

APPENDIX



**Testimony Before the
Senate Environment and Energy Committee
S-2973 (Smith, B/Bateman/Greenstein/Codey)**

July 20, 2015

By

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New Jersey Chamber of Commerce**

Good afternoon Chairman Smith and members of the Senate Environment and Energy Committee. The New Jersey State Chamber of Commerce appreciates the opportunity to provide our input on S-2973, which seeks to revise the electronic waste recycling law.

I am joined today by Matthew Karmel, an attorney at the law firm of Riker Danzig Scherer Hyland & Perretti, who will discuss the draft legislation.

The current e-waste recycling law and the proposed legislation place certain obligations relating to the recycling of “covered electronic devices” on “retailers” and “manufacturers.” These are all defined terms. A covered electronic device is defined to include computers, televisions, and computer monitors, and would likely include many different types of electronics unless specifically excluded. As you would expect, a “retailer” is a seller of new covered electronic devices. A “manufacturer” is generally defined as a manufacturer of covered electronic devices, or a seller of covered electronic devices under a brand that the seller owns or is licensed to use. The proposed legislation does not change the definitions of “retailer” or “manufacturer.” Based on these definitions, it is possible for a seller of covered electronic devices to be both a retailer and a manufacturer if it sells covered electronic devices under a brand that it owns, even if it does not manufacture those devices.

The obligations imposed on “manufacturers” are greater than those imposed on “retailers.” In fact, the current law and proposed legislation require “manufacturers” to provide free recycling of “covered electronic devices” in an amount specified by the New Jersey Department of Environmental Protection (“NJDEP”). The proposed legislation does not change the nature of this obligation, but instead changes the mechanism that the NJDEP uses to determine the amount of free recycling that a manufacturer must provide.

In contrast, the proposed legislation does not impose any additional obligations on “retailers.” Under the current law and the proposed legislation, a “retailer” is only required to: (1) sell only labeled products; (2) sell covered electronic devices manufactured by manufacturers in full compliance with the e-waste recycling law; and (3) to perform public outreach by providing information regarding recycling to consumers. Please note though that, as mentioned above, a seller of covered electronic

devices could be both a "retailer" and a "manufacturer" if it sells covered electronic devices under a brand that it owns.

As noted, the proposed legislation does not impose any additional obligations on "retailers," but it does change the mechanism for determining the amount of free recycling that a "manufacturer" must provide. As currently drafted, the proposed legislation ties this obligation to the "market share" of a manufacturer. "Market share" is defined therein as "a manufacturer's national sales of covered electronic devices expressed as a percentage of the total sales of all manufacturers' national sales of covered electronic devices, based on the best available public data." This definition, however, does not explain whether the market share is based on number of units sold, value of units sold, or some other metric. The legislation also appears to lump manufacturers' of all different types of covered electronic devices into one calculation. These two open issues create uncertainty over how the proposed legislation would be carried out and also seem to create potential unfairness to different manufacturers because it is unclear whether market share (and therefore the recycling obligation) is tied to the benefit obtained by the manufacturer or the cost of recycling that manufacturers' products.

The proposed legislation also changes the mechanism by which the NJDEP estimates the amount of e-waste that will be collected in each year from consumers. This estimate is important because a manufacturer is required to collect its "market share" of the estimate of e-waste that will be collected in each year. The proposed legislation specifically authorizes the NJDEP to prepare an estimate that is equal to "the total weight in pounds of covered electronic devices, including orphan devices, collected from consumers the previous program year plus an additional amount expected to be collected in the next program year to be determined by the department based upon retail sales of covered electronic devices in the preceding program year." The law also authorizes NJDEP to update the obligation at the end of the year based on the amount of covered electronics actually collected. It is unclear, however, whether the underlined portion of the preceding definition is an accurate method for estimating the increase in recycling of covered electronics from year to year. It is also unclear how a manufacturer would comply with the NJDEP end-of-year update if that update increases a manufacturer's obligation under the law. These two issues would seem to create uncertainty as to the cost of the obligation imposed by the law.

Thank you for taking our views into consideration.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2973

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED JUNE 15, 2015

Sponsored by:

Senator BOB SMITH

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Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Comment [WA1]: CEA suggests exploring a "CRT-focused" approach in New Jersey in which the target is focused on the true problem CED: cathode ray tube devices. While the suggested edits below are a response to Senator Smith's request for specific amendments we recommend that additional review be made of the following key items: 1) which specific subset of CEDs should have a manufacturer obligation as successors to CRT-technology displays, 2) how the manufacturer obligation based on the sale of new devices be proportionate to the CRT recycling burden across different obligated product types, and 3) the appropriate data sources for calculating market share (e.g., whether NJ-specific sales should be an option when setting the obligation).

SYNOPSIS

Revises electronic waste recycling laws.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.

1 AN ACT concerning electronic waste recycling, amending and
2 supplementing P.L.2007, c.347, and repealing various parts of
3 the statutory law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2007, c.347 (C.13:1E-99.94) is amended to
9 read as follows:

10 1. Sections 1 through 21 of P.L.2007, c.347 (C.13:1E-99.94
11 et seq.) and section [3 of P.L.2008, c.130 (C.13:1E-99.96a)] 10 of
12 P.L. , c. (C.) (pending before the Legislature as this bill) shall
13 be known and may be cited as the "Electronic Waste Management
14 Act."
15 (cf: P.L.2008, c.130, s.21)
16

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

19 2. As used in sections 1 through 21 of P.L.2007,
20 c.347 (C.13:1E-99.94 et seq.) and section [3 of P.L.2008,
21 c.130 (C.13:1E-99.96a)] 10 of P.L. , c.
22 (pending before the Legislature as this bill):

23 "Authorized recycler" means a person who: (1) engages in the
24 manual or mechanical separation of covered electronic devices to
25 recover components and commodities contained therein for the
26 purpose of re-use or recycling; or (2) changes the physical or
27 chemical composition of a covered electronic device by
28 deconstructing, size reduction, crushing, cutting, sawing,
29 compacting, shredding, or refining for the purpose of segregating
30 components, and for the purpose of recovering or recycling those
31 components, and who arranges for the transport of those
32 components to an end user.

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

35 "Business concern" means any corporation, association, firm,
36 partnership, sole proprietorship, trust or other form of commercial
37 organization. "Business concern" shall not include a small business
38 enterprise.

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

41 "Computer" means an electronic, magnetic, optical,
42 electrochemical, or other high-speed data processing device
43 performing logical, arithmetic, or storage function, and may include
44 both a computer central processing unit and a monitor, but the term
45 shall not include an automated typewriter or typesetter, a portable

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

Matter underlined thus is new matter.

1 handheld calculator, a portable digital assistant, or other similar
2 device.

3 "Consumer" means a person who purchases a covered electronic
4 device in a

5 transaction that is a retail sale. "Consumer" shall not include any
6 business concern purchasing covered electronic devices.

7 "Covered electronic device" means a computer monitor,
8 or television sold to a consumer. A "covered electronic
9 device" shall not include any of the following: (1) an electronic
10 device that is a part of a motor vehicle or any component part of a
11 motor vehicle assembled by, or for, a vehicle manufacturer or
12 franchised dealer, including replacement parts for use in a motor
13 vehicle; (2) an electronic device that is functionally or physically a
14 part of a larger piece of equipment designed and intended for use in
15 an industrial, commercial, or medical setting, including diagnostic,
16 monitoring, or control equipment; (3) an electronic device that is
17 contained within a clothes washer, clothes dryer, refrigerator,
18 refrigerator and freezer, microwave oven, conventional oven or
19 range, dishwasher, room air conditioner, dehumidifier, or air
20 purifier; or (4) a telephone of any type.

21
22 "Department" means the Department of Environmental
23 Protection.

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

29 "Manufacturer" means any person: (1) who manufactures or
30 manufactured covered electronic devices under a brand that it owns
31 or owned or is or was licensed to use, other than a license to
32 manufacture covered electronic devices for delivery exclusively to
33 or at the order of the licensor; (2) who sells or sold covered
34 electronic devices manufactured by others under a brand that the
35 seller owns or owned or is or was licensed to use, other than a
36 license to manufacture covered electronic devices for delivery
37 exclusively to or at the order of the licensor; (3) who manufactures
38 or manufactured covered electronic devices without affixing a
39 brand; (4) who manufactures or manufactured covered electronic
40 devices to which the person affixes or affixed a brand that the
41 person neither owns or owned nor is or was licensed to use; (5) for
42 whose account covered electronic devices manufactured outside the
43 United States are or were imported into the United States, provided
44 however, if, at the time such covered electronic devices are or were
45 imported into the United States, another person has registered as the
46 manufacturer of the brand of the covered electronic devices
47

Comment [WA2]: Including 828 and Institutional e-waste into this program is not necessary and misdirects manufacturer resources from the core problem - recycling of post-consumer CE, especially CRT devices.

Deleted: State entity, school district, or local government unit

Comment [WA3]: As the target calculation below is narrowed to CRT devices only, only devices that historically used CRT technology would be designated as CEDs. Generally these would be limited to TVs and computer monitors but additional discussion is necessary to determine whether "gray area" devices with displays similar to CRT devices should carry an obligation.

Deleted: desktop or personal computer,

Deleted: portable computer, printer, fax machine,

Deleted: unless it contains a video display area greater than four inches measured diagonally.

1 pursuant to subsection b. of section 9 of P.L.2007, c.347 (C.13:1E-
 2 99.102), then paragraph (5) of this definition shall not apply; or (6)
 3 a person who assumes the obligations and responsibilities for any
 4 manufacturer pursuant to paragraphs (1) through (5) of this
 5 definition.

6 "Market share" means a [television] manufacturer's national
 7 sales of [televisions] covered electronic devices expressed as a
 8 percentage of the total [weight] sales of all [television]
 9 manufacturers' national sales of covered electronic devices, based
 10 on the best available public data.

11 "Market share in weight" means the total weight of covered
 12 electronic devices for which an individual manufacturer is
 13 responsible to collect, transport, and recycle, as provided pursuant
 14 to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-99.105).

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

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

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

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

36
 39 "Program year" means a full calendar year beginning on or after
 40 January 1, 2011.

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

43 "Recycling" means any process by which materials which would
 44 otherwise become solid waste are collected, separated or processed
 45 and returned to the economic mainstream in the form of raw
 46 materials or products. "Recycling" shall not include energy

Comment [WA4]: See comment on
product scope above.

Deleted: "Portable computer" means a
computer and video display greater
37 than four inches in size that can
be carried as one unit by an
38 individual, including a laptop
computer

1 recovery or energy generation by means of incinerating electronic
2 waste whether apart or in combination with other wastes.

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

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

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

11 ["Return share" means the proportion of covered electronic
12 devices for which an individual manufacturer is responsible to
13 collect, transport, and recycle, as determined by the department
14 pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-
15 99.105).

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

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

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

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

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

46 (cf: P.L.2012, c.79, s.11)

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

3 9. a. (1) By January 30, [2012] 2016, and by each January
4 30 thereafter, the department shall:

5 (a) [have completed an auditable, statistically valid sampling of
6 covered electronic devices collected from consumers in this State
7 during the previous program year. The sampling information
8 collected shall consist of a list of brands of covered electronic
9 devices and the weight of covered electronic devices that are
10 identified for each brand. The department's sampling shall be
11 conducted in accordance with a procedure established by the
12 department and may be conducted by a third-party organization
13 including an authorized recycler, to be determined by the
14 department. The department may, at its discretion, be present at the
15 sampling and may audit the methodology and the results of the
16 third-party organization. The costs associated with the sampling
17 shall be recovered from the fees paid by manufacturers to the
18 department] determine the market share for each manufacturer of
19 covered electronic devices; and

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

23 (2) [If a manufacturer or group of manufacturers conducts its
24 own sampling of covered electronic devices, the manufacturer or
25 group of manufacturers shall submit a report to the department
26 annually by March 1, beginning the year after the program is
27 initiated. The report shall include:

28 (a) the results of an auditable, statistically valid sampling of
29 covered electronic devices collected from consumers in this State
30 by the manufacturer or group of manufacturers during the previous
31 program year. The sampling information reported shall consist of a
32 list of brands of covered electronic devices and the weight of
33 covered electronic devices that are identified for each brand; and

34 (b) the total weight of covered electronic devices, including
35 orphan devices, collected from consumers in this State by the
36 manufacturer or group of manufacturers during the previous
37 program year and documentation verifying collection and recycling
38 of such devices.] (Deleted by amendment, P.L. _____, c. _____)
39 (pending before the Legislature as this bill)

40 b. By February 1, 2010, and each January 1 thereafter, each
41 manufacturer of covered electronic devices offered for sale for
42 delivery in this State shall register with the department and pay a
43 registration fee of \$5,000. Any manufacturer to whom the
44 department provides notification of a [return share and return share
45 in weight] market share pursuant to subsection a. of section 12 of
46 P.L.2007, c.347 (C.13:1E-99.105) and who has not previously filed
47 a registration shall file a registration with the department within 30

1 days of receiving such notification from the department. Each
2 manufacturer's registration and renewal shall include a list of all of
3 the manufacturer's brands of covered electronic devices.

4 [The provisions of this section shall not apply to any
5 manufacturer or retailer of televisions offered for sale for delivery
6 in this State.]

7 c. If less than 100 covered electronic devices are sold by a
8 manufacturer in the previous program year, the department shall not
9 require a manufacturer to pay the registration fee or registration
10 renewal fee, as appropriate, in the subsequent year, pursuant to
11 subsection b. of this section.

12 (cf: P.L.2012, c.79, s.4)

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

16 10. a. [By June 1, 2010, each] Each manufacturer to whom the
17 department provides [, by April 2, 2010, a return] a market share
18 [in weight] that is greater than zero shall submit a plan to the
19 department to collect, transport, and recycle covered electronic
20 devices.

21 b. Each manufacturer to whom the department provides [, by
22 February 15, 2012 or] by February 15 of any year [thereafter], a
23 [return share in weight] market share that is greater than zero shall,
24 by March 15 of that year, comply with the requirements of
25 subsection a. of this section.

26 c. An individual manufacturer submitting a plan pursuant to
27 subsection a. of this section shall collect, transport, and recycle its
28 [return] market share in weight.

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

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

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

36 (2) The processes and methods that will be used to recycle
37 recovered covered electronic devices including a description of the
38 recycling processes that will be used, including the name and
39 location of all authorized recyclers to be directly utilized by the
40 plan;

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

44 (4) The methods that will be used to provide convenient
45 collection of covered electronic devices, especially used televisions,
46 for residents in cities of the first class and cities of the second class
47 having a population of more than 70,000;

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

6 [(5)] (6) The intention of the registrant to fulfill its obligation
7 through operation of its own plan, either individually, by contract
8 with for-profit or not-for-profit corporations, or local government
9 units, or with other manufacturers.

10 The department shall hold confidential any information obtained
11 pursuant to this subsection when shown by a manufacturer that the
12 information, if made public, would divulge competitive business
13 information, methods or processes entitled to protection as trade
14 secrets of the manufacturer.

15 Recovered covered electronic devices shall not be sent to prisons
16 for recycling either directly or through intermediaries and nothing
17 in this section shall be construed to allow for the recycling of
18 covered electronic devices by prisoners. Any person committed to a
19 jail, prison, or other institution for the detention of persons charged
20 with or convicted of an offense shall be disqualified from engaging
21 in the manual or mechanical separation of covered electronic
22 devices to recover components and commodities contained therein
23 for the purpose of re-use or recycling.

24 By January 1, 2011, each manufacturer or group of
25 manufacturers required to submit a plan, pursuant to subsection a.
26 of this section, shall commence its covered electronic device
27 recycling program to implement and finance the collection,
28 transportation, and recycling of covered electronic devices [other
29 than televisions]. The covered electronic device recycling program
30 shall accept all types and all brands of used covered electronic
31 devices, including orphan devices.

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

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

42 h. Manufacturers that collect, transport, and recycle covered
43 electronic devices in excess of their obligation may sell credits to
44 another registrant or apply that excess to the following year's
45 recycling obligation; provided that no more than 25 percent of a
46 manufacturer's obligation for any program year may be met with
47 credits generated in a prior program year. No manufacturer or

1 group of manufacturers, as the case may be, may cease
2 implementing its plan required pursuant to subsection e. of this
3 section and approved by the department, during any program year
4 by using credits.

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

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

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

9 l. [The provisions of this section shall not apply to any
10 manufacturer or retailer of televisions offered for sale for delivery
11 in this State.] (Deleted by amendment, P.L. . . . c.) (pending
12 before the Legislature as this bill)

13 m. A registered manufacturer shall inform the department, in
14 writing, as soon as it becomes aware that it will cease selling
15 covered electronic devices in the State.

16 (cf: P.L.2012, c.79, s.5)

17
18 5. Section 12 of P.L.2007, c.347 (C.13:1E-99.105) is amended
19 to read as follows:

20 12. a. (1) The department shall determine the [return share]
21 market share for each program year for each manufacturer [by
22 dividing the weight of covered electronic devices identified for each
23 manufacturer by the total weight of covered electronic devices
24 identified for all manufacturers. For the first program year, the
25 return share of covered electronic devices identified for each
26 manufacturer shall be based on the best available public return
27 share data from the United States, including data from other states,
28 for covered electronic devices from consumers. For the second and
29 each subsequent program year, the return share of covered
30 electronic devices identified for each manufacturer shall be based
31 on the most recent samplings of covered electronic devices
32 conducted in this State pursuant to subsection a. of section 9 of
33 P.L.2007, c.347 (C.13:1E-99.102)] based upon publicly available
34 data.

35 (2) Beginning January 1, 2017 the department shall determine the
36 [return share in weight]
37 estimated market share in weight for each program year for each
38 manufacturer for whom a [return share] market share is determined
39 pursuant to paragraph (1) of this subsection by multiplying the
40 [return share] market share for each such manufacturer by the total
41 weight in pounds of covered electronic devices containing cathode ray
42 tubes, including orphan

43 devices, collected from consumers the previous program year. [For the
44 first program year, the total weight in pounds of covered electronic
45 devices shall be based on the best available public weight data from
46 the United States, including data from other states, for covered
47

Comment [WA5]: This should give time to DEP to adjust the current program and collect the data necessary to calculate the CRT-based target and work through the details of setting the obligation.
Deleted: 1

Comment [WA6]: The industry-wide target would be the weight of CRTs collected during the previous year.
Comment [WA7]: Since CEDs are used for many years before recycling there is no basis for changing a recycling target because of the previous year's sales, they are independent variables.

Deleted: plus
42 an additional amount expected to be collected in the next program
43 year to be determined by the department based upon retail sales of
44 covered electronic devices in the preceding program year

1 electronic devices from consumers. For the second and each
2 subsequent program year, the total weight in pounds of covered
3 electronic devices shall be based on the total weight of covered
4 electronic devices, including orphan devices, determined by the
5 department pursuant to subsection a. of section 9 of P.L.2007,
6 c.347 (C.13:1E-99.102).]

7 (3) [By April 2, 2011, the] The department shall provide each
8 manufacturer for whom a [return] market share is determined
9 pursuant to paragraph (1) of this subsection with its [return] market
10 share and [its return] an estimate of its market share in weight [for
11 the first program year. Annually thereafter,] by February 15 [,
12 beginning in 2013, the department shall provide each manufacturer
13 for whom a return share is determined pursuant to paragraph (1) of
14 this subsection with its return share and its return share in weight
15 for the second and subsequent program years] annually for the
16 program year. A manufacturer shall be responsible for its market
17 share in weight for the program year with at least 85% of the
fulfillment of a manufacturer's obligation through the collection and
recycling of CEDs with cathode ray tubes.]

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

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

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

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

37 (2) The department shall organize and coordinate public
38 education and outreach.

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

Comment [WA8]: This would ensure that the vast majority of the obligation is fulfilled by CRT recycling (as it is now) while allowing for CRT returns to decline naturally from year to year.

Comment [WA9]: As currently written this would create a new entitlement system for any collector, recycler, scrap dealer and scavenger to be paid by a manufacturer (who are mostly New Jersey-based employers) without any contract, any terms to assure proper collection or any plan whatsoever. CEA strongly opposes.

Deleted: Should the total weight of 18 pounds collected in any program year exceed the estimated 19 collection amount, each manufacturer shall be responsible for its 20 proportionate share so that the manufacturer's obligation shall be its 21 market share in weight based upon the actual weight of covered 22 electronic devices collected in the program year

Deleted: [

Deleted:]

Deleted: sufficient numbers and locations of

Comment [WA10]: The problem with the current system is not a dearth of collection opportunities for consumers. The problem is that some local governments are contracting with recyclers who were not also hired by manufacturer recycling programs. The proposed change would provide DEP virtually unlimited authority to dictate collection locations which CEA opposes. It would also put DEP squarely in the middle of the hyper-competitive electronics recycling market.

Deleted: [

Deleted:]

Deleted: opportunities are

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

5 The annual report shall include the following:

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

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

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

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

17 (5) An evaluation of the existing collection and processing
18 infrastructure] (3) ~~A complete listing of all authorized recyclers~~
19 ~~recycling covered electronic devices pursuant to this section and the~~
20 ~~amount of material by weight recycled annually.~~

~~(4) The department's estimated weight of CEDs containing cathode ray~~
~~tubes for use in establishing manufacturer obligations under Section 12 of P.L.2007,~~
~~c.347 (C.13:1E-99.105).~~

21 g. (Deleted by amendment, P.L.2012, c.79).

22 h. [The provisions of this section shall not apply to any
23 manufacturer or retailer of televisions offered for sale for delivery
24 in this State.] ~~(Deleted by amendment, P.L. , c.) (pending before~~
25 ~~the Legislature as this bill)~~

26 (cf: P.L.2012, c.79, s.6)

27

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

30 17. a. (Deleted by amendment, P.L.2012, c.79)

31 b. (Deleted by amendment, P.L.2012, c.79)

32 c. (Deleted by amendment, P.L.2012, c.79)

33 d. The "Electronic Waste Management Act," P.L.2007, c.347
34 (C.13:1E-99.94 et seq.), and any rule or regulation adopted pursuant
35 thereto, shall be enforced by the department and may be enforced
36 by every certified local health agency, as the case may be.
37 Whenever the commissioner finds that a person has violated any
38 provision of P.L.2007, c.347, or any rule or regulation adopted
39 pursuant thereto, the commissioner may:

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

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

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

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

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

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

- 21 (1) a temporary or permanent injunction;
- 22 (2) recovery of reasonable costs of any investigation or
23 inspection which led to the discovery of the violation, and for the
24 reasonable costs of preparing and bringing a civil action
25 commenced under this subsection;
- 26 (3) recovery of reasonable costs incurred by the State in
27 removing, correcting, or terminating the adverse effects resulting
28 from any violation of the provisions of P.L.2007, c.347, or any rule
29 or regulation adopted pursuant thereto, for which a civil action has
30 been commenced and brought under this subsection;
- 31 (4) recovery of compensatory damages caused by a violation of
32 the provisions of P.L.2007, c.347, or any rule or regulation adopted,
33 for which a civil action has been commenced and brought under this
34 subsection. Assessments under this subsection shall be paid to the
35 State Treasurer, or to the certified local health agency, as the case
36 may be, except that compensatory damages may be paid by specific
37 order of the court to any persons who have been aggrieved by the
38 violation. If a proceeding is instituted by a certified local health
39 agency, notice thereof shall be served upon the commissioner in the
40 same manner as if the commissioner were a named party to the
41 action or proceeding. The department may intervene as a matter of
42 right in any proceeding brought by a certified local health agency.

43 g. (1) Except as authorized otherwise in paragraph (2) of this
44 subsection, the commissioner is authorized to assess a civil
45 administrative penalty of not less than \$500 nor more than \$1,000
46 for each violation, provided that each day during which the

1 violation continues shall constitute an additional, separate and
2 distinct offense.

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

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

36 h. A person who violates any provision of P.L.2007, c.347, or
37 any rule or regulation adopted pursuant thereto, or an administrative
38 order issued pursuant to subsection e. of this section, or a court
39 order issued pursuant to subsection f. of this section, or who fails to
40 pay a civil administrative penalty in full pursuant to subsection g. of
41 this section, or who knowingly makes any false or misleading
42 statement on any application, record, report, or other document
43 required to be submitted to the department, shall be subject, upon
44 order of a court, to a civil penalty not to exceed \$25,000 per day of
45 the violation, and each day during which the violation continues
46 shall constitute an additional, separate, and distinct offense. Any
47 civil penalty imposed pursuant to this subsection may be collected

1 with costs in a summary proceeding pursuant to the "Penalty
2 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),
3 or may be collected in a civil action commenced by a certified local
4 health agency, or the commissioner, as the case may be. In addition
5 to any penalties, costs or interest charges, the Superior Court, or the
6 municipal court as the case may be, may assess against the violator
7 the amount of economic benefit accruing to the violator from the
8 violation.

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

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

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

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

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

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

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

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

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

29 (cf. P.L.2012, c.79, s.9)

30
31 7. Section 18 of P.L.2007, c.347 (C.13:1E-99.111) is amended
32 to read as follows:

33 18. a. (1) The department shall adopt, pursuant to the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.), rules and regulations as are necessary to effectuate the
36 purposes of P.L.2007, c.347 (C.13:1E-99.94 et al.) [and section 3 of
37 P.L.2008, c.130 (C.13:1E-99.96a)] and section 10 of P.L. _____
38 c. (C.) pending before the Legislature as this bill).

39 (2) The department shall adopt rules and regulations, in
40 accordance with the provisions of section 8 of P.L.2007, c.347
41 (C.13:1E-99.101), that prohibit a new covered electronic device
42 from being sold or offered for sale in this State if the covered
43 electronic device is prohibited from being sold or offered for sale in
44 the European Union on and after its date of manufacture, to the
45 extent that Directive 2002/95/EC, adopted by the European
46 Parliament and the Council of the European Union on January 27,
47 2003, and as amended thereafter by the Commission of European

1 Communities, prohibits that sale due to the presence of certain
2 heavy metals.

3 (a) The department shall exclude from the rules and regulations
4 the sale of a new covered electronic device that contains a substance
5 that is used to comply with the consumer, health, or safety
6 requirements that are required by the Underwriters Laboratories or
7 federal or State law.

8 (b) In adopting rules and regulations pursuant to this subsection,
9 the department may not require the manufacture or sale of a new
10 covered electronic device that is different than, or otherwise not
11 prohibited by, the European Union under Directive 2002/95/EC,
12 adopted by the European Parliament and the Council of the
13 European Union on January 27, 2003. The department shall use, in
14 addition to any other information deemed relevant by the
15 department, the published decisions of the Technical Adaptation
16 Committee and European Union member states that interpret the
17 requirements of Directive 2002/95/EC.

18 b. The department may, in accordance with a fee schedule
19 adopted as a rule or regulation pursuant to the provisions of the
20 "Administrative Procedure Act," establish and charge reasonable
21 fees for any of the services to be performed in connection with this
22 act, which shall cover the full costs incurred by the department for
23 the review of plans and for other costs incurred by the department
24 for implementation of this act.

25 (cf: P.L.2008, c.130, s.15)

26

27 8. Section 19 of P.L.2007, c.347 (C.13:1E-99.112) is amended
28 to read as follows:

29 19. The department is authorized to participate in the
30 establishment and implementation of a regional, multi-state
31 organization or compact that is consistent with the requirements of
32 P.L.2007, c.347 (C.13:1E-99.94 et al.) [and section 3 of P.L.2008,
33 c.130 (C.13:1E-99.96a)] and section 10 of P.L. , c. (C.)
34 (pending before the Legislature as this bill).

35 (cf: P.L.2008, c.130, s.16)

36

37 9. Section 20 of P.L.2007, c.347 (C.13:1E-99.113) is amended
38 to read as follows:

39 20. The provisions of P.L.2007, c.347 (C.13:1E-99.94 et al.)
40 [and section 3 of P.L.2008, c.130 (C.13:1E-99.96a)] and section 10
41 of P.L. , c. (C.) (pending before the Legislature as this bill) are
42 intended to govern all aspects of the collection and recycling of
43 covered electronic devices as those terms are defined in section 2 of
44 P.L.2007, c.347 (C.13:1E-99.95). Upon a determination by the
45 Department of Environmental Protection of an equivalent national
46 program to collect or recycle covered electronic devices, the
47 Commissioner of Environmental Protection shall notify, in writing,

1 the Governor, the President of the Senate and the Speaker of the
2 General Assembly, and the members of the Senate Environment
3 Committee and the Assembly Environment and Solid Waste
4 Committee, or their successors, of this determination.

5 The provisions of this act shall expire 60 days after the date of
6 the notification required pursuant to this section or within the
7 timeframe provided by federal law, as appropriate.

8 The department shall provide notice in the New Jersey Register
9 of any determination made pursuant to this section, and shall take
10 any administrative action necessary in order to implement the
11 national program.

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

13 10. (New section) a. |

14 By February 1, 2016, and annually thereafter, every
15 authorized recycler identified in each manufacturer's plan submitted
16 pursuant to section 10 of P.L.2007, c.347 (C.13:1E-99.103) shall
17 identify the total weight of covered electronic devices delivered in
18 the prior calendar year for recycling at the authorized recycler.

19 11. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) and section 3
20 of P.L.2008, c.130 (C.13:1E-99.96a) are repealed.

21 12. This act shall take effect immediately.

Also need to add a provision that local governments whose CRT devices are recycled
by a manufacturer program must also make other CE devices collected at the local
government locations available to the manufacturer program at no cost.

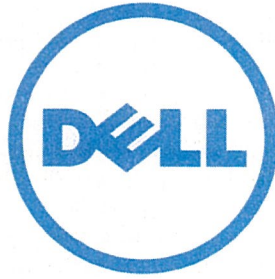
Comment [AS11]: Requiring reporting of collection weights by collection facility is burdensome, costly, and unnecessary. Many collection facilities do not have scales to weigh volumes collected, so adding scales at each collection facility would greatly increase costs. In addition, collection volumes are often transported from collection sites to regional recycling facilities to be weighed.

Deleted: By February 1, 2016, and annually]
15. thereafter, the operator of every collection location identified in]
16. each manufacturer's plan submitted pursuant to section 10 of]
17. P.L.2007, c.347 (C.13:1E-99.103) shall identify the total weight of]
18. covered electronic devices

Deleted: collected in the prior calendar year at]
19. each collection location.

Deleted: b.

Comment [WA12]: We were unsure where to put this provision in the current bill but similar to the provision in the South Carolina law for manufacturers to carry the significant burden of financing CRT recycling (the "bad stuff") it is critical that potential revenue from non-CRT CEDs be available to manufacturer recycling programs to help offset the cost of CRT recycling.



REMARKS OF
FRAN VALLUZZO, DELL
ON SENATE COMMITTEE SUBSITUTE FOR
S.2973, ELECTRONICS RECYCLING
BEFORE THE
NEW JERSEY SENATE COMMITTEE ON
ENVIRONMENT AND ENERGY
SENATOR BOB SMITH, CHAIRMAN

July 20, 2015

Trenton, NJ

Mr. Chairman, Members of the Committee, my name is Fran Valluzzo and I am here today representing Dell, a global provider of information technology hardware, software, services and solutions. Dell has over a decade of experience as a global leader in providing recycling and reuse services to our customers. We offer these services free to our customers, both directly and through partners, networks and public collection points. Dell has set a goal to recycle 2 billion lbs of electronic waste by 2020. We are well on our way to reaching that goal, having collected over 1.4 billion lbs. since we launched our recycling program.

Dell is not only a leader in recycling, we are also a leader in design for recyclability. Dell is the first company to establish a closed-loop recycled plastics supply chain, under which a portion of the plastics recycled from old products are incorporated into our new products.

Dell strongly supports the principles of Individual Producer Responsibility under which all producers take responsibility for proper end of life management of their own electronic products. Dell has had a robust recycling program with our partner, Goodwill Industries, here in NJ since 2007, a year before the recycling law sponsored by Chairman Smith was passed. There is no question that we are committed to this program and are pleased to provide our comments on changes to the law represented by Senate Committee Substitute to S. 2973.

With regard to Senate Committee Substitute to S. 2973, Dell believes that it is an improvement over the original S. 2973, in the following ways:

- The change from return share to market share in determining collection obligation more equitably assigns responsibility to manufacturers based on the weight of products that they have sold.

- The removal of curbside collection eliminates what amounts to a tax on manufacturers for premium collection services for consumers. Recycling is a partnership between manufacturers, government, recyclers and **consumers**. Consumers should bear a portion of the responsibility by taking advantage of free and convenient collection facilities provided by manufacturers.
- The addition of language encouraging, but not requiring, manufacturers to develop recycling plans with for-profits, not-for-profits and local governments ensures that plans are based on mutually agreed upon contract terms, not government mandates or market manipulation.

There are other issues that Dell continues to have concerns with in the Senate Committee Substitute. Many of these are addressed in the amendments developed by the Consumer Electronics Association (CEA). As a member of CEA, Dell generally supports the CEA amendments to the Senate Committee Substitute, and would like to comment directly on a number of them:

1. Change to CRT based solution.

It has become apparent that cathode ray tubes, or CRT's, in older model televisions and computer monitors, have become the biggest problem of recycling programs for a number of reasons. They are expensive to recycle, and contain sensitive materials with little residual value. This results in a lack of incentive for recyclers to collect and process CRT's since there is no economic benefit to do so. Computers and other IT products generally have a positive residual value that provides an economic incentive to collect and recycle. This has caused market distortions resulting in hoarding and

inflated pricing of IT products, and dumping or refusal to collect CRT equipment.

The bottom line is that the recycling program needs to focus on CRT's with negative value rather than IT products with positive residual value. The change proposed by CEA to focus a portion of manufacturer obligation on recycling CRT products provides a workable solution to cleaning up the remaining backlog of CRT waste. Dell, which currently collects both IT products and CRT's in the form of computer monitors, will continue to operate its programs to collect both, but its obligation will be met in part by recycling CRT monitors. With the overall volume and weight of CRT's declining, this approach will provide an effective solution to recycling the remaining CRT volumes that are in the waste stream.

Dell supports the CEA approach of having manufacturers meet a percentage of their obligation by recycling CRTs.

2. Deleting DEP Discretion to Increase Estimated Market Share Weight

CEA proposes to delete from the Senate Committee Substitute the language permitting DEP to increase the estimated market share weight an unspecified amount based on prior year "retail sales." Dell supports this deletion. It is unclear why this provision is needed. Sec. 9 a.1.(b) of P.L 2007, c347 already requires DEP to "determine the total weight of covered electronic devices, including orphan devices" **collected** in the previous program year. **That number** becomes the basis for allocating each manufacturer's collection obligation by market share. Moreover, DEP should not have discretion of this type that can materially impact the costs of manufacturers' programs without justification.

Dell supports deletion of DEP discretion to add an additional amount to the estimated market share-based collection obligation for manufacturers.

3. Deleting Provision to Add to the Estimated Collection Amount

CEA proposes to delete the provision which would increase the manufacturers' estimated collection amount if the total for the year exceeded the total estimated amount. Dell supports this deletion for two reasons: 1) this provision would create a new entitlement system for recyclers, collectors, and others to force manufacturers to pay often inflated rates for weight, and 2) it could penalize manufacturers who reached their target collection weight based on the estimated target, but who may fall short based on a revised target set at the end of the program year.

Dell supports deletion of the provision to add to the Estimated Collection Amount at the end of the program year.

4. Deleting DEP Discretion to Determine "Sufficient" Collection Opportunities

CEA proposes to delete the provision allowing DEP to determine the number of collection opportunities that manufacturers must provide, reverting back to the original law provision of "at least one electronics collection opportunity" in each county. Dell believes that DEP should not have the unlimited discretionary authority to force manufacturers to open additional collection facilities. Consumers should be willing to share the responsibility by dropping their electronics off at existing locations, which are designed to provide adequate coverage in a cost effective manner. Further, this deleted provision would encourage the establishment of collection centers by local governments using recyclers and collectors that do not have contracts with manufacturers to receive the volume of electronics collected,

resulting in market manipulation and inflated costs for purchased weight volumes.

Dell supports the deletion of the provision giving DEP the unlimited discretionary authority to change the number and location of collection facilities in the state.

5. Deleting requirement to report weight by collection site

CEA proposes to delete the provision requiring collection facilities to report total weight by facility. Very few collection facilities have the scales to do this, and in most cases, collected materials are transferred to central locations for weighing before being transported for recycling. This provision would impose unnecessary costs on manufacturers and create a paperwork burden that would serve no purpose.

Dell supports the deletion of the requirement to report weight by collection site as unnecessary and burdensome.

Dell would also like to comment on two other issues in the Senate Committee Substitute:

- **Allowing use of actual sales data to determine market share.** We are offering an amendment (attached to this statement) to provide manufacturers with the option of using **actual sales data** to determine the weight of products sold in prior years. The current law provides only for using **national sales data** as the basis for determining state sales volumes. Dell believes that manufacturers should be allowed to provide actual state retail sales data, a more accurate method of determining market share. This practice is common in other states with recycling laws. Of the 14 states that use sales data to determine market share, four states (IL, MD, MI and WI) require state sales data, while

another six states (CA, IN, MN, NY, OR and WA) give manufacturers the option of using national or state sales data. Although this amendment was not submitted in advance, we consider it to be a technical, clarifying amendment and ask that it be considered during the deliberations on this bill.

- **Requiring Local Governments to make other CED's available to manufacturers who collect CRT products.** With the change to basing a percentage of the collection obligation on CRT weight only, the law should be changed to ensure that local governments whose CRT's are collected and recycled by manufacturers must also make other CED's collected at local government locations available to the manufacturer at no cost. This provides an incentive for manufacturers to accept negative value CRT's for recycling while continuing to encourage recycling of positive value IT products like computers. CEA has proposed this change in their amendments to the Senate Committee Substitute. Dell supports it and asks that it be included in the bill.

In conclusion, Dell appreciates the opportunity to provide our comments on this legislation. We support your continuing efforts, Mr. Chairman, to ensure that NJ citizens can continue to responsibly recycle their used electronics.

I would be happy to answer any questions you may have.

Amendment to Senate Committee Substitute for S. 2973

Changes the Determination of "Market Share"

Page 4, lines 6-10 are amended as follows:

"Market share" means a [television] manufacturer's [national] sales of [televisions] covered electronic devices in the state, expressed as either 1) a percentage of the total [weight] sales of all [television] manufacturers' national sales of covered electronic devices, or 2) the manufacturer's actual sales of covered electronic devices sold at retail in the state, based on the best available public data.

Purpose of Amendment: This amendment provides manufacturers the option of determining "market share" by using actual state sales data as an alternative to calculating market share as a percentage of national sales data. Use of actual state sales data provides a more accurate reflection of the manufacturer's true market share in the state.

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice!

ANN M. CANNON
NJAC President
Mercer County Freeholder

JOHN G. DONNADIO
Executive Director

MEMORANDUM

TO: Senate Environment and Energy Committee

DATE: July 20, 2015

RE: SENATE, NO. 2973 (*Smith D-17/Bateman R-16*)

On June 15th, The New Jersey Association of Counties (NJAC) testified before the Committee in support of **SENATE, NO. 2973** (*Smith D-17/Bateman R-16*), which would make certain changes to the State's electronic waste recycling laws.

As you know, this legislation would require each manufacturer to provide for the collection, transportation, and recycling of its market share in weight of all covered electronics collected in a program year. This requirement would replace the current law's mandate that each manufacturer provide for the collection, transportation, and recycling of its "return share in weight" as estimated by the Department of Environmental Protection (DEP).

We believe that such legislation is necessary to assure that manufacturers provide a free and convenient E-Waste recycling program for all of the covered electronic devices that are collected; and, eliminates the need for counties to ultimately decide whether to absorb E-Waste recycling costs or eliminate the programs entirely.

NJAC remains supportive of this important and timely initiative; and, commends the sponsors for their efforts to improve the State's existing E-Waste recycling program. Additionally, should the Committee deem additional changes necessary, NJAC would support the amendments suggested by the Association of New Jersey Household Hazardous Waste Coordinators in their July 1, 2015 letter to the Committee. These amendments include addressing broken cathode ray tubes; and, amending N.J.S.A. 13:1E-99.106 to remove language authorizing recyclers to charge fees to schools or local governments for the collection, transportation, or recycling of covered electronic devices.

Thank you in advance for your time and consideration, and please do not hesitate to contact us at (609) 394-3467 with any questions or concerns.

**Amendments to the "Electronic Waste Management Act
(N.J.S.A. 13:1E-99.94 et seq.)**

99.95. Definitions.

Change the following definitions as follows:

**Gives the NJDEP the power to approve Recyclers-based on specific qualifications.*

"Authorized recycler" change to "Authorized Electronic Recycler" (AER). Add to the definition besides (1) and (2), and (3) The Authorized Electronic Recycler must be approved by the Department to operate in the State of New Jersey pursuant to N.J.S.A. 13:1E-99.97.

**Expands definition of a CRT to cover tubes-broken and unbroken.*

"Cathode ray tube" or "CRT" means a vacuum tube or picture tube used to convert an electronic signal into a visual image and refers to individual tubes that are separated from their host television, both broken and unbroken, with all of the electronic circuitry and housing.

**Defines "Consumer" more in depth/ and expands it.*

"Consumer" means an individual, business with less than 50 full time employees, not-for-profit with less than 75 full time employees, the state government and its agencies, a municipal or government entity, public schools, school district and its offices, private or parochial school or board of cooperative educational services located in New Jersey who has purchased a covered electronic device (CED) or other entities that the NJDEP approves. Any entity involved in a wholesale transaction between a distributor and retailer is not a consumer.

**Covers the "unlimited" addition to the amendment and the orphan share*

"Obligation" means the total weight that is collected by an AER which qualifies as a CED, that a specific manufacturer currently manufacturers or manufactured under its brand that it licenses, owns, or owned for sale in the state. The obligation represents all of the CED weight that is collected by the recycler that is associated with the manufacturer and that manufacturers' applicable orphan share. The manufacturer will be obligated to provide payment to the AER for the quantity of CEDs which are collected and processed by that AER. This will also include a manufacturers orphan share as defined in this Act.

"Orphan device" keep existing definition.

**This clears up the method that "orphan share" is calculated*

"Orphan share" means the allocated percentage, based on market share data, which is provided annually as set forth in this act, for orphan devices that will be applied to a manufacturer for inclusion in their "obligation". A manufacturers pro rata share of orphan devices shall be calculated as a manufacturers market share for the preceding calendar year multiplied by the total, in pounds, of orphan devices returned in the collection program by CED category as set forth in the Act. The orphan share will be calculated for all CED categories as defined in the Act.

**This sets forth what is included in the "recycling fee" being charged by an AER.*

"Recycling Fee": means the fee, expressed as a price per pound, that an AER will charge a manufacturer that includes any or all of the following: storage containers, loading and unloading CEDs, packaging and labeling, transporting CEDs, labor for collection events and plant operations for the sorting, weighing, data tracking which includes all billing and recordkeeping, general and administrative costs and costs incurred for the proper recycling of a manufacturer CEDs based on that manufacturers market share as provided by the NJDEP. This is to include the acceptable method of disposal of leaded CRT leaded glass by the NJDEP and other hazardous material generated during the recycling process. The fee will include all of the costs incurred as described in this definition. This shall include a manufacturers "orphan share" percentage as defined in this Act.

**This defines an alternative for recycling that gives a manufacturer-the ability to direct product to their chosen recycler.*

"Separation Fee": means the fee that an AER will charge a manufacturer that includes any or all of the following: storage container, loading and unloading CEDs, packaging and labeling, transporting CEDs, labor for collection events and plant operations, sorting, weighing, data tracking which includes all billing and recordkeeping, general and administrative costs and any other reasonable costs incurred to provide the separation of a manufacturer CEDs which are being set aside, picked up and shipped to another AER, which the manufacturer would prefer to use to recycle their electronics.

**Expands title of section to cover additional areas.*

99.96 Registration of television manufacturers; fees; reporting requirements; participation in statewide recycling program.

Title change to read: "Registration of each covered electronic device (CED) manufacturer; fees; reporting requirements; support of statewide collection infrastructure.

**Cleans up first area regarding manufacturers obligation.*

Amend subsection a:

"By January 1 of each year, each registered covered electronic device (CED) manufacturer who offers products for sale for delivery in the State shall register, or renew its registration, with the NJDEP and pay a registration/renewal fee of \$5000. Each covered electronic device (CED)

manufacturer registration and renewal shall include a list of all of the brands under which its covered electronic devices (CEDs) are sold. All fees collected pursuant to this subsection shall be allocated to the department to be used in the administration of the "Electronic Waste Management Act", P.L. 2007, c.347 (C.13:1E-99.94 et seq.).

****Specifies timing of registration payment.***

Amend subsection b:

"Each registered covered electronic device (CED) manufacturer shall submit an annual renewal of its registration to the department and pay to the department a registration renewal fee of \$5000 by January 1 of each year. Each registered CED manufacturers renewal shall include the listing of all of the brands under which its CEDs are sold. All fees collected pursuant to this subsection shall be allocated to the department to be used in the administration of P.L. 2007, c. 347.

****Remove current subsection c. and replace with the following:***

"The registered manufacturer is obligated to participate in the statewide recycling program as defined in this Act and must fulfill its obligations to: finance the collection, transportation, and recycling of used covered electronic devices as defined in this Act. The used covered electronic device recycling program shall accept all types and all brands of used covered electronic devices, including orphan devices from "consumers" as defined in this amendment, including but not limited to CRT tubes and CRT leaded glass."

****Subsection (e) is deleted-this is the elimination of a manufacturer submitting a plan to the state.***

****Add in the following modification-***

"Recovered CEDs shall not be sent to prisons for recycling, either directly or through intermediaries. Any person committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense shall be disqualified from being an authorized electronic recycler (AER) as defined in this Act.

****This deletes the last portion related to a manufacturers plan.***

Subsection (f) deleted.

****This clarifies what happens to a manufacturer if they fail to comply with the law.***

Amend subsection g:

"If a registered covered electronic device (CED) manufacturer fails to: (1) register with the Department; (2) pay all Department fees for registration/renewal and compliance; or (3) fails to participate in the statewide recycling program as defined in the Act, the registered electronic device manufacture shall be prohibited from selling or offering for sale electronic devices in this State.

**Addition of this area sets forth the criteria for an AER. It also gives guidance for handling out of state recyclers.*

99.97 This has been deleted by former Amendment. We suggest that a new section be added here that addresses the procedures for Department to approve "authorized electronic recycler."

13:1E-99.97 Approval by Department of authorized electronic recyclers (AER).

- a. The Department shall approve in-state and out-of-state recyclers of used covered electronic devices for purposes of implementation of this Act. The Department shall prepare an application form for the purpose of approving said recyclers.
- b. In-state facilities. Must be approved as a Class D Recycling Center and will not be required to fill out any applications or pay additional fees to become an AER. The Class D NJDEP approved facility must have a minimum of either R2-2013 (Responsible Recycling) or E-Stewards certifications, be ISO14001-2004 and OHSAS 18001-2007 certified, and provide the current documentation proving these designations by a nationally recognized certifying company, they must be current on all certifications and insurances needed to operate their facility, and must pay and be current with the fee's set by the NJDEP for this type of facility. Any facility in New Jersey that is approved as a Class D Recycling Center and has paid all of its Class D NJDEP registration and compliance fees shall automatically be approved as an authorized electronic recycler (AER). The required level of compliance as described in this subsection is a minimum and up to, but not to be limited to future regulations and certifications that the department sees fit for an AER. Any such change in requirements will be modified through a regulatory change.
- c. Out-of-State facilities. All out-of-state electronic recyclers seeking to be approved as an Authorized Electronic Recycler (AER) must submit to the Department all of the requirements as set forth by the Department and complete an application provided by the NJDEP. All information must be submitted to the Department and approved prior to the Authorized Electronic Recycler collecting, receiving, sorting or processing any material under this law. At a minimum, out-of-state- Authorized Electronic Recyclers must be R2-2013 and/or E-Steward Certified, be ISO14001-2004 and OHSAS 18001-2007 certified, and provide the current documentation proving these designations by a nationally recognized certifying company, they must be current on all certifications and insurances needed to operate their facility, and must provide to the Department documentation that indicates approval for the AER's activities in their host state. In addition, out-of-state AER's must pay registration and compliance fees that are imposed on all AER's by the Department
- d. The Department shall require all authorized electronic recyclers to pay the current/applicable fees which are required to be a NJDEP Class D permitted facility. This fee will apply to both in-state AER's and out-of-state AER's. The fee structure will

be the same for both types of AER's. This fee will include the quarterly on-site inspections by the NJDEP for in-state AER's and a quarterly review fee which will be applied to the out-of-state AER's for the NJDEP to administer a desktop audit of processes, procedures, insurances, and certifications. The NJDEP has the right to modify this fee as it sees fit for the review of out-of-state AER's when necessary to satisfy the requirements set forth in this ACT.

**This area sets forth the mechanism which the AER will operate and charge manufacturers.*

***New Section**

99.98 Authorized Electronic Recycler (AER) responsibilities and fee structure

On the date of enactment, each AER shall service any County, municipality or regional authority to provide for the collection and transportation of covered electronic devices (CED's). This will also encompass any collection efforts that will be implemented for all "consumers" as defined in this amendment. On receipt of the material under this program at their location, the AER will sort it by the CED categories as set forth in this act. Each category will be summarized by collection or drop-off and totaled on a report for the proper billing for the services being rendered. The AER will recycle, or use a suitable downstream vendor to do so as set forth in their applicable certifications, all collected CED's in accordance with the minimum standards established in this act. The AER will maintain a written log of all of the material received or collected to include: location where the material has been generated or collected, contact database for that location, the breakdown of CED's that have been received by unit count and weight, date of the collection or drop-off, persons collecting or dropping the material off, sub-contractor name utilized in collection efforts if applicable. In the case of a sub-contractor, all of the above information is required to verify that the point of origination qualifies in accordance with the act. The AER will provide the NJDEP a summary report on a monthly basis to include all of the totals for each CED category. The AER will also provide an attachment which will show the above mentioned written log with details for the NJDEP to review and audit compliance. The NJDEP has the right to do onsite audits of the AER's operation, program, and collection efforts. The AER will also have on file with the NJDEP a process flow diagram which specifies the flow of material to their locations, how it is handled/recycled, and then the subsequent downstream vendors. This information will also be available for viewing by the manufacturers who this act is covering. The AER must provide to the NJDEP any changes to their process flow on a quarterly basis. If no changes exist, a notification by the AER must be provided to the NJDEP. It is the AERs responsibility to pay all fees which are applicable to the NJDEP, as determined by the NJDEP, or the NJDEP may suspend that AER from operating in the state program. Prior to operating, a prospective out-of-state AER will need to complete the process flow diagram, submit all applicable paperwork and fees to the NJDEP and await approval.

The AER will invoice the manufacturers on a monthly basis for their allocated market share for the applicable CED category for which they are responsible. The fees will be billed directly to the manufacturer by the AER. The fee will encompass the reasonable costs of transporting and recycling that the manufacturer is responsible pursuant to this act as defined under "recycling fee". The costs will be calculated on a per pound basis and then allocated to the individual

manufacturers based on market share, as defined in this Act, for each category and then invoiced directly to the manufacturer contacts. This will also included the "orphan share" which a manufacturer is responsible for as defined in this Act. If any manufacturer becomes in arrears for more than 90 days, a report should be filed with the NJDEP. A listing will be provided by the NJDEP of all manufacturers/OEM's and their billing contact information to each AER working under this ACT.

This section shall not prohibit an AER from entering into a cooperative agreement with a CED manufacturer to return such manufacturers CED's for subsequent recycling by the manufacturer provided that the manufacturer is utilizing the services of either an in-state or out-of-state approved AER. The manufacturer must reimburse the AER whom originally collected the CEDs for expenses incurred in the collection, sorting, data tracking and packaging of the CEDs. For this Act, this will be known as the "separation fee" as defined in the definition area.

At no time during this Act will the fees collected by an AER be used as a rebate or incentive to a "consumer", as defined in the Act. The fees are solely for the purpose of supporting the recycling or separation efforts of the AER.

**This area sets forth the mechanism for which the manufacturers will pay the AER's.*

99.99 Manufacturers of covered electronic devices (CED) Responsibilities: financial requirements and structure.

On the date of enactment, each manufacturer will pay the costs incurred by an AER as defined under "recycling fee", "separation fee" and "orphan share" in this Act. The manufacturers are required to pay the fees in accordance with the guidelines set forth by this Act. If a manufacturer is delinquent in paying the AER within a 90 day timeframe, the AER will submit a report to the NJDEP. The NJDEP will then investigate the reason for delay in payment and work with both parties to get the discrepancy resolved. The NJDEP reserves the right to suspend the registration of any manufacturer who is in arrears with an AER for more than 90 days. A manufacturer that has had their registration suspended in accordance with this subsection shall demonstrate to the NJDEP that all past due balances have been paid. The NJDEP will verify with the AER that the payment has been made and will proceed with the manufacturers' registration reinstatement.

**This area modifies the old section and simplifies the structure for registration fees.*

99.102 Department duty to sample and audit disposed items; registration of manufacturers of covered electronic devices; registration fees.

Change title of 99.102 to: Registration of manufacturers of covered electronic devices; registration fees.

Delete subsection a.

Modify subsection b. to read as follows:-only include this text.

By January 1st of every year, each manufacturer of covered electronic devices offered for sale in the State shall register with the department and pay a registration fee of \$5000. Each manufacturers registration and renewal will include a list of all of the manufacturers brands of covered electronic devices currently for sale and for which it is responsible.

July 10, 2015

The Honorable Bob Smith
Chairman, Senate Environment and Energy Committee
New Jersey Senate
PO BOX 099
Trenton, NJ 08625-0099

Re: CompTIA's Comments on S. 2973 (Amendments to the Electronic Waste Management Act)

Dear Chairman Smith:

On behalf of the Computing Technology Industry Association ("CompTIA"), I write to provide the perspective of over 2000 information technology companies we represent on S. 2973, your legislation to revise the Electronic Waste Management Act ("Act").

CompTIA is the voice of the world's information technology industry. Our membership features technology companies of all sizes from the public and commercial sectors of the economy, including consumer electronics companies; IT hardware companies; systems integrators; Internet and e-commerce companies; information technology government contractors; and information technology consulting and sourcing companies. Our members are committed to reducing the environmental impacts of their products throughout their lifecycle: from design, to use, to end-of-life.

We have concerns with S. 2973 in its current form. CompTIA's members have a unique perspective of electronic waste management programs throughout the country, and respectfully submit these comments to encourage further amendments to the bill that ensure the responsible recycling of used electronic products in a manner that helps protect the environment and makes the most efficient and equitable use of public and private resources.

General Concerns with S. 2973

While the IT industry has helped achieve significant collection of New Jersey residents' used electronic products in ways that are convenient for their customers, we have great concerns with electronic waste policies that would unfairly increase the financial responsibility for IT product manufacturers. We are concerned that S. 2973 in its current form would do just that. The bill would effectively increase recovery targets for IT manufacturers by removing the current separation of setting targets between TV and IT categories. Because TVs constitute the largest portion of the collection stream, this is an increase in

responsibility to the IT sector. This is further exacerbated by the bill's proposal to increase the scope of IT products classified as covered electronic devices – specifically, printers and fax machines – while continuing to exempt TV peripherals.

Furthermore, the volume of costly cathode ray tube (“CRT”) monitor collections has been declining for several years, while the volume of costly CRT TV collections has been increasing. For example, CRT device collection data from states such as Washington and Wisconsin show that CRT computer monitor collections have declined steadily for years to around 0.5 lbs. per capita, while the volume of CRT TV collections has increased steadily for years to around 5 lbs. per capita. Therefore, we do not believe it fair or beneficial for New Jersey to target the IT industry for increases in those products' recycling requirements at this time.

Suggested Amendments

Unfair burden placed on IT product manufacturers. As stated, we are concerned that increasing IT recycling targets unfairly places greater costs on the IT sector. However, it is unclear whether S. 2973 proposes to continue to set targets for the TV and IT industries separately, as is the practice under current law. For example, Section 3 of the Act¹ deals with TV manufacturer take-back requirements. Section 12² deals with similar topics for “covered electronic devices” (“CEDs”), and CEDs are defined to *include* televisions. “Market share in weight” is defined as the volume that “an individual manufacturer is responsible to collect . . . as provided pursuant to . . . section 12” (only), but then “obligation” is defined as the “market share in weight, identified for an individual manufacturer, as provided pursuant to section 12 . . . *or* [emphasis added] the market share in weight identified for an individual television manufacturer, as determined pursuant to . . . section 3.”

If New Jersey moves forward with this legislation to amend the Act, it is critical to clarify in the bill that TV targets and targets for collecting other CEDs must be calculated separately in order to avoid shifting the burden for TVs to the IT industry. This is especially critical because S. 2973 in its current form proposes to add only IT devices as CEDs (while continuing to exempt all TV peripherals) – calculating targets as one group would therefore assign the IT industry disproportionately large market share of all material (dominated by old TVs) needing processing.

We therefore submit the below suggested language to provide clarity to the manufacturers of TVs and other CEDs:

¹ N.J.S.A. 13:1E-99.96

² N.J.S.A. 13:1E-99.105

- **SPECIFIC, MINIMUM PROPOSAL if the intent of the bill is to calculate both TV and IT targets under Section 12:**

To retain the practice under current law to establish collection goals in separate categories for (a) TVs, and (b) IT equipment, it is proposed that Section 12 be edited as follows (red brackets are for deletion, red underline is for addition; black brackets / underline are in the current version of S. 2973).

Section 12 a. (1) "The department shall determine the [return share] market share for each program year for each manufacturer [by dividing the weight of covered electronic devices . . . based on the most recent samplings of covered electronic devices conducted in this State pursuant to subsection a. of section 9 of P.L.1 2007, c.347 (C.13:1E-99.102)] based upon publicly available data. The department shall separately determine market share for (a) televisions to be assigned to television manufacturers, and (b) all other non-television covered electronic devices to be assigned to manufacturers of such covered devices.

(2) The department shall determine the [return share in weight] estimated market share in weight for each program year for (a) each television manufacturer for whom a [return share] market share is determined pursuant to paragraph (1)(a) of this subsection by multiplying the [return share] market share for each such television manufacturer by the total weight in pounds of covered [electronic devices] televisions, including orphan [devices] televisions, collected from consumers the previous program year plus an additional amount expected to be collected in the next program year to be determined by the department based upon retail sales of covered [electronic devices] televisions in the preceding program year, and (b) each manufacturer of other, non-television covered electronic devices for whom a market share is determined pursuant to paragraph (1)(b) of this subsection by multiplying the applicable market share for each covered electronic device manufacturer by the total weight in pounds of non-television covered electronic devices, including related orphan devices, collected from consumers during the previous program year, plus or minus any additional or reduced amount expected to require manufacturer financing to collect and recycle in the subsequent program year as determined by the department based upon relevant publicly-disclosed data. [For the first program year, the total weight in pounds of covered electronic devices shall be based on the best available public weight data from the United States, including data from other states, for covered electronic devices from consumers. For the second and each subsequent program year, the total weight in pounds of covered electronic devices shall be based on the total weight of covered electronic devices,

including orphan devices, determined by the department pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-99.102)].

- **SPECIFIC, MINIMUM PROPOSAL if the intent of the bill is to calculate TV targets under Section 3, and other CED targets (besides TVs) under Section 12:**

Section 12 a. (1) "The department shall determine the [return share] market share for each program year for each manufacturer [by dividing the weight of covered electronic devices . . . based on the most recent samplings of covered electronic devices conducted in this State pursuant to subsection a. of section 9 of P.L.1 2007, c.347 (C.13:1E-99.102)] based upon publicly available data. For purposes of this section, the term "covered electronic device" shall not include televisions. The department shall separately determine market share and obligations for television manufacturers pursuant to section 3, and shall not include any television collection weight or other television data when determining obligations for manufacturers of other, non-television covered electronic devices.

(2) The department shall determine the [return share in weight] estimated market share in weight for each program year for each manufacturer for whom a [return share] market share is determined pursuant to paragraph (1) of this subsection by multiplying the [return share] market share for each such manufacturer by the total weight in pounds of covered electronic devices, including orphan devices, collected from consumers the previous program year plus or minus any additional or reduced amount expected to require manufacturer financing to [be] collect[ed] in the next program year to be determined by the department based upon [retail sales of covered electronic devices in the preceding program year] relevant publicly-disclosed data. [For the first program year, the total weight in pounds of covered electronic devices shall be based on the best available public weight data from the United States, including data from other states, for covered electronic devices from consumers. For the second and each subsequent program year, the total weight in pounds of covered electronic devices shall be based on the total weight of covered electronic devices, including orphan devices, determined by the department pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-99.102)].

Provide a definition for which printers are considered to be CEDs.

Additionally, CompTIA and its members are concerned with the current version of S. 2973 which amends Section 2 of the Act to expand the list of CEDs to include printers and fax machines. While we recognize that states may seek to expand product scope under their e-waste programs ostensibly to address a problem with the collection of end of life devices, it is unclear why New Jersey is choosing

at this time to focus on printers and fax machines. If the primary cost burden for take-back programs is a growing stream of unwanted CRT televisions – which appears to be the case in most locations where data is available – then the addition of IT products to the list of CEDs while continuing to exempt TV-related devices is unjustified and will further lead to the IT industry subsidizing the recycling of CRT TVs for the TV industry.

There is also a concern that the currently undefined “printers and fax machines” will cover certain equipment where an incentive to properly manage obsolete electronics exists. Electronics recycling laws should focus on devices generated by residents/households, which includes home-based businesses. Government and business entities (“B2B” entities), including institutional, commercial and industrial entities, have existing legal obligations and/or other incentives to properly manage their obsolete electronics. Existing obligations and inducements include asset depreciation for tax purposes, federal or state Resource Conservation and Recovery Act requirements, lease agreements, data security/privacy considerations, and asset management contracts with distributors, leasing agents and manufacturers.

We therefore urge that the bill be further amended to define what type of printers are CEDs.

- **If S. 2973 is going to move forward with including printers as CEDs, then we urge the Legislature to amend the bill to provide a narrow definition including only household desktop printers.** The B2B waste stream is somewhat unique in that, due to existing collection systems, infrastructure, and collection provisions in B2B sales contracts, these products are being collected and recycled at high rates. We recommend including a definition of “printers” such as those found in other states’ e-waste laws like Illinois³, Michigan⁴ or Vermont⁵ to specifically tailor any requirement for recycling printers to focus on those used by consumers in their residences.

Maintain the existing return share approach for establishing IT manufacturers’ collection obligations. We believe that the return share model under the current law is a fair and more accurate approach for determining IT manufacturers’ recycling responsibility. Utilization of market share is problematic and can result in placing burdensome recycling obligations on manufacturers based on the arbitrary determination of what a manufacturer’s national sales are for a given year, even if their products are not being recovered in New Jersey at a rate commensurate with sales. This may lead to a scenario in which a newer

³ 415 ILCS 150/10

⁴ Mich. Stat. Ann. § 324.17301

⁵ 10 V.S.A. § 7551

CompTIA

CompTIA's Comments on S. 2973 (Amendments to the Electronic Waste Management Act)

July 10, 2015

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company is forced to substantially subsidize the cost to recover CEDs it does not produce to comply with the Act. On the other hand, return share – based on the rate that a brand is being collected for recycling – actually accounts for the relative burden of that brand in the collection and recycling system, and is a more relevant indicator of a manufacturer's rightful obligation. Return share also rewards manufacturers of devices that are not returned as often for recycling as competitor products. This is desirable as longevity of products has environmental benefits.

- **We urge that the bill maintain the return share model currently employed in New Jersey to ensure that IT manufacturer responsibility depends on the number of its CEDs collected (return share), and not adopt market share for IT products.**

Conclusion

Thank you for your consideration of our perspective on this important issue. We look forward to participating in further dialogue to address the concerns we've raised with this bill. If you have any questions or would like to discuss the issues we have raised in more detail, please feel free to contact Kevin Callahan at kcallahan@comptia.org or at (202) 682-4448.

Sincerely,



Kevin Callahan
Director, State Government Affairs – Northeast
CompTIA

cc: Judith Horowitz, Principal Counsel, Senate Environment and Energy
Committee



Memorandum

To: Senator Bob Smith, Chair of the Senate Committee on Environment & Energy

Cc: Judith Horowitz, OLS Committee Aide

From: Matt Mincieli, Northeast Region Executive Director, TechNet

Date: July 20, 2015

Re: Suggested revisions to the New Jersey Electronic Waste Management Act, S.B. 2973

Dear Chairman Smith,

My name is Matt Mincieli, and I'm the Northeast Region Executive Director for TechNet. I'm writing to inform you that TechNet, (www.technet.org), a member association made up of CEOs and Senior Executives from over 70 of the nation's leading technology companies in the fields of information technology, high tech manufacturing, clean energy, internet media, networking and applications, e-commerce, and venture finance respectfully recommends amendments to S.B. 2973 before the bill is passed in the State Senate.

TechNet champions policies that foster a climate for innovation, allowing technology companies to create, thrive and compete to the benefit of their consumers. As currently drafted, S.B. 2973 would create unnecessary burdens on the technology industry. You have already heard suggested amendments to the bill and will hear more today, but TechNet would like to highlight a specific issue that, if corrected, could alleviate potential consequences that would harm companies that do business in New Jersey and their consumers.

Of concern to our members in the IT space, it is unclear whether the S.B. 2973 proposes to continue to set targets for TV and IT industries separately, as is the practice under *current* law. **It is critical to clarify in the bill that TV targets and targets for collecting other covered electronic devices (CEDs) must be calculated separately in order to avoid shifting the burden for TVs to the IT industry.** This is especially critical because the bill proposes to add only IT devices as CEDs (while continuing to exempt all TV peripherals)—calculating targets as one group would therefore assign the IT industry disproportionately large market share of all material (dominated by old TVs) needing processing. To this end, TechNet recommends to specific minimum proposals depending on the underlying intent of the bill:

1) SPECIFIC, MINIMUM PROPOSAL *if the intent of the bill is to calculate both TV and IT targets under Section 12:* To retain the practice under current law to establish collection

goals in *separate* categories for (a) TVs, and (b) IT equipment, it is proposed that Section 12 be amended to include the following language:

Section 12 a. (1) The department shall separately determine market share for (a) televisions to be assigned to television manufacturers, and (b) all other non-television covered electronic devices to be assigned to manufacturers of such covered devices.

We suggest the following language addition at the end of paragraph (2)... and (b) each manufacturer of other, non-television covered electronic devices for whom a market share is determined pursuant to paragraph (1)(b) of this subsection by multiplying the applicable market share for each covered electronic device manufacturer by the total weight in pounds of non-television covered electronic devices, including related orphan devices, collected from consumers during the previous program year, plus or minus any additional or reduced amount expected to require manufacturer financing to collect and recycle in the subsequent program year as determined by the department based upon relevant publicly-disclosed data.

2) SPECIFIC, MINIMUM PROPOSAL *if the intent of the bill is to calculate TV targets under Section 3, and other CED targets (besides TVs) under Section 12:*

Section 12 a. (1) Throughout Section 12, the term 'covered electronic device' shall not include televisions. The department shall separately determine market share and obligations for television manufacturers pursuant to section 3, and shall not include any television collection weight or other television data when determining obligations for manufacturers of other, non-television covered electronic devices.

We suggest the next paragraph read: (2) The department shall determine the (~~delete: return share in weight~~) estimated market share in weight for each program year for each manufacturer for whom a (~~delete: return share~~) market share is determined pursuant to paragraph (1) of this subsection by multiplying the (~~delete: return share~~) market share for each such manufacturer by the total weight in pounds of covered electronic devices, including orphan devices, collected from consumers the previous program year plus or minus any additional or reduced amount expected to require manufacturer financing to collect in the next program year to be determined by the department based upon relevant publicly-disclosed data.

Please note that some other edits in the bill may warrant updating for consistency, depending on whether the Department and the bill sponsors intend for TV obligations to be calculated under Section 3 or Section 12.

Thank you for your time and consideration of our testimony and recommended revisions to S.B. 2973. We appreciate the opportunity to weigh in on this important issue at a public hearing and TechNet would be happy to discuss the above language with you and your Committee staff in more detail as you continue to debate the bill. We would also be willing to gather feedback from our members in the IT industry who would be impacted by this legislation if that would be helpful to your deliberations on the issue.

**TESTIMONY OF JOHN MARTORANO
MAGNUM COMPUTER RECYCLING
BEFORE
N.J. SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
JULY 20, 2015**

- (1) **Manufacturers must be responsible to “take back” all Covered Electronic Devices without any limitation regarding the amount of devices recycled.**

Manufacturers must be responsible and liable for the full cost of recycling CED’s from all recycling programs in the State. The concept of preparing Plans for NJDEP review and approval should be eliminated. This is a costly and time-consuming process and is not worthwhile. The submitted Plans do not cover all Electronic Waste collected and this is what the State should require to be recycled (“all E-Waste collected”).

Manufacturers must be responsible to “take back” all Covered Electronic Devices without any limitation regarding the amount of devices recycled.

- (2) **Manufacturers must be responsible to pay for the entire cost of recycling the Covered Electronic Devices.**

To be “free and convenient” someone must pay the cost to collect, store, process and transport the Covered Electronic Devices so they are properly recycled. The prior legislation required the manufacturers to do this. This should still be the aim and the new legislation must adopt a mechanism like the Connecticut law to require manufacturers to pay the proper cost to recycling facilities (in-state or out-of-state) for this effort.

Manufacturers must be responsible to pay for the entire cost of recycling the Covered Electronic Devices.

- (3) **Recycling facilities (companies) that accept/process E-Waste generated from New Jersey must be “approved” by the NJDEP and pay an annual fee whether the companies are “in-state” or “out-of-state” companies.**

Class D Recycling Centers are the facilities in New Jersey that are licensed to collect, store, and process E-Waste. The NJDEP must regulate/approve out-of-state facilities as well with a simple registration process that also includes a reasonable annual registration fee. The fee should be the same as the Class D Recycling Center annual registration fee. We must level the playing field.

Recycling facilities (companies) that accept/process E-Waste generated from New Jersey must be “approved” by the NJDEP and pay an annual fee whether the companies are “in-state” or “out-of-state” companies.

From: Diana Vigilante
Sent: Tuesday, July 14, 2015 3:49 PM
To: 'jhorowitz@njleg.org'
Cc: Senator Kip Bateman (senbateman@njleg.org)
Subject: E-waste Public Hearing- June 20

Just a note on what is happening in Somerset County:

In March a County-wide E-waste bid was released and on March 31, 2015 we received one bidder. The resolution was approved by Freeholders in May 2015.

On June 26, 2105 five days before the start of the new contract (July 1, 2015) the vendor met with county representatives and informed us he will not sign the contract. This is due to the Class D recycler that have been an integral part of our county recycling program for over a decade is being excluded or "wait listed" from OEM weight allocations. Thus, NJ-based recyclers have been unable to commit to contracts and government programs have been forced to close.

Somerset County has one (1) county-wide collection site. Our 21 municipalities do not operate regular if any collections...they refer all residents to the county program.

Hopefully we will rebid this program come mid-July. If we get no bids we will have no choice but to cancel the program.

Diana E. Vigilante, CRP
Manager
Somerset County Division of Solid Waste Management
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Please consider the environment before printing this e-mail

ANJHHWC, Secretary
njhazwaste.com

New Jersey Electronics Waste Management Act Testimony

Stakeholders Meeting – 20 July 2015

John L. White – CEO/Owner LogTech, LLC.

Senator Smith and Distinguished Committee Members:

Thank you for holding today's hearing on the New Jersey Electronics Waste Management Act. My name is John L. White and I'm the owner of LogTech, LLC a certified Veteran Owned Small Business located in Wall, NJ providing electronics reuse, recovery and recycling support/services for multiple New Jersey Townships.

As you know, rapid advancements in technologies have led to increasing sales in electronics but with this increase comes the dilemma of how to manage products that have reached the end of their useful lives. Recycling and reuse have great potential to help deal with this dilemma but there are also significant challenges for Class D Recycling Facilities in this State.

Discarded electronic products contain a number of substances that cause concern if improperly managed, including lead from cathode ray tubes and mercury in flat panel displays. Used electronic products do pose a human health and/or environmental threat if not disposed of properly, it makes good sense to reuse and recycle these products responsibly to bring about better materials management, create more jobs and economic activity and to promote greater resource conservation in New Jersey. In addition, if proper recycling procedures are not used or used electronics end up overseas valuable resources such as copper, gold and aluminum and others are lost for future use and create a greater burden on the environment due to mining for those resources.

So, what is the problem?

In my opinion the current New Jersey Electronics Waste Management Act of 2008 served its original purpose but is now out dated. Additionally, I believe the NJDEP lacks the authority to establish a mandatory state approach that requires environmentally preferable management of used electronics through recycling and reuse, the disposal ban is a key part of the approach, however the NJDEP and manufacturer's yearly coordinated plans do not, because they lack consistency and sustainability for recyclers in the state.

Manufacturers supporting this State, for the most part execute their state plans through brokers. It is the brokers who control and determine what electronics recycling companies get the weight, how much weight and what the cost per pound will be. Over the years I have seen my contracted annual weight allocations fluctuate up and down with the cost per pound decreasing. In the absence of a state framework for dealing with this problem, what I would refer to as a patchwork of potentially conflicting execution requirements exists today. The results, as witnessed last fall and again this year, created problems for counties and townships across the State in supporting their electronic recycling needs and their residents. The source of the problem stemmed from Class D Recyclers in the state either not having any allocated weight or not enough weight to support their clients. The results in some locations in the state were stock piles of electronic devices exposed to the environment elements while others had to stop accepting electronics from their residents. IAW the current Electronics Waste Management Act New Jersey residents are offered service that is free and convenient, as it should be for our residents. But this is not always the case.

It is the Class D Recyclers in the state that provide the heavy lifting with boots on the ground performing collection and processing services that support the townships, counties and state electronics recycling program.

This patchwork is placing a substantial financial burden on recyclers and an operational burden on stakeholders. Today's economic picture has changed since 2008, the cost to operate a certified electronics recycling center has increased along with regulatory requirements, lower revenue paid to recyclers, and lack of incentives to encourage recycling and reuse have created economic and employment hardships for businesses like ours. Such economic factors are compounded by increased Federal and State regulatory requirements that provide little incentive for environmentally preferable management of used electronics. It is worth noting that Connecticut has established a state approach that addresses these issues.

In my testimony today, I will discuss in some detail the following three key points from an ITAD & Electronics Recycling business perspective using my company as an example. .

1. **Economic Impacts:** LogTech's 2014 Profit and Loss Statements indicate that our overhead, fringe benefits, G&A, Professional fees for certifications, health care benefits and Insurances (WC, liability, vehicle, pollution) exceeded our net revenue leaving a total negative net income for the year of over \$300,000.00. One example of increased operational costs in 2014 was our worker compensation rates increased from \$1.18 per \$100 of payroll to \$10.16 per \$100 of payroll. Unfortunately, our 1st quarter and partial 2nd quarter (Jan – May) 2015 Profit and Loss Statement indicates a negative net income of just under \$80,000.00. My point is, it is expensive to operate a certified electronics recycling center in this state. The industry cannot survive on the current broker contracts paying \$0.02 CPP for covered electronic devices. At that price 2M pounds of product produces \$40,000 revenue plus commodity market value. LogTech averages about 8% of our total weight in electronics that are not CRTs. That would be roughly 160,000 pounds of commodities estimated value \$135,000. Together our total revenue for 2M pounds would be estimated at \$175,000. One can easily see the revenue does equal the overall operational costs. This year commodity prices have been lower due to the cost of crude oil being down. As the cost of supplies, insurances, certifications, fleet maintenance, etc... continue to increase our revenue over the years has decreased.

2. **Employment/Job Impacts:** Due to the financial burdens mentioned previously I have had to make some very tough and unpleasant decisions regarding my workforce. Since last fall I have had to lay off 8 employees which included my operations manager, my entire marketing staff, one admin clerk, 2 drivers, and 2 warehouseman/labors. In addition to the layoffs, I have had to reduce weekly work schedules for three employees from 40 hours to 30 hours. If our numbers don't change for the better in the 3rd quarter further reduction in work hours and additional layoffs will have occur.

3. **Certification Requirements:** LogTech is a R2, ISO 14001 and OSHA 18001 certified facility as well as a Class D Electronics Recycling Center in the State of New Jersey. As such we pay a lot of money to maintain our certifications on an annual basis, approximately \$21,000 for our Class D facility permit, quarterly enforcement inspections and Air Pollution Permit alone. We need to level the playing field, the current patchwork approach creates a dual criteria that is more demanding from a certification, inspections and financial perspective if your business resides within the state. The NJDEP state mandatory approach should establish the same criteria for out of state businesses to conduct business in New Jersey as it does for those businesses that reside and operate in the state which at a minimum should include certifications, audits, and fees.

I, as the owner of the company have taken drastic measures to reduce expenses, some of these decisions particularly personnel decisions have been very painful. The bottom line is I have done all that I can do, if the situation does not change before the end of this year I will be forced to close our Class D Electronics

Recycling Center to prevent bankruptcy. I strongly endorse the revisions to the NJ Electronics Waste Management Act that industry has proposed.

At LogTech we care about people, our communities, our workforce and the environment. This is our livelihood, it is what we love to do.

I appreciate the opportunity to be here today, this concludes my testimony. I will be happy to answer any questions the committee may have.

**Gloucester County Improvement Authority
Office of Recycling**

Charles Fentress
Chairman

Ashley C. Harris
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George Strachan
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Freeholder Liaison

July 17, 2015

Senator Bob Smith
Chair, Senate Environmental & Energy Committee
216 Stelton Road, Suite E-5
Piscataway, NJ 08854

Dear Senator Smith,

On behalf of Gloucester County and the Gloucester County Improvement Authority Office of Recycling, I would like to also thank for your support and efforts in leading the discussion on improving New Jersey's current E-Waste Legislation. Your leadership and dedication to encouraging an open dialogue to discuss S2973 is very much appreciated.

We would like to thank you for the expansion of the definition of both "covered electronic device" and "consumer" as amended. Although both items appear to be minimal adjustments, they will result in significant and positive improvements to New Jersey's Electronic Waste Management Programs all across the State.

However, we believe that S2973 must be further amended to include some sort of mechanism whereby County and Municipal E-Waste Programs are guaranteed to be supported and funded by the manufacturers. E-Waste Recycling is nothing new in Gloucester County. We began our program back in 2001. At that time, we only collected computer monitors, towers and all of their components. In 2007 we added televisions as well as all other types of electronics (printers, VCR & DVD players, copiers, etc). In Gloucester County, we currently offer a convenient drop off program for all residents at our County Solid Waste Complex every day during our regular operating hours. There is no charge to the resident for covered electronics under the ACT, however, on our end, we had to pay to continue the pickup service we have with our current vendor, due to costs imposed by the end markets for a good part of 2014 and now well into 2015. In addition, twenty-three of our twenty-four municipalities offer a local E-Waste drop off location at their Public Works Yard for their residents, but they too have been burdened with hefty fees to properly recycle their stockpiles since this crisis began.

In 2014 the Gloucester County drop off site at the County Solid Waste Complex paid out \$1,324.20. The total paid out by our 23 municipalities plus our county site was \$12,848.61. As of this date, our County Program alone has paid out \$1,956.66 and it is only Mid-July. No one had included funding in their budgets to cover these costs because we were all sold: "A Free and Convenient Recycling

Program". These programs were supposed to be good PR projects for towns and counties to offer this free program to their local residents. Now that the Law forbids residents from placing their E-waste in the regular trash, they need a way to properly recycle these items.

We are convinced that the current Act has fatal flaws and the recycling of E-Waste under the present program will not be "free and convenient" and will be very costly to government at the local and county levels. We are further concerned that programs may have to shut down and illegal dumping will increase. It is already happening. Two Counties have already opted to not provide any E-Waste program for their residents and the residents have to "fend" for themselves. This is creating a horrible situation of illegal dumping in those Counties and creating additional problems. We do not want this situation to happen in Gloucester County.

In addition, our county recognizes that the Senate has constraints in equalizing the "playing field" between in and out of state recyclers. However, the New Jersey Class D Recyclers that have been an integral part of our local programs for over a decade are now being excluded or put on waiting lists by OEM weight allocations. Thus, the New Jersey based recyclers have been unable to commit to contracts with our Counties and Municipalities, who in turn are terminating their long-run collection programs. We need a mechanism to ensure these issues are resolved.

Our County speaks on behalf of all of its residents in that we are seeking to maintain a free, convenient and unlimited drop off program for covered electronics. We are seeking your support in working with the Legislature to amend the current Act prior to additional heartaches and additional impacts on local and county roadways and budgets.

Thank you for addressing this very important crisis.

Respectfully,

Monica D. Gismondi,
Gloucester County Recycling/HSW Coordinator
GCAI/Office of Recycling

cc: John Donnadio, NJAC
Allen Weston, NJAC



**Association of New Jersey
Household Hazardous Waste
Coordinators**

www.njhazwaste.com

President, Dan Napoleon - (609) 278-8
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Division of Solid Waste Managen
711 Jersey Ave
New Brunswick, NJ 08

July 1, 2015

Senator Bob Smith
Chair, Senate Environment and Energy Committee
216 Stelton Road, Suite E-5
Piscataway, NJ 08854

Dear Senator Smith,

On behalf of the county membership of the Association of New Jersey Household Hazardous Waste Coordinators (ANJHHWC), I would like to thank you for your continued support and efforts to lead the discussion on improving NJ's e-waste legislation. Your leadership and dedication to fostering an open dialogue on the discussion of S2973 is appreciated.

First and foremost, ANJHHWC would like to express support of the expansion of the definition of both "consumer" and "covered electronic device" as amended. These small changes will result in significant and positive improvements to New Jersey's Electronic Waste Management Program.

We feel that S2973 must be further amended to include a mechanism whereby county and municipal e-waste collection programs are equally supported and funded by manufacturers. These programs offer unique opportunities for residents with no restrictions as to material or zip code. Enclosed, please find suggested amendments which will serve to address and resolve these issues.

Additionally, ANJHHWC recognizes the Senate's constraints in equalizing the playing field between in and out-of-state recyclers. However, the Class D recyclers that have been an integral part of county recycling programs for over a decade are being excluded or "wait listed" from OEM weight allocations. Thus, NJ-based recyclers have been unable to commit to contracts resulting in the termination of long-standing government-run collection programs.

Our organization speaks on behalf of all constituents in NJ and seeks to maintain a free, convenient and unlimited drop off program for covered electronics. We look forward to continuing to work with the Legislature to amend the current Act.

Thank you for addressing the Electronic Waste crisis in New Jersey.

Sincerely,

Daniel Napoleon, President
ANJHHWC

Enclosure:

cc: John Donnadio, NJAC

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SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2973

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED JUNE 15, 2015

Sponsored by: Senator

BOB SMITH

District 17 (Middlesex and Somerset)

Senator **CHRISTOPHER "KIP" BATEMAN**

District 16 (Hunterdon, Mercer, Middlesex and Somerset) Senator

LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex) Senator

RICHARD J. CODEY

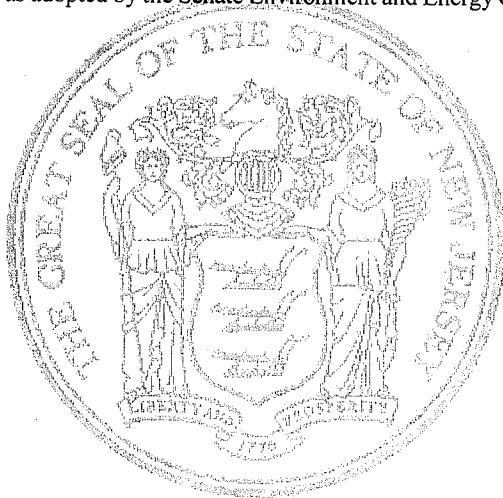
District 27 (Essex and Morris)

SYNOPSIS

Revises electronic waste recycling laws.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.



AN ACT concerning electronic waste recycling, amending and supplementing P.L.2007, c.347, and repealing various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2007, c.347 (C.13:1E-99.94) is amended to read as follows:

1. Sections 1 through 21 of P.L.2007, c.347 (C.13:1E-99.94 11 et seq.) and section [3 of P.L.2008, c.130 (C.13:1E-99.96a)] 10 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be known and may be cited as the "Electronic Waste Management Act."

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

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

2. As used in sections 1 through 21 of P.L.2007, c.347 (C.13:1E-99.94 et seq.) and section [3 of P.L.2008, 21 c.130 (C.13:1E-99.96a)] 10 of P.L., c.

(pending before the Legislature as this bill):

"Authorized recycler" means a person who: (1) engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of re-use or recycling; or (2) changes the physical or chemical composition of a covered electronic device by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for the purpose of segregating components, and for the purpose of recovering or recycling those components, and who arranges for the transport of those components to an end user, and is R2 and/or E-Steward Certified, ISO14001-2004 and OHSAS 18001-2007 certified, and must be in compliance with all applicable state and local permitting requirements.

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

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

"Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image and refers to individual tubes that are separated from their host television, both broken and unbroken, with all of the electronic circuitry and housing.

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

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

Matter underlined thus is new matter. SCS for S2973 B.SMITH, BATEMAN

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handheld calculator, a portable digital assistant, or other similar device.

"Consumer" means a person, State entity, school district, or local government unit who purchases a covered electronic device in a transaction that is a retail sale. "Consumer" shall not include any business concern purchasing covered electronic devices.

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

"Department" means the Department of Environmental Protection.

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

"Manufacturer" means any person: (1) who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor; (2) who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor; (3) who manufactures or manufactured covered electronic devices without affixing a brand; (4) who manufactures or manufactured covered electronic devices to which the person affixes or affixed a brand that the person neither owns or owned nor is or was licensed to use; (5) for whose account covered electronic devices manufactured outside the United States are or were imported into the United States, provided however, if, at the time such covered electronic devices are or were imported into the United States, another person has registered as the manufacturer of the brand of the covered electronic devices

pursuant to subsection b. of section 9 of P.L.2007, c.347 (C.13:1E-99.102), then paragraph (5) of this definition shall not apply; or (6) a person who assumes the obligations and responsibilities for any manufacturer pursuant to paragraphs (1) through (5) of this definition.

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

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

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

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

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

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

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

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

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

"Recycling" means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products. "Recycling" shall not include energy

recovery or energy generation by means of incinerating electronic waste whether apart or in combination with other wastes.

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

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

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

["Return share" means the proportion of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle, as determined by the department pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E- 15 99.105).

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

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

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

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

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

(cf: P.L.2012, c.79, s.11)

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

9. a. (1) ~~By January 30 May 1~~, [2012] 2016, and by each ~~January 30 May 1~~ thereafter, the department shall:

(a) [have completed an auditable, statistically valid sampling of covered electronic devices collected from consumers in this State during the previous program year. The sampling information collected shall consist of a list of brands of covered electronic devices and the weight of covered electronic devices that are identified for each brand. The department's sampling shall be conducted in accordance with a procedure established by the department and may be conducted by a third-party organization including an authorized recycler, to be determined by the department. The department may, at its discretion, be present at the sampling and may audit the methodology and the results of the third-party organization. The costs associated with the sampling shall be recovered from the fees paid by manufacturers to the department] determine the market share for each manufacturer of covered electronic devices for the next program year; and

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

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

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

(b) the total weight of covered electronic devices, including orphan devices, collected from consumers in this State by the manufacturer or group of manufacturers during the previous program year and documentation verifying collection and recycling of such devices.] (Deleted by amendment, P.L., c.)

(pending before the Legislature as this bill)

b. By February 1, 2010, and each January 1 thereafter, each manufacturer of covered electronic devices offered for sale for delivery in this State shall register with the department indicating any desire to use credits pursuant 99.103(h) for the next program year and pay a registration fee of \$5,000. Any manufacturer to whom the department provides notification of a [return share and return share in weight] market share pursuant to subsection a. of section 12 of P.L.2007, c.347 (C.13:1E-99.105) and who has not previously filed a registration shall file a registration with the department within 30

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days of receiving such notification from the department. Each manufacturer's registration and renewal shall include a list of all of the manufacturer's brands of covered electronic devices.

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

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

(cf: P.L.2012, c.79, s.4)

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

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

b. Each manufacturer to whom the department provides [, by February 15, 2012 or] by ~~February 15~~ May 1 of any year [thereafter], a [return share in weight] market share that is greater than zero shall, by ~~March 15~~ June 1 of that year for the next program year, comply with the requirements of subsection a. of this section.

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

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

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

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

(2) The processes and methods that will be used to recycle recovered covered electronic devices including a description of the recycling processes that will be used, including the name ~~and location, and R2 and/or E-Steward Certified, ISO14001-2004 and OHSAS 18001-2007 certified, and state or local permit compliant documentation for~~ of all authorized recyclers to be directly utilized by the plan;

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

(4) The methods that will be used to provide convenient collection of covered electronic devices, especially used televisions, for residents in cities of the first class and cities of the second class having a population of more than 70,000;

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

[(5)] (6) The intention of the registrant to fulfill its obligation through operation of its own plan, either individually, by contract with for-profit or not-for-profit corporations, or local government units, or with other manufacturers.

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

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

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

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

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

h. Manufacturers that collect, transport, and recycle covered electronic devices in excess of their obligation may sell credits to another registrant or apply that excess to the following year's recycling obligation; provided that no more than 25 percent of a manufacturer's obligation for any program year may be met with credits generated in a prior program year. No manufacturer or

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group of manufacturers, as the case maybe, may cease implementing its plan required pursuant to subsection e. of this section and approved by the department, during any program year by using credits.

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

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

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

l. [The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery in this State.] (Deleted by amendment, P.L. _____, c.) (pending before the Legislature as this bill)

m. A registered manufacturer shall inform the department, in writing, as soon as it becomes aware that it will cease selling covered electronic devices in the State. (cf: P.L.2012, c.79, s.5)

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

12. a. (1) The department shall determine the [return share] market share for each program year for each manufacturer [by dividing the weight of covered electronic devices identified for each manufacturer by the total weight of covered electronic devices identified for all manufacturers. For the first program year, the return share of covered electronic devices identified for each manufacturer shall be based on the best available public return share data from the United States, including data from other states, for covered electronic devices from consumers. For the second and each subsequent program year, the return share of covered electronic devices identified for each manufacturer shall be based on the most recent samplings of covered electronic devices conducted in this State pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-99.102)] based upon publicly available data.

(2) The department shall determine the [return share in weight] estimated market share in weight for each program year for each manufacturer for whom a [return share] market share is determined pursuant to paragraph (1) of this subsection by multiplying the [return share] market share for each such manufacturer by the total weight in pounds of covered electronic devices, including orphan devices, collected from consumers the previous program year plus an additional amount expected to be collected in the next program year to be determined by the department based upon retail sales of covered electronic devices in the preceding program year. [For the first program year, the total weight in pounds of covered electronic devices shall be based on the best available public weight data from the United States, including data from other states, for covered

electronic devices from consumers. For the second and each subsequent program year, the total weight in pounds of covered electronic devices shall be based on the total weight of covered electronic devices, including orphan devices, determined by the department pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-99.102).]

(3) [By April 2, 2011, the] The department shall provide each manufacturer for whom a [return] market share is determined pursuant to paragraph (1) of this subsection with its [return] market share and [its return] an estimate of its market share in weight [for the first program year. Annually thereafter,] by ~~February 15~~ May 1 [beginning in 2013, the department shall provide each manufacturer for whom a return share is determined pursuant to paragraph (1) of this subsection with its return share and its return share in weight for the second and subsequent program years] annually for the next program year. A manufacturer shall be responsible for its market share in weight for the program year. Should the total weight in pounds collected in any program year exceed the estimated collection amount, each manufacturer shall be responsible for its proportionate share so that the manufacturer's obligation shall be its market share in weight based upon the actual weight of covered electronic devices collected in the program year. This responsibility shall include the guarantee of maintaining a no cost collection network for consumers during the entire program year.

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

c. (1) The department shall ensure that [at least one] sufficient numbers and locations of electronics collection [opportunity is] opportunities are available in each county throughout the State and in such a manner as to be convenient, to the maximum extent practicable and feasible, to all consumers in the county. Further the Department shall ensure that manufacturers plans include the location of any collection site that has indicated pursuant to Section 10c its intention of collecting CEDs. The department shall approve or reject each manufacturer's plan by August 1st for the following program year.

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

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

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

e. [The department shall prepare a plan every three years that:

(1) establishes per-capita collection and recycling goals; and (2) Identifies any necessary State actions to expand collection opportunities to achieve the per-capita collection and recycling goals. The plan shall be posted on the department's Internet website and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

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

The annual report shall include the following:

- (1) The total weight of covered electronic devices collected in the State the previous calendar year;
- (2) [Progress toward achieving the overall annual total recovery and recycling goals described in the plan prepared pursuant to subsection e. of this section ;

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

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

(5) An evaluation of the existing collection and processing infrastructure]

(3) A complete listing of all authorized recyclers recycling covered electronic devices pursuant to this section and the amount of material by weight recycled annually.

g. (Deleted by amendment, P.L.2012, c.79).

h. [The provisions of this section shall not apply to any manufacturer or retailer of televisions offered for sale for delivery in this State.] (Deleted by amendment, P.L. . c.) (pending before the Legislature as this bill) 26

(cf: P.L.2012, c.79, s.6)

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

17. a. (Deleted by amendment, P.L.2012, c.79

b. (Deleted by amendment, P.L.2012, c.79)

c. (Deleted by amendment, P.L.2012, c.79)

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

- (1) issue an order, in accordance with subsection e. of this section, requiring the person found to be in violation to comply;
- (2) bring a civil action in accordance with subsection f. of this section;
- (3) levy a civil administrative penalty in accordance with subsection g. of this section; or
- (4) bring an action for a civil penalty in accordance with subsection h. of this section.

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

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

- (1) a temporary or permanent injunction;
- (2) recovery of reasonable costs of any investigation or inspection which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- (3) recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of the provisions of P.L.2007, c.347, or any rule or regulation adopted pursuant thereto, for which a civil action has been commenced and brought under this subsection;
- (4) recovery of compensatory damages caused by a violation of the provisions of P.L.2007, c.347, or any rule or regulation adopted, for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the State Treasurer, or to the certified local health agency, as the case may be, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation. If a proceeding is instituted by a certified local health agency, notice thereof shall be served upon the commissioner in the same manner as if the commissioner were a named party to the action or proceeding. The department may intervene as a matter of right in any proceeding brought by a certified local health agency.

g. (1) Except as authorized otherwise in paragraph (2) of this subsection, the commissioner is authorized to assess a civil administrative penalty of not less than \$500 nor more than \$1,000 for each violation, provided that each day during which the

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violation continues shall constitute an additional, separate and distinct offense.

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

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

h. A person who violates any provision of P.L.2007, c.347, or any rule or regulation adopted pursuant thereto, or an administrative order issued pursuant to subsection e. of this section, or a court order issued pursuant to subsection f. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection g. of this section, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected

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with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or may be collected in a civil action commenced by a certified local health agency, or the commissioner, as the case may be. In addition to any penalties, costs or interest charges, the Superior Court, or the municipal court as the case may be, may assess against the violator the amount of economic benefit accruing to the violator from the violation.

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

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

- (1) the sale of a new covered electronic device by any person that is not in full compliance with the provisions of this act;
- (2) the use of a qualified collection program to recycle covered electronic devices not discarded within the State, or region as 17 provided in section 19 of P.L.2007, c.347 (C.13:1E-99.112);
- (3) the knowing failure to report or accurately report any data required to be reported to the department pursuant to this act;
- (4) the non-payment of any fee required pursuant to this act;
- (5) failure to register [, pursuant to subsection a. of section 3 of P.L.2007, c.347 (C.13:1E-99.96) or] pursuant to subsection b. of section 9 of P.L.2007, c.347 (C.13:1E-99.102);
- (6) failure to submit or implement a plan pursuant to section [3 or] 10 of P.L.2007, c.347 ([C.13:1E-99.96 or] C.13:1E-99.103); and
- (7) failure to comply with any provision of section 16 of 28 P.L.2007, c.347 (C.13:1E-99.109).
(cf: P.L.2012, c.79, s.9)

7. Section 18 of P.L.2007, c.347 (C.13:1E-99.111) is amended to read as follows:

18. a. (1) The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as are necessary to effectuate the purposes of P.L.2007, c.347 (C.13:1E-99.94 et al.) [and section 3 of 37P.L.2008, c.130 (C.13:1E-99.96a)] and section 10 of P.L., c. (C.) pending before the Legislature as this bill).

(2) The department shall adopt rules and regulations, in accordance with the provisions of section 8 of P.L.2007, c.347 (C.13:1E-99.101), that prohibit a new covered electronic device from being sold or offered for sale in this State if the covered 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, and as amended thereafter by the Commission of European

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Communities, prohibits that sale due to the presence of certain heavy metals.

(a) The department shall exclude from the rules and regulations the sale of a new covered 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 or federal or State law.

(b) In adopting rules and regulations pursuant to this subsection, the department may not require the manufacture or sale of a new covered 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. The department shall use, in addition to any other information deemed relevant by the department, the published decisions of the Technical Adaptation Committee and European Union member states that interpret the requirements of Directive 2002/95/EC.

b. The department may, in accordance with a fee schedule adopted as a rule or regulation pursuant to the provisions of the "Administrative Procedure Act," establish and charge reasonable fees for any of the services to be performed in connection with this act, which shall cover the full costs incurred by the department for the review of plans and for other costs incurred by the department for implementation of this act. (cf: P.L.2008, c.130, s.15)

8. Section 19 of P.L.2007, c.347 (C.13:1E-99.112) is amended to read as follows:

19. The department is authorized to participate in the establishment and implementation of a regional, multi-state organization or compact that is consistent with the requirements of P.L.2007, c.347 (C.13:1E-99.94 et al.) [and section 3 of P.L.2008, c.130 (C.13:1E-99.96a)] and section 10 of P.L. , c. (C.)

(pending before the Legislature as this bill).

(cf: P.L.2008, c.130, s.16)

9. Section 20 of P.L.2007, c.347 (C.13:1E-99.113) is amended to read as follows:

20. The provisions of P.L.2007, c.347 (C.13:1E-99.94 et al.) [and section 3 of P.L.2008, c.130 (C.13:1E-99.96a)] and section 10

of P.L. , c. (C.) (pending before the Legislature as this bill) are intended to govern all aspects of the collection and recycling of covered electronic devices as those terms are defined in section 2 of P.L.2007, c.347 (C.13:1E-99.95). Upon a determination by the Department of Environmental Protection of an equivalent national program to collect or recycle covered electronic devices, the Commissioner of Environmental Protection shall notify, in writing,

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SCS for S2973 B.SMITH, BATEMAN

the Governor, the President of the Senate and the Speaker of the General Assembly, and the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors, of this determination.

The provisions of this act shall expire 60 days after the date of the notification required pursuant to this section or within the timeframe provided by federal law, as appropriate.

The department shall provide notice in the New Jersey Register of any determination made pursuant to this section, and shall take any administrative action necessary in order to implement the national program.

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

10. (New section) a. By February 1, 2016, and annually thereafter, the operator of every collection location identified in each manufacturer's plan submitted pursuant to section 10 of P.L.2007, c.347 (C.13:1E-99.103) shall identify the total weight of covered electronic devices collected in the prior calendar year at each collection location.

b. By February 1, 2016, and annually thereafter, every authorized recycler identified in each manufacturer's plan submitted pursuant to section 10 of P.L.2007, c.347 (C.13:1E-99.103) shall identify the total weight of covered electronic devices delivered in the prior calendar year for recycling at the authorized recycler.

c. By February 1, 2016 and annually thereafter, the operator of a collection location that desires to collect CEDs for the next program year shall provide notification of same to the department.

11. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) and section 3 of P.L.2008, c.130 (C.13:1E-99.96a) are repealed.

12. Section 11 of P.L. 2008, CHAPTER 130 C.13:1E-99.106 is amended to read as follows:

d. No fees or costs may be charged to consumers for the collection, transportation, or recycling of covered electronic devices except that a nominal fee may be charged to a consumer if a financial incentive, such as a coupon, of equal or greater value is provided. ~~Any authorized recycler may charge fees to schools or local government units for the reasonable costs incurred by the authorized recycler for the collection, transportation, or recycling of covered electronic devices.~~

13. This act shall take effect immediately.

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Association of New Jersey Recyclers

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July 2, 2015

Senator Bob Smith
Chair, Senate Environment Committee
216 Stelton Rd., Suite E-5
Piscataway, NJ 08854

RE: S-2973

Dear Senator Smith:

ANJR again wishes to thank you for addressing the issues our members have had with the current Electronic Waste Management Act.

While we still believe that moving towards a law that mirrors that which exists in Connecticut would be the best resolution to the problems being experienced by our members, we recognize that it may not be possible to do so. We offer the attached changes which we see as the next best way to improve the situation.

Our suggested amendments primarily change the timeframes set in the original act. One of the difficulties with the current law is allocation of manufacturers shares is not timely and therefore there are gaps of uncertainty in arranging agreements. Our proposed changes would benefit the recyclers, manufacturers and collectors of electronics in that they would provide sufficient time to arrange for agreements between all parties. We are also suggesting amending the law to allow locations that wish to serve as collection points to identify themselves to the NJDEP so that they can be included in the manufacturers' plans. This will alleviate the current issue that counties and municipalities are having with manufacturers excluding the government sites from their programs or only covering these sites for a portion of the program year.

We look forward to the meeting on July 20th and will continue to work with you to improve the recycling of electronics in New Jersey.

Thank you again.

Very truly yours,

Dominick D'Attilio, President

The Association of New Jersey Recyclers (ANJR) is a non-profit (501(c)(3)) organization committed to promoting environmental sustainability through sound resource management and recycling strategies. ANJR supports this concept by sponsoring workshops, educational events, professional development programs, and through our website, publications and newsletters. ANJR membership represents both the public and private sector, local and county government officials, the recycling industry and the business community.



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June 30, 2015

Senator Bob Smith
Chair, New Jersey Senate Environment and Energy Committee
Senator Linda Greenstein
Vice-Chair, New Jersey Senate Environment and Energy Committee
Senator Christopher Bateman
Senator Richard Codey
Senator Samuel Thompson

**Subject: Comments regarding Senate Bill 2973 amending New Jersey's
Electronics Waste Management Act**

Dear Chair Smith, Vice-Chair Greenstein and Members of the Committee,

Thank you for the opportunity to convey our thoughts regarding Senate Bill 2973 and contribute input to the upcoming July 14 Committee-sponsored stakeholder meeting dialogue regarding amending New Jersey's Electronic Waste Management Act. Sims Recycling Solutions does not oppose change to the current law, but recommends more clarity and additional consideration be given to specific clauses with the Bill 2973 before passage from the Senate.

Background

Sims Recycling Solutions is the world's leading electronics recycler, with 33 facilities in 12 countries. Sims Recycling is a wholly owned subsidiary of Sims Metal Management which operates 8 facilities in New Jersey. Sims Recycling Solutions has been an active participant in providing the citizens of New Jersey electronic recycling services since the Act was implemented in 2011. Sims Recycling is also providing similar take back service throughout the United States, Europe and Asia, both under mandated programs such as in New Jersey, as well as in other jurisdictions where there are no take back laws. It is with this extensive experience that we provide the following specific amendments the SB 2973:

Page 2 of 14, Section 2, Definition of Authorized Recycler:

The definition of an authorized recycler is very broad, as it largely describes any business that can manually or mechanically disassemble or physically alter covered electronic devices (CEDs) for the purposed of resource recovery. With that said, the law states Authorized Recyclers must meet certain standards established by the NJDEP and be listed in and work to implement a manufacturer plan. From the perspective of a manufacturer, an authorized recycler is someone that has met the NJDEP's requirements and has additionally been audited and vetted by the manufacturer or its

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representative and meets its business requirements, not just any company that is currently running an electronics recycling business in New Jersey.

If manufacturers are to be financially responsible for the cost of collection and recycling for any CEDs collected beyond a manufacturer's NJDEP stated market share weight goal, by any "Authorized Recycler" as referenced in Section 12.a.(3), the definition of Authorized Recycler should be changed to better reflect who is actually "authorizing" use of the recycler and is ultimately liable for the environmental and legal performance of an Authorized Recycler if not listed in a manufacturer plan. We would recommend that the definition of an "Authorized Recycler" be amended to include that the recycler must meet the requirements of the NJDEP, the requirements of S2973, and be under contract with a "manufacturer" as defined in S2973.

Page 2 of 14, Section 2, Definition of Consumer:

The definition of "Consumer" is proposed to be changed to include "State entities, school districts, and local government units". Sims does not believe these entities should be included within the definition of consumer as these entities, like businesses, already have an obligation under federal RCRA regulations to recycle electronics and currently have access to recycling options through the procurement process. True consumers have historically lacked access to proper electronics recycling, and the current system goes a long way to providing the consumers of New Jersey with environmentally sound recycling options. Including these additional entities unfairly shifts an existing federally mandated financial obligation to a third party.

Available market share data also does not capture the proposed scope of covered entities. Market share data is, at best, broken down by true consumer sales and business sales. Most sales to the proposed additional covered entities would fall under business sales, but not all business sales should be included in determining market share obligation. It will be impossible for the New Jersey Department of Environmental Protection to accurately determine the manufacturers' market share. This inaccuracy opens the Department up to protracted and expensive debates with stakeholders and delays the timely assigning of goals.

Sims Recycling Solutions recommends keeping the definition of consumer as it is currently written in the Act.

Page 2 of 14, Section 2, Definition of Covered Electronic Device:

We recommend that the definition of printer be changed to "desktop" printer.

Page 2 of 14, Section 2, Definition of Market Share: The proposed definition of "market share" is inconsistent with the goals of the law and is unfair. The new definition removes the qualifier of "weight" from the equation and replaces it with "sales". It is not clear in the bill, but one would assume "sales" means unit sales. This means that a manufacturer who sells 100 units of a product that weigh very little will have an obligation that is 100 times greater than a manufacturer who sells one unit that could

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weigh hundreds of pounds more than the total sales of the smaller products. The environmental impact of a product is not determined merely by the number of units sold. The weight of the product more closely determines the environmental impact of the product. The law should mirror the environmental realities of the products.

Sims Recycling Solutions recommends the bill not remove "weight" and delete the proposed addition of "sales" in the definition of "market share".

Page 7 & 10 of 14, Sections 3.k & Section 10.e.(5), Curbside Collection:

Thank you for agreeing to remove these sections by amendment at the June 15 Committee hearing.

Page 8 of 14, Section 9.a.(2), Sampling Requirements:

With the elimination of return share as a means of determining a manufacturers' obligation, Section 9.a.(2) is no longer needed and can be deleted.

Page 12 of 14, Section 12.a.(2), Determining Manufacturer Obligations:

The NJDEP is required under this section to determine the total weight manufacturers must collect for the following year. The proposed changes only allow the NJDEP to increase the amount collected over what was collected during the previous program year. This does not reflect the realities of what is going on in states that adopted take back laws earlier than New Jersey or results of a recently released U.S. Environmental Protection Agency study showing e-waste recovery rates rising, but e-waste generation rates decreasing on a national scale. Across the country states are seeing a leveling off of the weight of unwanted electronics being made available for collection. In some states, the total weights have started to decline. This is the result of the heavier covered products having moved through the system and being replaced by smaller, lighter, or mobile products.

Sims Recycling Solutions recommends the bill be amended to allow the Department to increase or decrease goals as the marketplace dictates. We would recommend the following changes:

The department shall determine the [return share in weight] estimated market share in weight for each program year for each manufacturer for whom a [return share] market share is determined pursuant to paragraph (1) of this subsection by multiplying the [return share] market share for each such manufacturer by the total weight in pounds of covered electronic devices, including orphan devices, collected from consumers the previous program year, ~~plus an additional~~ adjusting the amount expected to be collected in the next program year to be as determined by the department based upon retail sales, the weight and the collection trends of covered electronic devices in the preceding program year.

Page 12 of 14, Section 12.a.(3), Manufacturer Responsibility for Actual Amount of CEDs collected Annually vs of Obligated Goal

As written, this section is logically impossible to implement. Manufacturers report to the NJDEP on the total weight collected the previous program year on February 1st. The

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Department will not know if the actual weight of material collected exceeds the estimated weight until after the program year has ended. There will be no way for a manufacturer's Authorized Recycler to go back in time and collect and recycle more weight after the program year has ended.

Manufacturers contract with recyclers to provide recycling services to meet the requirements of the Act and these recyclers have contractual obligations on how the collected material must be managed. In order to protect their brands, manufacturers perform extensive audits of the recyclers they hire to recycle material from the citizens of New Jersey. Manufacturers have a liability under RCRA for the material they contract with recyclers to collect and recycle. It is expensive and time consuming to properly audit and manage recyclers. One interpretation of the current language is that manufacturers will be required to pay any "Authorized Recycler" for the material recycled, even if the recycler is not under contract, nor their processing methods approved by the manufacturer. Who then assumes the RCRA liability? Given that New Jersey is requiring the use of unaudited recyclers, one would think that the State of New Jersey would assume that liability.

Additionally, since the law's implementation in 2011, manufacturers have been submitting collection site information with anticipated collection rates to the NJDEP prior to a program year's start. The NJDEP did not really begin thoroughly checking to see if manufacturers were following through with implementation of their plans until late 2014 – requiring manufacturers to maintain full year collection at sites listed within their plan even if the manufacturer had met its market share obligation.

Rather than scrapping the current system in place, Sims Recycling Solutions recommends that this amendment be deleted and language be added to the law requiring:

- Collection sites and Authorized Recyclers to annually register and report weight data to the NJDEP. This will enable the NJDEP to have a clearer picture of the adequacy of collection service levels across the state, and
- Actual enforcement of the law by the NJDEP occurs on a regular basis – monies should be dedicated to this function.

These two actions in combination with a more defined convenient collection requirement as suggested in Section 12.c.(1), would work to make the law more transparent and effective for the NJDEP and all stakeholders.

Page 12 of 14, Section 12.c.(1), Sufficient Collection Opportunities

This section directs the NJDEP to "ensure sufficient numbers and locations of collection opportunities are available..." The bill gives no guidance on what the definition of "sufficient" is and gives a lot of broad authority to the NDEP to craft this definition. The definition should be developed equitably with significant input and/or negotiation from manufacturers, the NJDEP and perhaps representatives of County solid waste and

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recycling planning units at the upcoming stakeholder meeting. Manufacturers should not be expected to provide collection sites at all 566 NJ municipalities, but efforts should be made so that every county has at least one county sponsored collection site and perhaps an additional number of county or municipal-sponsored sites that are proportionate to a county's population.

Sims Recycling Solutions recommends the bill be amended to give the NJDEP some guidance as how to determine what is "sufficient."

Thank you for allowing Sims to provide you with these comments and recommendations for S2973. We look forward to our continued participation to help improve the recycling opportunities for the citizens of New Jersey.

Sincerely,

Larry King
Legislative Analyst

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76x

ADDITIONAL APPENDIX MATERIALS
SUBMITTED TO THE
SENATE ENVIRONMENT COMMITTEE *for the*
JULY 20, 2015 MEETING

Submitted by John Martorano Jr., Founder, Magnum Computer Recycling:

Mike Breslin, "Progress to electronics recycling threatened," *AmericanRecycler.com*,
July 2015, © American Recycler News, Inc.