

ESSB 6428 - H AMD

By Representative B. Sullivan

ADOPTED 03/02/2006

1 Strike everything after the enacting clause and insert the
2 following:

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

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

14 (1) "Authority" means the Washington materials management and
15 financing authority created under section 29 of this act.

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

19 (3) "Board" means the board of directors of the Washington
20 materials management and financing authority created under section 30
21 of this act.

22 (4) "Collector" means an entity licensed to do business in the
23 state that gathers unwanted covered electronic products from
24 households, small businesses, school districts, small governments, and
25 charities for the purpose of recycling and meets minimum standards that
26 may be developed by the department.

27 (5) "Contract for services" means an instrument executed by the
28 authority and one or more persons or entities that delineates

1 collection, transportation, and recycling services, in whole or in
2 part, that will be provided to the citizens of the state within service
3 areas as described in the approved standard plan.

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

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

28 (8) "Curbside service" means a collection service providing
29 regularly scheduled pickup of covered electronic products from
30 households or other covered entities in quantities generated from
31 households.

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

33 (10) "Electronic product" includes a cathode ray tube or flat panel
34 computer monitor having a viewable area greater than four inches when
35 measured diagonally; a desktop computer; a laptop or a portable
36 computer; or a cathode ray tube or flat screen television having a
37 viewable area greater than four inches when measured diagonally.

1 (11) "Equivalent share" means the weight in pounds of covered
2 electronic products identified for an individual manufacturer under
3 this chapter as determined by the department under section 20 of this
4 act.

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

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

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

14 (a) Manufactures or has manufactured a covered electronic product
15 under its own brand names for sale in or into this state;

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

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

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

26 (e) Imports or has imported a covered electronic product into the
27 United States that is sold in or into this state. However, if the
28 imported covered electronic product is manufactured by any person with
29 a presence in the United States meeting the criteria of manufacturer
30 under (a) through (d) of this subsection, that person is the
31 manufacturer. For purposes of this subsection, "presence" means any
32 person that performs activities conducted under the standards
33 established for interstate commerce under the commerce clause of the
34 United States Constitution; or

35 (f) Sells at retail a covered electronic product acquired from an
36 importer that is the manufacturer as described in (e) of this
37 subsection, and elects to register in lieu of the importer as the
38 manufacturer for those products.

1 (15) "New entrant" means: (a) A manufacturer of televisions that
2 have been sold in the state for less than ten years; or (b) a
3 manufacturer of desktop computers, laptop and portable computers, or
4 computer monitors that have been sold in the state for less than five
5 years. However, a manufacturer of both televisions and computers or a
6 manufacturer of both televisions and computer monitors that is deemed
7 a new entrant under either only (a) or (b) of this subsection is not
8 considered a new entrant for purposes of this chapter.

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

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

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

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

22 (20) "Processor" means an entity engaged in disassembling,
23 dismantling, or shredding electronic products to recover materials
24 contained in the electronic products and prepare those materials for
25 reclaiming or reuse in new products in accordance with processing
26 standards established by this chapter and by the department. A
27 processor may also salvage parts to be used in new products.

28 (21) "Product type" means one of the following categories:
29 Computer monitors; desktop computers; laptop and portable computers;
30 and televisions.

31 (22) "Program" means the collection, transportation, and recycling
32 activities conducted to implement an independent plan or the standard
33 plan.

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

36 (24) "Recycling" means transforming or remanufacturing unwanted
37 electronic products, components, and byproducts into usable or
38 marketable materials for use other than landfill disposal or

1 incineration. "Recycling" does not include energy recovery or energy
2 generation by means of combusting unwanted electronic products,
3 components, and byproducts with or without other waste. Smelting of
4 electronic materials to recover metals for reuse in conformance with
5 all applicable laws and regulations is not considered disposal or
6 energy recovery.

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

12 (26) "Return share" means the percentage of covered electronic
13 products by weight identified for an individual manufacturer, as
14 determined by the department under section 19 of this act.

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

18 (28) "Small business" means a business employing less than fifty
19 people.

20 (29) "Small government" means a city in the state with a population
21 less than fifty thousand, a county in the state with a population less
22 than one hundred twenty-five thousand, and special purpose districts in
23 the state.

24 (30) "Standard plan" means the plan for the collection,
25 transportation, and recycling of unwanted covered electronic products
26 developed, implemented, and financed by the authority on behalf of
27 manufacturers participating in the authority.

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

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

35 (33) "White box manufacturer" means a person who manufactured
36 unbranded covered electronic products offered for sale in the state
37 within ten years prior to a program year for televisions or within five

1 years prior to a program year for desktop computers, laptop or portable
2 computers, or computer monitors.

3 NEW SECTION. **Sec. 3.** (1) A manufacturer must participate in an
4 independent plan or the standard plan to implement and finance the
5 collection, transportation, and recycling of covered electronic
6 products.

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

9 (3) The manufacturers participating in an approved plan are
10 responsible for covering all administrative and operational costs
11 associated with the collection, transportation, and recycling of their
12 plan's equivalent share of covered electronic products. If costs are
13 passed on to consumers, it must be done without any fees at the time
14 the unwanted electronic product is delivered or collected for
15 recycling. However, this does not prohibit collectors providing
16 premium or curbside services from charging customers a fee for the
17 additional collection cost of providing this service, when funding for
18 collection provided by an independent plan or the standard plan does
19 not fully cover the cost of that service.

20 (4) Nothing in this chapter changes or limits the authority of the
21 Washington utilities and transportation commission to regulate
22 collection of solid waste in the state of Washington, including
23 curbside collection of residential recyclable materials, nor does this
24 chapter change or limit the authority of a city or town to provide such
25 service itself or by contract pursuant to RCW 81.77.020.

26 (5) Manufacturers are encouraged to collaborate with electronic
27 product retailers, certificated waste haulers, processors, recyclers,
28 charities, and local governments within the state in the development
29 and implementation of their plans.

30 NEW SECTION. **Sec. 4.** (1) By January 1, 2007, and annually
31 thereafter, each manufacturer must register with the department.

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

1 (3) The department shall review the registration or renewal
2 application and notify the manufacturer if their registration does not
3 meet the requirements of this section. Within thirty days of receipt
4 of such a notification from the department, the manufacturer must file
5 with the department a revised registration addressing the requirements
6 noted by the department.

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

8 (a) The name and contact information of the manufacturer submitting
9 the registration;

10 (b) The manufacturer's brand names of covered electronic products,
11 including all brand names sold in the state in the past, all brand
12 names currently being sold in the state, and all brand names for which
13 the manufacturer has legal responsibility under section 10 of this act;

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

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

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

20 (6) The department shall identify, using all reasonable means,
21 manufacturers that are in business or that are no longer in business
22 but that have a successor in interest by examining best available
23 return share data and other pertinent data. The department shall
24 notify manufacturers that have been identified and for whom an address
25 has been found of the requirements of this chapter, including
26 registration and plan requirements under this section and section 5 of
27 this act.

28 NEW SECTION. **Sec. 5.** (1) A manufacturer must participate in the
29 standard plan administered by the authority, unless the manufacturer
30 obtains department approval for an independent plan for the collection,
31 transportation, and recycling of unwanted electronic products.

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

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

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

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

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

7 (b) Each group of manufacturers submitting an independent plan must
8 designate a party authorized to file the plan with the department on
9 their behalf. A letter of certification from each of the manufacturers
10 designating the authorized party must be submitted to the department
11 together with the plan.

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

16 NEW SECTION. **Sec. 6.** (1) All initial independent plans and the
17 initial standard plan required under section 5 of this act must be
18 submitted to the department by February 1, 2008. The department shall
19 review each independent plan and the standard plan.

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

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

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

35 (5) An independent plan and the standard plan must contain the
36 following elements:

- 1 (a) Contact information for the authority or authorized party and
2 a comprehensive list of all manufacturers participating in the plan and
3 their contact information;
- 4 (b) A description of the collection, transportation, and recycling
5 systems and service providers used, including a description of how the
6 authority or authorized party will:
- 7 (i) Seek to use businesses within the state, including retailers,
8 charities, processors, and collection and transportation services;
- 9 (ii) Fairly compensate collectors for providing collection
10 services; and
- 11 (iii) Fairly compensate processors for providing processing
12 services;
- 13 (c) The method or methods for the reasonably convenient collection
14 of all product types of covered electronic products in rural and urban
15 areas throughout the state, including how the plan will provide for
16 collection services in each county of the state and for a minimum of
17 one collection site or alternate collection service for each city or
18 town with a population greater than ten thousand. A collection site
19 for a county may be the same as a collection site for a city or town in
20 the county;
- 21 (d) A description of how the plan will provide service to small
22 businesses, small governments, charities, and school districts in
23 Washington;
- 24 (e) The processes and methods used to recycle covered electronic
25 products including a description of the processing that will be used
26 and the facility location;
- 27 (f) Documentation of audits of each processor used in the plan and
28 compliance with processing standards established under sections 25 and
29 26 of this act;
- 30 (g) A description of the accounting and reporting systems that will
31 be employed to track progress toward the plan's equivalent share;
- 32 (h) A timeline describing startup, implementation, and progress
33 towards milestones with anticipated results;
- 34 (i) A public information campaign to inform consumers about how to
35 recycle their covered electronic products at the end of the product's
36 life; and
- 37 (j) A description of how manufacturers participating in the plan

1 will communicate and work with processors utilized by that plan to
2 promote and encourage design of electronic products and their
3 components for recycling.

4 (6) The standard plan shall address how it will incorporate and
5 fairly compensate registered collectors providing curbside or premium
6 services such that they are not compensated at a lower rate for
7 collection costs than the compensation offered other collectors
8 providing drop-off collection sites in that geographic area.

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

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

15 (a) If the program fails to provide service in each county in the
16 state or meet other plan requirements, the authority or authorized
17 party shall submit to the department within sixty days of failing to
18 provide service an updated plan addressing how the program will be
19 adjusted to meet the program geographic coverage and collection service
20 requirements established in section 9 of this act.

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

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

35 (3) The authority or authorized parties may buy and sell collected
36 covered electronic products with other programs without submitting a
37 plan 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 collection
11 services for covered electronic products of all product types that are
12 reasonably convenient and available to all citizens of the state
13 residing within its geographic boundaries, including both rural and
14 urban areas. Each program must provide collection service in every
15 county of the state. A program may provide collection services jointly
16 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 NEW SECTION. **Sec. 10.** Any person acquiring a manufacturer, or who
15 has acquired a manufacturer, shall have all responsibility for the
16 acquired company's covered electronic products, including covered
17 electronic products manufactured prior to the effective date of this
18 section, unless that responsibility remains with another entity per the
19 purchase agreement and the acquiring manufacturer provides the
20 department with a letter from the other entity accepting responsibility
21 for the covered electronic products. Cobranding manufacturers may
22 negotiate with retailers for responsibility for those products and must
23 notify the department of the results of their negotiations.

24 NEW SECTION. **Sec. 11.** (1) An independent plan and the standard
25 plan must implement and finance an auditable, statistically significant
26 sampling of covered electronic products entering its program every
27 program year. The information collected must include a list of the
28 brand names of covered electronic products by product type, the number
29 of covered electronic products by product type, the weight of covered
30 electronic products that are identified for each brand name or that
31 lack a manufacturer's brand, the total weight of the sample by product
32 type, and any additional information needed to assign return share.

33 (2) The sampling must be conducted in the presence of the
34 department or a third-party organization approved by the department.
35 The department may, at its discretion, audit the methodology and the
36 results.

1 (3) After the fifth program year, the department may reassess the
2 sampling required in this section. The department may adjust the
3 frequency at which manufacturers must implement the sampling or may
4 adjust the frequency at which manufacturers must provide certain
5 information from the sampling. Prior to making any changes, the
6 department shall notify the public, including all registered
7 manufacturers, and provide a comment period. The department shall
8 notify all registered manufacturers of any such changes.

9 NEW SECTION. **Sec. 12.** (1) An independent plan and the standard
10 plan must inform covered entities about where and how to reuse and
11 recycle their covered electronic products at the end of the product's
12 life, including providing a web site or a toll-free telephone number
13 that gives information about the recycling program in sufficient detail
14 to educate covered entities regarding how to return their covered
15 electronic products for recycling.

16 (2) The department shall promote covered electronic product
17 recycling by:

18 (a) Posting information describing where to recycle unwanted
19 covered electronic products on its web site;

20 (b) Providing information about recycling covered electronic
21 products through a toll-free telephone service; and

22 (c) Developing and providing artwork for use in flyers and signage
23 to retailers upon request.

24 (3) Local governments shall promote covered electronic product
25 recycling, including listings of local collection sites and services,
26 through existing educational methods typically used by each local
27 government.

28 (4) A retailer who sells new covered electronic products shall
29 provide information to consumers describing where and how to recycle
30 covered electronic products and opportunities and locations for the
31 convenient collection or return of the products. This requirement can
32 be fulfilled by providing the department's toll-free telephone number
33 and web site. Remote sellers may include the information in a visible
34 location on their web site as fulfillment of this requirement.

35 (5) Manufacturers, state government, local governments, retailers,
36 and collection sites and services shall collaborate in the development
37 and implementation of the public information campaign.

1 NEW SECTION. **Sec. 13.** (1) The electronic products recycling
2 account is created in the custody of the state treasurer. All payments
3 resulting from plans not reaching their equivalent share, as described
4 in section 22 of this act, shall be deposited into the account. Any
5 moneys collected for manufacturer registration fees, fees associated
6 with reviewing and approving plans and plan revisions, and penalties
7 levied under this chapter shall be deposited into the account.

8 (2) Only the director of the department or the director's designee
9 may authorize expenditures from the account. The account is subject to
10 allotment procedures under chapter 43.88 RCW, but an appropriation is
11 not required for expenditures.

12 (3) Moneys in the account may be used solely by the department for
13 the purposes of fulfilling department responsibilities specified in
14 this chapter and for expenditures to the authority and authorized
15 parties resulting from plans exceeding their equivalent share, as
16 described in section 22 of this act. Funds in the account may not be
17 diverted for any purpose or activity other than those specified in this
18 section.

19 NEW SECTION. **Sec. 14.** (1) By March 1st of the second program year
20 and each program year thereafter, the authority and each authorized
21 party shall file with the department an annual report for the preceding
22 program year.

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

24 (a) The total weight in pounds of covered electronic products
25 collected and recycled, by county, during the preceding program year
26 including documentation verifying collection and processing of that
27 material. The total weight in pounds includes orphan products. The
28 report must also indicate and document the weight in pounds received
29 from each nonprofit charitable organization primarily engaged in the
30 business of reuse and resale used by the plan. The report must
31 document the weight in pounds that were received in large quantities
32 from small businesses, small governments, charities and school
33 districts as described in section 9(5) of this act;

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

1 (c) A list of processors used, the weight of covered electronic
2 products processed by each direct processor, and a description of the
3 processes and methods used to recycle the covered electronic products
4 including a description of the processing and facility locations. The
5 report must also include a list of subcontractors who further processed
6 or recycled unwanted covered electronic products, electronic
7 components, or electronic scrap described in section 26(1) of this act,
8 including facility locations;

9 (d) Other documentation as established under section 26(3) of this
10 act;

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

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

18 (g) The list of manufacturers that are participating in the
19 standard plan; and

20 (h) Any other information deemed necessary by the department.

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

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

29 NEW SECTION. **Sec. 15.** Nonprofit charitable organizations that
30 qualify for a taxation exemption under section 501(c)(3) of the
31 internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are
32 primarily engaged in the business of reuse and resale and that are used
33 by a plan to collect covered electronic products shall file a report
34 with the department by March 1st of the second program year and each
35 program year thereafter. The report must indicate and document the
36 weight of covered electronic products sent for recycling during the

1 previous program year attributed to each plan that the charitable
2 organization is participating in.

3 NEW SECTION. **Sec. 16.** (1) Beginning January 1, 2007, no person
4 may sell or offer for sale an electronic product to any person in the
5 state unless the electronic product is labeled with the manufacturer's
6 brand. The label must be permanently affixed and readily visible.

7 (2) In-state retailers in possession of unlabeled products on
8 January 1, 2007, may exhaust their stock through sales to the public.

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

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

23 (a) The names of the manufacturers and the manufacturer's brands
24 that are registered with the department under section 4 of this act;

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

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

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

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

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

1 NEW SECTION. **Sec. 19.** (1) The department shall determine the
2 return share for each manufacturer in the standard plan or an
3 independent plan by dividing the weight of covered electronic products
4 identified for each manufacturer by the total weight of covered
5 electronic products identified for all manufacturers in the standard
6 plan or an independent plan, then multiplying the quotient by one
7 hundred.

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

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

17 NEW SECTION. **Sec. 20.** (1) The department shall determine the
18 total equivalent share for each manufacturer in the standard plan or an
19 independent plan by dividing the return share percentage for each
20 manufacturer by one hundred, then multiplying the quotient by the total
21 weight in pounds of covered electronic products collected for that
22 program year, allowing as needed for the additional credit authorized
23 in subsection (3) of this section.

24 (2)(a) By June 1st of each program year, the department shall
25 notify each manufacturer of the manufacturer's equivalent share of
26 covered electronic products to be applied to the previous program year.
27 The department shall also notify each manufacturer of how its
28 equivalent share was determined.

29 (b) By June 1st of each program year, the department shall bill any
30 authorized party or authority that has not attained its plan's
31 equivalent share as determined under section 22 of this act. The
32 authorized party or authority shall remit payment to the department
33 within sixty days from the billing date.

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

1 (3) Plans that utilize the collection services of nonprofit
2 charitable organizations that qualify for a taxation exemption under
3 section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.
4 501(c)(3)) that are primarily engaged in the business of reuse and
5 resale must be given an additional five percent credit to be applied
6 toward a plan's equivalent share for pounds that are received for
7 recycling from those organizations. The department may adjust the
8 percentage of credit annually.

9 NEW SECTION. **Sec. 21.** (1) By June 1, 2007, the department shall
10 notify each manufacturer of its preliminary return share of covered
11 electronic products for the first program year.

12 (2) Preliminary return share of covered electronic products must be
13 announced annually by June 1st of each program year for the next
14 program year.

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

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

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

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

32 (7) By August 1, 2007, the department shall publish the final
33 return shares for the first program year. By August 1st of each
34 program year, the department shall publish the final return shares for
35 use in the coming program year.

1 NEW SECTION. **Sec. 22.** (1) For an independent plan and the
2 standard plan, if the total weight in pounds of covered electronic
3 products collected during a program year is less than the plan's
4 equivalent share of covered electronic products for that year, then the
5 authority or authorized party shall submit to the department a payment
6 equal to the weight in pounds of the deficit multiplied by the
7 reasonable collection, transportation, and recycling cost for covered
8 electronic products and an administrative fee. Moneys collected by the
9 department must be deposited in the electronic products recycling
10 account.

11 (2) For an independent plan and the standard plan, if the total
12 weight in pounds of covered electronic products collected during a
13 program year is more than the plan's equivalent share of covered
14 electronic products for that year, then the department shall submit to
15 the authority or authorized party, a payment equal to the weight in
16 pounds of the surplus multiplied by the reasonable collection,
17 transportation, and recycling cost for covered electronic products.

18 (3) For purposes of this section, the initial reasonable
19 collection, transportation, and recycling cost for covered electronic
20 products is forty-five cents per pound and the administrative fee is
21 five cents per pound.

22 (4) The department may annually adjust the reasonable collection,
23 transportation, and recycling cost for covered electronic products and
24 the administrative fee described in this section. Prior to making any
25 changes in the fees described in this section, the department shall
26 notify the public, including all registered manufacturers, and provide
27 a comment period. The department shall notify all registered
28 manufacturers of any changes to the reasonable collection,
29 transportation, and recycling cost or the administrative fee by January
30 1st of the program year in which the change is to take place.

31 NEW SECTION. **Sec. 23.** (1) The department shall adopt rules to
32 determine the process for manufacturers to change plans under section
33 8 of this act.

34 (2) The department shall establish annual registration and plan
35 review fees for administering this chapter. An initial fee schedule
36 must be established by rule and be adjusted no more often than once
37 every two years. All fees charged must be based on factors relating to

1 administering this chapter and be based on a sliding scale that is
2 representative of annual sales of covered electronic products in the
3 state. Fees must be established in amounts to fully recover and not to
4 exceed expenses incurred by the department to implement this chapter.

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

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

11 NEW SECTION. **Sec. 24.** (1) Each collector and transporter of
12 covered electronic products in the state must register annually with
13 the department. The registration must include all identification
14 requirements for licensure in the state and the geographic area of the
15 state that they serve. The department shall develop a single form for
16 registration of both collectors and transporters.

17 (2) Each processor of covered electronic products utilized by an
18 independent or standard plan must register annually with the
19 department. The registration must include identification information
20 and documentation of any necessary operating permits issued by state or
21 local authorities.

22 NEW SECTION. **Sec. 25.** (1) The authority and each authorized party
23 shall ensure that each processor used directly by the authority or the
24 authorized party to fulfill the requirements of their respective
25 standard plan or independent plan has provided the authority or the
26 authorized party a written statement that the processor will comply
27 with the requirements of this section and section 26 of this act.

28 (2) The department shall establish by rule performance standards
29 for environmentally sound management for processors directly used to
30 fulfill the requirements of an independent plan or the standard plan.
31 Performance standards may include financial assurance to ensure proper
32 closure of facilities consistent with environmental standards.

33 (3) The department shall establish by rule guidelines regarding
34 nonrecycled residual that may be properly disposed after covered
35 electronic products have been processed.

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

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

5 NEW SECTION. **Sec. 26.** (1) The international export of any
6 unwanted covered electronic products or electronic components or
7 electronic scrap derived from such products destined for disposal or
8 recycling that are capable of leaching lead, cadmium, mercury,
9 hexavalent chromium, or selenium or selenium compounds in
10 concentrations above the limits listed in 40 C.F.R. Sec. 261.24 as of
11 the effective date of this section are prohibited except for exports
12 to:

13 (a) Countries that are members of the organization for economic
14 cooperation and development;

15 (b) Countries that are members of the European Union; or

16 (c) Countries that have entered into an agreement with the United
17 States that allows for such exports.

18 (2) Any unwanted electronic products or electronic components
19 derived from such products that are capable of leaching lead, cadmium,
20 mercury, hexavalent chromium, or selenium or selenium compounds in
21 concentrations exceeding the levels established in 40 C.F.R. Sec.
22 261.24 as of the effective date of this section and exported to
23 countries that are not members of the organization for economic
24 cooperation and development or the European Union or with whom the
25 United States has not entered into an agreement for such export for
26 reuse, must be tested and labeled as fully functional or needing only
27 repairs that do not result in the replacement of components capable of
28 leaching these substances in concentrations exceeding the levels
29 established in 40 C.F.R. Sec. 261.24 as of the effective date of this
30 section.

31 (3) The department shall establish rules to implement this section,
32 including any requirements necessary to ensure that full compliance is
33 adequately documented.

34 NEW SECTION. **Sec. 27.** (1) No manufacturer may sell or offer for
35 sale a covered electronic product in or into the state unless the
36 manufacturer of the covered electronic product is participating in an

1 approved plan. The department shall send a written warning to a
2 manufacturer that does not have an approved plan or is not
3 participating in an approved plan as required under section 5 of this
4 act. The written warning must inform the manufacturer that it must
5 participate in an approved plan within thirty days of the notice. Any
6 violation after the initial written warning shall be assessed a penalty
7 of up to ten thousand dollars for each violation.

8 (2) If the authority or any authorized party fails to implement
9 their approved plan, the department must assess a penalty of up to five
10 thousand dollars for the first violation along with notification that
11 the authority or authorized party must implement its plan within thirty
12 days of the violation. After thirty days, the authority or any
13 authorized party failing to implement their approved plan must be
14 assessed a penalty of up to ten thousand dollars for the second and
15 each subsequent violation.

16 (3) Any person that does not comply with manufacturer registration
17 requirements under section 4 of this act, education and outreach
18 requirements under section 12 of this act, reporting requirements under
19 section 14 of this act, labeling requirements under section 16 of this
20 act, retailer responsibility requirements under section 17 of this act,
21 collector or transporter registration requirements under section 24 of
22 this act, or requirements under sections 25 and 26 of this act, must
23 first receive a written warning including a copy of the requirements
24 under this chapter and thirty days to correct the violation. After
25 thirty days, a person must be assessed a penalty of up to one thousand
26 dollars for the first violation and up to two thousand dollars for the
27 second and each subsequent violation.

28 (4) All penalties levied under this section must be deposited into
29 the electronic products recycling account created under section 13 of
30 this act.

31 (5) The department shall enforce this section.

32 NEW SECTION. **Sec. 28.** (1) By December 31, 2012, the department
33 shall provide a report to the appropriate committees of the legislature
34 that includes the following information:

35 (a) For each of the preceding program years, the weight of covered
36 electronic products recycled in the state by plan, by county, and in
37 total;

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

4 (c) A description of the various collection programs used to
5 collect covered electronic products in the state;

6 (d) An evaluation of how the pounds per capita recycled of covered
7 electronic products in the state compares to programs in other states;

8 (e) Comments received from local governments and local communities
9 regarding satisfaction with the program, including accessibility and
10 convenience of services provided by the plans;

11 (f) Recommendations on how to improve the statewide collection,
12 transportation, and recycling system for convenient, safe, and
13 environmentally sound recycling of electronic products; and

14 (g) An analysis of whether and in what amounts unwanted electronic
15 products and electronic components and electronic scrap exported from
16 Washington have been exported to countries that are not members of the
17 organization for economic cooperation and development or the European
18 union, and recommendations for addressing such exports.

19 (2) By April 1, 2010, the department shall provide a report to the
20 appropriate committees of the legislature regarding the amount of
21 orphan products collected as a percent of the total amount of covered
22 electronic products collected. If the orphan products collected exceed
23 ten percent of the total amount of covered electronic products
24 collected, the department shall report to the appropriate committees of
25 the legislature within ninety days describing the orphan products
26 collected and include recommendations for decreasing the amount of
27 orphan products or alternative methods for financing the collection,
28 transportation, and recycling of orphan products.

29 NEW SECTION. **Sec. 29.** (1) The Washington materials management and
30 financing authority is established as a public body corporate and
31 politic, constituting an instrumentality of the state of Washington
32 exercising essential governmental functions.

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

1 (3) Membership in the authority is comprised of registered
2 participating manufacturers. Any registered manufacturer who does not
3 qualify or is not approved to submit an independent plan, or whose
4 independent plan has not been approved by the department, is a member
5 of the authority. All new entrants and white box manufacturers are
6 also members of the authority.

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

11 (5) The authority's standard plan is responsible for collecting,
12 transporting, and recycling the sum of the equivalent shares of each
13 participating manufacturer.

14 (6) The authority shall accept into the standard program covered
15 electronic products from any registered collector who meets the
16 requirements of this chapter. The authority shall compensate
17 registered collectors for the reasonable costs associated with
18 collection, but is not required to compensate nor restricted from
19 compensating the additional collection costs resulting from the
20 additional convenience offered to customers through premium and
21 curbside services.

22 (7) The authority shall accept and utilize in the standard program
23 any registered processor meeting the requirements of this chapter and
24 any requirements described in the authority's operating plan or through
25 contractual arrangements. Processors utilized by the standard plan
26 shall provide documentation to the authority at least annually
27 regarding how they are meeting the requirements in sections 25 and 26
28 of this act, including enough detail to allow the standard plan to meet
29 its reporting requirements in section 14(2) (c) and (d), and must
30 submit to audits conducted by or for the authority. The authority
31 shall compensate such processors for the reasonable costs, as
32 determined by the authority, associated with processing unwanted
33 electronic products. Such processors must demonstrate that the
34 unwanted electronic products have been received from registered
35 collectors or transporters, and provide other documentation as may be
36 required by the authority.

37 (8) Except as specifically allowed in this chapter, the authority

1 shall operate without using state funds or lending the credit of the
2 state or local governments.

3 (9) The authority shall develop innovative approaches to improve
4 materials management efficiency in order to ensure and increase the use
5 of secondary material resources within the economy.

6 NEW SECTION. **Sec. 30.** (1)(a) The authority is governed by a board
7 of directors. The board of directors is comprised of eleven
8 participating manufacturers, appointed by the director of the
9 department. Five board positions are reserved for representatives of
10 the top ten brand owners by return share of covered electronic
11 products, and six board positions are reserved for representatives of
12 other brands, including at least one board position reserved for a
13 manufacturer who is also a retailer selling their own private label.
14 The return share of covered electronic products used to determine the
15 top ten brand owners for purposes of electing the board must be
16 determined by the department by January 1, 2007.

17 (b) The board must have representation from both television and
18 computer manufacturers.

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

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

22 (4) The directors of the department of community, trade, and
23 economic development and the department of ecology, and the state
24 treasurer serve as ex officio members. The state agency directors and
25 the state treasurer serving in ex officio capacity may each designate
26 an employee of their respective departments to act on their behalf in
27 all respects with regard to any matter to come before the authority.
28 Ex officio designations must be made in writing and communicated to the
29 authority director.

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

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

36 (7) The members of the board serve without compensation but are

1 entitled to reimbursement, solely from the funds of the authority, for
2 expenses incurred in the discharge of their duties under this chapter.

3 NEW SECTION. **Sec. 31.** (1) Manufacturers participating in the
4 standard plan shall pay the authority to cover all administrative and
5 operational costs associated with the collection, transportation, and
6 recycling of covered electronic products within the state of Washington
7 incurred by the standard program operated by the authority to meet the
8 standard plan's equivalent share obligation as described in section
9 29(5) of this act.

10 (2) The authority shall assess charges on each manufacturer
11 participating in the standard plan and collect funds from each
12 participating manufacturer for the manufacturer's portion of the costs
13 in subsection (1) of this section. Such apportionment shall be based
14 on return share, market share, any combination of return share and
15 market share, or any other equitable method. The authority's
16 apportionment of costs to manufacturers participating in the standard
17 plan may not include nor be based on electronic products imported
18 through the state and subsequently exported outside the state. Charges
19 assessed under this section must not be formulated in such a way as to
20 create incentives to divert imported electronic products to ports or
21 distribution centers in other states. The authority shall adjust the
22 charges to manufacturers participating in the standard plan as
23 necessary in order to ensure that all costs associated with the
24 identified activities are covered.

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

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

35 (5) If a manufacturer has not met its financial obligations as
36 determined by the authority under this section, the authority shall

1 notify the department that the manufacturer is no longer participating
2 in the standard plan.

3 (6) The authority shall submit its plan for assessing charges and
4 apportioning cost on manufacturers participating in the standard plan
5 to the department for review and approval along with the standard plan
6 as provided in section 6 of this act.

7 (7)(a) Any manufacturer participating in the standard plan may
8 appeal an assessment of charges or apportionment of costs levied by the
9 authority under this section by written petition to the director of the
10 department. The director of the department or the director's designee
11 shall review all appeals within timelines established by the department
12 and shall reverse any assessments of charges or apportionment of costs
13 if the director finds that the authority's assessments or apportionment
14 of costs was an arbitrary administrative decision, an abuse of
15 administrative discretion, or is not an equitable assessment or
16 apportionment of costs. The director shall make a fair and impartial
17 decision based on sound data. If the director of the department
18 reverses an assessment of charges, the authority must redetermine the
19 assessment or apportionment of costs.

20 (b) Disputes regarding a final decision made by the director or
21 director's designee may be challenged through arbitration. The
22 director shall appoint one member to serve on the arbitration panel and
23 the challenging party shall appoint one other. These two persons shall
24 choose a third person to serve. If the two persons cannot agree on a
25 third person, the presiding judge of the Thurston county superior court
26 shall choose a third person. The decision of the arbitration panel
27 shall be final and binding, subject to review by the superior court
28 solely upon the question of whether the decision of the panel was
29 arbitrary or capricious.

30 NEW SECTION. **Sec. 32.** (1) The authority shall use any funds
31 legally available to it for any purpose specifically authorized by this
32 chapter to:

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

36 (b) Pay for the expenses of the authority including, but not

1 limited to, salaries, benefits, operating costs and consumable
2 supplies, equipment, office space, and other expenses related to the
3 costs associated with operating the authority;

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

8 (d) Pay the department for the fees for submitting the standard
9 plan and any plan revisions.

10 (2) If practicable, the authority shall avoid creating new
11 infrastructure already available through private industry in the state.

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

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

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

21 (4) The authority may receive additional sources of funding that do
22 not obligate the state to secure debt.

23 (5) All funds collected by the authority under this chapter,
24 including interest, dividends, and other profits, are and must remain
25 under the complete control of the authority and its board of directors,
26 be fully available to achieve the intent of this chapter, and be used
27 for the sole purpose of achieving the intent of this chapter.

28 NEW SECTION. **Sec. 33.** (1) The board shall adopt a general
29 operating plan of procedures for the authority. The board shall also
30 adopt operating procedures for collecting funds from participating
31 covered electronic manufacturers and for providing funding for
32 contracted services. These operating procedures must be adopted by
33 resolution prior to the authority operating the applicable programs.

34 (2) The general operating plan must include, but is not limited to:

35 (a) Appropriate minimum reserve requirements to secure the authority's
36 financial stability; (b) appropriate standards for contracting for
37 services; and (c) standards for service.

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

5 (4) The general operating plan must be adopted by resolution of the
6 board. The board may periodically update the general operating plan as
7 necessary, but must update the plan no less than once every four years.
8 The general operating plan or updated plan must include a report on
9 authority activities conducted since the commencement of authority
10 operation or since the last reported general operating plan, whichever
11 is more recent, including a statement of results achieved under the
12 purposes of this chapter and the general operating plan. Upon
13 adoption, the authority shall conduct its programs in observance of the
14 objectives established in the general operating plan.

15 NEW SECTION. **Sec. 34.** (1) The authority shall employ a chief
16 executive officer, appointed by the board, and a chief financial
17 officer, as well as professional, technical, and support staff,
18 appointed by the chief executive officer, necessary to carry out its
19 duties.

20 (2) Employees of the authority are not classified employees of the
21 state. Employees of the authority are exempt from state service rules
22 and may receive compensation only from the authority at rates
23 competitive with state service.

24 (3) The authority may retain its own legal counsel.

25 (4) The departments of ecology and community, trade, and economic
26 development shall provide staff to assist in the creation of the
27 authority. If requested by the authority, the departments of ecology
28 and community, trade, and economic development shall also provide
29 start-up support staff to the authority for its first twelve months of
30 operation, or part thereof, to assist in the quick establishment of the
31 authority. Staff expenses must be paid through funds collected by the
32 authority and must be reimbursed to the departments from the
33 authority's financial resources within the first twenty-four months of
34 operation.

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

37 (a) Maintain an office or offices;

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

5 (c) Make expenditures as appropriate for paying the administrative
6 costs and expenses of the authority in carrying out the provisions of
7 this chapter;

8 (d) Give assistance to private and public bodies contracted to
9 provide collection, transportation, and recycling services by providing
10 information, guidelines, forms, and procedures for implementing their
11 programs;

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

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

17 NEW SECTION. **Sec. 35.** This chapter is void if a federal law, or
18 a combination of federal laws, takes effect that establishes a national
19 program for the collection and recycling of covered electronic products
20 that substantially meets the intent of this chapter, including the
21 creation of a financing mechanism for collection, transportation, and
22 recycling of all covered electronic products from households, small
23 businesses, school districts, small governments, and charities in the
24 United States.

25 NEW SECTION. **Sec. 36.** A new section is added to chapter 43.19 RCW
26 to read as follows:

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

31 (2) The department of general administration shall ensure that
32 their surplus electronic products, other than those sold individually
33 to private citizens, are managed only by registered transporters and by
34 processors meeting the requirements of sections 25 and 26 of this act.

35 (3) The department of general administration shall ensure that
36 their surplus electronic products are directed to legal secondary

1 materials markets by requiring a chain of custody record that documents
2 to whom the products were initially delivered through to the end use
3 manufacturer.

4 **Sec. 37.** RCW 42.56.270 and 2005 c 274 s 407 are each amended to
5 read as follows:

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

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

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

17 (3) Financial and commercial information and records supplied by
18 private persons pertaining to export services provided under chapters
19 43.163 and 53.31 RCW, and by persons pertaining to export projects
20 under RCW 43.23.035;

21 (4) Financial and commercial information and records supplied by
22 businesses or individuals during application for loans or program
23 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
24 or during application for economic development loans or program
25 services provided by any local agency;

26 (5) Financial information, business plans, examination reports, and
27 any information produced or obtained in evaluating or examining a
28 business and industrial development corporation organized or seeking
29 certification under chapter 31.24 RCW;

30 (6) Financial and commercial information supplied to the state
31 investment board by any person when the information relates to the
32 investment of public trust or retirement funds and when disclosure
33 would result in loss to such funds or in private loss to the providers
34 of this information;

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

36 (8) Financial, commercial, operations, and technical and research

1 information and data submitted to or obtained by the clean Washington
2 center in applications for, or delivery of, program services under
3 chapter 70.95H RCW;

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

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

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

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

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

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

32 (b) When developed by the department of community, trade, and
33 economic development based on information as described in (a)(i) of
34 this subsection, any work product is not exempt from disclosure;

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

37 (d) If there is no written contact for a period of sixty days to
38 the department of community, trade, and economic development from a

1 person connected with siting, recruitment, expansion, retention, or
2 relocation of that person's business, information described in (a)(ii)
3 of this subsection will be available to the public under this chapter;
4 and

5 (13) Financial and proprietary information submitted to or obtained
6 by the department of ecology or the authority created under chapter
7 70.-- RCW (sections 1 through 35 of this act) to implement chapter
8 70.-- RCW (sections 1 through 35 of this act).

9 NEW SECTION. Sec. 38. This act must be liberally construed to
10 carry out its purposes and objectives.

11 NEW SECTION. Sec. 39. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. Sec. 40. This act takes effect July 1, 2006.

16 NEW SECTION. Sec. 41. Sections 1 through 35 of this act
17 constitute a new chapter in Title 70 RCW."

ESSB 6428 - H AMD
By Representative B. Sullivan

ADOPTED 03/02/2006

18 On page 1, line 2 of the title, after "opportunities;" strike the
19 remainder of the title and insert "amending RCW 42.56.270; adding a new
20 section to chapter 43.19 RCW; adding a new chapter to Title 70 RCW;
21 creating a new section; prescribing penalties; and providing an
22 effective date."

EFFECT: Authorizes a person selling imported covered electronic

products at retail to register as a manufacturer. Requires processors to register with the Department of Ecology and requires the authority to accept and use qualified processors in the standard program. Authorizes the Director of the Department of Ecology to appoint the members of the Materials Management and Financing Authority Board. Requires the Authority to submit its plan for assessing charges on manufacturers to the Department of Ecology for review and approval. Authorizes the authority to require financial assurances or performance bonds for manufacturers participating in the standard plan. Establishes a process for manufacturers to appeal assessment of charges or apportionment of costs made by the Authority to the Director of the Department of Ecology. Creates an arbitration process for disputes regarding final decisions made by the Director of the Department of Ecology.

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