health sciences and  
10 services authority in applications for, or delivery of, grants under  
11 RCW 35.104.010 through 35.104.060, to the extent that such information,  
12 if revealed, would reasonably be expected to result in private loss to  
13 providers of this information;

14 (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328  
15 that can be identified to a particular business;

16 (20) Financial and commercial information submitted to or obtained  
17 by the University of Washington, other than information the university  
18 is required to disclose under RCW 28B.20.150, when the information  
19 relates to investments in private funds, to the extent that such  
20 information, if revealed, would reasonably be expected to result in  
21 loss to the University of Washington consolidated endowment fund or to  
22 result in private loss to the providers of this information; (~~and~~)

23 (21) Financial, commercial, operations, and technical and research  
24 information and data submitted to or obtained by innovate Washington in  
25 applications for, or delivery of, grants and loans under chapter 43.333  
26 RCW, to the extent that such information, if revealed, would reasonably  
27 be expected to result in private loss to the providers of this  
28 information; and

29 (22) Market share data submitted by a manufacturer under RCW  
30 70.95N.190(4).

31 NEW SECTION. **Sec. 15.** This act takes effect January 1, 2014.

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