



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2009 Senate Bill 107

**Senate Substitute
Amendment 1 and Senate
Amendment 1 to Senate
Substitute Amendment 1**

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Contact: John Stolzenberg, Chief of Research Services (266-2988)

SENATE SUBSTITUTE AMENDMENT 1

Overview

Senate Substitute Amendment 1 assigns manufacturers of specified household electronic devices sold in the state the responsibility for recycling those devices either directly or through collectors and recyclers registered under the electronic waste recycling program created by the substitute amendment. These “covered electronic devices” include television and computer monitors with a tube or screen at least seven inches at its longest diagonal measurement, computers, and printers. The amount of covered electronic devices that a manufacturer is responsible for recycling is based upon the manufacturer’s sales of those devices in the state. A manufacturer may count towards its recycling obligation the recycling of a broader group of electronic devices identified as “eligible electronic devices.”

Manufacturer’s recycling responsibilities are enforced through restrictions on the sale of its covered electronic devices in the state and the assessment of shortfall fees when a manufacturer recycles less than its target amount.

If a manufacturer recycles more than its target amount, the manufacturer may earn recycling credits which the manufacturer can use to meet future recycling obligations or sell to another manufacturer for that manufacturer to meet its recycling obligations.

The Department of Natural Resources (DNR) administers the manufacturer, collector, and recycler registration programs and ensures compliance with the electronic waste recycling program. Local units of government may, but are not required to, register as a collector or recycler, or both.

The substitute amendment also establishes bans on the landfilling and incineration of eligible electronic devices. Landfill and incinerator operators are, in general, required to make a reasonable effort to manually separate, and arrange to recycle, televisions and computer monitors that are readily observable in the solid waste that is delivered to the facility for disposal or burning.

Electronic Waste Recycling Program

Requirements for Sale of Covered Electronic Devices

The substitute amendment establishes that beginning on December 1, 2009, a manufacturer may not sell to a household, offer to sell to a household or deliver to retailers for subsequent sale to a household a new covered electronic device unless the manufacturer does all of the following:

- Permanently affixes a label to the device that is readily visible and shows the manufacturer's brand.
- Registers with DNR.
- Pays DNR the applicable registration and shortfall fees.
- Recycles, or arranges for the recycling by a registered recycler of, eligible electronic devices used by households in this state. This recycling may be conducted jointly with other manufacturers or through an entity created by manufacturers to collect and recycle these devices.
- Provides specified reports to DNR.

The substitute amendment also establishes that beginning on May 1, 2010, a retailer may not sell or offer for sale to a household a new covered electronic device unless, before making the first offer for sale, the retailer has determined that the brand of the device is listed on DNR's Internet site. The retailer must also provide to purchasers information through specified means describing how these devices can be collected and recycled and a description of the landfill and incineration bans created by the substitute amendment.

For purposes of this program, a "manufacturer" is a person who does any of the following:

- Manufacturers covered electronic devices to be sold under the person's own brand.
- Sells covered electronic devices manufactured by others under the person's own brand.
- License the person's brand for manufacturing and sale of covered electronic devices by others. If a person identified in this bullet point enters into a contract with a licensee under which the licensee assumes the manufacturer's responsibilities under the program, the licensee rather than the licensor is the "manufacturer" of the covered electronic devices under this item.

"Eligible electronic devices" include "covered electronic devices" identified above in the Overview, plus the following devices used by a household primarily for personal use: computer peripherals (e.g., a keyboard), facsimile machines, digital video disc players and videocassette recorders (including those players and recorders that do not use a disc or cassette and that are not a camera), and other electronic devices identified by DNR by rule. The DNR may also remove devices from this list by rule. The department may not promulgate these rules until at least two years after the general effective date of the substitute amendment.

"Covered electronic devices" do not include a television or computer monitor that is a part of a motor vehicle or a specified appliance.

Registration of Manufacturers

The electronic waste recycling program is administered on a program year basis that runs from July 1 to the following June 30. In general, each manufacturer who offers covered electronic devices for sale in this state must annually by September 1 submit to DNR a registration that includes a list of its brands of covered electronic devices offered for sale in this state and a certification that it has complied and will continue to comply with the program's requirements. A complete registration is effective on receipt by DNR and is valid until the following September 1, unless revoked before that date.

Based upon the substitute amendment being enacted in the summer of 2009, the substitute amendment also provides for delayed implementation of the recycling program in program year 2009-10. Under this delayed implementation, a manufacturer's registration in the year 2009 is due by December 1, 2009.

Beginning in 2010, a manufacturer must disclose as part of its registration whether its covered electronic devices comply with European Union limitations on the presence of hazardous substances, including lead and mercury, in electrical and electronic equipment.

Manufacturer Recycling Targets, Fees, and Recycling Credits

A manufacturer must pay, with its annual registration application, a registration fee and, beginning in 2010, any applicable shortfall fee. The amount of the registration fee is based upon the number of covered electronic devices that the manufacturer sold in the state during the previous program year. The fee, for the specified sales, is as follows:

- \$5,000, if at least 100 devices sold. Starting two years after the bill's general effective date, DNR may modify this fee by rule.
- \$1,250, if 25 to 99 devices sold.
- \$0, if less than 25 devices sold.

For a full program year, the annual shortfall fee is calculated as the product of the shortfall weight, measured in pounds, times a poundage charge that varies by how closely the manufacturer met its target recycling weight. A manufacturer's shortfall weight is its target recycling weight less the sum of its weight of recycled devices and the number of recycling credits it elects to use.

A manufacturer's target recycling weight is 80% of the number of pounds of the manufacturer's covered electronic devices sold to households in this state during the program year that began 36 months before the beginning of the program year in which the calculation is made, as reported to DNR in the reports described below.

A manufacturer's weight of recycled devices is the weight of eligible electronic devices used by households in this state and collected by and delivered to the manufacturer or a registered recycler for recycling by or on behalf of the manufacturer during the previous program year. If the manufacturer reports separately the weight of eligible electronic devices used by households in rural counties and in urban counties for a program year, this weight is determined by adding the weight used by households in urban counties in that program year and 125% of the weight used by households in rural counties in that program year. The substitute amendment defines a "rural county" to be a county that is not an "urban county," and an "urban county" to be any of the following counties: Brown, Calumet, Chippewa, Dane, Dodge, Douglas, Dunn, Eau Claire, Fond du Lac, Grant, Green, Jefferson, Kenosha, LaCrosse, Lincoln,

Manitowoc, Marathon, Marinette, Milwaukee, Outagamie, Ozaukee, Pierce, Portage, Racine, Rock, Sauk, Sheboygan, St. Croix, Walworth, Washington, Waukesha, Winnebago, or Wood.

The poundage charge is \$.50 per pound, if the weight of recycled devices is less than 50% of the target recycling rate; \$.40 per pound, if the weight of recycled devices is between 50% and 90% of the target recycling weight; and \$.30 per pound, if the weight of recycled devices is more than 90% of the target recycling weight.

If, in a program year, a manufacturer's weight of recycled devices exceeds its target recycling weight, then the manufacturer is entitled to a number of recycling credits equal to the number of excess pounds or 20% of the target recycling weight, whichever is less. For any of the three succeeding program years, the manufacturer may use its credits to reduce or eliminate its shortfall fee or sell the credits to another manufacturer for that manufacturer to use during those years.

For program year 2009-10, the shortfall fee is based on a manufacturer's target recycling weight that is 50% of the full program year target recycling weight and the manufacturer's weight of recycled devices is the weight of covered electronic devices recycled by or on behalf of the manufacturer during the last two program quarters of that program year (i.e., January 1 to June 20, 2009).

Manufacturers Reporting Requirements

The substitute amendment requires that, in general, a manufacturer report with its annual registration application its total weight of its covered electronic devices sold to households in Wisconsin during the program year that began 24 months before the beginning of the program year in which the report is made. This report may be based upon the total weight of each model of its covered devices or all of its covered devices, or an estimate based on national sales data of the total weight of all of its covered electronic devices.

A manufacturer must also report its total weight of recycled devices during the preceding program year, as well as the number of recycling credits that it purchased or sold during that year, the number of credits that it elects to use in calculating its shortfall fees, and the number of credits available to the manufacturer after calculating its shortfall fees.

Collectors

The substitute amendment establishes that beginning on November 1, 2009, no person may operate as a collector delivering or arranging for the delivery of eligible electronic devices to a registered recycler for recycling on behalf of a registered manufacturer unless the person is registered under the electronic waste recycling program. Annual registration for program year 2009-10 must be made by November 1, 2009 and for subsequent full program years must be made no later than August 1. Each registration must include a certification that the person has all governmental licenses or other approvals that are required to operate as a collector and has complied, and will continue to comply, with the program requirements and with applicable health, environmental, safety, and financial responsibility requirements.

By August 1 of each full program year, registered collectors must report to DNR the total weight of eligible electronic devices they collected in the state during the preceding program year and the names of all registered recyclers to whom the collectors delivered those devices. A registered collector may not use prison labor to collect any of the devices reported in these reports.

Recyclers

The substitute amendment establishes that beginning on November 1, 2009, no person may operate as a recycler recycling eligible electronic devices on behalf of a registered manufacturer unless the person is registered under the electronic waste recycling program. Annual registration for program year 2009-10 must be made by November 1, 2009 and for subsequent full program years must be made no later than August 1. Each registration must include documentation of required liability insurance and a certification that the person complies with the operational requirements described below and with specified federal state and local requirements concerning the handling and processing of eligible electronic devices and materials derived from these devices.

The substitute amendment assigns to registered recyclers a number of operational requirements, including that each recycler:

- Must maintain liability insurance coverage of at least \$1 million for environmental releases, accidents, and other emergencies; and proof of financial responsibility, using one of the specified methods, ensuring the availability of funds to close the facilities at which recycling is conducted.
- May not use prison labor to recycle eligible electronic devices reported under the program.
- Must maintain records that:
 - Can be used to determine, for each program year, the total weight of eligible electronic devices recycled on behalf of manufacturers under the program, and the weight of materials derived from those devices that the recycler sends either to another person for use in a manufacturing process or for recovery, or to be landfilled or incinerated.
 - Identify each person who received from the recycler materials derived from eligible electronic devices recycled under the program.
 - If the persons identified under the preceding bullet point do not use the materials in a manufacturing process, identify each person who receives from those persons materials derived from eligible electronic devices recycled under the program.
 - Show the actions that the recycler takes to ensure that the persons identified under the preceding two bullet points uses the materials derived from eligible electronic devices in a manufacturing process or for recovery of usable materials.
- Prepares a written contingency plan for responding to releases of hazardous substances that complies with specified DNR rules.

The DNR must review the operational requirements described above and, if the department determines that changes are necessary to ensure that the requirements are at least equivalent to nationally recognized standards for recycling eligible electronic devices, modify the requirements by rule so that they are at least equivalent to these national standards. The DNR may not promulgate this rule until at least two years after the general effective date of the substitute amendment.

A registered recycler must make the records for a program year described in the preceding list available, upon request, to a manufacturer on behalf of whom the recycler recycled eligible electronic devices under the program in that year. If a recycler maintains a system under which it tracks devices recycled on behalf of one manufacturer, and the disposition of the materials derived from those devices,

separately from other devices that it recycles, the recycler is only required to provide the manufacturer the specified information concerning the eligible devices recycled on behalf of that manufacturer.

A registered recycler must also report semiannually to DNR the total weight of eligible electronic devices collected in the state of the recycler received for recycling on behalf of a registered manufacturer and the name of the manufacturer. Starting in 2010, the report due August 1 of each program year must cover the preceding program year. Starting in 2011, the report due February 1 of each program year must cover the first six months of the program year. Each record due in February must also identify the total weight of devices collected in the state that the recycler received for recycling during the first six months of the program year in anticipation of attributing them to a manufacturer under the recycling program. A registered recycler must also maintain records of the sources of eligible electronic devices collected in the state that the recycler receives for recycling on behalf of registered manufacturers.

Recordkeeping and Inspection

Affected retailers and registered manufacturers, collectors, and recyclers must maintain records related to the electronic waste recycling program and reports required under the program for at least three years. The DNR may inspect any of these persons' program-related records.

DNR Powers and Duties

The substitute amendment *directs* DNR to do all of the following:

- Maintain an Internet site on which it lists the names of registered manufacturers and registered recyclers, and the brands listed in the manufacturers' registrations.
- Make information provided in registration statements and reports under the program available to manufacturers, retailers, and the public. The substitute amendment also creates a procedure under which a person may request confidential treatment of this information.
- Annually review the registration fees for manufacturers and the elements of the formula for computing shortfall fees and recommend to the Legislature any changes in these items necessary to improve the effectiveness of the program or provide more recycling opportunities to rural areas of the state.
- Evaluate the accuracy of information on the sales of covered electronic devices provided by manufacturers in 2009 and 2010 and whether the weight of each manufacturer's covered electronic devices sold in the state should be based on national sales data obtained from third parties and report the results of this evaluation to the Legislature and the Governor.
- Beginning in 2012, report by December 1 of each year to the Legislature and the Governor on the specified elements of the program, including whether "covered electronic devices" should be expanded to include additional kinds of devices.
- If a federal law relating to the collection and recycling of covered electronic devices sold in the United States is enacted, report to the Legislature the effect of the federal law.
- Promote participation in the collection and recycling of eligible electronic devices by and on behalf of manufacturers through education and outreach activities.

- Assist collectors and recyclers in identifying applicable federal and state requirements concerning the collection, storage, transportation, export, and processing of eligible electronic devices and materials derived from those devices.
- Review registered recyclers' operational requirements specified in the substitute amendment and, starting two years after the general effective date of the substitute amendment, revise them by rule so that they are at least equivalent to nationally recognized recycling standards.

The substitute amendment *authorizes* DNR to do the following:

- Cooperate with other states to effectuate the electronic waste recycling program.
- Operate with other states a regional system for creating, trading, and selling credits for recycling eligible electronic devices.
- Revoke the registration of a manufacturer, collector or recycler who violates a specified program requirement.
- Add or delete, by rule, electronic devices from the list of eligible electronic devices subject to the landfilling and incineration ban or the electronic waste recycling program, or both, upon making the specified determination relating to harm from the disposal or burning of the device to human health or the environment.
- Modify, by rule, the registration fee for manufacturers that sell at least 100 covered electronic devices.
- Perform or contract for the performance of an audit of the activities of a registered collector or registered recycler and collect the specified portion of the costs of the audit from the collector or recycler.

The DNR may not promulgate a rule changing "eligible electronic devices" or a manufacturer's registration fee until at least two years after the general effective date of the substitute amendment.

Landfill and Incineration Bans

The substitute amendment establishes that beginning on September 1, 2010, no person may dispose of in a landfill, burn in an incinerator, or place in the container the contents of which will be disposed of in a landfill or burned in an incinerator any eligible electronic device.

A landfill or incinerator operator must make a reasonable effort to manually separate and arrange to have recycled any consumer television or computer monitor subject to the electronic waste recycling program that is readily observable in solid waste that is delivered to the facility for disposal or burning unless the operator determines that one of the following applies:

- Separating the device is not practical or would require the operator to implement measures to protect human health or safety in addition to any measures taken in the ordinary course of business.
- The device has been damaged in such a way that recycling is not feasible or practical.

Coordination with Other Recycling Programs

The substitute amendment directs local units of government that are "responsible units" under the state's general recycling program to provide information to persons in its region about the landfill

and incineration bans created by the substitute amendment, why it is important to recycle electronic devices, and opportunities available to those persons for recycling electronic devices.

The substitute amendment also establishes that solid wastes consisting of eligible electronic devices used by households may not be subject to a municipal waste flow control ordinance.

Penalties

The substitute amendment specifies the following penalties:

- A forfeiture of not more than \$10,000 for each violation by a manufacturer of a requirement in the electronic waste recycling program.
- A forfeiture of not more than \$1,000 for each violation by a person other than a manufacturer of a requirement in the electronic waste recycling program.
- A forfeiture of \$50 for the first violation, \$200 for a second violation and not more than \$2000 for a third or subsequent violation of the bans on landfilling or incinerating covered electronic devices.

Appropriations and Position Authorizations

The substitute amendment authorizes for DNR 1.0 SEG FTE position to administer the electronic waste recycling program, and 2 SEG two-year project positions for start up of this program.

The substitute amendment appropriates from the Recycling and Renewable Energy Fund \$170,000 for the first year of the fiscal biennium in which the provision providing this authorization takes effect and \$160,000 for the second year of that fiscal biennium for administration of the electronic waste recycling program and the specified positions. The substitute amendment also creates a new appropriation to DNR that consists of registration fees, shortfall fees and audit charges that DNR collects under the program that is to be used for administration of the program and the specified positions.

Effective Dates

The substitute amendment takes effect, in general, on the day after publication, except that the appropriations from the Recycling and Renewable Energy Fund described in the preceding section take effect on the day after publication or the second day after publication of the 2009-11 Biennial Budget Act, whichever is later.

SENATE AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1

Senate Amendment 1 to Senate Substitute Amendment 1 creates an exception to the requirement that a manufacturer pay a shortfall fee in a particular program year. Under the exception, a manufacturer may submit, with its registration, a request for relief from the shortfall fee in that year along with information showing that the manufacturer has made good faith progress toward meeting its applicable target recycling weight.

If DNR determines that a manufacturer requesting this relief has made good faith progress toward meeting its target recycling weight, the department must waive the requirement that the manufacturer pay the shortfall fee in the year. If DNR determines that the manufacturer has not made this progress, it must notify the manufacturer, and the manufacturer must pay the shortfall fee within 60 days after receiving the notification

Companion Bill

2009 Assembly Bill 278 contains the same text as in Senate Substitute Amendment 1 to 2009 Senate Bill 107.

Legislative History

On May 6, 2009, the Senate Committee on Environment offered Senate Substitute Amendment 1 and recommended adoption of Senate Substitute Amendment 1, by a vote of Ayes, 5; Noes, 0, and recommended passage of Senate Bill 107, as amended, by a vote of Ayes, 4; Noes, 1.

On June 9, 2009, Senator Miller offered Senate Amendment 1 to Senate Substitute Amendment 1, and the Senate adopted Senate Amendment 1 and Senate Substitute Amendment 1, as amended, on separate voice votes. On June 9, 2009, the Senate passed Senate Bill 107, as amended, by a vote of Ayes, 23; Noes, 10.

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