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SENATE BILL 5824

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State of Washington

62nd Legislature

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By Senator Pridemore

Read first time 02/17/11. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to market share in electronic waste; amending RCW  
2 70.95N.020, 70.95N.040, 70.95N.050, 70.95N.140, 70.95N.160, 70.95N.180,  
3 70.95N.190, 70.95N.200, 70.95N.220, 70.95N.270, 70.95N.290, and  
4 70.95N.300; and repealing RCW 70.95N.100 and 70.95N.110.

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

6 **Sec. 1.** RCW 70.95N.020 and 2006 c 183 s 2 are each amended to read  
7 as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) "Authority" means the Washington materials management and  
11 financing authority created under RCW 70.95N.280.

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

15 (3) "Board" means the board of directors of the Washington  
16 materials management and financing authority created under RCW  
17 70.95N.290.

18 (4) "Collector" means an entity licensed to do business in the  
19 state that gathers unwanted covered electronic products from

1 households, small businesses, school districts, small governments, and  
2 charities for the purpose of recycling and meets minimum standards that  
3 may be developed by the department.

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

9 (6) "Covered electronic product" includes a cathode ray tube or  
10 flat panel computer monitor having a viewable area greater than  
11 (~~four~~) nine inches when measured diagonally, a desktop computer, a  
12 laptop or a portable computer, or a cathode ray tube or flat panel  
13 television having a viewable area greater than four inches when  
14 measured diagonally that has been used in the state by any covered  
15 entity regardless of original point of purchase. "Covered electronic  
16 product" does not include: (a) A motor vehicle or replacement parts  
17 for use in motor vehicles or aircraft, or any computer, computer  
18 monitor, or television that is contained within, and is not separate  
19 from, the motor vehicle or aircraft; (b) monitoring and control  
20 instruments or systems; (c) medical devices; (d) products including  
21 materials intended for use as ingredients in those products as defined  
22 in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et  
23 seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et  
24 seq.), and regulations issued under those acts; (e) equipment used in  
25 the delivery of patient care in a health care setting; (f) a computer,  
26 computer monitor, or television that is contained within a clothes  
27 washer, clothes dryer, refrigerator, refrigerator and freezer,  
28 microwave oven, conventional oven or range, dishwasher, room air  
29 conditioner, dehumidifier, or air purifier; or (g) hand-held portable  
30 voice or data devices used for commercial mobile services as defined in  
31 47 U.S.C. Sec. 332 (d)(1).

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

34 (8) "Curbside service" means a collection service providing  
35 regularly scheduled pickup of covered electronic products from  
36 households or other covered entities in quantities generated from  
37 households.

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

1 (10) "Electronic product" includes a cathode ray tube or flat panel  
2 computer monitor having a viewable area greater than (~~four~~) nine  
3 inches when measured diagonally; a desktop computer; a laptop or a  
4 portable computer; or a cathode ray tube or flat screen television  
5 having a viewable area greater than four inches when measured  
6 diagonally.

7 (11) "Equivalent share" means the weight in pounds of covered  
8 electronic products identified for an individual manufacturer under  
9 this chapter as determined by the department under RCW 70.95N.200.

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

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

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

19 (a) Manufactures (~~or has manufactured~~) a covered electronic  
20 product under (~~its own brand names~~) a brand it owns or is licensed to  
21 use for sale in or into this state;

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

25 (c) Resells (~~or has resold~~) in or into this state under (~~its own~~  
26 ~~brand names~~) a brand it owns or is licensed to use a covered  
27 electronic product produced by other suppliers, including retail  
28 establishments that sell covered electronic products under (~~their own~~  
29 ~~brand names~~) brands they own or are licensed to use;

30 (d) Manufactures (~~or manufactured~~) a cobranded product for sale  
31 in or into this state that carries the name of both the manufacturer  
32 and a retailer;

33 (e) Imports (~~or has imported~~) a covered electronic product into  
34 the United States that is sold in or into this state. However, if the  
35 imported covered electronic product is manufactured by any person with  
36 a presence in the United States meeting the criteria of manufacturer  
37 under (a) through (d) of this subsection, that person is the  
38 manufacturer. For purposes of this subsection, "presence" means any

1 person that performs activities conducted under the standards  
2 established for interstate commerce under the commerce clause of the  
3 United States Constitution; ~~((or))~~

4 (f) Sells at retail a covered electronic product acquired from an  
5 importer that is the manufacturer as described in (e) of this  
6 subsection, and elects to register in lieu of the importer as the  
7 manufacturer for those products; or

8 (g) Assumes the responsibilities of a manufacturer under this  
9 section.

10 (15) "New entrant" means: (a) A manufacturer of televisions that  
11 have been sold in the state for less than ten years; or (b) a  
12 manufacturer of desktop computers, laptop and portable computers, or  
13 computer monitors that have been sold in the state for less than  
14 ~~((five))~~ two years. However, a manufacturer of both televisions and  
15 computers or a manufacturer of both televisions and computer monitors  
16 that is deemed a new entrant under either only (a) or (b) of this  
17 subsection is not considered a new entrant for purposes of this  
18 chapter.

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

22 ~~((17))~~ "Plan's equivalent share" means the weight in pounds of  
23 covered electronic products for which a plan is responsible. A plan's  
24 equivalent share is equal to the sum of the equivalent shares of each  
25 manufacturer participating in that plan.

26 ~~((18))~~ (17) "Plan's ~~((return))~~ market share" means the sum of the  
27 ~~((return))~~ market shares of each manufacturer participating in that  
28 plan.

29 ~~((19))~~ (18) "Premium service" means services such as at-location  
30 system upgrade services provided to covered entities and at-home pickup  
31 services offered to households. "Premium service" does not include  
32 curbside service.

33 ~~((20))~~ (19) "Processor" means an entity engaged in disassembling,  
34 dismantling, or shredding electronic products to recover materials  
35 contained in the electronic products and prepare those materials for  
36 reclaiming or reuse in new products in accordance with processing  
37 standards established by this chapter and by the department. A  
38 processor may also salvage parts to be used in new products.

1           ~~((+21))~~ (20) "Product type" means one of the following categories:  
2 Computer monitors; desktop computers; laptop and portable computers;  
3 and televisions.

4           ~~((+22))~~ (21) "Program" means the collection, transportation, and  
5 recycling activities conducted to implement an independent plan or the  
6 standard plan.

7           ~~((+23))~~ (22) "Program year" means each full calendar year after  
8 the program has been initiated.

9           ~~((+24))~~ (23) "Recycling" means transforming or remanufacturing  
10 unwanted electronic products, components, and by-products into usable  
11 or marketable materials for use other than landfill disposal or  
12 incineration. "Recycling" does not include energy recovery or energy  
13 generation by means of combusting unwanted electronic products,  
14 components, and by-products with or without other waste. Smelting of  
15 electronic materials to recover metals for reuse in conformance with  
16 all applicable laws and regulations is not considered disposal or  
17 energy recovery.

18           ~~((+25))~~ (24) "Retailer" means a person who offers covered  
19 electronic products for sale at retail through any means including, but  
20 not limited to, remote offerings such as sales outlets, catalogs, or  
21 the internet, but does not include a sale or lease that is a wholesale  
22 transaction with a distributor or a retailer.

23           ~~((+26) "Return share" means the percentage of covered electronic  
24 products by weight identified for an individual manufacturer, as  
25 determined by the department under RCW 70.95N.190.~~

26           ~~(+27))~~ (25) "Reuse" means any operation by which an electronic  
27 product or a component of a covered electronic product changes  
28 ownership and is used for the same purpose for which it was originally  
29 purchased.

30           ~~((+28))~~ (26) "Small business" means a business employing less than  
31 fifty people.

32           ~~((+29))~~ (27) "Small government" means a city in the state with a  
33 population less than fifty thousand, a county in the state with a  
34 population less than one hundred twenty-five thousand, and special  
35 purpose districts in the state.

36           ~~((+30))~~ (28) "Standard plan" means the plan for the collection,  
37 transportation, and recycling of unwanted covered electronic products

1 developed, implemented, and financed by the authority on behalf of  
2 manufacturers participating in the authority.

3 ~~((+31+))~~ (29) "Transporter" means an entity that transports covered  
4 electronic products from collection sites or services to processors or  
5 other locations for the purpose of recycling, but does not include any  
6 entity or person that hauls their own unwanted electronic products.

7 ~~((+32+))~~ (30) "Unwanted electronic product" means a covered  
8 electronic product that has been discarded or is intended to be  
9 discarded by its owner.

10 ~~((+33+))~~ (31) "White box manufacturer" means a person who  
11 manufactured unbranded covered electronic products offered for sale in  
12 the state within ten years prior to a program year for televisions or  
13 within five years prior to a program year for desktop computers, laptop  
14 or portable computers, or computer monitors.

15 (32) "Market share" means the percentage of covered electronic  
16 products by weight identified for an individual manufacturer, as  
17 determined by the department under RCW 70.95N.190.

18 **Sec. 2.** RCW 70.95N.040 and 2006 c 183 s 4 are each amended to read  
19 as follows:

20 (1) By January 1, 2007, and annually thereafter, each manufacturer  
21 must register with the department.

22 (2) A manufacturer must submit to the department with each  
23 registration or annual renewal a fee to cover the administrative costs  
24 of this chapter as determined by the department under RCW 70.95N.230.

25 (3) The department shall review the registration or renewal  
26 application and notify the manufacturer if their registration does not  
27 meet the requirements of this section. Within thirty days of receipt  
28 of such a notification from the department, the manufacturer must file  
29 with the department a revised registration addressing the requirements  
30 noted by the department.

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

32 (a) The name and contact information of the manufacturer submitting  
33 the registration;

34 (b) The ~~((manufacturer's brand names of))~~ list of brands under  
35 which the manufacturer manufactures or sells covered electronic  
36 products(~~(, including all brand names sold in the state in the past,~~

1 all brand names currently being sold in the state, and all brand names  
2 for which the manufacturer has legal responsibility under RCW  
3 70.95N.100));

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

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

7 (5) The registrant shall submit any changes to the information  
8 provided in the registration to the department within fourteen days of  
9 such change.

10 (6) The department shall identify, using all reasonable means,  
11 manufacturers that are in business or that are (~~no longer in business~~  
12 ~~but that have a successor in interest by examining best available~~  
13 ~~return~~) currently selling electronic devices using market share data,  
14 product advertisements, and other pertinent data. The department shall  
15 notify manufacturers that have been identified and for whom an address  
16 has been found of the requirements of this chapter, including  
17 registration and plan requirements under this section and RCW  
18 70.95N.050.

19 **Sec. 3.** RCW 70.95N.050 and 2006 c 183 s 5 are each amended to read  
20 as follows:

21 (1) A manufacturer must participate in the standard plan  
22 administered by the authority, unless the manufacturer obtains  
23 department approval for an independent plan for the collection,  
24 transportation, and recycling of unwanted electronic products.

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

27 (a) Each independent plan represents at least a five percent  
28 (~~return~~) market share of covered electronic products; and

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

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

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

1 (b) Each group of manufacturers submitting an independent plan must  
2 designate a party authorized to file the plan with the department on  
3 their behalf. A letter of certification from each of the manufacturers  
4 designating the authorized party must be submitted to the department  
5 together with the plan.

6 (5) Each manufacturer in the standard plan or in an independent  
7 plan retains responsibility and liability under this chapter in the  
8 event that the plan fails to meet the manufacturer's obligations under  
9 this chapter.

10 **Sec. 4.** RCW 70.95N.140 and 2006 c 183 s 14 are each amended to  
11 read as follows:

12 (1) By March 1st of the second program year and each program year  
13 thereafter, the authority and each authorized party shall file with the  
14 department an annual report for the preceding program year.

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

16 (a) The total weight in pounds of covered electronic products  
17 collected and recycled, by county, during the preceding program year  
18 including documentation verifying collection and processing of that  
19 material. (~~The total weight in pounds includes orphan products.~~)  
20 The report must also indicate and document the weight in pounds  
21 received from each nonprofit charitable organization primarily engaged  
22 in the business of reuse and resale used by the plan. The report must  
23 document the weight in pounds that were received in large quantities  
24 from small businesses, small governments, charities and school  
25 districts as described in RCW 70.95N.090(5);

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

30 (c) A list of processors used, the weight of covered electronic  
31 products processed by each direct processor, and a description of the  
32 processes and methods used to recycle the covered electronic products  
33 including a description of the processing and facility locations. The  
34 report must also include a list of subcontractors who further processed  
35 or recycled unwanted covered electronic products, electronic  
36 components, or electronic scrap (~~described in section 26(1) of this~~  
37 ~~act,~~) including facility locations;



1           (d) (~~Other documentation as established under section 26(3) of~~  
2 ~~this act;~~

3           ~~(e)) Educational and promotional efforts that were undertaken;~~

4           ~~((f) The results of sampling and sorting as required in RCW~~  
5 ~~70.95N.110, including a list of the brand names of covered electronic~~  
6 ~~products by product type, the number of covered electronic products by~~  
7 ~~product type, the weight of covered electronic products that are~~  
8 ~~identified for each brand name or that lack a manufacturer's brand, and~~  
9 ~~the total weight of the sample by product type;~~

10           ~~(g)) (e) The list of manufacturers that are participating in the~~  
11 ~~standard plan; and~~

12           ~~((h)) (f) Any other information deemed necessary by the~~  
13 ~~department.~~

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

18           (4) All reports submitted to the department must be available to  
19 the general public through the internet. Proprietary information  
20 submitted to the department under this chapter is exempt from public  
21 disclosure under RCW 42.56.270.

22           **Sec. 5.** RCW 70.95N.160 and 2006 c 183 s 16 are each amended to  
23 read as follows:

24           (1) Beginning January 1, 2007, no person may sell or offer for sale  
25 an electronic product to any person in the state unless the electronic  
26 product is labeled with the (~~manufacturer's~~) brand the manufacturer  
27 owns or is licensed to use. The label must be permanently affixed and  
28 readily visible.

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

31           **Sec. 6.** RCW 70.95N.180 and 2006 c 183 s 18 are each amended to  
32 read as follows:

33           (1) The department shall maintain on its web site the following  
34 information:

35           (a) The names of the manufacturers and the (~~manufacturer's~~)

1 brands being used by the manufacturer that are registered with the  
2 department under RCW 70.95N.040;

3 (b) The names of the manufacturers and the ~~((manufacturer's))~~  
4 brands being used by the manufacturer that are participating in an  
5 approved plan under RCW 70.95N.050;

6 (c) The names and addresses of the collectors and transporters that  
7 are listed in registrations filed with the department under RCW  
8 70.95N.240;

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

11 (e) ~~((Return))~~ Market and equivalent shares for all manufacturers.

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

14 **Sec. 7.** RCW 70.95N.190 and 2006 c 183 s 19 are each amended to  
15 read as follows:

16 (1) The department shall determine the ~~((return))~~ market share for  
17 each manufacturer in the standard plan or an independent plan by  
18 ~~((dividing the weight of covered electronic products identified for  
19 each manufacturer by the total weight of covered electronic products  
20 identified for all manufacturers in the standard plan or an independent  
21 plan, then multiplying the quotient by one hundred))~~ the following:

22 (a) All manufacturers must report the total weight of products sold  
23 nationwide in the prior program year;

24 (b) The department totals all the weights from all the  
25 manufacturers and that equals x; and

26 (c) The department then multiplies the manufacturers' total weight  
27 of products sold nationwide by x and this equals the manufacturers'  
28 market share calculation, which is a percentage.

29 (2) For the first program year, the department shall determine the  
30 ~~((return))~~ market share for such manufacturers using all reasonable  
31 means and based on best available information regarding ~~((return))~~  
32 market share data from other states and other pertinent data.

33 (3) For the second and each subsequent program year, the department  
34 shall determine the ~~((return))~~ market share for such manufacturers  
35 using all reasonable means ~~((and based on the most recent sampling of  
36 covered electronic products conducted in the state under RCW  
37 70.95N.110))~~ and publically available data.

1           **Sec. 8.** RCW 70.95N.200 and 2006 c 183 s 20 are each amended to  
2 read as follows:

3           (1) The department shall determine the total equivalent share for  
4 each manufacturer in the standard plan or an independent plan by  
5 dividing the (~~return~~) market share percentage for each manufacturer  
6 by one hundred, then multiplying the quotient by the total weight in  
7 pounds of covered electronic products collected in this state for that  
8 program year, allowing as needed for the additional credit authorized  
9 in subsection (3) of this section.

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

15           (b) By June 1st of each program year, the department shall bill any  
16 authorized party or authority that has not attained its plan's  
17 equivalent share as determined under RCW 70.95N.220. The authorized  
18 party or authority shall remit payment to the department within sixty  
19 days from the billing date.

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

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

31           **Sec. 9.** RCW 70.95N.220 and 2006 c 183 s 22 are each amended to  
32 read as follows:

33           (1) For an independent plan and the standard plan, if the total  
34 weight in pounds of covered electronic products collected during a  
35 program year is less than the plan's equivalent share of covered  
36 electronic products for that year, then the authority or authorized  
37 party shall submit to the department a payment equal to the weight in

1 pounds of the deficit multiplied by the reasonable collection,  
2 transportation, and recycling cost for covered electronic products and  
3 an administrative fee. Moneys collected by the department must be  
4 deposited in the electronic products recycling account.

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

12 (3) For purposes of this section, the initial reasonable  
13 collection, transportation, and recycling cost for covered electronic  
14 products is ~~((forty-five))~~ twenty cents per pound and the  
15 administrative fee is five cents per pound.

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

25 **Sec. 10.** RCW 70.95N.270 and 2006 c 183 s 28 are each amended to  
26 read as follows:

27 ~~((+1))~~ By December 31, 2012, the department shall provide a report  
28 to the appropriate committees of the legislature that includes the  
29 following information:

30 ~~((+a))~~ (1) For each of the preceding program years, the weight of  
31 covered electronic products recycled in the state by plan, by county,  
32 and in total;

33 ~~((+b))~~ (2) The performance of each plan in meeting its equivalent  
34 share, and payments received from and disbursed to each plan from the  
35 electronic products recycling account;

36 ~~((+c))~~ (3) A description of the various collection programs used  
37 to collect covered electronic products in the state;

1       ~~((d))~~ (4) An evaluation of how the pounds per capita recycled of  
2 covered electronic products in the state compares to programs in other  
3 states;

4       ~~((e))~~ (5) Comments received from local governments and local  
5 communities regarding satisfaction with the program, including  
6 accessibility and convenience of services provided by the plans;

7       ~~((f))~~ (6) Recommendations on how to improve the statewide  
8 collection, transportation, and recycling system for convenient, safe,  
9 and environmentally sound recycling of electronic products; and

10       ~~((g))~~ (7) An analysis of whether and in what amounts unwanted  
11 electronic products and electronic components and electronic scrap  
12 exported from Washington have been exported to countries that are not  
13 members of the organization for economic cooperation and development or  
14 the European union, and recommendations for addressing such exports.

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

25       **Sec. 11.** RCW 70.95N.290 and 2008 c 79 s 1 are each amended to read  
26 as follows:

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

1 (b) The board must have representation from both television and  
2 computer manufacturers.

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

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

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

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

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

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

22 **Sec. 12.** RCW 70.95N.300 and 2006 c 183 s 31 are each amended to  
23 read as follows:

24 (1) Manufacturers participating in the standard plan shall pay the  
25 authority to cover all administrative and operational costs associated  
26 with the collection, transportation, and recycling of covered  
27 electronic products within the state of Washington incurred by the  
28 standard program operated by the authority to meet the standard plan's  
29 equivalent share obligation as described in RCW 70.95N.280(5).

30 (2) The authority shall assess charges on each manufacturer  
31 participating in the standard plan and collect funds from each  
32 participating manufacturer for the manufacturer's portion of the costs  
33 in subsection (1) of this section. Such apportionment shall be based  
34 on (~~return share,~~) market share(~~(, any combination of return share~~  
35 ~~and market share, or any other equitable method)~~). The authority's  
36 apportionment of costs to manufacturers participating in the standard  
37 plan may not include nor be based on electronic products imported

1 through the state and subsequently exported outside the state. Charges  
2 assessed under this section must not be formulated in such a way as to  
3 create incentives to divert imported electronic products to ports or  
4 distribution centers in other states. The authority shall adjust the  
5 charges to manufacturers participating in the standard plan as  
6 necessary in order to ensure that all costs associated with the  
7 identified activities are covered.

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

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

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

22 ~~(6) ((The authority shall submit its plan for assessing charges and~~  
23 ~~apportioning cost on manufacturers participating in the standard plan~~  
24 ~~to the department for review and approval along with the standard plan~~  
25 ~~as provided in RCW 70.95N.060.~~

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

1 (b) Disputes regarding a final decision made by the director or  
2 director's designee may be challenged through arbitration. The  
3 director shall appoint one member to serve on the arbitration panel and  
4 the challenging party shall appoint one other. These two persons shall  
5 choose a third person to serve. If the two persons cannot agree on a  
6 third person, the presiding judge of the Thurston county superior court  
7 shall choose a third person. The decision of the arbitration panel  
8 shall be final and binding, subject to review by the superior court  
9 solely upon the question of whether the decision of the panel was  
10 arbitrary or capricious.

11 NEW SECTION. **Sec. 13.** The following acts or parts of acts are  
12 each repealed:

- 13 (1) RCW 70.95N.100 (Successor duties) and 2006 c 183 s 10; and  
14 (2) RCW 70.95N.110 (Covered electronic sampling) and 2006 c 183 s  
15 11.

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