



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0225/1
RCT:jld&bk:rs

In 12/15 - wanted Fri. 12/19 if possible

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SENATE SUBSTITUTE AMENDMENT 1,
2009 TO 2007 SENATE BILL 397

March 5, 2008 - Offered by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES.

Note

Regen

1 AN ACT to amend 287.91 (2), 287.95 (1) and 287.97; and to create 20.370 (2) (hr),
2 25.49 (1m), 287.07 (5), 287.09 (2) (ar), 287.13 (5) (i) and 287.17 of the statutes;
3 relating to: the sale disposal, collection, and recycling of electronic devices,
4 granting rule-making authority, making an appropriation, and providing
5 penalties.

Analysis
insert

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 20.370 (2) (hr) of the statutes is created to read:

7 20.370 (2) (hr) *Electronic waste recycling*. From the recycling and renewable
8 energy fund, all moneys received under s. 287.17 (4) and (10) (j) for administration
9 of the electronic waste recycling program under s. 287.17.

10 SECTION 2. 25.49 (1m) of the statutes is created to read:

11 25.49 (1m) The moneys received under s. 287.17 (4) and (10) (j).

12 SECTION 3. 287.07 (5) of the statutes is created to read:

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1 287.07 (5) ELECTRONIC DEVICES. (a) Beginning on September 1, 2009, no person
2 may dispose of in a solid waste disposal facility, burn in a solid waste treatment
3 facility, or place in a container the contents of which will be disposed of in a solid
4 waste disposal facility or burned in a solid waste treatment facility, any of the
5 following:

Insert 2-5

- 6 1. A computer, as defined in s. 287.17 (1) (d).
- 7 2. A peripheral, as defined in s. 287.17 (1) (j).
- 8 3. A facsimile machine.
- 9 4. A digital video disc player.
- 10 5. A digital video player that does not use a disc and that is not a camera, as
11 defined in s. 287.17 (1) (a).
- 12 6. A video cassette recorder.
- 13 7. A video recorder that does not use a cassette and that is not a camera, as
14 defined in s. 287.17 (1) (a).
- 15 8. A ^{consumer} video display device, as defined in s. 287.17 (1) (q).
- 16 9. A telephone with a video display.
- 17 10. Another kind of electronic device identified by the department under s.
18 287.17 (10) (i).

19 (b) The operator of a solid waste disposal facility or a solid waste treatment
20 facility shall make a reasonable effort to manually separate, and arrange to have
21 recycled, any video display device, as defined in s. 287.17 (1) (q), that is readily
22 observable in solid waste that is delivered to the facility for disposal or burning if the
23 operator determines that ^{or one} all of the following apply: ^{ies}

of a kind subject to par. (a) unless

1 1. Separating the video display device is ^{not} practical and will not ^{or would} require the
2 operator to implement measures to protect human health or safety in addition to any
3 measures taken in the ordinary course of business.

4 2. The video display device has not been damaged in such a way that recycling
5 is not feasible or practical.

6 **SECTION 4.** 287.09 (2) (ar) of the statutes is created to read:

7 287.09 (2) (ar) Provide information to persons in its region about the
8 prohibitions under s. 287.07 (5) (a), why it is important to recycle electronic devices,
9 and opportunities available to those persons for recycling electronic devices.

10 **SECTION 5.** 287.13 (5) (i) of the statutes is created to read:

11 287.13 (5) (i) Solid waste that consists of covered electronic devices, as defined
12 in s. 287.17 (1) (f), used by households.

13 **SECTION 6.** 287.17 of the statutes is created to read:

14 **287.17 Electronic waste recycling. (1) DEFINITIONS.** In this section:

15 (a) "Camera" means a device that records images and that is designed to be
16 hand-held.

17 (am) "Cathode-ray tube" means a vacuum tube used to convert an electronic
18 signal into a visual image.

19 (b) "Collection" means the act of receiving covered electronic devices from
20 households and delivering, or arranging for the delivery of, the covered electronic
21 devices to a recycler.

22 (c) "Collector" means a person who receives covered electronic devices from
23 households and delivers, or arranges for the delivery of, the covered electronic
24 devices to a recycler.

1 (d) "Computer" means a high-speed data processing device for performing
2 logical, arithmetic, or storage functions, except that "computer" does not include an
3 automated typewriter or typesetter, a portable hand-held calculator or device, or
4 other similar device.

5 (e) "Computer monitor" means an electronic device that is a cathode-ray tube
6 or flat panel display primarily intended to display information from a computer or
7 the Internet. "Computer monitor" includes a portable computer with a display.

8 *Insert from p. 6* (f) "Covered electronic device" means *a device that is one and* any of the following that is used by a
9 household primarily for personal use: *insert 4-9*

10 1. A computer

11 2. A peripheral.

12 3. A facsimile machine.

13 4. A digital video disc player.

14 4m. A digital video player that does not use a disc and that is not a camera.

15 5. A video cassette recorder.

16 5m. A video recorder that does not use a cassette and that is not a camera.

17 *consumer* 6. A video display device.

18 7. Another kind of electronic device identified by the department under sub.

19 (10) (i).

20 (g) "Dwelling unit" means a single unit providing complete, independent living
21 facilities for one or more persons, including permanent provisions for living,
22 sleeping, eating, cooking, and sanitation.

23 (gm) "Electronic device" means a device that requires electric current or
24 electromagnetic fields to function and that contains a circuit board.

1 (h) "Household" means one or more individuals who occupy one dwelling unit
2 in a detached or multiunit building.

3 (i) "Manufacturer" means a person who does any of the following:

4 1. Manufactures ^{consumer} video display devices to be sold under the person's own brand.

5 2. Sells ^{consumer} video display devices manufactured by others under the person's own

6 brand.

7 3. Licenses the person's brand for manufacture and sale of ^{consumer} video display devices

8 by others.

9 (j) "Peripheral" means a keyboard, printer, or any other device that is sold
10 exclusively for external use with a computer and that provides input into or output
11 from a computer.

12 (jm) "Program quarter" means a 3-month period ending on March 31, June 30,
13 September 30, or December 31.

14 (k) "Program year" means the period from July 1 to the following June 30.

15 (L) "Recycler" means a person who accepts covered electronic devices from
16 households and collectors for the purpose of recycling. "Recycler" does not include
17 a manufacturer who accepts products for refurbishing or repair.

18 (m) "Recycling" means preparing covered electronic devices for use in
19 manufacturing processes or for recovery of useable materials and delivering the
20 materials for use. "Recycling" does not include destruction by incineration or other
21 processes or land disposal of recyclable materials and does not include reuse, repair,
22 or any other process through which covered electronic devices are returned for use
23 by households in their original form.

24 (mg) "Registered collector" means a collector who is registered under sub. (7).

25 (mr) "Registered recycler" means a recycler who is registered under sub. (8).

1 (n) "Retailer" means a person who sells a ^{consumer} video display device to a household
2 in this state, in person or by mail, telephone, or the Internet, for use by the household.

3 (nm) "Rural county" means a county that is not an urban county.

4 (o) "Sell" means to transfer title or right to use for consideration.

5 (p) "Television" means an electronic device, with a cathode ray-tube or flat
6 panel display, primarily intended to receive video programming via broadcast, cable,
7 or satellite transmission or to receive video images from surveillance or similar
8 cameras.

9 (pm) "Urban county" means Brown County, Calumet County, Dane County,
10 Fond du Lac County, Jefferson County, Kenosha County, Manitowoc County,
11 Milwaukee County, Outagamie County, Ozaukee County, Racine County, Rock
12 County, Sheboygan County, Walworth County, Washington County, Waukesha
13 County, or Winnebago County.

14 (q) "Video display device" means a television or computer monitor with a tube
15 or screen that is at least ⁹/₁₆ inches in its longest diagonal measurement and that is
16 marketed by the manufacturer for use by households, except that ^{consumer} "video display
17 device" does not include any of the following:

18 1. A television or computer monitor that is part of a motor vehicle and that is
19 incorporated into the motor vehicle by, or for, a motor vehicle manufacturer or a
20 franchised motor vehicle dealer.

21 2. A television or computer monitor that is contained within
22 clothes dryer, refrigerator, freezer, microwave oven, conventional
23 dishwasher, room air conditioner, dehumidifier, or air purifier.

24 (2) REQUIREMENTS FOR SALE OF ^{consumer} VIDEO DISPLAY DEVICES. (a)

25 Beginning on September 1, ²⁰⁰⁹ 2008, a manufacturer may not sell to a household, offer

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Handwritten note:
← Could a television monitor be contained within these appliances? I guess I've seen them in refrigerators

1 to sell to a household, or deliver to retailers for subsequent sale to a household a new

2 ^{consumer} video display device unless all of the following apply:

3 1. The manufacturer permanently affixes a label to the ^{consumer} video display device
4 that is readily visible and that shows the manufacturer's brand.

5 2. The manufacturer is registered with the department in accordance with sub.

6 (3).

7 3. The manufacturer pays the fees under sub. (4).

8 4. The manufacturer recycles or arranges for the recycling by a registered
9 recycler of covered electronic devices used by households in this state.

10 5. Individuals are not charged a fee when they relinquish covered electronic
11 devices for recycling under sub. 4.

12 6. The manufacturer reports as required under sub. (5) and conducts

13 assessments as required under sub. (6).

14 (b) *Cooperation*. A manufacturer may carry out its responsibilities under par.

15 (a) 4. jointly with other manufacturers and may participate with other
16 manufacturers in creating an entity to collect and recycle covered electronic devices.

17 (c) *Retailers*. 1. Beginning on February 1, ²⁰¹⁰ 2009, a retailer may not sell or offer

18 for sale to a household a new ^{consumer} video display device unless, before making the first offer

19 for sale, the retailer has reviewed the Internet site maintained by the department

20 under sub. (10) (a) and determined that the brand of the video display device is listed

21 on the department's Internet site under sub. (10) (a).

22 2. If a manufacturer's registration is revoked or expired and the retailer took

23 possession of a ^{consumer} video display device of the manufacturer before the registration was

24 revoked or expired, the retailer may sell the ^{consumer} video display device to a household, but

25 only if the sale takes place fewer than 180 days after the revocation or expiration.

1 (3) REGISTRATION OF MANUFACTURERS. (a) To comply with sub. (2) (a) 2., a
2 manufacturer shall annually, no later than September 1, submit to the department
3 a registration that includes all of the following:

4 1. A list of the manufacturer's brands of ^{consumer} video display devices offered for sale
5 in this state.

6 2. The name, address, and contact information of an individual responsible for
7 ensuring compliance with this section.

8 3. A certification that the manufacturer has complied, and will continue to
9 comply, with the requirements of this section.

10 (b) Beginning with the registration due by September 1, ^{Insert 8-11-2010} 2009, a manufacturer
11 shall ^{indicate} include in its registration under par. (a) a statement disclosing whether any of
12 its video display devices would violate the maximum concentration value for lead,
13 mercury, cadmium, hexavalent chromium, polybrominated biphenyls, or
14 polybrominated diphenyl ethers provided under the Annex to European Union
15 Directive 2002/95/EC.

16 (c) Notwithstanding the deadline in par. (a), a manufacturer who begins selling
17 ^{consumer} video display devices after September 1, ²⁰⁰⁹ 2008, and who has not previously submitted
18 a registration under this subsection shall submit a registration to the department
19 not more than 10 days after the day on which the manufacturer begins selling or
20 offering to sell ^{consumer} video display devices.

21 (d) If a manufacturer changes the brands that it sells or offers to sell, the
22 manufacturer shall update its registration not more than 10 days after making the
23 change.

24 (e) A complete registration is effective on receipt by the department and is valid
25 until the following September 1 unless revoked before that date.

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(f) The department shall review a registration submitted under this section and notify the manufacturer if the registration is not complete. A manufacturer who receives notice under this paragraph shall submit the information needed to complete the registration within 30 days after the day on which it receives the notice.

(4) MANUFACTURER RECYCLING TARGETS, FEES, AND RECYCLING CREDITS. (a)

Payment. To comply with sub. (2) (a) 3., a manufacturer shall pay fees as provided in this subsection with the registration that it submits under sub. (3).

(b) *Registration fees.* 1. The registration fee due in 2008, or the first year that

a manufacturer registers if later than 2008, is \$5,000, except that, if the manufacturer sells fewer than 100 video display devices in this state annually, the fee is \$1,250.

2. In each year after the year in which a manufacturer pays the fee under subd.

1., the manufacturer shall pay a registration fee of \$2,500, except that, if the manufacturer sells fewer than 100 video display devices in this state annually, the registration fee is \$1,250.

(bm) *Shortfall fees.* In addition to the registration fee, beginning in 2009 a

manufacturer shall pay shortfall fees under par. (c) or (d) and under par. (dm) if the amounts calculated under those provisions are positive numbers, except that a manufacturer is not required to pay shortfall fees until its video display devices have been sold or offered for sale to households in this state for 3 full program years.

(c) *Annual shortfall fee in 2009.* The annual shortfall fee to be paid in 2009 by

a manufacturer is calculated as follows:

1. Determine the manufacturer's target recycling weight by multiplying the

number of pounds of the manufacturer's video display devices sold to households in

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1 this state, as reported in ~~2009~~ under sub. (5) (a), by 0.6 and multiplying the product
2 by 0.75.

3 2. Determine the actual recycling weight by adding the weight of covered
4 electronic devices recycled by or on behalf of the manufacturer during the last 3
5 program quarters of program year ~~2007-08~~ ²⁰⁰⁸⁻⁰⁹ as determined under par. (f) 2., plus the
6 number of recycling credits that a manufacturer elects to use, as reported to the
7 department under sub. (5) (c) 3.

8 3. Subtract the actual recycling weight, determined under subd. 2., from the
9 target recycling weight, determined under subd. 1.

10 4. Multiply the amount determined under subd. 3. by the estimated cost of
11 recycling determined as follows:

12 a. Fifty cents per pound for a manufacturer if the weight of covered electronic
13 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
14 is less than 50 percent of the target recycling weight, determined under subd. 1.

15 b. Forty cents per pound for a manufacturer if the weight of covered electronic
16 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
17 is at least 50 percent but not more than 90 percent of the target recycling weight,
18 determined under subd. 1.

19 c. Thirty cents per pound for a manufacturer if the weight of covered electronic
20 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
21 is more than 90 percent of the target recycling weight, determined under subd. 1.

22 (d) *Annual shortfall fee after* ²⁰¹⁰ ~~2009~~ The annual shortfall fee to be paid by a
23 manufacturer in a year after ~~2009~~ ²⁰¹⁰ is calculated as follows:

1 1. Determine the manufacturer's target recycling weight by multiplying the
2 number of pounds of the manufacturer's ^{consumer} video display devices sold to households in
3 this state, as reported in that year under sub. (5) (a), by 0.8.

4 2. Determine the actual recycling weight by adding the weight of covered
5 electronic devices recycled by or on behalf of the manufacturer during the previous
6 program year, as determined under par. (f) 1., plus the number of recycling credits
7 that a manufacturer elects to use, as reported to the department under sub. (5) (c)
8 3.

9 3. Subtract the actual recycling weight, determined under subd. 2., from the
10 target recycling weight, determined under subd. 1.

11 4. Multiply the amount determined under subd. 3. by the estimated cost of
12 recycling determined as follows:

13 a. Fifty cents per pound for a manufacturer if the weight of covered electronic
14 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
15 is less than 50 percent of the target recycling weight, determined under subd. 1.

16 b. Forty cents per pound for a manufacturer if the weight of covered electronic
17 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
18 is at least 50 percent but not more than 90 percent of the target recycling weight,
19 determined under subd. 1.

20 c. Thirty cents per pound for a manufacturer if the weight of covered electronic
21 devices recycled by or on behalf of the manufacturer, as determined under subd. 2.,
22 is more than 90 percent of the target recycling weight, determined under subd. 1.

23 (dm) *Quarterly shortfall fee.* 1. The quarterly shortfall fees paid by a
24 manufacturer in a program year are based on the actual recycling weight determined
25 under par. (f) 2. for each program quarter of the previous program year, except that

1 in program year 2009-10 a manufacturer is not required to pay a quarterly shortfall
2 fee based on actual recycling weight for the first program quarter of the previous
3 program year.

4 2. The quarterly shortfall fee based on a program quarter of a program year is
5 calculated as follows:

6 a. Determine the manufacturer's target recycling weight by multiplying the
7 number of pounds of the manufacturer's video display devices sold to households in
8 this state, as reported in the year in which the fee is paid under sub. (5) (a), by 0.6
9 for a program quarter in the program year ending on June 30, 2009, and by 0.8 for
10 a program quarter in every other program year and multiplying the product by 0.15.

11 b. Determine the actual recycling weight by adding the weight of covered
12 electronic devices recycled by or on behalf of the manufacturer during the program
13 quarter as determined under par. (f) 2. to the number of recycling credits that the
14 manufacturer elects to use, as reported to the department under sub. (5) (c) 3.

15 c. Subtract the actual recycling weight, determined under subd. 2. b., from the
16 target recycling weight, determined under subd. 2. a.

17 d. Multiply the amount determined under subd. 2. c. by the estimated cost of
18 recycling determined under subd. 5.

19 5. The estimated cost of recycling is determined as follows:

20 a. Fifty cents per pound for a manufacturer if the number of pounds of covered
21 electronic devices recycled by or on behalf of the manufacturer, as determined under
22 subd. 2. b., is less than 50 percent of the target recycling weight, determined under
23 subd. 2. a.

24 b. Forty cents per pound for a manufacturer if the number of pounds of covered
25 electronic devices recycled by or on behalf of the manufacturer, as determined under

1 subd. 2. b., is at least 50 percent but not more than 90 percent of the target recycling
2 weight, determined under subd. 2. a.

3 c. Thirty cents per pound for a manufacturer if the number of pounds of covered
4 electronic devices recycled by or on behalf of the manufacturer, as determined under
5 subd. 2. b., is more than 90 percent of the target recycling weight, determined under
6 subd. 2. a.

7 (e) *Recycling credits.* If, for a program year, the weight of covered electronic
8 devices recycled by or on behalf of a manufacturer, as determined under par. (f) 1.,
9 exceeds the target recycling weight determined under par. (c) 1. or (d) 1., the
10 manufacturer has a number of recycling credits equal to the number of excess
11 pounds. The manufacturer may use the credits for the purpose of par. (c) 2., (d) 2.,
12 or (dm) 2. b. for any of the 3 succeeding program years or may sell credits to another
13 manufacturer for use for any of the 3 succeeding program years.

14 (f) *Weight recycled.* 1. The weight of covered electronic devices recycled by or
15 on behalf of a manufacturer for a program year is the weight reported under sub. (5)
16 (b) for that program year, except that if the manufacturer reports separately the
17 weight of covered electronic devices used by households in rural counties and used
18 by households in urban counties for a program year, the weight is determined by
19 adding the weight used by households in urban counties in that program year and
20 1.5 times the weight used by households in rural counties in that program year.

21 2. The weight of covered electronic devices recycled by or on behalf of a
22 manufacturer for a program quarter is the weight reported under sub. (5) (b) for that
23 program quarter, except that if the manufacturer reports separately the weight of
24 covered electronic devices used by households in rural counties and used by
25 households in urban counties for a program quarter, the weight is determined by

1 adding the weight used by households in urban counties in that ~~program quarter~~ ^{period} and
2 1.5 times the weight used by households in rural counties in that ~~program quarter~~ ^{period}

3 (5) MANUFACTURERS REPORTING REQUIREMENTS. (a) *Weight of video display*
4 *devices sold.* 1. Except as provided in subd. 3., with the registration that it submits
5 under sub. (3) beginning in ²⁰¹⁰ 2009, a manufacturer shall report one of the following to
6 the department:

7 a. The total weight of each model of its ^{consumer} video display devices sold to households
8 in this state during the program year that began 36 months before the beginning of
9 the program year in which the report is made.

10 b. The total weight of all of its ^{consumer} video display devices sold to households in this
11 state during the program year that began 36 months before the beginning of the
12 program year in which the report is made.

13 c. An estimate of the total weight of its ^{consumer} video display devices sold to households
14 in this state during the program year that began 36 months before the beginning of
15 the program year in which the report is made ^{move} based on national sales data.

16 2. A manufacturer shall include in the report required under subd. 1. a
17 description of how the manufacturer calculated the weight reported under subd. 1.

18 3. A manufacturer is not required to report under subd. 1. until its ^{consumer} video display
19 devices have been sold or offered for sale to households in this state for one full
20 program year.

21 (b) *Weight of covered electronic devices recycled.* With the registration that it
22 submits under sub. (3) in ²⁰¹⁰ 2009, a manufacturer shall report to the department
23 the total weight of covered electronic devices used by households in this state that were
24 collected by or delivered to the manufacturer for recycling by the manufacturer or
25 that were collected by or delivered to a registered recycler for recycling on behalf of

1 the manufacturer during each of the last 3 program quarters of the preceding
2 program year. Beginning in ~~2010~~²⁰¹¹ with the registration that it submits under sub.
3 (3), a manufacturer shall report to the department the total weight of covered
4 electronic devices used by households in this state that were collected by or delivered
5 to the manufacturer for recycling by the manufacturer or that were collected by or
6 delivered to a registered recycler for recycling on behalf of the manufacturer during
7 each program quarter in the preceding program year. A manufacturer may report
8 separately the weight of covered electronic devices used by households in rural
9 counties and used by households in urban counties for the purpose of obtaining the
10 weight adjustment under sub. (4) (f) for covered electronic devices received from
11 households in rural counties.

12 (c) *Recycling credits.* With the registration that it submits under sub. (3),
13 beginning in ~~2009~~²⁰¹⁰, a manufacturer shall report all of the following to the department:

14 1. The number of recycling credits that the manufacturer purchased during the
15 preceding program year.

16 2. The number of recycling credits that the manufacturer sold during the
17 preceding program year.

18 3. The number of recycling credits that the manufacturer elects to use in the
19 calculation of its shortfall fees under sub. (4) (c) 2., (d) 2., and (dm) 2. b.

20 4. The number of recycling credits available to the manufacturer after
21 calculating its shortfall fees under sub. (4) (c) 2., (d) 2., and (dm) 2. b.

22 **(6) MANUFACTURER ASSESSMENT REQUIREMENTS.** A manufacturer shall conduct
23 and document assessments of the performance of any registered collectors and
24 registered recyclers who collect or recycle covered electronic waste on its behalf,
25 including assessments of whether the registered recyclers comply with sub. (8). A

1 manufacturer shall maintain, for 3 years, documentation of its assessments under
2 this subsection.

3 (7) COLLECTORS. (a) *Registration*. 1. Beginning on August 1, 2008, no collector
4 may deliver or arrange for the delivery of covered electronic devices to a registered
5 recycler unless the person submits to the department an annual registration, using
6 a form prescribed by the department, that includes all of the following:

7 a. The name, address, and contact information of a responsible individual.

8 b. The ^{street} address ^{of all facilities} at which the person operates as a collector.

9 c. A certification that the person has all required governmental licenses or
10 other approvals and has complied, and will continue to comply, with the
11 requirements of this subsection and with applicable health, environmental, safety,
12 and financial responsibility requirements.

13 2. A complete registration is effective on receipt by the department and is valid
14 until the following August 1 unless suspended or revoked before that date.

15 (b) *Reporting*. No later than ^{and records} November 1, February 1, May 1, and August 1 of
16 each program year, beginning ^{August} November 1, 2008, a registered collector shall report
17 to the department the total weight of covered electronic devices collected in this state
18 during the preceding program ^{year} quarter and ^{changes of} a list of all registered recyclers to whom
19 the collector delivered covered electronic devices. ^{Insert 16-19}

20 (8) RECYCLERS. (a) *Registration*. 1. Beginning on August 1, 2008, no person
21 may operate as a recycler receiving covered electronic devices on behalf of a
22 manufacturer who is registered under sub. (3) unless the person submits to the
23 department an annual registration, using a form prescribed by the department, that
24 includes all of the following:

25 a. The name, address, and contact information of a responsible individual.

a. required under par. (d)

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b. The ^{street} address of all facilities at which the person conducts recycling.

c. ^{of the} A certification that the person has complied, and will continue to comply, with the requirements under this subsection.

d. Documentation of the liability insurance required under this subsection.

2. A ^{complete} registration is effective on receipt by the department and is valid until the following August 1 unless suspended or revoked before that date.

(b) ^{and records} Reporting. No later than November 1, February 1, May 1, and August 1 of each program year, beginning with ^{August} November 1, 2008, a registered recycler shall report to the department the total weight of covered electronic devices collected in this state that the recycler received for recycling on behalf of a manufacturer registered under sub. (3) during the preceding program ^{year} quarter and the name of the manufacturer. ^{Insert 17-12}

(c) *Operational requirements.* 1. A registered recycler shall maintain liability insurance coverage in the amount of at least \$1,000,000 for environmental releases, accidents, and other emergencies.

2. A registered recycler may not use prison labor to recycle covered electronic devices the weight of which was or will be reported under sub. (5) (b).

3. Except as provided under par. (e), a registered recycler shall demonstrate that it has implemented, or commit itself to implementing within one year of the recycler's initial registration under par. (a), an environmental management system, as defined in s. 299.83 (1) (b), for each facility at which it conducts recycling, that is in compliance with the standards for environmental management systems issued by the International Organization for Standardization or determined by the department to be a functionally equivalent environmental management system, as defined in s. 299.83 (1) (dg).

Insert 17-12

1 4. Except as provided under par. (e), at least once every 3 years a registered
2 recycler shall have an environmental management system audit, as defined in s.
3 299.83 (1) (bm), of its environmental management system under subd. 3. performed
4 by an outside environmental auditor, as defined in s. 299.83 (1) (dr), approved by the
5 department.

6 5. A registered recycler shall comply with any other operational requirement
7 in rules promulgated under par. (e). *As a condition of registration under par. (a)*

8 (d) *Certification*. No later than August 1 of each year, beginning in 2009, a
9 registered recycler shall submit to the department a certification that states that the
10 registered recycler, and all persons who conduct recycling activities on covered
11 electronic devices or materials derived from covered electronic devices after the
12 registered recycler completes its recycling activities on the covered electronic devices
13 or materials: *does all of the following*

14 1. Comply with applicable health, environmental, safety, and financial
15 responsibility requirements, including the requirements in 40 CFR 261.39;

16 2. Have all required governmental licenses or other approvals;

17 3. Possess liability insurance coverage in the amount of at least \$1,000,000 for
18 environmental releases; and

19 4. Use no prison labor to recycle covered electronic devices the weight of which
20 was or will be reported under sub. (5) (b).

21 (e) *Modifying or adding requirements by rule*. The department shall review the
22 requirements under par. (c) 3. and 4. *1. to 4.* to determine whether it is necessary to modify
23 or add to those requirements so that the requirements applicable to registered
24 recyclers are at least equivalent to nationally recognized standards for recycling
25 covered electronic devices. If the department determines that it is necessary to

Insert 15-16

1 modify or add to the requirements under par. (c) ^{1. to 8.} ~~3. and 4.~~ the department shall
2 promulgate rules that modify or add to the requirements so that they are at least
3 equivalent to nationally recognized standards for recycling covered electronic
4 devices.

5 **(9) RETAILERS.** (a) *Reporting to manufacturers.* No later than May 1 of each
6 program year, beginning with May 1, 2009, a retailer shall report to a manufacturer,
7 using a format specified or approved by the department, the number of video display
8 devices, by model, labeled with the manufacturer's brand that the retailer sold to
9 households in this state during each program quarter during the previous program
10 year.

11 (b) *Providing information to purchasers.* A retailer who sells new ^{consumer} video display
12 devices for use by households shall provide to purchasers information describing how
13 ^{consumer} video display ^{of covered electronic} devices can be collected and recycled and a description of the
14 prohibitions in s. 287.07 (5) (a). A retailer may satisfy this requirement by providing
15 a toll-free number for receiving the information and a description of how to access
16 the department's Internet site under sub. (10) (a). A retailer who sells through a
17 catalog may provide the information in the catalog. A retailer who sells through the
18 Internet may provide the information on its Internet site.

19 **(9m) RECORD KEEPING AND INSPECTION.** A person subject to sub. (3), (7), (8), or
20 (9) shall maintain records related to the program under this section and reports
21 required under this section for at least 3 years. The department may inspect records
22 of a person subject to sub. (3), (7), (8), or (9) that are related to the program under this
23 section.

24 **(10) POWERS AND DUTIES OF THE DEPARTMENT.** (a) *Internet site; manufacturers.*
25 The department shall maintain an Internet site on which the department lists the

1 names of manufacturers who are registered under sub. (3) and the names of the
2 brands listed in the manufacturers' registrations. The department shall update the
3 information on the Internet site promptly upon receipt of a new or revised
4 registration. The department shall include on the Internet site a statement that this
5 section applies only to ^{consumer} video display devices sold for household use and that the list
6 of manufacturers is not a list of manufacturers qualified to sell video display devices
7 for industrial, commercial, or other nonhousehold uses. The department shall also
8 include on the Internet site the contact information provided by manufacturers
9 under sub. (3) (a) 2.

10 (am) *Internet site; recyclers.* The department shall maintain an Internet site
11 on which the department lists the names of registered recyclers. The department
12 shall update the information on the Internet site promptly upon receipt of a new or
13 revised registration.

14 (b) *Providing information.* Except as provided in par. (bm), the department
15 shall make the information provided in registration statements and reports under
16 subs. (3), (5), (7), and (8) available to manufacturers, retailers, and the public.

17 (bm) *Confidentiality.* 1. The department shall keep confidential any part of a
18 record, report, or other information obtained in the administration of this section
19 upon receiving an application for confidential status by any person containing a
20 showing satisfactory to the department that the part of a record, report, or other
21 information would, if made public, divulge a method or process that is entitled to
22 protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

23 2. If the department refuses to release information on the grounds that it is
24 confidential under subd. 1. and a person challenges that refusal, the department
25 shall inform the affected participant of that challenge. Unless the participant

1 authorizes the department to release the information, the participant shall pay the
2 reasonable costs incurred by this state to defend the refusal to release the
3 information.

4 3. Subdivision 1. does not prevent the disclosure of any information to a
5 representative of the department for the purpose of administering this section or to
6 an officer, employee, or authorized representative of the federal government for the
7 purpose of administering federal law. When the department provides information
8 that is confidential under subd. 1. to the federal government, the department shall
9 also provide a copy of the application for confidential status.

10 (c) *Review of formula.* 1. The department shall annually review all of the
11 following:

- 12 a. The number by which the weight of ^{consumer} video display devices sold is multiplied
13 under sub. (4) (d) 1. and (dm) 2. a. to determine target recycling weight.
14 b. The estimated cost of recycling under sub. (4) (d) 4. and (dm) 5.
15 c. The registration fee ^s under sub. (4) (b) 2.
16 d. The multiplier for the weight of covered electronic devices collected from
17 households in rural counties under sub. (4) (f).

18 2. If the department determines that any of the values under subd. 1. a. to d.
19 should be changed in order to improve the effectiveness of the program under this
20 section or to provide more recycling opportunities to rural areas of this state, the
21 department shall report its recommendations for changes under s. 13.172 (3) to the
22 committee of each house of the legislature with jurisdiction over solid waste policy.

23 (d) *Annual report.* Before December 1 of each year, beginning in ²⁰¹² ~~2011~~ the
24 department shall provide a report on the program under this section to the

1 legislature under s. 13.172 (2) and to the governor. The department shall include all
2 of the following in the report:

3 1. The total weight of covered electronic devices recycled.

4 2. A summary of the information provided by manufacturers and recyclers
5 under subs. (5) and (8).

6 3. Information concerning the recycling programs used by manufacturers to
7 recycle covered electronic devices.

8 4. Information concerning the collection and recycling of covered electronic
9 devices by persons other than registered manufacturers, collectors, and recyclers.

10 5. Information about any disposal of covered electronic devices in landfills in
11 this state.

12 6. A description of any actions taken to enforce the requirements of this section.

13 7. Any recommendations to apply the requirements under sub. (2) to additional
14 kinds of devices.

15 (e) *Report concerning federal legislation.* If a federal law relating to the
16 collection and recycling of ^{consumer} video display devices sold in the United States is enacted,
17 the department shall prepare a report describing the effect of the federal law and
18 shall submit the report under s. 13.172 (3) to the committee of each house of the
19 legislature with jurisdiction over solid waste policy.

20 (f) *Outreach and communication.* ^{1.} The department shall promote public
21 participation in the collection and recycling of covered electronic devices by and on
22 behalf of manufacturers through education and outreach activities. The department
23 shall facilitate communications between local governments, persons operating solid
24 waste collection and recycling centers, and manufacturers to ensure that

1 manufacturers are aware of covered electronic devices that are available for
2 recycling.

Insert
23-2

3 (g) *Cooperation with other states.* The department may cooperate with other
4 states to effectuate the program under this section. The department may, with other
5 states, operate a regional system for creating, trading, and selling credits for
6 recycling covered electronic devices.

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(h) *Suspension and revocation.* The department shall revoke the registration
of a manufacturer who violates sub. (2) (a), (3), (4), (5) or (6). The department may
suspend or revoke the registration of a collector or recycler who violates sub. (7) or
(8).

(i) *Additional covered electronic devices.* If the department determines that the
disposal of a kind of electronic device that is not listed in sub. (1) (f) in a solid waste
disposal facility may be harmful to human health or the environment, the
department may promulgate a rule specifying that the kind of electronic device is a
covered electronic device and is subject to s. 287.07 (5) (a).

(j) *Audits.* The department may perform or contract for the performance of an
audit of the activities of a registered collector or registered recycler. If the
department performs or contracts for the performance of an audit of a collector or
recycler during the first 3 years in which the collector or recycler is registered under
sub. (7) or (8) (a), the collector or recycler shall pay 25 percent of the cost of the audit.
If the department performs or contracts for the performance of an audit of a collector
or recycler after the first 3 years in which the collector or recycler is registered, the
collector or recycler shall pay 50 percent of the cost of the audit.

Insert
23-23

(11) PENALTIES. (a) *Manufacturer.* Any manufacturer who violates this section
may be required to forfeit not more than \$10,000 for each violation.

1 (b) *Others*. Any person, other than a manufacturer, who violates this section
2 may be required to forfeit not more than \$1,000 for each violation.

3 **SECTION 7.** 287.91 (2) of the statutes is amended to read:

4 287.91 (2) Notwithstanding sub. (1) and s. 287.95 (3) (a), the attorney general
5 may enforce s. 287.07 (3) and, (4), and (5) by seeking injunctive relief against any
6 person violating those provisions.

7 **SECTION 8.** 287.95 (1) of the statutes is amended to read:

8 287.95 (1) Any person who violates s. 287.07 (1m) or (5) may be required to
9 forfeit \$50 for a first violation, may be required to forfeit \$200 for a 2nd violation and
10 may be required to forfeit not more than \$2,000 for a 3rd or subsequent violation.

11 **SECTION 9.** 287.97 of the statutes is amended to read:

12 **287.97 Penalties.** Any person who violates this chapter, except s. 287.07,
13 287.08, 287.17, or 287.81, or any rule promulgated under this chapter, except under
14 s. 287.07, 287.08 or 287.81, may be required to forfeit not less than \$10 nor more than
15 \$1,000 for each violation.

16 **SECTION 10. Nonstatutory provisions.**

17 (1) SUBMISSION OF PROPOSED RULES. If the department of natural resources
18 determines that it is necessary to promulgate rules under section 287.17 (8) (e) of the
19 statutes, as created by this act, the department shall submit the rules in proposed
20 form to the legislative council staff under section 227.15 (1) of the statutes no later
21 than the first day of the 36th month beginning after the effective date of this
22 subsection.

23 (2) PERMANENT POSITION AUTHORIZATION. The authorized FTE positions for the
24 department of natural resources are increased by 1.0 SEG position, to be funded from

1 the appropriation under section 20.370 (2) (hr) of the statutes, as created by this act,
2 to administer the electronic waste recycling program. #

3 (3) PROJECT POSITION AUTHORIZATION. (a) The authorized FTE positions for the
4 department of natural resources are increased by 1.0 SEG 2-year project position,
5 to be funded from the appropriation under section 20.370 (2) (hq) of the statutes, for
6 start up of the electronic waste recycling program.

7 (b) The authorized FTE positions for the department of natural resources are
8 increased by 1.0 SEG 2-year project position, to be funded from the appropriation
9 under section 20.370 (2) (hr) of the statutes, as created by this act, for start up of the
10 electronic waste recycling program.

11 **SECTION 11. Fiscal changes.** ← create auto ref (a)

12 (1) FUNDING FOR POSITIONS. In the schedule under section 20.005 (3) of the
13 statutes for the appropriation to the department of natural resources under section
14 20.370 (2) (hq) of the statutes, as affected by the acts of 2007, the dollar amount is
15 increased by \$26,700 for fiscal year 2007-08 and the dollar amount is increased by
16 \$160,000 for fiscal year 2008-09 to increase the authorized FTE positions for the
17 department by 1.0 SEG position for administration of the electronic waste recycling
18 program and to fund the 1.0 FTE SEG project position authorized under SECTION 10
19 (3) (a) of this act. ← a.f.

20 (END)

Insert
25-19

D-Note

1

Analysis Insert

This bill relates to the collection, recycling, and disposal of certain electronic devices.

MANUFACTURERS OF VIDEO DISPLAY DEVICES

In general

This bill imposes a number of requirements on manufacturers of consumer video display devices. A consumer video display device is a television or a computer monitor that has a tube or screen of at least four inches in the longest diagonal dimension and that is marketed for use by individuals.

Under the bill, beginning on September 1, 2009, a manufacturer may not sell a consumer video display device at retail, or to a retailer for resale, unless the manufacturer registers with the Department of Natural Resources (DNR), collects and recycles or arranges for the collection and recycling of certain electronic devices, makes required reports, and pays certain fees.

The bill also, ^{move} beginning on February 1, 2010, prohibits a retailer from selling a consumer video display device unless the retailer determines that the manufacturer is registered with DNR.

Registration of manufacturers

imitations on
The bill requires a manufacturer to register annually with DNR. The registration must include a list of the manufacturer's brands that are sold in this state, contact information, and a certification that the manufacturer complies with the requirements in the bill. Beginning in 2010, the bill requires a manufacturer to disclose, when it registers, whether its consumer video display devices comply with European Union requirements relating to the presence of certain hazardous substances, including lead and mercury, in electronic devices.

The bill authorizes DNR to revoke the registration of a manufacturer that violates the requirements in the bill.

* *Collection and recycling; reporting*

The bill requires a manufacturer of consumer video display devices to collect and recycle or arrange for the collection and recycling of certain electronic devices that were used by individuals. Collecting more electronic devices, by weight, lowers the shortfall fees that a manufacturer is required to pay, as described below. A manufacturer is not limited to collecting electronic devices made by the manufacturer and is not limited to collecting consumer video display devices. The electronic devices that are counted as satisfying a manufacturer's obligation to collect and recycle (covered electronic devices) include, in addition to consumer video display devices, computers, computer peripherals, digital video players, and video recorders used by individuals. Electronic devices used by businesses do not count toward a manufacturer's obligation to collect and recycle.

Under the bill, a manufacturer may not charge an individual a fee when the individual relinquishes a covered electronic device for collection and recycling.

The bill requires a manufacturer to make annual reports to DNR of the weight of its consumer video display devices sold to individuals in this state and of the weight of covered electronic devices collected by or on behalf of the manufacturer.

Fees

X The bill requires a manufacturer to pay an annual registration fee of \$5,000, except that the fee for a manufacturer that sells at least 25 but fewer than 100 consumer video video display devices in this state in a year is \$1,250 and a manufacturer that sells fewer than 25 consumer video display devices is not required to pay a registration fee.

The bill also provides for shortfall fees. Whether a manufacturer must pay a shortfall fee and the amount of the fee is based on the weight of a manufacturer's consumer video display devices sold and the weight of covered electronic devices recycled by or on behalf of the manufacturer. Manufacturers are allowed to count covered electronic devices collected from individuals in rural counties (identified in the bill) as weighing 1.5 times their actual weight.

If a manufacturer meets its target recycling weight, which is 0.6 times the weight of its consumer video display devices sold the first year and 0.8 times the weight of its consumer video display devices sold after the first year, it is not required to pay a variable fee. If a manufacturer exceeds its target recycling weight, it receives credits, which it may use to meet its target recycling weight in any of the next three years or which it may sell to other manufacturer.

Penalties

A manufacturer may be required to pay a penalty of not more than \$10,000 for each violation of the maximum forfeiture for a violation by any person of \$1,000.

Does this see change paragraph in title, i.e., "reporting"?

COLLECTORS

of A collector is an entity that receives covered electronic devices from individuals and delivers them to recyclers. The bill requires a collector to register annually with DNR if the collector delivers to a recycler that recycles covered electronic devices on behalf of a manufacturer. The bill requires a collector to certify annually that it complies with the requirements in the bill and with applicable health, environmental, safety, and financial responsibility requirements. The bill also requires a collector to report to DNR annually the total weight of covered electronic devices collected and the names of recyclers to whom the collector delivered covered electronic devices.

RECYCLERS

A recycler is an entity that accepts covered electronic devices from individuals and collectors and prepares the devices for use in manufacturing or recovers useable materials from the devices. The bill requires a recycler to register annually with DNR if it recycles covered electronic devices on behalf of a manufacturer.

The bill requires a registered recycler to comply with a number of requirements, including maintaining liability insurance, ensuring that it has funds available to wind up its business and repair any environmental contamination caused by the

of business, and maintaining records that show the weight of materials that it recovers from covered electronic devices that ^{are} actually recycled and the weight that ^{of materials} is disposed of in a landfill or incinerated. The bill requires a registered recycler to certify annually that it complies with the requirements in the bill and with applicable requirements under other laws concerning the storage, transportation, processing, and exporting of covered electronic devices and materials recovered from those devices and health and safety training for employees ^{and}.

The bill prohibits a recycler from using prison labor to recycle covered electronic devices on behalf of a manufacturer.

The bill requires a recycler to report to DNR annually the total weight of covered electronic devices collected in this state that it recycles on behalf of manufacturers.

RETAILERS

The bill requires a retailer to provide information to purchasers describing how covered electronic devices can be collected and recycled and describing the prohibitions on disposing of electronic devices in landfills, as described below.

OTHER PROVISIONS

Landfill and incineration ban

Current law prohibits various items, including lead acid batteries and major appliances, from being disposed of in landfills and from being incinerated. This bill prohibits the disposal in landfills and the incineration of televisions, computer monitors, computers, computer peripherals, facsimile machines, digital video players, video recorders, and telephones with video displays. The prohibition takes effect on September 1, 2010. The bill authorizes DNR to expand the prohibition to other kinds of electronic devices if disposing of the electronic devices in landfills may be harmful to human health or the environment and also authorizes DNR to exempt a kind of electronic device from the prohibition.

Audits

This bill authorizes DNR to perform or contract for the performance of an audit of the activities of a registered collector or a registered recycler. The bill requires the collector or recycler to pay a portion of the cost of the audit.

1 **Insert 2-5**

2 ^{not} devices, unless the device is of a kind exempted by a rule promulgated under
3 s. 287.17 (10) (i)

4 **Insert 4-9**

5 ^{not}, unless the device is of a kind exempted by a rule promulgated under s. 287.17
6 (10) (i)

7 **Insert 8-11**

1 ~~not~~ which of the following applies:

2 (a) ^{e 1.} The manufacturer's consumer video display devices do not contain any of
3 the substances covered by the European Union directive on the restriction of the use
4 of hazardous substances in electrical and electronic equipment, 2002/95/EC or a
5 successor directive, in excess of a maximum concentration value provided in the
6 directive.

7 (b) ^{e 2.} The manufacturer's consumer video display devices contain one or more of
8 the substances covered by the European Union directive on the restriction of the use
9 of hazardous substances in electrical and electronic equipment, 2002/95/EC or a
10 successor directive, in excess of a maximum concentration value provided in the
11 directive, but comply with exemptions granted under the directive.

12 (c) ^{e 3.} The manufacturer's consumer video display devices contain one or more of
13 the substances covered by the European Union directive on the restriction of the use
14 of hazardous substances in electrical and electronic equipment, 2002/95/EC or a
15 successor directive, in excess of a maximum concentration value provided in the
16 directive and do not comply with exemptions granted under the directive.

17 **Insert 9-1**

18 ~~not~~ Within 20 days after the receipt of a registration under this subsection,

19 **Insert 9-8**

20 ~~not~~ If the manufacturer sells at least 100 consumer video display devices in this
21 state annually, the manufacturer shall pay a

22 **Insert 9-9**

23 ~~not~~ as provided under sub. (10) (k).

24 **Insert 9-11-A**

25 ~~not~~ manufacturer shall pay a registration

Insert 9-11-B

3. If the manufacturer sells fewer than 25[✓] consumer video display devices in this state annually, the manufacturer is not required to pay a registration fee.

Insert 16-19 ³

person may operate as a

Insert 16-19

~~no #~~ A registered collector shall maintain records of the sources of covered electronic devices it collects and of the registered recyclers to whom the collector delivers covered electronic devices.

Insert 17-12

~~no #~~ A registered recycler shall maintain records of the sources of covered electronic devices collected in this state that the recycler receives for recycling on behalf of a manufacturer registered under sub. (3).[✓]

Insert 17-17

3. A registered recycler shall maintain proof of financial responsibility ensuring the availability of ^{funds} funds in an amount sufficient to cover the estimated costs of paying another person to close the facilities at which recycling is conducted, including managing any remaining covered electronic devices or materials derived from covered electronic devices and performing any necessary environmental cleanup. The registered recycler shall maintain, and provide to the department[✓] upon request, an itemized statement of the estimated costs in a form specified by the department[✓] and documentation of the source of the estimates. The registered recycler may provide the proof of financial responsibility required under this subdivision using one of the following:[✓]

- a. A surety bond.

1 b. A deposit of cash, certificates of deposit, or securities issued by the federal
2 government.

3 c. An escrow account.

4 d. An irrevocable letter of credit.

5 e. An irrevocable trust.

6 4. A registered recycler shall maintain, and make available to manufacturers
7 upon request, records that can be used to determine, for each program year, the total
8 weight of covered electronic devices received by the recycler, the weight of materials
9 derived from covered electronic devices that the registered recycler sends to another
10 person for use in a manufacturing process or for recovery of useable materials, and
11 the weight of materials derived from covered electronic devices that the registered
12 recycler sends to be disposed of in a solid waste disposal facility or burned at a solid
13 waste treatment facility.

14 5. A registered recycler shall maintain, and make available to manufacturers
15 upon request, records that do all of the following:

16 a. Identify each person who received from the registered recycler materials
17 derived from covered electronic devices. ✓

18 b. If a person identified under subd. 5. a. does not use the materials in a
19 manufacturing process, identify each person who receives from the person identified
20 under subd. ⁵4² a. materials derived from covered electronic devices. ✓

21 6. A registered recycler shall maintain records that show the actions that it
22 takes to ensure that the persons identified under subd. 5. use the materials derived
23 from covered electronic devices in a manufacturing process or for recovery of useable
24 materials.

1 7. A registered recycler shall prepare and maintain a written contingency plan
2 for responding to releases of hazardous substances that complies with the
3 requirements in rules promulgated under s. 291.05 (6).

4 8. A registered recycler shall prepare and maintain a written plan for the
5 identification and management of hazardous materials.

6 **Insert 18-16**

7 2. Complies with federal , state, and local requirements concerning the storage,
8 transportation, processing, and exporting of covered electronic devices and materials
9 derived from covered electronic devices, including the requirements in 40 CFR
10 261.39 (a) (5), 261.39, and 273.20 and requirements in rules promulgated under s.
11 291.05.

12 3. Complies with federal requirements under 29 CFR 1910.120 concerning
13 occupational and environmental health and safety training for employees.

14 **Insert 23-2**

15 2. The department shall assist recyclers to identify federal and state
16 requirements concerning the storage, transportation, export, and processing of
17 covered electronic devices and materials derived from covered electronic devices.
18 The department shall assist collectors to identify health, environmental, safety, and
19 financial responsibility requirements applicable to collectors.

20 **Insert 23-15**

21 ~~186~~ no If the department determines that the disposal of a kind of electronic device
22 that is listed in sub. (1) (f) or s. 287.07 (5) (a) in a solid waste facility is not harmful
23 to human health and is not harmful to the environment or if the department
24 determines that it is not feasible to require the recycling of a kind of electronic device
25 that is listed in sub. (1) (f) or s. 287.07 (5) (a), the department may promulgate a rule

1 specifying that the kind of electronic device is not a covered electronic device, is not
2 subject to s. 287.07 (5) (a), or both.

3 **Insert 23-23**

4 (k) *Modification of registration fee.* The department may modify the
5 registration fee under sub. (4) (b) 1. by rule.

6 **Insert 25-19**

create auto ref (b)

7

(b) CONTINUED FUNDING FOR POSITIONS. In the schedule under section 20.005 (3)

8 of the statutes for the appropriation to the department of natural resources under

9 section 20.370 (2) (hq) of the statutes, as affected by the acts of 2009, the dollar

10 amount is increased by \$160,000 for the first fiscal year of the fiscal biennium in

11 which this subsection takes effect to provide continued funding for the positions

12 authorized under this act. In the schedule under section 20.005 (3) of the statutes

13 for the appropriation to the department of natural resources under section 20.370 (2)

14 (hq) of the statutes, as affected by the acts of 2009, the dollar amount is increased

15 by \$160,000 for the second fiscal year of the fiscal biennium in which this subsection

16 takes effect to provide continued funding for the positions authorized under this

17 act.

18

SECTION 1. Effective dates. This act takes effect on the day after publication,

19 except as follows:

*cancel the subsection insert 25-19
ref a.r. (a) (2) a.r. (b)*

20 (1) SECTION takes effect on the day after publication or the 2nd day after

21 publication of the 2009-11 biennial budget act, whichever is later.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0944/P1dn

RCT...

Date

John Anderson:

This is a preliminary draft of the proposal concerning the recycling of electronic devices. The draft is based on Senate Substitute Amendment 1 to 2007 Senate Bill 397 with numerous changes, primarily based on instructions from DNR. I have also made some changes intended to improve consistency and clarity. The draft should be reviewed carefully.

Some of the most extensive changes from last session relate to requirements imposed on registered recyclers (those that recycle covered electronic devices on behalf of manufacturers). Earlier, there had been a request to require registered recyclers to certify that they took certain actions, some of which were not explicitly required under current law or under last year's legislation. I made the point that actions should be required before a person is asked to certify compliance. I have tried to include language that requires registered recyclers to take the actions that are not already required of them (called operation requirements, see proposed s. 287.17 (8) (c)) and then requires recyclers to certify that they comply with those new requirements as well as some requirements that apply to them under current law (see proposed s. 287.17 (8) (d)).

In the course of drafting, I realized that I am uncertain about exactly what requirements do apply to recyclers under current law. One matter that confuses me relates to point 20 of the DNR instructions, which requires recyclers to take three kinds of actions to safeguard occupational health and safety. The instructions indicate that the first kind of action, training personnel, is required under current law and that the other two kinds of actions are not required under current law. However, the instructions refer to current laws as the sources of requirements for all three kinds of activities. I am also not certain whether there is an intent to apply the requirements that are included under point 19 more broadly than they currently apply. It is unclear to me to what extent the intent is to require all registered recyclers to comply with requirements that currently apply to some persons but that do not apply to all recyclers who will have to become registered.

In regard to using cross-references to extend the application of current rules and regulations, it is often difficult to apply requirements that are written to apply to one kind of entity or in one situation to another kind of entity or another situation. One aspect of this problem is that the terms of the existing requirement may simply be

ch.
+ inapplicable to the new entities or situations. It seems to me that this might be the case with the state requirements for contingency plans referred to in the "Explanation/Intent" column for point 20. (I am also confused by the reference to ch. NR 665 rather than NR 664.)

X Also relating to point 20, I have done some research concerning the Emergency Planning and Community Right-to-Know Act (EPCRA) and have not found requirements for a covered business to have a plan for identification and management of hazardous materials. Therefore, the draft does not include a reference to EPCRA. I will look into this matter further.

As requested, this draft authorizes DNR to exclude a type of electronic device from the landfill ban, from the definition of covered electronic device, or from both. I am not sure what the standard should be for making an exclusion. See proposed s. 287.17 (10) (i).

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0944/P1dn
RCT:kjf:jf

December 17, 2008

John Anderson:

This is a preliminary draft of the proposal concerning the recycling of electronic devices. The draft is based on Senate Substitute Amendment 1 to 2007 Senate Bill 397 with numerous changes, primarily based on instructions from DNR. I have also made some changes intended to improve consistency and clarity. The draft should be reviewed carefully.

Some of the most extensive changes from last session relate to requirements imposed on registered recyclers (those that recycle covered electronic devices on behalf of manufacturers). Earlier, there had been a request to require registered recyclers to certify that they took certain actions, some of which were not explicitly required under current law or under last year's legislation. I made the point that actions should be required before a person is asked to certify compliance. I have tried to include language that requires registered recyclers to take the actions that are not already required of them (called operational requirements, see proposed s. 287.17 (8) (c)) and then requires recyclers to certify that they comply with those new requirements as well as with some requirements that apply to them under current law (see proposed s. 287.17 (8) (d)).

In the course of drafting, I realized that I am uncertain about exactly what requirements do apply to recyclers under current law. One matter that confuses me relates to point 20 of the DNR instructions, which requires recyclers to take three kinds of actions to safeguard occupational health and safety. The instructions indicate that the first kind of action, training personnel, is required under current law and that the other two kinds of actions are not required under current law. However, the instructions refer to current law as the source of requirements for all three kinds of activities. I am also not certain whether there is an intent to apply the requirements that are included under point 19 more broadly than they currently apply. It is unclear to me to what extent the intent is to require all registered recyclers to comply with requirements that currently apply to some persons but that do not currently apply to all recyclers who will have to become registered.

In regard to using cross-references to extend the application of current rules and regulations, it is often difficult to apply requirements that are written to apply to one kind of entity or in one situation to another kind of entity or another situation. One aspect of this problem is that the terms of the existing requirement may simply be

inapplicable to the new entities or situations. It seems to me that this might be the case with the state requirements for contingency plans referred to in the "Explanation/Intent" column for point 20. (I am also confused by the reference to ch. NR 665 rather than ch. NR 664.)

Also relating to point 20, I have done some research concerning the Emergency Planning and Community Right-to-Know Act (EPCRA) and have not found requirements for a covered business to have a plan for identification and management of hazardous materials. Therefore, the draft does not include a reference to EPCRA. I will look into this matter further.

As requested, this draft authorizes DNR to exclude a type of electronic device from the landfill ban, from the definition of covered electronic device, or from both. I am not sure what the standard should be for making an exclusion. See proposed s. 287.17 (10) (i).

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Stolzenberg, John
Sent: Tuesday, December 23, 2008 2:40 PM
To: Tradewell, Becky
Subject: FW: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

From: Anderson, John
Sent: Tuesday, December 23, 2008 2:37 PM
To: Moore, Cynthia G - DNR
Cc: Stolzenberg, John; Murray, Sarah C - DNR
Subject: RE: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

Sounds, good. Thanks Cynthia and Sarah.

From: Moore, Cynthia G - DNR [mailto:Cynthia.Moore@Wisconsin.gov]
Sent: Tuesday, December 23, 2008 2:28 PM
To: Anderson, John
Cc: Stolzenberg, John; Murray, Sarah C - DNR
Subject: RE: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

John

Sarah Murray and I reviewed the draft today and the Drafter Note from Becky. Nice work by Becky (and John S I assume), as usual. We found a few modifications which Sarah will be forwarding to you by Friday at the latest - if not later today. Hope this timing fits into your schedule.

We will still need to route the draft and our comments through our legal staff for their review. However, since they might not be able to get to this immediately, we decided to go ahead and forward our comments so you can start working on final revisions. With the exception of the recycler certification requirements, we don't expect they will have much to comment on. And we hope we've addressed possible concerns they might have with recycler requirements.

Happy holidays- John S, I hope you are NOT biking in this weather!

 *Cynthia G Moore*

Great Lakes Program Coordinator
Office of the Great Lakes

12/29/2008

Tradewell, Becky

From: Murray, Sarah C - DNR [Sarah.Murray@wisconsin.gov]
Sent: Friday, December 26, 2008 11:56 AM
To: Anderson, John
Cc: Stolzenberg, John; Tradewell, Becky; Moore, Cynthia G - DNR; Mitchell, Gene R - DNR; Bangert, Suzanne A - DNR
Subject: RE: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste
Attachments: review of draft and drafter notes_122608.doc

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Division of Water

Wisconsin Department of Natural Resources

(☎) phone: (608) 261-4385

(☎) fax: (608) 267-2800

e-mail: Cynthia.moore@wisconsin.gov

From: Anderson, John [mailto:John.Anderson@legis.wisconsin.gov]

Sent: Thursday, December 18, 2008 1:50 PM

To: Moore, Cynthia G - DNR; Stolzenberg, John - LEGIS

Subject: FW: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

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From: Basford, Sarah

Sent: Thursday, December 18, 2008 10:11 AM

To: Sen.Miller

Subject: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

Following is the PDF version of draft LRB 09-0944/P1 and drafter's note.

Division of Water

Wisconsin Department of Natural Resources

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**DNR notes on draft e-waste legislation
December 26, 2008**

Item	Location	Recommended change	Explanation/Intent
1	p. 10, line 15	Delete "new" before "consumer video display device"	Consistency with use of the term "consumer video display device" in all other parts of the bill. DNR will define through guidance how to determine whether consumer VDD manufactured from recycled components would fall under the definition of a VDD
2	p. 11, lines 14-18	Delete entire paragraph	The EU has been working to eliminate most published exemptions, and the hazardous waste program staff indicated this option isn't needed. The manufacturer should simply indicate whether or not they comply with ROHS directives
3	p.12, line 9	Insert "business" between 20 and days (should read 20 business days)	Allows time for holidays and weekends and is consistent with common business practice.
4	p. 12, lines 15-22	Lines 16, 19 and 22: Replace "annually" with "during the previous program year"	Clarify what time period "annual" refers to for the number of VDD sold.
5	p. 13, line 11	Replace "2008-09" with "2009-10"	Correct for program start in 2009
6	p.13, lines 11-13	Delete remainder of this sentence starting with "plus"	Manufacturers will have no carry-over credits after the first year of the program operation.
7	p.15, line 19	Replace "2008-09" with "2009-10"	Correct for program start in 2009
8	p. 16, line 1	Insert "consumer" before video display devices"	Consistency in referring to VDD
9	p. 18, line 3	Insert "applicable" between "all" and "required so that it reads: "A certification that the person has all applicable required..."	Limit the requirement to licenses and approvals that a person would need for collection and transportation of electronic devices.
10	p. 21, lines 1-3	Consider adding note with reference to administrative code to clarify.	From Pat Chabot, DNR hazardous waste program coordinator: I talked with Pete Flaherty (DNR's hazardous waste attorney) about one provision of the proposed bill, s. 287.17(8)(c) 7., which says: "A registered recycler shall prepare and maintain a written contingency plan for responding to releases of hazardous substances that complies with the requirements in rules promulgated under s. 291.05 (6)." Section 291.05(6) e. requires hazardous waste facilities to comply with the DNR rules, and recyclers are not hazardous waste facilities. However, Pete said the proposed bill can make requirements in other statutes apply to recyclers in this bill. I'd suggest adding a note in the proposed bill that says the contingency plan requirements can be found in subchapter D of ch. NR 664 (identical to ch. NR 665). It would provide more specific information to the reader.

11	p. 21, lines 4-5	Delete this requirement	Delete the requirement for a haz waste identification and management plan. These requirements are more stringent than current rules; we don't have the time to develop minimum requirements; we don't want to have to go through rule-making, at least initially. Finally, most recyclers will have to comply with haz and universal waste mgt requirements under current laws, so this requirement is somewhat redundant.
12	p. 21, line 15	Delete reference to 40 CFR 216.41	This code reference addresses reuse of CRTs. Reuse is not covered by this bill.
13	p. 26 lines 9-24	The determination for additions or exemptions should refer not only to disposal but also to incineration (treatment).	The ban prohibits disposal and incineration

Tradewell, Becky

From: Murray, Sarah C - DNR [Sarah.Murray@wisconsin.gov]
Sent: Monday, December 29, 2008 12:18 PM
To: Tradewell, Becky; Anderson, John
Cc: Moore, Cynthia G - DNR; Stolzenberg, John
Subject: RE: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

Thanks, Becky. Here are some more details on what Cynthia and I were thinking on these two items, in case it's helpful in any decision-making.

For item 1, our concern was that just having "new" in one place was inconsistent and potentially confusing if we didn't define "new." We discussed scenarios such as Apple, acting as a retailer, selling refurbished computers; a small, local business that builds computers from individual parts (could be both new and old); and a company like Cascade selling refurbished equipment.

I agree with your assessment that we don't want to prevent someone like Goodwill from selling old models, etc. I think we are certainly primarily targeting sales of new devices--but we were concerned that someone such as Apple could do a lot of minimal refurbishing and not count those VDDs in sales totals, etc. I know we've discussed the refurbished/recycled angle some in the past, and maybe the decision is just to assume that any of these VDDs just fall outside the law, in which case we might want to add "new" in other spots. Or maybe it's not as confusing to have the "new" in one place as Cynthia and I were thinking.

For item 9, I know Cynthia's concern was that we not get into regulations completely unrelated to the electronics recycling process--but maybe this isn't an issue since it is a certification and DNR is not necessarily verifying it.

Not sure how much Cynthia is checking e-mail this week, but she may chime in. Let me know if there's anything else you need from DNR.

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John, please let me know when you are ready for me to proceed with a redraft and whether there are any of the proposed changes that you do not want included.

If you have any questions or would like to discuss the proposal further, please let me know. I will be out of the office until Friday afternoon (the 2nd).

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266-7290

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Tradewell, Becky

From: Moore, Cynthia G - DNR [Cynthia.Moore@Wisconsin.gov]
Sent: Monday, December 29, 2008 2:19 PM
To: Murray, Sarah C - DNR; Tradewell, Becky; Anderson, John
Cc: Stolzenberg, John
Subject: RE: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

I am checking messages occasionally-and having fun not working otherwise.

I was going to check with MI and IL how they dealt with refurbished computers- my recollection is that the legislation only applies to new devices and not ones built from recycled or reused parts. I will be in the office on Friday and can send out a message then, unless Sarah has time to contact Mel (Illinois) and Garth before then. On the second item, as long as the wording is clear that the only regulations that apply are those applicable to the recycling process, I'm not committed to any specific wording.
cynthia

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To: Tradewell, Becky - LEGIS; Anderson, John - LEGIS
Cc: Moore, Cynthia G - DNR; Stolzenberg, John - LEGIS
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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

-0944/p1

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1/7/09 Per John Anderson - go ahead with redraft. OK
to postpone item 3 of 12/26 memo (deleting "new").

Tradewell, Becky

From: Moore, Cynthia G - DNR [Cynthia.Moore@Wisconsin.gov]
Sent: Wednesday, January 07, 2009 3:10 PM
To: Tradewell, Becky; Anderson, John; Murray, Sarah C - DNR
Cc: Stolzenberg, John; Toral Jha; Mitchell, Gene R - DNR
Subject: RE: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste
Importance: Low

Becky

Sorry for the delay in getting back to you on these two items. I'll spare you the details of our discussions and jump to our conclusions- let us know if these make sense.

Item 1. We definitely don't want to discourage the resale of used/refurbished VDDs.

a. Leave "new" as is in the bill on page 9, line 24 and page 10, line 15. This limits the restriction on sales of new VDD and would allow Goodwill to resell a used VDD that was not registered, or had been refurbished but sold under the old brand name.

b. Delete "new" on page 22, line 3- the retailer should provide information on recycling on the sale of any VDD.

Optionally, if there then needs to be a definition of "new consumer VDD" , we would define it as "a VDD sold for the first time under a particular brand name". If someone completely rebuilds a computer and sells it under their own brand name, it would be considered a new VDD. If they rebuild but sell under the original brand name, then it is not new and not regulated under the program.

We could, alternatively, just address this on a case by case basis or through guidance.

Item 9. I think wording this as you suggest - A certification that the person has all governmental licenses or permits that it is required to obtain" - is clearer.

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Sarah

From: Moore, Cynthia G - DNR
Sent: Tuesday, December 23, 2008 2:28 PM
To: Anderson, John - LEGIS
Cc: Stolzenberg, John - LEGIS; Murray, Sarah C - DNR
Subject: RE: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

John

Sarah Murray and I reviewed the draft today and the Drafter Note from Becky. Nice work by Becky (and John S I assume), as usual. We found a few modifications which Sarah will be forwarding to you by Friday at the latest - if not later today. Hope this timing fits into your schedule.

We will still need to route the draft and our comments through our legal staff for their review. However, since they might not be able to get to this immediately, we decided to go ahead and forward our comments so you can start working on final revisions. With the exception of the recycler certification requirements, we don't expect they will have much to comment on. And we hope we've addressed possible concerns they might have with recycler requirements.

Happy holidays- John S, I hope you are NOT biking in this weather!

 *Cynthia G Moore*

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From: Anderson, John [<mailto:John.Anderson@legis.wisconsin.gov>]
Sent: Thursday, December 18, 2008 1:50 PM
To: Moore, Cynthia G - DNR; Stolzenberg, John - LEGIS
Subject: FW: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

Here is a pdraft. Let me know what you think. Thanks. Enjoy the snow. jga

From: Basford, Sarah

Sent: Thursday, December 18, 2008 10:11 AM

To: Sen.Miller

Subject: Draft review: LRB 09-0944/P1 Topic: Electronic waste recycling program and prohibition on landfilling certain electronic waste

Following is the PDF version of draft LRB 09-0944/P1 and drafter's note.