

2007 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB397)

Received: **01/17/2008**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-9170**

By/Representing: **John Anderson**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Adtl. Drafters:

Subject: **Environment - solid haz. waste**
Environment - recycling

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Miller@legis.wisconsin.gov**

Carbon copy (CC:) to: **John.Stolzenberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Collection, recycling, and disposal of certain electronic devices

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 02/27/2008	jdyer 02/27/2008		_____			
		jdyer 02/27/2008		_____			
/P1			rschlue 02/27/2008	_____			
/1	btradewe 02/28/2008	jdyer 02/28/2008	rschlue 02/28/2008	_____	cduerst 02/28/2008	cduerst 02/28/2008	

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<END>

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/?	btradewe 02/27/2008	jdye 02/27/2008		_____			
		jdye 02/27/2008		_____			
/P1	btradewe	1/28 jld	rschluet	_____			
			02/27/2008	_____			

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/?	btradewe	PI 2/2/08		_____	_____	_____	_____

FE Sent For:

<END>

Tradewell, Becky

From: Anderson, John
Sent: Thursday, January 17, 2008 12:27 PM
To: Tradewell, Becky
Cc: Bier, Beth; Miller, Mark; Stolzenberg, John
Subject: SB 397 (Irb 3058/2) Electronics Recycling Legislation.

Hello Becky,

Sen. Miller asked me to email the language below for inclusion into a Substitute Amendment for SB 397, our Electronics Recycling (E-Waste) Bill... LRB 3058/2.

We have a number of additional changes to be made to be included in the SUB, but I wanted to get you the language below to give you a start on the sub.

I know you are working on a number of things for Sen. Miller. Mark asked me to let you know that SB 397 is a higher priority for him at this moment than Green Tier and Great Lakes.

Rep. Stone will soon be requesting a bill draft on E-Waste. His bill and our SUB should be identical.

I will get you the rest of the drafting instructions for the SUB to SB 397 as soon as I can. I need to bounce a few questions off of John Stolzenberg. Thank you very much.

John Anderson, Sen. Mark Miller's office.

SUB language (partial)

287.07 Prohibitions on land disposal and incineration.

(1m) BATTERIES, MAJOR APPLIANCES AND, OIL AND ELECTRONIC DEVICES. No person may:

(a) Dispose of a lead acid battery or a major appliance in a solid waste disposal facility in this state, except that a person may dispose of a microwave oven in a solid waste disposal facility in this state if the capacitor has been removed and disposed of in accordance with s. 299.45 (7), if applicable.

(am) Burn a lead acid battery or a major appliance in a solid waste treatment facility in this state.

(b) Dispose of waste oil in a solid waste disposal facility or burn waste oil without energy recovery in a solid waste treatment facility in this state.

(c) Beginning on [date], dispose of in a solid waste disposal facility or burn in a solid waste treatment facility in this state, or place in a container destined for disposal in a solid waste disposal facility or for burning in a solid waste treatment facility in this state, any of the following electronic devices:

1. *A computer as defined in s. 287.17(1) (d)*
2. *A peripheral as defined in s. 287.17 (1) (j)*
3. *A facsimile machine*
4. *A digital video disc player*

5. *A digital player that does not use a disc and is not a camera as defined in s. 287.17 (1) (a)*
6. *A video cassette recorder*
7. *A video recorder that does not use a disc and that is not a camera, as defined in s. 287.17(1)(a)*
8. *A video display device as defined in s. 287.17 (1) (q)*
9. *A telephone with a video display*
10. *Another kind of electronic device identified by the department under s. 287.17(1) (f) used by households.*

(d) The operator of a solid waste disposal or treatment facility shall make a reasonable effort to manually segregate and arrange for recycling any material listed under para. (c)8 that is readily observed in a waste stream destined for disposal or burning, provided that the operator determines that:

1. *retrieval of the material is practical and will not require extraordinary measures to protect human health and safety.*
2. *the material has not been damaged in such a way that recycling is no longer feasible or practical.*

John G. Anderson
Office of Senator Mark Miller
State Capitol Room 409 South
P O Box 7882
Madison, WI 53707
Phone: (608) 266-9170
Fax: (608) 266-5087

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Tradewell, Becky

From: Anderson, John
Sent: Tuesday, January 22, 2008 11:00 AM
To: Tradewell, Becky
Subject: RE: SB 397 (lrb 3058/2) Electronics Recycling Legislation.

Thank you, Becky. I appreciate your work on this. I apologize for the confusion. Mark is involved in two large issues as are you. He wanted me to let you know that the **Great Lakes Compact REMAINS his priority**. I am sorry I gave you the wrong info on his priorities.

We will be in touch. Thanks, much. john

From: Tradewell, Becky
Sent: Friday, January 18, 2008 4:12 PM
To: Anderson, John
Cc: Stolzenberg, John
Subject: RE: SB 397 (lrb 3058/2) Electronics Recycling Legislation.

John Anderson,

Moving the disposal prohibitions to s. 287.07 (1m) has three legal effects and I want to make sure that they are all intended.

1. It causes s. 287.07 (7) (bg) to apply. This is an exemption to the burning ban for a facility that uses solid waste as a supplemental fuel if less than 30% of heat input to the facility is derived from the solid waste burned as supplemental fuel.
2. It causes s. 287.09 (2) (a) to apply, requiring responsible units (local governments that are responsible for operating recycling programs) to develop and implement recycling or other programs to manage solid waste generated in their jurisdictions in compliance with the disposal prohibitions.
3. It causes the penalty in s. 287.95 (1) to apply.

If you do not want any of those legal effects or if you have questions about this, please let me know.

I also want to mention that I will have to locate the requirement proposed as s. 287.07 (1m) (d) somewhere else in the statutes because it does not fit under the introduction to s. 287.07 (1m), which reads "No person may:".

Becky Tradewell
6-7290

From: Anderson, John
Sent: Thursday, January 17, 2008 12:27 PM
To: Tradewell, Becky
Cc: Bier, Beth; Miller, Mark; Stolzenberg, John
Subject: SB 397 (lrb 3058/2) Electronics Recycling Legislation.

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Fax: (608) 266-5087

Tradewell, Becky

From: Anderson, John
Sent: Tuesday, January 22, 2008 12:05 PM
To: Tradewell, Becky
Subject: FW: SB 397 (Irb 3058/2) Electronics Recycling Legislation..

From DNR: thanks much, jga

From: Moore, Cynthia G - DNR [mailto:Cynthia.Moore@Wisconsin.gov]
Sent: Tuesday, January 22, 2008 12:04 PM
To: Anderson, John
Cc: Miller, Mark; Toral Jha; Bier, Beth; Mack, Dennis P - DNR; Bangert, Suzanne A - DNR
Subject: RE: SB 397 (Irb 3058/2) Electronics Recycling Legislation..

John

I reviewed this with Dennis Mack, my supervisor. He agrees with me that the simplest, and cleanest way to address these unintended impacts is to list the ban as you have currently in the bill. By this I mean, keep the language we worked out with Waste Mgt but create a new section s. 287.07 (5) for the ban.

And please thank Becky for bringing this up- these impacts were not intended!

Cynthia G. Moore

Recycling Program Coordinator

Recycling and Solid Waste Section

Bureau of Waste & Materials Management

Wisconsin Department of Natural Resources

(☎) phone: (608) 267-7550

(☎) fax: (608) 267-2768

(✉) e-mail: Cynthia.Moore@wisconsin.gov

From: Anderson, John [mailto:John.Anderson@legis.wisconsin.gov]
Sent: Tuesday, January 22, 2008 9:29 AM
To: Moore, Cynthia G - DNR

Cc: Miller, Mark - LEGIS; Toral Jha; Bier, Beth - LEGIS
Subject: FW: SB 397 (Irb 3058/2) Electronics Recycling Legislation.

Thoughts on Becky's comments? This gets technical and beyond my comprehension. Thanks, all. j

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Tradewell, Becky

From: Anderson, John
Sent: Thursday, February 21, 2008 4:55 PM
To: Tradewell, Becky
Cc: Miller, Steve; Bier, Beth; Stolzenberg, John; Kuhn, Jamie; Miller, Mark
Subject: RE: SB 397 & sub

Attachments: Drafting Instructions for SB 397 SUB 0208 2.21.08.doc

Here are the drafting instructions for our sub amendment to SB 397. Thank you. Please call with any questions.

John Anderson 6-9170

Please review the attached document.



Drafting
Instructions for SB ..

From: Miller, Steve
Sent: Thursday, February 21, 2008 4:39 PM
To: Anderson, John
Subject: RE: SB 397 & sub

No, but the sooner we get the drafting instructions the better. Please send them to Becky Tradewell.
Steve
267-2175

From: Anderson, John
Sent: Thursday, February 21, 2008 4:23 PM
To: Miller, Steve
Cc: Miller, Mark
Subject: SB 397 & sub

Good afternoon, Steve.

Sen. Miller is wondering if you have transferred the drafting responsibilities for Senate Bill 397 and the substitute amendment. We have our drafting instructions for the sub ready to go, pending the Leg council's John Stolzenberg's review.

Thank you.

John G. Anderson
Office of Senator Mark Miller
State Capitol Room 409 South
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Madison, WI 53707
Phone: (608) 266-9170
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Drafting Instructions for SB 397 SUB

February, 2008

Section	Intention	Comments
4 Page 4, lines 1-6, page 4	Delete section 1	
2 Page 4, lines 8-10	Do we need to delineate in the bill that any remaining dollars can be used for the program.	
3 Either Section 2 or 3, Page 4	Create a fund within the Recycling and Renewable Energy Fund for electronics recycling	Want to segregate funds so we can track the monies spent on program. Counties feel strongly about keeping funds separate.
4 Page 4, line 14	<p>Replace this section with the following language:</p> <p>287.07 Prohibitions on land disposal and incineration.</p> <p>(1m) BATTERIES, MAJOR APPLIANCES, OIL AND ELECTRONIC DEVICES. No person may:</p> <p>(a) Dispose of a lead acid battery or a major appliance in a solid waste disposal facility in this state, except that a person may dispose of a microwave oven in a solid waste disposal facility in this state if the capacitor has been removed and disposed of in accordance with s. 299.45 (7), if applicable.</p> <p>(am) Burn a lead acid battery or a major appliance in a solid waste treatment facility in this state.</p> <p>(b) Dispose of waste oil in a solid waste disposal facility or burn waste oil without energy recovery in a solid waste treatment facility in this state.</p> <p><i>(c)Beginning on [date], dispose of in a solid waste disposal facility or burn in a solid waste treatment facility in this state, or place in a container destined for disposal in a solid waste disposal facility or for burning in a solid waste treatment facility in this</i></p>	<p>See John S notes on this section.- we're not sure if the final decision was to put this under 287.07 (1m)(c) or under 287.07 (5). If the former, please make sure the banned material can not be combusted/incinerated for energy recovery.</p> <p>Waste Management language</p>

almost 4

Deleted: AND
Deleted:

	<p>state, any of the following electronic devices:</p> <ol style="list-style-type: none"> 1. A computer as defined in s. 287.17(1) (d) 2. A peripheral as defined in s. 287.17 (1) (j) 3. A facsimile machine 4. A digital video disc player 5. A digital player that does not use a disc and is not a camera as defined in s. 287.17 (1) (a) 6. A video cassette recorder 7. A video recorder that does not use a disc and that is not a camera, as defined in s. 287.17(1)(a) 8. A video display device as defined in s. 287.17 (1) (q) 9. A telephone with a video display 10. Another kind of electronic device identified by the department under s. 287.17(1) (f) used by households. <p>(d) The operator of a solid waste disposal or treatment facility shall make a reasonable effort to manually segregate and arrange for recycling any material listed under para. (c)8 that is readily observed in a waste stream destined for disposal or burning, provided that the operator determines that:</p> <ol style="list-style-type: none"> 1. retrieval of the material is practical and will not require measures to protect human health and safety. 2. the material has not been damaged in such a way that recycling is no longer feasible or practical. 	
5 ✓ Page 4, line 14	Intent: The ban is treated like the bans on current laws and are subject to technical DNR assistance under 287.19(1)(b). These bans are subject to forfeitures collected by DNR via citation.	
6 ✓ Page 5, Line 12	After line 12, inset 287.09(2)(ar) – the responsible unit shall provide information to its constituents about the program- regarding why to recycle and opportunities to recycle locally.	OR create a section in the bill for Responsible Unit responsibilities.

7 Page 7 (after line 25)	Insert definition for "Recycling Weight." Goals of definition: <ol style="list-style-type: none"> 1) Means the total weight of CEDs collected for recycling that can count towards the manufacturers recycling target. 2) Weights collected at a solid waste disposal facility and recycled can count. 3) Either received by a recycler by a collector or collected directly by the recycler. 4) This does not include the wt of any CEDs that were transferred between recyclers (i.e. received from another recycler – including transported by a collector between two recyclers). 	The purpose of this is to avoid double counting of weights towards manufacturers target.
8 ✓ Page 8, line 4	Change definition of "sell" to read: "sell" means to transfer title or right to use for consideration by a household."	WMC request
Page 8, line 10	Delete Eau Claire County from the list	
10 Page 10, Lines 10-18	Delete and replace with: <p>"Beginning with the registration due by September 1, 2009, a manufacturer shall include in its registration a statement disclosing whether:</p> <ol style="list-style-type: none"> 1) Any of its video display devices exceed the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated biphenyl ethers under the ROHS Directive 2002/95/EC of the European Parliament and Council (Restricting the Use of Certain Hazardous Substances in Electrical and Electronic Equipment) and any amendments thereto; or 2) The manufacturer has received an exemption from one or more of those maximum concentration values under the ROHS Directive that has been approved and published by the European Commission. 	3M suggestion
11 ✓ Page 11, Lines 6-10	Make it clear that the Department can reject an incomplete registration.	
12 Page 11, Line 11	Change Title of section to reflect "Manufacturers Target, Fees, Penalties, Recycling Credits"	

13 ✓
 14 ✓
 15 ✓
 16 ✓
 17

Page 11, Section 4(a)	Change title to "Registration Fees"	
Page 11, line 12	Add word "registration" before "fees"	
Page 11, Section 4(b)	Change Section 4(b) to Section 4(a)1.	
Page 11, Section 4(c)	Change Section 4(c) to Section 4(a)2.	
Page 11, beginning line 22	<p>Beginning "In addition to..." create new Section 4(b) . Change to "In addition to registration fee..."</p> <p>Title Section4(b) "Program penalties" or something to that effect. We want to avoid using the word fee in this section so it is not confused with registration fees.</p> <p>Rework this section (through page 15, line 8) to reflect the following goals:</p> <p>We want to have 2 penalties for the recycling target shortfall.</p> <ol style="list-style-type: none"> 1) Annual penalty - At the end of the program year, manufacturers are assessed an penalty which is determined on the sliding scale of the following: <ol style="list-style-type: none"> a. Less than 50% of the target - \$.50/lb b. Between 50-90% of the target - \$.40/lb. c. Between 90-99% of the target - \$.30/lb. 2) Quarterly Penalty – This penalty is meant to ensure manufactures recycle a minimum portion of their annual target (15% per quarter). This penalty is assessed on the following sliding scale: <ol style="list-style-type: none"> a. Less than 50% of the target - \$.50/lb b. Between 50-90% of the target - \$.40/lb. c. Between 90-99% of the target - \$.30/lb. <p>These two penalties are additive such that the TOTAL penalty assessed for the manufacturer is the combination of both.</p> <p>There is no penalty if a manufacturer meets their</p>	<p>We are eliminating the option to report "variable fees on a quarterly or annual basis" per page 12, lines 1-2. And now we have two sets of fees. One is a penalty for not meeting your annual target. One is a penalty for not meeting your quarterly targets.</p> <p><u>See John S notes on this section.</u></p> <p>See attached document entitled "Variable Fees Worksheet" for explanation.</p>

Why?

19

20

21

22

	target early.	
Page 15, lines 9 – 15	Move this section to below Page 16, Line 6 and ensure references are correct.	
Page 16, section 5	<p>Change to:</p> <p>(5) Manufacturers Reporting Requirements. (a) Determination of target recycling weight. 1. Manufacturers shall report one of the following to the department: (Insert Page 16, lines 11-16 CHANGE “previous program quarter” to “the program year two years prior”</p> <p>2. Year 1: A manufacturer shall report to the Department upon registration.</p> <p>3. Year 2 and thereafter: A manufacturer shall report on June 1 of the previous program year to the Department.</p> <p>4. For a new entrant (i.e. a manufacturer who has not sold in the State before) they are not required to report until they have sold in the state for at least a full program year.</p>	<p>For “two year’s prior” example:</p> <p>Program year ‘08-’09 you would report for July ‘06 – June ‘07.</p> <p><u>See John S notes on this section.</u></p>
Page 16, line 19-21	Change language to “Beginning no later than January 31, 2009, a manufacturer shall report to the Department no later than 30 days after the end of each program quarter the total weight...”	
Page 17, line 4	Change Section 5(c) to reflect a reconciliation of their total weights recycled , any shortfalls and application of credits to meet their shortfall. Keep language about the purchase/sale of credits (lines 6-11).	
Page 17, Lines 19-24 and Page 18, Lines 1-10	<p>Replace section (7) COLLECTORS with the following language:</p> <p>(7) COLLECTORS. (a) <i>Registration.</i> 1. Beginning on August 1, 2008, no person may operate as a collector unless the person submits to the department an annual registration, using a form prescribed by the department, that includes all of the following:</p> <p>a. The name, address, and contact information of a responsible individual.</p> <p>b. The address at which the person operates as a collector.</p> <p>c. A certification that the person has:</p> <p>1. complied with and will continue to</p>	<u>See John S notes on this section.</u>

	<p>comply with all applicable requirements of this subsection.</p> <ol style="list-style-type: none"> 2. complied with and will continue to comply with state regulations for the management of hazardous and universal wastes under s. 291. 3. complied with and will continue to comply with state regulations for solid waste facilities under s. 289. 4. complied with and will continue to comply with federal regulations for the management of unprocessed CRTs under 40 CFR Part 261, if applicable. 5. established and will maintain a chain of custody for the next two collectors, recyclers or other destinations to verify that these vendors utilize practices that protect worker safety, public health and the environment and do not utilize prison labor, for CED or materials derived from CED. 6. Maintained and will continue to maintain and manage the facility in a nuisance free manner so as not to pose a potential hazard to public health or the environment. <p>2. A complete registration is effective on receipt by the department and is valid until the following August 1 unless revoked before that date.</p> <p>3. The department may suspend or revoke a registration for violation of any of the requirements in this subsection.</p> <p>(b) <i>Reporting.</i> No later than November 1, February 1, May 1, and August 1 of each program year, beginning November 1, 2008, a collector shall report to the department on a form prescribed by the department the total weight of covered electronic devices collected in this state during the preceding program quarter and a list of all recyclers to whom the collector delivered covered electronic devices.</p>	
<p>23 Page 18, line 11</p>	<p>Replace Section (8) Recyclers with the following:</p> <p>(8) RECYCLERS.</p>	<p><u>See John S notes on this section.</u></p>

(a) Registration.

1. Beginning on August 1, 2008, no person may operate as a recycler unless the person submits to the department an annual registration, using a form prescribed by the department, that includes all of the following:
 - a. The name, address, and contact information of a responsible individual.
 - b. The address of all facilities at which the person conducts recycling.
 - c. A certification that the person has complied, and will continue to comply, with the requirements of this subsection.
 - d. Submittal of documentation of pollution liability insurance coverage specified in par (c) 1.
2. A registration is effective upon notification of its approval by the department and is valid until the following August 1 unless revoked before that date.
3. The department may suspend or revoke a registration for violation of any of the requirements in this subsection.

(b) Reporting. No later than November 1, February 1, May 1, and August 1 of each program year, beginning with November 1, 2008, a recycler shall report to the department the total weight of covered electronic devices collected in this state that the recycler recycled during the preceding program quarter.

(c) Financial responsibility assurance.

1. A recycler shall maintain pollution liability insurance coverage in the amount of at least \$1,000,000 for environmental releases, accidents, and other emergencies.

(d) Certification. With the initial registration and, thereafter, no later than August 1 of each year, a recycler shall submit to the department on a form

prescribed by the department certification that states that the recycler, and all persons who conduct recycling activities on covered electronic devices or materials derived from covered electronic devices after the recycler completes its recycling activities on the covered electronic devices or materials comply with the design, closure and operations requirements specified in par (e) to (g).

(e) Standards for design of permanent electronic recycling facilities. The owner or operator of an electronics recycling facility shall construct and maintain the facility according to all the following minimum design criteria, except that an out-of-state facility shall comply with design criteria for their state of location. Electronic recycling facility means a facility for recycling of covered electronic devices collected for recycling under this program:

1. The facility shall not be located in any of the following:
 - a. a flood plain
 - b. a wetland
 - c. a habitat determined by the department to be critical to the continued existence of any threatened or endangered species listed in c. NR 27.
2. All hazardous wastes shall be stored in containers in a building completely enclosed with a floor, walls and roof to prevent exposure to the elements. The floor underlying containers shall be free of cracks and gaps and sufficiently impervious to contain leaks and spills under the released material is detected and removed.
3. Spilled or leaked waste shall be removed from the collection area in as timely a manner as is necessary to prevent overflow of the collection system or within 24 hours, which is less.

(f) Closure requirements. The facility owner or operator must document a plan to ensure that

closure of an electronics recycling facility meets all the following:

1. minimizes the need for further maintenance
2. controls, minimizes or eliminates the escape of hazardous waste, hazardous constituents or contaminated run-off to the ground, surface waters, or the atmosphere.

(g) *Operational requirements.* The owner or facility operator must maintain documentation on site for the past three years to demonstrate compliance with all of the following:

1. Be in compliance with state regulations for the management of hazardous and universal wastes under s. 291
2. Be in compliance with state regulations for solid waste facilities under s. 289.
3. Be in compliance with federal regulations for the management of unprocessed CRTs under 40 CFR Part 261.
4. Have a written health and safety management system that is compliant with or equivalent to the standards for health and safety management systems issued by British Standard and is auditable by an outside environmental auditor.
5. Have a written environmental management system that is compliant with or equivalent to the standards for environmental management systems issued by the International Organization for Standardization and is auditable by an outside environmental auditor.
6. Use no prison labor to recycle covered electronic devices *which would be counted toward a manufacturer's recycled weight (recycling obligation);*

**This would apply to any reference to the prison labor prohibition made in the bill.

7. Does not store of any material in a

Comment [TPJ1]: I am unsure how to site the BS OHSAS 18001 standard here. A link with more information is: <http://www.bsi-global.com/en/Assessment-and-certification-services/management-systems/Standards-and-Schemes/BSOHSAS-18001/>

manner where less than 75% of the material by weight or volume is sent to downstream vendors in any 12-month period.

8. Employ industry accepted procedures for the destruction or sanitization of data on hard drives and other data storage devices that are substantially equivalent to those specified in the National Institute of Standards and Technology's Guidelines for Media Sanitation or certified by the National Association for Information Destruction.
9. Establish and maintain a verifiable chain of custody to the point of reclamation where the device is turned into a raw material to demonstrate their downstream vendors utilize practices that protect worker safety, public health and the environment and do not utilize prison labor, including CED or materials derived from CED.
10. Ensure that the facility is maintained and managed in a nuisance free manner and does not pose a potential hazard to public health or the environment.
11. Any other requirements developed by the department under rule promulgation.

(h) No later than three years after enactment of this legislation, the department shall review the requirements under par (e) to (g) and as necessary, promulgate rules for revised management practices for recycling or reuse of covered electronics in this state to ensure that Wisconsin's practices are at least equivalent to the "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., dated April 25, 2006 or other standards from a comparable national recognized organization or the USEPA .

	(i) The state including its Attorney General and the department shall be authorized to initiate independent action to enforce any provision of this law.	
24	GENERAL Question Are any of the "Certification" sections (i.e. recyclers and collectors) enforceable under the Penalty section on page 23, lines 11-12? It is our intention that they are.	
25	Page 19, Lines 23-24 Delete "November 1, February 1" and "August 1." This should only read "May 1."	
26	Page 20, Line 3 Delete "previous program quarter" replace with "program year two year's prior."	
27	Page 20, Line 12 Add the following to Internet Site (a) <i>Internet Site. Add the following:</i> "... The department shall maintain an Internet site on which the department lists the names of recyclers who are registered under sub. (8a.). The department shall update the information on the Internet site promptly upon receipt of a new or revised registration."	
28	Page 20, line 22 Change section (j) as following: (j) <i>Audits and inspections.</i> The department may perform or contract for the performance of an audit or an inspection of the activities of a collector or a recycler. If the department performs or contracts for the performance 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.	Wanted S. 287.93 del?
29	Page 21 Under "review of formula" – ensure that DNR can add additional materials to definition of Video Display Device (even if the device is not a Video Display Device).	

30 ✓
31 ✓
32 ✓
33 ✓
34 ✓

Page 22, Line 17	After "section" add "to include reciprocity with respect to trading and selling of credits."	
Page 22, Line 19	After "may" add "suspend" to read "...may suspend and revoke."	
Page 22, Line 20	Should read "sub (7) or (8)."	
Page 23, Line 15	After "enforce" change to reflect appropriate 287 citation.	<u>See John S notes on this section.</u>
Page 23, Line 23	Change language to reflect this goal: there will be 2 project positions (only available for the first 2 years). 2 Permanent positions. We want to fund one project and one permanent position from the "electronics recycling fund" and fund one permanent and one project from the general Recycling and Renewable Energy Fund.	Do we need to language allowing for the use of funds from the Recycling and Renewable Energy Fund? – staff and monies for tools to coordinate program

Changes to
Drafting Instructions for SB 397 SUB

From John Stelzenberg 2/25 (a.m.)

February, 2008

Section	Intention	Comments
1. Page 4, lines 1-6, page 4	Delete section 1	
2. Page 4, lines 8-10	Do we need to delineate in the bill that any remaining dollars can be used for the program.	
3. Either Section 2 or 3, Page 4	Create a fund within the Recycling and Renewable Energy Fund for electronics recycling	Want to segregate funds so we can track the monies spent on program. Counties feel strongly about keeping funds separate.
4. Page 4, line 14	<p>Replace this section with the following language:</p> <p>287.07 Prohibitions on land disposal and incineration.</p> <p>(1m) BATTERIES, MAJOR APPLIANCES, OIL AND ELECTRONIC DEVICES. No person may:</p> <p>(a) Dispose of a lead acid battery or a major appliance in a solid waste disposal facility in this state, except that a person may dispose of a microwave oven in a solid waste disposal facility in this state if the capacitor has been removed and disposed of in accordance with s. 299.45 (7), if applicable.</p> <p>(am) Burn a lead acid battery or a major appliance in a solid waste treatment facility in this state.</p> <p>(b) Dispose of waste oil in a solid waste disposal facility or burn waste oil without energy recovery in a solid waste treatment facility in this state.</p> <p><i>(c)Beginning on [date], dispose of in a solid waste disposal facility or burn in a solid waste treatment facility in this state, or place in a container destined for disposal in a solid waste disposal facility or for burning in a solid waste treatment facility in this</i></p>	<p>See John S notes on this section. - we're not sure if the final decision was to put this under 287.07 (1m)(c) or under 287.07 (5). if the former, please make sure the banned material can not be combusted/incinerated for energy recovery.</p> <p>Waste Management language</p>

No change in Sec. 2

No change in Sec. 2 or 3
+ see #34

Deleted: AND

Deleted:

	<p>state, any of the following electronic devices:</p> <ol style="list-style-type: none"> 1. A computer as defined in s. 287.17(1) (d) 2. A peripheral as defined in s. 287.17 (1) (j) 3. A facsimile machine 4. A digital video disc player 5. A digital player that does not use a disc and is not a camera as defined in s. 287.17 (1) (a) 6. A video cassette recorder 7. A video recorder that does not use a disc and that is not a camera, as defined in s. 287.17(1)(a) 8. A video display device as defined in s. 287.17 (1) (q) 9. A telephone with a video display 10. Another kind of electronic device identified by the department under s. 287.17(1) (f) used by households. <p>(d) The operator of a solid waste disposal or treatment facility shall make a reasonable effort to manually segregate and arrange for recycling any material listed under para. (c)8 that is readily observed in a waste stream destined for disposal or burning, provided that the operator determines that:</p> <ol style="list-style-type: none"> 1. retrieval of the material is practical and will not require measures to protect human health and safety. 2. the material has not been damaged in such a way that recycling is no longer feasible or practical. 		
5.	Page 4, line 14	Intent: The ban is treated like the bans on current laws and are subject to technical DNR assistance under 287.19(1)(b). These bans are subject to forfeitures collected by DNR via citation.	Directive in s. 287.19(1)(b) is adequate. No additional change needed.
6.	Page 5, Line 12	After line 12, inset 287.09(2)(ar) – the responsible unit shall provide information to its constituents about the program- regarding why to recycle and opportunities to recycle locally.	OR create a section in the bill for Responsible Unit responsibilities.

In insert 5-12, alternative language for [] is "in addition to any measures taken in the ordinary course of business."

7.	Page 7 (after line 25)	Insert definition for "Recycling Weight." Goals of definition: 1) Means the total weight of CEDs collected for recycling that can count towards the manufacturers recycling target. 2) Weights collected at a solid waste disposal facility and recycled can count. 3) Either received by a recycler by a collector or collected directly by the recycler. 4) This does not include the wt of any CEDs that were transferred between recyclers (i.e. received from another recycler - including transported by a collector between two recyclers).	The purpose of this is to avoid double counting of weights towards manufacturers target.
8.	Page 8, line 4	Change definition of "sell" to read: "sell" means to transfer title or right to use for consideration by a household."	WMC request
9.	Page 8, line 10	Delete Eau Claire County from the list	
10.	Page 10, Lines 10-18	Delete and replace with: "Beginning with the registration due by September 1, 2009, a manufacturer shall include in its registration a statement disclosing whether: 1) Any of its video display devices exceed the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated biphenyl ethers under the ROHS Directive 2002/95/EC of the European Parliament and Council (Restricting the Use of Certain Hazardous Substances in Electrical and Electronic Equipment) and any amendments thereto; or 2) The manufacturer has received an exemption from one or more of those maximum concentration values under the ROHS Directive that has been approved and published by the European Commission.	3M suggestion Your treatment of part (b), p 10, l. 13 & 14 is correct. DNR staff is checking on how this exemption is expressed, e.g., by category of industry or product or by specific firm.
11.	Page 11, Lines 6-10	Make it clear that the Department can reject an incomplete registration.	
12.	Page 11, Line 11	Change Title of section to reflect "Manufacturers Target, Fees, Penalties, Recycling Credits"	

This definition not needed. See alternative in #9.

make changes in text as we discussed, rather than via this definition.

I'll check your revisions for these changes.

Your treatment of part (b), p 10, l. 13 & 14 is correct.

DNR staff is checking on how this exemption is expressed, e.g., by category of industry or product or by specific firm.

13.	Page 11, Section 4(a)	Change title to "Registration Fees"	
14.	Page 11, line 12	Add word "registration" before "fees"	
15.	Page 11, Section 4(b)	Change Section 4(b) to Section 4(a)1.	
16.	Page 11, Section 4(c)	Change Section 4(c) to Section 4(a)2.	
17.	Page 11, beginning line 22	<p>Beginning "In addition to..." create new Section 4(b) . Change to "In addition to registration fee..."</p> <p>Title Section 4(b) "Program penalties" or something to that effect. We want to avoid using the word fee in this section so it is not confused with registration fees.</p> <p>Rework this section (through page 15, line 8) to reflect the following goals:</p> <p>We want to have 2 penalties for the recycling target shortfall.</p> <p>1) Annual penalty - At the end of the program year, manufacturers are assessed an penalty which is determined on the sliding scale of the following:</p> <ul style="list-style-type: none"> a. Less than 50% of the target - \$.50/lb b. Between 50-90% of the target - \$.40/lb. c. Between 90-99% of the target - \$.30/lb. <p>2) Quarterly Penalty - This penalty is meant to ensure manufactures recycle a minimum portion of their annual target (15% per quarter). This penalty is assessed on the following sliding scale:</p> <ul style="list-style-type: none"> a. Less than 50% of the target - \$.50/lb b. Between 50-90% of the target - \$.40/lb. c. Between 90-99% of the target - \$.30/lb. <p>These two penalties are additive such that the TOTAL penalty assessed for the manufacturer is the combination of both.</p> <p>There is no penalty if a manufacturer meets their</p>	<p>We are eliminating the option to report "variable fees on a quarterly or annual basis" per page 12, lines 1-2. And now we have two sets of fees. One is a penalty for not meeting your annual target. One is a penalty for not meeting your quarterly targets.</p> <p><u>See John S notes on this section.</u></p> <p>See attached document entitled "Variable Fees Worksheet" for explanation.</p>

O.K. to use a new name for variable fees (not "penalty"). Two suggestions: Annual & quarterly short fall fees or annual & quarterly recycling short fall fees.

- Keep 0.6 & 0.8 multipliers on page 12, line 10 & page 13, lines 14 & 15

- See other changes in text of bill.

- Annual & quarterly fees are to be paid annually by Sept. 1 in the year following the program year, starting in 2009. For 2008-09 annual

& qtr. Fees, skip first qtr. (Pro-rate)

	target early.	
18.	Page 15, lines 9-15	Move this section to below Page 16, Line 6 and ensure references are correct.
19.	Page 16, section 5	Change to: (5) Manufacturers Reporting Requirements. (a) Determination of target recycling weight. 1. Manufacturers shall report one of the following to the department: (Insert Page 16, lines 11-16 CHANGE "previous program quarter" to "the program year two years prior" 2. Year 1: A manufacturer shall report to the Department upon registration. 3. Year 2 and thereafter: A manufacturer shall report on June 1 of the previous program year to the Department. 4. For a new entrant (i.e. a manufacturer who has not sold in the State before) they are not required to report until they have sold in the state for at least a full program year.
20.	Page 16, line 19-21	Change language to "Beginning no later than January 31, 2009, a manufacturer shall report to the Department no later than 30 days after the end of each program quarter the total weight..."
21.	Page 17, line 4	Change Section 5(c) to reflect a reconciliation of their total weights recycled, any shortfalls and application of credits to meet their shortfall. Keep language about the purchase/sale of credits (lines 6-11).
22.	Page 17, Lines 19-24 and Page 18, Lines 1-10	Replace section (7) COLLECTORS with the following language: (7) COLLECTORS. (a) Registration. 1. Beginning on August 1, 2008, no person may operate as a collector unless the person submits to the department an annual registration, using a form prescribed by the department, that includes all of the following: a. The name, address, and contact information of a responsible individual. b. The address at which the person operates as a collector. c. A certification that the person has: 1. complied with and will continue to

Move was requested to make bill easier to read.

See notes in bill

See notes in bill

Drop this item, bill text OK.

See John S notes on this section.

Add that collector regs. under the sub only apply to collectors participating in collection & recycling program under the sub. (i.e. manufacturer's recycling required under sub (2)(a)4. [Some cities may continue separate collection programs.]

} same as bill

In lieu of adding these certification requirements to the statutes (after clarifying them), direct

DNR to establish them by rule

& authorize DNR to promulgate them in an emergency rule without a finding of an emergency. (If there is time, DNR staff may work on an add. to the sub that specifies these req'ts. for certification.)

com. 4 on 1/2/07

As appropriate, generalize from these points to provide guidance to ONR on its certification rule.

- comply with all applicable requirements of this subsection.
- 2. complied with and will continue to comply with state regulations for the management of hazardous and universal wastes under s. 291.
- 3. complied with and will continue to comply with state regulations for solid waste facilities under s. 289.
- 4. complied with and will continue to comply with federal regulations for the management of unprocessed CRTs under 40 CFR Part 261, if applicable.
- 5. established and will maintain a chain of custody for the next two collectors, recyclers or other destinations to verify that these vendors utilize practices that protect worker safety, public health and the environment and do not utilize prison labor, for CED or materials derived from CED.
- 6. Maintained and will continue to maintain and manage the facility in a nuisance free manner so as not to pose a potential hazard to public health or the environment.

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

3. The department may suspend or revoke a registration for violation of any of the requirements in this subsection.

(b) Reporting. No later than November 1, February 1, May 1, and August 1 of each program year, beginning November 1, 2008, a collector shall report to the department on a form prescribed by the department the total weight of covered electronic devices collected in this state during the preceding program quarter and a list of all recyclers to whom the collector delivered covered electronic devices.

or suspended

Add suspension to pg 18, line 5

covered in your treatment of pg 27, lines 18 to 20.

same as bill

23.

Page 18, line 11

Replace Section (8) Recyclers with the following:

(8) RECYCLERS.

See John S notes on this section.

Add that recyclers regs under the sub only apply to recyclers participating in the collection & recycling program required under the bill under sub. (a)(a)4. [Thus, Badger State Industries won't have to register.]

(a) Registration.

1. Beginning on August 1, 2008, no person may operate as a recycler unless the person submits to the department an annual registration, using a form prescribed by the department, that includes all of the following:
 - a. The name, address, and contact information of a responsible individual.
 - b. The address of all facilities at which the person conducts recycling.
 - c. A certification that the person has complied, and will continue to comply, with the requirements of this subsection.
 - d. Submittal of documentation of pollution liability insurance coverage specified in par (c) 1.
2. A registration is effective upon notification of its approval by the department and is valid until the following August 1 unless revoked before that date.
3. The department may suspend or revoke a registration for violation of any of the requirements in this subsection.

Addressed in bill already

New, still needs to be added

or suspended

to pg 18, line 20
Add to reflect next point.

covered in your treatment of pg 22, line 8 to 20

(b) Reporting. No later than November 1, February 1, May 1, and August 1 of each program year, beginning with November 1, 2008, a recycler shall report to the department the total weight of covered electronic devices collected in this state that the recycler recycled during the preceding program quarter.

(c) Financial responsibility assurance.

1. A recycler shall maintain pollution liability insurance coverage in the amount of at least \$1,000,000 for environmental releases, accidents, and other emergencies.

New, still needs to be added.

(d) Certification. With the initial registration and, thereafter, no later than August 1 of each year, a recycler shall submit to the department on a form

- Treat this certification like collector certification w/ rulemaking & emergency + awaiting clarification - what's listing in existing state & Federal reg. vs new reg's.

prescribed by the department certification that states that the recycler, and all persons who conduct recycling activities on covered electronic devices or materials derived from covered electronic devices after the recycler completes its recycling activities on the covered electronic devices or materials comply with the design, closure and operations requirements specified in par (e) to (g).

(e) Standards for design of permanent electronic recycling facilities. The owner or operator of an electronics recycling facility shall construct and maintain the facility according to all the following minimum design criteria, except that an out-of-state facility shall comply with design criteria for their state of location. Electronic recycling facility means a facility for recycling of covered electronic devices collected for recycling under this program:

1. The facility shall not be located in any of the following:
 - a. a flood plain
 - b. a wetland
 - c. a habitat determined by the department to be critical to the continued existence of any threatened or endangered species listed in c. NR 27.
2. All hazardous wastes shall be stored in containers in a building completely enclosed with a floor, walls and roof to prevent exposure to the elements. The floor underlying containers shall be free of cracks and gaps and sufficiently impervious to contain leaks and spills under the released material is detected and removed.
3. Spilled or leaked waste shall be removed from the collection area in as timely a manner as is necessary to prevent overflow of the collection system or within 24 hours, which is less.

(f) Closure requirements. The facility owner or operator must document a plan to ensure that

closure of an electronics recycling facility meets all the following:

1. minimizes the need for further maintenance
2. controls, minimizes or eliminates the escape of hazardous waste, hazardous constituents or contaminated run-off to the ground, surface waters, or the atmosphere.

(g) *Operational requirements.* The owner or facility operator must maintain documentation on site for the past three years to demonstrate compliance with all of the following:

1. Be in compliance with state regulations for the management of hazardous and universal wastes under s. 291
2. Be in compliance with state regulations for solid waste facilities under s. 289.
3. Be in compliance with federal regulations for the management of unprocessed CRTs under 40 CFR Part 261.
4. Have a written health and safety management system that is compliant with or equivalent to the standards for health and safety management systems issued by British Standard and is auditable by an outside environmental auditor.
5. Have a written environmental management system that is compliant with or equivalent to the standards for environmental management systems issued by the International Organization for Standardization and is auditable by an outside environmental auditor.
6. Use no prison labor to recycle covered electronic devices *which would be counted toward a manufacturer's recycled weight (recycling obligation).*;

****This would apply to any reference to the prison labor prohibition made in the bill.**

7. Does not store of any material in a

Comment [TP31]: I am unsure how to cite the BS OHSAS 18001 standard here. A link with more information is: <http://www.bsi-global.com/en/Assessment-and-certification-services/management-systems/Standards-and-Schemes/BSOHSAS-18001/>

	<p>manner where less than 75% of the material by weight or volume is sent to downstream vendors in any 12-month period.</p> <ol style="list-style-type: none">8. Employ industry accepted procedures for the destruction or sanitization of data on hard drives and other data storage devices that are substantially equivalent to those specified in the National Institute of Standards and Technology's Guidelines for Media Sanitation or certified by the National Association for Information Destruction.9. Establish and maintain a verifiable chain of custody to the point of reclamation where the device is turned into a raw material to demonstrate their downstream vendors utilize practices that protect worker safety, public health and the environment and do not utilize prison labor, including CED or materials derived from CED.10. Ensure that the facility is maintained and managed in a nuisance free manner and does not pose a potential hazard to public health or the environment.11. Any other requirements developed by the department under rule promulgation.	
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(h) No later than three years after enactment of this legislation, the department shall review the requirements under par (e) to (g) and as necessary, promulgate rules for revised management practices for recycling or reuse of covered electronics in this state to ensure that Wisconsin's practices are at least equivalent to the "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., dated April 25, 2006 or other standards from a comparable national recognized organization or the USEPA .

	(i) The state including its Attorney General and the department shall be authorized to initiate independent action to enforce any provision of this law.	Drop this item, use current law.
24.	GENERAL Question Are any of the "Certification" sections (i.e. recyclers and collectors) enforceable under the Penalty section on page 23, lines 11-12? It is our intention that they are.	Drop item; Not needed.
25.	Page 19, Lines 23-24 Delete "November 1, February 1" and "August 1." This should only read "May 1."	
26.	Page 20, Line 3 Delete "previous program quarter" replace with "program year two year's prior."	In light of #25, needs to be changed, I'm checking on exact reference.
27.	Page 20, Line 12 Add the following to Internet Site (a) <i>Internet Site. Add the following:</i> "... The department shall maintain an Internet site on which the department lists the names of recyclers who are registered under sub. (8a.). The department shall update the information on the Internet site promptly upon receipt of a new or revised registration."	
28.	Page 20, line 22 Change section (j) as following: (j) <i>Audits and inspections.</i> The department may perform or contract for the performance of an audit or an inspection of the activities of a collector or a recycler. If the department performs or contracts for the performance 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.	- Drop this item; ok to use s. 287.93 for inspections. + Give DNR authority to inspect manufacturers' & retailers' records related to the bill's requirements/ programs. + Add provisions on confidentiality of records. For collectors & recyclers, it may work to add a reference to s. 287.17 (electronics recycling section created by sub) to s. 289.09(1) & (2)(a). For manufacturers, need similar provisions for information they submit to DNR. Add Manufacturers to s. 289.09?
29.	Page 21 Under "review of formula" - ensure that DNR can add additional materials to definition of Video Display Device (even if the device is not a Video Display Device).	+ Add requirement that persons subject to bill retain records & reports for 3 years.

↑
Purpose of this item is to allow DNR to include in its report to the legislature under sub. (10) (d) on page 21, line 14, recommendation that other products be treated like video display devices (& subject to sales restrictions, etc.)

30.	Page 22, Line 17	After "section" add "to include reciprocity with respect to trading and selling of credits."	Add item, intent is to allow DNR to join with other states in creating a regional program for creating, selling & trading these credits.
31.	Page 22, Line 19	After "may" add "suspend" to read "...may suspend and revoke."	
32.	Page 22, Line 20	Should read "sub (7) or (8)."	← i.e. delete "(a)" on page 23, line 20,
33.	Page 23, Line 15	After "enforce" change to reflect appropriate 287 citation.	See John S notes on this section.
34.	Page 23, Line 23	Change language to reflect this goal: there will be 2 project positions (only available for the first 2 years). 2 Permanent positions. We want to fund one project and one permanent position from the "electronics recycling fund" and fund one permanent and one project from the general Recycling and Renewable Energy Fund.	Do we need to language allowing for the use of funds from the Recycling and Renewable Energy Fund? - staff and monies for tools to coordinate program



Modify insert 24-2 to also create 1.0 SEG 2yr project position. Provide expenditure authority from (2) (hr) appropriation based on \$90,000/project or permanent position/yr for these positions, i.e.:

- FY 07-08, \$26,700 [2 months for 2 positions]
- FY 08-09, \$160,000

These positions & appropriations provide for the startup & administration of the program.

+ Modify insert 24-6 to authorize 1.0 SEG position & 1.0 SEG 2yr project position. (vs. 2.0 SEG 2-year project positions.) Funded from (2) (hr) appropriation. These positions will administer the program.