

20	Monies Appropriated in this Bill:
27	None
28	Other Special Clauses:
29	None
30	Utah Code Sections Affected:
31	AMENDS:
32	19-1-105, as enacted by Laws of Utah 1991, Chapter 112
33	63G-4-102, as renumbered and amended by Laws of Utah 2008, Chapter 382
34	63I-1-219, as last amended by Laws of Utah 2009, Chapter 334
35	ENACTS:
36	<b>19-6-1201</b> , Utah Code Annotated 1953
37	<b>19-6-1202</b> , Utah Code Annotated 1953
38	<b>19-6-1203</b> , Utah Code Annotated 1953
39	<b>19-6-1204</b> , Utah Code Annotated 1953
40	<b>19-6-1205</b> , Utah Code Annotated 1953
41	<b>19-6-1206</b> , Utah Code Annotated 1953
42	<b>19-6-1207</b> , Utah Code Annotated 1953
43	<b>19-6-1208</b> , Utah Code Annotated 1953
44 45	Be it enacted by the Legislature of the state of Utah:
46	Section 1. Section 19-1-105 is amended to read:
47	19-1-105. Divisions of department Control by division directors.
48	(1) The following divisions are created within the department:
49	(a) the Division of Air Quality, to administer [Title 19,] Chapter 2, Air Conservation
50	Act;
51	(b) the Division of Drinking Water, to administer [Title 19, ]Chapter 4, Safe Drinking
52	Water Act;
53	(c) the Division of Environmental Response and Remediation, to administer [Title 19,]
54	Chapter 6, Parts 3, Hazardous Substances Mitigation Act, and 4, Underground Storage Tank
55	Act;
56	(d) the Division of Radiation Control, to administer [Title 19,] Chapter 3, Radiation

5/	Control Act;
58	(e) the Division of Solid and Hazardous Waste, to administer [Title 19,] Chapter 6,
59	Parts 1, Solid and Hazardous Waste Act, 2, Hazardous Waste Facility Siting Act, [and] 5, Solid
60	Waste Management Act, and 12, Consumer Electronic Recycling Programs; and
61	(f) the Division of Water Quality, to administer [Title 19,] Chapter 5, Water Quality
62	Act.
63	(2) Each division is under the immediate direction and control of a division director
64	appointed by the executive director.
65	(3) (a) Each division director shall possess the necessary administrative skills and
66	training to adequately qualify [him] the division director for [his] the position. [He shall]
67	(b) The division director shall have graduated from an accredited college or university
68	with:
69	[(a)] (i) a four-year degree in physical or biological science or engineering;
70	[(b)] (ii) a related degree; or
71	[ <del>(c)</del> ] <u>(iii)</u> a degree in law.
72	(4) Each director may be removed at the will of the executive director.
73	Section 2. Section 19-6-1201 is enacted to read:
74	Part 12. Consumer Electronic Recycling Program
75	<u>19-6-1201.</u> Title.
76	This part is known as the "Consumer Electronic Recycling Program."
77	Section 3. Section 19-6-1202 is enacted to read:
78	<u>19-6-1202.</u> Definitions.
79	As used in this part:
80	(1) "Board" means the Solid and Hazardous Waste Control Board created in Section
81	<u>19-1-106.</u>
82	(2) (a) "Consumer" means a person who possesses a consumer electronic device for the
83	person's own personal or home-based business use.
84	(b) "Consumer" does not include a person who possesses a consumer electronic device
85	<u>for:</u>
86	(i) a business that is not a home-based business; or
87	(ii) another purpose that does not constitute personal use

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88	(3) (a) "Consumer electronic device" means an electronic device for consumer use if						
89	that electronic device is:						
90	(i) a computer central processing unit;						
91	(ii) a personal computer with a screen size greater than four inches at a diagonal:						
92	(iii) a computer peripheral, including a mouse, keyboard, printer, scanner, or copier;						
93	(iv) a computer monitor;						
94	(v) a television; or						
95	(vi) a desktop device that prints, scans, or copies.						
96	(b) "Consumer electronic device" does not include:						
97	(i) an electronic device that is not used primarily for consumer use, including a						
98	business electronic device;						
99	(ii) a personal audio or video device with a screen size of less than four inches at a						
100	diagonal;						
101	(iii) a mobile telephone, regardless of whether it contains a computer or computer-like						
102	central processing unit;						
103	(iv) the internal components of a consumer electronic device, standing alone; or						
104	(v) a device excluded by rule made by the board.						
105	(4) "Designated recycling drop-off point" means a recycling drop-off point designated						
106	under Section 19-6-1204.						
107	(5) "Division" means the Division of Solid and Hazardous Waste, created in Section						
108	<u>19-1-105.</u>						
109	(6) "Executive secretary" means the board's executive secretary appointed in						
110	accordance with Section 19-6-107.						
111	(7) (a) "Manufacturer" means a person who:						
112	(i) manufactures a consumer electronic device, whether in whole or by assembly of						
113	other components;						
114	(ii) owns, licenses, or resells the brand of a consumer electronic device; or						
115	(iii) sells at retail in the state a consumer electronic device acquired from a person who						
116	is a manufacturer and elects to register as the manufacturer of that consumer electronic device						
117	in lieu of the other manufacturer.						
118	(b) "Manufacturer" does not include a person who:						

119	(i) manufactures the internal components of a consumer electronic device; or						
120	(ii) assembles a computer system from components for the person's own use.						
121	(c) "Manufacturer" for a consumer electronic device for which more than one person is						
122	a manufacturer, means:						
123	(i) the manufacturer who elects to register in lieu of another in accordance with						
124	Subsection (7)(a)(iv); or						
125	(ii) the person who owns the brand of the consumer electronic device, if no						
126	manufacturer elects to register in lieu of another manufacturer.						
127	(8) "Market share," with respect to a specific manufacturer, means the portion of the						
128	total sales in the state of a type of consumer electronic device that are attributable to the						
129	manufacturer.						
130	(9) "Orphan device" means a consumer electronic device the manufacturer of which:						
131	(a) cannot be determined; or						
132	(b) no longer exists.						
133	(10) (a) "Recycling" means disassembling, dismantling, processing, or shredding a						
134	consumer electronic device to recover a useable product.						
135	(b) "Recycling" does not include incineration.						
136	(11) "Registered recycler" means a person who recycles consumer electronic devices						
137	who registers with the division as a registered recycler in accordance with Section 19-6-1206.						
138	(12) "Type," with respect to a consumer electronic device, means one of the following:						
139	(a) a television or computer monitor;						
140	(b) a computer;						
141	(c) a computer peripheral, except for a computer monitor; or						
142	(d) a consumer electronic device that is not described in Subsections (12)(a) through						
143	<u>(c).</u>						
144	Section 4. Section 19-6-1203 is enacted to read:						
145	19-6-1203. Consumer Electronic Recycling Program.						
146	(1) (a) There is established the "Consumer Electronic Recycling Program" within the						
147	Division of Solid and Hazardous Waste.						
148	(b) The executive secretary shall administer the program.						
149	(2) The division shall maintain and make publicly available on its Internet website a						

150	current list of:						
151	(a) manufacturers registered under this part;						
152	(b) registered recyclers; and						
153	(c) designated recycling drop-off points; and						
154	(3) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah						
155	Administrative Rulemaking Act, establishing:						
156	(a) requirements for security and destruction of data remaining on a consumer						
157	electronic device recycled in accordance with this part;						
158	(b) environmental and handling requirements for the recycling of consumer electronic						
159	devices by a registered recycler;						
160	(c) liability insurance requirements for a registered recycler on the basis of the potential						
161	liability of the registered recycler for damages in connection with the recycling of a consumer						
162	electronic device; and						
163	(d) subject to Subsection (4), an administrative penalty for a violation of this chapter.						
164	(4) The executive secretary may, in accordance with rules made by the board, impose						
165	an administrative penalty against a registered recycler or manufacturer for a violation of this						
166	chapter that is established by rule, and which may include:						
167	(a) suspension or revocation of a registration;						
168	(b) a cease and desist order; or						
169	(c) a fine not to exceed 200% of the applicable registration fee, for the failure to						
170	register or to pay a registered recycler in accordance with this chapter.						
171	(5) The board may amend or revoke any action by the executive secretary under						
172	Subsection (4).						
173	(6) The division may enter into an agreement with a county concerning the division's						
174	and county's responsibilities under this part.						
175	(7) (a) The board, executive secretary, division, or an agent of the board, executive						
176	secretary, or division may inspect any property used by a registered manufacturer, registered						
177	recycler, or county in connection with the program.						
178	(b) A person conducting an inspection in accordance with Subsection (7)(a) may:						
179	(i) access and copy any records related to the program; and						
180	(ii) record, photograph, or otherwise document the inspection.						

181	Section 5. Section 19-6-1204 is enacted to read:						
182	19-6-1204. Designated drop-off points.						
183	(1) (a) A county of the first $\hat{\mathbf{H}} \rightarrow \underline{\mathbf{or} \ \mathbf{second}} \leftarrow \hat{\mathbf{H}}$ -class shall designate at least one recycling						
183a	drop-off point						
184	within the county where a consumer may drop off a consumer electronic device for no charge						
185	to the consumer.						
186	(b) In designating a recycling drop-off point under this Subsection (1), a county may						
187	consult a local health department or solid waste district within the county.						
188	(2) A county that is not a county of the first $\hat{\mathbf{H}} \rightarrow \underline{\mathbf{or} \ \mathbf{second}} \leftarrow \hat{\mathbf{H}}$ -class may designate one or						
188a	more recycling						
189	drop-off points within the county where a consumer may drop off a consumer electronic device						
190	for no charge to the consumer.						
191	(3) A manufacturer may designate one or more recycling drop-off points within the						
192	state where a consumer may drop off a consumer electronic device for no charge to the						
193	consumer.						
194	Section 6. Section <b>19-6-1205</b> is enacted to read:						
195	19-6-1205. Registration by manufacturer Duties.						
196	(1) On and after July 1, 2010, a manufacturer of a consumer electronic device that is						
197	sold to a consumer within the state shall register with the division.						
198	(2) To register with the division, a manufacturer shall:						
199	(a) file an application with the division that includes:						
200	(i) the manufacturer's current address; and						
201	(ii) a list of the brands of consumer electronic devices that the manufacturer						
202	manufactures that are sold in the state; and						
203	(b) pay an annual fee:						
204	(i) of not more than \$3,000 for the period beginning on July 1, 2010 and ending on						
205	June 30, 2011; and						
206	(ii) established by the board in accordance with Section 63J-1-504, except that a fee						
207	shall vary in amount on the basis of a manufacturer's market share.						
208	(3) For the fiscal year beginning on July 1, 2011 and thereafter, the total fees assessed						
209	under this section may not exceed \$100,000.						
210	(4) A manufacturer shall:						
211	(a) if the address provided to the division under Subsection (2) changes, notify the						

212	division of the new address within 10 days of the day on which the address changes; and						
213	(b) satisfy a valid request for payment from a registered recycler within 45 days after						
214	receipt of the request for payment.						
215	Section 7. Section 19-6-1206 is enacted to read:						
216	19-6-1206. Recycler registration Duties.						
217	(1) A person seeking to be a registered recycler under this part shall register with the						
218	division.						
219	(2) To register with the division, a person shall:						
220	(a) file an application with the division; and						
221	(b) pay an annual fee established by the board in accordance with Section 63J-1-504.						
222	(3) A registered recycler shall:						
223	(a) for a consumer electronic device recycled in accordance with this part, comply with						
224	the rules made by the board in accordance with Section 19-6-1203 concerning:						
225	(i) maintaining the security and destruction of data remaining on the consumer						
226	electronic device; and						
227	(ii) environmental and handling requirements;						
228	(b) transport a consumer electronic device from a designated recycling drop-off point						
229	for recycling;						
230	(c) submit a request for payment to a manufacturer only in accordance with this part						
231	and board rules made in accordance with Section 19-6-1203 governing the submission of						
232	requests for payment;						
233	(d) maintain a record of an orphan device; and						
234	(e) maintain liability insurance at a level established by the board by rule made in						
235	accordance with Section 19-6-1203.						
236	Section 8. Section <b>19-6-1207</b> is enacted to read:						
237	19-6-1207. Costs of recycling under the program.						
238	(1) A manufacturer of a consumer electronic device recycled in accordance with this						
239	part shall pay for a registered recycler's cost of recycling the consumer electronic device as						
240	negotiated by the manufacturer and the registered recycler, regardless of whether the						
241	manufacturer is registered in accordance with this part.						
242	(2) The cost of recycling paid by a manufacturer under Subsection (1) shall be						

243	determined by applying the negotiated rate to the manufacturer's portion of the market share for
244	the type of consumer electronic device at issue.
245	(3) A registered recycler shall:
246	(a) include in the cost to the manufacturer the total amount by weight of material
247	recycled by the registered recycler; and
248	(b) submit a request for payment to each manufacturer by the manufacturer's market
249	share.
250	Section 9. Section 19-6-1208 is enacted to read:
251	19-6-1208. Consumer Electronic Recycling Program Restricted Account.
252	(1) There is created within the General Fund the Consumer Electronic Recycling
253	Program Restricted Account.
254	(2) The account shall be funded by fees collected in accordance with this part.
255	(3) (a) The Consumer Electronic Recycling Program Restricted Account shall earn
256	interest.
257	(b) Interest earned on the Consumer Electronic Recycling Program Restricted Account
258	shall be deposited into the General Fund.
259	(4) Monies in the Consumer Electronic Recycling Program Restricted Account shall be
260	used by the division for expenses incurred in the administration of this part.
261	Section 10. Section <b>63G-4-102</b> is amended to read:
262	63G-4-102. Scope and applicability of chapter.
263	(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
264	superseding provisions of this chapter by explicit reference to this chapter, the provisions of
265	this chapter apply to every agency of the state and govern:
266	(a) state agency action that determines the legal rights, duties, privileges, immunities,
267	or other legal interests of an identifiable person, including agency action to grant, deny, revoke,
268	suspend, modify, annul, withdraw, or amend an authority, right, or license; and
269	(b) judicial review of the action.
270	(2) This chapter does not govern:
271	(a) the procedure for making agency rules, or judicial review of the procedure or rules;
272	(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
273	waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the

issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

- (c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;
- (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;
- (e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;
- (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Chapter 3a, Architects Licensing Act, Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55, Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and Chapter 76, Professional Geologist Licensing Act, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;
- (g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;
- (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or

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correctness of the notice or order;

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- (i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;
- (j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah

- Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
  Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
  Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
  Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
  Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, or Title
  19, Chapter 6, Part 12, Consumer Electronic Recycling Program, except that this chapter
  governs an agency action commenced by a person authorized by law to contest the validity or
  - (l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;
  - (m) the initial determination of a person's eligibility for government or public assistance benefits;
  - (n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;
    - (o) a license for use of state recreational facilities;
  - (p) state agency action under Title 63G, Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;
    - (q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;
  - (r) state agency action relating to the installation, maintenance, and repair of headgates, caps, values, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

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337	(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and
338	(ii) an action taken by the Division of Securities pursuant to a hearing conducted under
339	Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange
340	of securities described in Subsection 61-1-11.1(1); and
341	(u) state agency action relating to water well driller licenses, water well drilling
342	permits, water well driller registration, or water well drilling construction standards, or judicial
343	review of the action.
344	(3) This chapter does not affect a legal remedy otherwise available to:
345	(a) compel an agency to take action; or
346	(b) challenge an agency's rule.
347	(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
348	proceeding, or the presiding officer during an adjudicative proceeding from:
349	(a) requesting or ordering a conference with parties and interested persons to:
350	(i) encourage settlement;
351	(ii) clarify the issues;
352	(iii) simplify the evidence;
353	(iv) facilitate discovery; or
354	(v) expedite the proceeding; or
355	(b) granting a timely motion to dismiss or for summary judgment if the requirements of
356	Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
357	except to the extent that the requirements of those rules are modified by this chapter.
358	(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by
359	this chapter, except as explicitly provided in that section.
360	(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is
361	governed by this chapter.
362	(6) This chapter does not preclude an agency from enacting a rule affecting or
363	governing an adjudicative proceeding or from following the rule, if the rule is enacted
364	according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking
365	Act, and if the rule conforms to the requirements of this chapter.
366	(7) (a) If the attorney general issues a written determination that a provision of this

(s) the issuance and enforcement of an initial order under Section 73-2-25;

367	chapter would result in the denial of funds or services to an agency of the state from the federal
368	government, the applicability of the provision to that agency shall be suspended to the extent
369	necessary to prevent the denial.

- 370 (b) The attorney general shall report the suspension to the Legislature at its next session.
  - (8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.
  - (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.
- Section 11. Section **63I-1-219** is amended to read:
- 378 **63I-1-219.** Repeal dates, Title 19.
- 379 (1) Title 19, Chapter 2, Air Conservation Act, is repealed July 1, 2014.
- 380 (2) Title 19, Chapter 3, Radiation Control Act, is repealed July 1, 2012.
- 381 (3) Title 19, Chapter 4, Safe Drinking Water Act, is repealed July 1, 2019.
- 382 (4) Title 19, Chapter 5, Water Quality Act, is repealed July 1, 2019.
- 383 (5) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, is repealed July 1,
- 384 2019.

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- 385 (6) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, is repealed July 386 1, 2010.
- 387 (7) Title 19, Chapter 6, Part 4, Underground Storage Tank Act, is repealed July 1,
- 388 2018.
- 389 (8) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal, is repealed July 1, 2016.
- 390 (9) Title 19, Chapter 6, Part 7, Used Oil Management Act, is repealed July 1, 2019.
- 391 (10) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act, is repealed July 1, 2010.
- 392 (11) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, is repealed July 1,
- 393 2012.
- 394 (12) Title 19, Chapter 6, Part 12, Consumer Electronic Recycling Program, is repealed
- 395 July 1, 2020.

#### H.B. 153 2nd Sub. (Gray) - Recycling of Electronic Items

#### **Fiscal Note**

2010 General Session State of Utah

#### **State Impact**

Provisions of this bill require manufacturers and consumer electronic device recyclers to register with the Solid and Hazardous Waste Division of the Department of Environmental Quality. It is estimated that 80 manufacturers and recyclers would register at \$3,000 each the first year for total revenue of \$240,000 in FY 2011. Revenues for subsequent years are dependent on renewal fees but can't be more than \$100,000. The estimated cost to implement and administer provisions of this bill is \$223,000 in FY 2011 and \$100,000 in FY 2012. These costs will be appropriated from the newly created General Fund Restricted - Consumer Electronic Recycling Program Restricted Account.

	FY 2010	FY 2011	FY 2012	FY 2010	F Y 2011	F 1 2012
	Approp.	Approp.	Approp.	Revenue	Revenue	Revenue
Restricted Funds	\$0	\$223,000	\$100,000			\$100,000
Total	\$0	\$223,000	\$100,000	\$0	\$240,000	\$100,000

#### Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and businesses are likely to experience increased costs to off set the expense of recycling of electronic devices.

3/8/2010, 11:17:22 AM, Lead Analyst: Bleazard, M./Attny: CRP

Office of the Legislative Fiscal Analyst