
SUBSTITUTE SENATE BILL 5824

State of Washington

62nd Legislature

2011 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senator Pridemore)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to improving the electronic waste recycling program
2 by including additional products and converting to a market share
3 funding mechanism; amending RCW 70.95N.020, 70.95N.040, 70.95N.050,
4 70.95N.090, 70.95N.140, 70.95N.180, 70.95N.190, 70.95N.200, 70.95N.210,
5 70.95N.230, 70.95N.290, 70.95N.300, and 70.95N.350; adding a new
6 section to chapter 70.95N RCW; repealing RCW 70.95N.100 and 70.95N.110;
7 and providing an effective date.

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

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

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

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

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

18 (3) "Board" means the board of directors of the Washington

1 materials management and financing authority created under RCW
2 70.95N.290.

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

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

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

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

1 (8) "Curbside service" means a collection service providing
2 regularly scheduled pickup of covered electronic products from
3 households or other covered entities in quantities generated from
4 households.

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

6 (10) "Electronic product" includes a cathode ray tube or flat panel
7 computer monitor having a viewable area greater than four inches when
8 measured diagonally; a desktop computer; a laptop or a portable
9 computer; ~~((or))~~ a cathode ray tube or flat screen television having a
10 viewable area greater than four inches when measured diagonally; or a
11 peripheral.

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

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

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

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

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

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

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

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

36 (e) Imports or has imported a covered electronic product into the
37 United States that is sold in or into this state. However, if the
38 imported covered electronic product is manufactured by any person with

1 a presence in the United States meeting the criteria of manufacturer
2 under (a) through (d) of this subsection, that person is the
3 manufacturer. For purposes of this subsection, "presence" means any
4 person that performs activities conducted under the standards
5 established for interstate commerce under the commerce clause of the
6 United States Constitution; or

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

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

19 (16) "Orphan product" means a covered electronic product that lacks
20 a manufacturer's brand or for which the manufacturer is no longer in
21 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) "Plan's return share" means the sum of the return shares of
27 each manufacturer participating in that plan.

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

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

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

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

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

9 (24) "Recycling" means transforming or remanufacturing unwanted
10 electronic products, components, and by-products into usable or
11 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) "Retailer" means a person who offers covered electronic
19 products for sale at retail through any means including, but not
20 limited to, remote offerings such as sales outlets, catalogs, or the
21 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) "Reuse" means any operation by which an electronic product or
27 a component of a covered electronic product changes ownership and is
28 used for the same purpose for which it was originally purchased.

29 (28) "Small business" means a business employing less than fifty
30 people.

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

35 (30) "Standard plan" means the plan for the collection,
36 transportation, and recycling of unwanted covered electronic products
37 developed, implemented, and financed by the authority on behalf of
38 manufacturers participating in the authority.

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

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

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

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

16 (35) "Peripheral" means any device sold exclusively for external
17 use with a computer or television that provides input or output into or
18 from a computer or television. "Peripheral" includes but is not
19 limited to a mouse, keyboard, printer, speakers, zip drive, external
20 hard drive, scanner, small-scale server, router, modem, video game
21 console, video cassette recorder/player, digital video recorder,
22 digital video disk player or similar video device, digital streaming
23 player, web cams, cable or satellite receiver, or digital converter
24 box.

25 (36)(a) "Printer" means desktop printers, multifunction printer
26 copiers, and printer/fax combinations that are designed to reside on a
27 work surface, and include various print technologies, including without
28 limitation laser and LED (electrographic), ink jet, dot matrix,
29 thermal, and digital sublimation, and multifunction or all-in-one
30 devices that perform different tasks, including without limitation
31 copying, scanning, faxing, and printing.

32 (b) "Printer" does not include floor-standing printers, printers
33 with optional floor stand, point of sale receipt printers, household
34 printers such as a calculator with printing capabilities or label
35 makers, or nonstand-alone printers that are embedded into products that
36 are not covered electronic products.

37 (37) "Small-scale server" means a computer that typically uses
38 desktop components in a desktop form factor, but is designed primarily

1 to be a storage host for other computers. To be considered a
2 small-scale server, a computer must have the following characteristics:
3 Designed in a pedestal, tower, or other form factor similar to those of
4 desktop computers so that all data processing, storage, and network
5 interfacing is contained within one box or product; intended to be
6 operational twenty-four hours per day and seven days a week, and
7 unscheduled downtime is extremely low, such as on the order of hours
8 per year; is capable of operating in a simultaneous multiuser
9 environment serving several users through networked client units; and
10 designed for an industry accepted operating system for home or low-end
11 server applications.

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

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

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

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

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

26 (a) The name and contact information of the manufacturer submitting
27 the registration;

28 (b) The manufacturer's brand names of covered electronic products,
29 including all brand names sold in the state in the past, all brand
30 names currently being sold in the state, and all brand names for which
31 the manufacturer has legal responsibility (~~(under RCW 70.95N.100)~~);

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

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

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

1 (6) The department shall identify, using all reasonable means,
2 manufacturers that are in business or that are no longer in business
3 but that have a successor in interest by examining best available
4 (~~return share~~) data, product advertisements, and other pertinent
5 data. The department shall notify manufacturers that have been
6 identified and for whom an address has been found of the requirements
7 of this chapter, including registration and plan requirements under
8 this section and RCW 70.95N.050.

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

11 (1) A manufacturer must participate in the standard plan
12 administered by the authority, unless the manufacturer obtains
13 department approval for an independent plan for the collection,
14 transportation, and recycling of unwanted electronic products.

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

17 (a) For program years 2009 through 2012, each independent plan
18 represents at least a five percent return share of covered electronic
19 products and for program year 2013 and all subsequent program years,
20 each independent plan represents at least a five percent market share
21 of covered electronic products; and

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

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

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

30 (b) Each group of manufacturers submitting an independent plan must
31 designate a party authorized to file the plan with the department on
32 their behalf. A letter of certification from each of the manufacturers
33 designating the authorized party must be submitted to the department
34 together with the plan.

35 (5) For the 2013 program year and all subsequent program years, an
36 independent plan must apportion its costs among manufacturers
37 participating in that plan based on market share.

1 dispersed population, a program may provide collection at the nearest
2 commercial centers or solid waste sites, collection events, mail-back
3 systems, or a combination of these options.

4 (5) For small businesses, small governments, charities, and school
5 districts that may have large quantities of covered electronic products
6 that cannot be handled at collection sites or curbside services, a
7 program may provide alternate services. At a minimum, a program must
8 provide for processing of these large quantities of covered electronic
9 products at no charge to the small businesses, small governments,
10 charities, and school districts.

11 **Sec. 5.** RCW 70.95N.140 and 2006 c 183 s 14 are each amended to
12 read as follows:

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

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

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

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

31 (c) A list of processors used, the weight of covered electronic
32 products processed by each direct processor, and a description of the
33 processes and methods used to recycle the covered electronic products
34 including a description of the processing and facility locations. The
35 report must also include a list of subcontractors who further processed
36 or recycled unwanted covered electronic products, electronic

1 components, or electronic scrap (~~described in section 26(1) of this~~
2 ~~act~~)), including facility locations;

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

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

6 ~~((f))~~ (e) For program years 2009 through 2011, the results of
7 sampling and sorting (~~as required in RCW 70.95N.110~~), including a
8 list of the brand names of covered electronic products by product type,
9 the number of covered electronic products by product type, the weight
10 of covered electronic products that are identified for each brand name
11 or that lack a manufacturer's brand, and the total weight of the sample
12 by product type;

13 ~~((g))~~ (f) The list of manufacturers that are participating in the
14 standard plan; and

15 ~~((h))~~ (g) Any other information deemed necessary by the
16 department.

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

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

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

27 (1) The department shall maintain on its web site the following
28 information:

29 (a) The names of the manufacturers and the manufacturer's brands
30 that are registered with the department under RCW 70.95N.040;

31 (b) The names of the manufacturers and the manufacturer's brands
32 that are participating in an approved plan under RCW 70.95N.050;

33 (c) The names and addresses of the collectors and transporters that
34 are listed in registrations filed with the department under RCW
35 70.95N.240;

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

1 (e) ~~((Return and equivalent shares for all manufacturers.))~~ For
2 program years 2009 through 2012, return and equivalent shares for all
3 manufacturers, and for program years 2013 and all subsequent program
4 years, market and equivalent shares for all manufacturers.

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

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

9 (1) For program years 2009 through 2012, the department shall
10 determine the return share for each manufacturer in the standard plan
11 or an independent plan by dividing the weight of covered electronic
12 products identified for each manufacturer by the total weight of
13 covered electronic products identified for all manufacturers in the
14 standard plan or an independent plan, then multiplying the quotient by
15 one hundred.

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

20 (3) For ~~((the second and each subsequent program year))~~ 2010
21 through 2012, the department shall determine the return share for such
22 manufacturers using all reasonable means and based on the most recent
23 sampling of covered electronic products conducted in the state ~~((under~~
24 ~~RCW 70.95N.110))~~.

25 (4)(a) For program year 2013 and all subsequent program years, the
26 department shall determine market share for all manufacturers using
27 data reported by manufacturers under (b) of this subsection and
28 publicly available data.

29 (b)(i) By March 1st of each program year, each manufacturer must
30 report one of the following to the department:

31 (A) The total weight of covered electronic products sold by that
32 manufacturer nationwide in the prior program year; or

33 (B) The total weight of covered electronic products sold by that
34 manufacturer within the state in the prior program year;

35 (ii) For those manufacturers who reported information under
36 (b)(i)(A) of this subsection, the department shall total the weight

1 reported by each manufacturer and then multiply that total weight by
2 the quotient of the state's population divided by the total population
3 of the United States;

4 (iii) Next, the department shall total all the weight in (b)(ii) of
5 this subsection and all the weight reported by manufacturers in
6 (b)(i)(B) of this subsection and that equals X; and

7 (c) The department then divides each individual manufacturers'
8 total weight reported in (b)(i)(B) of this subsection or calculated in
9 (b)(ii) of this subsection by X and this equals each individual
10 manufacturers' market share calculation, which is a percentage.

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

13 (1) For program years 2009 through 2012, the department shall
14 determine the total equivalent share for each manufacturer in the
15 standard plan or an independent plan by dividing the return share
16 percentage for each manufacturer by one hundred, then multiplying the
17 quotient by the total weight in pounds of covered electronic products
18 collected in this state for that program year, allowing as needed for
19 the additional credit authorized in subsection (3) of this section.
20 For program year 2013 and all subsequent program years, the department
21 shall determine the total equivalent share for each manufacturer in the
22 standard plan or an independent plan by dividing the market share
23 percentage for each manufacturer by one hundred, then multiplying the
24 quotient by the total weight in pounds of covered electronic products
25 collected for that program year, allowing as needed for the additional
26 credit authorized in subsection (3) of this section.

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

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

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

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

12 **Sec. 9.** RCW 70.95N.210 and 2006 c 183 s 21 are each amended to
13 read as follows:

14 (1) By June 1, 2007, the department shall notify each manufacturer
15 of its preliminary return share of covered electronic products for the
16 first program year.

17 (2) For program years 2009 through 2011, preliminary return share
18 of covered electronic products must be announced annually by June 1st
19 of each program year for the next program year. Beginning in 2012 and
20 all subsequent program years, preliminary market share of covered
21 electronic products must be announced annually by June 1st of each
22 program year for the next program year.

23 (3) Manufacturers may challenge the preliminary return or market
24 share by written petition to the department. The petition must be
25 received by the department within thirty days of the date of
26 publication of the preliminary return or market shares.

27 (4) The petition must contain a detailed explanation of the grounds
28 for the challenge, an alternative calculation, and the basis for such
29 a calculation, documentary evidence supporting the challenge, and
30 complete contact information for requests for additional information or
31 clarification.

32 (5) Sixty days after the publication of the preliminary return or
33 market share, the department shall make a final decision on return or
34 market share, having fully taken into consideration any and all
35 challenges to its preliminary calculations.

36 (6) A written record of challenges received and a summary of the

1 bases for the challenges, as well as the department's response, must be
2 published at the same time as the publication of the final return
3 share.

4 (7) By August 1, 2007, the department shall publish the final
5 return shares for the first program year. For program years 2009
6 through 2011, by August 1st of each program year, the department shall
7 publish the final return shares for use in the coming program year.
8 For the 2012 program year and beyond, by August 1st of each program
9 year, the department shall publish the final market shares for use in
10 the coming program year.

11 **Sec. 10.** RCW 70.95N.230 and 2006 c 183 s 23 are each amended to
12 read as follows:

13 (1) The department shall adopt rules to determine the process for
14 manufacturers to change plans under RCW 70.95N.080.

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 either by weight or unit, or representative of market share.
22 Fees must be established in amounts to fully recover and not to exceed
23 expenses incurred by the department to implement this chapter.

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

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

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

32 (1)(a) The authority is governed by a board of directors. The
33 board of directors is comprised of eleven participating manufacturers,
34 appointed by the director of the department. For program years 2009
35 through 2012, five board positions are reserved for representatives of
36 the top ten brand owners by return share of covered electronic

1 products, and six board positions are reserved for representatives of
2 other brands, including at least one board position reserved for a
3 manufacturer who is also a retailer selling their own private label.
4 The return share of covered electronic products used to determine the
5 top ten brand owners for purposes of electing the board must be
6 determined by the department by January 1, 2007. For program year 2013
7 and all subsequent program years, five board positions are reserved for
8 representatives of the top ten brand owners by market share of covered
9 electronic products and six board positions are reserved for
10 representatives of other brands, including at least one board position
11 reserved for a manufacturer that is also a retailer selling its own
12 private label. The market share of covered electronic products used to
13 determine the top ten brand owners for purposes of electing the board
14 must be determined by the department by August 1, 2012.

15 (b) The board must have representation from both television and
16 computer manufacturers.

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

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

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

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

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

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

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

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

7 (2) The authority shall assess charges on each manufacturer
8 participating in the standard plan and collect funds from each
9 participating manufacturer for the manufacturer's portion of the costs
10 in subsection (1) of this section. Prior to 2013 program year, such
11 apportionment shall be based on return share, market share, any
12 combination of return share and market share, or any other equitable
13 method. For the 2013 program year and all subsequent program years,
14 the apportionment must be based on market share. The authority's
15 apportionment of costs to manufacturers participating in the standard
16 plan may not include nor be based on electronic products imported
17 through the state and subsequently exported outside the state. Charges
18 assessed under this section must not be formulated in such a way as to
19 create incentives to divert imported electronic products to ports or
20 distribution centers in other states. The authority shall adjust the
21 charges to manufacturers participating in the standard plan as
22 necessary in order to ensure that all costs associated with the
23 identified activities are covered.

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

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

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

1 (6) The authority shall submit its plan for assessing charges and
2 apportioning cost on manufacturers participating in the standard plan
3 to the department for review and approval along with the standard plan
4 as provided in RCW 70.95N.060. Beginning January 1, 2013, the
5 authority is no longer required to submit a plan for assessing charges
6 and apportioning cost along with a standard plan update or as a
7 standard plan revision.

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

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

31 **Sec. 13.** RCW 70.95N.350 and 2009 c 285 s 1 are each amended to
32 read as follows:

33 (1) Only an entity registered as a collector with the department
34 may act as a collector in a plan. All covered electronic products
35 received by a registered collector must be submitted to a plan. Fully
36 functioning computers and fully functioning peripherals that are
37 received by a registered collector and demonstrated to be in working

1 order may be sold or donated as whole products by the collector for
2 reuse. Computers and peripherals that require repair to make them a
3 fully functioning unit may only be repaired on-site at the collector's
4 place of business by the registered collector for reuse according to
5 its original purpose.

6 (2) Registered collectors may use whole parts gleaned from
7 collected computers and peripherals or new parts for making repairs as
8 long as there is a part-for-part exchange with nonfunctioning computers
9 and peripherals submitted to a plan.

10 (3) Registered collectors may not include computers and peripherals
11 that are gleaned for reuse in the weight totals for compensation by the
12 plan.

13 (4) Registered collectors must maintain a record of computers sold
14 or donated by the collector for a period of three years.

15 (5) Registered collectors must display a notice at the point of
16 collection that computers and peripherals received by the collector may
17 be repaired and sold or donated as a fully functioning computer or
18 peripheral rather than submitted to a processor for recycling.

19 (6) The authority, authorized party, or the department may conduct
20 site visits of all registered collectors that reuse or refurbish
21 computers and peripherals and who have an agreement with the authority
22 or authorized party to provide collection services. If the authority
23 or authorized party finds that a collector is not providing services in
24 compliance with this chapter, the authority or authorized party shall
25 report that finding to the department for enforcement action.

26 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.95N
27 RCW to read as follows:

28 The standard plan and any independent plan must accept peripherals
29 starting in 2013.

30 NEW SECTION. **Sec. 15.** This act takes effect January 1, 2012.

31 NEW SECTION. **Sec. 16.** The following acts or parts of acts are
32 each repealed:

33 (1) RCW 70.95N.100 (Successor duties) and 2006 c 183 s 10; and

1 (2) RCW 70.95N.110 (Covered electronic sampling) and 2006 c 183 s
2 11.

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