REPORT

DATE: June 5, 2003

TO: The Energy and Environment Committee (EEC)

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SUBJECT: SB 20 (Sher) Solid Waste: Electronic Waste Recovery, Reuse, and Recycling

EXECUTIVE DIRECTOR'S APPROVAL

RECOMMENDED ACTION: Support

SUMMARY:

Senate Bill 20, introduced by Senate Environmental Quality Committee Chair Byron Sher (D-Palo Alto), creates the Hazardous Electronic Waste Recovery, Reuse, and Recycling Act of 2003. SB 20 defines "hazardous electronic devices" and prohibits their sale in California unless the manufacturer implements a take-back plan or pays a fee to cover the cost of a waste recovery program. The California Integrated Waste Management Board (CIWMB) is empowered to impose civil penalties for violations and to review, amend, approve or disapprove waste recovery plans.

Although SCAG has no adopted electronic waste policy, both the Solid Waste Task Force and the EEC have expressed support for electronic waste recovery as a means to encourage solid waste diversion per AB 939's requirements and to protect the public health by reducing the presence of hazardous materials in solid waste facilities and, ultimately, ground water. By establishing a take-back program that removes electronic waste from landfills, SB 20 advances both goals. In the absence of a stated SCAG electronic waste policy, supporting SB 20 also effectively builds a record of support for electronic waste recovery programs such as those established in SB 20.

BACKGROUND:

The growing problem of electronic waste, known as e-waste, is well known to members of the Solid Waste Task Force and the EEC after several presentations and discussions over the last two years. Obsolete or inoperative electronic devices like televisions, cellular phones, and computer monitors are a growing component of the waste stream, where they pose an environmental and public health threat due to their use of lead, mercury, beryllium, cadmium, brominated-flame retardants and other hazardous materials. No state program addresses e-waste, although regulations passed by the Department of Toxic Substances Control (DTSC) prohibit the disposal of lead-containing cathode ray tubes (CRTs) in landfills.

Legislators in California began examining the issue of e-waste around the same time as European policymakers. In October 2002, the European Union adopted a directive requiring product manufacturers to bear the financial burdens of managing e-waste and to develop take-back programs. The National Electronics Product Stewardship Initiative (NEPSI), a stakeholder group, has brokered the corresponding e-waste dialogue in the United States. NEPSI's Product Stewardship Principles have been developed to support state and local agencies in promoting product stewardship.

With momentum gathering, the California Legislature passed SB 1523 (Romero) last year to establish a state CRT recovery program. Governor Davis vetoed the bill, stating in his veto message he was "willing to sign legislation that challenges industry to assume greater responsibility for the recycling and disposal of electronic waste." Senator Sher has responded to the Governor's message with SB 20.

The bill incorporates NEPSI's primary goal of developing a system that includes viable financing to maximize the collection, reuse, and recycling of used electronics while reducing product toxicity. This goal, among others, was endorsed by the Solid Waste Task Force and the EEC when they voted to adopt NEPSI's Product Stewardship Principles as SCAG's e-waste policy in November 2002 and December 2002 respectively. (The Regional Council returned the recommendation to the EEC in January 2003 for further analysis.)

Specifically, SB 20 defines a "hazardous electronic device" to be a consumer product, component or device that uses an electric current and which DTSC determines is hazardous material or hazardous waste. DTSC must adopt procedures for the phase-out of hazardous materials used in the manufacture of hazardous electronic devices by the earliest feasible date. Manufacturers are prohibited from selling hazardous electronic devices in the state unless they demonstrate to the CIWMB a hazardous electronic waste recovery plan exists that provides a cost-free and convenient recycling for consumers. In the alternative, manufacturers may remit to the board a fee covering the net average cost of collecting, processing, and recycling hazardous electronic waste.

Manufacturers must label hazardous electronic devices with their brand, meet specified recycling targets, and ensure waste is not improperly exported and disposed in other countries. CIWMB may impose administrative civil penalties of up to $2,500 per violation and may seek civil penalties of up to $5,000 per violation in court. CIWMB shall not implement SB 20's provisions, however, if federal law preempts the field or if a court enters a final judgement that holds that the fee imposed on manufacturers under the bill is not applicable to out-of-state manufacturers.

SUPPORT:
The following agencies support SB 20:
- League of California Cities
- CSAC
- Californians Against Waste
- Natural Resources Defense Council
- Sierra Club
- Planning and Conservation League

OPPOSE:
The following agencies oppose SB 20:
- American Electronics Association
- California Manufacturers & Technology Association
- Electronic Industries Alliance

BILL STATUS:
SB 20 is on Senate Second Reading and will be heard by Senate Appropriations on May 22nd.

FISCAL IMPACT:
All work related to adopting the recommended staff action is contained within the adopted FY02/03 budget and adopted 2003 SCAG Legislative Program and does not require the allocation of any additional financial resources.

CAE#85625

SOUTHERN CALIFORNIA
ASSOCIATION of GOVERNMENTS

AMENDED IN SENATE MAY 6, 2003

SENATE BILL No. 20

Introduced by Senator Sher
(Principal Coauthor: Assembly Member Jackson)
(Coauthor: Assembly Member Pavley)

December 2, 2002

~~An act relating to solid waste.~~ *An act to add Article 11.7 (commencing with Section 25243) to Chapter 6.5 of Division 20 of the Health and Safety Code, and to add 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, as amended, Sher. Solid waste: ~~electronic waste products: recycling and refurbishment~~ *hazardous electronic waste recovery, reuse, and recycling.*

(1) Existing law prohibits the management of hazardous waste, except in accordance with the hazardous waste 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.

~~Existing~~

The bill would require the Department of Toxic Substances Control to adopt regulations to prohibit the use of hazardous materials in the manufacture of hazardous electronic devices sold in the state, and to prohibit the use of any electronic or mechanical device that prevents, impedes, or limits the reuse, remanufacture, or recycling of a hazardous electronic device, thereby imposing a state-mandated local program by creating a new crime.

(2) Existing law requires the California Integrated Waste Management Board to administer state programs to recycle ~~plastic trash bags, plastic packaging containers, waste tires, newsprint, and other~~ *various* specified materials.

This bill would ~~state the intent of the Legislature to ensure that funds are available to assist cities, counties, and recyclers of electronic wastes in developing programs to safely collect and recycle the hazardous materials contained in electronic wastes, and to promote the refurbishment and reuse of electronic equipment for use by schools and nonprofit agencies.~~ *enact the Hazardous Electronic Waste Recovery, Reuse, and Recycling Act of 2003. The bill would prohibit any person from selling a hazardous electronic device in this state unless the board determines that the manufacturer of that device is in compliance with the act. The bill would require a manufacturer of a hazardous electronic device, as defined, sold in the state to establish and implement a hazardous electronic device recovery system that is certified by the board for the collection, handling, transportation, processing, recovery, reuse, and recycling of the hazardous electronic waste resulting from the devices sold by that manufacturer. The bill would require a manufacturer of a hazardous electronic device that sells a hazardous electronic device in the state to notify the board of its intent to sell the device and to prepare and submit to the board a hazardous electronic device recovery plan that meets specified standards. The bill would require a manufacturer that intends to export a hazardous electronic waste to provide the department with specified information.*

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

The bill would require the board to establish and impose a fee on a manufacturer of a hazardous electronic device that submits a plan for review to cover its reasonable costs of implementing the act. The bill would require a manufacturer of a hazardous electronic device who does not submit a recovery plan to the board or who does not meet specified recovery and recycling targets, to instead pay a fee to the

board, in a specified amount. The bill would require the board to deposit the fees collected under the act in the Hazardous Electronic Waste, Recovery, Reuse, and Recycling Account, which the bill would create in the Integrated Waste Management Fund in the State Treasury.

This bill would authorize the board to expend the moneys deposited in the account, upon appropriation by the Legislature, to implement the act and, among other things, to provide recycling incentive payments to hazardous electronics material handlers, provide grant funds to local governments and nonprofit agencies for recycling hazardous electronic devices, provide financial incentives to manufacturers of these devices to assist in the recycling of the devices, and to establish public information programs on recycling of hazardous electronic devices. The bill would authorize the board to adopt regulations to implement the bill.

(3) 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 a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes.* State-mandated local program: ~~no~~ *yes.*

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 ~~(a) Many electronic waste products contain hazardous~~
4 *(a) Electronic waste from hazardous electronic devices*
5 *represents one of the fastest growing hazardous components of*
6 *California's waste stream.*
7 *(b) According to the United States Environmental Protection*
8 *Agency, more than 4.3 million tons of appliances and consumer*
9 *electronics were discarded in 1999.*
10 *(c) Due to the presence of toxic lead, mercury, or other*
11 *hazardous or potentially hazardous materials in electronic waste,*
12 *these devices pose a particular threat to public health and the*
13 *environment when improperly discarded.*
14 *(d) A study conducted by the California Integrated Waste*
15 *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) Hazardous electronic devices recovered for recycling, including devices from California public agencies, have 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 hazardous electronic devices that are 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 hazardous electronic devices established pursuant to this act should establish strict and enforceable requirements on all manufacturers of hazardous electronic devices 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 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 11.7 (commencing with Section 25243) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 11.7. Phase Out Of Hazardous Materials In Hazardous Electronic Devices

25243. The Legislature finds and declares that it is in the interest of the state to establish a program modeled on the Product Stewardship Initiative undertaken by the European Economic Union to phase out the use of hazardous materials in the manufacture of hazardous electronic devices.

25243.5. For purposes of this article, the following definitions apply:

(a) "Hazardous electronic device" has the same meaning as defined in Section 42463 of the Public Resources Code.

(b) "Hazardous material" has the same meaning as defined in Section 25501.

25243.7. On or before January 1, 2007, the department shall adopt regulations establishing dates and procedures to prohibit the use of hazardous materials in the manufacture of a hazardous electronic device sold in the state by the earliest feasible date.

25243.8 On or before January 1, 2005, the department shall adopt regulations prohibiting the use of an electronic or a mechanical device that prevents, impedes, or limits the reuse, remanufacture, or recycling of a hazardous electronic device.

SEC. 3. 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. HAZARDOUS ELECTRONIC WASTE RECOVERY, REUSE, AND RECYCLING

Article 1. General Provisions

42460. This act shall be known, and may be cited, as the Hazardous Electronic Waste Recovery, Reuse, and 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 hazardous electronic devices, and to provide incentives to design electronic devices that are less toxic and more recyclable.

(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 hazardous electronic devices.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of hazardous electronic devices is the responsibility of the producers and consumers of hazardous 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 hazardous electronic devices be internalized by the producers and consumers of hazardous electronic devices at or before the point of purchase, and not at the point of discard.

(e) Manufacturers of hazardous 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 hazardous electronic device recovery, reuse, and 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) A further purpose of this chapter is to promote the refurbishment and reuse of electronic equipment for the use of schools and nonprofit agencies.

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 Hazardous Electronic Waste Recovery, Reuse, and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

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

(c) "Consumer" means a purchaser or owner of a hazardous electronic device.

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

(e) "Fee" means the hazardous electronics device recycling and recovery fee imposed by Section 42471.

(f) "Hazardous electronic device" means any consumer product, component, or device that requires an alternating current or direct current electrical charge for operation and that the department determines is a hazardous material or a hazardous waste. A hazardous electronic device includes, but is not limited to, a television, video monitor, computer monitor, or any other device that has one or more cathode ray tubes containing lead.

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

(h) "Manufacturer" means any person who manufactures a hazardous electronic device and sells that hazardous electronic device in this state.

(i) "Registrant" means the manufacturer, or an independent party that submits the plan required by Section 42468 instead of the manufacturer.

Article 3. Manufacturer Responsibility

42465. (a) A person may not sell a hazardous electronic device to a consumer in this state unless the board determines the manufacturer of that hazardous electronic device demonstrates compliance with this chapter by either establishing and implementing a system certified by the board pursuant to Section 42467 or paying a fee pursuant to Section 42471.

(b) On and after January 1, 2005, a person may not sell or offer for sale in this state a hazardous 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.

42466. (a) On or after July 1, 2006, if the board determines that the recovery and recycling targets set forth in subdivision (b) are not being met by a manufacturer or registrant of a hazardous electronic device, the manufacturer shall comply with Section 42471 until the board determines that the system certified by the board pursuant to Section 42467 is meeting the targets.

(b) The recovery systems under Section 42467 and the plans under Section 42468, except as specified in subdivision (c), shall conform with the following recovery and recycling targets:

(1) On and after January 1, 2005, a manufacturer or registrant is responsible for arranging or otherwise ensuring that an amount of hazardous electronic waste equivalent to not less than 50 percent of the hazardous electronic devices sold by that manufacturer in the state in the previous year is diverted from waste disposal and recovered for reuse or recycling.

(2) On and after January 1, 2007, a manufacturer or registrant is responsible for arranging or otherwise ensuring that an amount of hazardous electronic waste equivalent to not less than 70 percent of the hazardous electronic devices sold by that manufacturer in the state in the previous year is diverted from waste disposal and recovered for reuse or recycling.

(3) On and after January 1, 2010, a manufacturer or registrant is responsible for arranging or otherwise ensuring that an amount of hazardous electronic waste equivalent to not less than 90 percent of the hazardous electronic devices sold by that manufacturer in the state in the previous year is diverted from waste disposal and recovered for reuse or recycling.

(c) The board may either increase or decrease the recovery and recycling targets in subdivision (b) based on a determination of the projected volume of obsolete hazardous electronic devices.

(d) Notwithstanding the recovery and recycling targets in subdivision (b), state and federal regulations prohibit the disposal of hazardous electronic waste in solid waste disposal facilities and it is the intent of the legislature that all hazardous electronic waste is managed in accordance with all applicable laws, regulations, and ordinances.

42467. (a) Except as provided in Section 42471, a manufacturer of a hazardous electronic device sold in the state shall establish and implement a hazardous electronic device recovery system that is certified by the board pursuant to this article for the collection, handling, transportation, processing, recovery, reuse, and recycling of the hazardous electronic waste that results from the hazardous electronic device sold by that manufacturer.

(b) A manufacturer of a hazardous electronic device that sells a hazardous electronic device in this state shall notify the board of its intent to sell a hazardous electronic device.

(c) Any manufacturer or registrant that intends to export hazardous electronic waste to a foreign destination shall comply with all of the following prior to export:

(1) Notify the department of the contents, volume, and destination of the proposed export.

(2) Demonstrate that hazardous electronic waste will be handled in a manner that is at least as protective of public health and the environment as the laws, regulations, and ordinances applicable to the recycling and disposal of these devices in this state.

(3) Demonstrate that the importation of hazardous electronic waste is not prohibited by any applicable law or regulation of the country of destination.

(d) In order to minimize costs and confusion in developing a hazardous electronic device recovery system under this section, manufacturers and registrants are encouraged to coordinate with and, to the extent feasible, support the utilization of any existing public and private systems for the collection, handling, transportation, processing, recovery, reuse, and recycling of hazardous electronic waste.

(e) A city, county, or public agency may not require consumers to use a system required under this section to recycle hazardous electronic devices to the exclusion of other programs legally available. This chapter anticipates that hazardous electronic device recovery systems in addition to those provided by manufacturers and registrants under this section may be available to consumers in the state. Nothing in this chapter is deemed to prohibit or restrict any other system or to prohibit or restrict any other person from receiving, storing, transporting, or recycling hazardous electronic devices.

42468. (a) Except as provided in Section 42471, a manufacturer or a registrant of a hazardous electronic device sold in the state shall prepare and submit to the board a hazardous electronic waste recovery plan to establish a hazardous electronic waste recovery system that meets all of the following standards:

(1) The plan demonstrates that it will result in the efficient collection, handling, transportation, processing, recovery, reuse, and recycling of hazardous electronic waste that results from the hazardous electronic device sold by that manufacturer in this state in a manner that is cost free to consumers.

(2) The plan demonstrates that the manufacturer or registrant will provide either directly, or through contracts or other binding arrangements with other parties as retailers, local governments, or private waste collection companies, one or more opportunities for the consumer to return the hazardous electronic devices for recovery, reuse, and recycling in a manner that is at least as convenient to the consumer as the purchase and delivery of new hazardous electronic devices through one or more of the following mechanisms:

(A) The return of the hazardous electronic device at a location where the device is sold.

(B) The mailing or shipping of the hazardous electronic device to a recycling or recovery facility, including, but not limited to, a facility owned or operated by a manufacturer of these devices.

(C) The curbside collection or pickup of the hazardous electronic device from the consumer.

(D) The dropoff of the hazardous electronic device at a conveniently located recycling or recovery facility.

(3) The plan demonstrates that the manufacturer or registrant of the hazardous electronic device will make available information

to every consumer through the use of a toll-free telephone number, Internet Web site, and information either labeled on the device, included in the packaging, or accompanying the sale of the hazardous electronic device, that describes where and how to return, recycle, and dispose of the hazardous electronic device and opportunities and locations for the collection or return of the device.

(4) The plan demonstrates that all collection, handling, transportation, dismantling, processing, refurbishment, and recycling of the hazardous electronic device will be done safely and in conformance with all applicable laws, regulations, and ordinances.

(5) The plan demonstrates that hazardous electronic waste recovered may not be disposed in violation of any applicable law, regulation, or ordinance.

(6) The plan demonstrates that hazardous electronic devices sent to a foreign destination will be handled in a manner that is at least as protective of public health and the environment as the laws, regulations, and ordinances applicable to the recycling and disposal of these devices in this state and ensures that no hazardous electronic device will be exported to any country where the importation of hazardous waste is prohibited.

(7) The plan demonstrates the capability of meeting or exceeding the recovery targets specified in Section 42466.

(b) If the registrant changes the system that has been submitted to the board, before the change can become effective, the registrant shall submit the changed system to the board and revise its Internet Web site and toll-free telephone information to be consistent with the changed system.

(c) The registrant that receives a hazardous electronic device for recycling, refurbishment, or reuse has the discretion to either recycle, refurbish, or reuse (including resale) the hazardous electronic device. Except to the extent otherwise required by law, the manufacturer and registrant do not have responsibility for any data that may be on the hazardous electronic device if an information storage device is included with the hazardous electronic device.

(d) Once per calendar year, each registrant shall file a report with the board which describes the implementation of the system during the year. The report shall identify the total number of

hazardous electronic devices received during the preceding year, together with the total number of devices reused or refurbished for reuse, and the total number of devices recycled or resold. The report shall also describe the processes and methods used to recycle, refurbish, or reuse the hazardous electronic devices and, in particular, the report shall identify any disassembly, physical recovery operation including, but not limited to, for, crushing, grinding, or glass to glass recycling, or other operation that was used, and describe where it took place.

42469. (a) Within 90 days of the date that the board receives a hazardous electronic device recovery plan submitted pursuant to Section 42468, the board shall review, identify, and suggest amendments, and certify or disapprove the plan at a duly noticed public hearing.

(b) The board shall certify a hazardous electronic device recovery plan only if the board determines there is substantial evidence in the record that the plan will comply with all of the standards established pursuant to Section 42468 and be implemented in accordance with those standards.

(c) The board shall establish a schedule for the review and action on a hazardous electronic device recovery plan to ensure the consistent, timely, and thorough review of each plan submitted pursuant to this article.

(d) The board shall establish and impose a fee on a manufacturer of a hazardous electronic device that submits a plan for review pursuant to this article to cover the board's reasonable costs of implementing this chapter.

42470. A registrant may partner with one or more manufacturers or other parties, as a collective registrant, to prepare and submit to the board a joint hazardous electronic device recovery plan to comply with Section 42468.

42471. (a) As an alternative to complying with Section 42468, a manufacturer of a hazardous electronic device may remit to the board a hazardous electronics waste device, recycling, and recovery fee on each hazardous electronic device sold by the manufacturer in the state.

(b) The board shall calculate the amount of the fee required to be paid by a manufacturer pursuant to this section by subtracting the average scrap value, including any negative scrap value, of the hazardous electronic device sold by that manufacturer, or the

hazardous waste disposal cost of that device, from the average cost of collecting, processing, and recycling the hazardous electronic scrap, as determined by the board.

(c) The hazardous electronics waste device, recycling, and recovery fee shall be paid to entities for the collection, processing, and recycling of hazardous electronic waste, in a form and manner determined by the board.

42472. The imposition of a hazardous electronics waste device, recycling, and recovery fee pursuant to Section 42471 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 establishing a hazardous electronics device recycling and recovery fee unless expressly authorized under this chapter. This section does not prohibit the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or dropoff recycling programs operated by, or pursuant to a contract with, a city, county, city and county, or other public agency, including actions relating to fees for these programs.

42473. The Legislature declares that the imposition of a hazardous electronics device recycling and recovery fee pursuant to Section 42471 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 hazardous 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 hazardous electronic device not covered either by a hazardous electronic device recovery system certified by the board under Section 42467, or by a hazardous electronics waste device, recycling, and recovery fee paid in lieu of the recovery system requirement of Section 42467, as defined in Section 42471.

(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 hazardous electronic device not covered either by a

hazardous electronic device recovery system certified by the board under Section 42467, or by a hazardous electronics waste device, recycling, and recovery fee paid in lieu of the recovery system requirement of Section 42467, as described under Section 42471.

(c) Civil liability in an amount of up to twenty-five thousand dollars ($25,000) may be administratively imposed by the board against manufacturers or registrants for failure to comply with Section 42465, 42467, 42468, or 42471.

Article 4. Administration

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 hazardous electronic devices.

(d) The board 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 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.

Article 5. Financial Provisions

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

the purposes of implementing this chapter and for the following purposes:

(1) To provide recycling incentive payments to hazardous electronics material handlers that collect and process hazardous electronics and hazardous electronic devices, if those facilities comply with all of the applicable provisions of Sections 66273.80 to 66273.90, inclusive, of Title 22 of the California Code of Regulations.

(2) To provide grant funds to local governments for the cleanup of illegally dumped hazardous electronic devices and to establish and maintain local programs that supplement private sector programs pursuant to Section 42467 for the convenient and cost-effective collection and recycling of hazardous electronics and hazardous electronic devices.

(3) To provide grants to nonprofit agencies that accept for recycling hazardous electronics and hazardous electronic devices.

(4) To provide financial incentives to manufacturers of hazardous electronic devices to encourage consumers to return the devices for processing, or recycling, and to assist manufacturers in collecting, processing, or recycling hazardous electronic devices.

(5) To establish a public information program to educate the public on the hazards of improper hazardous electronic device storage and disposal and on the opportunities to recycle hazardous electronic devices. Not more than one percent of funds in the account may be used for the purpose of implementing this paragraph.

(6) 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 hazardous electronic devices, and any regulations adopted by the department pursuant to that chapter.

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

Article 6. State Agency Procurement

42480. (a) A state agency that purchases or leases hazardous 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 by the board 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 hazardous 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 7. Inapplicability of Chapter

42485. The board 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 cathode ray tube devices 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 cathode ray tube devices, in an amount that is equal to, or greater than, the revenues that would be generated by the fee imposed under Section 42471.

(3) Requires cathode ray tube 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. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only 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.

~~materials that may pose risks to public health and the environment if improperly handled or discarded.~~

~~(b) Most California communities lack the infrastructure needed to provide for the convenient and affordable collection, refurbishment, processing, and recycling of electronic wastes.~~

~~(c) It is the intent of the Legislature to ensure that funds are available to assist cities, counties, and recyclers of electronic wastes in developing programs to safely collect and recycle the hazardous materials contained in electronic wastes.~~

1 ~~(d) It is also the intent of the Legislature to promote the~~
2 ~~refurbishment and reuse of electronic equipment for use by~~
3 ~~schools and nonprofit agencies.~~

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