



HOUSE COMMITTEE ON APPROPRIATIONS  
2009-10 Legislative Session

**FISCAL NOTE**

HOUSE BILL: 708

PRINTER'S NO: 4465

PRIME SPONSOR: Ross

FISCAL IMPACT SUMMARY	FY 2010/11	FY 2011/12
<b>Estimated Expenditure Increase/(Decrease):</b>		
<u>Electronic Materials Recycling Account (New)<sup>1</sup></u>		
Department of Environmental Protection	\$0	\$430,000 <sup>a</sup>
<u>General Fund</u>		
Office of the Attorney General	\$0	\$0
Environmental Quality Board	\$0	\$0
<b>Estimated Revenue Increase/(Decrease):</b>		
<u>Electronic Materials Recycling Account (New)<sup>1</sup></u>		
Registration Fees on Manufacturers (New)	\$0	\$430,000 <sup>b,c</sup>

<sup>1</sup>The bill creates an Electronic Materials Recycling Account as a restricted revenue account in the General Fund.

<sup>a</sup>The Department of Environmental Protection stated it will limit its administrative expenses as not to exceed the new revenue that will be collected and deposited into the new account.

<sup>b</sup>The revenue estimate assumes the same number of registrants as the state of Connecticut and not that of Oregon or Washington who have shown a greater degree of entrepreneurialism. See the analysis below for further explanation.

<sup>c</sup>In addition to this revenue, the account will likely receive by March 15, 2013, \$499,000 in assessments and penalties based on the 2011/12 program year.

**OVERVIEW:**

House Bill 708 is a freestanding bill creating the Covered Device Recycling Act that mandates the recycling of computers and televisions.

Recycling Mandated (§505 and §506)

Two years after the effective date, the bill in §506 bans disposing of computers, computer monitors, and televisions in any solid waste disposal facility. Owners of solid waste disposal facilities are held harmless from disposal of such devices as long as they put forth a good faith effort to comply, post notices on the ban, and notify, in writing, all collectors of such devices.

Starting with the effective date (sixty days), the bill in §505 requires that such electronic devices must be disposed of at a recycling facility that can demonstrate to the Department of Environmental Protection (henceforth, the Department) it has achieved and maintains accredited certification for responsible recycling practices as enumerated in the bill. The Department must maintain an internet website that includes a list of the approved recycling facilities.

Annual Registration of and Fees on Manufacturers of Computers and Televisions (§302, §303, §304, and §503)

No later than twelve months after the effective date, the bill in §302 prohibits the sale of any computer or television manufactured after the effective date of the bill unless the brand is registered with the Department. Retailers must consult the Department's registry prior to offering the device for sale.

Section 303 requires all computers and televisions to be labeled with its brand name.

Six months after the effective date, Section 304 requires all manufacturers of televisions, computers and computer monitors to register their brands with the Department for a fee of \$5,000. For years thereafter, it requires annual registration fees of \$5,000, which may be adjusted. Section 503 requires the Department to review the fee every one to two years, **and, as amended by the Senate, the Environmental Quality Board may promulgate regulations to adjust the fees in order to generate sufficient revenue to implement the provisions of this act.**

#### Manufacturer Plan Submissions and Reporting Requirements (§305)

Computer and television manufacturers—either individually or jointly with other manufacturers—must file plans with the Department to collect, transport and recycle a quantity of covered devices equal to the manufacturer's market share. The plans shall include the collection methods, recycling processes, means of notifying the public, intention of the manufacturer to fulfill its obligation, and a listing of the collection sites. **The Senate added the requirement for the plan to include the estimated weight of the devices to be collected and a minimum two percent increase in the estimate for the second full program year.**

**The Senate also added reporting requirements to the bill. Manufacturers must submit by January 30<sup>th</sup> of each year a report to the Department giving the estimated weight of its devices sold to households during the previous year calculated by multiplying the manufacturer's total U.S. sales with Pennsylvania's population divided by the U.S. population. National sales data submitted by the manufacturers shall be exempt from the Right-to-Know Law (Act 3 of 2008) and shall not be disclosed by the Department.**

**The Senate also added a provision requiring annual reports by manufacturers or groups of manufacturers jointly conducting collection/recycling operations to file reports by January 30 of each year consisting of the total weight of devices collected and recycled, and documentation verifying collection and recycling of those devices.**

The Department shall review each plan submitted by the manufacturers, and within sixty days make a determination whether the plan complies with the provisions of the bill. If the plan is rejected, the manufacture has thirty days to resubmit the plan.

If a manufacturer fails to collect its obligated share of collections, in weight, for a program year, the manufacturer shall submit by March 15<sup>th</sup> of the following program year a payment to the Department to cover the cost of the unmet collection plus an additional penalty of 10%. The Department shall determine the costs of collection, and shall revise such costs every one to two years.

#### Retailer Responsibilities (§305)

In addition to the responsibilities covered above, retailers will be required to notify customers on how to recycle televisions and computers, including collection points.

#### Administration of the Program (Chapter 5)

The Department shall:

1. Encourage the use of existing the collection and consolidation infrastructures as much as feasible;
2. Update and maintain the registry list of manufacturers and brands (see §302 and §304);
3. Organize and coordinate public education and outreach;
4. Review all recycling plans submitted by manufacturers (see §305);
5. Oversee implementation and take necessary enforcement actions;
6. Submit an annual report to the General Assembly, and post the report on its internet website;
7. Maintain an internet site; and
8. Maintain a toll-free number.

#### Enforcement (§507)

The Department and the Attorney General are authorized to initiate independent actions to enforce the provisions of the bill. All funds awarded by the court shall be used first to offset enforcement expenses. Any money in excess of enforcement expenses shall be deposited in the Electronic Materials Recycling Account, established by this bill.

#### Penalties (§507)

Manufacturers who fail to register may be assessed up to a \$10,000 penalty for a first offense, and up to \$25,000 penalty for subsequent violations. Any person violating any other provision of the act may be assessed a penalty of up to \$1,000 for a first violation or up to \$2,000 for any subsequent violation. All revenue received from assessed penalties are to be deposited in the Electronic Materials Recycling Account, established by this bill.

#### Regulations (§508)

**The Senate amended the bill to confer the power to adopt rules and regulations on the Environmental Quality Board.** Regulations must be promulgated in accordance with the Regulatory Review Act (1982 Act 181).

#### Multistate Implementation (§509)

The bill authorizes the Department to participate in the establishment and implementation of this act through a multistate organization or compact.

#### Electronic Materials Recycling Account (§510)

This bill creates an Electronic Materials Recycling Account as a restricted revenue account in the General Fund. All proceeds resulting from the manufacturer's registration fees, renewal fees, penalties and judicial actions shall be deposited into the account. The Department is authorized to expend the moneys of the Account to carry out the duties imposed by this Act.

#### Expiration of Act Upon Finding by Secretary of U.S. Law (§701)

This act may expire if the Secretary of the Department publishes a determination in the Pennsylvania Bulletin that the U.S. Congress has enacted a law directed to the collection and recycling of computers, computer monitors, and televisions. The Secretary is charged with the duty of monitoring laws passed by Congress.

#### Effective Date (§)

This act shall take effect in 60 days.

### **ANALYSIS:**

#### Registration Revenue to the Electronic Materials Recycling Account

The bill establishes an initial \$5,000 registration fee on manufacturers but allows the Environmental Quality Board to adjust the amount of the registration fee in order to cover implementation costs after a review by the Department of the fees within one to two years.

An examination of registrants in other states that have similar e-recycling programs as proposed by H.B. 708 shows that the number of registrants varies from state to state. The state of Connecticut, for example, has 86 registered manufacturers, Minnesota has 49, Oregon has 173, and the State of Washington has 250. The difference in the numbers appears to be the number of small and start-up manufacturers, which are greater in Oregon and Washington than in Connecticut and Minnesota. Perhaps not coincidentally, both Oregon and Washington have tiered fee structures favorable to small and start-up firms. In Oregon, for example, the fee structure has reduced fees of \$200 for manufacturers with market shares between 0.01% and 0.1% and \$40 for manufacturers with market shares below 0.01%. In Washington, the tiered system is even more beneficial for small businesses. Manufacturers with market shares from 0.03% to 0.1% pay \$188; from 0.01% to 0.03%, they pay \$62; and below 0.01%, they pay just \$7.

By contrast, Minnesota charges manufacturers producing less than one hundred units \$1,250 in registration fees, and Connecticut's minimum fee for units sold or offered for sale after June 1, 2010 is \$6,000. Further study would be required to determine the degree to which the reduced levels of entrepreneurship in Minnesota and Connecticut, as compared to Oregon and Washington, are due to the registration fees. Because H.B. 708 establishes a minimum fee of \$5,000, this fiscal note will assume Pennsylvania's number of registrations will be the same as Connecticut's rather than Oregon or Washington. Assuming 86 registrants as in Connecticut, therefore, would provide \$430,000 in revenues. Because the bill specifies a due date for the registration fees to be six month after the sixty-day effective date, this revenue would not be realized until FY 2011/12.

#### Assessment Fee Revenue to the Electronic Materials Recycling Account

The bill requires manufacturers to implement recycling programs according to a formula that designates each manufacturer's responsibility in pounds of recycling materials. If a manufacturer's program falls short of the required volume, the manufacturer will be required to pay by March 15<sup>th</sup> of the following program year an assessment fee for the cost of the shortfall *plus* a 10 percent penalty. Minnesota has a similar program, and in the first year of operation 24 manufacturers were assessed a total \$219,725 for an overall two percent shortfall in meeting recycling targets. H.B. 708 differs in an important way. The manufacturers in Minnesota were required to meet only 60% of their market share, and H.B. 708 requires 100%. The shortfall in Pennsylvania, therefore, will likely be greater, but for purposes of this fiscal note, however, the value of two percent will be assumed in order to derive a conservative revenue estimate. The various states with e-recycling that were surveyed annually recycle, on average, roughly 6.2 lbs. per capita. For Pennsylvania, using this per-capita average, would yield 78,149,555 lbs. of recycled materials.

Two percent of this amount is 1,562,991 lbs. Using the experiences from other states, the per-pound program cost to recycle e-waste varies from 26¢ to 32¢. Using 29¢ as the average cost would yield assessment revenue of \$453,267. Adding the required 10% penalty brings the total to \$498,594.

The \$499,000 (rounded up to the nearest thousands) in revenue from the assessment fees and penalties would not become available until FY 2012/13 because the due date of the payment would not be until March 15<sup>th</sup> of the following program year. This revenue would be deposited into the new Electronic Materials Recycling Account. Note that this revenue will not go back to the recycling programs of the manufacturers because H.B. 708 does not contemplate a credit program for exceeding a goal, only a penalty for not meeting it. As the program matures, it is likely that manufacturers, or those acting on their behalf, would be better able to judge the requisite volume of recycling needed to be compliant with the law, thus reducing state revenue from these assessments and penalties.

#### Revenue from Noncompliance Penalties

Of the states surveyed with similar programs, only one had issued a penalty for noncompliance. The normal course of action of these states' agencies was to leverage their power by notifying retailers to remove computers or televisions from non-compliant manufacturers off their shelves. Predictably this resulted in action by the retailer leading to compliance. It is assumed, therefore, that these penalties will not yield any significant revenue to the Commonwealth.

This bill further specifies that any moneys awarded by the court must first be used for enforcement activities with the remainder being deposited to the Electronic Materials Recycling Account (§507). The bill in §510, however, specifies that the penalties are to be deposited in the Account; so it appears that the bill allows for the possibility of other court-ordered awards. After consulting with the Administrative Office of Pennsylvania Courts, it was determined that in order to comply, those found guilty of violating the act would pay these other "awards" directly to the Department or the Office of the Attorney General. Nonetheless, because little judicial action is anticipated, it is unlikely that there would any such revenue, and the Commonwealth Court is unlikely to see any activity due to this bill. If a case would arise, however, the Court would use its current resources to handle the case.

### Departmental Administrative Expenses

The Department estimates it will require four to five persons to administer the program at a total cost of \$400,000 to \$500,000. This is probably a reasonable estimate. Connecticut, a much smaller state, has three full-time equivalent employees for a program cost of \$216,000. The Department stated that it will limit the size of its enforcement and administrative costs to be equal or less than new revenue deposited in the Electronic Materials Recycling Account. Using the revenue estimate above, the first year expenditures will be no more than \$430,000. This amount includes costs for promoting educational and outreach programs, producing annual reports, maintaining registries, calculating market share and recycling goals, reviewing and approving recycling plans, billing manufacturers for unmet recycling goals, creating an internet site, and implementing general enforcement activities. In addition, the bill requires establishing a toll-free number. The Department currently operates a toll-free number, which it contracts out to a private firm, for a cost of \$54,000. The Department plans to use the same toll-free number it has in place by simply expanding the service contract to include e-recycling. It will have an incremental cost on top of the \$54,000, but the exact amount is not yet known. The Department anticipates, however, that this incremental cost will be easily covered by the total estimate of \$430,000 for administrative costs.

### Costs for the Attorney General

According to the Department, the Office of Attorney General would only be utilized in the event there is a difficult enforcement action. Considering the experience of other states, the capability of the Department to enforce environmental laws, and the nature of this proposed program, it is unlikely that the Attorney General would incur any costs from this bill.

### Multistate Implementation

Any costs relating to the potential of entering into or participating with a multistate implementation organization or compact are unknown and therefore unquantifiable until such time that specifics of any such organization or compact are developed. This provision is also optional. The Secretary of the Department, therefore, would likely evaluate the cost prior to entering or participating.

### Costs for the Environmental Quality Board

Any cost for reviewing and adjusting the manufacturer's registration fee and promulgating regulations that the Environmental Quality Board may elect to do will be negligible and covered with current resources. Because the Department handles the administrative expenses of the Board, any unforeseen expenses will be picked up by the Department and funded by the new Electronic Materials Recycling Account.

### Expiration Due to Federal Law

Costs or savings due to the Secretary of Environmental Protection terminating the program if Federal law is enacted will depend on the specifics of the Federal law and the availability of Federal funding to replace the revenue sources created by this bill. It is however possible that a new Federal law would require states to implement e-recycling programs but fail to provide funding. This scenario would require the General Assembly to revisit the issue; otherwise the Department would lose its operating revenue created by this bill.

### Sources

The following sources were used in the preparation of this fiscal note: the Pennsylvania Department of Environmental Protection, the Office of the Attorney General, the Administrative Office of Pennsylvania Courts, the Council of State Governments, the Connecticut Department of Environmental Protection, the Maine Department of Environmental Protection, the Minnesota Pollution Control Agency, the Oregon Department of Environmental Quality, the Washington State Department of Ecology, the Informational Technology Industry Association, and the Electronics TakeBack Coalition.

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**General Note and Disclaimer:** *This Fiscal Note was prepared pursuant to House Rule 19(a), and the elements considered and reported above are required by Section 5 of the rule. Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*