

HOUSE BILL REPORT

ESHB 1824

As Passed House:
February 8, 2018

Title: An act relating to electronic product recycling.

Brief Description: Concerning electronic product recycling.

Sponsors: House Committee on Environment (originally sponsored by Representatives Peterson, Lovick, Kagi, Ortiz-Self, Tarleton, Robinson, Stanford, Ormsby and Doglio).

Brief History:

Committee Activity:

Environment: 2/7/17, 2/16/17 [DPS].

Floor Activity:

Passed House: 3/1/17, 55-43.

Floor Activity:

Passed House: 2/8/18, 53-45.

Brief Summary of Engrossed Substitute Bill

- Requires the Washington Materials Management and Financing Authority (WMMFA), which is the organization established to run the state's electronic waste recycling program to publish information about the contracted rates and product volumes allocated to transporters and processors, and to make certain other changes involving WMMFA contracting practices.
- Requires the Department of Ecology (ECY) to conduct certain additional audit and oversight activities related to the electronic waste recycling program.
- Directs penalties under hazardous waste management laws imposed on covered electronic product processors to be deposited into an account used for the ECY's oversight of the electronic waste recycling program.

HOUSE COMMITTEE ON ENVIRONMENT

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Buys, Fey, Kagi and McBride.

Minority Report: Do not pass. Signed by 3 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Dye.

Staff: Jacob Lipson (786-7196).

Background:

Electronic Waste Recycling.

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

Under the E-Cycle law, manufacturers of covered electronic products are required to participate in an electronics recycling program. The E-Cycle law allows for the establishment of multiple electronics recycling programs, should manufacturers choose to develop alternative programs. However, to date, the only electronics recycling program that has been established is operated by the Washington Materials Management and Financing Authority (WMMFA), a public body whose creation was required by the E-Cycle law.

The WMMFA operations are overseen by the Department of Ecology (ECY). The WMMFA must submit an annual report to the ECY containing specified information, including the methods used to collect, transport, process, and recycle covered products. The ECY may audit processors of electronic waste to ensure compliance with program standards. The ECY's program rules for processors require them to adhere to applicable hazardous waste laws, and issue penalties under hazardous waste management laws for improper electronic product processing and disposal to covered electronic product processors in the program. Penalties for violations of provisions of the E-Cycle law are directed into the Electronic Products Recycling Account, which is an unappropriated account used for expenditures related to the ECY's program oversight responsibilities.

The E-Cycle Plan.

The WMMFA must devise and implement a standard plan for collecting, transporting, and recycling the electronic products of its participating manufacturers. Collectors, processors, and transporters of electronic waste must register annually with the ECY. The standard plan must use any registered electronic waste processor that meets program standards established by the ECY rule. The WMMFA's approved plan grants preference to processors that meet heightened performance standards for environmentally sound management that are established by ECY guidance.

The program plans of both the WMMFA and any independent program must include a description of how the plan will seek to use in-state businesses and to fairly compensate collectors and processors.

The Washington Materials Management and Financing Authority.

The WMMFA is a public body governed by a board of directors appointed by the Director of the ECY. Representatives of the ECY and the Department of Commerce serve as ex officio members of the board. The board of directors adopts the WMMFA's operating plan for the collection, transport, and recycling covered electronic products, and is also responsible for collecting the funds needed to operate the program from covered electronic product manufacturers. The board appoints a chief executive officer, and the WMMFA must also employ other specified staff. The WMMFA may execute contracts and other agreements, and make administrative expenditures in order to carry out the program. The WMMFA has adopted procedures and standards for contracting for goods and services as part of its operating plan.

Summary of Engrossed Substitute Bill:

Washington Materials Management and Financing Authority Plan Operations.

In awarding processing contracts, the WMMFA must give priority to using electronic waste processing companies operating in Washington.

An electronic waste transport or processing business may not be used by an electronic waste recycling program for at least three years following a violation if:

- the ECY determines that the business willfully violated, after July 1, 2017, an environmentally sound performance standard for processors set by ECY rule, program registration requirements, or hazardous waste management laws; and
- that entity has previously been penalized by the ECY under hazardous waste management laws or E-Cycle performance standards or registration requirements.

Washington Materials Management and Financing Authority Oversight.

The ECY and the Department of Commerce ex officio members of the WMMFA board must attend at least three board meetings per year.

The ECY is required to periodically audit transporters, collectors, and processors operating under the E-Cycle program. As part of their annual report to the ECY, the WMMFA must submit information regarding contract rates and product volume allocations to each processor and transporter, a description of procurement processes, and a description of processor volume allocation methodology. The ECY must periodically review E-Cycle plans and review the annual report to ensure that the WMMFA is using cost-effective and environmentally sound transport and processing processes.

Allocation of Penalties.

Penalties issued under hazardous waste management laws to a processor of covered electronic products must be deposited in the Electronic Products Recycling Account.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The program and the WMMFA need additional transparency and accountability in their rate structures. Using geographic position system (GPS) trackers, electronic waste was proven to be exported overseas and disposed of in unacceptable ways. This company lied to the state, lied on its audit forms, and can't be trusted to not lie in the future. To ensure that serious violations of program requirements don't occur in the future, the program needs more audits and oversight, including using GPS trackers and unannounced inspections, as well as higher penalties for violations. The public needs to know that contractor prices are not being lowered so much that the integrity of recycling is not compromised by a need to cut costs. It would be acceptable to create an advisory board of stakeholders to oversee the program rather than adding processors and collectors to the WMMFA's board. The recent violations and exporting of electronic waste show that the program is not functioning as intended, and should be fixed.

(Opposed) One large processor in the program violated program standards, but did not break the law and should not be removed from the program. If that processor was removed entirely from the program, there might not be sufficient capacity among other processors to handle the excess volumes of product. The program needs to use all qualified contractors around the state in order to shorten the supply chains and ensure local availability of processing capacity. The existing law is a producer-responsibility model, and adding vendors and advocacy organizations to the governing board is inappropriate. This bill would unravel a functioning program. The ECY already has sufficient oversight authority for the program, and this bill would result in excessive regulation. Requiring constant renegotiation of contract rates and volumes will paralyze the program's ability to efficiently allocate product volume for processing. The WMMFA was intended to operate more like a private business than like a public agency, and it should not be required to post all of the program's business information publicly.

(Other) The ECY has an auditing process in place, but that process could be strengthened. The trackers that a nonprofit organization recently used to prove noncompliance with program requirements are a good enforcement tool. Ensuring the proper fate of downstream processing of electronic wastes is a critical goal of the program. The ECY assessed a large penalty against the processor for violations. This company's actions were unacceptable and a breach of trust, but it is not the role of the ECY to put a company out of business over a single mistake. Putting businesses other than manufacturers on the governing board of the WMMFA would create conflicts of interest. A better avenue for continued program oversight would be to create an advisory group of involved businesses and other stakeholders.

Persons Testifying: (In support) Representative Peterson, prime sponsor; Sean O'Sullivan, Josh Estes and Gareth Perry, Ace Metal Company; and Jim Puckett, Basel Action Network.

(Opposed) John Friedrich, Washington Materials Management and Financing Authority; Charlie Brown, Consumer Technology Association; and Craig Lorch, Total Reclaim.

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

Persons Signed In To Testify But Not Testifying: None.