

Representative Rebecca P. Edwards proposes the following substitute bill:

RECYCLING OF ELECTRONIC ITEMS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill addresses the recycling of consumer electronic devices.

Highlighted Provisions:

This bill:

- ▶ establishes the Consumer Electronic Recycling Program within the Division of Solid and Hazardous Waste;
- ▶ defines terms;
- ▶ addresses duties of the division, the Solid and Hazardous Waste Control Board, and the board's executive secretary, including rulemaking;
- ▶ requires the division to maintain publicly available lists of manufacturers, registered recyclers, and recycling drop-off points;
- ▶ provides for the establishment of recycling drop-off points;
- ▶ imposes duties on manufacturers and registered recyclers;
- ▶ requires registration;
- ▶ addresses the payment of recycling costs for consumer electronic devices;
- ▶ includes a sunset provision;
- ▶ creates the Consumer Electronic Recycling Program Restricted Account; and
- ▶ makes technical changes.



26 **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 **19-6-1201**, Utah Code Annotated 1953

37 **19-6-1202**, Utah Code Annotated 1953

38 **19-6-1203**, Utah Code Annotated 1953

39 **19-6-1204**, Utah Code Annotated 1953

40 **19-6-1205**, Utah Code Annotated 1953

41 **19-6-1206**, Utah Code Annotated 1953

42 **19-6-1207**, Utah Code Annotated 1953

43 **19-6-1208**, Utah Code Annotated 1953



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

57 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 [~~(c)~~] (iii) 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 **19-6-1201. Title.**

76 This part is known as the "Consumer Electronic Recycling Program."

77 Section 3. Section **19-6-1202** is enacted to read:

78 **19-6-1202. Definitions.**

79 As used in this part:

80 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
81 19-1-106.

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 for:

86 (i) a business that is not a home-based business; or

87 (ii) another purpose that does not constitute personal use.

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 19-1-105.

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 (c).

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-class shall designate at least one recycling 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-class may designate one or 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 **19-6-1205** 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 **19-6-1207** 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 **63G-4-102** 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

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

277 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
278 commutation or termination of a sentence, or to the rescission, termination, or revocation of
279 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
280 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
281 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
282 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or
283 judicial review of the action;

284 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
285 student or teacher in a school or educational institution, or judicial review of the action;

286 (e) an application for employment and internal personnel action within an agency
287 concerning its own employees, or judicial review of the action;

288 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
289 Occupational Safety and Health Act, and Title 58, Chapter 3a, Architects Licensing Act,
290 Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing
291 Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional
292 Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55,
293 Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and
294 Chapter 76, Professional Geologist Licensing Act, except that this chapter governs an agency
295 action commenced by the employer, licensee, or other person authorized by law to contest the
296 validity or correctness of the citation or assessment;

297 (g) state agency action relating to management of state funds, the management and
298 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
299 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
300 the state, except as provided in those contracts, or judicial review of the action;

301 (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of
302 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
303 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
304 Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or

305 judicial review of the action;

306 (i) the initial determination of a person's eligibility for unemployment benefits, the
307 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
308 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
309 determination of a person's unemployment tax liability;

310 (j) state agency action relating to the distribution or award of a monetary grant to or
311 between governmental units, or for research, development, or the arts, or judicial review of the
312 action;

313 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
314 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
315 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
316 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
317 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used
318 Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, or Title
319 19, Chapter 6, Part 12, Consumer Electronic Recycling Program, except that this chapter
320 governs an agency action commenced by a person authorized by law to contest the validity or
321 correctness of the notice or order;

322 (l) state agency action, to the extent required by federal statute or regulation, to be
323 conducted according to federal procedures;

324 (m) the initial determination of a person's eligibility for government or public
325 assistance benefits;

326 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
327 registration;

328 (o) a license for use of state recreational facilities;

329 (p) state agency action under Title 63G, Chapter 2, Government Records Access and
330 Management Act, except as provided in Section 63G-2-603;

331 (q) state agency action relating to the collection of water commissioner fees and
332 delinquency penalties, or judicial review of the action;

333 (r) state agency action relating to the installation, maintenance, and repair of headgates,
334 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
335 measuring devices, or judicial review of the action;

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

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
371 session.

372 (8) Nothing in this chapter may be interpreted to provide an independent basis for
373 jurisdiction to review final agency action.

374 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
375 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
376 the time period established for judicial review.

377 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.

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.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
Restricted Funds	\$0	\$223,000	\$100,000	\$0	\$240,000	\$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.