

New Jersey E-Waste Amendment Reintroduced: Proposes Higher Penalties and Limits on the Use of Recycling Credits

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On January 10, 2012, Assemblymen Reed Gusciora (D), John F. McKeon (D), and Peter J. Barnes III (D) introduced a bill (A1459) to amend the state's four-year-old e-waste recycling law. The bill is identical to legislation in the last session, which never made it out of the Assembly Appropriations Committee.

If enacted, A1459 would dramatically expand the enforcement provisions of New Jersey's e-waste law. Among other things, the bill authorizes the Commissioner of the New Jersey Department of Environmental Protection (DEP) to assess civil administrative penalties of up to \$50,000 a day for certain violations, such as the failure of a television manufacturer to register with the DEP or to submit and implement a recycling plan. Manufacturers would have the right to contest a civil administrative penalty in a hearing before the DEP Commissioner. Currently, there is no right to a hearing and the maximum penalty for continuing violations is \$1,000 a day. The DEP Commissioner and certified local health agencies would also be empowered to seek injunctions or damages in state court for violations of the e-waste law.

In addition to enhancing the e-waste law's enforcement powers, A1459 also proposes to restrict the ability of manufacturers who exceed their annual recycling obligation to either sell the excess recycled weight as credits to other manufacturers or apply the credits to the following year's recycling obligation. The bill provides that no more than 25 percent of a manufacturer's recycling obligation may be met with recycling credits generated in a prior year. The current law contains no such limit. The bill further provides that no manufacturer or group of manufacturers may cease implementing a recycling plan during any year simply because they have enough recycling credits to meet their recycling obligation.

Other notable changes that A1459 would make to New Jersey's e-waste law include:

- Manufacturers who sell less than 100 televisions or covered electronic devices in a year would be exempt from paying the \$5,000 registration fee;
- The sale of new electronic devices that exceed the European Union heavy metal maximum concentration value would be allowed if the use of the heavy metal is necessary to comply with consumer, health, or safety requirements imposed by the Underwriters Laboratories or federal or

state law;

- Consumers may be charged a nominal fee for the collection, transportation, or recycling of a covered electronic device if a financial incentive, such as a coupon of equal or greater value, is provided;
- Used television recovery and recycling programs would no longer be required to be fully audited by an independent, certified public accountant each calendar year; and
- The DEP would no longer be required to hold a public hearing every one to two years to review the covered electronic device recycling goals and registration fees.

The bill has been referred to the Assembly Environment and Solid Waste Committee. Two of the bill's sponsors—Assemblymen Gusciora and Barnes—are members of the seven-person Committee.