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P.L.2012, CHAPTER 79, *approved December 21, 2012*
Assembly, No. 1459 (*Second Reprint*)

1 AN ACT concerning electronic waste and amending P.L.2007,
2 c.347, and P.L.2008, c.130, and supplementing P.L.1977, c.443
3 (C.26:3A2-21 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) is amended to
9 read as follows:

10 3. a. Beginning on January 1, 2010, and each January 1
11 thereafter, each manufacturer of televisions offered for sale for
12 delivery in this State shall register with the department and pay a
13 registration fee of \$5,000. Each television manufacturer's
14 registration and renewal shall include a list of all of the brands
15 under which its televisions are sold. All fees collected pursuant to
16 this subsection shall be allocated to the department to be used in the
17 administration of the "Electronic Waste Management Act,"
18 P.L.2007, c.347 (C.13:1E-99.94 et seq.).

19 b. Each registered television manufacturer shall submit an
20 annual renewal of its registration to the department and pay to the
21 department a registration renewal fee of \$5,000 by January 1 of
22 each program year. Each registered television manufacturer's
23 renewal shall include an annual report. All fees collected pursuant
24 to this subsection shall be allocated to the department to be used in
25 the administration of P.L.2007, c.347.

26 c. In addition to reporting all brands under which its televisions
27 are sold, regardless of whether the brand is owned or licensed, the
28 registered television manufacturer's annual report shall include the
29 total number ²and weight² of all new televisions sold in the State in
30 the previous program year. The department shall determine a
31 registered television manufacturer's market share ²by weight².

32 d. A registered television manufacturer shall inform the
33 department, in writing, as soon as it becomes aware that it will
34 cease selling televisions in the State.

35 e. By June 1, 2010, each registered television manufacturer or
36 group of registered television manufacturers shall submit a plan to
37 the department to collect, transport and recycle used televisions
38 based on the television manufacturer's market share. Every plan

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted March 8, 2012.

²Assembly amendments adopted in accordance with Governor's recommendations October 11, 2012.

1 shall be filed with a television manufacturer's annual registration,
2 and shall include:

3 (1) Methods that will be used to collect the used televisions
4 including proposed collection services;

5 (2) The processes and methods that will be used to recycle
6 recovered used televisions including a description of the recycling
7 processes that will be used, including the name and location of all
8 authorized recyclers to be directly utilized by the plan;

9 (3) Means that will be utilized to publicize the collection
10 services, including specification of a website or toll-free telephone
11 number that provides information about the registrant's recycling
12 program in sufficient detail to allow consumers to learn how to
13 return their used televisions for recycling, including limitations
14 placed by collection sites on the number of used televisions
15 permitted for drop-off by consumers; and

16 (4) The intention of the registrant to fulfill its obligation through
17 its own operations, either individually or with other registered
18 television manufacturers, or by contract with for-profit or not-for-
19 profit corporations, or local government units.

20 The department shall hold confidential any information obtained
21 pursuant to this subsection when shown by a registered television
22 manufacturer that the information, if made public, would divulge
23 competitive business information, methods or processes entitled to
24 protection as trade secrets of the registered television manufacturer.

25 Recovered used televisions shall not be sent to prisons for
26 recycling either directly or through intermediaries and nothing in
27 this section shall be construed to allow for the recycling of used
28 televisions by prisoners. Any person committed to a jail, prison, or
29 other institution for the detention of persons charged with or
30 convicted of an offense shall be disqualified from being an
31 authorized recycler.

32 By January 1, 2011, each registered television manufacturer or
33 group of registered television manufacturers shall commence its
34 used television recycling program to implement and finance the
35 collection, transportation, and recycling of used televisions. The
36 used television recycling program shall accept all types and all
37 brands of used televisions, including orphan devices.

38 f. Each registrant's plan or plan jointly submitted by a group of
39 registrants shall be reviewed to determine its compliance with
40 subsection e. of this section and approved by the department. The
41 department may reject the plan, in whole or in part, and may impose
42 additional requirements as a condition of approval.

43 g. If a registered television manufacturer fails to comply with
44 all the conditions and terms of an approved plan, the registered
45 television manufacturer shall be prohibited from selling or offering
46 for sale televisions in this State.

1 h. **【Registered television manufacturers that collect, transport,**
2 **and recycle used televisions in excess of their market share may sell**
3 **credits to another registrant or apply that excess to the following**
4 **year's recycling program.】** Registered television manufacturers that
5 collect, transport, and recycle used televisions in excess of their
6 market share may sell credits to another registrant or apply that
7 excess to the following year's recycling program; provided that no
8 more than 25 percent of a manufacturer's obligation for any
9 program year may be met with credits generated in a prior program
10 year. No manufacturer or group of manufacturers, as the case may
11 be, may cease implementing its plan required pursuant to subsection
12 e. of this section and approved by the department, during any
13 program year by using credits.

14 i. Nothing in this act is intended to exempt any person from
15 liability the person would otherwise have under applicable law.

16 j. If less than 100 televisions are sold by a manufacturer in the
17 previous program year, the department shall not require a
18 manufacturer to pay the registration fee or registration renewal fee,
19 as appropriate, in the subsequent year, pursuant to subsections a. or
20 b. of this section.

21 (cf: P.L.2008, c.130, s.2)

22
23 2. Section 3 of P.L.2008, c.130 (C.13:1E-99.96a) is amended to
24 read as follows:

25 3. a. The department shall prepare a plan every three years
26 that: (1) establishes used television per-capita collection and
27 recycling goals; and (2) identifies any necessary State actions to
28 expand collection opportunities to achieve the used television per-
29 capita collection and recycling goals. The plan shall be posted on
30 the department's Internet website and submitted, pursuant to section
31 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

32 b. The department shall prepare an annual report, which shall
33 be posted on the department's Internet website and submitted,
34 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
35 Legislature.

36 The annual report shall include the following:

37 (1) Progress toward achieving the overall annual total recovery
38 and recycling goals described in the plan prepared pursuant to
39 subsection a. of this section; and

40 (2) An evaluation of the effectiveness of existing used television
41 collection and processing infrastructure.

42 c. **【The used television recovery and recycling program**
43 **implemented to effectuate the provisions of P.L.2007, c.347**
44 **(C.13:1E-99.94 et al.) and its associated regulations shall be fully**
45 **audited by an independent, certified public accountant at the end of**
46 **each calendar year and the audit report shall be submitted, pursuant**
47 **to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.】**

1 (Deleted by amendment, P.L. _____, c. _____) (pending before the
2 Legislature as this bill).
3 (cf: P.L.2008, c.130, s.3)
4

5 3. Section 8 of P.L.2007, c.347 (C.13:1E-99.101) is amended
6 to read as follows:

7 8. Beginning on January 1, 2011, no person shall sell or offer
8 for sale in this State a new covered electronic device, including a
9 television, if the covered electronic device is prohibited from being
10 sold or offered for sale in the European Union on or after its date of
11 manufacture due to the concentration of one or more heavy metals
12 in the covered electronic device exceeding its maximum
13 concentration value, as specified in the Commission of European
14 Communities' Decision of August 18, 2005, amending Directive
15 2002/95/EC (European Union document 2005/618/EC), or as
16 specified in a subsequent amendment to the Directive. The sale or
17 offer for sale of a new covered electronic device that exceeds the
18 European Union heavy metal maximum concentration value on or
19 after its date of manufacture shall be permitted if the use of the
20 heavy metal is necessary to comply with consumer, health, or safety
21 requirements imposed by the Underwriters Laboratories or federal
22 or State law.

23 (cf: P.L.2008, c.130, s.6)
24

25 4. Section 9 of P.L.2007, c.347 (C.13:1E-99.102) is amended
26 to read as follows:

27 9. a. (1) By January 30, 2012, and by each January 30
28 thereafter, the department shall:

29 (a) have completed an auditable, statistically **[significant]** valid
30 sampling of covered electronic devices collected from consumers in
31 this State during the previous program year. The sampling
32 information collected shall consist of a list of brands of covered
33 electronic devices and the weight of covered electronic devices that
34 are identified for each brand. The department's sampling shall be
35 conducted in accordance with a procedure established by the
36 department and may be conducted by a third-party organization
37 including an authorized recycler, to be determined by the
38 department. The department may, at its discretion, be present at the
39 sampling and may audit the methodology and the results of the
40 third-party organization. The costs associated with the sampling
41 shall be recovered from the fees paid by manufacturers to the
42 department; and

43 (b) determine the total weight of covered electronic devices,
44 including orphan devices, collected from consumers in this State
45 during the previous program year.

46 (2) If a manufacturer or group of manufacturers conducts its
47 own sampling of covered electronic devices, the manufacturer or

1 group of manufacturers shall submit a report to the department
2 annually by March 1, beginning the year after the program is
3 initiated. The report shall include:

4 (a) the results of an auditable, statistically **[significant]** valid
5 sampling of covered electronic devices collected from consumers in
6 this State by the manufacturer or group of manufacturers during the
7 previous program year. The sampling information reported shall
8 consist of a list of brands of covered electronic devices and the
9 weight of covered electronic devices that are identified for each
10 brand; and

11 (b) the total weight of covered electronic devices, including
12 orphan devices, collected from consumers in this State by the
13 manufacturer or group of manufacturers during the previous
14 program year and documentation verifying collection and recycling
15 of such devices.

16 b. By February 1, 2010, and each January 1 thereafter, each
17 manufacturer of covered electronic devices offered for sale for
18 delivery in this State shall register with the department and pay a
19 registration fee of \$5,000. Any manufacturer to whom the
20 department provides notification of a return share and return share
21 in weight pursuant to subsection a. of section 12 of P.L.2007, c.347
22 (C.13:1E-99.105) and who has not previously filed a registration
23 shall file a registration with the department within 30 days
24 of receiving such notification from the department. Each
25 manufacturer's registration and renewal shall include a list of all of
26 the manufacturer's brands of covered electronic devices.

27 The provisions of this section shall not apply to any
28 manufacturer or retailer of televisions offered for sale for delivery
29 in this State.

30 c. If less than 100 covered electronic devices are sold by a
31 manufacturer in the previous program year, the department shall not
32 require a manufacturer to pay the registration fee or registration
33 renewal fee, as appropriate, in the subsequent year, pursuant to this
34 subsection b. of this section.

35 (cf: P.L.2008, c.130, s.7)

36

37 5. Section 10 of P.L.2007, c.347 (C.13:1E-99.103) is amended
38 to read as follows:

39 10. a. By June 1, 2010, each manufacturer to whom the
40 department provides, by April 2, 2010, a return share in weight that
41 is greater than zero shall submit a plan to the department to collect,
42 transport and recycle covered electronic devices.

43 b. Each manufacturer to whom the department provides, by
44 February 15, 2012 or by February 15 of any year thereafter, a return
45 share in weight that is greater than zero shall, by March 15 of that
46 year, comply with the requirements of subsection a. of this section.

1 c. An individual manufacturer submitting a plan pursuant to
2 subsection a. of this section shall collect, transport, and recycle its
3 return share in weight.

4 d. A group of manufacturers jointly submitting a plan pursuant
5 to subsection a. of this section shall collect, transport, and recycle
6 the sum of the obligations of each participating manufacturer.

7 e. Every plan shall be filed with a manufacturer's annual
8 registration, and shall include:

9 (1) Methods that will be used to collect the covered electronic
10 devices including proposed collection services;

11 (2) The processes and methods that will be used to recycle
12 recovered covered electronic devices including a description of the
13 recycling processes that will be used, including the name and
14 location of all authorized recyclers to be directly utilized by the
15 plan;

16 (3) The processes and methods that will be used to recycle
17 recovered covered electronic devices which originated from
18 transactions between business concerns;

19 (4) Means that will be utilized to publicize the collection
20 services, including specification of a website or toll-free telephone
21 number that provides information about the manufacturer's program
22 in sufficient detail to allow consumers to learn how to return their
23 covered electronic devices for recycling; and

24 (5) The intention of the registrant to fulfill its obligation through
25 operation of its own plan, either individually or with other
26 manufacturers.

27 The department shall hold confidential any information obtained
28 pursuant to this subsection when shown by a manufacturer that the
29 information, if made public, would divulge competitive business
30 information, methods or processes entitled to protection as trade
31 secrets of the manufacturer.

32 Recovered covered electronic devices shall not be sent to prisons
33 for recycling either directly or through intermediaries and nothing
34 in this section shall be construed to allow for the recycling of
35 covered electronic devices by prisoners. Any person committed to a
36 jail, prison, or other institution for the detention of persons charged
37 with or convicted of an offense shall be disqualified from engaging
38 in the manual or mechanical separation of covered electronic
39 devices to recover components and commodities contained therein
40 for the purpose of re-use or recycling.

41 By January 1, 2011, each manufacturer or group of
42 manufacturers required to submit a plan, pursuant to subsection a.
43 of this section, shall commence its covered electronic device
44 recycling program to implement and finance the collection,
45 transportation, and recycling of covered electronic devices other
46 than televisions. The covered electronic device recycling program

1 shall accept all types and all brands of used covered electronic
2 devices, including orphan devices.

3 f. Each manufacturer's plan or plan jointly submitted by a
4 group of manufacturers shall be reviewed to determine its
5 compliance with subsection e. of this section and approved by the
6 department. The department may reject the plan, in whole or in
7 part, and may impose additional requirements as a condition of
8 approval.

9 g. If a manufacturer fails to comply with all the conditions and
10 terms of an approved plan, the manufacturer shall be prohibited
11 from selling or offering for sale in this State a covered electronic
12 device.

13 h. **【Manufacturers that collect, transport, and recycle covered**
14 **electronic devices in excess of their obligation may sell credits to**
15 **another registrant or apply that excess to the following year's**
16 **recycling obligation.】** Manufacturers that collect, transport, and
17 recycle covered electronic devices in excess of their obligation may
18 sell credits to another registrant or apply that excess to the
19 following year's recycling obligation; provided that no more than 25
20 percent of a manufacturer's obligation for any program year may be
21 met with credits generated in a prior program year. No
22 manufacturer or group of manufacturers, as the case may be, may
23 cease implementing its plan required pursuant to subsection e. of
24 this section and approved by the department, during any program
25 year by using credits.

26 i. (Deleted by amendment, P.L.2008, c.130)

27 j. (Deleted by amendment, P.L.2008, c.130)

28 k. Nothing in this act is intended to exempt any person from
29 liability the person would otherwise have under applicable law.

30 l. The provisions of this section shall not apply to any
31 manufacturer or retailer of televisions offered for sale for delivery
32 in this State.

33 (cf: P.L.2008, c.130, s.8)

34

35 6. Section 12 of P.L.2007, c.347 (C.13:1E-99.105) is amended
36 to read as follows:

37 12. a. (1) The department shall determine the return share for
38 each program year for each manufacturer by dividing the weight of
39 covered electronic devices identified for each manufacturer by the
40 total weight of covered electronic devices identified for all
41 manufacturers. For the first program year, the return share of
42 covered electronic devices identified for each manufacturer shall be
43 based on the best available public return share data from the United
44 States, including data from other states, for covered electronic
45 devices from consumers. For the second and each subsequent
46 program year, the return share of covered electronic devices
47 identified for each manufacturer shall be based on the most recent

1 samplings of covered electronic devices conducted in this State
2 pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-
3 99.102).

4 (2) The department shall determine the return share in weight
5 for each program year for each manufacturer for whom a return
6 share is determined pursuant to paragraph (1) of this subsection by
7 multiplying the return share for each such manufacturer by the total
8 weight in pounds of covered electronic devices, including orphan
9 devices, collected from consumers the previous program year. For
10 the first program year, the total weight in pounds of covered
11 electronic devices shall be based on the best available public weight
12 data from the United States, including data from other states, for
13 covered electronic devices from consumers. For the second and
14 each subsequent program year, the total weight in pounds of
15 covered electronic devices shall be based on the total weight of
16 covered electronic devices, including orphan devices, determined
17 by the department pursuant to subsection a. of section 9 of
18 P.L.2007, c.347 (C.13:1E-99.102).

19 (3) By April 2, 2011, the department shall provide each
20 manufacturer for whom a return share is determined pursuant to
21 paragraph (1) of this subsection with its return share and its return
22 share in weight for the first program year. Annually thereafter, by
23 February 15, beginning in 2013, the department shall provide each
24 manufacturer for whom a return share is determined pursuant to
25 paragraph (1) of this subsection with its return share and its return
26 share in weight for the second and subsequent program years.

27 b. (Deleted by amendment, P.L.2008, c.130)

28 c. (1) The department shall ensure that at least one electronics
29 collection opportunity is available in each county throughout the
30 State and in such a manner as to be convenient, to the maximum
31 extent practicable and feasible, to all consumers in the county.

32 (2) The department shall ensure that collection sites do not place
33 unreasonable limits on the number of covered electronic devices
34 permitted for drop-off by consumers.

35 d. (1) Beginning on January 1, 2011, the department shall
36 maintain a list of registrants and the brands reported in each
37 manufacturer's registration, and post the list on the department's
38 Internet website that is updated at least once a month.

39 (2) The department shall organize and coordinate public
40 education and outreach.

41 e. The department shall prepare a plan every three years that:
42 (1) establishes per-capita collection and recycling goals; and (2)
43 identifies any necessary State actions to expand collection
44 opportunities to achieve the per-capita collection and recycling
45 goals. The plan shall be posted on the department's Internet website
46 and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
47 19.1), to the Legislature.

1 f. The department shall prepare an annual report, which shall
2 be posted on the department's Internet website and submitted,
3 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
4 Legislature.

5 The annual report shall include the following:

6 (1) The total weight of covered electronic devices collected in
7 the State the previous calendar year;

8 (2) Progress toward achieving the overall annual total recovery
9 and recycling goals described in the plan prepared pursuant to
10 subsection e. of this section;

11 (3) A complete listing of all collection sites operating in the
12 State in the prior calendar year, the parties that operated them, and
13 the amount of material by weight collected at each site;

14 (4) An evaluation of the effectiveness of the education and
15 outreach program; and

16 (5) An evaluation of the existing collection and processing
17 infrastructure.

18 g. **【**The program implemented to effectuate the provisions of
19 this act and its associated regulations shall be fully audited by an
20 independent, certified public accountant at the end of each calendar
21 year and the audit report shall be submitted, pursuant to section 2 of
22 P.L.1991, c.164 (C.52:14-19.1), to the Legislature.**】** (Deleted by
23 amendment, P.L. , c.) (pending before the Legislature as this
24 bill).

25 h. The provisions of this section shall not apply to any
26 manufacturer or retailer of televisions offered for sale for delivery
27 in this State.

28 (cf: P.L.2008, c.130, s.10)

29

30 7. Section 13 of P.L.2007, c.347 (C.13:1E-106) is amended to
31 read as follows:

32 13. a. The department shall maintain an Internet website and
33 toll-free number complete with up-to-date listings of where
34 consumers can bring covered electronic devices for recycling under
35 the provisions of this act.

36 b. (Deleted by amendment, P.L.2008, c.130)

37 c. **【**No more frequently than annually and no less frequently
38 than biennially, the department shall review, at a public hearing, the
39 covered electronic device recycling goals and registration fees.
40 Recommended changes to the covered electronic device recycling
41 goals and registration fees shall be included in the annual reports
42 required pursuant to section 3 of P.L.2008, c.130 (C.13:1E-99.96a)
43 and subsection f. of section 12 of P.L.2007, c.347 (C.13:1E-
44 99.105).**】** (Deleted by amendment, P.L. , c.) (pending before
45 the Legislature as this bill).

46 d. No fees or costs may be charged to consumers for the
47 collection, transportation, or recycling of covered electronic devices

1 except that a nominal fee may be charged to a consumer if a
2 financial incentive, such as a coupon, of equal or greater value is
3 provided . Any authorized recycler may charge fees to schools or
4 local government units for the reasonable costs incurred by the
5 authorized recycler for the collection, transportation, or recycling of
6 covered electronic devices.

7 (cf: P.L.2008, c.130, s.11)

8
9 '8. Section 16 of P.L.2007, c.347 (C.13:1E-99.109) is amended
10 to read as follows:

11 16. a. On and after January 1, 2011, no person shall knowingly
12 dispose of a used covered electronic device, or any of the
13 components or subassemblies thereof, as solid waste.

14 b. No solid waste facility in this State shall knowingly accept
15 for disposal any truckload or roll-off container of solid waste
16 containing a visible quantity of covered electronic devices, or any
17 of the components or subassemblies thereof, as solid waste at any
18 time.

19 c. An owner or operator of a solid waste facility may refuse to
20 accept for disposal any truckload or roll-off container of solid waste
21 containing a visible quantity of covered electronic devices or any of
22 the components or subassemblies thereof.

23 d. An owner or operator of a solid waste facility shall not be
24 found in violation of this section if the owner or operator has:

25 (1) made a good faith effort to comply with this section;

26 (2) posted in a conspicuous location at the solid waste facility a
27 sign stating that covered electronic devices, or any of the
28 components or subassemblies thereof, shall not be accepted at the
29 solid waste facility; and

30 (3) notified, in writing, all persons authorized to deposit solid
31 waste at the solid waste facility that covered electronic devices, or
32 any of the components or subassemblies thereof, shall not be
33 accepted at the solid waste disposal facility.

34 e. As used in this section, "solid waste facility" shall have the
35 same meaning as set forth in section 3 of P.L.1970, c.39 (C.13:1E-
36 3).¹

37 (cf: P.L.2008, c.130, s.13)

38
39 '8.] 9.¹ Section 17 of P.L.2007, c.347 (C.13:1E-99.110) is
40 amended to read as follows:

41 17. a. **【**The State, including the Attorney General and the
42 department, shall be authorized to initiate independent action to
43 enforce any provision of this act, including failure by a
44 manufacturer to remit the registration fee required pursuant to
45 section 3 of P.L.2007, c.347 (C.13:1E-99.96) or section 9 of
46 P.L.2007, c.347 (C.13:1E-99.102), or any fee required pursuant to
47 subsection b. of section 18 of P.L.2007, c.347 (C.13:1E-99.111) to

1 the department. Any funds awarded by the court shall be used first
2 to offset enforcement expenses. Money in excess of the
3 enforcement expenses shall be deposited into a separate account,
4 and shall be dedicated for use by the department solely for the
5 purposes of administering and enforcing the provisions of this act
6 and any rules or regulations adopted pursuant thereto.】 (Deleted by
7 amendment, P.L. , c.) (pending before the Legislature as this
8 bill) '【.】'

9 b. 【Any person who violates the provisions of this act shall be
10 subject to a penalty of not less than \$500 nor more than \$1,000 for
11 each offense, to be collected in a civil action by a summary
12 proceeding under the "Penalty Enforcement Law of 1999,"
13 P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court
14 of competent jurisdiction wherein injunctive relief has been
15 requested. The Superior Court shall have jurisdiction to enforce the
16 provisions of the "Penalty Enforcement Law of 1999" in connection
17 with this act.

18 If the violation is of a continuing nature, each day during which
19 it continues constitutes an additional, separate, and distinct offense.

20 The department may institute a civil action for injunctive relief
21 to enforce this act and to prohibit and prevent a violation of this act,
22 and the court may proceed in the action in a summary manner.】
23 (Deleted by amendment, P.L. , c.) (pending before the
24 Legislatre as this bill) '【.】'

25 c. '【Violations of the act include, but are not limited to:

26 (1) the sale of a new covered electronic device by any person
27 that is not in full compliance with the provisions of this act;

28 (2) the use of a qualified collection program to recycle covered
29 electronic devices not discarded within the State, or region as
30 provided in section 19 of P.L.2007, c.347 (C.13:1E-99.112);

31 (3) the knowing failure to report or accurately report any data
32 required to be reported to the department pursuant to this act; **【and】**

33 (4) the non-payment of any fee required pursuant to this act ;

34 (5) failure to register, pursuant to subsection a. of section 3 of
35 P.L.2007, c.347 (C.13:1E-99.96) or pursuant to subsection b. of
36 section 9 of P.L.2007, c.347 (C.13:1E-99.102);

37 (6) failure to submit or implement a plan pursuant to section 3
38 or 10 of P.L.2007, c.347 (C.13:1E-99.96 or C.13:1E-99.103)】

39 (Deleted by amendment, P.L. , c.) (pending before the
40 Legislatre as this bill)'

41 d. The "Electronic Waste Management Act," P.L.2007, c.347
42 (C.13:1E-99.94 et seq.), and any rule or regulation adopted pursuant
43 thereto, shall be enforced by the department and may be enforced
44 by every certified local health agency ' , as the case may be' .
45 Whenever the commissioner finds that a person has violated any

1 provision of P.L.2007, c.347, or any rule or regulation adopted
2 pursuant thereto, the commissioner may:

3 (1) issue an order, in accordance with subsection e. of this
4 section, requiring the person found to be in violation to comply;

5 (2) bring a civil action in accordance with subsection f. of this
6 section;

7 (3) levy a civil administrative penalty in accordance with
8 subsection g. of this section; or

9 (4) bring an action for a civil penalty in accordance with
10 subsection h. of this section.

11 e. Whenever, on the basis of available information, the
12 commissioner finds that a person has violated any provision of
13 P.L.2007, c.347, or any rule or regulation adopted thereto, the
14 commissioner may issue an administrative enforcement order: (1)
15 specifying the provision or provisions of P.L.2007, c.347, or the
16 rule or regulation, of which the person is in violation; (2) citing the
17 action which constituted the violation; (3) requiring compliance
18 with the provision or provisions violated; and (4) providing notice
19 to the person of the right to a hearing on the matters contained in
20 the administrative enforcement order. The ordered party shall have
21 35 days from receipt of the order within which to deliver to the
22 commissioner a written request for a hearing. An order shall be
23 effective upon receipt and any person to whom such order is
24 directed shall comply with the order immediately. A request for
25 hearing shall not automatically stay the effect of the order.

26 f. The commissioner is authorized to, and a certified local
27 health agency may, institute a civil action in Superior Court for
28 appropriate relief from any violation of the provisions of P.L.2007,
29 c.347, or any rule or regulation adopted thereof. Such relief may
30 include, singly or in combination:

31 (1) a temporary or permanent injunction;

32 (2) recovery of reasonable costs of any investigation or
33 inspection which led to the discovery of the violation, and for the
34 reasonable costs of preparing and bringing a civil action
35 commenced under this subsection;

36 (3) recovery of reasonable costs incurred by the State in
37 removing, correcting, or terminating the adverse effects resulting
38 from any violation of the provisions of P.L.2007, c.347, or any rule
39 or regulation adopted pursuant thereto, for which a civil action has
40 been commenced and brought under this subsection;

41 (4) recovery of compensatory damages caused by a violation of
42 the provisions of P.L.2007, c.347, or any rule or regulation adopted,
43 for which a civil action has been commenced and brought under this
44 subsection. Assessments under this subsection shall be paid to the
45 State Treasurer, or to the certified local health agency, as the case
46 may be, except that compensatory damages may be paid by specific
47 order of the court to any persons who have been aggrieved by the

1 violation. If a proceeding is instituted by a certified local health
2 agency, notice thereof shall be served upon the commissioner in the
3 same manner as if the commissioner were a named party to the
4 action or proceeding. The department may intervene as a matter of
5 right in any proceeding brought by a certified local health agency.

6 g. (1) Except as authorized otherwise in paragraph (2) of this
7 subsection, the commissioner is authorized to assess a civil
8 administrative penalty of not less than \$500 nor more than \$1,000
9 for each violation, provided that each day during which the
10 violation continues shall constitute an additional, separate and
11 distinct offense.

12 (2) For any violation of sections 3, 7, 8, 10 or 11 of P.L.2007,
13 c.347 (C.13:1E-99.96, C.13:1E-99.100, C.13:1E-99.101, C.13:1E-
14 99.103, or C.13:1E-99.104) or subsection a. or b. of section 6,
15 subsection b. of section 9, or subsection a. of section 15 of
16 P.L.2007, c.347 (C.13:1E-99.99, C.13:1E-99.102, C.13:1E-99.108),
17 the commissioner is authorized to assess a civil administrative
18 penalty not to exceed ²[\$50,000] \$25,000² for each day during
19 which a violation continues. In assessing a civil administrative
20 penalty, the commissioner shall consider the severity of the
21 violation, the measures taken to prevent further violations, and
22 whether the penalty will maintain an appropriate deterrent.

23 Prior to assessment of a civil administrative penalty, the person
24 committing the violation shall be notified by certified mail or
25 personal service that the penalty is being assessed. The notice shall
26 identify the section of the statute, rule, regulation, or order violated;
27 recite the facts alleged to constitute a violation; state the basis for
28 the amount of the civil administrative penalties to be assessed; and
29 affirm the rights of the alleged violator to a hearing. The ordered
30 party shall have 35 days from receipt of the notice within which to
31 deliver to the commissioner a written request for a hearing. After
32 the hearing and upon finding that a violation has occurred, the
33 commissioner may issue a final order after assessing the amount of
34 the fine specified in the notice. If no hearing is requested, the
35 notice shall become a final order after the expiration of the 35-day
36 period. Payment of the assessment is due when a final order is
37 issued or the notice becomes a final order. The authority to levy an
38 administrative order is in addition to all other enforcement
39 provisions in P.L.2007, c.347, and the payment of any assessment
40 shall not be deemed to affect the availability of any other
41 enforcement provisions in connection with the violation for which
42 the assessment is levied. The department may compromise any
43 civil administrative penalty assessed under this section in an
44 amount and with conditions the department determines appropriate.

45 h. A person who violates any provision of P.L.2007, c.347, or
46 any rule or regulation adopted pursuant thereto, or an administrative
47 order issued pursuant to subsection e. of this section, or a court

1 order issued pursuant to subsection f. of this section, or who fails to
 2 pay a civil administrative penalty in full pursuant to subsection g. of
 3 this section, or who knowingly makes any false or misleading
 4 statement on any application, record, report, or other document
 5 required to be submitted to the department, shall be subject, upon
 6 order of a court, to a civil penalty not to exceed ²[\$50,000]
 7 \$25,000² per day of the violation, and each day during which the
 8 violation continues shall constitute an additional, separate, and
 9 distinct offense. Any civil penalty imposed pursuant to this
 10 subsection may be collected with costs in a summary proceeding
 11 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
 12 c.274 (C.2A:58-10 et seq.), or may be collected in a civil action
 13 commenced by a certified local health agency, or the commissioner,
 14 as the case may be. In addition to any penalties, costs or interest
 15 charges, the Superior Court, or the municipal court as the case may
 16 be, may assess against the violator the amount of economic benefit
 17 accruing to the violator from the violation.

18 i. As used in this section, "certified local health agency" shall
 19 have the same meaning as set forth in section 3 of P.L.1977, c.443
 20 (C.26:3A2-23).

21 ¹j. Violations of the act include, but are not limited to:

22 (1) the sale of a new covered electronic device by any person
 23 that is not in full compliance with the provisions of this act;

24 (2) the use of a qualified collection program to recycle covered
 25 electronic devices not discarded within the State, or region as
 26 provided in section 19 of P.L.2007, c.347 (C.13:1E-99.112);

27 (3) the knowing failure to report or accurately report any data
 28 required to be reported to the department pursuant to this act;

29 (4) the non-payment of any fee required pursuant to this act ;

30 (5) failure to register, pursuant to subsection a. of section 3 of
 31 P.L.2007, c.347 (C.13:1E-99.96) or pursuant to subsection b. of
 32 section 9 of P.L.2007, c.347 (C.13:1E-99.102);

33 (6) failure to submit or implement a plan pursuant to section 3
 34 or 10 of P.L.2007, c.347 (C.13:1E-99.96 or C.13:1E-99.103); and

35 (7) failure to comply with any provision of section 16 of
 36 P.L.2007, c.347 (C.13:1E-99.109).¹

37 (cf: P.L.2008, c.130, s.14)

38

39 ¹[9.] ¹10.¹ (New section) In addition to the environmental
 40 health laws that are enforced by a certified local health agency
 41 pursuant to section 7 of P.L.1977, c.443 (C.26:3A2-25), a certified
 42 local health agency may agree to enforce the provisions of
 43 P.L.2007, c.347 (C.13:1E-99.94 et seq.) as provided in section 17 of
 44 P.L.2007, c.347 (C.13:1E-99.110).

45

46 ²11. Section 2 of P.L.2007, c.347 (C.13:1E-99.95) is amended to
 47 read as follows:

1 2. As used in sections 1 through 21 of P.L.2007, c.347
2 (C.13:1E-99.94 et seq.) and section 3 of P.L.2008, c.130 (C.13:1E-
3 99.96a):

4 "Authorized recycler" means a person who: (1) engages in the
5 manual or mechanical separation of covered electronic devices to
6 recover components and commodities contained therein for the
7 purpose of re-use or recycling; or (2) changes the physical or
8 chemical composition of a covered electronic device by
9 deconstructing, size reduction, crushing, cutting, sawing,
10 compacting, shredding, or refining for the purpose of segregating
11 components, and for the purpose of recovering or recycling those
12 components, and who arranges for the transport of those
13 components to an end user.

14 "Brand" means symbols, words, or marks that identify a covered
15 electronic device, rather than any of its components.

16 "Business concern" means any corporation, association, firm,
17 partnership, sole proprietorship, trust or other form of commercial
18 organization. "Business concern" shall not include a small business
19 enterprise.

20 "Cathode ray tube" means a vacuum tube or picture tube used to
21 convert an electronic signal into a visual image.

22 "Computer" means an electronic, magnetic, optical,
23 electrochemical, or other high-speed data processing device
24 performing logical, arithmetic, or storage function, and may include
25 both a computer central processing unit and a monitor, but the term
26 shall not include an automated typewriter or typesetter, a portable
27 handheld calculator, a portable digital assistant, or other similar
28 device.

29 "Consumer" means a person who purchases a covered electronic
30 device in a transaction that is a retail sale. "Consumer" shall not
31 include any business concern purchasing covered electronic
32 devices.

33 "Covered electronic device" means a desktop or personal
34 computer, computer monitor, portable computer, or television sold
35 to a consumer. A "covered electronic device" shall not include any
36 of the following: (1) an electronic device that is a part of a motor
37 vehicle or any component part of a motor vehicle assembled by, or
38 for, a vehicle manufacturer or franchised dealer, including
39 replacement parts for use in a motor vehicle; (2) an electronic
40 device that is functionally or physically a part of a larger piece of
41 equipment designed and intended for use in an industrial,
42 commercial, or medical setting, including diagnostic, monitoring, or
43 control equipment; (3) an electronic device that is contained within
44 a clothes washer, clothes dryer, refrigerator, refrigerator and
45 freezer, microwave oven, conventional oven or range, dishwasher,
46 room air conditioner, dehumidifier, or air purifier; or (4) a

1 telephone of any type unless it contains a video display area greater
2 than four inches measured diagonally.

3 "Department" means the Department of Environmental
4 Protection.

5 "Local government unit" means any county or municipality, or
6 any agency, instrumentality, authority or corporation of any county
7 or municipality, including, but not limited to, sewerage, utilities and
8 improvement authorities, or any other political subdivision of the
9 State.

10 "Manufacturer" means any person: (1) who manufactures or
11 manufactured covered electronic devices under a brand that it owns
12 or owned or is or was licensed to use, other than a license to
13 manufacture covered electronic devices for delivery exclusively to
14 or at the order of the licensor; (2) who sells or sold covered
15 electronic devices manufactured by others under a brand that the
16 seller owns or owned or is or was licensed to use, other than a
17 license to manufacture covered electronic devices for delivery
18 exclusively to or at the order of the licensor; (3) who manufactures
19 or manufactured covered electronic devices without affixing a
20 brand; (4) who manufactures or manufactured covered electronic
21 devices to which the person affixes or affixed a brand that the
22 person neither owns or owned nor is or was licensed to use; (5) for
23 whose account covered electronic devices manufactured outside the
24 United States are or were imported into the United States, provided
25 however, if, at the time such covered electronic devices are or were
26 imported into the United States, another person has registered as the
27 manufacturer of the brand of the covered electronic devices
28 pursuant to subsection b. of section 9 of P.L.2007, c.347 (C.13:1E-
29 99.102), then paragraph (5) of this definition shall not apply; or (6)
30 a person who assumes the obligations and responsibilities for any
31 manufacturer pursuant to paragraphs (1) through (5) of this
32 definition.

33 "Market share" means a television manufacturer's national sales
34 of televisions expressed as a percentage of the total weight of all
35 television manufacturers' national sales based on the best available
36 public data.

37 "Monitor" means a separate video display component of a
38 computer, whether sold separately or together with a computer
39 central processing unit and computer box, and includes a cathode
40 ray tube, liquid crystal display, gas plasma, digital light processing,
41 or other image projection technology, greater than four inches
42 measured diagonally, and its case, interior wires and circuitry, cable
43 to the central processing unit, and power cord.

44 "Obligation" means: (1) the return share in weight, identified for
45 an individual manufacturer, as determined by the department
46 pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-
47 99.105); or (2) the market share, identified for an individual

1 television manufacturer, as determined by the department pursuant
2 to subsection c. of section 3 of P.L.2007, c.347 (C.13:1E-99.96).

3 "Orphan device" means a covered electronic device for which no
4 manufacturer can be identified, or for which the original
5 manufacturer no longer exists.

6 "Person" means an individual, trust firm, joint stock company,
7 business concern, and corporation, including, but not limited to, a
8 government department, partnership, limited liability company, or
9 association.

10 "Portable computer" means a computer and video display greater
11 than four inches in size that can be carried as one unit by an
12 individual, including a laptop computer.

13 "Program year" means a full calendar year beginning on or after
14 January 1, 2011.

15 "Purchase" means the taking, by sale, of title in exchange for
16 consideration.

17 "Recycling" means any process by which materials which would
18 otherwise become solid waste are collected, separated or processed
19 and returned to the economic mainstream in the form of raw
20 materials or products. "Recycling" shall not include energy
21 recovery or energy generation by means of incinerating electronic
22 waste whether apart or in combination with other wastes.

23 "Registrant" means a manufacturer of covered electronic devices
24 that is in full compliance with the requirements of this act.

25 "Retail sales" means the sale of covered electronic devices
26 through sales outlets, via the Internet, mail order, or other means,
27 whether or not the retailer has a physical presence in this State.

28 "Retailer" means a person who owns or operates a business that
29 sells new covered electronic devices in this State by any means to a
30 consumer.

31 "Return share" means the proportion of covered electronic
32 devices for which an individual manufacturer is responsible to
33 collect, transport, and recycle, as determined by the department
34 pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-
35 99.105).

36 "Return share in weight" means the total weight of covered
37 electronic devices for which an individual manufacturer is
38 responsible to collect, transport, and recycle, as determined by the
39 department pursuant to subsection a. of section 12 of P.L.2007,
40 c.347 (C.13:1E-99.105).

41 "Sale" or "sell" means any transfer for consideration of title,
42 including, but not limited to, transactions conducted through sales
43 outlets, catalogs, or the Internet, or any other, similar electronic
44 means, and excluding leases.

45 "Small business enterprise" means any business which has its
46 principal place of business in this State, is independently owned and

1 operated, and employs the equivalent of fewer than 50 full-time
2 employees.

3 "Television" means a stand-alone display system containing a
4 cathode ray tube or any other type of display primarily intended to
5 receive video programming via broadcast, having a viewable area
6 greater than four inches measured diagonally, able to adhere to
7 standard consumer video formats and having the capability of
8 selecting different broadcast channels and support sound capability.

9 "Video display" means an output surface having a viewable area
10 greater than four inches when measured diagonally that displays
11 moving graphical images or a visual representation of image
12 sequences or pictures, showing a number of quickly changing
13 images on a screen in fast succession to create the illusion of
14 motion, including, if applicable, a device that is an integral part of
15 the display and cannot be easily removed from the display by the
16 consumer that produces the moving image on the screen. A "video
17 display" typically uses a cathode ray tube, liquid crystal display, gas
18 plasma, digital light processing, or other image projection
19 technology.²

20 (cf: P.L.2008, c.130, s.1)

21

22 ' [10.] ²[11. ¹] 12.² This act shall take effect immediately.

23

24

25

26

27

Revises "Electronic Waste Management Act."

ASSEMBLY, No. 1459

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Hunterdon and Mercer)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

SYNOPSIS

Revises “Electronic Waste Management Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning electronic waste and amending P.L.2007,
2 c.347, and P.L.2008, c.130, and supplementing P.L.1977, c.443
3 (C.26:3A2-21 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) is amended to
9 read as follows:

10 3. a. Beginning on January 1, 2010, and each January 1
11 thereafter, each manufacturer of televisions offered for sale for
12 delivery in this State shall register with the department and pay a
13 registration fee of \$5,000. Each television manufacturer's
14 registration and renewal shall include a list of all of the brands
15 under which its televisions are sold. All fees collected pursuant to
16 this subsection shall be allocated to the department to be used in the
17 administration of the "Electronic Waste Management Act,"
18 P.L.2007, c.347 (C.13:1E-99.94 et seq.).

19 b. Each registered television manufacturer shall submit an
20 annual renewal of its registration to the department and pay to the
21 department a registration renewal fee of \$5,000 by January 1 of
22 each program year. Each registered television manufacturer's
23 renewal shall include an annual report. All fees collected pursuant
24 to this subsection shall be allocated to the department to be used in
25 the administration of P.L.2007, c.347.

26 c. In addition to reporting all brands under which its televisions
27 are sold, regardless of whether the brand is owned or licensed, the
28 registered television manufacturer's annual report shall include the
29 total number of all new televisions sold in the State in the previous
30 program year. The department shall determine a registered
31 television manufacturer's market share.

32 d. A registered television manufacturer shall inform the
33 department, in writing, as soon as it becomes aware that it will
34 cease selling televisions in the State.

35 e. By June 1, 2010, each registered television manufacturer or
36 group of registered television manufacturers shall submit a plan to
37 the department to collect, transport and recycle used televisions
38 based on the television manufacturer's market share. Every plan
39 shall be filed with a television manufacturer's annual registration,
40 and shall include:

41 (1) Methods that will be used to collect the used televisions
42 including proposed collection services;

43 (2) The processes and methods that will be used to recycle
44 recovered used televisions including a description of the recycling

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 processes that will be used, including the name and location of all
2 authorized recyclers to be directly utilized by the plan;

3 (3) Means that will be utilized to publicize the collection
4 services, including specification of a website or toll-free telephone
5 number that provides information about the registrant's recycling
6 program in sufficient detail to allow consumers to learn how to
7 return their used televisions for recycling, including limitations
8 placed by collection sites on the number of used televisions
9 permitted for drop-off by consumers; and

10 (4) The intention of the registrant to fulfill its obligation through
11 its own operations, either individually or with other registered
12 television manufacturers, or by contract with for-profit or not-for-
13 profit corporations, or local government units.

14 The department shall hold confidential any information obtained
15 pursuant to this subsection when shown by a registered television
16 manufacturer that the information, if made public, would divulge
17 competitive business information, methods or processes entitled to
18 protection as trade secrets of the registered television manufacturer.

19 Recovered used televisions shall not be sent to prisons for
20 recycling either directly or through intermediaries and nothing in
21 this section shall be construed to allow for the recycling of used
22 televisions by prisoners. Any person committed to a jail, prison, or
23 other institution for the detention of persons charged with or
24 convicted of an offense shall be disqualified from being an
25 authorized recycler.

26 By January 1, 2011, each registered television manufacturer or
27 group of registered television manufacturers shall commence its
28 used television recycling program to implement and finance the
29 collection, transportation, and recycling of used televisions. The
30 used television recycling program shall accept all types and all
31 brands of used televisions, including orphan devices.

32 f. Each registrant's plan or plan jointly submitted by a group of
33 registrants shall be reviewed to determine its compliance with
34 subsection e. of this section and approved by the department. The
35 department may reject the plan, in whole or in part, and may impose
36 additional requirements as a condition of approval.

37 g. If a registered television manufacturer fails to comply with
38 all the conditions and terms of an approved plan, the registered
39 television manufacturer shall be prohibited from selling or offering
40 for sale televisions in this State.

41 h. **【Registered television manufacturers that collect, transport,
42 and recycle used televisions in excess of their market share may sell
43 credits to another registrant or apply that excess to the following
44 year's recycling program.】 Registered television manufacturers that
45 collect, transport, and recycle used televisions in excess of their
46 market share may sell credits to another registrant or apply that
47 excess to the following year's recycling program; provided that no**

1 more than 25 percent of a manufacturer's obligation for any
2 program year may be met with credits generated in a prior program
3 year. No manufacturer or group of manufacturers, as the case may
4 be, may cease implementing its plan required pursuant to subsection
5 e. of this section and approved by the department, during any
6 program year by using credits.

7 i. Nothing in this act is intended to exempt any person from
8 liability the person would otherwise have under applicable law.

9 j. If less than 100 televisions are sold by a manufacturer in the
10 previous program year, the department shall not require a
11 manufacturer to pay the registration fee or registration renewal fee,
12 as appropriate, in the subsequent year, pursuant to subsections a. or
13 b. of this section.

14 (cf: P.L.2008, c.130, s.2)

15

16 2. Section 3 of P.L.2008, c.130 (C.13:1E-99.96a) is amended to
17 read as follows:

18 3. a. The department shall prepare a plan every three years
19 that: (1) establishes used television per-capita collection and
20 recycling goals; and (2) identifies any necessary State actions to
21 expand collection opportunities to achieve the used television per-
22 capita collection and recycling goals. The plan shall be posted on
23 the department's Internet website and submitted, pursuant to section
24 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

25 b. The department shall prepare an annual report, which shall
26 be posted on the department's Internet website and submitted,
27 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
28 Legislature.

29 The annual report shall include the following:

30 (1) Progress toward achieving the overall annual total recovery
31 and recycling goals described in the plan prepared pursuant to
32 subsection a. of this section; and

33 (2) An evaluation of the effectiveness of existing used television
34 collection and processing infrastructure.

35 c. **【**The used television recovery and recycling program
36 implemented to effectuate the provisions of P.L.2007, c.347
37 (C.13:1E-99.94 et al.) and its associated regulations shall be fully
38 audited by an independent, certified public accountant at the end of
39 each calendar year and the audit report shall be submitted, pursuant
40 to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.**】**

41 (Deleted by amendment, P.L. _____, c. _____) (pending before the
42 Legislature as this bill).

43 (cf: P.L.2008, c.130, s.3)

44

45 3. Section 8 of P.L.2007, c.347 (C.13:1E-99.101) is amended
46 to read as follows:

1 8. Beginning on January 1, 2011, no person shall sell or offer
2 for sale in this State a new covered electronic device, including a
3 television, if the covered electronic device is prohibited from being
4 sold or offered for sale in the European Union on or after its date of
5 manufacture due to the concentration of one or more heavy metals
6 in the covered electronic device exceeding its maximum
7 concentration value, as specified in the Commission of European
8 Communities' Decision of August 18, 2005, amending Directive
9 2002/95/EC (European Union document 2005/618/EC), or as
10 specified in a subsequent amendment to the Directive. The sale or
11 offer for sale of a new covered electronic device that exceeds the
12 European Union heavy metal maximum concentration value on or
13 after its date of manufacture shall be permitted if the use of the
14 heavy metal is necessary to comply with consumer, health, or safety
15 requirements imposed by the Underwriters Laboratories or federal
16 or State law.

17 (cf: P.L.2008, c.130, s.6)

18

19 4. Section 9 of P.L.2007, c.347 (C.13:1E-99.102) is amended
20 to read as follows:

21 9. a. (1) By January 30, 2012, and by each January 30
22 thereafter, the department shall:

23 (a) have completed an auditable, statistically **【significant】** valid
24 sampling of covered electronic devices collected from consumers in
25 this State during the previous program year. The sampling
26 information collected shall consist of a list of brands of covered
27 electronic devices and the weight of covered electronic devices that
28 are identified for each brand. The department's sampling shall be
29 conducted in accordance with a procedure established by the
30 department and may be conducted by a third-party organization
31 including an authorized recycler, to be determined by the
32 department. The department may, at its discretion, be present at the
33 sampling and may audit the methodology and the results of the
34 third-party organization. The costs associated with the sampling
35 shall be recovered from the fees paid by manufacturers to the
36 department; and

37 (b) determine the total weight of covered electronic devices,
38 including orphan devices, collected from consumers in this State
39 during the previous program year.

40 (2) If a manufacturer or group of manufacturers conducts its
41 own sampling of covered electronic devices, the manufacturer or
42 group of manufacturers shall submit a report to the department
43 annually by March 1, beginning the year after the program is
44 initiated. The report shall include:

45 (a) the results of an auditable, statistically **【significant】** valid
46 sampling of covered electronic devices collected from consumers in
47 this State by the manufacturer or group of manufacturers during the

1 previous program year. The sampling information reported shall
2 consist of a list of brands of covered electronic devices and the
3 weight of covered electronic devices that are identified for each
4 brand; and

5 (b) the total weight of covered electronic devices, including
6 orphan devices, collected from consumers in this State by the
7 manufacturer or group of manufacturers during the previous
8 program year and documentation verifying collection and recycling
9 of such devices.

10 b. By February 1, 2010, and each January 1 thereafter, each
11 manufacturer of covered electronic devices offered for sale for
12 delivery in this State shall register with the department and pay a
13 registration fee of \$5,000. Any manufacturer to whom the
14 department provides notification of a return share and return share
15 in weight pursuant to subsection a. of section 12 of P.L.2007, c.347
16 (C.13:1E-99.105) and who has not previously filed a registration
17 shall file a registration with the department within 30 days
18 of receiving such notification from the department. Each
19 manufacturer's registration and renewal shall include a list of all of
20 the manufacturer's brands of covered electronic devices.

21 The provisions of this section shall not apply to any
22 manufacturer or retailer of televisions offered for sale for delivery
23 in this State.

24 c. If less than 100 covered electronic devices are sold by a
25 manufacturer in the previous program year, the department shall not
26 require a manufacturer to pay the registration fee or registration
27 renewal fee, as appropriate, in the subsequent year, pursuant to this
28 subsection b. of this section.

29 (cf: P.L.2008, c.130, s.7)

30
31 5. Section 10 of P.L.2007, c.347 (C.13:1E-99.103) is amended
32 to read as follows:

33 10. a. By June 1, 2010, each manufacturer to whom the
34 department provides, by April 2, 2010, a return share in weight that
35 is greater than zero shall submit a plan to the department to collect,
36 transport and recycle covered electronic devices.

37 b. Each manufacturer to whom the department provides, by
38 February 15, 2012 or by February 15 of any year thereafter, a return
39 share in weight that is greater than zero shall, by March 15 of that
40 year, comply with the requirements of subsection a. of this section.

41 c. An individual manufacturer submitting a plan pursuant to
42 subsection a. of this section shall collect, transport, and recycle its
43 return share in weight.

44 d. A group of manufacturers jointly submitting a plan pursuant
45 to subsection a. of this section shall collect, transport, and recycle
46 the sum of the obligations of each participating manufacturer.

1 e. Every plan shall be filed with a manufacturer's annual
2 registration, and shall include:

3 (1) Methods that will be used to collect the covered electronic
4 devices including proposed collection services;

5 (2) The processes and methods that will be used to recycle
6 recovered covered electronic devices including a description of the
7 recycling processes that will be used, including the name and
8 location of all authorized recyclers to be directly utilized by the
9 plan;

10 (3) The processes and methods that will be used to recycle
11 recovered covered electronic devices which originated from
12 transactions between business concerns;

13 (4) Means that will be utilized to publicize the collection
14 services, including specification of a website or toll-free telephone
15 number that provides information about the manufacturer's program
16 in sufficient detail to allow consumers to learn how to return their
17 covered electronic devices for recycling; and

18 (5) The intention of the registrant to fulfill its obligation through
19 operation of its own plan, either individually or with other
20 manufacturers.

21 The department shall hold confidential any information obtained
22 pursuant to this subsection when shown by a manufacturer that the
23 information, if made public, would divulge competitive business
24 information, methods or processes entitled to protection as trade
25 secrets of the manufacturer.

26 Recovered covered electronic devices shall not be sent to prisons
27 for recycling either directly or through intermediaries and nothing
28 in this section shall be construed to allow for the recycling of
29 covered electronic devices by prisoners. Any person committed to a
30 jail, prison, or other institution for the detention of persons charged
31 with or convicted of an offense shall be disqualified from engaging
32 in the manual or mechanical separation of covered electronic
33 devices to recover components and commodities contained therein
34 for the purpose of re-use or recycling.

35 By January 1, 2011, each manufacturer or group of
36 manufacturers required to submit a plan, pursuant to subsection a.
37 of this section, shall commence its covered electronic device
38 recycling program to implement and finance the collection,
39 transportation, and recycling of covered electronic devices other
40 than televisions. The covered electronic device recycling program
41 shall accept all types and all brands of used covered electronic
42 devices, including orphan devices.

43 f. Each manufacturer's plan or plan jointly submitted by a
44 group of manufacturers shall be reviewed to determine its
45 compliance with subsection e. of this section and approved by the
46 department. The department may reject the plan, in whole or in

1 part, and may impose additional requirements as a condition of
2 approval.

3 g. If a manufacturer fails to comply with all the conditions and
4 terms of an approved plan, the manufacturer shall be prohibited
5 from selling or offering for sale in this State a covered electronic
6 device.

7 h. **【Manufacturers that collect, transport, and recycle covered**
8 **electronic devices in excess of their obligation may sell credits to**
9 **another registrant or apply that excess to the following year's**
10 **recycling obligation.】** Manufacturers that collect, transport, and
11 recycle covered electronic devices in excess of their obligation may
12 sell credits to another registrant or apply that excess to the
13 following year's recycling obligation; provided that no more than 25
14 percent of a manufacturer's obligation for any program year may be
15 met with credits generated in a prior program year. No
16 manufacturer or group of manufacturers, as the case may be, may
17 cease implementing its plan required pursuant to subsection e. of
18 this section and approved by the department, during any program
19 year by using credits.

20 i. (Deleted by amendment, P.L.2008, c.130)

21 j. (Deleted by amendment, P.L.2008, c.130)

22 k. Nothing in this act is intended to exempt any person from
23 liability the person would otherwise have under applicable law.

24 l. The provisions of this section shall not apply to any
25 manufacturer or retailer of televisions offered for sale for delivery
26 in this State.

27 (cf: P.L.2008, c.130, s.8)

28

29 6. Section 12 of P.L.2007, c.347 (C.13:1E-99.105) is amended
30 to read as follows:

31 12. a. (1) The department shall determine the return share for
32 each program year for each manufacturer by dividing the weight of
33 covered electronic devices identified for each manufacturer by the
34 total weight of covered electronic devices identified for all
35 manufacturers. For the first program year, the return share of
36 covered electronic devices identified for each manufacturer shall be
37 based on the best available public return share data from the United
38 States, including data from other states, for covered electronic
39 devices from consumers. For the second and each subsequent
40 program year, the return share of covered electronic devices
41 identified for each manufacturer shall be based on the most recent
42 samplings of covered electronic devices conducted in this State
43 pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-
44 99.102).

45 (2) The department shall determine the return share in weight
46 for each program year for each manufacturer for whom a return
47 share is determined pursuant to paragraph (1) of this subsection by

1 multiplying the return share for each such manufacturer by the total
2 weight in pounds of covered electronic devices, including orphan
3 devices, collected from consumers the previous program year. For
4 the first program year, the total weight in pounds of covered
5 electronic devices shall be based on the best available public weight
6 data from the United States, including data from other states, for
7 covered electronic devices from consumers. For the second and
8 each subsequent program year, the total weight in pounds of
9 covered electronic devices shall be based on the total weight of
10 covered electronic devices, including orphan devices, determined
11 by the department pursuant to subsection a. of section 9 of
12 P.L.2007, c.347 (C.13:1E-99.102).

13 (3) By April 2, 2011, the department shall provide each
14 manufacturer for whom a return share is determined pursuant to
15 paragraph (1) of this subsection with its return share and its return
16 share in weight for the first program year. Annually thereafter, by
17 February 15, beginning in 2013, the department shall provide each
18 manufacturer for whom a return share is determined pursuant to
19 paragraph (1) of this subsection with its return share and its return
20 share in weight for the second and subsequent program years.

21 b. (Deleted by amendment, P.L.2008, c.130)

22 c. (1) The department shall ensure that at least one electronics
23 collection opportunity is available in each county throughout the
24 State and in such a manner as to be convenient, to the maximum
25 extent practicable and feasible, to all consumers in the county.

26 (2) The department shall ensure that collection sites do not place
27 unreasonable limits on the number of covered electronic devices
28 permitted for drop-off by consumers.

29 d. (1) Beginning on January 1, 2011, the department shall
30 maintain a list of registrants and the brands reported in each
31 manufacturer's registration, and post the list on the department's
32 Internet website that is updated at least once a month.

33 (2) The department shall organize and coordinate public
34 education and outreach.

35 e. The department shall prepare a plan every three years that:
36 (1) establishes per-capita collection and recycling goals; and (2)
37 identifies any necessary State actions to expand collection
38 opportunities to achieve the per-capita collection and recycling
39 goals. The plan shall be posted on the department's Internet website
40 and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
41 19.1), to the Legislature.

42 f. The department shall prepare an annual report, which shall
43 be posted on the department's Internet website and submitted,
44 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
45 Legislature.

46 The annual report shall include the following:

- 1 (1) The total weight of covered electronic devices collected in
2 the State the previous calendar year;
- 3 (2) Progress toward achieving the overall annual total recovery
4 and recycling goals described in the plan prepared pursuant to
5 subsection e. of this section;
- 6 (3) A complete listing of all collection sites operating in the
7 State in the prior calendar year, the parties that operated them, and
8 the amount of material by weight collected at each site;
- 9 (4) An evaluation of the effectiveness of the education and
10 outreach program; and
- 11 (5) An evaluation of the existing collection and processing
12 infrastructure.
- 13 g. **【**The program implemented to effectuate the provisions of
14 this act and its associated regulations shall be fully audited by an
15 independent, certified public accountant at the end of each calendar
16 year and the audit report shall be submitted, pursuant to section 2 of
17 P.L.1991, c.164 (C.52:14-19.1), to the Legislature.**】** (Deleted by
18 amendment, P.L. , c.) (pending before the Legislature as this
19 bill).
- 20 h. The provisions of this section shall not apply to any
21 manufacturer or retailer of televisions offered for sale for delivery
22 in this State.
23 (cf: P.L.2008, c.130, s.10)
24
- 25 7. Section 13 of P.L.2007, c.347 (C.13:1E-106) is amended to
26 read as follows:
- 27 13. a. The department shall maintain an Internet website and
28 toll-free number complete with up-to-date listings of where
29 consumers can bring covered electronic devices for recycling under
30 the provisions of this act.
- 31 b. (Deleted by amendment, P.L.2008, c.130)
- 32 c. **【**No more frequently than annually and no less frequently
33 than biennially, the department shall review, at a public hearing, the
34 covered electronic device recycling goals and registration fees.
35 Recommended changes to the covered electronic device recycling
36 goals and registration fees shall be included in the annual reports
37 required pursuant to section 3 of P.L.2008, c.130 (C.13:1E-99.96a)
38 and subsection f. of section 12 of P.L.2007, c.347 (C.13:1E-
39 99.105).**】** (Deleted by amendment, P.L. , c.) (pending before
40 the Legislature as this bill).
- 41 d. No fees or costs may be charged to consumers for the
42 collection, transportation, or recycling of covered electronic devices
43 except that a nominal fee may be charged to a consumer if a
44 financial incentive, such as a coupon, of equal or greater value is
45 provided . Any authorized recycler may charge fees to schools or
46 local government units for the reasonable costs incurred by the

1 authorized recycler for the collection, transportation, or recycling of
2 covered electronic devices.
3 (cf: P.L.2008, c.130, s.11)
4

5 8. Section 17 of P.L.2007, c.347 (C.13:1E-99.110) is amended
6 to read as follows:

7 17. a. **【**The State, including the Attorney General and the
8 department, shall be authorized to initiate independent action to
9 enforce any provision of this act, including failure by a
10 manufacturer to remit the registration fee required pursuant to
11 section 3 of P.L.2007, c.347 (C.13:1E-99.96) or section 9 of
12 P.L.2007, c.347 (C.13:1E-99.102), or any fee required pursuant to
13 subsection b. of section 18 of P.L.2007, c.347 (C.13:1E-99.111) to
14 the department. Any funds awarded by the court shall be used first
15 to offset enforcement expenses. Money in excess of the
16 enforcement expenses shall be deposited into a separate account,
17 and shall be dedicated for use by the department solely for the
18 purposes of administering and enforcing the provisions of this act
19 and any rules or regulations adopted pursuant thereto.**】** (Deleted by
20 amendment, P.L. , c.) (pending before the Legislature as this
21 bill).

22 b. **【**Any person who violates the provisions of this act shall be
23 subject to a penalty of not less than \$500 nor more than \$1,000 for
24 each offense, to be collected in a civil action by a summary
25 proceeding under the "Penalty Enforcement Law of 1999,"
26 P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court
27 of competent jurisdiction wherein injunctive relief has been
28 requested. The Superior Court shall have jurisdiction to enforce the
29 provisions of the "Penalty Enforcement Law of 1999" in connection
30 with this act.

31 If the violation is of a continuing nature, each day during which
32 it continues constitutes an additional, separate, and distinct offense.

33 The department may institute a civil action for injunctive relief
34 to enforce this act and to prohibit and prevent a violation of this act,
35 and the court may proceed in the action in a summary manner.**】**
36 (Deleted by amendment, P.L. , c.) (pending before the
37 Legislature as this bill).

38 c. Violations of the act include, but are not limited to:

39 (1) the sale of a new covered electronic device by any person
40 that is not in full compliance with the provisions of this act;

41 (2) the use of a qualified collection program to recycle covered
42 electronic devices not discarded within the State, or region as
43 provided in section 19 of P.L.2007, c.347 (C.13:1E-99.112);

44 (3) the knowing failure to report or accurately report any data
45 required to be reported to the department pursuant to this act; **【and】**

46 (4) the non-payment of any fee required pursuant to this act ;

1 (5) failure to register, pursuant to subsection a. of section 3 of
2 P.L.2007, c.347 (C.13:1E-99.96) or pursuant to subsection b. of
3 section 9 of P.L.2007, c.347 (C.13:1E-99.102); and

4 (6) failure to submit or implement a plan pursuant to section 3
5 or 10 of P.L.2007, c.347 (C.13:1E-99.96 or C.13:1E-99.103) .

6 d. The “Electronic Waste Management Act,” P.L.2007, c.347
7 (C.13:1E-99.94 et seq.), and any rule or regulation adopted pursuant
8 thereto, shall be enforced by the department and may be enforced
9 by any certified local health agency. Whenever the commissioner
10 finds that a person has violated any provision of P.L.2007, c.347, or
11 any rule or regulation adopted pursuant thereto, the commissioner
12 may:

13 (1) issue an order, in accordance with subsection e. of this
14 section, requiring the person found to be in violation to comply;

15 (2) bring a civil action in accordance with subsection f. of this
16 section;

17 (3) levy a civil administrative penalty in accordance with
18 subsection g. of this section; or

19 (4) bring an action for a civil penalty in accordance with
20 subsection h. of this section.

21 e. Whenever, on the basis of available information, the
22 commissioner finds that a person has violated any provision of
23 P.L.2007, c.347, or any rule or regulation adopted thereto, the
24 commissioner may issue an administrative enforcement order: (1)
25 specifying the provision or provisions of P.L.2007, c.347, or the
26 rule or regulation, of which the person is in violation; (2) citing the
27 action which constituted the violation; (3) requiring compliance
28 with the provision or provisions violated; and (4) providing notice
29 to the person of the right to a hearing on the matters contained in
30 the administrative enforcement order. The ordered party shall have
31 35 days from receipt of the order within which to deliver to the
32 commissioner a written request for a hearing. An order shall be
33 effective upon receipt and any person to whom such order is
34 directed shall comply with the order immediately. A request for
35 hearing shall not automatically stay the effect of the order.

36 f. The commissioner is authorized to, and a certified local
37 health agency may, institute a civil action in Superior Court for
38 appropriate relief from any violation of the provisions of P.L.2007,
39 c.347, or any rule or regulation adopted thereof. Such relief may
40 include, singly or in combination:

41 (1) a temporary or permanent injunction;

42 (2) recovery of reasonable costs of any investigation or
43 inspection which led to the discovery of the violation, and for the
44 reasonable costs of preparing and bringing a civil action
45 commenced under this subsection;

46 (3) recovery of reasonable costs incurred by the State in
47 removing, correcting, or terminating the adverse effects resulting

1 from any violation of the provisions of P.L.2007, c.347, or any rule
2 or regulation adopted pursuant thereto, for which a civil action has
3 been commenced and brought under this subsection;

4 (4) recovery of compensatory damages caused by a violation of
5 the provisions of P.L.2007, c.347, or any rule or regulation adopted,
6 for which a civil action has been commenced and brought under this
7 subsection. Assessments under this subsection shall be paid to the
8 State Treasurer, or to the certified local health agency, as the case
9 may be, except that compensatory damages may be paid by specific
10 order of the court to any persons who have been aggrieved by the
11 violation. If a proceeding is instituted by a certified local health
12 agency, notice thereof shall be served upon the commissioner in the
13 same manner as if the commissioner were a named party to the
14 action or proceeding. The department may intervene as a matter of
15 right in any proceeding brought by a certified local health agency.

16 g. (1) Except as authorized otherwise in paragraph (2) of this
17 subsection, the commissioner is authorized to assess a civil
18 administrative penalty of not less than \$500 nor more than \$1,000
19 for each violation, provided that each day during which the
20 violation continues shall constitute an additional, separate and
21 distinct offense.

22 (2) For any violation of sections 3, 7, 8, 10 or 11 of P.L.2007,
23 c.347 (C.13:1E-99.96, C.13:1E-99.100, C.13:1E-99.101, C.13:1E-
24 99.103, or C.13:1E-99.104) or subsection a. or b. of section 6,
25 subsection b. of section 9, or subsection a. of section 15 of
26 P.L.2007, c.347 (C.13:1E-99.99, C.13:1E-99.102, C.13:1E-99.108),
27 the commissioner is authorized to assess a civil administrative
28 penalty not to exceed \$50,000 for each day during which a violation
29 continues. In assessing a civil administrative penalty, the
30 commissioner shall consider the severity of the violation, the
31 measures taken to prevent further violations, and whether the
32 penalty will maintain an appropriate deterrent.

33 Prior to assessment of a civil administrative penalty, the person
34 committing the violation shall be notified by certified mail or
35 personal service that the penalty is being assessed. The notice shall
36 identify the section of the statute, rule, regulation, or order violated;
37 recite the facts alleged to constitute a violation; state the basis for
38 the amount of the civil administrative penalties to be assessed; and
39 affirm the rights of the alleged violator to a hearing. The ordered
40 party shall have 35 days from receipt of the notice within which to
41 deliver to the commissioner a written request for a hearing. After
42 the hearing and upon finding that a violation has occurred, the
43 commissioner may issue a final order after assessing the amount of
44 the fine specified in the notice. If no hearing is requested, the
45 notice shall become a final order after the expiration of the 35-day
46 period. Payment of the assessment is due when a final order is
47 issued or the notice becomes a final order. The authority to levy an

1 administrative order is in addition to all other enforcement
2 provisions in P.L.2007, c.347, and the payment of any assessment
3 shall not be deemed to affect the availability of any other
4 enforcement provisions in connection with the violation for which
5 the assessment is levied. The department may compromise any
6 civil administrative penalty assessed under this section in an
7 amount and with conditions the department determines appropriate.

8 h. A person who violates any provision of P.L.2007, c.347, or
9 any rule or regulation adopted pursuant thereto, or an administrative
10 order issued pursuant to subsection e. of this section, or a court
11 order issued pursuant to subsection f. of this section, or who fails to
12 pay a civil administrative penalty in full pursuant to subsection g. of
13 this section, or who knowingly makes any false or misleading
14 statement on any application, record, report, or other document
15 required to be submitted to the department, shall be subject, upon
16 order of a court, to a civil penalty not to exceed \$50,000 per day of
17 the violation, and each day during which the violation continues
18 shall constitute an additional, separate, and distinct offense. Any
19 civil penalty imposed pursuant to this subsection may be collected
20 with costs in a summary proceeding pursuant to the "Penalty
21 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),
22 or may be collected in a civil action commenced by a certified local
23 health agency, or the commissioner, as the case may be. In addition
24 to any penalties, costs or interest charges, the Superior Court, or the
25 municipal court as the case may be, may assess against the violator
26 the amount of economic benefit accruing to the violator from the
27 violation.

28 i. As used in this section, "certified local health agency" shall
29 have the same meaning as set forth in section 3 of P.L.1977, c.443
30 (C.26:3A2-23).

31 (cf: P.L.2008, c.130, s.14)

32
33 9. (New section) In addition to the environmental health laws
34 that are enforced by a certified local health agency pursuant to
35 section 7 of P.L.1977, c.443 (C.26:3A2-25), a certified local health
36 agency may agree to enforce the provisions of P.L.2007, c.347
37 (C.13:1E-99.94 et seq.) as provided in section 17 of P.L.2007, c.347
38 (C.13:1E-99.110).

39
40 10. This act shall take effect immediately.

41 42 43 STATEMENT

44
45 This bill would amend the "Electronic Waste Management Act,"
46 P.L.2007, c.347 (C.13:1E-99.94 et seq.) by revising its penalty
47 provisions, deleting the credit-trading program, reallocating the

1 funds collected under registration fees, authorizing enforcement of
2 the act by certified local health agencies, and removing audit and
3 public hearing requirements under current law.

4 Under the bill, the Department of Environmental Protection
5 (DEP) would use the registration fees from manufacturers to
6 support the administration of the program. In addition, the bill
7 would exempt manufacturers who sell less than 100 televisions or
8 less than 100 covered electronic devices in the previous program
9 year from paying the \$5,000 registration or registration renewal fee.
10 Any manufacturer who sells 100 or more units, after being
11 exempted from fees, would be required to pay the registration fee or
12 the registration renewal fee for any year in which 100 or more units
13 are sold.

14 Current law provides that a person in violation of this act may be
15 subject to a civil penalty of not less than \$500 nor more than \$1,000
16 for each offense, and the DEP is required to seek relief in Superior
17 Court to enforce the statute. This bill would change the penalty
18 provision to authorize the DEP to issue administrative orders, levy
19 administrative penalties, bring a civil action seeking a court order,
20 and bring an action for a civil penalty to enforce the act. The bill
21 also authorizes the commissioner to assess a civil administrative
22 penalty not to exceed \$50,000, for certain violations of the act, such
23 as failure to register or submit or implement a plan. For other
24 violations, the commissioner is authorized to assess a civil
25 administrative penalty of not less than \$500 nor more than \$1,000
26 for each violation. In addition, the bill would authorize a court to
27 impose a civil penalty for violations of the act of up to \$50,000 per
28 day. Further, the bill authorizes certified local health agencies to
29 enforce the act.

30 This bill would limit the provision of law allowing
31 manufacturers that collect electronics in excess of their obligation
32 to either sell credits to other manufacturers or apply the credits to
33 the next year's obligation by providing that no more than 25 percent
34 of a manufacturer's obligation for any program year may be met
35 with credits generated in a prior program year. The bill further
36 provides that no manufacturer or group of manufacturers, as the
37 case may be, may cease implementing its plan during any program
38 year by using credits.

39 The bill would also allow the sale or offer for sale of new
40 electronic devices that exceed the European Union heavy metal
41 maximum concentration value on or after the date of manufacture if
42 the use of the heavy metal is necessary to comply with consumer,
43 health, or safety requirements imposed by the Underwriters
44 Laboratories or federal or State law. The bill would also allow a
45 nominal fee to be charged to a consumer for the collection,
46 transportation, or recycling of a covered electronic device if a
47 financial incentive, such as a coupon, of equal or greater value is

1 provided. Finally, the bill would also delete provisions that
2 required: (1) the used television recovery and recycling program to
3 be fully audited by an independent, certified public accountant each
4 calendar year; and (2) the DEP to hold a public hearing every one to
5 two years to review the covered electronic device recycling goals
6 and registration fees.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1459

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2012

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No. 1459.

The bill, with committee amendments, would amend the "Electronic Waste Management Act," P.L.2007, c.347 (C.13:1E-99.94 et seq.) by revising its penalty provisions, deleting the credit-trading program, reallocating the funds collected under registration fees, authorizing enforcement of the act by certified local health agencies, and removing audit and public hearing requirements under current law.

Under the bill, the Department of Environmental Protection (DEP) would use the registration fees from manufacturers to support the administration of the program. In addition, the bill would exempt manufacturers who sell less than 100 televisions or less than 100 covered electronic devices in the previous program year from paying the \$5,000 registration or registration renewal fee. Any manufacturer who sells 100 or more units, after being exempted from fees, would be required to pay the registration fee or the registration renewal fee for any year in which 100 or more units are sold.

Current law provides that a person in violation of this act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and the DEP is required to seek relief in Superior Court to enforce the statute. This bill would change the penalty provision to authorize the DEP to issue administrative orders, levy administrative penalties, bring a civil action seeking a court order, and bring an action for a civil penalty to enforce the act. The bill also authorizes the commissioner to assess a civil administrative penalty not to exceed \$50,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill would authorize a court to impose a civil penalty for violations of the act of up to \$50,000 per day. Further, the bill authorizes certified local health agencies to enforce the act.

This bill would limit the provision of law allowing manufacturers that collect covered electronic devices in excess of their obligation to either sell credits to other manufacturers or apply the credits to the next year's obligation by providing that no more than 25 percent of a manufacturer's obligation for any program year may be met with credits generated in a prior program year. The bill further provides that no manufacturer or group of manufacturers, as the case may be, may cease implementing its plan during any program year by using credits.

The bill would also allow the sale, or offer for sale, of new electronic devices that exceed the European Union heavy metal maximum concentration value on or after the date of manufacture if the use of the heavy metal is necessary to comply with consumer, health, or safety requirements imposed by the Underwriters Laboratories or federal or State law. The bill would also allow a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided. Finally, the bill would also delete provisions that required: (1) the used television recovery and recycling program to be fully audited by an independent, certified public accountant each calendar year; and (2) the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) prohibit a solid waste facility from knowingly accepting for disposal any truckload or roll-off container of solid waste containing a visible quantity of covered electronic devices, or any components or assemblies thereof;

2) provide that the owner or operator of a solid waste facility would not be found in violation of the provision, outlined in 1) above, if a good faith effort is made toward compliance, a sign is posted at the facility stating that covered electronic devices shall not be accepted, and all persons authorized to deposit solid waste at the facility have been notified in writing that covered electronic devices shall not be accepted;

3) provide that failure to comply with section 16 of the "Electronic Waste Management Act," P.L.2007, c.347 (C.13:1E-99.109), would constitute a violation of the act and would be subject to the penalty provisions thereof; and

4) make technical corrections.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1459

STATE OF NEW JERSEY

DATED: MAY 21, 2012

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1459 (1R).

This bill amends the “Electronic Waste Management Act,” P.L.2007, c.347 (C.13:1E-99.94 et seq.) by revising its penalty provisions, limiting the credit-trading program, reallocating the funds collected under registration fees, authorizing enforcement of the act by certified local health agencies, and removing audit and public hearing requirements under current law.

Under the bill, the Department of Environmental Protection (DEP) will use the registration fees from manufacturers to support the administration of the program. In addition, the bill exempts manufacturers who sell less than 100 televisions or less than 100 covered electronic devices in the previous program year from paying the \$5,000 registration or registration renewal fee. The bill requires a manufacturer who sells 100 or more units after being exempted from fees to pay the registration fee or the registration renewal fee for any year in which 100 or more units are sold.

Current law provides that a person in violation of the act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and requires the DEP to seek relief in Superior Court to enforce the statute. This bill changes the penalty provision to authorize the DEP to issue administrative orders, levy administrative penalties, bring a civil action seeking a court order, and bring an action for a civil penalty to enforce the act. The bill also authorizes the Commissioner of DEP to assess a civil administrative penalty not to exceed \$50,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill authorizes a court to impose a civil penalty for violations of the act of up to \$50,000 per day. Further, the bill authorizes certified local health agencies to enforce the act.

This bill limits the provision of law allowing manufacturers that collect covered electronic devices in excess of their obligation to either sell credits to other manufacturers or apply the credits to the next

year's obligation by providing that no more than 25 percent of a manufacturer's obligation for any program year may be met with credits generated in a prior program year. The bill further provides that no manufacturer or group of manufacturers, as the case may be, may cease implementing its plan during any program year by using credits.

The bill also allows the sale, or offer for sale, of new electronic devices that exceed the European Union heavy metal maximum concentration value on or after the date of manufacture if the use of the heavy metal is necessary to comply with consumer, health, or safety requirements imposed by the Underwriters Laboratories or federal or State law. The bill also allows a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided.

The bill deletes provisions that require: (1) the used television recovery and recycling program to be fully audited by an independent, certified public accountant each calendar year; and (2) the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

The bill prohibits a solid waste facility from knowingly accepting for disposal any truckload or roll-off container of solid waste containing a visible quantity of covered electronic devices, or any components or assemblies thereof. However, the owner or operator of a solid waste facility will not be found in violation of this provision if a good faith effort is made toward compliance, a sign is posted at the facility stating that covered electronic devices shall not be accepted, and all persons authorized to deposit solid waste at the facility have been notified in writing that covered electronic devices shall not be accepted. The bill provides that knowingly disposing of a used covered electronic device, or any of the components or subassemblies thereof, as solid waste, constitute a violation of the act and will be subject to the penalty provisions thereof.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill would have minimal or no fiscal impact on the Department of Environmental Protection (DEP) and certified local health agencies. As the bill provides that all registration fees are to be used by the DEP to administer the act, some or most of the program costs incurred by the DEP could be offset depending on the amount of fees collected. Therefore, the OLS does not believe that any significant added expenditure by the department would be necessary. According to information informally provided by the Executive, some costs currently incurred by the DEP could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing

requirements of the act. The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the bill provides.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1459

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: MAY 23, 2012

SUMMARY

Synopsis: Revises “Electronic Waste Management Act.”

Type of Impact: Minimal or no impact.

Agencies Affected: Department of Environmental Protection, counties.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost		Minimal – See comments below	
State Revenue		Minimal – See comments below	
Local Cost		Minimal – See comments below	
Local Revenue		Minimal – See comments below	

- The Office of Legislative Services (OLS) estimates that the bill would have minimal or no fiscal impact on the Department of Environmental Protection (DEP) and certified local health agencies.
- The bill provides that all registration fees are to be used by the DEP to administer the act, which depending on the fees collected, could offset some or most program costs incurred by the department.
- Some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act.
- The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

BILL DESCRIPTION

Assembly Bill No. 1459 (1R) of 2012 would amend the “Electronic Waste Management Act,” P.L.2007, c.347, by revising its penalty provisions, limiting the credit-trading program, reallocating the funds collected under registration fees, authorizing enforcement of the act by certified local health agencies, and removing audit and public hearing requirements under current law.

Under the bill, the DEP would use the registration fees from manufacturers to support the administration of the program. In addition, the bill would exempt manufacturers who sell less than 100 televisions or covered electronic devices in the previous program year from paying the \$5,000 registration or registration renewal fee. Any manufacturer who sells 100 or more units, after being exempted from fees, would be required to pay the registration fee or the registration renewal fee for any year in which 100 or more units are sold.

Current law provides that a person in violation of this act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and the DEP is required to seek relief in Superior Court to enforce the statute. This bill would change the penalty provision to authorize the DEP to issue administrative orders, levy administrative penalties, bring a civil action seeking a court order, and bring an action for a civil penalty to enforce the act. The bill also authorizes the commissioner to assess a civil administrative penalty not to exceed \$50,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill would authorize a court to impose a civil penalty for violations of the act of up to \$50,000 per day. Further, the bill authorizes certified local health agencies to enforce the act.

The bill would limit the provision of law allowing manufacturers that collect covered electronic devices in excess of their obligation to either sell credits to other manufacturers or apply the credits to the next year’s obligation by providing that no more than 25 percent of a manufacturer's obligation for any program year may be met with credits generated in a prior program year. The bill provides that no manufacturer or group of manufacturers may cease implementing its plan during any program year by using credits. The bill would also allow a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided. Finally, the bill would also delete provisions that require the used television recovery and recycling program to be audited by an independent certified public accountant each calendar year, and the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would have minimal or no fiscal impact on the DEP and certified local health agencies. Since the bill provides that all registration fees are to be used by the DEP to administer the act, some or most of the program costs incurred by the department

could be offset depending on the amount of fees collected. Therefore, the OLS does not believe that any significant added expenditure by the department would be necessary. According to information informally provided by the Executive, some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act. The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY BILL NO. 1459
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1459 (First Reprint) with my recommendations for reconsideration.

This bill makes numerous revisions to the Electronic Waste Management Act ("Act") to improve the Department of Environmental Protection's ("DEP") administration of the Act and to reduce unnecessary and onerous requirements imposed on the regulated community.

I commend the sponsors' efforts to streamline government and to reduce unnecessary regulatory burdens. Indeed, common sense regulatory reform and red-tape cutting measures have been a hallmark of my Administration. Nevertheless, I recommend two amendments to this bill that will improve the Act's fairness while ensuring that compliance is encouraged and wrongful conduct is deterred.

First, to ensure fairness in DEP's administration of the Act, a television manufacturer's recycling responsibility should be measured in terms of the weight of televisions manufactured, not units, thereby ensuring that the Act's requirements are appropriately distributed among industry participants.

Second, this bill increases the maximum penalty that may be assessed to a violator of the Act from \$1,000 to \$50,000. I agree with the legislative sponsors that a \$1,000 maximum fine is not a deterrent to improper conduct. However, a maximum civil administrative penalty of \$25,000 is more in-line with other DEP maximum civil administrative penalties, will serve as a substantial deterrent to wrongful conduct, and will assuredly encourage compliance with the Act.

Therefore, I herewith return Assembly Bill No. 1459 (First Reprint) and recommend that it be amended as follows:

- Page 2, Section 1, Line 29: After "number" insert "and weight"
- Page 2, Section 1, Line 31: After "share" insert "by weight"
- Page 14, Section 9, Line 15: Delete "\$50,000" and insert "\$25,000"
- Page 15, Section 9, Line 3: Delete "\$50,000" and insert "\$25,000"
- Page 15, Line 42: Insert new section:
- "11. Section 2 of P.L.2007, c.347 (C.13:1E-99.95) is amended to read as follows:
2. As used in sections 1 through 21 of P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section 3 of P.L.2008, c.130 (C.13:1E-99.96a):
- "Authorized recycler" means a person who: (1) engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of re-use or recycling; or (2) changes the physical or chemical composition of a covered electronic device by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for the purpose of segregating components, and for the purpose of recovering or recycling those components, and who arranges for the transport of those components to an end user.
- "Brand" means symbols, words, or marks that identify a covered electronic device, rather than any of its components.
- "Business concern" means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization. "Business concern" shall not include a small business enterprise.
- "Cathode ray tube" means a vacuum tube or picture tube

used to convert an electronic signal into a visual image.

"Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor, but the term shall not include an automated typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other similar device.

"Consumer" means a person who purchases a covered electronic device in a transaction that is a retail sale. "Consumer" shall not include any business concern purchasing covered electronic devices.

"Covered electronic device" means a desktop or personal computer, computer monitor, portable computer, or television sold to a consumer. A "covered electronic device" shall not include any of the following: (1) an electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle; (2) an electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment; (3) an electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (4) a telephone of any type unless it contains a video display area greater than four inches measured diagonally.

"Department" means the Department of Environmental Protection.

"Local government unit" means any county or municipality, or any agency, instrumentality, authority or corporation of any county or municipality, including, but not limited to, sewerage, utilities and improvement authorities, or any other political subdivision of the State.

"Manufacturer" means any person: (1) who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor; (2) who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor; (3) who manufactures or manufactured covered electronic devices without affixing a brand; (4) who manufactures or manufactured covered electronic devices to which the person affixes or affixed a brand that the person neither owns or owned nor is or was licensed to use; (5) for whose account covered electronic devices manufactured outside the United States are or were imported into the United States, provided however, if, at the time such covered electronic devices are or were imported into the United States, another person has registered as the manufacturer of the brand of the covered electronic devices pursuant to subsection b. of section 9 of P.L.2007, c.347 (C.13:1E-99.102), then paragraph (5) of this definition shall not apply; or (6) a person who assumes the obligations and

responsibilities for any manufacturer pursuant to paragraphs (1) through (5) of this definition.

"Market share" means a television manufacturer's national sales of televisions expressed as a percentage of the total weight of all television manufacturers' national sales based on the best available public data.

"Monitor" means a separate video display component of a computer, whether sold separately or together with a computer central processing unit and computer box, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology, greater than four inches measured diagonally, and its case, interior wires and circuitry, cable to the central processing unit, and power cord.

"Obligation" means: (1) the return share in weight, identified for an individual manufacturer, as determined by the department pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-99.105); or (2) the market share, identified for an individual television manufacturer, as determined by the department pursuant to subsection c. of section 3 of P.L.2007, c.347 (C.13:1E-99.96).

"Orphan device" means a covered electronic device for which no manufacturer can be identified, or for which the original manufacturer no longer exists.

"Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government department, partnership, limited liability company, or association.

"Portable computer" means a computer and video display greater than four inches in size that can be carried as

one unit by an individual, including a laptop computer.

"Program year" means a full calendar year beginning on or after January 1, 2011.

"Purchase" means the taking, by sale, of title in exchange for consideration.

"Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products. "Recycling" shall not include energy recovery or energy generation by means of incinerating electronic waste whether apart or in combination with other wastes.

"Registrant" means a manufacturer of covered electronic devices that is in full compliance with the requirements of this act.

"Retail sales" means the sale of covered electronic devices through sales outlets, via the Internet, mail order, or other means, whether or not the retailer has a physical presence in this State.

"Retailer" means a person who owns or operates a business that sells new covered electronic devices in this State by any means to a consumer.

"Return share" means the proportion of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle, as determined by the department pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-99.105).

"Return share in weight" means the total weight of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle, as determined by the department pursuant to subsection a. of section 12

of P.L.2007, c.347 (C.13:1E-99.105).

"Sale" or "sell" means any transfer for consideration of title, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, and excluding leases.

"Small business enterprise" means any business which has its principal place of business in this State, is independently owned and operated, and employs the equivalent of fewer than 50 full-time employees.

"Television" means a stand-alone display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, having a viewable area greater than four inches measured diagonally, able to adhere to standard consumer video formats and having the capability of selecting different broadcast channels and support sound capability.

"Video display" means an output surface having a viewable area greater than four inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display and cannot be easily removed from the display by the consumer that produces the moving image on the screen. A "video display" typically uses a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology."

Page 15, Section 11, Line 43:

Delete "11" and insert "12"

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 1459

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: OCTOBER 19, 2012

SUMMARY

Synopsis: Revises “Electronic Waste Management Act.”

Type of Impact: Minimal or no impact.

Agencies Affected: Department of Environmental Protection, counties.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal – See comments below		
State Revenue	Minimal – See comments below		
Local Cost	Minimal – See comments below		
Local Revenue	Minimal – See comments below		

- The Office of Legislative Services (OLS) estimates that the bill would have minimal or no fiscal impact on the Department of Environmental Protection (DEP) and certified local health agencies.
- The bill provides that all registration fees are to be used by the DEP to administer the act, which depending on the fees collected, could offset some or most program costs incurred by the department.
- Some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act.
- The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

BILL DESCRIPTION

Assembly Bill No. 1459 (2R) of 2012 would amend the “Electronic Waste Management Act,” P.L.2007, c.347, by revising its penalty provisions, limiting the credit-trading program, reallocating the funds collected under registration fees, authorizing enforcement of the act by certified local health agencies, and removing audit and public hearing requirements under current law.

Under the bill, the DEP would use the registration fees from manufacturers to support the administration of the program. In addition, the bill would exempt manufacturers who sell less than 100 televisions or covered electronic devices in the previous program year from paying the \$5,000 registration or registration renewal fee. Any manufacturer who sells 100 or more units, after being exempted from fees, would be required to pay the registration fee or the registration renewal fee for any year in which 100 or more units are sold.

Current law provides that a person in violation of this act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and the DEP is required to seek relief in Superior Court to enforce the statute. This bill would change the penalty provision to authorize the DEP to issue administrative orders, levy administrative penalties, bring a civil action seeking a court order, and bring an action for a civil penalty to enforce the act. The bill also authorizes the commissioner to assess a civil administrative penalty not to exceed \$25,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill would authorize a court to impose a civil penalty for violations of the act of up to \$25,000 per day. Further, the bill authorizes certified local health agencies to enforce the act.

The bill would limit the provision of law allowing manufacturers that collect covered electronic devices in excess of their obligation to either sell credits to other manufacturers or apply the credits to the next year’s obligation by providing that no more than 25 percent of a manufacturer’s obligation for any program year may be met with credits generated in a prior program year. The bill provides that no manufacturer or group of manufacturers may cease implementing its plan during any program year by using credits. The bill would also allow a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided. Finally, the bill would also delete provisions that require the used television recovery and recycling program to be audited by an independent certified public accountant each calendar year, and the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would have minimal or no fiscal impact on the DEP and certified local health agencies. Since the bill provides that all registration fees are to be used by the DEP to administer the act, some or most of the program costs incurred by the department could be offset depending on the amount of fees collected. Therefore, the OLS does not believe

that any significant added expenditure by the department would be necessary. According to information informally provided by the Executive, some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act. The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 822

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Senators Gordon and Beach

SYNOPSIS

Revises "Electronic Waste Management Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning electronic waste and amending P.L.2007,
2 c.347, and P.L.2008, c.130, and supplementing P.L.1977, c.443
3 (C.26:3A2-21 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) is amended to
9 read as follows:

10 3. a. Beginning on January 1, 2010, and each January 1
11 thereafter, each manufacturer of televisions offered for sale for
12 delivery in this State shall register with the department and pay a
13 registration fee of \$5,000. Each television manufacturer's
14 registration and renewal shall include a list of all of the brands
15 under which its televisions are sold. All fees collected pursuant to
16 this subsection shall be allocated to the department to be used in the
17 administration of the "Electronic Waste Management Act,"
18 P.L.2007, c.347 (C.13:1E-99.94 et seq.).

19 b. Each registered television manufacturer shall submit an
20 annual renewal of its registration to the department and pay to the
21 department a registration renewal fee of \$5,000 by January 1 of
22 each program year. Each registered television manufacturer's
23 renewal shall include an annual report. All fees collected pursuant
24 to this subsection shall be allocated to the department to be used in
25 the administration of P.L.2007, c.347.

26 c. In addition to reporting all brands under which its televisions
27 are sold, regardless of whether the brand is owned or licensed, the
28 registered television manufacturer's annual report shall include the
29 total number of all new televisions sold in the State in the previous
30 program year. The department shall determine a registered
31 television manufacturer's market share.

32 d. A registered television manufacturer shall inform the
33 department, in writing, as soon as it becomes aware that it will
34 cease selling televisions in the State.

35 e. By June 1, 2010, each registered television manufacturer or
36 group of registered television manufacturers shall submit a plan to
37 the department to collect, transport and recycle used televisions
38 based on the television manufacturer's market share. Every plan
39 shall be filed with a television manufacturer's annual registration,
40 and shall include:

41 (1) Methods that will be used to collect the used televisions
42 including proposed collection services;

43 (2) The processes and methods that will be used to recycle
44 recovered used televisions including a description of the recycling

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 processes that will be used, including the name and location of all
2 authorized recyclers to be directly utilized by the plan;

3 (3) Means that will be utilized to publicize the collection
4 services, including specification of a website or toll-free telephone
5 number that provides information about the registrant's recycling
6 program in sufficient detail to allow consumers to learn how to
7 return their used televisions for recycling, including limitations
8 placed by collection sites on the number of used televisions
9 permitted for drop-off by consumers; and

10 (4) The intention of the registrant to fulfill its obligation through
11 its own operations, either individually or with other registered
12 television manufacturers, or by contract with for-profit or not-for-
13 profit corporations, or local government units.

14 The department shall hold confidential any information obtained
15 pursuant to this subsection when shown by a registered television
16 manufacturer that the information, if made public, would divulge
17 competitive business information, methods or processes entitled to
18 protection as trade secrets of the registered television manufacturer.

19 Recovered used televisions shall not be sent to prisons for
20 recycling either directly or through intermediaries and nothing in
21 this section shall be construed to allow for the recycling of used
22 televisions by prisoners. Any person committed to a jail, prison, or
23 other institution for the detention of persons charged with or
24 convicted of an offense shall be disqualified from being an
25 authorized recycler.

26 By January 1, 2011, each registered television manufacturer or
27 group of registered television manufacturers shall commence its
28 used television recycling program to implement and finance the
29 collection, transportation, and recycling of used televisions. The
30 used television recycling program shall accept all types and all
31 brands of used televisions, including orphan devices.

32 f. Each registrant's plan or plan jointly submitted by a group of
33 registrants shall be reviewed to determine its compliance with
34 subsection e. of this section and approved by the department. The
35 department may reject the plan, in whole or in part, and may impose
36 additional requirements as a condition of approval.

37 g. If a registered television manufacturer fails to comply with
38 all the conditions and terms of an approved plan, the registered
39 television manufacturer shall be prohibited from selling or offering
40 for sale televisions in this State.

41 h. Registered television manufacturers that collect, transport,
42 and recycle used televisions in excess of their market share may sell
43 credits to another registrant or apply that excess to the following
44 year's recycling program. Registered television manufacturers that
45 collect, transport, and recycle used televisions in excess of their
46 market share may sell credits to another registrant or apply that
47 excess to the following year's recycling program; provided that no

1 more than 25 percent of a manufacturer's obligation for any
2 program year may be met with credits generated in a prior program
3 year. No manufacturer or group of manufacturers, as the case may
4 be, may cease implementing its plan required pursuant to subsection
5 e. of this section and approved by the department, during any
6 program year by using credits.

7 i. Nothing in this act is intended to exempt any person from
8 liability the person would otherwise have under applicable law.

9 j. If less than 100 televisions are sold by a manufacturer in the
10 previous program year, the department shall not require a
11 manufacturer to pay the registration fee or registration renewal fee,
12 as appropriate, in the subsequent year, pursuant to subsections a. or
13 b. of this section.

14 (cf: P.L.2008, c.130, s.2)

15

16 2. Section 3 of P.L.2008, c.130 (C.13:1E-99.96a) is amended to
17 read as follows:

18 3. a. The department shall prepare a plan every three years
19 that: (1) establishes used television per-capita collection and
20 recycling goals; and (2) identifies any necessary State actions to
21 expand collection opportunities to achieve the used television per-
22 capita collection and recycling goals. The plan shall be posted on
23 the department's Internet website and submitted, pursuant to section
24 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

25 b. The department shall prepare an annual report, which shall
26 be posted on the department's Internet website and submitted,
27 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
28 Legislature.

29 The annual report shall include the following:

30 (1) Progress toward achieving the overall annual total recovery
31 and recycling goals described in the plan prepared pursuant to
32 subsection a. of this section; and

33 (2) An evaluation of the effectiveness of existing used television
34 collection and processing infrastructure.

35 c. **【The used television recovery and recycling program**
36 **implemented to effectuate the provisions of P.L.2007, c.347**
37 **(C.13:1E-99.94 et al.) and its associated regulations shall be fully**
38 **audited by an independent, certified public accountant at the end of**
39 **each calendar year and the audit report shall be submitted, pursuant**
40 **to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.】**

41 (Deleted by amendment, P.L. _____, c. _____) (pending before the
42 Legislature as this bill).

43 (cf: P.L.2008, c.130, s.3)

44

45 3. Section 8 of P.L.2007, c.347 (C.13:1E-99.101) is amended
46 to read as follows:

1 8. Beginning on January 1, 2011, no person shall sell or offer
2 for sale in this State a new covered electronic device, including a
3 television, if the covered electronic device is prohibited from being
4 sold or offered for sale in the European Union on or after its date of
5 manufacture due to the concentration of one or more heavy metals
6 in the covered electronic device exceeding its maximum
7 concentration value, as specified in the Commission of European
8 Communities' Decision of August 18, 2005, amending Directive
9 2002/95/EC (European Union document 2005/618/EC), or as
10 specified in a subsequent amendment to the Directive. The sale or
11 offer for sale of a new covered electronic device that exceeds the
12 European Union heavy metal maximum concentration value on or
13 after its date of manufacture shall be permitted if the use of the
14 heavy metal is necessary to comply with consumer, health, or safety
15 requirements imposed by the Underwriters Laboratories or federal
16 or State law.

17 (cf: P.L.2008, c.130, s.6)

18

19 4. Section 9 of P.L.2007, c.347 (C.13:1E-99.102) is amended
20 to read as follows:

21 9. a. (1) By January 30, 2012, and by each January 30
22 thereafter, the department shall:

23 (a) have completed an auditable, statistically **【significant】** valid
24 sampling of covered electronic devices collected from consumers in
25 this State during the previous program year. The sampling
26 information collected shall consist of a list of brands of covered
27 electronic devices and the weight of covered electronic devices that
28 are identified for each brand. The department's sampling shall be
29 conducted in accordance with a procedure established by the
30 department and may be conducted by a third-party organization
31 including an authorized recycler, to be determined by the
32 department. The department may, at its discretion, be present at the
33 sampling and may audit the methodology and the results of the
34 third-party organization. The costs associated with the sampling
35 shall be recovered from the fees paid by manufacturers to the
36 department; and

37 (b) determine the total weight of covered electronic devices,
38 including orphan devices, collected from consumers in this State
39 during the previous program year.

40 (2) If a manufacturer or group of manufacturers conducts its
41 own sampling of covered electronic devices, the manufacturer or
42 group of manufacturers shall submit a report to the department
43 annually by March 1, beginning the year after the program is
44 initiated. The report shall include:

45 (a) the results of an auditable, statistically **【significant】** valid
46 sampling of covered electronic devices collected from consumers in
47 this State by the manufacturer or group of manufacturers during the

1 previous program year. The sampling information reported shall
2 consist of a list of brands of covered electronic devices and the
3 weight of covered electronic devices that are identified for each
4 brand; and

5 (b) the total weight of covered electronic devices, including
6 orphan devices, collected from consumers in this State by the
7 manufacturer or group of manufacturers during the previous
8 program year and documentation verifying collection and recycling
9 of such devices.

10 b. By February 1, 2010, and each January 1 thereafter, each
11 manufacturer of covered electronic devices offered for sale for
12 delivery in this State shall register with the department and pay a
13 registration fee of \$5,000. Any manufacturer to whom the
14 department provides notification of a return share and return share
15 in weight pursuant to subsection a. of section 12 of P.L.2007, c.347
16 (C.13:1E-99.105) and who has not previously filed a registration
17 shall file a registration with the department within 30 days of
18 receiving such notification from the department. Each
19 manufacturer's registration and renewal shall include a list of all of
20 the manufacturer's brands of covered electronic devices.

21 The provisions of this section shall not apply to any
22 manufacturer or retailer of televisions offered for sale for delivery
23 in this State.

24 c. If less than 100 covered electronic devices are sold by a
25 manufacturer in the previous program year, the department shall not
26 require a manufacturer to pay the registration fee or registration
27 renewal fee, as appropriate, in the subsequent year, pursuant to this
28 subsection b. of this section.

29 (cf: P.L.2008, c.130, s.7)

30
31 5. Section 10 of P.L.2007, c.347 (C.13:1E-99.103) is amended
32 to read as follows:

33 10. a. By June 1, 2010, each manufacturer to whom the
34 department provides, by April 2, 2010, a return share in weight that
35 is greater than zero shall submit a plan to the department to collect,
36 transport and recycle covered electronic devices.

37 b. Each manufacturer to whom the department provides, by
38 February 15, 2012 or by February 15 of any year thereafter, a return
39 share in weight that is greater than zero shall, by March 15 of that
40 year, comply with the requirements of subsection a. of this section.

41 c. An individual manufacturer submitting a plan pursuant to
42 subsection a. of this section shall collect, transport, and recycle its
43 return share in weight.

44 d. A group of manufacturers jointly submitting a plan pursuant
45 to subsection a. of this section shall collect, transport, and recycle
46 the sum of the obligations of each participating manufacturer.

1 e. Every plan shall be filed with a manufacturer's annual
2 registration, and shall include:

3 (1) Methods that will be used to collect the covered electronic
4 devices including proposed collection services;

5 (2) The processes and methods that will be used to recycle
6 recovered covered electronic devices including a description of the
7 recycling processes that will be used, including the name and
8 location of all authorized recyclers to be directly utilized by the
9 plan;

10 (3) The processes and methods that will be used to recycle
11 recovered covered electronic devices which originated from
12 transactions between business concerns;

13 (4) Means that will be utilized to publicize the collection
14 services, including specification of a website or toll-free telephone
15 number that provides information about the manufacturer's program
16 in sufficient detail to allow consumers to learn how to return their
17 covered electronic devices for recycling; and

18 (5) The intention of the registrant to fulfill its obligation through
19 operation of its own plan, either individually or with other
20 manufacturers.

21 The department shall hold confidential any information obtained
22 pursuant to this subsection when shown by a manufacturer that the
23 information, if made public, would divulge competitive business
24 information, methods or processes entitled to protection as trade
25 secrets of the manufacturer.

26 Recovered covered electronic devices shall not be sent to prisons
27 for recycling either directly or through intermediaries and nothing
28 in this section shall be construed to allow for the recycling of
29 covered electronic devices by prisoners. Any person committed to a
30 jail, prison, or other institution for the detention of persons charged
31 with or convicted of an offense shall be disqualified from engaging
32 in the manual or mechanical separation of covered electronic
33 devices to recover components and commodities contained therein
34 for the purpose of re-use or recycling.

35 By January 1, 2011, each manufacturer or group of
36 manufacturers required to submit a plan, pursuant to subsection a.
37 of this section, shall commence its covered electronic device
38 recycling program to implement and finance the collection,
39 transportation, and recycling of covered electronic devices other
40 than televisions. The covered electronic device recycling program
41 shall accept all types and all brands of used covered electronic
42 devices, including orphan devices.

43 f. Each manufacturer's plan or plan jointly submitted by a
44 group of manufacturers shall be reviewed to determine its
45 compliance with subsection e. of this section and approved by the
46 department. The department may reject the plan, in whole or in

1 part, and may impose additional requirements as a condition of
2 approval.

3 g. If a manufacturer fails to comply with all the conditions and
4 terms of an approved plan, the manufacturer shall be prohibited
5 from selling or offering for sale in this State a covered electronic
6 device.

7 h. **【Manufacturers that collect, transport, and recycle covered**
8 **electronic devices in excess of their obligation may sell credits to**
9 **another registrant or apply that excess to the following year's**
10 **recycling obligation.】** Manufacturers that collect, transport, and
11 recycle covered electronic devices in excess of their obligation may
12 sell credits to another registrant or apply that excess to the
13 following year's recycling obligation; provided that no more than 25
14 percent of a manufacturer's obligation for any program year may be
15 met with credits generated in a prior program year. No
16 manufacturer or group of manufacturers, as the case may be, may
17 cease implementing its plan required pursuant to subsection e. of
18 this section and approved by the department, during any program
19 year by using credits.

20 i. (Deleted by amendment, P.L.2008, c.130)

21 j. (Deleted by amendment, P.L.2008, c.130)

22 k. Nothing in this act is intended to exempt any person from
23 liability the person would otherwise have under applicable law.

24 l. The provisions of this section shall not apply to any
25 manufacturer or retailer of televisions offered for sale for delivery
26 in this State.

27 (cf: P.L.2008, c.130, s.8)

28

29 6. Section 12 of P.L.2007, c.347 (C.13:1E-99.105) is amended
30 to read as follows:

31 12. a. (1) The department shall determine the return share for
32 each program year for each manufacturer by dividing the weight of
33 covered electronic devices identified for each manufacturer by the
34 total weight of covered electronic devices identified for all
35 manufacturers. For the first program year, the return share of
36 covered electronic devices identified for each manufacturer shall be
37 based on the best available public return share data from the United
38 States, including data from other states, for covered electronic
39 devices from consumers. For the second and each subsequent
40 program year, the return share of covered electronic devices
41 identified for each manufacturer shall be based on the most recent
42 samplings of covered electronic devices conducted in this State
43 pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-
44 99.102).

45 (2) The department shall determine the return share in weight
46 for each program year for each manufacturer for whom a return
47 share is determined pursuant to paragraph (1) of this subsection by

1 multiplying the return share for each such manufacturer by the total
2 weight in pounds of covered electronic devices, including orphan
3 devices, collected from consumers the previous program year. For
4 the first program year, the total weight in pounds of covered
5 electronic devices shall be based on the best available public weight
6 data from the United States, including data from other states, for
7 covered electronic devices from consumers. For the second and
8 each subsequent program year, the total weight in pounds of
9 covered electronic devices shall be based on the total weight of
10 covered electronic devices, including orphan devices, determined
11 by the department pursuant to subsection a. of section 9 of
12 P.L.2007, c.347 (C.13:1E-99.102).

13 (3) By April 2, 2011, the department shall provide each
14 manufacturer for whom a return share is determined pursuant to
15 paragraph (1) of this subsection with its return share and its return
16 share in weight for the first program year. Annually thereafter, by
17 February 15, beginning in 2013, the department shall provide each
18 manufacturer for whom a return share is determined pursuant to
19 paragraph (1) of this subsection with its return share and its return
20 share in weight for the second and subsequent program years.

21 b. (Deleted by amendment, P.L.2008, c.130)

22 c. (1) The department shall ensure that at least one electronics
23 collection opportunity is available in each county throughout the
24 State and in such a manner as to be convenient, to the maximum
25 extent practicable and feasible, to all consumers in the county.

26 (2) The department shall ensure that collection sites do not place
27 unreasonable limits on the number of covered electronic devices
28 permitted for drop-off by consumers.

29 d. (1) Beginning on January 1, 2011, the department shall
30 maintain a list of registrants and the brands reported in each
31 manufacturer's registration, and post the list on the department's
32 Internet website that is updated at least once a month.

33 (2) The department shall organize and coordinate public
34 education and outreach.

35 e. The department shall prepare a plan every three years that:
36 (1) establishes per-capita collection and recycling goals; and (2)
37 identifies any necessary State actions to expand collection
38 opportunities to achieve the per-capita collection and recycling
39 goals. The plan shall be posted on the department's Internet website
40 and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
41 19.1), to the Legislature.

42 f. The department shall prepare an annual report, which shall
43 be posted on the department's Internet website and submitted,
44 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
45 Legislature.

46 The annual report shall include the following:

- 1 (1) The total weight of covered electronic devices collected in
2 the State the previous calendar year;
- 3 (2) Progress toward achieving the overall annual total recovery
4 and recycling goals described in the plan prepared pursuant to
5 subsection e. of this section;
- 6 (3) A complete listing of all collection sites operating in the
7 State in the prior calendar year, the parties that operated them, and
8 the amount of material by weight collected at each site;
- 9 (4) An evaluation of the effectiveness of the education and
10 outreach program; and
- 11 (5) An evaluation of the existing collection and processing
12 infrastructure.
- 13 g. **【**The program implemented to effectuate the provisions of
14 this act and its associated regulations shall be fully audited by an
15 independent, certified public accountant at the end of each calendar
16 year and the audit report shall be submitted, pursuant to section 2 of
17 P.L.1991, c.164 (C.52:14-19.1), to the Legislature. **】** (Deleted by
18 amendment, P.L. , c.) (pending before the Legislature as this
19 bill).
- 20 h. The provisions of this section shall not apply to any
21 manufacturer or retailer of televisions offered for sale for delivery
22 in this State.
23 (cf: P.L.2008, c.130, s.10)
24
- 25 7. Section 13 of P.L.2007, c.347 (C.13:1E-106) is amended to
26 read as follows:
- 27 13. a. The department shall maintain an Internet website and
28 toll-free number complete with up-to-date listings of where
29 consumers can bring covered electronic devices for recycling under
30 the provisions of this act.
- 31 b. (Deleted by amendment, P.L.2008, c.130)
- 32 c. **【**No more frequently than annually and no less frequently
33 than biennially, the department shall review, at a public hearing, the
34 covered electronic device recycling goals and registration fees.
35 Recommended changes to the covered electronic device recycling
36 goals and registration fees shall be included in the annual reports
37 required pursuant to section 3 of P.L.2008, c.130 (C.13:1E-99.96a)
38 and subsection f. of section 12 of P.L.2007, c.347 (C.13:1E-
39 99.105). **】** (Deleted by amendment, P.L. , c.) (pending before
40 the Legislature as this bill).
- 41 d. No fees or costs may be charged to consumers for the
42 collection, transportation, or recycling of covered electronic devices
43 except that a nominal fee may be charged to a consumer if a
44 financial incentive, such as a coupon, of equal or greater value is
45 provided. Any authorized recycler may charge fees to schools or
46 local government units for the reasonable costs incurred by the

1 authorized recycler for the collection, transportation, or recycling of
2 covered electronic devices.
3 (cf: P.L.2008, c.130, s.11)
4

5 8. Section 17 of P.L.2007, c.347 (C.13:1E-99.110) is amended
6 to read as follows:

7 17. a. **【**The State, including the Attorney General and the
8 department, shall be authorized to initiate independent action to
9 enforce any provision of this act, including failure by a
10 manufacturer to remit the registration fee required pursuant to
11 section 3 of P.L.2007, c.347 (C.13:1E-99.96) or section 9 of
12 P.L.2007, c.347 (C.13:1E-99.102), or any fee required pursuant to
13 subsection b. of section 18 of P.L.2007, c.347 (C.13:1E-99.111) to
14 the department. Any funds awarded by the court shall be used first
15 to offset enforcement expenses. Money in excess of the
16 enforcement expenses shall be deposited into a separate account,
17 and shall be dedicated for use by the department solely for the
18 purposes of administering and enforcing the provisions of this act
19 and any rules or regulations adopted pursuant thereto. **】** (Deleted by
20 amendment, P.L. , c.) (pending before the Legislature as this
21 bill).

22 b. **【**Any person who violates the provisions of this act shall be
23 subject to a penalty of not less than \$500 nor more than \$1,000 for
24 each offense, to be collected in a civil action by a summary
25 proceeding under the "Penalty Enforcement Law of 1999,"
26 P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court
27 of competent jurisdiction wherein injunctive relief has been
28 requested. The Superior Court shall have jurisdiction to enforce the
29 provisions of the "Penalty Enforcement Law of 1999" in connection
30 with this act.

31 If the violation is of a continuing nature, each day during which
32 it continues constitutes an additional, separate, and distinct offense.

33 The department may institute a civil action for injunctive relief
34 to enforce this act and to prohibit and prevent a violation of this act,
35 and the court may proceed in the action in a summary manner. **】**
36 (Deleted by amendment, P.L. , c.) (pending before the
37 Legislature as this bill).

38 c. Violations of the act include, but are not limited to:

39 (1) the sale of a new covered electronic device by any person
40 that is not in full compliance with the provisions of this act;

41 (2) the use of a qualified collection program to recycle covered
42 electronic devices not discarded within the State, or region as
43 provided in section 19 of P.L.2007, c.347 (C.13:1E-99.112);

44 (3) the knowing failure to report or accurately report any data
45 required to be reported to the department pursuant to this act; **【and】**

46 (4) the non-payment of any fee required pursuant to this act ;

1 (5) failure to register, pursuant to subsection a. of section 3 of
2 P.L.2007, c.347 (C.13:1E-99.96) or pursuant to subsection b. of
3 section 9 of P.L.2007, c.347 (C.13:1E-99.102);

4 (6) failure to submit or implement a plan pursuant to section 3
5 or 10 of P.L.2007, c.347 (C.13:1E-99.96 or C.13:1E-99.103) .

6 d. The “Electronic Waste Management Act,” P.L.2007, c.347
7 (C.13:1E-99.94 et seq.), and any rule or regulation adopted pursuant
8 thereto, shall be enforced by the department and may be enforced
9 by every certified local health agency, as the case may be.
10 Whenever the commissioner finds that a person has violated any
11 provision of P.L.2007, c.347, or any rule or regulation adopted
12 pursuant thereto, the commissioner may:

13 (1) issue an order, in accordance with subsection e. of this
14 section, requiring the person found to be in violation to comply;

15 (2) bring a civil action in accordance with subsection f. of this
16 section;

17 (3) levy a civil administrative penalty in accordance with
18 subsection g. of this section; or

19 (4) bring an action for a civil penalty in accordance with
20 subsection h. of this section.

21 e. Whenever, on the basis of available information, the
22 commissioner finds that a person has violated any provision of
23 P.L.2007, c.347, or any rule or regulation adopted thereto, the
24 commissioner may issue an administrative enforcement order: (1)
25 specifying the provision or provisions of P.L.2007, c.347, or the
26 rule or regulation, of which the person is in violation; (2) citing the
27 action which constituted the violation; (3) requiring compliance
28 with the provision or provisions violated; and (4) providing notice
29 to the person of the right to a hearing on the matters contained in
30 the administrative enforcement order. The ordered party shall have
31 35 days from receipt of the order within which to deliver to the
32 commissioner a written request for a hearing. An order shall be
33 effective upon receipt and any person to whom such order is
34 directed shall comply with the order immediately. A request for
35 hearing shall not automatically stay the effect of the order.

36 f. The commissioner is authorized to, and a certified local
37 health agency may, institute a civil action in Superior Court for
38 appropriate relief from any violation of the provisions of P.L.2007,
39 c.347, or any rule or regulation adopted thereof. Such relief may
40 include, singly or in combination:

41 (1) a temporary or permanent injunction;

42 (2) recovery of reasonable costs of any investigation or
43 inspection which led to the discovery of the violation, and for the
44 reasonable costs of preparing and bringing a civil action
45 commenced under this subsection;

46 (3) recovery of reasonable costs incurred by the State in
47 removing, correcting, or terminating the adverse effects resulting

1 from any violation of the provisions of P.L.2007, c.347, or any rule
2 or regulation adopted pursuant thereto, for which a civil action has
3 been commenced and brought under this subsection;

4 (4) recovery of compensatory damages caused by a violation of
5 the provisions of P.L.2007, c.347, or any rule or regulation adopted,
6 for which a civil action has been commenced and brought under this
7 subsection. Assessments under this subsection shall be paid to the
8 State Treasurer, or to the certified local health agency, as the case
9 may be, except that compensatory damages may be paid by specific
10 order of the court to any persons who have been aggrieved by the
11 violation. If a proceeding is instituted by a certified local health
12 agency, notice thereof shall be served upon the commissioner in the
13 same manner as if the commissioner were a named party to the
14 action or proceeding. The department may intervene as a matter of
15 right in any proceeding brought by a certified local health agency.

16 g. (1) Except as authorized otherwise in paragraph (2) of this
17 subsection, the commissioner is authorized to assess a civil
18 administrative penalty of not less than \$500 nor more than \$1,000
19 for each violation, provided that each day during which the
20 violation continues shall constitute an additional, separate and
21 distinct offense.

22 (2) For any violation of sections 3, 7, 8, 10 or 11 of P.L.2007,
23 c.347 (C.13:1E-99.96, C.13:1E-99.100, C.13:1E-99.101, C.13:1E-
24 99.103, or C.13:1E-99.104) or subsection a. or b. of section 6,
25 subsection b. of section 9, or subsection a. of section 15 of
26 P.L.2007, c.347 (C.13:1E-99.99, C.13:1E-99.102, C.13:1E-99.108),
27 the commissioner is authorized to assess a civil administrative
28 penalty not to exceed \$50,000 for each day during which a violation
29 continues. In assessing a civil administrative penalty, the
30 commissioner shall consider the severity of the violation, the
31 measures taken to prevent further violations, and whether the
32 penalty will maintain an appropriate deterrent.

33 Prior to assessment of a civil administrative penalty, the person
34 committing the violation shall be notified by certified mail or
35 personal service that the penalty is being assessed. The notice shall
36 identify the section of the statute, rule, regulation, or order violated;
37 recite the facts alleged to constitute a violation; state the basis for
38 the amount of the civil administrative penalties to be assessed; and
39 affirm the rights of the alleged violator to a hearing. The ordered
40 party shall have 35 days from receipt of the notice within which to
41 deliver to the commissioner a written request for a hearing. After
42 the hearing and upon finding that a violation has occurred, the
43 commissioner may issue a final order after assessing the amount of
44 the fine specified in the notice. If no hearing is requested, the
45 notice shall become a final order after the expiration of the 35-day
46 period. Payment of the assessment is due when a final order is
47 issued or the notice becomes a final order. The authority to levy an

1 administrative order is in addition to all other enforcement
2 provisions in P.L.2007, c.347, and the payment of any assessment
3 shall not be deemed to affect the availability of any other
4 enforcement provisions in connection with the violation for which
5 the assessment is levied. The department may compromise any
6 civil administrative penalty assessed under this section in an
7 amount and with conditions the department determines appropriate.

8 h. A person who violates any provision of P.L.2007, c.347, or
9 any rule or regulation adopted pursuant thereto, or an administrative
10 order issued pursuant to subsection e. of this section, or a court
11 order issued pursuant to subsection f. of this section, or who fails to
12 pay a civil administrative penalty in full pursuant to subsection g. of
13 this section, or who knowingly makes any false or misleading
14 statement on any application, record, report, or other document
15 required to be submitted to the department, shall be subject, upon
16 order of a court, to a civil penalty not to exceed \$50,000 per day of
17 the violation, and each day during which the violation continues
18 shall constitute an additional, separate, and distinct offense. Any
19 civil penalty imposed pursuant to this subsection may be collected
20 with costs in a summary proceeding pursuant to the "Penalty
21 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),
22 or may be collected in a civil action commenced by a certified local
23 health agency, or the commissioner, as the case may be. In addition
24 to any penalties, costs or interest charges, the Superior Court, or the
25 municipal court as the case may be, may assess against the violator
26 the amount of economic benefit accruing to the violator from the
27 violation.

28 i. As used in this section, "certified local health agency" shall
29 have the same meaning as set forth in section 3 of P.L.1977, c.443
30 (C.26:3A2-23).

31 (cf: P.L.2008, c.130, s.14)

32

33 9. (New section) In addition to the environmental health laws
34 that are enforced by a certified local health agency pursuant to
35 section 7 of P.L.1977, c.443 (C.26:3A2-25), a certified local health
36 agency may agree to enforce the provisions of P.L.2007, c.347
37 (C.13:1E-99.94 et seq.) as provided in section 17 of P.L.2007, c.347
38 (C.13:1E-99.110).

39

40 10. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 The bill would amend the "Electronic Waste Management Act,"
46 P.L.2007, c.347 (C.13:1E-99.94 et seq.) by revising its penalty
47 provisions, deleting the credit-trading program, reallocating the

1 funds collected under registration fees, authorizing enforcement of
2 the act by certified local health agencies, and removing audit and
3 public hearing requirements under current law.

4 Under the bill, the Department of Environmental Protection
5 (DEP) would use the registration fees from manufacturers to
6 support the administration of the program. In addition, the bill
7 would exempt manufacturers who sell less than 100 televisions or
8 less than 100 covered electronic devices in the previous program
9 year from paying the \$5,000 registration or registration renewal fee.
10 Any manufacturer who sells 100 or more units, after being
11 exempted from fees, would be required to pay the registration fee or
12 the registration renewal fee for any year in which 100 or more units
13 are sold.

14 Current law provides that a person in violation of this act may be
15 subject to a civil penalty of not less than \$500 nor more than \$1,000
16 for each offense, and the DEP is required to seek relief in Superior
17 Court to enforce the statute. This bill would change the penalty
18 provision to authorize the DEP to issue administrative orders, levy
19 administrative penalties, bring a civil action seeking a court order,
20 and bring an action for a civil penalty to enforce the act. The bill
21 also authorizes the commissioner to assess a civil administrative
22 penalty not to exceed \$50,000, for certain violations of the act, such
23 as failure to register or submit or implement a plan. For other
24 violations, the commissioner is authorized to assess a civil
25 administrative penalty of not less than \$500 nor more than \$1,000
26 for each violation. In addition, the bill would authorize a court to
27 impose a civil penalty for violations of the act of up to \$50,000 per
28 day. Further, the bill authorizes certified local health agencies to
29 enforce the act.

30 This bill would limit the provision of law allowing
31 manufacturers that collect electronics in excess of their obligation
32 to either sell credits to other manufacturers or apply the credits to
33 the next year's obligation by providing that no more than 25 percent
34 of a manufacturer's obligation for any program year may be met
35 with credits generated in a prior program year. The bill further
36 provides that no manufacturer or group of manufacturers, as the
37 case may be, may cease implementing its plan during any program
38 year by using credits. The bill would also allow the sale or offer for
39 sale of new electronic devices that exceed the European Union
40 heavy metal maximum concentration value on or after the date of
41 manufacture if the use of the heavy metal is necessary to comply
42 with consumer, health, or safety requirements imposed by the
43 Underwriters Laboratories or federal or State law. The bill would
44 also allow a nominal fee to be charged to a consumer for the
45 collection, transportation, or recycling of a covered electronic
46 device if a financial incentive, such as a coupon, of equal or greater
47 value is provided. Finally, the bill would also delete provisions that

1 required: (1) the used television recovery and recycling program to
2 be fully audited by an independent, certified public accountant each
3 calendar year; and (2) the DEP to hold a public hearing every one to
4 two years to review the covered electronic device recycling goals
5 and registration fees.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 822

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 9, 2012

The Senate Environment and Energy Committee favorably reports Senate Bill No. 822 with committee amendments.

The bill, with committee amendments, would amend the “Electronic Waste Management Act,” P.L.2007, c.347 (C.13:1E-99.94 et seq.) by revising its penalty provisions, deleting the credit-trading program, reallocating the funds collected under registration fees, authorizing enforcement of the act by certified local health agencies, and removing audit and public hearing requirements under current law.

Under the bill, the Department of Environmental Protection (DEP) would use the registration fees from manufacturers to support the administration of the program. In addition, the bill would exempt manufacturers who sell less than 100 televisions or less than 100 covered electronic devices in the previous program year from paying the \$5,000 registration or registration renewal fee. Any manufacturer who sells 100 or more units, after being exempted from fees, would be required to pay the registration fee or the registration renewal fee for any year in which 100 or more units are sold.

Current law provides that a person in violation of this act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and the DEP is required to seek relief in Superior Court to enforce the statute. This bill would change the penalty provision to authorize the DEP to issue administrative orders, levy administrative penalties, bring a civil action seeking a court order, and bring an action for a civil penalty to enforce the act. The bill also authorizes the commissioner to assess a civil administrative penalty not to exceed \$50,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill would authorize a court to impose a civil penalty for violations of the act of up to \$50,000 per day. Further, the bill authorizes certified local health agencies to enforce the act.

This bill would limit the provision of law allowing manufacturers that collect covered electronic devices in excess of their obligation to either sell credits to other manufacturers or apply the credits to the

next year's obligation by providing that no more than 25 percent of a manufacturer's obligation for any program year may be met with credits generated in a prior program year. The bill further provides that no manufacturer or group of manufacturers, as the case may be, may cease implementing its plan during any program year by using credits.

The bill would also allow the sale, or offer for sale, of new electronic devices that exceed the European Union heavy metal maximum concentration value on or after the date of manufacture if the use of the heavy metal is necessary to comply with consumer, health, or safety requirements imposed by the Underwriters Laboratories or federal or State law. The bill would also allow a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided. Finally, the bill would also delete provisions that required: (1) the used television recovery and recycling program to be fully audited by an independent, certified public accountant each calendar year; and (2) the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

The committee amendments would prohibit a solid waste facility from knowingly accepting for disposal any truckload or roll-off container of solid waste containing a visible quantity of covered electronic devices, or any components or assemblies thereof. However, the committee amendments would also provide that the owner or operator of a solid waste facility would not be found in violation of this provision if a good faith effort is made toward compliance, a sign is posted at the facility stating that covered electronic devices shall not be accepted, and all persons authorized to deposit solid waste at the facility have been notified in writing that covered electronic devices shall not be accepted. The committee amendments would also provide that failure to comply with section 16 of the "Electronic Waste Management Act," P.L.2007, c.347 (C.13:1E-99.109), would constitute a violation of the act and would be subject to the penalty provisions thereof. The committee also made technical amendments to the bill.

This bill was pre-filed for introduction in the 2012-2013 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 822

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 822 (1R), with committee amendments.

As amended, the bill would amend the “Electronic Waste Management Act,” P.L.2007, c.347 (C.13:1E-99.94 et seq.) by: (1) revising penalty provisions, (2) limiting the use of credit-trading and prior year credits to reduce a manufacturers annual recycling program, (3) providing that annual registration fees collected from television manufacturers be allocated to the Department of Environmental Protection (DEP) for use in administering the act, (4) permitting certified local health agencies to undertake certain enforcement actions under the act, and (5) removing independent audit and public hearing requirements under the act.

The bill, as amended, provides a one year exemption from the \$5,000 annual registration fee for any manufacturers who sell less than 100 televisions or less than 100 covered electronic devices in the previous program year.

Also, this bill, as amended, would change the penalty provisions under the act to authorize the DEP to issue administrative orders, levy administrative penalties, bring civil actions seeking court orders, and bring actions for civil penalties to enforce the act. Current law provides that a person in violation of this act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and the DEP is required to seek relief in Superior Court to enforce the statute. The bill, as amended, also authorizes the commissioner to assess a civil administrative penalty not to exceed \$50,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill, as amended, would authorize a court to impose a civil penalty for violations of the act of up to \$50,000 per day.

This bill, as amended, would limit the provision of law allowing manufacturers that collect covered electronic devices in excess of their

obligation to either sell credits to other manufacturers or apply the credits to the next year's obligation by providing that no more than 25 percent of a manufacturer's obligation for any program year may be met with credits generated in a prior program year. The bill, as amended, further provides that no manufacturer or group of manufacturers, as the case may be, may cease implementing its plan during any program year by using credits.

The bill, as amended, would also allow the sale, or offer for sale, of new electronic devices that exceed the European Union heavy metal maximum concentration value on or after the date of manufacture if the use of the heavy metal is necessary to comply with consumer, health, or safety requirements imposed by the Underwriters Laboratories or federal or State law. The bill, as amended, would also allow a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided. The bill, as amended, would also delete provisions that required: (1) the used television recovery and recycling program to be fully audited by an independent, certified public accountant each calendar year; and (2) the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

The bill, as amended, would prohibit a solid waste facility from knowingly accepting for disposal any truckload or roll-off container of solid waste containing a visible quantity of covered electronic devices, or any components or assemblies thereof. However, the owner or operator of a solid waste facility would not be found in violation of this provision if a good faith effort is made toward compliance, a sign is posted at the facility stating that covered electronic devices shall not be accepted, and all persons authorized to deposit solid waste at the facility have been notified in writing that covered electronic devices shall not be accepted. The bill, as amended, also provides that knowingly disposing of a used covered electronic device, or any of the components or subassemblies thereof, as solid waste, would constitute a violation of the act and would be subject to the penalty provisions thereof.

COMMITTEE AMENDMENTS:

The committee amendment makes a technical amendment to the bill.

FISCAL IMPACT:

The OLS estimates that the bill would have minimal or no fiscal impact on the DEP and certified local health agencies. Since the bill provides that all registration fees are to be used by the DEP to administer the act, some or most of the program costs incurred by the department could be offset depending on the amount of fees collected. Therefore, the OLS does not believe that any significant added

expenditure by the department would be necessary. According to information informally provided by the Executive, some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act. The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 822

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: APRIL 11, 2012

SUMMARY

- Synopsis:** Revises “Electronic Waste Management Act.”
- Type of Impact:** Minimal or no impact.
- Agencies Affected:** Department of Environmental Protection, counties.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal – See comments below		
State Revenue	Minimal – See comments below		
Local Cost	Minimal – See comments below		
Local Revenue	Minimal – See comments below		

- The Office of Legislative Services (OLS) estimates that the bill would have minimal or no fiscal impact on the Department of Environmental Protection (DEP) and certified local health agencies.
- The bill provides that all registration fees are to be used by the DEP to administer the act, which depending on the fees collected, could offset some or most program costs incurred by the department.
- Some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act.
- The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

BILL DESCRIPTION

Senate Bill No. 822 (1R) of 2012 would amend the “Electronic Waste Management Act,” P.L.2007, c.347, by revising its penalty provisions, deleting the credit-trading program, reallocating the funds collected under registration fees, authorizing enforcement of the act by certified local health agencies, and removing audit and public hearing requirements under current law.

Under the bill, the DEP would use the registration fees from manufacturers to support the administration of the program. In addition, the bill would exempt manufacturers who sell less than 100 televisions or covered electronic devices in the previous program year from paying the \$5,000 registration or registration renewal fee. Any manufacturer who sells 100 or more units, after being exempted from fees, would be required to pay the registration fee or the registration renewal fee for any year in which 100 or more units are sold.

Current law provides that a person in violation of this act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and the DEP is required to seek relief in Superior Court to enforce the statute. This bill would change the penalty provision to authorize the DEP to issue administrative orders, levy administrative penalties, bring a civil action seeking a court order, and bring an action for a civil penalty to enforce the act. The bill also authorizes the commissioner to assess a civil administrative penalty not to exceed \$50,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill would authorize a court to impose a civil penalty for violations of the act of up to \$50,000 per day. Further, the bill authorizes certified local health agencies to enforce the act.

The bill would limit the provision of law allowing manufacturers that collect covered electronic devices in excess of their obligation to either sell credits to other manufacturers or apply the credits to the next year’s obligation by providing that no more than 25 percent of a manufacturer’s obligation for any program year may be met with credits generated in a prior program year. The bill provides that no manufacturer or group of manufacturers, may cease implementing its plan during any program year by using credits. The bill would also allow a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided. Finally, the bill would also delete provisions that require the used television recovery and recycling program to be audited by an independent certified public accountant each calendar year, and the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would have minimal or no fiscal impact on the DEP and certified local health agencies. Since the bill provides that all registration fees are to be used by the DEP to administer the act, some or most of the program costs incurred by the department could be offset depending on the amount of fees collected. Therefore, the OLS does not believe

that any significant added expenditure by the department would be necessary. According to information informally provided by the Executive, some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act.. The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 822

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 29, 2012

SUMMARY

- Synopsis:** Revises “Electronic Waste Management Act.”
- Type of Impact:** Minimal or no impact.
- Agencies Affected:** Department of Environmental Protection, counties.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal – See comments below		
State Revenue	Minimal – See comments below		
Local Cost	Minimal – See comments below		
Local Revenue	Minimal – See comments below		

- The Office of Legislative Services (OLS) estimates that the bill would have minimal or no fiscal impact on the Department of Environmental Protection (DEP) and certified local health agencies.
- The bill provides that all registration fees are to be used by the DEP to administer the act, which depending on the fees collected, could offset some or most program costs incurred by the department.
- Some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act.
- The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

BILL DESCRIPTION

Senate Bill No. 822 (2R) of 2012 would amend the “Electronic Waste Management Act,” P.L.2007, c.347, by revising its penalty provisions, deleting the credit-trading program, reallocating the funds collected under registration fees, authorizing enforcement of the act by certified local health agencies, and removing audit and public hearing requirements under current law.

Under the bill, the DEP would use the registration fees from manufacturers to support the administration of the program. In addition, the bill would exempt manufacturers who sell less than 100 televisions or covered electronic devices in the previous program year from paying the \$5,000 registration or registration renewal fee. Any manufacturer who sells 100 or more units, after being exempted from fees, would be required to pay the registration fee or the registration renewal fee for any year in which 100 or more units are sold.

Current law provides that a person in violation of this act may be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each offense, and the DEP is required to seek relief in Superior Court to enforce the statute. This bill would change the penalty provision to authorize the DEP to issue administrative orders, levy administrative penalties, bring a civil action seeking a court order, and bring an action for a civil penalty to enforce the act. The bill also authorizes the commissioner to assess a civil administrative penalty not to exceed \$50,000, for certain violations of the act, such as failure to register or submit or implement a plan. For other violations, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation. In addition, the bill would authorize a court to impose a civil penalty for violations of the act of up to \$50,000 per day. Further, the bill authorizes certified local health agencies to enforce the act.

The bill would limit the provision of law allowing manufacturers that collect covered electronic devices in excess of their obligation to either sell credits to other manufacturers or apply the credits to the next year’s obligation by providing that no more than 25 percent of a manufacturer’s obligation for any program year may be met with credits generated in a prior program year. The bill provides that no manufacturer or group of manufacturers, may cease implementing its plan during any program year by using credits. The bill would also allow a nominal fee to be charged to a consumer for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon, of equal or greater value is provided. The bill would also delete provisions that require the used television recovery and recycling program to be audited by an independent certified public accountant each calendar year, and the DEP to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

In addition, section 16 of P.L.2007, c.347 (C.13:1E-99.109) is amended to read as follows:

- a. On and after January 1, 2011, no person shall knowingly dispose of a used covered electronic device, or any of the components or subassemblies thereof, as solid waste.
- b. No solid waste facility in this State shall knowingly accept for disposal any truckload or roll-off container of solid waste containing a visible quantity of covered electronic devices, or any of the components or subassemblies thereof, as solid waste at any time.
- c. An owner or operator of a solid waste facility may refuse to accept for disposal any truckload or roll-off container of solid waste containing a visible quantity of covered electronic devices or any of the components or subassemblies thereof.
- d. An owner or operator of a solid waste facility shall not be found in violation of this section if the owner or operator has: (1) made a good faith effort to comply with this section; (2) posted in a conspicuous location at the solid waste facility a sign stating that covered electronic devices, or any of the components or subassemblies thereof, shall not be accepted at the solid waste facility;

and (3) notified, in writing, all persons authorized to deposit solid waste at the solid waste facility that covered electronic devices, or any of the components or subassemblies thereof, shall not be accepted at the solid waste disposal facility.

e. As used in this section, "solid waste facility" shall have the same meaning as set forth in section 3 of P.L.1970, c.39 (C.13:1E-3).

FISCAL ANALYSIS

EXECUTIVE BRANCH

According to information informally provided by the Executive, some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill would have minimal or no fiscal impact on the DEP and certified local health agencies. Since the bill provides that all registration fees are to be used by the DEP to administer the act, some or most of the program costs incurred by the department could be offset depending on the amount of fees collected. Therefore, the OLS does not believe that any significant added expenditure by the department would be necessary. According to information informally provided by the Executive, some costs currently incurred by the department could decrease or be eliminated due to provisions in the bill that streamline the enforcement and penalty requirements, and that remove the auditing and public hearing requirements of the act. The OLS notes that it is possible the State could receive increased revenue from the higher penalties imposed for violations that the act provides.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).