

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

Implementing and Financing An Electronic Product Collection, Recycling and Reuse Program For Washington State

**Washington Department of Ecology Recommendations
Responding to ESHB 2488**



December 2005

**Publication Number 05-07-049
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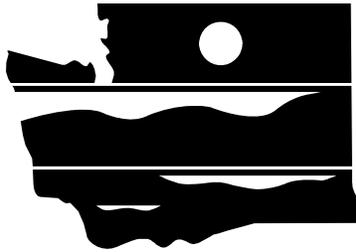
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Introduction

This report provides recommendations for financing and implementing an electronic product recycling and reuse program in the state of Washington, as requested in ESHB 2488 in the 2004 legislative session. The legislature defined electronic products as televisions, computers and computer monitors purchased for personal use.

ESHB 2488 included these findings:

- Rapidly changing technological advances in the computer and electronics sector have resulted in an increasing number of outdated electronic products.
- The Environmental Protection Agency estimates that over 20 million personal computers became obsolete in 1998 and only 13 percent were reused or recycled.
- By 2005, more than 63 million personal computers are projected to be retired according to a recent study by the National Safety Council.
- Electronic products may contain hazardous materials including lead, mercury, brominated flame retardants, and hexavalent chromium.
- Cathode ray tubes in computer monitors and video display devices may contain between four to eight pounds of lead.
- National and state efforts have been initiated to examine opportunities to recycle and reuse electronic waste and encourage development of products using less toxic substances and more recycled content.

The set of recommendations described below will provide a funded long-term system for recycling unwanted electronic products. Funds are paid by manufacturers, and embedded in purchase prices.

Stakeholders agreed that the system should include collection, transportation and processing of electronic products in preparation for recycling. Stakeholders do not agree upon the approach to finance the system. The disagreement is primarily due to the inability of electronics manufacturers to find points of agreement on funding and sharing responsibility.

Financing methods considered included:

1. Cost Internalization– manufacturers internalize the costs of collection, transportation and processing into the cost of their products;
2. Advanced Recovery Fee– consumers pay a fee at the time of purchase to cover the cost of recycling end of life products with the idea that what is recycled today is paid for today; and
3. End of Life Fee– manufacturers offer end of life collection, transportation and processing services for a fee, paid by the consumer that owns the product at end of life.

Of these three options, we recommend the first, cost internalization, for the following reasons:

- No new taxes;
- Private industry based; and
- Best value for the citizens of the state.

Recommended E-Waste Recycling System:

All manufacturers selling computers, televisions and computer monitors within the state of Washington must participate. There are two ways, either through a standard program designed and operated by a third party organization or opt out and design and operate their own independent program.

In order to opt out, a manufacturer needs to have a history of selling their products within the state for ten years or more and command at least 5% of the market sales share of like products.

Third Party Organization

The standard program for collecting, transporting and processing electronic products is operated by a third party organization - the Materials Management and Finance Authority. The Authority will submit an electronic product recovery plan on behalf of its member manufacturers to Ecology for approval.

The authority will receive funding from participating member manufacturers. Current market share of product sales will determine the level of funding responsibility for each participating manufacturer. The Authority will not use state revenues and the authority cannot extend the credit of the state for standard program financing.

A board of directors, representative of participating member manufacturers, will govern the authority. The authority must submit a plan to Ecology for approval describing the electronic products recovery program that it will implement on behalf of its member manufacturers.

Manufacturers may opt out of the standard program and finance and operate their own program, either individually or collectively, by petitioning the Department of Ecology. Manufacturers that gain approval to opt out of the standard program must submit a plan with the same requirements placed on the authority and pay for all their program costs.

Responsibility Shared Among Manufacturers

Each manufacturer that successfully petitions to opt out of the standard program and the authority will be assigned an amount of electronic products for which they will be responsible. The share of responsibility for recovery of electronic products will be based on the percentage of products returned for recycling bearing manufacturers' brand names. That portion of the returned share that is ascribed to manufacturers that are no longer in business or non-branded products will be distributed among the identified brand owners based on their percentage share of the known universe of identifiable brand names. Retailers that brand their own products and retailers that import products directly from offshore manufacturers having no significant U.S. presence will be responsible for those products.

Electronic Product Recovery Plans

The Authority and all independent program manufacturers must submit to Ecology an electronic product recovery plan describing how they will provide collection services to the public for electronic products throughout the state as well as transportation and processing services. Plan requirements:

- A description of the network of locations provided to consumers to drop-off their unwanted electronic products without additional charges or fees. The description will include a list of locations, evidence of agreement between the manufacturer and the location owner such as a contract or other legal instrument. The network must be created in such a way as to provide this minimum level of service to consumers:
 - Within five miles of any household in areas with population densities of 1,000 people or more per square mile; and
 - Equal in number to existing disposal facility availability in rural areas of the state.Alternative services may be offered if they are demonstrated to provide equal or better access, availability and convenience to consumers.
- Agreements with processors of unwanted electronic products include at a minimum processor acknowledgement of compliance with applicable environmental, labor and business laws; identification of destinations of recovered materials sold for recycling; the end use of the recovered material and assurance of compliance with applicable environmental, labor and business laws by the end user in the receiving location.
- A description of how material recovered from electronic products will be used in new products made by the manufacturer.
- A description of the public information, education and outreach program that will be utilized to market the services offered including saturation levels expected.
- A discussion of the existing collection infrastructure (governmental or private business collection, transportation and processing services) available in the state and why this infrastructure will or will not be used, where feasible infrastructure exists.
- A strategy to provide ongoing collection, transportation and processing services of unwanted electronic products from school districts throughout the state. A one time intensive cleanout of electronic products no longer in routine use in schools and school district facilities throughout the state within three years of the effective date of legislative action must be provided. This intensive clean out will be coordinated through the Office of the Superintendent of Public Instruction. Educational service districts and school districts will cooperate fully with the Office of the Superintendent of Public Instruction in order to complete this effort.
- A strategy for collecting, transporting and processing unwanted electronic products from small business, small local governments.

Ecology will review and approve the plans. Ecology can approve the plan or provide a list of inadequacies that require revision.

Manufacturer Registration

Manufacturers must register with Ecology and be issued a license to sell products into the state of Washington upon approval of their plan. Ecology may revoke the license for non-compliance and non-participation. No manufacturer may sell electronic products into the state without a license. A registration fee will be charged to cover all costs incurred by the department.

Service Provider Registration

Companies interested in contracting with manufacturers to provide collection, transportation or recycling services must be registered with Ecology to do so. Manufacturers are encouraged to work with existing service providers to the maximum extent practical.

Product Identification – Branding Required

Manufacturers must clearly brand their products sold into the state. Unbranded products cannot be sold into the state. Products sold into the state by manufacturers without licenses to sell will be removed from sales floors and penalties will be levied on the manufacturer and the retailer selling the product. Time will be granted to retailers to liquidate existing stocks that cannot be sold in the future. Ecology will enforce these compliance provisions.

Reporting – Performance Measures

The Authority and all independent plan manufacturers will submit annual reports to Ecology. The reports will include:

1. Quantities of products collected and processed for recycling. The quantities will be reported by the number of and pounds collected by type and types of unit (computers, televisions, computer monitors).
2. Quantities collected in each county of the state.
3. The type and weight of material sent to markets for recycling by destination location.
4. Results of marketing efforts.
5. Quantities of recovered materials by type used to manufacture new electronic products.

Reiteration of Preference to Recycle – Surcharge on Disposal

It is the policy of the state of Washington that products be recycled rather than incinerated or disposed (Chapter 70.95 RCW Solid Waste Management – Reduction and Recycling). This includes electronic products. While consumers may choose to dispose of their electronic products, rather than participating in the recycling program at no additional cost, a surcharge should be levied for the privilege of doing so. Disposal of electronic products should be discouraged.

State Government, Large Local Governments and Higher Education to Establish Recycling Programs - Restricting Sales of Surplus Electronic Products

Require all of state government, large local governments and political sub-divisions including institutions of higher education to prepare plans describing how their electronic products will be collected, transported and processed at end of life. Governments may place products for sale as surplus. Only working single units may be sold to individuals. Products destined for recycling may only be acquired by certified electronic product processors.

Government Procurement – Product Take Back

All future procurement of electronic products by of state government, local governments and political sub-divisions including institutions of higher education must include provision for product take back by the manufacturer. Take back can take the form of direct return to the manufacturer, contracted recycling services or any other method the manufacturer designs to assure that electronic products used by government are recycled. In addition, new electronic products must be Energy Star certified by the United State Environmental Protection Agency. Efforts should be made to procure electronic products that contain no lead, mercury, hexavalent chromium or cadmium unless there are no alternative products available to perform the functions and functionality required.

Prohibit Certain Disposal Practices of Electronic Products Containing Heavy Metals

Incineration or disposal in unlined landfill of electronic products that contain lead, mercury, hexavalent chromium or cadmium should be forbidden.

Advantages of this recommendation

Government's role is minimal. The state will not be a tax collector nor will the burden of collecting additional fees and taxes be placed on retailers in the state. The government role is to establish rules for the program and enforce those rules. The high cost of tax collection, both at the retail level and within government itself is eliminated.

The false boundaries of state lines that regulate interstate commerce and ability to tax are eliminated. Manufacturer cost internalization applies regardless of where a product is purchased – in state, out of state or over the internet – everyone plays.

Requiring cost internalization places the system squarely in the competitive market place. This approach relies upon the competitive nature of our economy to produce the most efficient system at the lowest possible cost. Cost internalization relies on the private sector to do what it does best – compete fairly in the open market to provide the best available products and services at the lowest possible cost. It does not rely on government to operate a program on behalf of the private sector.

Cost internalization only involves those that manufacture and use the products. It does not rely on general tax revenues or other subsidies from government and other social resources to be successful.

The detailed recommendations are in Appendix A. Additional information sources included research in the areas recommended by the legislature and consultation with stakeholders through a series of facilitated meetings. Our facilitators report, research papers supporting our recommendations, and stakeholder comments related to our recommendations are available to view in document number 06-07-005. Additional information about electronic products and waste can be found in Ecology's interim report to the legislature, submitting in December, 2004; publication number 05-07-002.

Appendix A:
**Detailed Program Recommendation for Electronic
Product Recycling in Washington State**

Management of Unwanted Electronic Products

Section 1. Purpose and Findings

Create and finance a collection, transportation and processing system within the state that will assure recycling of unwanted electronic products.

It is essential to the health, safety, and welfare of all Washington citizens that material resources, once extracted from the environment for commercial use, remain commercially available and usable within the economic system and that hazardous materials be disposed safely and non-hazardous substitute be developed. Beyond the associated environmental benefits, doing so provides meaningful business and employment opportunities.

Over the past twenty-five years, new electronic products have been introduced to consumer markets that did not exist before. In addition, these products are made from a composite of materials, many of which are recent inventions. It is imperative that these products and materials are managed safely at the end of their useful life in order to conserve energy and resources, and realize the highest economic return.

Therefore, all manufacturers of covered electronic products and retail companies branding as their own covered electronic products for retail sale shall notify the department of their intent to sell their products into the state of Washington and receive a license for the privilege of doing so.

All manufacturers shall participate in the standard program for electronic product recycling. The standard program will be funded by a product stewardship fee paid by manufacturers based on their current sales market share in the state of Washington. The fee shall be collected from manufacturers and paid to the Materials Management and Financing Authority established in sections 23 through 29 of this act to fund the standard program. The authority shall establish the standard program to implement a covered electronics collection, transportation and processing program on behalf of the manufacturers.

The authority will:

- Negotiate the standard program services with manufacturers and collection, transportation and service providers;
- Establish fees that will be charged annually to participating manufacturers based on a negotiated formula that fairly ascribes the financial responsibility of each;
- Collect and manage collected fees and pay for contracted collection, transportation and processing services;
- Track and report results of the standard program to the department of ecology;
- Collaborate with all local government solid waste planning jurisdictions to implement a public awareness campaign to promote reuse and recycling of covered electronic products; and
- Provide other management and support services to assure that the shares of covered electronic products ascribed to participating manufacturers are met.

Manufacturers may petition the department to opt out of the standard program and operate an independent program. Only those manufacturers that command five percent of the current sales market for computers or televisions, and have been selling their products into the state for more than ten years are eligible to submit a petition. These manufacturers will be required to write an independent plan for collecting, transporting and processing unwanted electronic products designed to meet requirements prescribed herein in order to receive a license for the privilege of selling products in and into

Washington state. Manufacturers submitting an independent plan may do so individually or collaboratively with one or more additional manufacturers as long as each manufacturer meets the opt out criteria individually.

The authority and manufacturers submitting independent plans are encouraged to use existing infrastructure within the state to the maximum practicable extent to provide collection, transportation and processing systems and services, in order to minimize costs. This use of existing infrastructure is not intended to preclude new entrepreneurial activity or growth and development of new businesses within the state. Rather, the intent is to use existing infrastructure to the maximum extent practicable in order to provide the most cost effective and efficient systems for collecting, transporting and processing covered electronic products to the citizens of Washington State.

Section 2. Definitions

Terms used herein have the following meaning given to, unless the context clearly indicates otherwise.

"Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more covered electronic products.

"Certified collection, transportation and processing systems and service provider," means:

- Any entity licensed and permitted under all required state and local laws to provide collection, transportation or processing services in the state; and
- Are registered with and certified by the department as a company authorized to provide collection, transportation and processing services under this act.

"Covered electronic products," means desktop or personal computers, computer monitors, portable computers, and televisions. The universe of products covered includes historic, orphan and migrated units that are in the state. Only products owned by current residents within the state of Washington are included.

"Current resident" means any one living within the geographic area of Washington State at a location that is a residential address. Residency shall be verified by a valid Washington state driver's license or other legally acceptable form of identification at drop off locations or programs not associated with a residential address.

"Collect," "collecting" or "collection" means gathering unwanted covered electronic products from individual consumers, small businesses, school districts, small governments, and charities.

"Collection location" means a location in the state that accepts from consumers at no cost, unwanted covered electronic products. Collection locations may only be operated by a certified collection service provider under contract with a manufacturer or the authority in accordance with approved plan. Collection locations do not include temporary collection locations, short-term collection events, or other locations that are not permanently established, routinely available and conveniently accessible. Collection locations may be associated with retail stores provided that the retailer commits to participation in the plans required herein and is a certified collection service provider.

"Collection location equivalency" means services that will provide convenient collection of covered and unwanted electronic products from consumers equivalent to the convenience provided by curbside

collection of recyclables offered in the same community in the state, collection systems adopted within approved local government solid waste management plans or other means of equal convenience.

“Manufacturer” means any one that sells new to the public a brand of covered electronic product in or into the state of Washington regardless of method of sale and includes:

- Original Equipment Manufacturers whose products are sold under brand names owned by the manufacturer, its subsidiaries, acquired companies and related affiliate companies;
- Assemblers of covered electronic products that use parts manufactured by others and sold under the assemblers brand names owned by the assembler, its subsidiaries and related companies;
- Retail establishments that sell covered electronic products under their own brand names, its subsidiaries and related companies that are assembled for them by others; and
- Retailers that that assemble and sell covered electronic products directly to the public.

Any of the four types of manufacturers described above, acquired by another company shall become part of the acquiring company. The acquiring company shall bare all responsibility for the acquired company products, historic and future.

A manufacturer is not an individual that assembles their own computer for personal use.

“Processed” or “processing” means disassembling or dismantling products to recover materials contained therein and prepare those materials for refining or reuse in new products. It may also include salvaging parts to be used in new products.

“Transport,” “transporting” or “transportation” means transferring collected unwanted covered electronic products to a location for processing.

“Unit” or “units” means any of the following:

- Televisions;
- Personal computers (PC);
- Compact or laptop computers; and
- Computer monitors.

“Unwanted electronic product” means a covered electronic product that no longer performs the functions for which it was designed and is no longer wanted by its owner.

Section 3. Intent

It is the intent of the legislature that all covered electronic products be collected, transported and processed as described in sections 9 and 10, through the approved systems established by manufacturers in their plans and the authority, in order to recover materials and prepare them for recycling markets at no additional cost to the unwanted electronic product owner. By-pass wastes and materials with no recycling market may be disposed at permitted disposal facilities after processing. Except, those covered electronic products intended to be disposed by their owner may be disposed of only at a permitted lined landfill.

Those choosing to dispose of their covered electronic products shall pay a fee for the privilege to dispose in addition to regular disposal fees charged by the disposal service provider. The fee will be \$25 per unit and shall be adjusted for inflation every five years. The disposal service provider may retain 20% of the

fee to cover administrative costs related to fee collection. The remaining 80% will be deposited in the state general fund and used exclusively for public awareness projects and programs related to covered electronic product recycling. Any disposed covered electronic product may be recovered for recycling by the disposal service provider, but cannot be included in meeting recovery responsibilities of manufacturers.

Only unwanted covered electronic products owned by current residents of the state of Washington residing within the geographic boundaries of the state are included.

No person may knowingly dispose of covered electronic products outside the two options provided above. Service providers and disposal facility operators bear no responsibility or liability if a covered electronic product is covertly disposed by the owner without the knowledge of the service provider.

Nothing in this section precludes the authority of local governments to establish programs and policies to meet their unique local circumstances.

Section 4. Costs to be Borne by Manufacturers Through the Sale of Their Products – Distribution of Costs

The cost associated with the programs required herein shall be the responsibility of licensed manufacturers.

The financing mechanism prescribed in section 23 shall apply to manufacturers participating in the standard program operated by the Materials Management and Financing Authority. Independent plan manufacturers must demonstrate annually to the satisfaction of the department that they have adequate funds set aside to cover the collection, transportation and processing costs of those services described in their approved plans for their share as described in Section 5.

Section 5. Distribution of Responsibility

It is determined that leaders in current market sales have benefited from the pioneering work of their predecessors in developing technologies and consumer markets for like products. It is also determined that the quantity of unwanted electronic products available for processing is of much smaller quantity than will be available in the future. Retail prices of covered electronic products have dropped significantly in recent years, causing more of those products to be replaced, supplemented and added to households throughout the state in quantities unanticipated in the past. Current manufacturers with leading market share have been responsible for much of this growth. Therefore, current market leaders have a responsibility now to assure that unwanted electronic products being replaced or supplemented be recycled regardless of age or brand.

The percentage of recovery responsibility shall be based on percentage share of collected products represented by brand. The percent of unbranded products and products that can not be ascribed to existing manufacturers shall be distributed between the authority members and independent plan manufacturers based on their percentage share of the identifiable stream.

The recovery responsibility will be determined for televisions and computers separately. This calculation shall be done by the department each calendar year based on reports received from electronic product processors. Reports must be submitted to the department no later than February 15th of the year following the reporting year.

Section 6. Manufacturer Registration and Licensing

All manufacturers must register with and be licensed by the state of Washington for the privilege of selling their products in this state.

A. Registration

Within 90 days of the effective date of this act, all manufacturers must register their intention to sell covered electronic products into the state of Washington by submitting notification to the department of that intent accompanied by a registration fee established by the department. The notification must include:

- Name of Manufacturer;
- Product brand names that the manufacturer intends to sell within the state;
- Methods of sale used; and
- Name of the highest level individual within the manufacturers organization responsible for the sales of the manufacturer's products within the United States and Washington state with associated contact information and signature of those individuals.

The fee will cover the cost of registration, maintenance of records, distribution of licensed manufacturers lists to retailers and publication of related information on the internet and on paper for distribution to interested parties in compliance with the freedom of information act, rule development and enforcement activities of the department. The fee will also finance monitoring and reporting costs of the department. The registration fee shall be paid annually and may be adjusted according to actual program costs experienced by the department. The fee shall be based on the number of units sold by each registered and licensed manufacturer within the state for the current year.

In order to receive a license to sell covered electronic products, manufacturers must first submit a plan that demonstrates how they will provide a covered electronic product collection, transportation and processing system within the state as required by section 5. The authority and each manufacturer submitting an independent plan to the department shall pay a fee established by the department to cover associated plan and licensing costs.

B. Covered Electronic Products Distribution License

1). No manufacturer may distribute, or have distributed on its behalf, a covered electronic product in this state until a license to distribute has been obtained by that manufacturer from the state of Washington. The license shall be granted to each manufacturer upon receipt of an application filed on forms provided by the master license system and shall be accompanied by a fee of five hundred dollars and a copy of plan approval from the department.. The license shall expire five years after issuance and may be renewed upon approval of an updated plan.

2). If an application for license renewal provided for in this section is not filed prior to the license expiration date, a delinquency fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license can be issued. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that their products have not been distributed into the state subsequent to the expiration of the prior held license.

C. Maintenance of Registration and Licenses to Do Business in the State Of Washington - Performance Verification Reports Required

The certification and license is maintained contingent upon implementation of approved plans and results of those plans. The department shall establish rules for preparation and content of performance verification reports. Performance verification reports must be received by the department no later than February 15th of the year following the reporting period. Failure to submit reports to the department will result in the revocation of the privilege of selling products into the state.

Section 7. Plans

A. Plans

Each manufacturer that sells or wishes to sell covered electronic products into the state shall register with and notify the department of their intent to do so as described in section 5 of this act. . All manufacturers will indicate their intention to participate in the standard program administered by the Materials Management and Financing Authority or write and submit an independent plan for collection, transportation and processing of unwanted electronic products described in this section.

Planning requirements

Manufacturers submitting independent plans and the authority will demonstrate how they will provide services for the collection, transportation and processing services of covered electronic products conveniently and at no additional visible cost to the consumer.

Independent planning manufacturers may write an individual plan or may participate as a member of a group plan in collaboration with other manufacturers. Manufacturers are encouraged to collaborate with electronic product retailers, certificated waste haulers, recycling businesses, and local government solid waste management planning jurisdictions in the development of their plans.

Plans must contain the following elements:

- Collection, transporting and processing systems that will be utilized;
- Collection, transportation and processing service providers;
- Accounting and reporting systems that will be employed to track progress toward meeting target recovery rates and document product sales within the state;
- Timeline including startup and implementation with associated progress mile stones with anticipated results; and
- Public information campaign to promote the continued use and reuse of covered electronic products and end of life management of the products by the final users. Manufacturers will work in collaboration with local governments in the development and implementation of this public information campaign.

Plans must assure that covered electronic products collection services are available to all citizens of the state currently residing within its geographic boundaries.

All collection service providers must be registered pursuant to sections 9 and 10 of this act.

Except as provided in section 7, this level of service will be provided to:

- Private individuals;
- Small businesses;
- Government;

- School districts;
- Institutions of higher education; and
- Charities.

Plans may be updated periodically to accommodate changes in products and in response to new collection, transportation and processing technologies that improve efficiency and effectiveness and reduce overall costs. Plans will be updated at least every four years.

The state solid waste management plan and local government solid waste management plans must be reviewed, and updated as necessary, to assure compatibility with this act.

B. Level of Service

1). Collection Sites

Manufacturers must assure that covered electronic products collection services are available to all citizens of the state currently residing within its geographic boundaries and assure that their planned collection services are available in every county of the state for both rural and urban populations. There shall be at least one collection site in every county and not less than one location per 10,000 people.

Collection sites may be provided at locations such as recycling businesses, solid waste management facilities, retail outlets or charity organizations subsequent to the regular business operations of that site.

Collection site operators may provide collection services for different manufacturers. Manufacturers with independent plans and the authority are encouraged to collaborate in establishing collection sites, especially in rural areas of the state. Collection locations must be staffed, in operation at least five days per week with one of those days being a weekend day, and be permanently established, except as specified in 3). of this section.

Collection sites do not include temporary collection locations, short-term collection events, or other locations that are not permanently established, routinely available and conveniently accessible. Collection locations may be associated with retail stores provided that the retailer commits to participation in the plans required herein and is a certified collection service provider.

2). Equivalency

Collection service providers may offer collection location equivalency in forms different than collection sites if those alternate services can be demonstrated to provide equal or better convenience to the citizens of the state at equal to or less than the same cost and will realize equal or increased recovery of unwanted covered electronic products. The alternatives must be permanently and continuously provided.

3). Rural Equivalency

In counties where 3 or less collection sites are required, collection services must be at least as available and operate the same or more hours as solid waste disposal or recycling services within that county.

4). All collection service providers must be registered pursuant to section 9.

Section 8. Government Electronic Products Recycling and Procurement Practices

A. State government, all cities with populations of 50,000 or more ¹, all counties with populations over 125,000² and the state institutions of higher education will establish, operate and maintain a method to collect and prepare for reuse or sale for reuse or recycling, unwanted electronic products that have been purchased and were used in the course of doing their business. Other governmental entities within the state may participate in this program.

For all state and local governments and political sub-divisions, the Department of General Administration shall establish the system under chapter 43.19.1919 RCW related to surplus properties management and RCW Chapter 43.19.1919 RCW Surplus computers and computer-related equipment -- Donation to school districts or educational service districts, and will make that system available to use by all state government agencies, counties, cities, school districts and all other political sub-divisions within the state.

The Department of General Administration will assure that their surplus and unwanted electronic products, other than those sold as individual units to private citizens, are sold only to registered transporters and processors. The Department of General Administration will further assure that their products are directed to legal secondary materials markets by requiring a chain of custody record that documents to whom the products were initially delivered through to the end use manufacturer.

This section does not apply to covered electronic products that are leased or purchased through contracts containing manufacturer take-back requirements.

Covered electronic products that are collected, transported and processed under this section may not be included in meeting manufacturer target recovery rates.

B. Beginning in fiscal year 2007, all state government, first class cities³, class A and AA counties⁴ and the state institutions of higher education that procure electronic products shall incorporate manufacturer product take back requirements within all bid requests, purchasing contracts and purchasing agreements, regardless of quantity purchased. Instructions on end of life management and return to manufacturers will accompany all equipment throughout its useful life. Any governmental entity in possession of electronic products at the end of useful life shall follow return instruction explicitly. All units purchased under these requirements shall not be sold or released in anyway to a private citizen for personal use. Should any part of the returned units be utilized in new or refurbished products, all identifying marks, labels and information, including digitally recorded information, related to previous governmental ownership shall be removed. Only products from manufacturers that are licensed to sell electronic products may be considered for procurement under this section.

Section 9. Business Participation

Businesses that are required to write pollution prevention plan pursuant to Chapter 70.95C Waste Reduction must include in those plans an element describing how they will assure proper management of unwanted computers, computer monitors and televisions in their possession. Unwanted electronic

¹ Seattle, Spokane, Tacoma, Vancouver, Bellevue, Everett, Kent, Federal Way, Spokane Valley, Yakima, Bellingham, Lakewood, Kennewick, Renton, Shoreline

² King, Pierce, Snohomish, Spokane, Clark, Kitsap, Yakima, Thurston, Whatcom, Benton

³ Aberdeen, Bellingham, Bremerton, Everett, Richland, Seattle, Spokane, Tacoma, Vancouver, Yakima

⁴ King, Pierce, Snohomish, Clark, Yakima, Benton, Spokane

products collected, transported and processed as a result of this section shall not be included in meeting the manufacturers' share of recovery responsibility described in section 5.

Section 10. Registration of Collectors, Transporters and Processors

Each collector, transporter and processor of covered electronic products in the state of Washington shall register with the Department. The registration shall include all identification requirements for licensure in the state of Washington, geographic area of the state that they serve, and rates charged for services.

A registered service provider list will be assembled by the department and will be made available to manufacturers required to write plans upon their request.

Registration will be renewed annually and must be accompanied by a report containing:

- Manufacturer(s), governments and businesses with which they have contracted for services; and
- Quantities of covered electronic products and to whom the products or recovered materials were delivered foreign or domestic, by number of units and weight and what the materials were used for, separately accounted for by the standard program, independent plan programs, all covered electronic products collected from governments and from large businesses.

All registered collectors, transporters and processors receiving certification of registration from the department must be in and remain in compliance with all state and federal regulations governing wages including compliance with the state minimum wage, worker safety and health requirements and environmental regulations. All shipments must comply with all state and federal environmental, import and export laws, all applicable laws of receiving countries and all applicable international laws and agreements. Failure to be in full compliance with these regulations will result in the denial or revocation of certification. It is the intent of this act to assure that programs associated with the collection, transportation or processing of covered electronic products are competitive among those contracting these services. Therefore, the use of prison labor, individuals assigned community service hours by courts or any other services paying below the state minimum wage is prohibited.

Section 11. Confidentiality, Exception

It shall be a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter.

Section 12. Misbranding

No person may knowingly distribute misbranded or non-branded covered electronic products. A covered electronic product shall be deemed to be misbranded if it is:

- a. Bears any statement, design, or graphic representation relative thereto which is false or misleading;
- b. Distributed under the name of another covered electronic product; or
- c. Labeled in a manor as to render it unlikely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Section 13. Reuse of Covered Electronic Products

There will be no effort to direct or control free markets for reuse of covered electronic products. Every effort shall be made to encourage continued use of covered electronic products with remaining functional value. Product reuse will not be included as part of the recovery rate established as a standard or share of responsibility. Shipments of products for reuse in other countries must occur in a manner compliant with all laws of the receiving country. A registered processor must process all covered electronic products shipped from this state for reuse. The registered processor shall report to the department, the quantity and type of products shipped and the name of the receiving company and receiving country. These reports shall be confidential as the information contained therein is proprietary as these markets are highly competitive.

Section 14. Consumer Information

Manufacturers must inform consumers about how to recycle their covered electronic products at end of life. This information must be provided to the original purchaser and be available to the owner of the product at end of life.

The Department of Ecology, in collaboration with manufacturers, wholesalers and retailers of covered electronic products and local governments, will promote covered electronic product recycling and product stewardship by:

- Posting information where to recycle unwanted covered electronic products on the internet;
- Providing information about recycling covered electronic products through a toll free telephone service; and
- Listing certified collection, transportation and processing service providers on the internet; and
- Carrying out an advertising campaign to raise public awareness of covered electronic product recycling issues and opportunities.

Section 15. Managing Existing Products

Products that have moved into the state after being purchased in another state by their owner when their owner was a resident of another state will be treated as a product sold in the state when they become unwanted products.

Unidentifiable products and products sold prior to the effective date of this act will be managed as products sold in the state when they become unwanted. Responsibility for those products will be distributed among manufacturers as described in section 5.

Section 16. Identification Labeling

As of June 30, 2006, all covered electronic products sold into the state of Washington shall be brand labeled by the manufacturer of the products. Manufacturer shall assure brand labels are not removable. In-state retailers in possession of these products at facilities within the state on June 30, 2006 may exhaust their stock through sales to the public.

The label shall be placed on the main unit of each product. A PC, computer monitor or television set are each considered main units.

Section 17. Restrictions on Disposal of Electronic Products Containing Hazardous Substances

Effective July 1, 2006 covered electronic products containing lead, mercury, cadmium, or hexavalent chromium may not be:

1. Burned as a means of disposal in solid waste incineration facilities.
2. Disposed of in landfills other than permitted lined municipal solid waste landfills or hazardous waste landfills.

Section 18. Deferral to National Program

Sections 1 through 15 of this act become void upon the establishment of a national system for recycling covered electronic products established through an act of Congress that substantially meets the intent of this act including the creation of a financing mechanism.

Section 19. Financial Assurance

Collection, transportation and processing service providers must secure and retain a financial assurance mechanism to provide funding to cover costs of, and any potential liability costs associated with, cleanup of sites used to provide required contracted collection, transportation and processing services. This financial assurance can be in the form of insurance policies, fund accounts, investments or other mechanism that will assure funds immediately if needed in an amount calculated to provide complete cleanup and liability coverage. Manufacturers contracting with service providers must require financial assurance provisions in their contracts.

Section 20. Penalties

Failure to register as a covered electronic product collector, transporter or processor Any person that collects, transports, processes or disposes of covered electronic products in ways not approved within the plans or is not registered with the department as authorized to provide such services is in violation of the act and will pay a penalty of \$10,000 for each violation and \$100 for each covered electronic product handled.

Failure to register as a covered electronic products manufacturer Any manufacturer that has not registered with the department as a manufacturer selling covered electronic products within the state and sells covered electronic products within the state will be assessed a penalty of not less than \$200 per each unit sold upon first citation of infraction and \$1,000 per each unit sold upon the second and each subsequent citation of infraction.

Sale of non-brand label equipment prohibited Any manufacturer, wholesale or retail business selling non-branded covered electronic products within the state after June 30, 2007 shall be in violation of this act and will be assessed a penalty of not less than \$200 per each unit sold upon first citation of infraction and \$1,000 per each unit sold upon the second and each subsequent citations of infraction.

Failure to submit a plan Any manufacturer that has not submitted and received approval from the department, a plan shall be in violation of this act and will be penalized on the basis of \$1,000 for each covered electronic product sold into the state.

Failure to implement approved plans The license for the privilege to sell products into the state shall be revoked from any manufacturer failing to implement and reasonably meet the recovery rates established in section 4 of this act. The license may be reinstated upon approval by the department of an amended

plan that demonstrates improvements and corrections the manufacturer will undertake to assure implementation and improve performance.

Unapproved disposal of covered electronic products prohibited No person shall dispose of covered electronic products within the state of Washington outside of the systems established within the approved plans except as provided in section 2. Any person disposing of covered electronic products in ways other than those listed in the plans shall be found in violation of this act and will be assessed a fine of not less than \$100 for each unit in addition to any other penalties and fines assessed by any other law.

Sections 20 through 26 constitute the establishment, scope of responsibilities and duties of the MATERIALS MANAGEMENT AND FINANCING AUTHORITY

Section 21. Purposes -- Construction

It is the primary purpose of this chapter to establish a materials management authority to act as business management organization on behalf of the citizens of the state to manage financial resources and contract for services for materials collection, transportation and processing of secondary materials derived from covered electronic products, without using state funds or lending the credit of the state or local governments.

It is also a purpose of this chapter to encourage the employment and retention of Washington workers at meaningful wages and to develop innovative approaches to improve materials management efficiency in order to assure and increase the use of secondary material resources within the economy. This chapter is enacted to accomplish these and related purposes and shall be construed liberally to carry out its purposes and objectives.

Section 22. Definitions

As used in this chapter, the following words and terms have the following meanings, unless the context requires otherwise:

(1) "Authority" means the Washington materials management and financing authority created under this act or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law;

(2) "Fees" means funds collected on new covered electronic products sold into this state by the manufacturers participating in the authority program for collection, transportation and processing of covered electronic products.

(3) "Manufacturer" means any one that sells new to the public a brand labeled covered electronic product in or into the state of Washington. Manufacturers include:

- Original Equipment Manufacturers whose products are sold under brand names owned by the manufacturer, its subsidiaries and related companies;
- Assemblers of covered electronic products that use parts manufactured by others and sold under the assemblers brand names owned by the assembler, its subsidiaries and related companies;
- Retail establishments that sell covered electronic products under their own brand names, its subsidiaries and related companies that are assembled for them by others; and
- Retailers that assemble and sell covered electronic products directly to the public.

(4) "Existing collection, transportation and processing systems and service provider" and herein shall be referred to as service provider, means:

- Any entity licensed and permitted under all required state and local laws to provide collection, transportation or processing services in the state; and
- Are registered with the department as a company authorized to provide collection, transportation and processing services under this act.

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

(6) "Service area" means an area of any size where collection, transportation and processing services will be provided

(7) "Plan" means the general business plan of the authority;

(8) "Economic development" means projects owned and operated by the private sector for recovering and using secondary materials in manufacturing production and assembly of products;

(9) "Covered electronic products," means desktop or personal computers, computer monitors, portable computers, and televisions. The universe of products covered includes historic, orphan and migrated units that are in the state. Only products owned by current residents within the state of Washington are included.

(10) "Financing agreements" means, and includes without limitation, a contractual arrangement with a manufacturer of covered electronic products that will assure funds collected under the financing section herein, are provided to the authority in sufficient amount and timeliness that the authority remains solvent of debt at all times.

Section 23. Materials Management and Financing Authority Created -- Membership

The Materials Management and Financing Authority is established as a public body corporate and politic, with perpetual corporate succession, constituting an instrumentality of the state of Washington exercising essential governmental functions. The authority is a public body within the meaning of RCW 39.53.010. The authority is established to plan and implement a collection, transportation and processing program for manufacturers that have registered with the department their intent to participate in the standard program.

The authority shall be governed by a board of directors.

- Tens members will be selected based on a vote of member manufacturers of the authority representative of those manufacturers as follows:
 - At least one position shall represent manufacturers commanding less than 2 percent of the total market sales of computers.
 - At least one position shall represent manufacturers commanding less than 2 percent of current market sales of televisions.
 - At least one position must represent retailer manufacturers.

The board shall select from its membership the chair of the board and such other officers as deemed appropriate and described in its general operating plan as adopted under the requirements of section 23.

The board shall create its own by-laws in accordance with the laws of the state of Washington. A majority of the board shall constitute a quorum.

Any member of the authority board may be removed for misfeasance, malfeasance or willful neglect of duty after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing by the affected member.

The board shall create a technical advisory committee with which they will consult in the development and implementation of the standard program. The technical advisory committee will be made up of at least the following members with additional members the board deems necessary in order to achieve maximum recycling of electronic products in the state:

- The director or designee of the department of community, trade and economic development
- The director or designee of the department of Ecology
- A representative of the secondary materials collection, transportation and processing industry
- An industry product design and materials expert
- An economist from an institution of higher education within Washington

The intent of the technical advisory committee is to provide the board and authority staff access to a panel of experts that can offer consultation and guidance in relation to the development and ongoing implementation of electronic product recycling programs.

The state agency directors may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the technical advisory committee. Such designations shall be made in writing and communicated to the authority director and board chair.

The members of the board and the technical advisory committee shall serve without compensation but shall be entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter.

Section 24. Scope of Authority's Powers.

Set fee level.

A product stewardship fee will be collected from each manufacturer of electronic products sold into the state. The fees collected will be used to pay for the services necessary for the collection, transportation and processing of covered electronic products within the state of Washington incurred by the standard program operated by the authority and all related expenses of the authority.

The fee shall be initially ten dollars per each covered electronic product unit sold into the state. This fee shall remain at ten dollars per unit until 2012 or until the authority has sufficient data to establish rates for each participating manufacturer based on total program costs and current sales market share of each manufacturer, which ever is sooner.

Starting January 1, 2012 or sooner, the authority shall set annual fees, assess charges to participating manufacturers and collect fees directly to fund the activities of the standard program. The authority may adjust the fees in order to assure that all costs associated with the identified activities are covered. Should the fees collected not cover costs, the authority shall charge participating manufacturers the difference in what had been collected and the total cost, pro rated as devised by the authority based on current sales market share of the member manufacturers. Should the authority collect fees in excess of the total program cost for a calendar year, the excess shall be credited to each manufacturer's financial responsibility for the upcoming year.

Use funds.

The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter PROVIDED, That no funds of the state shall be used for such purposes and, that no funds available to the authority are used to duplicate the infrastructure already available through private industry in the state, to:

- (1) Contract and pay for collecting, transporting and processing of covered electronic products and other services as identified in approved manufacturers plans;
- (2) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space and other expenses related to the costs associated with running such an organization; and
- (3) Pay fees to the Department of Ecology as described in section 6.

All funds collected by the authority under this act, including interest, dividends and other profits, are and will remain under the complete control of the authority and its board of directors and be fully available to achieve the intent of this chapter.

Adopt general operating plan.

(1) The authority shall adopt a general operating plan of procedures for the authority. The authority shall also adopt operating procedures for individual programs as they are developed for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures shall be adopted by resolution prior to the authority operating the applicable programs.

(2) The plan shall include, but are not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) strict standards for performance of service providers against established target recovery rates for covered electronic products

(3) The plan shall include how the authority will coordinate and implement approved manufacturer's plans.

At least one public hearing shall be conducted by the authority on the plan prior to its adoption. The plan shall be adopted by resolution of the authority board of directors no later than DATE. The authority may periodically update the plan as determined necessary by the authority board of directors and no less than every four years. The plan or updated plan shall include a report on authority activities conducted since the commencement of authority operation or since the last reported plan, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the plan.

Section 25. Additional Powers Authorized

In addition to accomplishing the specifically authorized in this chapter, the authority may:

- (1) Maintain an office or offices;
- (2) Sue and be sued in its own name, and plead and be impleaded;
- (3) Engage consultants, agents, attorneys, and advisers, contract with federal, state, and local governmental entities for services, and hire such employees, agents and other personnel as the authority deems necessary, useful, or convenient to accomplish its purposes;

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

(5) Acquire and hold real or personal property, or any interest therein, in the name of the authority, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the authority deems necessary, useful, or convenient to accomplish its purposes;

(6) Open and maintain accounts in qualified public depositories and otherwise provide for the investment of any funds not required for immediate disbursement, and provide for the selection of investments;

(7) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, or local government;

(8) Procure such insurance in such amounts and from such insurers as the authority deems desirable, including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;

(9) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used and applied as the authority deems necessary, useful, or convenient to accomplish its purposes;

(10) Act as an agent, by agreement, for federal, state, or local governmental entities to carry out the programs authorized in this chapter;

(11) Establish, revise, and collect such fees and charges as the authority deems necessary, useful, or convenient to accomplish its purposes;

(12) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter: PROVIDED, That expenditures with respect to the financial obligations of the authority shall not be made from funds of the state;

(13) Establish such reserves and special funds, and controls on deposits to and disbursements from them, as the authority deems necessary, useful, or convenient to accomplish its purposes;

(14) Give assistance to private and public bodies contracted to provide collection, transportation and processing services by providing information, guidelines, forms, and procedures for implementing their financing programs;

(15) Prepare, publish and distribute, with or without charge, such studies, reports, bulletins, and other material as the authority deems necessary, useful, or convenient to accomplish its purposes;

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

(17) Adopt rules concerning its exercise of the powers authorized by this chapter; and

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

Section 26. Restrictions on Authority's Activity

Notwithstanding any other provision of this chapter, the authority shall not:

- (1) Give any state money or property or loan any state money or credit to or in aid of any individual, association, company, or corporation, or become directly or indirectly the owner of any stock in or bonds of any association, company, or corporation;
- (2) Issue bills of credit or accept deposits of money for time or demand deposit, administer trusts, engage in any form or manner in, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association other than as provided in this chapter;
- (3) Be or constitute a bank or trust company within the jurisdiction or under the control of the director of financial institutions, the comptroller of the currency of the United States of America or the treasury department thereof;
- (4) Be or constitute a bank, broker or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange or securities dealers' law of the United States of America or the state; or
- (5) Financing any venture, investment or capital improvement not otherwise authorized by this act.
- (6) All sales data from individual manufacturers will be held confidentially. Freedom of information act requirements do not apply.

Section 27. Staffing, Restrictions -- Authority not to Receive Appropriated State Funds

The authority shall receive no appropriation of state funds. The authority shall employ a chief executive officer, appointed by the board with concurrence of the governor, and a chief financial officer as well as professional, technical and support staff, appointed by the chief executive officer, necessary to carry out its duties. Employees of the authority are not classified employees of the state, exempt from state service regulations and shall receive compensation only from the authority at rates competitive with state service. The authority will retain its own legal counsel. The departments of Ecology and Community, Trade and Economic Development shall provide start up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority. Staff expenses will be paid through fees and funds collected by the authority and will be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

The authority can generate revenue from two sources. 1). Fees collected fund section 23 and 2). Grants, contributions and other sources that do not obligate the state or the authority to secure debt.

Section 28. Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 29. Emergency

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Notes:

The Materials Management and Finance Authority is modeled after Chapter 43.163 RCW -
ECONOMIC DEVELOPMENT FINANCE AUTHORITY

The Washington State Constitution permits the expenditure of public funds only for public purposes.
Const. art. 7, § 1 (amend. 14).1/

In a recent opinion, the State Supreme Court quoted and then applied the following explanation of a public municipal purpose:

[T]he public purposes for which cities may incur liabilities are not restricted to those for which precedent can be found, but the test is whether the work is required for the general good of all the inhabitants of the city. But it is not essential that the entire community, or even a considerable portion of it, should directly enjoy or participate in an improvement in order to make it a public one. . . . [T]he test of a public purpose should be whether the expenditure confers a direct benefit of reasonably [[Orig. Op. Page 4]] general character to a significant part of the public. . . .