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LRB Number: 50225, P1

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2/27 Per John S. ¹ They want manufacturers to be able to use credits for their ^{quarterly} shortfall fees, as well as the annual shortfall fees.

2. Manufacturers new to the state don't have to report until September following first full program year & don't have to pay fees until Sept following 3rd full program year.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBs0225/D1
RCT:jld&bk:rs

Today (the earlier, the better)
A.M.

Y.M.V.

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

**SENATE SUBSTITUTE AMENDMENT ,
TO 2007 SENATE BILL 397**

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 disposal, collection, and recycling of electronic devices,
4 granting rule-making authority, making an appropriation, and providing
5 penalties.

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).

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

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

7 1. A computer, as defined in s. 287.17 (1) (d).

8 2. A peripheral, as defined in s. 287.17 (1) (j).

9 3. A facsimile machine.

10 4. A digital video disc player.

11 5. A digital video player that does not use a disc and that is not a camera, as
12 defined in s. 287.17 (1) (a).

13 6. A video cassette recorder.

14 7. A video recorder that does not use a cassette and that is not a camera, as
15 defined in s. 287.17 (1) (a).

16 8. A video display device, as defined in s. 287.17 (1) (q).

17 9. A telephone with a video display.

18 10. Another kind of electronic device identified by the department under s.
19 287.17 (10) (i).

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

1 1. Separating the video display device is practical and will not 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 (f) "Covered electronic device" means any of the following that is used by a
9 household primarily for personal use:

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 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 video display devices to be sold under the person's own brand.

5 2. Sells 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 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 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 inches in its longest diagonal measurement and that is
16 marketed by the manufacturer for use by households, except that "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 a clothes washer,
22 clothes dryer, refrigerator, freezer, microwave oven, conventional oven or stove,
23 dishwasher, room air conditioner, dehumidifier, or air purifier.

24 **(2) REQUIREMENTS FOR SALE OF VIDEO DISPLAY DEVICES.** (a) *Manufacturers.*
25 Beginning on September 1, 2008, a manufacturer may not sell to a household, offer

1 to sell to a household, or deliver to retailers for subsequent sale to a household a new
2 video display device unless all of the following apply:

3 1. The manufacturer permanently affixes a label to the 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 subd. 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, 2009, a retailer may not sell or offer
18 for sale to a household a new 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 video display device of the manufacturer before the registration was
24 revoked or expired, the retailer may sell the 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 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, 2009, a manufacturer
11 shall 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 video display devices after September 1, 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 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.

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

5 (4) MANUFACTURER RECYCLING TARGETS, FEES, AND RECYCLING CREDITS. (a)
6 *Payment.* To comply with sub. (2) (a) 3., a manufacturer shall pay fees as provided
7 in this subsection with the registration that it submits under sub. (3).

8 (b) *Registration fees.* 1. The registration fee due in 2008, or the first year that
9 a manufacturer registers if later than 2008, is \$5,000, except that, if the
10 manufacturer sells fewer than 100 video display devices in this state annually, the
11 fee is \$1,250.

12 2. In each year after the year in which a manufacturer pays the fee under subd.
13 1., the manufacturer shall pay a registration fee of \$2,500, except that, if the
14 manufacturer sells fewer than 100 video display devices in this state annually, the
15 registration fee is \$1,250.

16 (b) ^m *Shortfall fees.* In addition to the registration fee, beginning in 2009, a
17 manufacturer shall pay shortfall fees under par. (c) or (d) and under par. (dm) if the
18 amounts calculated under those provisions are positive numbers. *Insert 9-18 ✓*

19 (c) *Annual shortfall fee in 2009.* The annual shortfall fee to be paid in 2009 by
20 a manufacturer is calculated as follows:

21 1. Determine the manufacturer's target recycling weight by multiplying the
22 number of pounds of the manufacturer's video display devices sold to households in
23 this state, as reported in 2009 under sub. (5) (a), by 0.6 and multiplying the product
24 by 0.75.

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

6 3. Subtract the actual recycling weight, determined under subd. 2., from the
7 target recycling weight, determined under subd. 1.

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

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

13 b. Forty 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 at least 50 percent but not more than 90 percent of the target recycling weight,
16 determined under subd. 1.

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

20 (d) *Annual shortfall fee after 2009.* The annual shortfall fee to be paid by a
21 manufacturer in a year after 2009 is calculated as follows:

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

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

6 3. Subtract the actual recycling weight, determined under subd. 2., from the
7 target recycling weight, determined under subd. 1.

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

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

13 b. Forty 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 at least 50 percent but not more than 90 percent of the target recycling weight,
16 determined under subd. 1.

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

20 (dm) *Quarterly shortfall fee.* 1. The quarterly shortfall fees paid by a
21 manufacturer in a program year are based on the actual recycling weight determined
22 under par. (f) 2. for each program quarter[✓] of the previous program year, except that
23 in program year 2009^{✓ -10} a manufacturer is not required to pay a quarterly shortfall fee
24 based on actual recycling weight for the first^{✓ program} quarter of the previous program year.

program

1 2. The quarterly shortfall fee based on a quarter of a program year[✓] is calculated
2 as follows:

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

8 b. Determine the actual recycling weight^{Insert 12-8-A program as determined} for the quarter^{Insert 12-8-B} under par. (f) 2.

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

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

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

14 a. Fifty cents per pound for a manufacturer if the number of pounds of covered
15 electronic devices recycled by or on behalf of the manufacturer, as determined under
16 ^{subd. 2. b.} par. (f) 2, is less than 50 percent of the target recycling weight, determined under
17 subd. 2. a.

18 b. Forty cents per pound for a manufacturer if the number of pounds of covered
19 electronic devices recycled by or on behalf of the manufacturer, as determined under
20 ^{subd. 2. b.} par. (f) 2, is at least 50 percent but not more than 90 percent of the target recycling
21 weight, determined under subd. 2. a.

22 c. Thirty cents per pound for a manufacturer if the number of pounds of covered
23 electronic devices recycled by or on behalf of the manufacturer, as determined under
24 ^{subd. 2. b.} par. (f) 2, is more than 90 percent of the target recycling weight, determined under
25 subd. 2. a.

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

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

15 2. The weight of covered electronic devices recycled by or on behalf of a
 16 manufacturer for a program quarter is the weight reported under sub. (5) (b) for that
 17 program quarter, except that if the manufacturer reports separately the weight of
 18 covered electronic devices used by households in rural counties and used by
 19 households in urban counties for a program quarter the weight is determined by
 20 adding the weight used by households in urban counties in that program quarter and
 21 1.5 times the weight used by households in rural counties in that program quarter.

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

1 a. The total weight of each model of its video display devices sold to households
2 in this state during the program year that began 36 months before the beginning of
3 the program year in which the report is made.

4 b. The total weight of all of its video display devices sold to households in this
5 state during the program year that began 36 months before the beginning of the
6 program year in which the report is made.

7 c. An estimate of the total weight of its 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 based on national sales data.

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

Insert
14-11

12 (b) *Weight of covered electronic devices recycled.* With the registration that it
13 submits under sub. (3) in 2009, a manufacturer shall report to the department the
14 total weight of covered electronic devices used by households in this state that were
15 collected by or delivered to the manufacturer for recycling by the manufacturer or
16 that were collected by or delivered to a registered recycler for recycling on behalf of
17 the manufacturer during ^{✓ each of} the last 3 ^{program} quarters of the preceding program year.

18 Beginning in 2010, with the registration that it submits under sub. (3), a
19 manufacturer shall report to the department the total weight of covered electronic
20 devices used by households in this state that were collected by or delivered to the
21 manufacturer for recycling by the manufacturer or that were collected by or
22 delivered to a registered recycler for recycling on behalf of the manufacturer during

23 ^{✓ program} each quarter in the preceding program year. A manufacturer may report separately
24 the weight of covered electronic devices used by households in rural counties and
25 used by households in urban counties for the purpose of obtaining the weight

1 adjustment under sub. (4) (f) for covered electronic devices received from households
2 in rural counties.

With the registration that it submits under sub. (3)

3 (c) *Recycling credits.* No later than September 1 of each year, beginning in
4 2009, a manufacturer shall report all of the following to the department:

5 1. The number of recycling credits that the manufacturer purchased during the
6 preceding program year.

7 2. The number of recycling credits that the manufacturer sold during the
8 preceding program year.

9 3. The number of recycling credits that the manufacturer elects to use in the
10 calculation of its variable recycling fee under sub. (4)(d) 2. *and (dm) 2. b.*

shortfall (c) 2.9

11 4. The number of recycling credits available to the manufacturer after
12 calculating its variable recycling fee under sub. (4)(d) 2. *and (dm) 2. b.*

shortfall

13 (6) MANUFACTURER ASSESSMENT REQUIREMENTS. A manufacturer shall conduct
14 and document assessments of the performance of any registered collectors and
15 registered recyclers who collect or recycle covered electronic waste on its behalf,
16 including assessments of whether the registered recyclers comply with sub. (8). A
17 manufacturer shall maintain, for 3 years, documentation of its assessments under
18 this subsection.

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

- 23 a. The name, address, and contact information of a responsible individual.
- 24 b. The address at which the person operates as a collector.

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

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

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

12 (8) RECYCLERS. (a) *Registration*. 1. Beginning on August 1, 2008, no person
13 may operate as a recycler receiving covered electronic devices on behalf of a
14 manufacturer who ^{✓ it is} registered under sub. (3) unless the person submits to the
15 department an annual registration, using a form prescribed by the department, that
16 includes all of the following:

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

18 b. The address of all facilities at which the person conducts recycling.

19 c. A certification that the person has complied, and will continue to comply, with
20 the requirements under this subsection.

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

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

24 (b) *Reporting*. No later than November 1, February 1, May 1, and August 1 of
25 each program year, beginning with November 1, 2008, a registered recycler shall

registered under

1 report to the department the total weight of covered electronic devices collected in
2 this state that the recycler received for recycling on behalf of a manufacturer subject
3 to sub. (3) during the preceding program quarter and the name of the manufacturer.

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

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

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

17 4. Except as provided under par. (e), at least once every 3 years a registered
18 recycler shall have an environmental management system audit, as defined in s.
19 299.83 (1) (bm), of its environmental management system under subd. 3. performed
20 by an outside environmental auditor, as defined in s. 299.83 (1) (dr), approved by the
21 department.

22 5. A registered recycler shall comply with any other operational requirement
23 in rules promulgated under par. (e).

24 (d) *Certification.* No later than August 1 of each year, beginning in 2009, a
25 registered recycler shall submit to the department a certification that states that the

1 registered recycler, and all persons who conduct recycling activities on covered
2 electronic devices or materials derived from covered electronic devices after the
3 registered recycler completes its recycling activities on the covered electronic devices
4 or materials:

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

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

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

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

12 (e) ^{Ⓡ or adding} *Modifying requirements by rule.* ✓ The department shall review the
13 requirements under par. (c) 3. and 4. to determine whether it is necessary to modify
14 or add to those requirements so that the requirements applicable to registered
15 recyclers are at least equivalent to nationally recognized standards for recycling
16 covered electronic devices. If the department determines that it is necessary to
17 modify or add to the requirements under par. (c) 3. and 4., the department shall
18 promulgate rules that modify or add to the requirements so that they are at least
19 equivalent to nationally recognized standards for recycling covered electronic
20 devices.

21 (9) RETAILERS. (a) *Reporting to manufacturers.* No later than May 1 of each
22 program year, beginning with [✓] May 1, 2008, ^{9/20} a retailer shall report to a manufacturer,
23 using a format specified or approved by the department, the number of video display
24 devices, by model, labeled with the manufacturer's brand that the retailer sold to

1 households in this state during each program quarter during the previous program
2 year.

3 (b) *Providing information to purchasers.* A retailer who sells new video display
4 devices for use by households shall provide to purchasers information describing how
5 video display devices can be collected and recycled and a description of the
6 prohibitions in s. 287.07 (5) (a). A retailer may satisfy this requirement by providing
7 a toll-free number for receiving the information and a description of how to access
8 the department's Internet site under sub. (10) (a). A retailer who sells through a
9 catalog may provide the information in the catalog. A retailer who sells through the
10 Internet may provide the information on its Internet site.

11 (9m) RECORD KEEPING AND INSPECTION. A person subject to sub. (3), (7), (8), or
12 (9) shall maintain records related to the program under this section and reports
13 required under this section for at least 3 years. The department may inspect records
14 of a person subject to sub. (3), (7), (8), or (9) that are related to the program under this
15 section.

16 (10) POWERS AND DUTIES OF THE DEPARTMENT. (a) *Internet site; manufacturers.*
17 The department shall maintain an Internet site on which the department lists the
18 names of manufacturers who are registered under sub. (3) and the names of the
19 brands listed in the manufacturers' registrations. The department shall update the
20 information on the Internet site promptly upon receipt of a new or revised
21 registration. The department shall include on the Internet site a statement that this
22 section applies only to video display devices sold for household use and that the list
23 of manufacturers is not a list of manufacturers qualified to sell video display devices
24 for industrial, commercial, or other nonhousehold uses. The department shall also

1 include on the Internet site the contact information provided by manufacturers
2 under sub. (3) (a) 2.

3 (am) *Internet site; recyclers.* The department shall maintain an Internet site
4 on which the department lists the names of ^{✓ registered} recyclers ~~who are registered~~ under sub.

5 (8) (a). The department shall update the information on the Internet site promptly
6 upon receipt of a new or revised registration.

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

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

16 2. If the department refuses to release information on the grounds that it is
17 confidential under subd. 1. and a person challenges that refusal, the department
18 shall inform the affected participant of that challenge. Unless the participant
19 authorizes the department to release the information, the participant shall pay the
20 reasonable costs incurred by this state to defend the refusal to release the
21 information.

22 3. Subdivision 1. does not prevent the disclosure of any information to a
23 representative of the department for the purpose of administering this section or to
24 an officer, employee, or authorized representative of the federal government for the
25 purpose of administering federal law. When the department provides information

1 that is confidential under subd. 1. to the federal government, the department shall
2 also provide a copy of the application for confidential status.

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

5 a. The number by which the weight of video display devices sold is multiplied
6 under sub. (4) (d) 1, ^{and (dm) 2. a. ✓} to determine target recycling weight. ✓

7 b. The estimated cost of recycling under sub. (4) (d) 4, ^{and (dm) 5. ✓}

8 c. The registration fee under sub. (4) ^{(a) (b) 2 ✓}

9 d. The multiplier for the weight of covered electronic devices collected from
10 households in rural counties under sub. (4) (f).

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

16 (d) *Annual report.* Before December 1 of each year, beginning in 2011, the
17 department shall provide a report on the program under this section to the
18 legislature under s. 13.172 (2) and to the governor. The department shall include all
19 of the following in the report:

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

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

23 3. Information concerning the collection ^{of recycling} programs used by manufacturers to
24 collect ^{of recycle} covered electronic devices. ✓

and recycling ✓

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

3 5. Information about any disposal of covered electronic devices in landfills in
4 this state.

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

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

8 (e) *Report concerning federal legislation.* If a federal law relating to the
9 collection and recycling of video display devices sold in the United States is enacted,
10 the department shall prepare a report describing the effect of the federal law and
11 shall submit the report under s. 13.172 (3) to the committee of each house of the
12 legislature with jurisdiction over solid waste policy.

13 (f) *Outreach and communication.* The department shall promote public
14 participation in the collection and recycling of covered electronic devices by and on
15 behalf of manufacturers through education and outreach activities. The department
16 shall facilitate communications between local governments, persons operating solid
17 waste collection and recycling centers, and manufacturers to ensure that
18 manufacturers are aware of covered electronic devices that are available for
19 recycling.

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

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

1 suspend or revoke the registration of a collector or recycler who violates sub. (7) or
2 (8).

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

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

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

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

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

21 287.91 (2) Notwithstanding sub. (1) and s. 287.95 (3) (a), the attorney general
22 may enforce s. 287.07 (3) ~~and~~, (4), and (5) by seeking injunctive relief against any
23 person violating those provisions.

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

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

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

5 **287.97 Penalties.** Any person who violates this chapter, except s. 287.07,
6 287.08, 287.17, or 287.81, or any rule promulgated under this chapter, except under
7 s. 287.07, 287.08 or 287.81, may be required to forfeit not less than \$10 nor more than
8 \$1,000 for each violation.

9 **SECTION 10. Nonstatutory provisions.**

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

16 (2) PERMANENT POSITION AUTHORIZATION. The authorized FTE positions for the
17 department of natural resources are increased by 1.0 SEG position, to be funded from
18 the appropriation under section 20.370 (2) (hr) of the statutes, as created by this act,
19 to administer the electronic waste recycling program.

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

24 (b) The authorized FTE positions for the department of natural resources are
25 increased by 1.0 SEG 2-year project position, to be funded from the appropriation

1 under section 20.370 (2) (hr) of the statutes, as created by this act, for start up of the
2 electronic waste recycling program.

3 **SECTION 11. Fiscal changes.**

4 (1) FUNDING FOR POSITIONS. In the schedule under section 20.005 (3) of the
5 statutes for the appropriation to the department of natural resources under section
6 20.370 (2) (hq) of the statutes, as affected by the acts of 2007, the dollar amount is
7 increased by \$26,700 for fiscal year 2007-08 and the dollar amount is increased by
8 \$160,000 for fiscal year 2008-09 to increase the authorized FTE positions for the
9 department by 1.0 SEG position for administration of the electronic waste recycling
10 program and to fund the 1.0 FTE SEG project position authorized under SECTION 10
11 (3) (a) of this act.

12 (END)

DWte

Insert 9-18

(NO #), 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 (NO #)

(end ins)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Insert 12-8-A

~~NO~~ by adding the weight of covered [✓] electronic devices
recycled by or on behalf of the manufacturer
during ~~NO~~

(end ins)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Insert 12-8-B

~~26~~ to the number of recycling credits that the manufacturer elects to ^{use} use, as reported to the department under sub. (5)(c) 3. ✓

(end ins)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Insert 14-11

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

(end ins)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0225/1dn

RCT:.....

JLD

date

This is a draft of the substitute amendment[✓] to the electronics recycling bill.

Under this draft, a manufacturer cannot count electronic waste that is recycled on its behalf unless the recycler is registered with DNR.[✓] To be registered, a recycler must comply[✓] with several requirements, including having an environmental management system. The draft also authorizes DNR to add additional operational requirements by rule. Someone might challenge the constitutionality of this aspect of the proposal as it applies to recyclers that are located outside of this state.

It might be argued that this state is attempting to apply its laws outside of its jurisdiction. It might also be argued that this aspect of the draft violates the Interstate Commerce Clause.[✓] I am aware that Minnesota registers out-of-state recyclers for the purpose of its electronics recycling law, but the Minnesota law requires that recyclers comply with their own state and local laws (as well as federal laws). For the most part, the Minnesota law does not impose independent requirements on how recyclers operate. It is difficult to predict the outcome of any court challenge, especially one based on the Interstate Commerce Clause,[✓] and I have not had time to research the issue. However, I am aware that courts have invalidated laws that could result in conflicting requirements imposed by different states with the result that interstate commerce could be "bogged down." That might be the case here. *

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
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FF An alternative approach might be to provide for the regulation ~~of~~ ^{of} persons in this state who recycle electronic devices separately from the producer responsibility program.[✓]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0225/1dn
RCT:jld:rs

February 28, 2008

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Please contact me with any questions or redraft instructions.

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