



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Senate Bill 397

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

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Senate Bill 397 relates to the disposal, collection, and recycling of electronic devices. This Amendment Memo summarizes the contents of Senate Substitute Amendment 1 and Senate Amendment 1 to Senate Substitute Amendment 1 to Senate Bill 397.

SENATE SUBSTITUTE AMENDMENT 1

Senate Substitute Amendment 1 has two main components, one creating an electronic waste recycling program and the second establishing bans on the landfilling and incineration of specified electronic devices.

Electronics Waste Recycling Program

Requirements for Sale of Video Display Devices

The substitute amendment specifies that, beginning on September 1, 2008, a manufacturer may not sell or offer to sell to a household, or deliver to retailers for subsequent sale to a household a new “video display device” unless the manufacturer meets the following requirements.

- Permanently fixes a label to the video display device that is readily visible and that shows the manufacturer’s brand.
- Is registered with the Department of Natural Resources (DNR).
- Pays registration and shortfall fees described below.

- Recycles or arrange for the recycling by a registered recycler of “covered electronic devices” used by households in the state. In these recycling programs, individuals may not be charged a fee when they relinquish covered electronic devices for recycling.
- Provides specified reports to DNR and conducts required assessments.

For purposes of this program, a “manufacturer” is a person who manufactures video display devices to be sold under the person’s own brand; sells video display devices manufactured by others under the person’s own brand; or licenses the person’s brand for manufacture and sale of video devices by others. A “video display device” is a television or computer monitor with a tube or screen that is at least nine inches in its longest diagonal measurement and is marketed by the manufacturer for use by households, other than a television or computer monitor that is part of a motor vehicle or specified appliance. A “covered electronic device” is any specified electronic devices used by a household primarily for personal use including a computer, peripheral computer equipment such as a keyboard or printer, facsimile machine, digital video disc player, video cassette recorder, video display device, and other kinds of electronic devices identified by DNR by rule for which the department has determined that the disposal of the device in a landfill may be harmful to human health or the environment.

A manufacturer may carry out its recycling responsibilities described above jointly with other manufacturers and may participate with other manufacturers in creating an entity to collect and recycle covered electronic devices.

The substitute amendment also specifies that, beginning on February 1, 2009, a retailer may not sell or offer for sale to a household a new video display device unless, before offering the device for sale, the retailer has reviewed DNR’s Internet site, described below, and determined that the brand of the video display device is listed as being manufactured by a registered manufacturer. A retailer who took possession of a video display device before the revocation or expiration of a manufacturer’s registration may sell the device to a household within 180 days after the revocation or expiration.

Registration of Manufacturers

The substitute amendment requires each manufacturer to register annually with DNR no later than September 1, beginning September 1, 2008. The registration must include a list of the manufacturer’s brands of video display devices offered for sale in Wisconsin, contact information and a certification the manufacturer has complied, and will continue to comply, with the requirements of the electronic waste recycling program; and, beginning with the registration due September 1, 2009, a statement disclosing whether any of its video display devices would violate the maximum concentration value for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, or polybrominated diphenyl ethers provided under the Annex to European Union Directive 2002/95/EC.

A manufacturer who begins selling video display devices after September 1, 2009 and who has not previously submitted a registration under this program must submit a registration to DNR not more than 10 days after the date on which the manufacturer began selling or offering to sell video display devices in the state. If a manufacturer changes the brands that it is selling, the manufacturer must update its registration not more than 10 days after making the change.

Manufacturer Recycling Targets, Fees, and Recycling Credits

A manufacturer must pay both registration and applicable shortfall fees to DNR annually with its annual registration. In general, the initial registration fee is \$5,000 and \$2,500 in subsequent years. If a manufacturer sells fewer than 100 video display devices in the state annually, the initial and ongoing annual registration fee is \$1,250.

In general, a manufacturer must pay annual or quarterly shortfall fees, or both of these fees, starting September 1, 2009, only if the manufacturer's "target recycling weight" exceeds its "actual recycling weight" for the applicable period. The amount of the fee is the difference between the manufacturer's target recycling weight and actual recycling weight multiplied by the "estimated cost of recycling."

The annual target recycling weight is the specified portion* of the weight of the manufacturer's video display devices sold to households in the state, as reported to DNR, in the program year that began three years before the beginning of the program year in which the report is made. The quarterly target recycling weight is the annual weight times 0.15.

The annual and quarterly actual recycling weight is the sum of the covered electronic devices, used by households and recycled by or on behalf of the manufacturer during the previous program year or quarter within the year, as reported to DNR, plus the number of recycling credits the manufacturer elects to use. If a manufacturer reports separately to DNR the weight of covered electronic devices recycled by or on its behalf in urban and rural counties, the manufacturer shall count the recycling from rural counties as 1.5 times the actual weight of the recycling in those counties. Rural counties are defined to be any county other than the following counties: Brown, Calumet, Dane, Fond du Lac, Jefferson, Kenosha, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha, and Winnebago.

The estimated cost of the recycling varies between 30 and 50 cents per pound, based on the portion the manufacturer's weight of covered electronic devices recycled by or on its behalf is of its target recycling weight.

The annual and quarterly shortfall fees for program year 2008-09 are based on the last three quarters of sales and recycling in that program year. A new manufacturer is not required to pay shortfall fees until its video display devices have been sold or offered for sale to households in the state for three full program years.

If a manufacturer's annual weight of covered electronic devices exceeds the target recycling weight, the manufacturer has a number of recycling credits equal to the number of excess pounds. The manufacturer may use the credits in determining applicable annual or quarterly shortfall fees or sell them to another manufacturer for use in any of the three succeeding program years.

* The portion is 0.6 for program year 2008-09 and 0.8 for subsequent program years.

Manufacturers Reporting Requirements

Starting with its registration in September 2009, a manufacturer must include reports on the weight of video display devices sold to households in Wisconsin and the weight of covered electronic devices recycled by the manufacturer or a registered recycler on behalf of the manufacturer.

The weight of video display devices sold can be reported in any one of three ways, based upon the total weight of each model of its video display devices, or the total weight of all of its video display devices, sold to households in Wisconsin during the program year that began 36 months before the beginning of the program year in which the report is made; or an estimate of the total weight of its video display devices sold to households in Wisconsin during that program year based on national sales data. A “program year” runs from July 1 to the following June 30.

A manufacturer is not required to report the weight of its video display devices sold until it has sold these devices to households in the state for one full program year.

In general, a manufacturer must also report the total weight of covered electronic devices used by households in the state that were collected by or delivered to the manufacturer for recycling by the manufacturer or that were collected by or delivered to a registered recycler for recycling on behalf of the manufacturer during each program quarter in the preceding program year. For program year 2008-09, this report needs to cover only the last three program quarters in that program year. In this report, a manufacturer may separate the weight of covered electronic devices used by households in rural counties and in urban counties to receive credit for recycling in rural counties.

In addition to the above reports, a manufacturer, beginning in 2009, must also report to DNR the number of recycling credits that the manufacturer purchased or sold during the preceding program year, or elects to use in the calculation of its shortfall fees, and any remaining recycling credits available to the manufacturer after calculating its shortfall fees.

Manufacturer Assessment Requirements

The substitute amendment requires each manufacturer subject to the electronic waste recycling program to conduct and document assessments of the performance of any registered collectors and recyclers who collect or recycle covered electronic waste on its behalf. These assessments must include whether the registered recyclers comply with the program’s requirements applicable to registered recyclers. A manufacturer must maintain documentation of these assessments for three years.

Collector Registration and Reporting

Under the substitute amendment, beginning on August 1, 2008, no collector may deliver or arrange for the delivery of covered electronic devices to a registered recycler unless the person submits an annual registration to DNR on the department’s form that includes contact information, the address at which the person operates as a collector, and a certification that the person has all the required governmental licenses or other approvals and has complied, and will continue to comply, with the applicable requirements of the electronic waste recycling program and with applicable health, environmental, safety, and financial responsibility requirements. There is no fee for this registration.

Each registered collector must report to DNR not later than November 1, February 1, May 1, and August 1 of each program year, beginning November 1, 2008, the total weight of the covered electronic devices collected in the state during the preceding program quarter and a list of all registered recyclers to whom the collector delivered these devices.

Recycler Registration, Reporting, Operational, and Certification Requirements

Under the substitute amendment, beginning on August 1, 2008, no person may operate as a recycler receiving covered electronic devices on behalf of a registered manufacturer, unless the person submits to DNR an annual registration on the department's form that includes contact information, the address of all the facilities at which the person conducts recycling, and a certification the person has complied, and will continue to comply with applicable requirements under the electronic waste recycling program, and documentation of required liability insurance. There is no fee for this registration.

No later than November 1, February 1, May 1, and August 1 of each program year, beginning with November 1, 2008, each registered recycler must report to DNR the total weight of covered electronic devices collected in the state that the recycler received for recycling on behalf of a registered manufacturer during the preceding program quarter and the name of the manufacturer.

Each registered recycler is subject to the following operational requirements:

- Maintenance of liability insurance coverage at least \$1 million for environmental releases, accidents, and other emergencies.
- A prohibition on the use of prison labor to recycle covered electronic devices if the weight of these recycled devices was or will be reported by a registered manufacturer to DNR.
- A demonstration that the recycler has implemented or has committed to implementing within one year of the recycler's initial registration an environmental management system for each facility at which it conducts recycling that is in compliance with standards for such systems issued by the International Organization for Standardization or a functionally equivalent system, as determined by the department.
- Performance of an environmental management system audit of each of its environmental management systems by an outside environmental auditor at least once every three years.
- Any other operational requirement specified by DNR, by rule, as a result of the review described below.

The substitute amendment directs DNR to review the operational requirements identified above relating to environmental management systems to determine whether those requirements should be modified or added to in order to establish requirements applicable to registered recyclers that are at least equivalent to nationally recognized standards for recycling covered electronic devices. If DNR determines that these requirements should be modified or added to, the department must promulgate rules making these adjustments in the requirements and submit the draft rules to the Legislative Council Rules Clearinghouse within three years after the bill's effective date.

By August 1 of each year, beginning in 2009, each registered recycler must submit to DNR a certification that states that the recycler, and all persons who conduct recycling activities on covered electronic devices or materials derived from covered electronic devices after the registered recycler completes its recycling activities on the covered electronic devices or materials does all of the following:

- Complies with applicable health, environmental, safety, and financial responsibility requirements, including requirements in the U.S. Environmental Protection Agency's "cathode ray tube" (CRT) rule.
- Have all required governmental licenses or other approvals.
- Possess liability insurance coverage in the amount of at least \$1 million for environmental releases.
- Does not use prison labor to recycle covered electronic devices which are reported to DNR by a registered manufacturer.

Retailer Reporting and Customer Information Requirements

The substitute amendment requires that no later than May 1 of each program year, beginning with May 1, 2009, each retailer who sells video display devices to households in the state for use by the household must report to a manufacturer, using a format specified or approved by DNR, the number of video display devices, by model, labeled with the manufacturer's brand that the retailer sold to households in the state during each program quarter during the previous program year.

A retailer who sells new video display devices for use by households must provide to purchasers information describing how these devices can be collected and recycled and a description of the landfill and incineration bans described below. A retailer may satisfy this requirement in a number of ways, including, as appropriate, providing the information via a toll-free number, in a catalog, and on its Internet site.

Recordkeeping and Inspection

Each registered manufacturer, collector, and recycler subject to the electronic waste recycling program must maintain records related to the program and required reports for at least three years. The DNR may inspect records of these persons and of retailers that are related to the program.

DNR Internet Sites

The substitute amendment directs DNR to maintain an Internet site which lists the names of registered manufacturers and the names of the brands listed in the manufacturers' registrations. This site must include a statement that the listed brands of video display devices are only those sold for household use and not a list of manufacturers qualified to sell video display devices for industrial, commercial, or other nonhousehold uses. The DNR must also maintain an Internet site listing the names of registered recyclers.

DNR Records

In general, DNR must make information provided in registration statements and reports required under the electronic waste recycling program available to manufacturers, retailers, and the public. The department must keep confidential any part of a record, report, or other information obtained in the administration of the program upon receiving an application for confidential status based on the information being entitled to protection as a trade secret. These confidentiality provisions are based upon comparable provisions in the state's "Green Tier" law.

DNR Reviews and Reports

The substitute amendment directs DNR to annually review the parameters in the formulas used to calculate shortfall fees and the amount of the registration fee to determine if any of these values should be changed in order to improve the effectiveness of the electronic waste recycling program or to provide more recycling opportunities to rural areas of the state. If the department makes any of these determinations, it must then report its recommendations for changes to the committee of each house of the Legislature with jurisdiction over solid waste policy.

In addition to the above annual review, beginning December 1 of each year, starting December 1, 2011, DNR must provide an annual report to the Legislature and the Governor on the electronic waste recycling program. This report must include information on the amounts of covered electronic devices recycled or landfilled and descriptions of these recycling programs, descriptions of any actions taken to enforce the requirements of the program, and any recommendations to apply the sales requirements applicable to covered video devices to additional kinds of devices.

If a federal law relating to the collection or recycling of video display devices sold in the United States is enacted, DNR must report the effect of the federal law to the committee in each house of the Legislature who has jurisdiction over solid waste policy.

Outreach and Public Education

The substitute amendment directs DNR to promote public participation in the collection and recycling of covered electronic devices by and on behalf of manufacturers through education and outreach activities. The department must also facilitate communications between local governments, persons operating solid waste collection and recycling centers, and manufacturers to ensure that manufacturers are aware of covered electronic devices that are available for recycling.

The substitute amendment directs the local units of government responsible for implementing the state solid waste recycling program, known as "responsible units," to provide information to persons in their regions about the landfilling and incineration bans created by the substitute amendment, why its important to recycle electronic devices, and opportunities available to those persons to recycle electronic devices.

Cooperation With Other States

The substitute amendment authorizes DNR to cooperate with other states to effectuate the electronic waste recycling program and to operate with other states a regional system for creating, trading, and selling credits for recycling covered electronic devices.

Municipal Waste Flow Control Exemption

Current law contains procedures for a municipality to require the use of a facility for the recycling of solid waste or for the recovery of resources from solid waste generated within the municipality, including adoption of a municipal waste flow control ordinance. The substitute amendment exempts from municipal waste flow control solid waste that consists of covered electronic devices, as defined in the electronic waste recycling program, used by households.

Enforcement, Audits, and Penalties

Under the substitute amendment, the DNR must revoke the registration of a manufacturer who violates applicable requirements in the electronic waste recycling program. The department may suspend or revoke the registration of a collector or recycler who violates applicable requirements.

The substitute amendment authorizes DNR to perform or contract for an audit of the activities of a registered collector or recycler. If DNR audits a collector or recycler during the first three years that the collector or recycler is registered under the program, the collector or recycler must pay 25% of the cost of the audit. After that time, the collector or recycler must pay 50% of the cost of the audit.

The substitute amendment specifies that any manufacturer who violates the program requirements may be required to forfeit not more than \$10,000 for each violation. Any person, other than a manufacturer, who violates the program's requirements may be required to forfeit not more than \$1,000 for each violation.

Appropriations and Position Authorizations

The substitute amendment authorizes a total of four positions at DNR for the start-up or administration of the electronic waste recycling program, two permanent positions, and two two-year project positions. One of the full-time positions and one of the two-year project positions are funded by the registration and shortfall fees collected by the department under the program. The other full-time position and two-year project position are funded by an appropriation from the Recycling and Renewable Energy Fund in an amount of \$26,700 for fiscal year 2007-08 and \$160,000 for fiscal year 2008-09. (The appropriation for fiscal year 2007-08 is intended to cover the expenses of the two positions for the last two months of that fiscal year.)

Landfill and Incineration Bans

Beginning on September 1, 2009, the substitute amendment bans the landfilling, burning in a solid waste treatment facility (e.g., an incinerator) or placing in a container the contents of which will be disposed of in a landfill or burned in a solid waste treatment facility any of the electronic devices that

are subject to the electronic waste recycling program, described above, or a telephone with a video display.

In addition, the operator of a landfill or solid waste treatment facility must make a reasonable effort to manually separate and arrange to have recycled any video display device that is readily observable in solid waste that is delivered to the facility for disposal or burning if the operator determines that separating the device is practical and will not require the operator to implement measures to protect human health or safety in addition to any measures taken in the ordinary course of business, and that the device has not been damaged in such a way that recycling is not feasible or practical.

Any person who violates one of the above bans or requirements may be required to forfeit \$50 for a first violation, \$200 for a second violation, and not more than \$2,000 for a third or subsequent violation. The DNR may use a citation to collect these forfeitures. In addition, the Attorney General may enforce these bans and requirements by seeking injunctive relief against any person violating them.

SENATE AMENDMENT 1 TO SENATE SUBSTITUTE AMENDMENT 1

Senate Amendment 1 makes the following changes to Senate Substitute Amendment 1:

- Clarifies the definition of “manufacturer” in the electronic waste recycling program to exclude a person who licenses a person’s brand for manufacturer and sale of video display devices by others when another person assumes the responsibilities under the program that arise from the sale of the licensed video display devices.
- Adds an exception to the definition of “video display device” in the electronic waste recycling program for a television or computer monitor that is functionally or physically part of, connected to, or integrated into either of the following:
 - A larger piece of equipment designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic, monitoring, or other medical products.
 - Equipment used for security, sensing, monitoring, or anti-terrorism purposes.

LEGISLATIVE HISTORY

On March 3, 2008, the Senate Committee on Environment and Natural Resources introduced and recommended adoption of Senate Amendment 1 to Senate Substitute Amendment 1 and of Senate Substitute Amendment 1, and passage of Senate Bill 397, as amended, by votes of Ayes, 5; Noes. 0.

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