

ASSEMBLY BILL

No. 960

Introduced by Assembly Member Bonnie Lowenthal

February 18, 2011

An act to amend Sections 42463, 42476, and 42476.5 of, and to repeal and add Section 42476.6 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as introduced, Bonnie Lowenthal. Recycling: electronic waste.

(1) Existing law, the Electronic Waste Recycling Act of 2003, requires a retailer selling a covered electronic device in this state to collect a covered electronic waste recycling fee from the consumer, as specified. These fees are deposited in the Electronic Waste Recovery and Recycling Account, and the Department of Resources Recycling and Recovery (CalRecycle) is continuously appropriated the money in the account to, among other things, make electronic waste recovery payments and recycling payments. CalRecycle is authorized to make these payments only if certain conditions are met. A violation of the act is a crime.

This bill would define the terms “electronic waste” and “electronic device” and would additionally require, as a condition of CalRecycle making those payments, that the recycler make certain demonstrations regarding the export of electronic devices from which that waste was derived and the export of all other electronic waste handled by the recycler.

(2) Existing law requires a person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal,

to a foreign country, or to another state for ultimate export to a foreign country, to comply with specified notification requirements and make specified demonstrations. Existing law exempts from these requirements a component part of a covered electronic device that is exported and reused or recycled.

The bill would revise the requirements imposed on exportation to additionally include a person who exports electronic waste or a previously used electronic device and would also include, in the provision, an export intended for reuse. The bill would impose a state-mandated local program by creating a new crime.

The bill would repeal the existing exemption for exportation of component parts that are reused or recycled and would instead require the department to adopt regulations exempting materials or component parts of electronic waste or previously used electronic devices that meet certain conditions. The bill would also make conforming changes to reference to CalRecycle.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 42463 of the Public Resources Code is
2 amended to read:

3 42463. For the purposes of this chapter, the following terms
4 have the following meanings, unless the context clearly requires
5 otherwise:

6 (a) "Account" means the Electronic Waste Recovery and
7 Recycling Account created in the Integrated Waste Management
8 Fund under Section 42476.

9 (b) "Authorized collector" means any of the following:

10 (1) A city, county, or district that collects covered electronic
11 devices.

12 (2) A person or entity that is required or authorized by a city,
13 county, or district to collect covered electronic devices pursuant

1 to the terms of a contract, license, permit, or other written
2 authorization.

3 (3) A nonprofit organization that collects or accepts covered
4 electronic devices.

5 (4) A manufacturer or agent of the manufacturer that collects,
6 consolidates, and transports covered electronic devices for
7 recycling from consumers, businesses, institutions, and other
8 generators.

9 (5) An entity that collects, handles, consolidates, and transports
10 covered electronic devices and has filed applicable notifications
11 with the department pursuant to Chapter 23 (commencing with
12 Section 66273.1) of Division 4.5 of Title 22 of the California Code
13 of Regulations.

14 (c) *“CalRecycle” means the Department of Resources Recycling*
15 *and Recovery.*

16 (e)

17 (d) *“Consumer” means a person who purchases a new or*
18 *refurbished covered electronic device in a transaction that is a*
19 *retail sale or in a transaction to which a use tax applies pursuant*
20 *to Part 1 (commencing with Section 6001) of Division 2 of the*
21 *Revenue and Taxation Code.*

22 ~~(d) “Department”~~

23 (e) *Notwithstanding Section 40118, “Department” means the*
24 *Department of Toxic Substances Control.*

25 (f) (1) *“Electronic waste” means an electronic device, as*
26 *specified in paragraph (2) that is discarded, and is identified as*
27 *hazardous waste because it meets either of the following*
28 *conditions:*

29 (A) *Exhibits toxicity, as specified in the regulations adopted*
30 *pursuant to Chapter 6.5 (commencing with Section 25100) of*
31 *Chapter 6.5 of Division 20 of the Health and Safety Code.*

32 (B) *Is listed as hazardous waste pursuant to the regulations*
33 *adopted pursuant to Chapter 6.5 (commencing with Section 25100)*
34 *of Division 20 of the Health and Safety Code.*

35 (2) *“Electronic device” includes, but is not limited to, cash*
36 *registers, oscilloscopes computers, computer peripherals,*
37 *telephones, answering machines, radios, stereo equipment, tape*
38 *players, recorders, phonographs, video cassette players or*
39 *recorders, compact disc players or recorders, calculators,*

1 *appliances, and any of the devices specified in subparagraphs (A)*
2 *to (D), inclusive, of paragraph (2) of subdivision (e).*

3 (3) *“Electronic waste and electronic device do not include any*
4 *of the following:*

5 (A) *“Covered electronic waste” as defined in this section.*

6 (B) *A major appliance, as defined in Section 42166.*

7 (C) *A device that is comprised largely of metal, qualifies as*
8 *“scrap metal” as defined in Section 66260.10 of Title 22 of the*
9 *California Code of Regulations, and is recycled.*

10 ~~(e)~~

11 (g) (1) Except as provided in paragraph (2), “covered electronic
12 device” means a video display device containing a screen greater
13 than four inches, measured diagonally, that is identified in the
14 regulations adopted by the department pursuant to subdivision (b)
15 of Section 25214.10.1 of the Health and Safety Code.

16 (2) “Covered electronic device” does not include any of the
17 following:

18 (A) A video display device that is a part of a motor vehicle, as
19 defined in Section 415 of the Vehicle Code, or any component
20 part of a motor vehicle assembled by, or for, a vehicle manufacturer
21 or franchised dealer, including replacement parts for use in a motor
22 vehicle.

23 (B) A video display device that is contained within, or a part of
24 a piece of industrial, commercial, or medical equipment, including
25 monitoring or control equipment.

26 (C) A video display device that is contained within a clothes
27 washer, clothes dryer, refrigerator, refrigerator and freezer,
28 microwave oven, conventional oven or range, dishwasher, room
29 air-conditioner, dehumidifier, or air purifier.

30 (D) An electronic device, on and after the date that it ceases to
31 be a covered electronic device under subdivision (e) of Section
32 25214.10.1 of the Health and Safety Code.

33 ~~(f)~~

34 (h) “Covered electronic waste” or “covered e-waste” means a
35 covered electronic device that is discarded.

36 ~~(g)~~

37 (i) “Covered electronic waste recycling fee” or “covered e-waste
38 recycling fee” means the fee imposed pursuant to Article 3
39 (commencing with Section 42464).

40 ~~(h)~~

1 (j) “Covered electronic waste recycler” or “covered e-waste
2 recycler” means any of the following:

3 (1) A person who engages in the manual or mechanical
4 separation of covered electronic devices to recover components
5 and commodities contained therein for the purpose of reuse or
6 recycling.

7 (2) A person who changes the physical or chemical composition
8 of a covered electronic device, in accordance with the requirements
9 of Chapter 6.5 (commencing with Section 25100) of Division 20
10 of the Health and Safety Code and the regulations adopted pursuant
11 to that chapter, by deconstructing, size reduction, crushing, cutting,
12 sawing, compacting, shredding, or refining for purposes of
13 segregating components, for purposes of recovering or recycling
14 those components, and who arranges for the transport of those
15 components to an end user.

16 (3) A manufacturer who meets any conditions established by
17 this chapter and Chapter 6.5 (commencing with Section 25100)
18 of Division 20 of the Health and Safety Code for the collection or
19 recycling of covered electronic waste.

20 ~~(i)~~

21 (k) “Discarded” has the same meaning as defined in subdivision
22 (b) of Section 25124 of the Health and Safety Code.

23 ~~(j)~~

24 (l) “Electronic waste recovery payment” means an amount
25 established and paid by ~~the board~~ CalRecycle pursuant to Section
26 42477.

27 ~~(k)~~

28 (m) “Electronic waste recycling payment” means an amount
29 established and paid by ~~the board~~ CalRecycle pursuant to Section
30 42478.

31 ~~(l)~~

32 (n) “Hazardous material” has the same meaning as defined in
33 Section 25501 of the Health and Safety Code.

34 ~~(m)~~

35 (o) “Manufacturer” means either of the following:

36 (1) A person who manufactures a covered electronic device sold
37 in this state.

38 (2) A person who sells a covered electronic device in this state
39 under that person’s brand name.

40 ~~(n)~~

1 (p) “Person” means an individual, trust firm, joint stock
2 company, business concern, and corporation, including, but not
3 limited to, a government corporation, partnership, limited liability
4 company, and association. Notwithstanding Section 40170,
5 “person” also includes a city, county, city and county, district,
6 commission, the state or a department, agency, or political
7 subdivision thereof, an interstate body, and the United States and
8 its agencies and instrumentalities to the extent permitted by law.

9 ~~(o)~~

10 (q) “Recycling” has the same meaning as defined in subdivision
11 (a) of Section 25121.1 of the Health and Safety Code.

12 ~~(p)~~

13 (r) “Refurbished,” when used to describe a covered electronic
14 device, means a device that the manufacturer has tested and
15 returned to a condition that meets factory specifications for the
16 device, has repackaged, and has labeled as refurbished.

17 ~~(q)~~

18 (s) “Retailer” means a person who makes a retail sale of a new
19 or refurbished covered electronic device. “Retailer” includes a
20 manufacturer of a covered electronic device who sells that covered
21 electronic device directly to a consumer through any means,
22 including, but not limited to, a transaction conducted through a
23 sales outlet, catalog, or the Internet, or any other similar electronic
24 means.

25 ~~(r)~~

26 (t) (1) “Retail sale” has the same meaning as defined under
27 Section 6007 of the Revenue and Taxation Code.

28 (2) “Retail sale” does not include the sale of a covered electronic
29 device that is temporarily stored or used in California for the sole
30 purpose of preparing the covered electronic device for use
31 thereafter solely outside the state, and that is subsequently
32 transported outside the state and thereafter used solely outside the
33 state.

34 ~~(s)~~

35 (u) “Vendor” means a person that makes a sale of a covered
36 electronic device for the purpose of resale to a retailer who is the
37 lessor of the covered electronic device to a consumer under a lease
38 that is a continuing sale and purchase pursuant to Part 1
39 (commencing with Section 6001) of Division 2 of the Revenue
40 and Taxation Code.

1 (t)

2 (v) “Video display device” means an electronic device with an
3 output surface that displays, or is capable of displaying, moving
4 graphical images or a visual representation of image sequences or
5 pictures, showing a number of quickly changing images on a screen
6 in fast succession to create the illusion of motion, including, if
7 applicable, a device that is an integral part of the display, in that
8 it cannot be easily removed from the display by the consumer, that
9 produces the moving image on the screen. A video display device
10 may use, but is not limited to, a cathode ray tube (CRT), liquid
11 crystal display (LCD), gas plasma, digital light processing, or other
12 image projection technology.

13 SEC. 2. Section 42476 of the Public Resources Code is
14 amended to read:

15 42476. (a) The Electronic Waste and Recovery and Recycling
16 Account is hereby established in the Integrated Waste Management
17 Fund. All fees collected pursuant to this chapter shall be deposited
18 in the account. Notwithstanding Section 13340 of the Government
19 Code, the funds in the account are hereby continuously
20 appropriated, without regard to fiscal year, for the following
21 purposes:

22 (1) To pay refunds of the covered electronic waste recycling
23 fee imposed under Section 42464.

24 (2) To make electronic waste recovery payments to an
25 authorized collector of covered electronic waste pursuant to Section
26 42479.

27 (3) To make electronic waste recycling payments to covered
28 electronic waste recyclers pursuant to Section 42479.

29 (4) To make payments to manufacturers pursuant to subdivision
30 (g).

31 (b) (1) The money in the account may be expended for the
32 following purposes only upon appropriation by the Legislature in
33 the annual Budget Act:

34 (A) For the administration of this chapter by ~~the board~~
35 *CalRecycle* and the department.

36 (B) To reimburse the State Board of Equalization for its
37 administrative costs of registering, collecting, making refunds, and
38 auditing retailers and consumers in connection with the covered
39 electronic waste recycling fee imposed under Section 42464.

1 (C) To provide funding to the department to implement and
2 enforce Chapter 6.5 (commencing with Section 25100) of Division
3 20 of the Health and Safety Code, as that chapter relates to covered
4 electronic devices, and any regulations adopted by the department
5 pursuant to that chapter.

6 (D) To establish the public information program specified in
7 subdivision (d).

8 (2) Any fines or penalties collected pursuant to this chapter shall
9 be deposited in the Electronic Waste Penalty Subaccount, which
10 is hereby established in the account. The funds in the Electronic
11 Waste Penalty Subaccount may be expended by ~~the board~~
12 *CalRecycle* or department only upon appropriation by the
13 Legislature.

14 (c) Notwithstanding Section 16475 of the Government Code,
15 any interest earned upon funds in the Electronic Waste Recovery
16 and Recycling Account shall be deposited in that account for
17 expenditure pursuant to this chapter.

18 (d) Not more than 1 percent of the funds annually deposited in
19 the Electronic Waste Recovery and Recycling Account shall be
20 expended for the purposes of establishing the public information
21 program to educate the public in the hazards of improper covered
22 electronic device storage and disposal and on the opportunities to
23 recycle covered electronic devices.

24 (e) ~~The board~~ *CalRecycle* shall adopt regulations specifying
25 cancellation methods for the recovery, processing, or recycling of
26 covered electronic waste.

27 (f) ~~The board~~ *CalRecycle* may pay an electronic waste recycling
28 payment or electronic waste recovery payment for covered
29 electronic waste only if all of the following conditions are met:

30 (1) The covered electronic waste, including any residuals from
31 the processing of the waste, is handled in compliance with all
32 applicable statutes and regulations.

33 (2) The manufacturer or the authorized collector or recycler of
34 the electronic waste provide a cost free and convenient opportunity
35 to recycle electronic waste, in accordance with the legislative intent
36 specified in subdivision (b) of Section 42461.

37 (3) If the covered electronic waste is processed, the covered
38 electronic waste is processed in this state according to the
39 cancellation method authorized by ~~the board~~ *CalRecycle*.

1 (4) *The recycler demonstrates and CalRecycle determines that*
2 *no amount or component of the covered electronic device from*
3 *which the covered electronic waste was derived is exported to a*
4 *state or country in violation of the laws or requirements of that*
5 *state or country.*

6 (5) *The recycler demonstrates and CalRecycle determines that*
7 *all electronic waste handled by the recycler making the claim has*
8 *been managed consistent with Section 42476.5 and that the recycler*
9 *or any other entity exporting any portion of the covered electronic*
10 *waste for which payment is claimed or any electronic waste is in*
11 *compliance with the requirements of Section 42476.5.*

12 ~~(4)~~

13 ~~(g) The board declares—~~*CalRecycle shall declare that the state*
14 *is a market participant in the business of the recycling of covered*
15 *electronic waste for all of the following reasons:*

16 ~~(A)~~

17 (1) *The fee is collected from the state’s consumers for covered*
18 *electronic devices sold for use in the state.*

19 ~~(B)~~

20 (2) *The purpose of the fee and subsequent payments is to prevent*
21 *damage to the public health and the environment from waste*
22 *generated in the state.*

23 ~~(C)~~

24 (3) *The recycling system funded by the fee ensures that*
25 *economically viable and sustainable markets are developed and*
26 *supported for recovered materials and components in order to*
27 *conserve resources and maximize business and employment*
28 *opportunities within the state.*

29 ~~(g)~~

30 ~~(h) (1) The board—~~*CalRecycle may make a payment to a*
31 *manufacturer that takes back a covered electronic device from a*
32 *consumer in this state for purposes of recycling the device at a*
33 *processing facility. The amount of the payment made by the board*
34 *CalRecycle shall equal the value of the covered electronic waste*
35 *recycling fee paid for that device. To qualify for a payment*
36 *pursuant to this subdivision, the manufacturer shall demonstrate*
37 *both of the following to the board CalRecycle:*

38 (A) *The covered electronic device for which payment is claimed*
39 *was used in this state.*

1 (B) The covered electronic waste for which a payment is
2 claimed, including any residuals from the processing of the waste,
3 has been, and will be, handled in compliance with all applicable
4 statutes and regulations.

5 (2) A covered electronic device for which a payment is made
6 under this subdivision is not eligible for an electronic waste
7 recovery payment or an electronic waste recycling payment under
8 Section 42479.

9 SEC. 3. Section 42476.5 of the Public Resources Code is
10 amended to read:

11 42476.5. ~~A~~ *Except as provided in the regulations adopted*
12 *pursuant to Section 42476.6, a person who exports covered*
13 *electronic waste, or a covered electronic device, electronic waste,*
14 *or previously used electronic device intended for reuse, recycling,*
15 *or disposal, to a foreign country, or to another state for ultimate*
16 *export to a foreign country, shall do all of the following at least*
17 *60 days prior to export:*

18 (a) Notify the department of the destination, disposition,
19 contents, and volume of the waste, or device intended for recycling
20 or disposal to be exported, and include with the notification the
21 demonstrations required pursuant to subdivisions (b) to (e),
22 inclusive.

23 (b) Demonstrate that the waste or device is being exported for
24 the purposes of recycling or disposal.

25 (c) Demonstrate that the importation of the waste or device is
26 not prohibited by an applicable law in the state or country of
27 destination and that any import will be conducted in accordance
28 with all applicable laws. As part of this demonstration, required
29 import and operating licenses, permits, or other appropriate
30 authorization documents shall be forwarded to the department.

31 (d) Demonstrate that the exportation of the waste or device is
32 conducted in accordance with applicable United States or
33 applicable international law.

34 (e) (1) Demonstrate that the waste or device will be managed
35 within the country of destination only at facilities whose operations
36 meet or exceed the binding decisions and implementing guidelines
37 of the Organization for Economic Cooperation and Development
38 for the environmentally sound management of the waste or device
39 being exported.

1 (2) The demonstration required by this subdivision applies to
2 any country of destination, notwithstanding that the country is not
3 a member of the Organization for Economic Cooperation and
4 Development.

5 SEC. 4. Section 42476.6 of the Public Resources Code is
6 repealed.

7 ~~42476.6. Section 42476.5 does not apply to a component part~~
8 ~~of a covered electronic device that is exported to an authorized~~
9 ~~collector or recycler and that is reused or recycled into a new~~
10 ~~electronic component.~~

11 SEC. 5. Section 42476.6 is added to the Public Resources Code,
12 to read:

13 42476.6. (a) It is the intent of the Legislature that only materials
14 or component parts of electronic waste or previously used
15 electronic devices that are ready for reuse or recycling back into
16 new materials or products without further processing or handling
17 and that pose no risk to public health or the environment are exempt
18 from the requirements of Section 42476.5.

19 (b) The department shall adopt regulations providing guidance
20 to exporters on materials and components to exempt from the
21 requirements of Section 42476.5 only materials or component parts
22 of electronic waste, covered electronic waste, previously used
23 electronic devices, and previously used covered electronic devices
24 that are ready for reuse or recycling back into new materials or
25 products without further processing or handling and that pose no
26 risk to public health or the environment.

27 SEC. 6. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.