

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6428

Chapter 183, Laws of 2006

(partial veto)

59th Legislature
2006 Regular Session

ELECTRONIC PRODUCT RECYCLING

EFFECTIVE DATE: 7/1/06

Passed by the Senate March 6, 2006
YEAS 38 NAYS 11

BRAD OWEN

President of the Senate

Passed by the House March 2, 2006
YEAS 69 NAYS 29

FRANK CHOPP

Speaker of the House of Representatives

Approved March 24, 2006, with the
exception of section 26, which is vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6428** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 24, 2006 - 1:12 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6428

AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By 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)

READ FIRST TIME 01/30/06.

1 AN ACT Relating to providing electronic product recycling through
2 manufacturer financed opportunities; amending RCW 42.56.270; adding a
3 new section to chapter 43.19 RCW; adding a new chapter to Title 70 RCW;
4 creating a new section; prescribing penalties; and providing an
5 effective date.

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

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

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

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

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

6 (3) "Board" means the board of directors of the Washington
7 materials management and financing authority created under section 30
8 of this act.

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

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

19 (6) "Covered electronic product" includes a cathode ray tube or
20 flat panel computer monitor having a viewable area greater than four
21 inches when measured diagonally, a desktop computer, a laptop or a
22 portable computer, or a cathode ray tube or flat panel television
23 having a viewable area greater than four inches when measured
24 diagonally that has been used in the state by any covered entity
25 regardless of original point of purchase. "Covered electronic product"
26 does not include: (a) A motor vehicle or replacement parts for use in
27 motor vehicles or aircraft, or any computer, computer monitor, or
28 television that is contained within, and is not separate from, the
29 motor vehicle or aircraft; (b) monitoring and control instruments or
30 systems; (c) medical devices; (d) products including materials intended
31 for use as ingredients in those products as defined in the federal
32 food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-
33 serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations
34 issued under those acts; (e) equipment used in the delivery of patient
35 care in a health care setting; (f) a computer, computer monitor, or
36 television that is contained within a clothes washer, clothes dryer,
37 refrigerator, refrigerator and freezer, microwave oven, conventional

1 oven or range, dishwasher, room air conditioner, dehumidifier, or air
2 purifier; or (g) hand-held portable voice or data devices used for
3 commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

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

6 (8) "Curbside service" means a collection service providing
7 regularly scheduled pickup of covered electronic products from
8 households or other covered entities in quantities generated from
9 households.

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

11 (10) "Electronic product" includes a cathode ray tube or flat panel
12 computer monitor having a viewable area greater than four inches when
13 measured diagonally; a desktop computer; a laptop or a portable
14 computer; or a cathode ray tube or flat screen television having a
15 viewable area greater than four inches when measured diagonally.

16 (11) "Equivalent share" means the weight in pounds of covered
17 electronic products identified for an individual manufacturer under
18 this chapter as determined by the department under section 20 of this
19 act.

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

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

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

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

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

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

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

4 (e) Imports or has imported a covered electronic product into the
5 United States that is sold in or into this state. However, if the
6 imported covered electronic product is manufactured by any person with
7 a presence in the United States meeting the criteria of manufacturer
8 under (a) through (d) of this subsection, that person is the
9 manufacturer. For purposes of this subsection, "presence" means any
10 person that performs activities conducted under the standards
11 established for interstate commerce under the commerce clause of the
12 United States Constitution; or

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

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

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

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

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

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

1 (20) "Processor" means an entity engaged in disassembling,
2 dismantling, or shredding electronic products to recover materials
3 contained in the electronic products and prepare those materials for
4 reclaiming or reuse in new products in accordance with processing
5 standards established by this chapter and by the department. A
6 processor may also salvage parts to be used in new products.

7 (21) "Product type" means one of the following categories:
8 Computer monitors; desktop computers; laptop and portable computers;
9 and televisions.

10 (22) "Program" means the collection, transportation, and recycling
11 activities conducted to implement an independent plan or the standard
12 plan.

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

15 (24) "Recycling" means transforming or remanufacturing unwanted
16 electronic products, components, and byproducts into usable or
17 marketable materials for use other than landfill disposal or
18 incineration. "Recycling" does not include energy recovery or energy
19 generation by means of combusting unwanted electronic products,
20 components, and byproducts with or without other waste. Smelting of
21 electronic materials to recover metals for reuse in conformance with
22 all applicable laws and regulations is not considered disposal or
23 energy recovery.

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

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

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

35 (28) "Small business" means a business employing less than fifty
36 people.

37 (29) "Small government" means a city in the state with a population

1 less than fifty thousand, a county in the state with a population less
2 than one hundred twenty-five thousand, and special purpose districts in
3 the state.

4 (30) "Standard plan" means the plan for the collection,
5 transportation, and recycling of unwanted covered electronic products
6 developed, implemented, and financed by the authority on behalf of
7 manufacturers participating in the authority.

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

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

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

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

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

26 (3) The manufacturers participating in an approved plan are
27 responsible for covering all administrative and operational costs
28 associated with the collection, transportation, and recycling of their
29 plan's equivalent share of covered electronic products. If costs are
30 passed on to consumers, it must be done without any fees at the time
31 the unwanted electronic product is delivered or collected for
32 recycling. However, this does not prohibit collectors providing
33 premium or curbside services from charging customers a fee for the
34 additional collection cost of providing this service, when funding for
35 collection provided by an independent plan or the standard plan does
36 not fully cover the cost of that service.

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

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

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

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

17 (3) The department shall review the registration or renewal
18 application and notify the manufacturer if their registration does not
19 meet the requirements of this section. Within thirty days of receipt
20 of such a notification from the department, the manufacturer must file
21 with the department a revised registration addressing the requirements
22 noted by the department.

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

24 (a) The name and contact information of the manufacturer submitting
25 the registration;

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

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

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

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

36 (6) The department shall identify, using all reasonable means,
37 manufacturers that are in business or that are no longer in business

1 but that have a successor in interest by examining best available
2 return share data and other pertinent data. The department shall
3 notify manufacturers that have been identified and for whom an address
4 has been found of the requirements of this chapter, including
5 registration and plan requirements under this section and section 5 of
6 this act.

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

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

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

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

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

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

23 (b) Each group of manufacturers submitting an independent plan must
24 designate a party authorized to file the plan with the department on
25 their behalf. A letter of certification from each of the manufacturers
26 designating the authorized party must be submitted to the department
27 together with the plan.

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

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

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

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

9 (4) Within ninety days after receipt of a plan, the department
10 shall determine whether the plan complies with this chapter. If the
11 plan is approved, the department shall send a letter of approval. If
12 a plan is rejected, the department shall provide the reasons for
13 rejecting the plan to the authority or authorized party. The authority
14 or authorized party must submit a new plan within sixty days after
15 receipt of the letter of disapproval.

16 (5) An independent plan and the standard plan must contain the
17 following elements:

18 (a) Contact information for the authority or authorized party and
19 a comprehensive list of all manufacturers participating in the plan and
20 their contact information;

21 (b) A description of the collection, transportation, and recycling
22 systems and service providers used, including a description of how the
23 authority or authorized party will:

24 (i) Seek to use businesses within the state, including retailers,
25 charities, processors, and collection and transportation services;

26 (ii) Fairly compensate collectors for providing collection
27 services; and

28 (iii) Fairly compensate processors for providing processing
29 services;

30 (c) The method or methods for the reasonably convenient collection
31 of all product types of covered electronic products in rural and urban
32 areas throughout the state, including how the plan will provide for
33 collection services in each county of the state and for a minimum of
34 one collection site or alternate collection service for each city or
35 town with a population greater than ten thousand. A collection site
36 for a county may be the same as a collection site for a city or town in
37 the county;

1 (d) A description of how the plan will provide service to small
2 businesses, small governments, charities, and school districts in
3 Washington;

4 (e) The processes and methods used to recycle covered electronic
5 products including a description of the processing that will be used
6 and the facility location;

7 (f) Documentation of audits of each processor used in the plan and
8 compliance with processing standards established under sections 25 and
9 26 of this act;

10 (g) A description of the accounting and reporting systems that will
11 be employed to track progress toward the plan's equivalent share;

12 (h) A timeline describing startup, implementation, and progress
13 towards milestones with anticipated results;

14 (i) A public information campaign to inform consumers about how to
15 recycle their covered electronic products at the end of the product's
16 life; and

17 (j) A description of how manufacturers participating in the plan
18 will communicate and work with processors utilized by that plan to
19 promote and encourage design of electronic products and their
20 components for recycling.

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

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

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

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

1 (b) The authority or authorized party shall notify the department
2 of any modification to the plan. If the department determines that the
3 authority or authorized party has significantly modified the program
4 described in the plan, the authority or authorized party shall submit
5 a revised plan describing the changes to the department within sixty
6 days of notification by the department.

7 (2) Within sixty days after receipt of a revised plan, the
8 department shall determine whether the revised plan complies with this
9 chapter. If the revised plan is approved, the department shall send a
10 letter of approval. If the revised plan is rejected, the department
11 shall provide the reasons for rejecting the plan to the authority or
12 authorized party. The authority or authorized party must submit a new
13 plan revision within sixty days after receipt of the letter of
14 disapproval.

15 (3) The authority or authorized parties may buy and sell collected
16 covered electronic products with other programs without submitting a
17 plan revision for review.

18 NEW SECTION. **Sec. 8.** (1) A manufacturer participating in an
19 independent plan may join the standard plan by notifying the authority
20 and the department of its intention at least five months prior to the
21 start of the next program year.

22 (2) Manufacturers may not change from one plan to another plan
23 during a program year.

24 (3) A manufacturer participating in the standard plan wishing to
25 implement or participate in an independent plan may do so by complying
26 with rules adopted by the department under section 23 of this act.

27 NEW SECTION. **Sec. 9.** (1) A program must provide collection
28 services for covered electronic products of all product types that are
29 reasonably convenient and available to all citizens of the state
30 residing within its geographic boundaries, including both rural and
31 urban areas. Each program must provide collection service in every
32 county of the state. A program may provide collection services jointly
33 with another plan or plans.

34 (a) For any city or town with a population of greater than ten
35 thousand, each program shall provide a minimum of one collection site
36 or alternate collection service described in subsection (3) of this

1 section or a combination of sites and alternate service that together
2 provide at least one collection opportunity for all product types. A
3 collection site for a county may be the same as a collection site for
4 a city or town in the county.

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

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

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

16 (3) A program may provide collection services in forms different
17 than collection sites, such as curbside services, if those alternate
18 services provide equal or better convenience to citizens and equal or
19 increased recovery of unwanted covered electronic products.

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

24 (5) For small businesses, small governments, charities, and school
25 districts that may have large quantities of covered electronic products
26 that cannot be handled at collection sites or curbside services, a
27 program may provide alternate services. At a minimum, a program must
28 provide for processing of these large quantities of covered electronic
29 products at no charge to the small businesses, small governments,
30 charities, and school districts.

31 NEW SECTION. **Sec. 10.** Any person acquiring a manufacturer, or who
32 has acquired a manufacturer, shall have all responsibility for the
33 acquired company's covered electronic products, including covered
34 electronic products manufactured prior to the effective date of this
35 section, unless that responsibility remains with another entity per the
36 purchase agreement and the acquiring manufacturer provides the
37 department with a letter from the other entity accepting responsibility

1 for the covered electronic products. Cobranding manufacturers may
2 negotiate with retailers for responsibility for those products and must
3 notify the department of the results of their negotiations.

4 NEW SECTION. **Sec. 11.** (1) An independent plan and the standard
5 plan must implement and finance an auditable, statistically significant
6 sampling of covered electronic products entering its program every
7 program year. The information collected must include a list of the
8 brand names of covered electronic products by product type, the number
9 of covered electronic products by product type, the weight of covered
10 electronic products that are identified for each brand name or that
11 lack a manufacturer's brand, the total weight of the sample by product
12 type, and any additional information needed to assign return share.

13 (2) The sampling must be conducted in the presence of the
14 department or a third-party organization approved by the department.
15 The department may, at its discretion, audit the methodology and the
16 results.

17 (3) After the fifth program year, the department may reassess the
18 sampling required in this section. The department may adjust the
19 frequency at which manufacturers must implement the sampling or may
20 adjust the frequency at which manufacturers must provide certain
21 information from the sampling. Prior to making any changes, the
22 department shall notify the public, including all registered
23 manufacturers, and provide a comment period. The department shall
24 notify all registered manufacturers of any such changes.

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

32 (2) The department shall promote covered electronic product
33 recycling by:

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

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

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

5 (3) Local governments shall promote covered electronic product
6 recycling, including listings of local collection sites and services,
7 through existing educational methods typically used by each local
8 government.

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

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

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

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

30 (3) Moneys in the account may be used solely by the department for
31 the purposes of fulfilling department responsibilities specified in
32 this chapter and for expenditures to the authority and authorized
33 parties resulting from plans exceeding their equivalent share, as
34 described in section 22 of this act. Funds in the account may not be
35 diverted for any purpose or activity other than those specified in this
36 section.

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

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

6 (a) The total weight in pounds of covered electronic products
7 collected and recycled, by county, during the preceding program year
8 including documentation verifying collection and processing of that
9 material. The total weight in pounds includes orphan products. The
10 report must also indicate and document the weight in pounds received
11 from each nonprofit charitable organization primarily engaged in the
12 business of reuse and resale used by the plan. The report must
13 document the weight in pounds that were received in large quantities
14 from small businesses, small governments, charities and school
15 districts as described in section 9(5) of this act;

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

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

28 (d) Other documentation as established under section 26(3) of this
29 act;

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

31 (f) The results of sampling and sorting as required in section 11
32 of this act, including a list of the brand names of covered electronic
33 products by product type, the number of covered electronic products by
34 product type, the weight of covered electronic products that are
35 identified for each brand name or that lack a manufacturer's brand, and
36 the total weight of the sample by product type;

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

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

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

6 (4) All reports submitted to the department must be available to
7 the general public through the internet. Proprietary information
8 submitted to the department under this chapter is exempt from public
9 disclosure under RCW 42.56.270.

10 NEW SECTION. **Sec. 15.** Nonprofit charitable organizations that
11 qualify for a taxation exemption under section 501(c)(3) of the
12 internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are
13 primarily engaged in the business of reuse and resale and that are used
14 by a plan to collect covered electronic products shall file a report
15 with the department by March 1st of the second program year and each
16 program year thereafter. The report must indicate and document the
17 weight of covered electronic products sent for recycling during the
18 previous program year attributed to each plan that the charitable
19 organization is participating in.

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

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

26 NEW SECTION. **Sec. 17.** No person may sell or offer for sale a
27 covered electronic product to any person in this state unless the
28 manufacturer of the covered electronic product has filed a registration
29 with the department under section 4 of this act and is participating in
30 an approved plan under section 5 of this act. A person that sells or
31 offers for sale a covered electronic product in the state shall consult
32 the department's web site for lists of manufacturers with registrations
33 and approved plans prior to selling a covered electronic product in the
34 state. A person is considered to have complied with this section if on

1 the date the product was ordered from the manufacturer or its agent,
2 the manufacturer was listed as having registered and having an approved
3 plan on the department's web site.

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

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

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

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

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

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

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

18 NEW SECTION. **Sec. 19.** (1) The department shall determine the
19 return share for each manufacturer in the standard plan or an
20 independent plan by dividing the weight of covered electronic products
21 identified for each manufacturer by the total weight of covered
22 electronic products identified for all manufacturers in the standard
23 plan or an independent plan, then multiplying the quotient by one
24 hundred.

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

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

34 NEW SECTION. **Sec. 20.** (1) The department shall determine the
35 total equivalent share for each manufacturer in the standard plan or an

1 independent plan by dividing the return share percentage for each
2 manufacturer by one hundred, then multiplying the quotient by the total
3 weight in pounds of covered electronic products collected for that
4 program year, allowing as needed for the additional credit authorized
5 in subsection (3) of this section.

6 (2)(a) By June 1st of each program year, the department shall
7 notify each manufacturer of the manufacturer's equivalent share of
8 covered electronic products to be applied to the previous program year.
9 The department shall also notify each manufacturer of how its
10 equivalent share was determined.

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

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

19 (3) Plans that utilize the collection services of nonprofit
20 charitable organizations that qualify for a taxation exemption under
21 section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec.
22 501(c)(3)) that are primarily engaged in the business of reuse and
23 resale must be given an additional five percent credit to be applied
24 toward a plan's equivalent share for pounds that are received for
25 recycling from those organizations. The department may adjust the
26 percentage of credit annually.

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

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

33 (3) Manufacturers may challenge the preliminary return share by
34 written petition to the department. The petition must be received by
35 the department within thirty days of the date of publication of the
36 preliminary return shares.

1 (4) The petition must contain a detailed explanation of the grounds
2 for the challenge, an alternative calculation, and the basis for such
3 a calculation, documentary evidence supporting the challenge, and
4 complete contact information for requests for additional information or
5 clarification.

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

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

14 (7) By August 1, 2007, the department shall publish the final
15 return shares for the first program year. By August 1st of each
16 program year, the department shall publish the final return shares for
17 use in the coming program year.

18 NEW SECTION. **Sec. 22.** (1) For an independent plan and the
19 standard plan, if the total weight in pounds of covered electronic
20 products collected during a program year is less than the plan's
21 equivalent share of covered electronic products for that year, then the
22 authority or authorized party shall submit to the department a payment
23 equal to the weight in pounds of the deficit multiplied by the
24 reasonable collection, transportation, and recycling cost for covered
25 electronic products and an administrative fee. Moneys collected by the
26 department must be deposited in the electronic products recycling
27 account.

28 (2) For an independent plan and the standard plan, if the total
29 weight in pounds of covered electronic products collected during a
30 program year is more than the plan's equivalent share of covered
31 electronic products for that year, then the department shall submit to
32 the authority or authorized party, a payment equal to the weight in
33 pounds of the surplus multiplied by the reasonable collection,
34 transportation, and recycling cost for covered electronic products.

35 (3) For purposes of this section, the initial reasonable
36 collection, transportation, and recycling cost for covered electronic

1 products is forty-five cents per pound and the administrative fee is
2 five cents per pound.

3 (4) The department may annually adjust the reasonable collection,
4 transportation, and recycling cost for covered electronic products and
5 the administrative fee described in this section. Prior to making any
6 changes in the fees described in this section, the department shall
7 notify the public, including all registered manufacturers, and provide
8 a comment period. The department shall notify all registered
9 manufacturers of any changes to the reasonable collection,
10 transportation, and recycling cost or the administrative fee by January
11 1st of the program year in which the change is to take place.

12 NEW SECTION. **Sec. 23.** (1) The department shall adopt rules to
13 determine the process for manufacturers to change plans under section
14 8 of this act.

15 (2) The department shall establish annual registration and plan
16 review fees for administering this chapter. An initial fee schedule
17 must be established by rule and be adjusted no more often than once
18 every two years. All fees charged must be based on factors relating to
19 administering this chapter and be based on a sliding scale that is
20 representative of annual sales of covered electronic products in the
21 state. Fees must be established in amounts to fully recover and not to
22 exceed expenses incurred by the department to implement this chapter.

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

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

29 NEW SECTION. **Sec. 24.** (1) Each collector and transporter of
30 covered electronic products in the state must register annually with
31 the department. The registration must include all identification
32 requirements for licensure in the state and the geographic area of the
33 state that they serve. The department shall develop a single form for
34 registration of both collectors and transporters.

35 (2) Each processor of covered electronic products utilized by an
36 independent or standard plan must register annually with the

1 department. The registration must include identification information
2 and documentation of any necessary operating permits issued by state or
3 local authorities.

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

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

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

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

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

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

30 (a) *Countries that are members of the organization for economic*
31 *cooperation and development;*

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

33 (c) *Countries that have entered into an agreement with the United*
34 *States that allows for such exports.*

35 (2) *Any unwanted electronic products or electronic components*
36 *derived from such products that are capable of leaching lead, cadmium,*

1 mercury, hexavalent chromium, or selenium or selenium compounds in
2 concentrations exceeding the levels established in 40 C.F.R. Sec.
3 261.24 as of the effective date of this section and exported to
4 countries that are not members of the organization for economic
5 cooperation and development or the European Union or with whom the
6 United States has not entered into an agreement for such export for
7 reuse, must be tested and labeled as fully functional or needing only
8 repairs that do not result in the replacement of components capable of
9 leaching these substances in concentrations exceeding the levels
10 established in 40 C.F.R. Sec. 261.24 as of the effective date of this
11 section.

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

**Sec. 26 was vetoed. See message at end of chapter.*

15 NEW SECTION. **Sec. 27.** (1) No manufacturer may sell or offer for
16 sale a covered electronic product in or into the state unless the
17 manufacturer of the covered electronic product is participating in an
18 approved plan. The department shall send a written warning to a
19 manufacturer that does not have an approved plan or is not
20 participating in an approved plan as required under section 5 of this
21 act. The written warning must inform the manufacturer that it must
22 participate in an approved plan within thirty days of the notice. Any
23 violation after the initial written warning shall be assessed a penalty
24 of up to ten thousand dollars for each violation.

25 (2) If the authority or any authorized party fails to implement
26 their approved plan, the department must assess a penalty of up to five
27 thousand dollars for the first violation along with notification that
28 the authority or authorized party must implement its plan within thirty
29 days of the violation. After thirty days, the authority or any
30 authorized party failing to implement their approved plan must be
31 assessed a penalty of up to ten thousand dollars for the second and
32 each subsequent violation.

33 (3) Any person that does not comply with manufacturer registration
34 requirements under section 4 of this act, education and outreach
35 requirements under section 12 of this act, reporting requirements under
36 section 14 of this act, labeling requirements under section 16 of this
37 act, retailer responsibility requirements under section 17 of this act,

1 collector or transporter registration requirements under section 24 of
2 this act, or requirements under sections 25 and 26 of this act, must
3 first receive a written warning including a copy of the requirements
4 under this chapter and thirty days to correct the violation. After
5 thirty days, a person must be assessed a penalty of up to one thousand
6 dollars for the first violation and up to two thousand dollars for the
7 second and each subsequent violation.

8 (4) All penalties levied under this section must be deposited into
9 the electronic products recycling account created under section 13 of
10 this act.

11 (5) The department shall enforce this section.

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

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

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

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

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

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

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

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

36 (2) By April 1, 2010, the department shall provide a report to the
37 appropriate committees of the legislature regarding the amount of

1 orphan products collected as a percent of the total amount of covered
2 electronic products collected. If the orphan products collected exceed
3 ten percent of the total amount of covered electronic products
4 collected, the department shall report to the appropriate committees of
5 the legislature within ninety days describing the orphan products
6 collected and include recommendations for decreasing the amount of
7 orphan products or alternative methods for financing the collection,
8 transportation, and recycling of orphan products.

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

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

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

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

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

30 (6) The authority shall accept into the standard program covered
31 electronic products from any registered collector who meets the
32 requirements of this chapter. The authority shall compensate
33 registered collectors for the reasonable costs associated with
34 collection, but is not required to compensate nor restricted from
35 compensating the additional collection costs resulting from the
36 additional convenience offered to customers through premium and
37 curbside services.

1 (7) The authority shall accept and utilize in the standard program
2 any registered processor meeting the requirements of this chapter and
3 any requirements described in the authority's operating plan or through
4 contractual arrangements. Processors utilized by the standard plan
5 shall provide documentation to the authority at least annually
6 regarding how they are meeting the requirements in sections 25 and 26
7 of this act, including enough detail to allow the standard plan to meet
8 its reporting requirements in section 14(2) (c) and (d), and must
9 submit to audits conducted by or for the authority. The authority
10 shall compensate such processors for the reasonable costs, as
11 determined by the authority, associated with processing unwanted
12 electronic products. Such processors must demonstrate that the
13 unwanted electronic products have been received from registered
14 collectors or transporters, and provide other documentation as may be
15 required by the authority.

16 (8) Except as specifically allowed in this chapter, the authority
17 shall operate without using state funds or lending the credit of the
18 state or local governments.

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

22 NEW SECTION. **Sec. 30.** (1)(a) The authority is governed by a board
23 of directors. The board of directors is comprised of eleven
24 participating manufacturers, appointed by the director of the
25 department. Five board positions are reserved for representatives of
26 the top ten brand owners by return share of covered electronic
27 products, and six board positions are reserved for representatives of
28 other brands, including at least one board position reserved for a
29 manufacturer who is also a retailer selling their own private label.
30 The return share of covered electronic products used to determine the
31 top ten brand owners for purposes of electing the board must be
32 determined by the department by January 1, 2007.

33 (b) The board must have representation from both television and
34 computer manufacturers.

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

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

1 (4) The directors of the department of community, trade, and
2 economic development and the department of ecology, and the state
3 treasurer serve as ex officio members. The state agency directors and
4 the state treasurer serving in ex officio capacity may each designate
5 an employee of their respective departments to act on their behalf in
6 all respects with regard to any matter to come before the authority.
7 Ex officio designations must be made in writing and communicated to the
8 authority director.

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

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

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

18 NEW SECTION. **Sec. 31.** (1) Manufacturers participating in the
19 standard plan shall pay the authority to cover all administrative and
20 operational costs associated with the collection, transportation, and
21 recycling of covered electronic products within the state of Washington
22 incurred by the standard program operated by the authority to meet the
23 standard plan's equivalent share obligation as described in section
24 29(5) of this act.

25 (2) The authority shall assess charges on each manufacturer
26 participating in the standard plan and collect funds from each
27 participating manufacturer for the manufacturer's portion of the costs
28 in subsection (1) of this section. Such apportionment shall be based
29 on return share, market share, any combination of return share and
30 market share, or any other equitable method. The authority's
31 apportionment of costs to manufacturers participating in the standard
32 plan may not include nor be based on electronic products imported
33 through the state and subsequently exported outside the state. Charges
34 assessed under this section must not be formulated in such a way as to
35 create incentives to divert imported electronic products to ports or
36 distribution centers in other states. The authority shall adjust the

1 charges to manufacturers participating in the standard plan as
2 necessary in order to ensure that all costs associated with the
3 identified activities are covered.

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

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

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

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

22 (7)(a) Any manufacturer participating in the standard plan may
23 appeal an assessment of charges or apportionment of costs levied by the
24 authority under this section by written petition to the director of the
25 department. The director of the department or the director's designee
26 shall review all appeals within timelines established by the department
27 and shall reverse any assessments of charges or apportionment of costs
28 if the director finds that the authority's assessments or apportionment
29 of costs was an arbitrary administrative decision, an abuse of
30 administrative discretion, or is not an equitable assessment or
31 apportionment of costs. The director shall make a fair and impartial
32 decision based on sound data. If the director of the department
33 reverses an assessment of charges, the authority must redetermine the
34 assessment or apportionment of costs.

35 (b) Disputes regarding a final decision made by the director or
36 director's designee may be challenged through arbitration. The
37 director shall appoint one member to serve on the arbitration panel and
38 the challenging party shall appoint one other. These two persons shall

1 choose a third person to serve. If the two persons cannot agree on a
2 third person, the presiding judge of the Thurston county superior court
3 shall choose a third person. The decision of the arbitration panel
4 shall be final and binding, subject to review by the superior court
5 solely upon the question of whether the decision of the panel was
6 arbitrary or capricious.

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

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

13 (b) Pay for the expenses of the authority including, but not
14 limited to, salaries, benefits, operating costs and consumable
15 supplies, equipment, office space, and other expenses related to the
16 costs associated with operating the authority;

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

21 (d) Pay the department for the fees for submitting the standard
22 plan and any plan revisions.

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

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

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

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

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

36 (5) All funds collected by the authority under this chapter,
37 including interest, dividends, and other profits, are and must remain

1 under the complete control of the authority and its board of directors,
2 be fully available to achieve the intent of this chapter, and be used
3 for the sole purpose of achieving the intent of this chapter.

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

10 (2) The general operating plan must include, but is not limited to:
11 (a) Appropriate minimum reserve requirements to secure the authority's
12 financial stability; (b) appropriate standards for contracting for
13 services; and (c) standards for service.

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

18 (4) The general operating plan must be adopted by resolution of the
19 board. The board may periodically update the general operating plan as
20 necessary, but must update the plan no less than once every four years.
21 The general operating plan or updated plan must include a report on
22 authority activities conducted since the commencement of authority
23 operation or since the last reported general operating plan, whichever
24 is more recent, including a statement of results achieved under the
25 purposes of this chapter and the general operating plan. Upon
26 adoption, the authority shall conduct its programs in observance of the
27 objectives established in the general operating plan.

28 NEW SECTION. **Sec. 34.** (1) The authority shall employ a chief
29 executive officer, appointed by the board, and a chief financial
30 officer, as well as professional, technical, and support staff,
31 appointed by the chief executive officer, necessary to carry out its
32 duties.

33 (2) Employees of the authority are not classified employees of the
34 state. Employees of the authority are exempt from state service rules
35 and may receive compensation only from the authority at rates
36 competitive with state service.

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

2 (4) The departments of ecology and community, trade, and economic
3 development shall provide staff to assist in the creation of the
4 authority. If requested by the authority, the departments of ecology
5 and community, trade, and economic development shall also provide
6 start-up support staff to the authority for its first twelve months of
7 operation, or part thereof, to assist in the quick establishment of the
8 authority. Staff expenses must be paid through funds collected by the
9 authority and must be reimbursed to the departments from the
10 authority's financial resources within the first twenty-four months of
11 operation.

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

14 (a) Maintain an office or offices;

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

19 (c) Make expenditures as appropriate for paying the administrative
20 costs and expenses of the authority in carrying out the provisions of
21 this chapter;

22 (d) Give assistance to private and public bodies contracted to
23 provide collection, transportation, and recycling services by providing
24 information, guidelines, forms, and procedures for implementing their
25 programs;

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

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

31 NEW SECTION. **Sec. 35.** This chapter is void if a federal law, or
32 a combination of federal laws, takes effect that establishes a national
33 program for the collection and recycling of covered electronic products
34 that substantially meets the intent of this chapter, including the
35 creation of a financing mechanism for collection, transportation, and
36 recycling of all covered electronic products from households, small

1 businesses, school districts, small governments, and charities in the
2 United States.

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

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

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

13 (3) The department of general administration shall ensure that
14 their surplus electronic products are directed to legal secondary
15 materials markets by requiring a chain of custody record that documents
16 to whom the products were initially delivered through to the end use
17 manufacturer.

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

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

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

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

31 (3) Financial and commercial information and records supplied by
32 private persons pertaining to export services provided under chapters
33 43.163 and 53.31 RCW, and by persons pertaining to export projects
34 under RCW 43.23.035;

35 (4) Financial and commercial information and records supplied by
36 businesses or individuals during application for loans or program

1 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
2 or during application for economic development loans or program
3 services provided by any local agency;

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (13) Financial and proprietary information submitted to or obtained
21 by the department of ecology or the authority created under chapter
22 70.-- RCW (sections 1 through 35 of this act) to implement chapter
23 70.-- RCW (sections 1 through 35 of this act).

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

26 NEW SECTION. Sec. 39. If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

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

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

Passed by the Senate March 6, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 24, 2006, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2006.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections Section 26, Engrossed Substitute Senate Bill No. 6428 entitled:

"AN ACT Relating to providing electronic product recycling through manufacturer financed opportunities."

This bill creates a recycling program for "electronic wastes," which includes used and unwanted computers and televisions. Section 26 of the bill would prohibit the export of these wastes to certain other countries.

I regret that, based on legal advice, the State of Washington does not have the necessary authority to prohibit the export of electronic waste. Accordingly, I will not put the entire bill at risk because of this section alone.

However, I believe that the section represents good environmental policy. I will therefore call on the President and Congress to take up this issue and enact legislation that prohibits the export of our hazardous wastes to third world countries that are not prepared to manage them.

Once enacted by the federal government, I recognize this might affect our options for proper recycling and disposal of e-wastes. To make sure we are ready, I hereby direct the Department of Ecology to evaluate alternatives to the export of these wastes and recommend actions as needed to ensure capacity for their proper management.

For the remainder of the bill, this is a new program for the state and it will take some time and experience to make sure it runs right. I am asking Ecology to work closely with all affected stakeholders to ensure that this bill is implemented in a fair and equitable manner.

Along that line, I am directing Ecology to take the following steps:

1. To adopt, within their new program rules, rigorous financial assurance requirements for new manufacturers, sufficient to ensure that they will be responsible for recycling their products and not leave them for others to clean up;

2. To evaluate alternatives for managing legacy e-waste products in a manner that does not create competitive differences between existing and new companies, including a way to distribute costs of recycling past products more fairly among all affected parties; and,

3. To evaluate the use of product toxicity in lieu of, or in addition to, product weight, when determining equitable cost shares.

In addition, I am asking Ecology to provide annual reports on the progress, problems, and stakeholder concerns with implementation of this bill. The reports should include any needed changes to the statute to ensure fairness and clarity in the program.

For these reasons, I have vetoed Section 26 of Engrossed Substitute Senate Bill No. 6428.

With the exception of Section 26, Engrossed Substitute Senate Bill No. 6428 is approved."