

HOUSE BILL REPORT

HB 2662

As Reported by House Committee On:
Natural Resources, Ecology & Parks

Title: An act relating to providing electronic product recycling through manufacturer financed opportunities.

Brief Description: Providing electronic product recycling through manufacturer financed opportunities.

Sponsors: Representatives B. Sullivan, Priest, Pettigrew, Jarrett, Dunshee, Anderson, Kagi, Serben, McCoy, Ericksen, Upthegrove, Tom, Green, Strow, Rodne, Nixon, Chase, Buri, Hunt, Eickmeyer, Darneille, Linville, Morrell, Lantz, Hunter, Appleton, Williams, Hudgins, Wallace, P. Sullivan, Flannigan, Springer, Kenney, O'Brien, Simpson, Clibborn, Sells, Moeller, Ericks, Kilmer and Schual-Berke.

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 1/17/06, 1/26/06 [DPS].

Brief Summary of Substitute Bill

- Requires manufacturers of covered electronic products (CEPs) offered for sale in Washington to register with the Department of Ecology (DOE) and to implement and finance the collection, transportation, and recycling of CEPs by January 1, 2009.
- Creates the Electronic Products Recycling Account and authorizes the DOE to establish fees to recover the costs to register manufacturers, review plans, and other administrative costs of the new program.
- Creates the Washington Materials Management and Financing Authority as a public entity to develop and implement a collection and recycling program for manufacturers participating in the standard plan.
- Requires persons selling electronic products to affix a label with the manufacturer's brand name by July 1, 2007.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Blake, Dickerson, Eickmeyer, Hunt and Kagi.

Minority Report: Do not pass. Signed by 4 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Chandler and Orcutt.

Staff: Jeff Olsen (786-7157).

Background:

The Department of Ecology (DOE) estimates that between 2003 and 2010, over 4.5 million computer processing units, 3.5 million cathode ray tube monitors, and 1.5 million flat panel monitors will become obsolete in Washington. These electronic products may contain many different materials, including steel, aluminum, copper, glass, plastic, gold, and lead.

In 2004, the Legislature enacted ESHB 2488 (Chapter 194, Laws of 2004) directing the DOE, in consultation with the Solid Waste Advisory Committee, to research information regarding the collection, recycling, and reuse of covered electronic products (CEPs). Covered electronic products include all computer monitors, personal computers, and televisions sold to consumers for personal use. The DOE report recommends that a system be developed and financed by industry based on product market share. The level of responsibility for each participant would be based on the return share of products being collected. The recommendations include requirements for a license to sell CEPs in Washington, with penalties for noncompliance.

Summary of Substitute Bill:

CEPs

Legislative findings conclude that a system financed by manufacturers for the collection, transportation, and recycling of CEPs must be established. Covered electronic products include computer monitors, desktop computers, laptop or portable computers, or televisions that have been used in the state by any household, charity, school district, small business, or small government. Televisions and computer monitors must have screens with a viewable area greater than four inches when measured diagonally.

Labeling Requirements

No person may sell or offer for sale an electronic product in Washington after January 1, 2007, unless a label with the manufacturer's brand is permanently affixed and readily visible. In-state retailers in possession of unlabeled products on January 1, 2007, may exhaust their stock through sales to the public.

Manufacturers, Collectors, and Transporters Registration

By January 1, 2007, manufacturers offering CEPs for sale in Washington must register annually with the DOE. Collectors and transporters of CEPs must also register annually with the DOE. When registering with the DOE, manufacturers must provide the DOE with contact information, the brand names of CEPs sold in the state, the methods of sale, and the manufacturer's preference for participating in the standard plan or an independent plan.

Manufacturers include any person who manufactures a CEP for sale in this state under their own brand name, assembles a CEP using parts manufactured by others for sale under the assembler's brand name, resells under its own brand name a CEP produced by other suppliers, imports a CEP that is sold in this state, or manufactures a co-branded product for sale in this state that carries the name of both the manufacturer and a retailer.

Manufacturer Financed Collection and Recycling Plans

Manufacturers of CEPs offered for sale in Washington must participate in plans to implement and finance the collection, transportation, and recycling of their equivalent share of CEPs by January 1, 2009. Manufacturers must participate in an independent plan or the standard plan operated by the Washington Materials Management and Financing Authority (Authority). Manufacturers must pay for all of the program costs. If program costs are passed on to consumers, manufacturers may not charge a fee at the time an unwanted electronic product is delivered or collected for recycling. Any person acquiring a manufacturer has responsibility for the acquired company's CEPs.

Independent Plans and the Standard Plan

A manufacturer that sells a CEP in Washington must participate in the standard plan, unless the manufacturer obtains approval from the DOE to participate in an independent plan. The standard plan is the plan developed by the Authority on behalf of participating manufacturers. An independent plan may be submitted to the DOE by manufacturers or a group of manufacturers, provided that the plan represents at least 5 percent of the return share of CEPs. Also, to participate in an independent plan a manufacturer may not be a new entrant or a white box manufacturer. An authorized party is the manufacturer or the entity designated by a group of manufacturers submitting an independent plan.

Plan Review

All independent plans and the standard plan must be submitted to the DOE by February 1, 2008. The DOE must review the plans within 90 days and notify persons with letters of approval. If a plan is rejected, the DOE must provide reasons for rejecting the plan, and the authority or authorized parties have 60 days to submit a new plan. Plans must be updated at least every five years. If a program fails to meet certain plan requirements, updated plans must be submitted to DOE describing how program adjustments will be made.

Plans submitted to the DOE must contain contact information and a list of participants, a description of the collection system, methods of collection in both rural and urban areas, a description of plan service to covered entities, a description of recycling processes and

facilities, processors used in the plan, how progress will be measured, and public education efforts.

Recycling Program Requirements

Programs established to implement recycling plans must provide for convenient collection services for both urban and rural populations. Programs must provide at least one collection site or service for any city or town with a population greater than 10,000. Collection sites must be staffed and open to the public at a frequency adequate to meet the needs of the area being served. Programs may limit the number of CEPs accepted per customer per day.

Washington Materials Management and Financing Authority

The Authority is established as a public body and an instrument of Washington. The Authority is governed by a Board of Directors (Board), comprised of 11 members of participating manufacturers. Five Board positions are reserved for representatives from the top ten brands by return share of CEPs, and six Board positions are reserved for other brands. The Board must have representation from both television and computer manufacturers. The Board must select a chair and create its own bylaws. The Directors of the Department of Community, Trade and Economic Development (DCTED); the Director of the DOE; and the State Treasurer serve as ex officio members.

The Authority must plan and implement a collection and recycling program for manufacturers participating in the standard plan. The standard plan is responsible for the sum of equivalent shares of participating manufacturers. The Board must adopt a general operating plan of procedures and shall conduct at least one public hearing on the general operating plan. The DOE and the DCTED must provide staff to assist in the creation of the Authority.

Participating manufacturers shall pay the Authority to cover the administrative and collection costs to operate the standard program. The Authority must determine the initial fee collected from participating manufacturers. If the Board fails to set an initial fee, the fee is between \$6 and \$10 per unit of CEP sold in the state for the first year of operation. After the first year, the Authority shall set annual fees and other charges to fund the standard program.

Return Share and Equivalent Share

The DOE must determine return share based on the percentage of CEPs by weight identified for an individual manufacturer. For the first program year, the DOE must establish the return share based on best available information from other states. In subsequent years, the return share must be based on the most recent sampling of CEPs. Manufacturers may challenge the preliminary return share by written petition to the DOE.

The DOE must determine the equivalent share for each manufacturer by comparing the return share to the total weight in pounds of CEPs collected for that program year. By June 1 of each year, the DOE must notify each manufacturer of their equivalent share for the previous year, and shall bill the authority or any authorized party that has not attained its equivalent share. By September 1 of each year, the DOE shall pay the authority or any authorized party that

exceeds its equivalent share. Plans using nonprofit organizations for collection services are given a 5 percent credit to be applied towards a plan's equivalent share for pounds that are received for recycling from those organizations.

If a plan collects less than its equivalent share, the Authority or authorized party must pay the DOE an amount to cover the costs of handling those CEPs, plus an administrative fee. Moneys collected by the DOE are deposited in the newly created Electronic Products Recycling Account. If a plan collects more than its equivalent share, the DOE must pay an amount to compensate for the collection of the surplus CEPs.

Plans must finance an auditable, statistically significant sampling of the CEPs entering its program every year. The information collected must include the brand names, product types, weight by brand name, and any additional information needed to assign return share.

Processors, Processing Standards, and Export Reporting Requirements

The Authority and authorized parties must obtain written statements from processors regarding compliance with certain processor requirements. The export of unwanted CEPs is prohibited except for exports to Organization for Economic Cooperation and Development (OECD) countries, members of the European Community, or other countries that have entered into an agreement with the United States allowing for the exports. Covered electronic products exported to other countries must be tested and labeled as functional or needing certain repairs. No plan or program may use federal or state prison labor for processing a CEP.

The DOE shall establish by rule performance standards for environmentally sound management of processors. These standards must include financial assurances to ensure proper closure of a facility that is consistent with environmental standards. The DOE must establish by rule the allowable percent of non-recycled residual that may be properly disposed of after CEPs have been processed. The DOE may audit processors used to fulfill the requirement of a plan.

Annual Reporting

By March 1 of the second program year and annually thereafter, the Authority and authorized parties must submit annual reports to the DOE. Annual reports must include the total weight of CEPs recycled by county, collection services by county, the weight of CEPs processed by each processor, documentation of compliance with processing standards, educational and promotional efforts, sampling results, and any other information deemed necessary by the DOE. The Authority's annual report must provide a list of participating manufacturers that have paid their equivalent share to the Authority. Nonprofit organizations that collect CEPs must report by each plan they participate in the weight of CEPs recycled during the previous program year. Financial and proprietary information submitted to or obtained by the DOE is exempt from public records disclosure requirements.

Education and Outreach Requirements

Plans must inform consumers about where and how to reuse and recycle their CEPs, including web site information or a toll-free telephone number. The DOE shall promote CEP recycling by posting information on its web site, providing a toll-free telephone number, or other activities. Local governments must promote recycling through existing educational methods. Retailers must provide information to consumers describing how to recycle CEPs.

State Purchasing Policies

The Department of General Administration (GA) must adopt purchasing policies that establish a preference for electronic products that meet environmental performance standards relating to the reduction or elimination of hazardous materials. The GA must ensure that certain surplus electronic products are managed only by registered transporters and processors. The GA must ensure that their surplus electronic products are directed to legal secondary material markets by requiring a chain of custody record.

Registration, Plan Review, and Other Fees

The DOE shall establish by rule annual registration and plan review fees to fully recover the costs incurred by the DOE in implementing the program. Fees must be based on factors relating to administering the collection and recycling program and be based on a sliding scale representative of annual sales of CEPs in the state. Fees collected by the DOE must be deposited in the Electronic Products Recycling Account to be used to fulfill their duties in administering the program.

Penalties

Manufacturers may not sell or offer for sale a CEP in Washington unless they register with the DOE, and they are participating in an approved plan to recycle their CEPs. The DOE must send written warnings to manufacturers that do not have an approved plan giving them notice to participate in an approved plan within 90 days. If manufacturers do not comply, they must be assessed a penalty of up to \$10,000.

If the Authority or an authorized party fails to implement an approved plan, the DOE must assess a penalty of up to \$5,000 upon first infraction. After 90 days, the Authority or authorized parties must be assessed a penalty up to \$10,000 if they still fail to implement their plans.

Persons not complying with manufacturer registration, education and outreach, reporting, labeling, retailer responsibilities, collector and transporter registration, or processing standards must first receive a written warning. After 90 days, a person must be assessed up to \$1,000 for the first citation and \$2,000 for subsequent citations.

Legislative Report

By December 31, 2012, the DOE must provide a report to the Legislature containing the following information: the weight of CEPs recycled by plan, by county, and in total; the performance of each plan; a description of the collection programs; an evaluation of how the

program compares to other states; comments from local governments; information on unwanted CEPs exported; and recommendations on how to improve the program.

Substitute Bill Compared to Original Bill:

The substitute clarifies that collectors providing premium or curbside collection may still assess fees to collect CEPs. The substitute removes a penalty prohibiting a manufacturer from offering an electronic product for sale for failing to participate in a plan. The substitute removes specific fee requirements the Authority would assess to participating manufacturers. The substitute extends the implementation date for complying with product labeling requirements from July 1, 2006 to January 1, 2007 and extends implementation dates for determining return share. The substitute directs the DOE and the DCTED to assist in creating the Authority. The substitute requires the Authority and authorized parties to obtain written statements from processors regarding compliance with the processor requirements. The substitute adds a reporting requirement to the DOE's legislative report regarding export of unwanted electronic products and scrap.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect July 1, 2006.

Testimony For: (In support) There have been efforts at both the national and regional level to come up with a solution to address the recycling of unwanted electronic products. However, there is no consensus on how to fund the program. This legislation is consistent with recommendations made by the DOE after an 18-month stakeholder process. The bill includes a system that has a minimal role for state government, allows businesses to work with other businesses, and promotes the development of more environmentally friendly products.

People need a simple, free way to dispose of their unwanted products. The bill is a shared responsibility approach that works for many stakeholders including state and local governments, households, nonprofits, and retailers. Local governments and nonprofits are currently bearing the costs of disposing of unwanted electronic products. Collecting fees at the retail level would be problematic. Some local transfer stations are unable to collect these products, and it can be expensive to recycle. The system created is market based, which will drive costs down and benefits up. The plan is flexible and allows manufacturers to join the standard plan or participate in an independent plan. Retailers are ready to take their share of products under this plan.

The plan is fair and equitable. Consumers do not want to pay fees to get rid of these products and rather end up storing products.

(With concerns) The intent of the bill is not to include cell phones, and the federal definition is needed to clarify that cell phones are excluded. The control of recycling markets will be concentrated under a small number of persons. It is not clear if curbside recycling is included

in the bill. Current curbside efforts should be expanded. Recycling is an emerging industry, and this bill may put some companies out of business.

Testimony Against: The approach in the bill places a very disproportionate share on manufacturers. It will be difficult for manufacturers to determine how to fund the program. Manufacturers make products, retailers sell them, and local governments manage solid waste and recycling. Manufacturers have the least experience to operate a program, but are required to figure out how to collect these products. Manufacturers do not track products that are sold in Washington. The definition of retailer is weak. This approach will not result in green design, since manufacturers already do this. Companies are spending millions on environmental design. Currently, there are a number of activities and recycling events involving manufacturers and retailers.

The bill requires sorting by brand, and having multiple programs will be confusing to consumers. This is just a tax on manufacturers. The bill allows companies to opt in and out of plans and will result in some companies not paying for their share. The bill will disadvantage in-state companies, provides market advantages to foreign competition, and will directly effect the ability of some companies to stay in business. The payments in the bill of \$0.50 per pound are higher than costs in other states.

Persons Testifying: (In support) Representative Sullivan, prime sponsor; Cullen Stephenson, Department of Ecology; Mo McBroom, Washington Environmental Council; Arnold Grothues, Radio Shack; Lisa Sepanski, King County Solid Waste Division; Larry King, Hewlett Packard; Bill Smith, City of Tacoma and Northwest Product Stewardship; Tiffany Hatch, Seattle Goodwill; Jan Gee, Washington Retail Association; and Suellen Mele, Washington Citizens for Resource Conservation.

(With concerns) Steve Gano, Cingular Wireless; Craig Lorch, Total Reclaim; and David Michener, Waste Management.

(Opposed) David Thompson, Panasonic; Douglas Smith, Sony; Frank Dick, Sharp; Dale Swanson, Panasonic; and Steve Matheson, Northwest E-Cycle.

Persons Signed In To Testify But Not Testifying: None.