
SENATE BILL 5136

State of Washington

65th Legislature

2017 Regular Session

By Senators Chase, Sheldon, Conway, and Hasegawa

1 AN ACT Relating to electronic product recycling; amending RCW
2 70.95N.010, 70.95N.290, 70.95N.280, 70.95N.250, and 70.95N.060; and
3 reenacting and amending RCW 70.95N.140.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 70.95N.010 and 2006 c 183 s 1 are each amended to
6 read as follows:

7 The legislature finds that a convenient, safe, and
8 environmentally sound system for the collection, transportation, and
9 recycling of covered electronic products must be established. The
10 legislature further finds that the system must encourage the design
11 of electronic products that are less toxic and more recyclable. The
12 legislature further finds that the responsibility for this system
13 must be shared among all stakeholders, with manufacturers financing
14 the collection, transportation, and recycling system. The legislature
15 further finds that the authority that is charged with developing,
16 financing, and implementing this system must perform these functions
17 with full public disclosure, that their work be consistent with state
18 contracting standards applicable to other governmental agency
19 procurement, and that the department must exercise strong oversight
20 of the performance of the authority.

1 **Sec. 2.** RCW 70.95N.290 and 2013 c 305 s 12 are each amended to
2 read as follows:

3 (1)(a) The authority is governed by a board of directors. The
4 board of directors is comprised of eleven participating
5 manufacturers, appointed by the director of the department. For
6 program years 2009 through 2015, five board positions are reserved
7 for representatives of the top ten brand owners by return share of
8 covered electronic products, and six board positions are reserved for
9 representatives of other brands, including at least one board
10 position reserved for a manufacturer who is also a retailer selling
11 their own private label. The return share of covered electronic
12 products used to determine the top ten brand owners for purposes of
13 electing the board must be determined by the department by January 1,
14 2007. For program years 2016 and beyond, five board positions are
15 reserved for representatives of the top ten brand owners by market
16 share of covered electronic products, and six board positions are
17 reserved for representatives of other brands, including at least one
18 board position reserved for a manufacturer who is also a retailer
19 selling its own private label. The market share of covered electronic
20 products used to determine the top ten brand owners for purposes of
21 electing the board must be determined by the department by October 1,
22 2015. Two board positions are reserved for representatives of
23 companies engaged in the collection, transportation, and direct
24 processing of discarded electronic products. One board position is
25 reserved for a representative of organizations advocating for
26 increasing the recycling and reuse of discarded electronic products.
27 These positions must rotate every two years.

28 (b) The board must have representation from both television and
29 computer manufacturers.

30 (2) The board shall select from its membership the chair of the
31 board and such other officers as it deems appropriate.

32 (3) A majority of the board constitutes a quorum.

33 (4) The directors of the department of commerce and the
34 department of ecology serve as ex officio members and they or their
35 designees must attend a minimum of three board meetings each year.
36 The state agency directors serving in ex officio capacity may each
37 designate an employee of their respective departments to act on their
38 behalf in all respects with regard to any matter to come before the
39 authority. Ex officio designations must be made in writing and
40 communicated to the authority director.

1 (5) The board shall create its own bylaws in accordance with the
2 laws of the state of Washington.

3 (6) Any member of the board may be removed for misfeasance,
4 malfeasance, or willful neglect of duty after notice and a public
5 hearing, unless the notice and hearing are expressly waived in
6 writing by the affected member.

7 (7) The members of the board serve without compensation but are
8 entitled to reimbursement, solely from the funds of the authority,
9 for expenses incurred in the discharge of their duties under this
10 chapter.

11 **Sec. 3.** RCW 70.95N.280 and 2006 c 183 s 29 are each amended to
12 read as follows:

13 (1) The Washington materials management and financing authority
14 is established as a public body corporate and politic, constituting
15 an instrumentality of the state of Washington exercising essential
16 governmental functions. In procuring goods and services, the
17 authority shall be guided by the policies and procedures applicable
18 to state agencies under chapter 39.26 RCW.

19 (2) The authority shall plan and implement a collection,
20 transportation, and recycling program for manufacturers that have
21 registered with the department their intent to participate in the
22 standard program as required under RCW 70.95N.040.

23 (3) Membership in the authority is comprised of registered
24 participating manufacturers. Any registered manufacturer who does not
25 qualify or is not approved to submit an independent plan, or whose
26 independent plan has not been approved by the department, is a member
27 of the authority. All new entrants and white box manufacturers are
28 also members of the authority.

29 (4) The authority shall act as a business management organization
30 on behalf of the citizens of the state to manage financial resources
31 and contract for services for collection, transportation, and
32 recycling of covered electronic products.

33 (5) The authority's standard plan is responsible for collecting,
34 transporting, and recycling the sum of the equivalent shares of each
35 participating manufacturer.

36 (6) The authority shall accept into the standard program covered
37 electronic products from any registered collector who meets the
38 requirements of this chapter. The authority shall compensate
39 registered collectors for the reasonable costs associated with

1 collection, but is not required to compensate nor restricted from
2 compensating the additional collection costs resulting from the
3 additional convenience offered to customers through premium and
4 curbside services.

5 (7) The authority shall accept and utilize in the standard
6 program any registered processor meeting the requirements of this
7 chapter and any requirements described in the authority's operating
8 plan or through contractual arrangements. Priority must be given to
9 processors operating in the state of Washington. Processors utilized
10 by the standard plan shall provide documentation to the authority at
11 least annually regarding how they are meeting the requirements in RCW
12 70.95N.250 (~~and section 26 of this act~~), including enough detail to
13 allow the standard plan to meet its reporting requirements in RCW
14 70.95N.140(2)(c) (~~and (d)~~), and must submit to audits conducted by
15 or for the authority. The authority shall compensate such processors
16 for the reasonable costs, as determined by the authority, associated
17 with processing unwanted electronic products. Such processors must
18 demonstrate that the unwanted electronic products have been received
19 from registered collectors or transporters, and provide other
20 documentation as may be required by the authority.

21 (8) Except as specifically allowed in this chapter, the authority
22 shall operate without using state funds or lending the credit of the
23 state or local governments.

24 (9) The authority shall develop innovative approaches to improve
25 materials management efficiency in order to ensure and increase the
26 use of secondary material resources within the economy.

27 **Sec. 4.** RCW 70.95N.250 and 2006 c 183 s 25 are each amended to
28 read as follows:

29 (1) The authority and each authorized party shall ensure that
30 each processor used directly by the authority or the authorized party
31 to fulfill the requirements of their respective standard plan or
32 independent plan has provided the authority or the authorized party a
33 written statement that the processor will comply with the
34 requirements of this section (~~and section 26 of this act~~).

35 (2) The department shall establish by rule performance standards
36 for environmentally sound management for processors directly used to
37 fulfill the requirements of an independent plan or the standard plan.
38 Performance standards may include financial assurance to ensure
39 proper closure of facilities consistent with environmental standards.

1 A transporter, collector, or processor utilized in an independent
2 plan or the standard plan that is determined by the department to
3 have willfully violated these performance standards or other
4 requirements of this chapter may not be utilized in the plan as a
5 preferred participant for a minimum period of three years following
6 the violation.

7 (3) The department shall establish by rule guidelines regarding
8 nonrecycled residual that may be properly disposed after covered
9 electronic products have been processed.

10 (4) The department (~~may audit~~) shall periodically audit
11 transporters, collectors, and processors that are utilized to fulfill
12 the requirements of an independent plan or the standard plan.

13 (5) No plan or program required under this chapter may include
14 the use of federal or state prison labor for processing.

15 **Sec. 5.** RCW 70.95N.060 and 2006 c 183 s 6 are each amended to
16 read as follows:

17 (1) All initial independent plans and the initial standard plan
18 required under RCW 70.95N.050 must be submitted to the department by
19 February 1, 2008. The department shall review each independent plan
20 and the standard plan.

21 (2) The authority submitting the standard plan and each
22 authorized party submitting an independent plan to the department
23 must pay a fee to the department to cover the costs of administering
24 and implementing this chapter. The department shall set the fees as
25 described under RCW 70.95N.230.

26 (3) The fees in subsection (2) of this section apply to the
27 initial plan submission and plan updates and revisions required in
28 RCW 70.95N.070.

29 (4) Within ninety days after receipt of a plan, the department
30 shall determine whether the plan complies with this chapter. If the
31 plan is approved, the department shall send a letter of approval. If
32 a plan is rejected, the department shall provide the reasons for
33 rejecting the plan to the authority or authorized party. The
34 authority or authorized party must submit a new plan within sixty
35 days after receipt of the letter of disapproval.

36 (5) An independent plan and the standard plan must contain the
37 following elements:

1 (a) Contact information for the authority or authorized party and
2 a comprehensive list of all manufacturers participating in the plan
3 and their contact information;

4 (b) A description of the collection, transportation, and
5 recycling systems and service providers used, including a description
6 of how the authority or authorized party will:

7 (i) Seek to use businesses within the state, including retailers,
8 charities, processors, and collection and transportation services;

9 (ii) Fairly compensate collectors for providing collection
10 services; ~~((and))~~

11 (iii) Fairly compensate processors for providing processing
12 services; and

13 (iv) Review service contracts and provide for contract rate and
14 volume revisions at least two times per year to adjust for changes in
15 market conditions;

16 (c) The method or methods for the reasonably convenient
17 collection of all product types of covered electronic products in
18 rural and urban areas throughout the state, including how the plan
19 will provide for collection services in each county of the state and
20 for a minimum of one collection site or alternate collection service
21 for each city or town with a population greater than ten thousand. A
22 collection site for a county may be the same as a collection site for
23 a city or town in the county;

24 (d) A description of how the plan will provide service to small
25 businesses, small governments, charities, and school districts in
26 Washington;

27 (e) The processes and methods used to recycle covered electronic
28 products including a description of the processing that will be used
29 and the facility location;

30 (f) Documentation of audits of each processor used in the plan
31 and compliance with processing standards established under RCW
32 70.95N.250 ~~((and section 26 of this act))~~;

33 (g) A description of the accounting and reporting systems that
34 will be employed to track progress toward the plan's equivalent
35 share;

36 (h) A timeline describing start-up, implementation, and progress
37 towards milestones with anticipated results;

38 (i) A public information campaign to inform consumers about how
39 to recycle their covered electronic products at the end of the
40 product's life; and

1 (j) A description of how manufacturers participating in the plan
2 will communicate and work with processors utilized by that plan to
3 promote and encourage design of electronic products and their
4 components for recycling.

5 (6) The standard plan shall address how it will incorporate and
6 fairly compensate registered collectors providing curbside or premium
7 services such that they are not compensated at a lower rate for
8 collection costs than the compensation offered other collectors
9 providing drop-off collection sites in that geographic area.

10 (7) All transporters, collectors, and processors used to fulfill
11 the requirements of this section must be registered as described in
12 RCW 70.95N.240.

13 (8) The department must periodically review the standard plan and
14 all revisions to the plan to ensure that the authority is consistent
15 in its allocation of product volume among contracted transporters,
16 collectors, and processors, that the authority engages in competitive
17 rate and volume negotiations, and that the authority is consistent in
18 its administration of the standard plan.

19 **Sec. 6.** RCW 70.95N.140 and 2013 c 305 s 6 and 2013 c 292 s 1 are
20 each reenacted and amended to read as follows:

21 (1) By March 1st of the second program year and each program year
22 thereafter, the authority and each authorized party shall file with
23 the department an annual report for the preceding program year.

24 (2) The annual report must include the following information:

25 (a) The total weight in pounds of each type of covered electronic
26 products collected and recycled, by county, during the preceding
27 program year including documentation verifying collection and
28 processing of that material. The total weight in pounds includes
29 orphan products. The report must also indicate and document the
30 weight in pounds received from each nonprofit charitable organization
31 primarily engaged in the business of reuse and resale used by the
32 plan. The report must document the weight in pounds that were
33 received in large quantities from small businesses, small
34 governments, charities and school districts as described in RCW
35 70.95N.090(5);

36 (b) The collection services provided in each county and for each
37 city with a population over ten thousand including a list of all
38 collection sites and services operating in the state in the prior
39 program year and the parties who operated them;

1 (c)(i) A list of processors used, the weight of covered
2 electronic products processed by each direct processor, and a
3 description of the processes and methods used to recycle the covered
4 electronic products including a description of the processing and
5 facility locations. The report must also include a list of
6 subcontractors who further processed or recycled unwanted covered
7 electronic products or electronic components, including facility
8 locations.

9 (ii) An estimate of the weight of each type of material recovered
10 as a result of the processing of recycled covered electronic
11 products. Recovered materials catalogued under this subsection must
12 include, at a minimum: Cathode ray tube glass, circuit boards,
13 batteries, mercury-containing devices, plastics, and metals.

14 (iii) An estimate of the percentage, by weight, of all collected
15 products that ultimately are reused, recycled, or end up as residual
16 waste that is disposed of in another manner;

17 (d) Educational and promotional efforts that were undertaken;

18 (e) For program years 2009 through 2014, the results of sampling
19 and sorting as required in RCW 70.95N.110, including a list of the
20 brand names of covered electronic products by product type, the
21 number of covered electronic products by product type, the weight of
22 covered electronic products that are identified for each brand name
23 or that lack a manufacturer's brand, and the total weight of the
24 sample by product type;

25 (f) The list of manufacturers that are participating in the
26 standard plan;

27 (g) A description of program revenues and costs, including: (i)
28 The total cost of the program; and (ii) the average cost of the
29 program per pound of covered electronic product collected;

30 (h) A detailed accounting of the following costs of the program:
31 (i) Program delivery, including: (A) Education and promotional
32 efforts; (B) collection; (C) transportation; and (D) processing and
33 labor; and (ii) program administration;

34 (i) A description of the methods used by the program to collect,
35 transport, recycle, and process covered electronic products; (~~and~~)

36 (j) The contracted rates and allocated volumes for services by
37 each transporter, collector, and processor, and the rates bid or
38 offered by other service providers that unsuccessfully sought
39 contracts with the authority and each authorized party; and

40 (k) Any other information deemed necessary by the department.

1 (3) The department shall review each report within ninety days of
2 its submission and shall notify the authority or authorized party of
3 any need for additional information or documentation, or any
4 deficiency in its program.

5 (4) All reports submitted to the department must be available to
6 the general public through the internet. Proprietary information
7 submitted to the department under this chapter is exempt from public
8 disclosure under RCW 42.56.270.

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