

# SENATE BILL REPORT

## ESSB 6428

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As Passed Senate, February 8, 2006

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

**Brief Description:** Providing for electronic product recycling.

**Sponsors:** Senate Committee on Water, Energy & Environment (originally sponsored by Senators Pridemore, Esser, Poulsen, Morton, Schmidt, Fairley, Benson, Berkey, Regala, Kohl-Welles, Weinstein, Prentice, Kastama, Johnson, Thibaudeau, Kline, Eide, Shin, Rockefeller, Jacobsen, Haugen, Doumit, Oke, Franklin, Swecker, Carrell, Rasmussen, Spanel, Fraser, McAuliffe, Keiser, Brown, Finkbeiner, Brandland and Benton).

**Brief History:**

**Committee Activity:** Water, Energy & Environment: 1/17/06, 1/26/06 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/1/06, 2/6/06 [DPS(WEE), DNP, w/oRec].

Passed Senate: 2/8/06, 41-8.

### Brief Summary of Bill

- A collection, transportation, and recycling system is created to manage discarded computer monitors, desktop and laptop computers, and televisions.
- Manufacturers will establish and pay for the system; the state, local governments, and charities and retailers will participate in public outreach; and consumers will turn in items for recycling.
- A public authority made up of manufacturers will administer a standard plan implementing the system. Manufacturers may optionally elect to participate in independent plans. All plans must be operational by January 1, 2009.
- The system will be available to all households, charities, small businesses, small governments, and schools.
- The Department of Ecology will oversee and enforce the system.
- The act is void if the federal government establishes a national electronic waste recycling system that substantially meets the scope and intent of the act.

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### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Majority Report:** That Substitute Senate Bill No. 6428 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Delvin, Fraser, Pridemore and Regala.

**Minority Report:** Do not pass.  
Signed by Senator Honeyford.

**Minority Report:** That it be referred without recommendation.  
Signed by Senator Mulliken.

**Staff:** Sam Thompson (786-7413)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6428 as recommended by Committee on Water, Energy & Environment be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller and Thibaudeau.

**Minority Report:** Do not pass.  
Signed by Senator Schoesler.

**Minority Report:** That it be referred without recommendation.  
Signed by Senators Zarelli, Ranking Minority Member and Parlette.

**Staff:** Kirstan Arestad (786-7708)

**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. When discarded, these items could cause significant environmental harm.

In 2004, Washington enacted legislation directing DOE to research the collection, recycling, and reuse of computer monitors, personal computers, and televisions. A DOE report issued in December 2005 recommended that a collection and processing system be developed and financed by manufacturers, based on product market share.

**Summary of Bill:** A manufacturer-financed system for collecting, transporting, and recycling "covered electronic products" (CEPs) discarded by households, charities, school districts, and small businesses and governments is established. CEPs include computer monitors, desktop computers, laptop or portable computers, and televisions. CEP televisions and computer monitors have screens with a viewable area greater than four inches when measured diagonally. Manufacturers may not sell or offer to sell a CEP in or into Washington unless they participate in a collecting, transporting, and recycling plan approved by DOE.

Labeling. Beginning January 1, 2007, no person may sell or offer for sale an electronic product in Washington unless the manufacturer's brand is permanently affixed and readily visible. In-state retailers possessing unlabeled products on that date may exhaust their stock through sales.

Manufacturer, Collector, and Transporter Registration. Manufacturers offering CEPs for sale in Washington must register with DOE by January 1, 2007, and annually thereafter. CEP collectors and transporters must also annually register with DOE. When registering, manufacturers must provide DOE with contact information, brand names, methods of sale, and preference for participating in a standard collection, transportation, and recycling plan or an independent plan.

"Manufacturers" include any person in business or no longer in business but having a successor manufacturing a CEP for sale in Washington under their own brand name, assembling a CEP using parts manufactured by others for sale under the assembler's brand name, reselling under its own brand name a CEP produced by other suppliers, importing or exporting a CEP sold in Washington, or manufacturing a co-branded product carrying the name of both the manufacturer and a retailer.

Manufacturer-Financed Collection and Recycling Plans. Manufacturers must participate in plans to implement and finance the collection, transportation, and recycling of their equivalent share of CEPs by January 1, 2009. Manufacturers may participate in the standard plan operated by the Washington Materials Management and Financing Authority (Authority). Manufacturers must pay for all program costs. If costs are passed on to consumers, manufacturers may not charge a fee when an unwanted product is delivered or collected for recycling. Collectors providing premium or curbside services may, however, charge a fee for their additional collection costs. Any person acquiring a manufacturer has responsibility for the acquired company's CEPs.

Independent Plans and the Standard Plan. A manufacturer must participate in the standard plan developed by the Authority on behalf of participating manufacturers unless it obtains approval from DOE to participate in an independent plan. An independent plan may be submitted to DOE by a manufacturer or group of manufacturers representing at least five percent of the return share of CEPs; participants may not be new entrants or white box (unbranded product) manufacturers.

Plan Review by DOE. All plans must be submitted to DOE by February 1, 2008. DOE must review the plans within 90 days and notify persons with letters of approval, or, if it rejects a plan, provide reasons for doing so; the Authority or independent plans then have 60 days to submit a new plan. Plans must be updated at least every five years. If a plan fails to meet certain requirements, updates must be submitted to DOE describing adjustments. Submitted plans must include contact information and participant lists, and describe collection systems, service to covered entities, recycling processes and facilities, processors used, progress tracking systems, timelines, public education efforts, and collector compensation.

Collection. Programs implementing plans must provide for convenient urban and rural collection services, with at least one collection site or alternate service for municipalities with populations greater than 10,000. Collection sites must be staffed and open to the public at a frequency adequate to meet area needs. 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 the state. It is governed by a board of directors (board), comprised of 11 elected representatives of participating manufacturers. Five positions are

reserved for representatives from the top ten brands by return share of CEPs, and six positions are reserved for other brands. The board must have representatives from both television and computer manufacturers. The Directors of DOE, the Department of Community, Trade and Economic Development, and the State Treasurer serve as ex-officio members. The board must select a chair and create bylaws.

The Authority must plan and implement a 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 and conduct at least one public hearing on that plan.

Participating manufacturers must pay the Authority's administrative and collection costs. The Authority will assess charges and collect funds based on any equitable method and collect assessments to fund standard program activities. The Authority will adjust assessments to ensure that all costs are covered. If a manufacturer has not met its financial obligations, the Authority will notify DOE that the manufacturer is no longer participating in the standard plan.

Return Share and Equivalent Share. DOE must annually determine a manufacturer's return share based on weight of CEPs identified for that manufacturer. Initially, DOE must establish return share using all reasonable means and best available information. In subsequent years, DOE must consult the most recent sampling of CEPs. A manufacturer may challenge DOE's preliminary determination.

DOE must annually determine a manufacturer's equivalent share through a calculation comparing the manufacturer's return share to the total weight in pounds of CEPs collected for that year. By June 1, DOE must notify each manufacturer of its equivalent share for the previous year and bill each plan that has not attained its equivalent share. By September 1, DOE must pay each plan that exceeded its equivalent share. A plan using nonprofit organizations for collection will be given a five percent credit applied to the plan's equivalent share for pounds received from those organizations.

A plan collecting less than its equivalent share must pay DOE to cover costs of handling the deficit, plus an administrative fee. Monies collected by DOE will be deposited in the newly-created electronic products recycling account. DOE must pay a plan collecting more than its equivalent share to compensate for collection of the surplus.

Plans must finance sampling of CEPs entering their programs. Information collected must include brand names, product types, weight by brand name, and any additional information needed to assign return share.

Export Limitations and Processing Standards. Plans must ensure that processors comply with export limitations and other requirements. International export of certain electronic waste by processors is prohibited, under certain circumstances, if these items exceed federal hazardous waste standards. Products exported into certain countries for reuse must be tested and labeled as fully functional or needing only minor repairs. DOE will establish performance standards for processors and guidelines regarding nonrecycled residual disposed after processing. DOE may audit processors. Plans may not use federal or state prison labor for processing.

Annual Reporting. Plans must annually report to DOE regarding total weight of CEPs recycled by county, collection services by county, weight of CEPs processed by each processor, compliance with processing standards, educational and promotional efforts, sampling results, and other information deemed necessary by DOE. The standard plan's annual report must list participating manufacturers. Nonprofit organizations collecting CEPs must report the weight of CEPs they collected during the previous year. Financial and proprietary information submitted to or obtained by DOE is exempt from public records disclosure requirements.

Outreach. Plans must inform consumers about where and how to recycle their CEPs. DOE and local governments must promote recycling. Retailers must provide pertinent information to consumers.

State Purchasing. The Department of General Administration (GA) must adopt purchasing preferences for electronic products meeting environmental standards for reducing or eliminating hazardous materials. GA must ensure that surplus products are managed only by registered transporters and processors and are directed to legal secondary materials markets.

Fees. DOE must establish annual registration and plan review fees to recover implementation costs. Fees must be based on a sliding scale representing annual sales of CEPs in Washington, and will be deposited in the electronic products recycling account.

Penalties. DOE must send written warnings to manufacturers not participating in an approved plan, giving them notice to participate within 30 days. Manufacturers not complying with the initial warning will be assessed a penalty of up to \$10,000. If the Authority or an independent plan fails to implement an approved plan, DOE will assess a penalty of up to \$5,000 for the first violation. After 30 days, non-complying parties will be assessed penalties of up to \$10,000 for subsequent violations. Persons not complying with manufacturer registration, education and outreach, reporting, labeling, retailer responsibility, collector and transporter registration, or processing requirements will receive a written warning. After 30 days, non-complying persons will be assessed a penalty of up to \$1,000 for the first violation and up to \$2,000 for subsequent violations.

Preemption. The act is void if federal law establishes a national electronic waste collection and recycling system that substantially meets the scope and intent of the act.

Report. By December 31, 2012, DOE must report to the Legislature concerning weight of CEPs recycled, performance of each plan, collection programs, comparison to programs in other states, comments from local governments, recommendations on improvements, and export of electronic waste to certain countries.

**Appropriation:** None.

**Fiscal Note:** Requested on February 9, 2006.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on July 1, 2006.

**Testimony For (Water, Energy & Environment):** This legislation was developed by a broad coalition, authorizes a flexible, efficient market-based approach that will be implemented by businesses rather than government, and provides incentives for manufacturers

to produce products with lower environmental impacts. Manufacturers should bear disposal and recycling costs as costs of doing business; these costs will be embedded in the product price. The advance recovery fee system imposed in California has angered consumers, unfairly prompting a backlash against retailers. Existing Washington recyclers will be benefitted by this legislation.

**Testimony Against (Water, Energy & Environment):** This legislation, which is opposed by many television manufacturers, unfairly burdens manufacturers; they are not equipped to design electronic waste collection and recycling systems. Some manufacturers will be competitively disadvantaged. There should be a "point of sale" cost borne by consumers, similar to the advance recovery fee system imposed in California. This legislation may hurt small in-state recyclers because manufacturers may ship e-waste to lower-cost operations elsewhere; the existing free enterprise system is sufficient.

**Testimony Other (Water, Energy & Environment):** This legislation should be clarified to expressly provide that it does not apply to discarded cell phones. This legislation may be a "loser" for recyclers because it will concentrate flow of electronic waste into small contracts and might discourage curbside collection.

**Who Testified (Water, Energy & Environment):** PRO: Cullen Stephenson, DOE; Mo McBroom, Washington Environmental Council; Arnold Grothues, RadioShack; Lisa Sepansk, King County; Larry King, Hewlett Packard; Bill Smith, City of Tacoma and Northwest Product Stewardship; Tiffany Hatch, Seattle Goodwill; Jan Gee, Washington Retail Association and Amazon; Paul Benz, Lutheran Public Policy and Washington Association of Churches; Eddie Westmoreland, Waste Connections; Suellen Mele, Washington Citizens for Resource Conservation.

CON: David Thompson, Panasonic; Douglas Smith, Sony Electronics; Frank Dick, Sharp Electronics; Steve Matheson, Northwest E-Cycle.

OTHER: Craig Lorch, Total Reclaim; David Michener, Waste Management; Steve Gano, Cingular Wireless.

**Testimony For (Ways & Means):** Proposed legislation is the result of an 18 month process wherein many stakeholder groups participated. This bill reflects the concerns of the manufacturing industry and represents the compromise bill.

**Testimony Other (Ways & Means):** There are major problems with the bill. It taxes a small group. Not all products are covered under this bill such as printers and copiers. Large businesses are also not covered under this bill.

**Who Testified (Ways & Means):** PRO: Craig Pridemore, Senator; Dan Coyne, Hewlett-Packard; Mo McBroom, Washington Environmental Council; Jan Gee, Washington Retail Association.

OTHER: Randy Ray, Electronics manufacturers; FrankDick, Sharp; Dale Swanson, Panasonic; and Bill Pikire, Electronic manufacturers.

**House Amendment(s):** Materials Management and Financing Authority. The Director of DOE will appoint the Authority's board members. DOE must approve the Authority's plan for assessing costs. A member manufacturer may appeal a cost assessment to the DOE Director, whose decision

can subsequently be reviewed by an arbitration panel, with subsequent limited Superior Court review. The authority cannot: (1) apportion costs based on products imported through the state then exported outside the state; (2) create incentives to divert imported products to ports or distribution centers in other states; and (3) assess fees or levy taxes directly on sale or possession of products. The Authority is authorized to require financial assurances or performance bonds from manufacturers.

Orphan Product Costs. DOE must report to the Legislature by April 1, 2010, regarding orphan products and, if they exceed 10 percent of total covered products collected, recommend ways to decrease the amount of orphan products or finance and handle them differently.

E-Waste Processors. Processors must register with DOE and the Authority must use qualified processors and fairly compensate them.

Retailer Liability. The House amendment changes and clarifies that retail sellers may register and be held accountable as manufacturers.

International Export of E-Waste. Restrictions on international export of electronic waste are shifted to a new, separate section.