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# Wisconsin Legislative Council

## ACT MEMO

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**Prepared by:** Benjamin Kranner, Staff Analyst

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### 2023 Wisconsin Act 108 [2023 Senate Bill 866]

### Modifications to the Electronic Waste Recycling Program

The Department of Natural Resources (DNR) administers an electronic waste recycling program, often referred to as “E-Cycle Wisconsin.” Under the program, a manufacturer may not sell covered electronic devices to a household or covered school,<sup>1</sup> or deliver covered electronic devices to a retailer for subsequent sale to a household or covered school, unless certain requirements are met. Among these requirements, a manufacturer must generally register with DNR, pay certain fees, report specific information, and recycle or arrange for the recycling of eligible electronic devices. Additionally, statutes establish requirements for collectors and recyclers of electronic devices.

2023 Wisconsin Act 108 makes various changes to the electronic waste recycling program, as discussed below.

## TARGET RECYCLING WEIGHT FORMULA

State law requires a manufacturer to recycle, or arrange for the recycling of, a target weight of eligible electronic devices in each program year. If a manufacturer does not meet its target recycling weight, the manufacturer is generally required to pay a shortfall fee to DNR.

Under prior law, a manufacturer’s target weight for a given program year was based upon 80 percent of the total weight of covered electronic devices that the manufacturer sold to households and covered schools in the state in the program year that began three years prior to the given program year. **The act changes the target weight formula**, providing that a manufacturer’s target is based upon the manufacturer’s market share of the weight of covered devices sold in the state in the program year that began two program years prior to the given program year. A manufacturer’s target recycling weight is calculated by multiplying this market share by the total weight of eligible devices, collected in the state, that recyclers received for recycling in the program year that began two program years prior to the program year in which the target will apply.

Generally reflecting the changes to the target recycling weight formula, the act also modifies manufacturer reporting requirements. Additionally, the act requires DNR to calculate each manufacturer’s target recycling weight for the upcoming program year, and to notify each manufacturer of its target no later than the August 1 preceding the program year in which the target will apply.

The act includes nonstatutory provisions to address manufacturer targets for program years 2024 and 2025. The formulae for these targets generally mirror the act’s formula for other program years. However, the 2024 and 2025 targets are calculated using manufacturer market shares in certain calendar years, rather than program years. The formula for a manufacturer’s 2025 target also includes a

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<sup>1</sup> “Covered school” is defined to mean a public elementary or secondary school, including a charter school; a private elementary or secondary school; or a tribal school. [[s. 287.17 \(1\) \(fm\), Stats.](#)]

two-thirds multiplier, reflecting the fact that the formula relies upon the weight of devices collected during an 18-month period (the “transition year”).<sup>2</sup>

## REGISTRATION FEES

State law requires a manufacturer to pay a registration fee to DNR in each program year. The statutes establish various tiers of registration fees,<sup>3</sup> with the applicability of each tier based upon the number of covered devices that a manufacturer sold in the previous program year.

The act modifies the registration fees associated with certain tiers, as well as the number of devices that a manufacturer must sell to qualify for a particular tier. **Under the act**, the tiers, and associated registration fees, are as follows:<sup>4</sup>

- If a manufacturer sold at least 550 covered devices in the state in the previous program year, the manufacturer must pay a registration fee of \$5,500. Under prior law, this tier began at 500 devices, and was associated with a \$5,000 registration fee.
- If a manufacturer sold at least 250, but fewer than 550 covered devices in the state in the previous program year, the manufacturer must pay a registration fee of \$2,500. Under prior law, this tier ended at 500 devices and was associated with a \$1,250 registration fee.
- If a manufacturer sold fewer than 250 covered devices, the manufacturer is not required to pay a registration fee. This tier is unchanged relative to prior law.

## DEFINITION OF PERIPHERAL

2023 Wisconsin Act 108 modifies the definition of a “peripheral,” a type of electronic device that may be recycled and counted toward a manufacturer’s target recycling weight. Prior to the act, the definition of “peripheral” was limited to certain types of devices sold exclusively for external use with a consumer computer and that provide input into or output from a consumer computer (e.g., a keyboard). **The act expands the definition** to also include devices sold exclusively for external use with a consumer video display device and that provide input into or output from a consumer video display device.

## CONDITIONS FOR WAIVER OF SHORTFALL FEES

As noted previously, a manufacturer must generally pay a shortfall fee if the manufacturer fails to recycle, or arrange for the recycling of, a target weight of eligible devices. Prior law, retained by the act, provided that a manufacturer may obtain relief from the shortfall fee if it submits a request, along with supporting information, indicating that it has made good faith progress toward meeting its target recycling weight. If DNR determines that a manufacturer has made good faith progress toward meeting the target, then it must waive the shortfall fee.

**The act directs DNR to promulgate rules** establishing what may constitute good faith progress toward meeting a target recycling weight. The rule must provide flexibility in staff determination of

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<sup>2</sup> This 18-month period, from July 1, 2022, to December 31, 2023, was a product of 2021 Wisconsin Act 79, which shifted the years used for the administration of the electronic waste recycling program from the state fiscal year to the calendar year.

<sup>3</sup> The statutes also authorize DNR to modify the registration fees associated with the tiers that require a registration fee. This authority is unaffected by the act.

<sup>4</sup> The statutes also establish unique fees and thresholds for the “transition year,” the 18-month program year from July 1, 2022, to December 31, 2023. This transition year was a product of 2021 Wisconsin Act 79, which shifted the years used for the administration of the electronic waste recycling program from the state fiscal year to the calendar year.

good faith progress, but must establish means by which a manufacturer may demonstrate good faith progress. The rule must also account for circumstances beyond a manufacturer's control, such as a reduction in collection sites or events due to a local or statewide declared emergency.

**Effective date:** March 16, 2024

For a full history of the bill, visit the Legislature's [bill history page](#).

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