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INTRODUCED BY Senators Sher and Romero
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DECEMBER 2, 2002

An act to add Article 10.3 (commencing with Section 25214.9) to Chapter 6.5 of Division 20 of the Health and Safety Code, and to add Article 4 (commencing with Section 41516) to Chapter 3.5 of Part 2 of, and Chapter 8.5 (commencing with Section 42460) to Part 3 of, Division 30 of the Public Resources Code, relating to hazardous and solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 20, Sher. Solid waste: hazardous electronic waste.

(1) Existing law prohibits the management of hazardous waste, except in accordance with the hazardous waste control laws. Under existing law, the Department of Toxic Substances Control is authorized to exempt, until January 1, 2003, by regulation, a hazardous waste management activity from the requirements of the hazardous waste control law if the regulation governs a specified type of hazardous waste, including electronic hazardous wastes, identifies the hazardous waste as a universal waste, and amends specified existing regulations of the department. Existing law prohibits the disposal of electronic products in or on land, except as specified. A violation of the hazardous waste control law is a crime.

The bill would authorize the Department of Toxic Substances Control to adopt management standards, by regulation, as an alternative to the hazardous waste control laws, for electronic waste that the department determines is hazardous, to the extent consistent with the federal Resource Conservation and Recovery Act of 1976 (RCRA). The bill would require the department to adopt regulations to prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold in the European Union on and after its date of manufacture, due to the presence of certain heavy metals. The bill would prohibit these regulations from taking effect until January 1, 2007, or on or after the date the Directive 2002/95/EC, as adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later. The bill would require the department to exclude certain electronic devices from the regulations and would prohibit the department from requiring the manufacture or sale of an electronic device that is different than, or not otherwise prohibited by, the European Union, thereby imposing a state-mandated local program by creating a new crime. The bill would also incorporate the provisions of the Electronic Waste Recycling Act of 2003, as specified below, by reference into the hazardous waste control laws.

(2) Existing law requires the California Integrated Waste Management Board to administer state programs to recycle various specified materials.

This bill would enact the Electronic Waste Recycling Act of 2003. The bill would make it unlawful to sell, on and after July 1, 2004, a covered electronic device in this state to a consumer, as defined, unless the board or department determines that the manufacturer of that device is in compliance with the act. The bill would prohibit the sale of a covered electronic device, after January 1, 2005, that is not labeled, as specified.

The bill would require a retailer selling a covered electronic device in this state to collect an electronic waste recycling fee from the consumer on and after July 1, 2004, and to transmit the fee to the board in accordance with a schedule and procedures that the board would be required to establish. The bill would set the electronic waste recycling fee in an amount according to a specified fee schedule and would require the board, in collaboration with the department, on and after July 1, 2005, and at least once every 2 years thereafter, to review and adjust the electronic waste recycling fee, based on specified factors.

The bill would require each manufacturer of an electronic device who sells the device in this state, by July 1, 2005, and at least once annually thereafter, to submit a report to the board on the number of electronic devices sold by the manufacturer in this state during the previous calendar year and other information regarding certain specified materials in those devices. A manufacturer would also be required to make information available to consumers that describes where and how to return, recycle, and dispose of the electronic device and opportunities and locations for the collection or return of the device, through specified means.

The bill would impose civil liability for violations of specified provisions.

The bill would require the board, in collaboration with the department, to convene an electronic waste working group to define environmental purchasing criteria, by July 1, 2005, that may be used by state agencies. The bill would also require the board to annually establish and update, as necessary, statewide electronic waste recycling goals.

The bill would require the board and the department to deposit the fees and fines collected under the act in the Electronic Waste

Recovery and Recycling Account, which the bill would create in the Integrated Waste Management Fund in the State Treasury.

This bill would authorize the board and the department to expend the moneys deposited in the account, upon appropriation by the Legislature, to make electronic waste recovery payments to authorized collectors, to make electronic waste recycling payments to covered electronic waste recyclers, and to administer the act, and provisions regulating covered electronic devices. The bill would also allow the expenditure of not more than 1% of the funds in the account to establish public information programs on recycling of hazardous electronic devices.

The bill would require the board, in collaboration with the department, to establish on July 1, 2004, and on July 1 every 2 years thereafter, an electronic waste recovery payment schedule to cover the net cost of an authorized collector in operating a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state and would require the board to make those payments to authorized collectors or to a covered electronic waste recycler for payment to an authorized collector. The bill would also require the board to establish an electronic waste recycling payment schedule to cover an e-waste recycler's net cost of receiving, processing, and recycling covered electronic waste from an authorized collector and would require the board to make those payments to covered electronic waste recyclers. The bill would allow a recycler to receive these payments only if the recycler meets specified eligibility requirements regarding the recycler's facilities. The bill would authorize the board and the department to adopt regulations to implement the bill and would authorize these regulations to be adopted as emergency regulations, as specified.

The bill would require any person who intends to export electronic waste to a foreign destination to comply with specified notification requirements and to demonstrate, among other things, that the handling of the exported electronic waste within the country of destination would meet certain standards adopted by the Organization for Economic Co-operation and Development.

Since the bill would incorporate the provisions of this act into

the hazardous waste control laws, a violation of which is a crime, the bill would impose a state-mandated local program by creating new crimes.

(3) Existing law, the California Integrated Waste Management Act of 1989, requires the county or regional agency integrated waste management plan that a county or regional agency is required to submit to the board to contain a household hazardous waste element.

This bill would require, on and after January 1, 2004, that when a county or regional agency revises the county or regional integrated waste management plan and its elements, the city household hazardous waste element and county household hazardous waste element would be required to identify those actions the city, county, or regional agency is taking to promote the collection, consolidation, recovery, and recycling of covered electronic waste, thereby creating a state-mandated local program by imposing new duties upon local agencies.

(4) This bill would provide that its provisions are severable.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Electronic waste represents one of the fastest growing and hazardous components of California's waste stream.

(b) According to the United States Environmental Protection Agency, more than 4.3 million tons of appliances and consumer electronics were discarded in 1999.

(c) Due to the presence of toxic lead, mercury, or other hazardous or potentially hazardous materials in electronic waste, this waste

poses a particular threat to public health and the environment when improperly discarded.

(d) A study conducted by the California Integrated Waste Management Board estimates that California households currently have more than 6,000,000 obsolete computer monitors and television sets "stockpiled" in their homes.

(e) A study for the National Safety Council projects that more than 10,000 computers and televisions become obsolete in California every day. The study further projects that three-quarters of all computers ever purchased in the United States remain stockpiled in storerooms, attics, garages, or basements.

(f) It is estimated that only 20 percent of obsolete computers and televisions are currently recovered for recycling.

(g) Electronic waste recovered for recycling, including devices from California public agencies, has been found to have been illegally handled and discarded in developing countries, posing a significant threat to public health, worker safety, and the environment in those countries.

(h) The collection, handling, and management of electronic waste that is currently recovered represents a costly and growing problem for local governments and nonprofit organizations, including Goodwill Industries and the Salvation Army.

(i) The high technology sector represents a vital and important part of California's economy.

(j) The system to reduce and recycle electronic waste established pursuant to this act should establish strict and enforceable requirements on all regulated entities while being cost-effective and providing flexibility to take advantage of the innovation of the high technology sector.

(k) The system should also ensure that the state will impose compliance obligations uniformly on all regulated entities to ensure that companies accepting their responsibilities are not penalized by the potential noncompliance of other companies.

(l) The system should also be scalable to national, international, and global systems to take into account obligations that may be imposed on manufacturers of hazardous electronic devices beyond those imposed under this act.

(m) The system should ensure that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve resources and maximize business and employment opportunities within California.

(n) The Governor has requested that the Legislature enact legislation in 2003 challenging industries to assume greater responsibility for the recycling and disposal of electronic waste, stating that "California needs a comprehensive and innovative state law that partners with product manufacturers, establishes recycling targets, and provides for the safe recycling and disposal of electronic wastes." The Governor further expressed support for a system that "provides incentives to design products that are less toxic and more recyclable."

SEC. 2. Article 10.3 (commencing with Section 25214.9) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.3. Electronic Waste

25214.9. (a) The requirements and other provisions of Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code are incorporated by reference as requirements and provisions of this chapter.

(b) To the extent consistent with the federal act, the department may, by regulation, establish management standards as an alternative to one or more of the standards in this chapter, for any specified activity that involves the management of an electronic waste.

25214.10. (a) For purposes of this section "electronic device" has the same meaning as a "covered electronic device", as defined in subdivision (g) of Section 42463 of Public Resources Code.

(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision (a) shall take

effect January 1, 2007, or on or after the date the Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of any electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by this section.

SEC. 3. Article 4 (commencing with Section 41516) is added to Chapter 3.5 of Part 2 of Division 30 of the Public Resources Code, to read:

Article 4. Covered Electronic Waste

41516. (a) For purposes of this article, "covered electronic waste" has the same meaning as defined in subdivision (g) of Section 42463.

(b) On and after January 1, 2004, when a county or regional agency revises the countywide or regional integrated waste management plan and its elements pursuant to Section 41770, the city household hazardous waste element and county household hazardous waste element in the plan shall identify those actions the city, county, or regional agency is taking to promote the collection, consolidation, recovery, and recycling of covered electronic waste.

SEC. 5. Chapter 8.5 (commencing with Section 42460) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 8.5. ELECTRONIC WASTE RECYCLING

Article 1. General Provisions

42460. This act shall be known, and may be cited, as the Electronic Waste Recycling Act of 2003.

42461. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of covered electronic devices, and to provide incentives to design electronic devices that are less toxic, more recyclable, and that use recycled materials.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is cost free and convenient for consumers and the public to return, recycle, and ensure the safe and environmentally-sound disposal of covered electronic devices.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of covered electronic devices is the responsibility of the producers and consumers of covered electronic devices, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of these hazardous materials, it is the intent of this chapter to ensure that any cost associated with the proper management of covered electronic devices be internalized by the producers and consumers of covered electronic devices at or before the point of purchase, and not at the point of discard.

(e) Manufacturers of covered electronic devices, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those public sector entities and business enterprises that currently provide collection and processing services to develop and promote a safe and effective covered electronic device recycling system for California.

(f) The producers of electronic products, components, and devices should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in those products.

(g) Electronic products, components, and devices, to the greatest

extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of the Hazardous Electronic Waste Recycling Act is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste discarded or offered for recycling in the state, to eliminate electronic waste stockpiles and legacy devices by December 31, 2007, to end the illegal disposal of covered electronic devices, to establish manufacturer responsibility for reporting to the board on the manufacturer's efforts to phase out hazardous materials in electronic devices and increase the use of recycled materials, and to ensure that electronic devices sold in the state do not violate the regulations adopted by the Department of Toxic Substances Control pursuant to Section 25214.10 of the Health and Safety Code.

Article 2. Definitions

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Account" means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) "Authorized collector" means any of the following:

(1) A city, county or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) Any entity that collects, handles, consolidates, and transports covered electronic devices and has filed a notification

with the department pursuant to Article 7 (commencing with Section 66273.80) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(c) "Board" means the California Integrated Waste Management Board.

(d) (1) "Consumer" means a purchaser or owner of a covered electronic device. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(2) (A) "Consumer" does not include a manufacturer who purchases specialty or medical electronic equipment that is a covered electronic device.

(B) For purposes of this paragraph, "medical electronic equipment" includes, but is not limited to, radiotherapy equipment, cardiology equipment, dialysis equipment, pulmonary ventilators, nuclear medicine equipment, laboratory equipment for in-vitro diagnosis, analyzers and freezers.

(C) For purposes of this paragraph "specialty electronic equipment" includes, but is not limited to, smoke detectors, heating regulators, and thermostats.

(e) "Department" means the Department of Toxic Substances Control.

(f) (1) "Covered electronic device" means a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device with a screen size that is greater than four inches in size measured diagonally and which the department determines, when discarded or disposed, would be a hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(2) "Covered electronic device" does not include an automobile or a large piece of commercial or industrial equipment, including, but not limited to, commercial medical equipment, that contains a cathode ray tube, cathode ray tube device, flat panel screen, or other similar video display device that is contained within, and is not separate from, the larger piece of industrial or commercial equipment.

(g) "Covered electronic waste" or "covered e-waste" means a covered electronic device that is discarded or disposed.

(h) "Covered electronic waste recycling fee" or "covered e-waste recycling fee" means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) "Covered electronic waste recycler" or "covered e-waste recycler" means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) "Electronic waste recovery payment" means an amount established and paid by the board pursuant to Section 42477.

(k) "Electronic waste recycling payment" means a payment made by the board to an authorized collector of covered electronic waste pursuant to Section 42477.

(l) "Electronic waste recycling payment" means an amount established and paid by the board pursuant to Section 42478.

(m) "Hazardous material" has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) "Manufacturer" means any of the following:

(A) A person who manufactures a covered electronic device sold in this state.

(B) A person who sells a covered electronic device in this state under a person's brand name.

(o) "Retailer" means a person who sells a covered electronic device in the state to a consumer but who did not manufacture the device. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer.

(p) (1) "Sell" or "sale" means any transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (n), "distributor" means a person who sells a covered electronic device to a retailer.

Article 3. Covered Electronic Waste Recycling Fee

42464. (a) On and after July 1, 2004, a covered electronic waste recycling fee is hereby imposed upon the first sale in the state of a covered electronic device to a consumer by a retailer.

(b) A retailer that sells a covered electronic device to a consumer shall collect the fee imposed under subdivision (a) for each covered electronic device sold by the retailer in the following amounts:

(1) Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(c) The electronic waste recycling fee collected pursuant to this section shall be transmitted to the board in accordance with a

schedule and procedure that the board shall establish pursuant to Sections 42475 and 42475.2. The covered electronic waste recycling fees shall be deposited in the account pursuant to Section 42476.

(d) A retailer selling a covered electronic device may retain 3 percent of the covered electronic waste recycling fee as reimbursement for any costs associated with the collection of the fee.

(e) On and after July 1, 2005, and at least once every two years thereafter, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. The board shall base any adjustment of the covered electronic waste recycling fee on the both of following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of 100 percent of the covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

42464.2. The board may collect the fees imposed pursuant to this section pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). The board may contract with the State Board of Equalization or another party for collection of fees due under this section.

Article 4. Manufacturer Responsibility

42465. On and after July 1, 2004, it shall be unlawful to sell a covered electronic device to a consumer in this state unless the board or department determines that the manufacturer of that covered electronic device demonstrates compliance with this chapter.

42465.1. On and after January 1, 2005, a person may not sell or

offer for sale in this state a covered electronic device unless the device is labeled with the name of the manufacturer or the manufacturer's brand label, so that it is readily visible.

42465.2. (a) On or before July 1, 2005, and at least once annually thereafter as determined by the board, each manufacturer of a covered electronic device who sells those devices in this state shall do all of the following:

(1) Submit to the board a report that includes all of the following information:

(A) An estimate of the number of covered electronic devices sold by the manufacturer in the state during the previous year.

(B) A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, PBDE's, and PBB's used in covered electronic devices manufactured by the manufacturer in that year and the reduction in the use of those hazardous materials from the previous year.

(C) A baseline or set of baselines that show the total estimated amount of recycled materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year.

(D) A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.

(2) Make information available to consumers, that describes where and how to return, recycle, and dispose of the covered electronic device and opportunities and locations for the collection or return of the device, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information accompanying the sale of covered electronic device.

(b) Any information submitted to the board pursuant to subdivision (a) that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information.

42465.3. On or before April 1, 2004, a manufacturer shall inform the retailer if a covered electronic device sold by that manufacturer is subject to the covered electronic waste recycling fee established

pursuant to this chapter.

Article 5. Administration

42472. (a) The imposition of a covered electronic waste recycling fee is a matter of statewide interest and concern and is applicable uniformly throughout the state. A city, county, city and county, or other public agency may not adopt, implement, or enforce an ordinance, resolution, regulation, or rule requiring a consumer, manufacturer, or retailer to recycle covered electronic devices or imposing a covered electronic waste recycling fee upon a manufacturer, retailer, or consumer, unless expressly authorized under this chapter.

(b) Nothing in this section prohibits the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, city and county, or other public agency, including any action relating to fees for these programs. Nothing in this section shall be construed to affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

42473. The Legislature declares that the imposition of a covered electronic waste recycling fee would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution, because the amount and nature of the fee has a fair and reasonable relationship to the adverse environmental burdens imposed by the disposal of covered electronic devices and there is a sufficient nexus between the fee imposed and the use of those fees to support the recycling and reuse of these devices.

42474. (a) Civil liability in an amount of up to two thousand five hundred dollars (\$2,500) per offense may be administratively imposed by the board for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(b) A civil penalty in an amount of up to five thousand dollars (\$5,000) per offense may be imposed by a superior court for each sale

of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(c) Civil liability in an amount of up to twenty-five thousand dollars (\$25,000) may be administratively imposed by the board against manufacturers for failure to comply with this chapter, except as otherwise provided in subdivision (a).

42474.5. This chapter and all regulations adopted pursuant to this chapter may be enforced by the department pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

42475. (a) The board shall administer this chapter in consultation with the department.

(b) The board may adopt any regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter.

(c) The board shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that ensure the protection of any proprietary information submitted to the board by a manufacturer of covered electronic devices.

(d) The board and the department may prepare, publish, or issue any materials that the board determines to be necessary for the dissemination of information concerning the activities of the board under this chapter.

(e) In carrying out this chapter, the board and the department may solicit and use any and all expertise available in other state agencies, including, but not limited to, the department, the Department of Conservation, and the State Board of Equalization.

42475.1. The board and department may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter, and any other regulations that the board and the department determines are necessary to implement the provisions of this chapter in a manner that is enforceable.

42475.2. (a) The board and the department may adopt regulations to implement this chapter as emergency regulations.

(b) The emergency regulations adopted pursuant to this chapter

shall be adopted by the board and the department in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department or the board, whichever occurs sooner.

42475.3. The board in collaboration with the department shall convene a covered electronic waste working group comprised of representatives from manufacturers of covered electronic devices and other interested parties to develop and, by July 1, 2005, advise the board and the State and Consumer Services Agency on environmental purchasing criteria that may be used by state agencies to identify covered electronic devices with reduced environmental impacts. In defining criteria, the group shall consider the environmental impacts of products over their entire life cycle, as well as tradeoffs in other product attributes such as safety, product functionality, and cost. The group shall also consider any federal product evaluation or rating system, or market based system to promote the development and sale of environmentally conscious products.

42475.4. (a) The board shall annually establish, and update as necessary, statewide recycling goals for covered electronic waste. In implementing this section, the board shall do all of the following:

(1) Post on its Web site information on the amount of covered electronic devices sold in the state in the previous year as reported to the board.

(2) Post on its Web site information on the amount of covered electronic waste recycled in the state in the previous year as

reported to the board.

(3) Develop and adopt recycling goals, with input from manufacturers, retailers, covered electronic waste recyclers, and collectors, that reflect projections of covered electronic device sales, rates of obsolescence, and stockpiles.

(b) Nothing in this section authorizes the board to establish any recycling rates or dates by which a manufacturer of covered electronic devices shall comply with this chapter, or to impose any other recycling goal or target on a manufacturer of those devices.

Article 6. Financial Provisions

42476. (a) The board and the department shall deposit all fees or fines collected under this chapter into the Electronic Waste Recovery and Recycling Account, which is hereby created in the Integrated Waste Management Fund. The funds in the Electronic Waste Recovery and Recycling Account may be expended by the board and department, upon appropriation by the Legislature, for the following purposes:

(1) To make electronic waste recovery payments to an authorized collector of covered electronic waste pursuant to Section 42479.

(2) To make electronic waste recycling payments to covered electronic waste recyclers of covered electronic waste pursuant to Section 42479.

(3) To provide for costs of the board and the department to administer this chapter.

(4) To provide funding to the department to implement and enforce Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as that chapter relates to covered electronic devices, and any regulations adopted by the department pursuant to that chapter.

(b) Notwithstanding Section 16475 of the Government Code, any interest earned upon funds in the Electronic Waste Recovery and Recycling Account shall be deposited in that account for expenditure pursuant to this chapter.

(c) Not more than 1 percent of the funds annually deposited in the Electronic Waste Recovery and Recycling Account shall be expended

for the purposes of establishing the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and on the opportunities to recycle covered electronic devices.

(d) The board may not provide any payment for covered electronic devices unless the materials will be handled in compliance with all statutes and regulations regarding the export of hazardous wastes. No payment may be made for covered electronic devices exported to any country where the export import of hazardous waste is prohibited.

(e) The board may not provide any payment for covered electronic waste unless the materials are handled in compliance with all statutes and regulations regarding the export of hazardous wastes, including, but not limited to, Section 42476.5.

42476.5. Except as provided in Section 42476.6, any person who intends to export covered electronic waste to a foreign destination shall comply with all of the following at least 60 days prior to export:

(a) Notify the department of the destination, contents, and volume of covered electronic waste to be exported.

(b) Demonstrate that the importation of covered electronic waste is not prohibited by any applicable law or regulation of the country of destination and that any import is conducted in accordance with all applicable laws. As part of this demonstration, required import and operating licenses shall be forwarded to the department.

(c) Demonstrate that the exportation of covered electronic waste is conducted only in accordance with applicable international law.

(d) Demonstrate that the management of the exported covered electronic waste will be handled within the country of destination in accordance with applicable rules, standards, and requirements adopted by the Organization for Economic Co-operation and Development for the environmentally sound management of electronic waste.

(e) Demonstrate that the covered electronic waste is being exported for the purpose of reuse or recycling.

42476.6. Section 42476.5 does not apply to a component part of a covered electronic device that is exported to an authorized collector or recycler and that is reused or recycled into a new electronic component.

42477. On July 1, 2004, and on July 1 every two years thereafter, the board in collaboration with the department shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state. The board shall make the electronic waste recovery payments either directly to an authorized collector or to a covered electronic waste recycler for payment to an authorized collector pursuant to this article.

42478. On July 1, 2004, and on July 1 every two years thereafter, the board, in collaboration with the department shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover an electronic waste recycler's net cost to receive, process, and recycle a covered electronic device from an authorized collector. The board shall make the electronic waste recycling payments to a covered electronic waste recycler pursuant to this article.

42479. (a) (1) The board shall make electronic waste recovery payments and electronic waste recycling payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to the board by the authorized collector or recycler in the form and manner determined by the board.

(2) To the extent authorized pursuant to Section 42477, a covered electronic waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the board.

(b) An e-waste recycler is eligible for a payment pursuant to this section only if the e-waste recycler meets all of the following requirements:

(1) The e-waste recycler is in compliance with applicable requirements of Article 6 (commencing with Section 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The e-waste recycler demonstrates to the board that any facility utilized by the e-waste recycler for the handling, processing, refurbishment, or recycling of covered electronic devices meets all of the following standards:

(A) The facility has been inspected by the department within the past 12 months and had been found to be operating in conformance with all applicable laws, regulations and ordinances.

(B) The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

(C) The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

(D) The facility meets or exceed the standards specified in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300), of the Labor Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

Article 7. State Agency Procurement

42480. (a) A state agency that purchases or leases covered electronic devices shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of covered electronic devices.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

Article 8. Inapplicability of Chapter

42485. The board or the department shall not implement this chapter if either of the following occur:

(a) A federal law, or a combination of federal laws, takes effect and does all of the following:

(1) Establishes a program for the collection, recycling, and proper disposal of covered electronic waste that is applicable to all cathode ray tube devices sold in the United States.

(2) Provides revenues to the state to support the collection, recycling, and proper disposal of covered electronic waste, in an amount that is equal to, or greater than, the revenues that would be generated by the fee imposed under Section 42464.

(3) Requires covered electronic device manufacturers, retailers, handlers, processors, and recyclers to dispose of those devices in a manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and prohibits the devices from being exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) A trial court issues a judgment, which is not appealed, or an appellate court issues an order affirming a judgment of a trial court, holding that out-of-state manufacturers or retailers, or both, may not be required to collect the fee authorized by this chapter.

The order shall be stayed until all appeals are concluded. The out-of-state manufacturers or retailers, or both, shall continue to collect the fee during the appellate process.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution or because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.