

# ASSEMBLY, No. 1459

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Assemblyman REED GUSCIORA**

**District 15 (Hunterdon and Mercer)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblyman PETER J. BARNES, III**

**District 18 (Middlesex)**

**SYNOPSIS**

Revises “Electronic Waste Management Act.”

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning electronic waste and amending P.L.2007,  
2 c.347, and P.L.2008, c.130, and supplementing P.L.1977, c.443  
3 (C.26:3A2-21 et seq.).  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 3 of P.L.2007, c.347 (C.13:1E-99.96) is amended to  
9 read as follows:

10 3. a. Beginning on January 1, 2010, and each January 1  
11 thereafter, each manufacturer of televisions offered for sale for  
12 delivery in this State shall register with the department and pay a  
13 registration fee of \$5,000. Each television manufacturer's  
14 registration and renewal shall include a list of all of the brands  
15 under which its televisions are sold. All fees collected pursuant to  
16 this subsection shall be allocated to the department to be used in the  
17 administration of the "Electronic Waste Management Act,"  
18 P.L.2007, c.347 (C.13:1E-99.94 et seq.).

19 b. Each registered television manufacturer shall submit an  
20 annual renewal of its registration to the department and pay to the  
21 department a registration renewal fee of \$5,000 by January 1 of  
22 each program year. Each registered television manufacturer's  
23 renewal shall include an annual report. All fees collected pursuant  
24 to this subsection shall be allocated to the department to be used in  
25 the administration of P.L.2007, c.347.

26 c. In addition to reporting all brands under which its televisions  
27 are sold, regardless of whether the brand is owned or licensed, the  
28 registered television manufacturer's annual report shall include the  
29 total number of all new televisions sold in the State in the previous  
30 program year. The department shall determine a registered  
31 television manufacturer's market share.

32 d. A registered television manufacturer shall inform the  
33 department, in writing, as soon as it becomes aware that it will  
34 cease selling televisions in the State.

35 e. By June 1, 2010, each registered television manufacturer or  
36 group of registered television manufacturers shall submit a plan to  
37 the department to collect, transport and recycle used televisions  
38 based on the television manufacturer's market share. Every plan  
39 shall be filed with a television manufacturer's annual registration,  
40 and shall include:

41 (1) Methods that will be used to collect the used televisions  
42 including proposed collection services;

43 (2) The processes and methods that will be used to recycle  
44 recovered used televisions including a description of the recycling

**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 processes that will be used, including the name and location of all  
2 authorized recyclers to be directly utilized by the plan;

3 (3) Means that will be utilized to publicize the collection  
4 services, including specification of a website or toll-free telephone  
5 number that provides information about the registrant's recycling  
6 program in sufficient detail to allow consumers to learn how to  
7 return their used televisions for recycling, including limitations  
8 placed by collection sites on the number of used televisions  
9 permitted for drop-off by consumers; and

10 (4) The intention of the registrant to fulfill its obligation through  
11 its own operations, either individually or with other registered  
12 television manufacturers, or by contract with for-profit or not-for-  
13 profit corporations, or local government units.

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

19 Recovered used televisions shall not be sent to prisons for  
20 recycling either directly or through intermediaries and nothing in  
21 this section shall be construed to allow for the recycling of used  
22 televisions by prisoners. Any person committed to a jail, prison, or  
23 other institution for the detention of persons charged with or  
24 convicted of an offense shall be disqualified from being an  
25 authorized recycler.

26 By January 1, 2011, each registered television manufacturer or  
27 group of registered television manufacturers shall commence its  
28 used television recycling program to implement and finance the  
29 collection, transportation, and recycling of used televisions. The  
30 used television recycling program shall accept all types and all  
31 brands of used televisions, including orphan devices.

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

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

41 h. **【Registered television manufacturers that collect, transport,  
42 and recycle used televisions in excess of their market share may sell  
43 credits to another registrant or apply that excess to the following  
44 year's recycling program.】** Registered television manufacturers that  
45 collect, transport, and recycle used televisions in excess of their  
46 market share may sell credits to another registrant or apply that  
47 excess to the following year's recycling program; provided that no

1 more than 25 percent of a manufacturer's obligation for any  
2 program year may be met with credits generated in a prior program  
3 year. No manufacturer or group of manufacturers, as the case may  
4 be, may cease implementing its plan required pursuant to subsection  
5 e. of this section and approved by the department, during any  
6 program year by using credits.

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

9 j. If less than 100 televisions are sold by a manufacturer in the  
10 previous program year, the department shall not require a  
11 manufacturer to pay the registration fee or registration renewal fee,  
12 as appropriate, in the subsequent year, pursuant to subsections a. or  
13 b. of this section.

14 (cf: P.L.2008, c.130, s.2)

15  
16 2. Section 3 of P.L.2008, c.130 (C.13:1E-99.96a) is amended to  
17 read as follows:

18 3. a. The department shall prepare a plan every three years  
19 that: (1) establishes used television per-capita collection and  
20 recycling goals; and (2) identifies any necessary State actions to  
21 expand collection opportunities to achieve the used television per-  
22 capita collection and recycling goals. The plan shall be posted on  
23 the department's Internet website and submitted, pursuant to section  
24 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

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

29 The annual report shall include the following:

30 (1) Progress toward achieving the overall annual total recovery  
31 and recycling goals described in the plan prepared pursuant to  
32 subsection a. of this section; and

33 (2) An evaluation of the effectiveness of existing used television  
34 collection and processing infrastructure.

35 c. **【**The used television recovery and recycling program  
36 implemented to effectuate the provisions of P.L.2007, c.347  
37 (C.13:1E-99.94 et al.) and its associated regulations shall be fully  
38 audited by an independent, certified public accountant at the end of  
39 each calendar year and the audit report shall be submitted, pursuant  
40 to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.**】**

41 (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_) (pending before the  
42 Legislature as this bill).

43 (cf: P.L.2008, c.130, s.3)

44  
45 3. Section 8 of P.L.2007, c.347 (C.13:1E-99.101) is amended  
46 to read as follows:

1       8. Beginning on January 1, 2011, no person shall sell or offer  
2 for sale in this State a new covered electronic device, including a  
3 television, if the covered electronic device is prohibited from being  
4 sold or offered for sale in the European Union on or after its date of  
5 manufacture due to the concentration of one or more heavy metals  
6 in the covered electronic device exceeding its maximum  
7 concentration value, as specified in the Commission of European  
8 Communities' Decision of August 18, 2005, amending Directive  
9 2002/95/EC (European Union document 2005/618/EC), or as  
10 specified in a subsequent amendment to the Directive. The sale or  
11 offer for sale of a new covered electronic device that exceeds the  
12 European Union heavy metal maximum concentration value on or  
13 after its date of manufacture shall be permitted if the use of the  
14 heavy metal is necessary to comply with consumer, health, or safety  
15 requirements imposed by the Underwriters Laboratories or federal  
16 or State law.

17 (cf: P.L.2008, c.130, s.6)

18

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

21       9. a. (1) By January 30, 2012, and by each January 30  
22 thereafter, the department shall:

23       (a) have completed an auditable, statistically **【significant】** valid  
24 sampling of covered electronic devices collected from consumers in  
25 this State during the previous program year. The sampling  
26 information collected shall consist of a list of brands of covered  
27 electronic devices and the weight of covered electronic devices that  
28 are identified for each brand. The department's sampling shall be  
29 conducted in accordance with a procedure established by the  
30 department and may be conducted by a third-party organization  
31 including an authorized recycler, to be determined by the  
32 department. The department may, at its discretion, be present at the  
33 sampling and may audit the methodology and the results of the  
34 third-party organization. The costs associated with the sampling  
35 shall be recovered from the fees paid by manufacturers to the  
36 department; and

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

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

45       (a) the results of an auditable, statistically **【significant】** valid  
46 sampling of covered electronic devices collected from consumers in  
47 this State by the manufacturer or group of manufacturers during the

1 previous program year. The sampling information reported shall  
2 consist of a list of brands of covered electronic devices and the  
3 weight of covered electronic devices that are identified for each  
4 brand; and

5 (b) the total weight of covered electronic devices, including  
6 orphan devices, collected from consumers in this State by the  
7 manufacturer or group of manufacturers during the previous  
8 program year and documentation verifying collection and recycling  
9 of such devices.

10 b. By February 1, 2010, and each January 1 thereafter, each  
11 manufacturer of covered electronic devices offered for sale for  
12 delivery in this State shall register with the department and pay a  
13 registration fee of \$5,000. Any manufacturer to whom the  
14 department provides notification of a return share and return share  
15 in weight pursuant to subsection a. of section 12 of P.L.2007, c.347  
16 (C.13:1E-99.105) and who has not previously filed a registration  
17 shall file a registration with the department within 30 days  
18 of receiving such notification from the department. Each  
19 manufacturer's registration and renewal shall include a list of all of  
20 the manufacturer's brands of covered electronic devices.

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

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

29 (cf: P.L.2008, c.130, s.7)

30  
31 5. Section 10 of P.L.2007, c.347 (C.13:1E-99.103) is amended  
32 to read as follows:

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

37 b. Each manufacturer to whom the department provides, by  
38 February 15, 2012 or by February 15 of any year thereafter, a return  
39 share in weight that is greater than zero shall, by March 15 of that  
40 year, comply with the requirements of subsection a. of this section.

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

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

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

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

5 (2) The processes and methods that will be used to recycle  
6 recovered covered electronic devices including a description of the  
7 recycling processes that will be used, including the name and  
8 location of all authorized recyclers to be directly utilized by the  
9 plan;

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

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

18 (5) The intention of the registrant to fulfill its obligation through  
19 operation of its own plan, either individually or with other  
20 manufacturers.

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

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

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

43 f. Each manufacturer's plan or plan jointly submitted by a  
44 group of manufacturers shall be reviewed to determine its  
45 compliance with subsection e. of this section and approved by the  
46 department. The department may reject the plan, in whole or in

1 part, and may impose additional requirements as a condition of  
2 approval.

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

7 h. **【Manufacturers that collect, transport, and recycle covered**  
8 **electronic devices in excess of their obligation may sell credits to**  
9 **another registrant or apply that excess to the following year's**  
10 **recycling obligation.】** Manufacturers that collect, transport, and  
11 recycle covered electronic devices in excess of their obligation may  
12 sell credits to another registrant or apply that excess to the  
13 following year's recycling obligation; provided that no more than 25  
14 percent of a manufacturer's obligation for any program year may be  
15 met with credits generated in a prior program year. No  
16 manufacturer or group of manufacturers, as the case may be, may  
17 cease implementing its plan required pursuant to subsection e. of  
18 this section and approved by the department, during any program  
19 year by using credits.

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

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

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

24 l. The provisions of this section shall not apply to any  
25 manufacturer or retailer of televisions offered for sale for delivery  
26 in this State.

27 (cf: P.L.2008, c.130, s.8)

28

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

31 12. a. (1) The department shall determine the return share for  
32 each program year for each manufacturer by dividing the weight of  
33 covered electronic devices identified for each manufacturer by the  
34 total weight of covered electronic devices identified for all  
35 manufacturers. For the first program year, the return share of  
36 covered electronic devices identified for each manufacturer shall be  
37 based on the best available public return share data from the United  
38 States, including data from other states, for covered electronic  
39 devices from consumers. For the second and each subsequent  
40 program year, the return share of covered electronic devices  
41 identified for each manufacturer shall be based on the most recent  
42 samplings of covered electronic devices conducted in this State  
43 pursuant to subsection a. of section 9 of P.L.2007, c.347 (C.13:1E-  
44 99.102).

45 (2) The department shall determine the return share in weight  
46 for each program year for each manufacturer for whom a return  
47 share is determined pursuant to paragraph (1) of this subsection by



1 multiplying the return share for each such manufacturer by the total  
2 weight in pounds of covered electronic devices, including orphan  
3 devices, collected from consumers the previous program year. For  
4 the first program year, the total weight in pounds of covered  
5 electronic devices shall be based on the best available public weight  
6 data from the United States, including data from other states, for  
7 covered electronic devices from consumers. For the second and  
8 each subsequent program year, the total weight in pounds of  
9 covered electronic devices shall be based on the total weight of  
10 covered electronic devices, including orphan devices, determined  
11 by the department pursuant to subsection a. of section 9 of  
12 P.L.2007, c.347 (C.13:1E-99.102).

13 (3) By April 2, 2011, the department shall provide each  
14 manufacturer for whom a return share is determined pursuant to  
15 paragraph (1) of this subsection with its return share and its return  
16 share in weight for the first program year. Annually thereafter, by  
17 February 15, beginning in 2013, the department shall provide each  
18 manufacturer for whom a return share is determined pursuant to  
19 paragraph (1) of this subsection with its return share and its return  
20 share in weight for the second and subsequent program years.

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

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

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

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

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

35 e. The department shall prepare a plan every three years that:  
36 (1) establishes per-capita collection and recycling goals; and (2)  
37 identifies any necessary State actions to expand collection  
38 opportunities to achieve the per-capita collection and recycling  
39 goals. The plan shall be posted on the department's Internet website  
40 and submitted, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
41 19.1), to the Legislature.

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

46 The annual report shall include the following:

- 1 (1) The total weight of covered electronic devices collected in  
2 the State the previous calendar year;
- 3 (2) Progress toward achieving the overall annual total recovery  
4 and recycling goals described in the plan prepared pursuant to  
5 subsection e. of this section;
- 6 (3) A complete listing of all collection sites operating in the  
7 State in the prior calendar year, the parties that operated them, and  
8 the amount of material by weight collected at each site;
- 9 (4) An evaluation of the effectiveness of the education and  
10 outreach program; and
- 11 (5) An evaluation of the existing collection and processing  
12 infrastructure.
- 13 g. **【**The program implemented to effectuate the provisions of  
14 this act and its associated regulations shall be fully audited by an  
15 independent, certified public accountant at the end of each calendar  
16 year and the audit report shall be submitted, pursuant to section 2 of  
17 P.L.1991, c.164 (C.52:14-19.1), to the Legislature.**】** (Deleted by  
18 amendment, P.L. , c. ) (pending before the Legislature as this  
19 bill).
- 20 h. The provisions of this section shall not apply to any  
21 manufacturer or retailer of televisions offered for sale for delivery  
22 in this State.  
23 (cf: P.L.2008, c.130, s.10)  
24
- 25 7. Section 13 of P.L.2007, c.347 (C.13:1E-106) is amended to  
26 read as follows:
- 27 13. a. The department shall maintain an Internet website and  
28 toll-free number complete with up-to-date listings of where  
29 consumers can bring covered electronic devices for recycling under  
30 the provisions of this act.
- 31 b. (Deleted by amendment, P.L.2008, c.130)
- 32 c. **【**No more frequently than annually and no less frequently  
33 than biennially, the department shall review, at a public hearing, the  
34 covered electronic device recycling goals and registration fees.  
35 Recommended changes to the covered electronic device recycling  
36 goals and registration fees shall be included in the annual reports  
37 required pursuant to section 3 of P.L.2008, c.130 (C.13:1E-99.96a)  
38 and subsection f. of section 12 of P.L.2007, c.347 (C.13:1E-  
39 99.105).**】** (Deleted by amendment, P.L. , c. ) (pending before  
40 the Legislature as this bill).
- 41 d. No fees or costs may be charged to consumers for the  
42 collection, transportation, or recycling of covered electronic devices  
43 except that a nominal fee may be charged to a consumer if a  
44 financial incentive, such as a coupon, of equal or greater value is  
45 provided . Any authorized recycler may charge fees to schools or  
46 local government units for the reasonable costs incurred by the

1 authorized recycler for the collection, transportation, or recycling of  
2 covered electronic devices.  
3 (cf: P.L.2008, c.130, s.11)  
4

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

7 17. a. **【**The State, including the Attorney General and the  
8 department, shall be authorized to initiate independent action to  
9 enforce any provision of this act, including failure by a  
10 manufacturer to remit the registration fee required pursuant to  
11 section 3 of P.L.2007, c.347 (C.13:1E-99.96) or section 9 of  
12 P.L.2007, c.347 (C.13:1E-99.102), or any fee required pursuant to  
13 subsection b. of section 18 of P.L.2007, c.347 (C.13:1E-99.111) to  
14 the department. Any funds awarded by the court shall be used first  
15 to offset enforcement expenses. Money in excess of the  
16 enforcement expenses shall be deposited into a separate account,  
17 and shall be dedicated for use by the department solely for the  
18 purposes of administering and enforcing the provisions of this act  
19 and any rules or regulations adopted pursuant thereto.**】** (Deleted by  
20 amendment, P.L. , c. ) (pending before the Legislature as this  
21 bill).

22 b. **【**Any person who violates the provisions of this act shall be  
23 subject to a penalty of not less than \$500 nor more than \$1,000 for  
24 each offense, to be collected in a civil action by a summary  
25 proceeding under the "Penalty Enforcement Law of 1999,"  
26 P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court  
27 of competent jurisdiction wherein injunctive relief has been  
28 requested. The Superior Court shall have jurisdiction to enforce the  
29 provisions of the "Penalty Enforcement Law of 1999" in connection  
30 with this act.

31 If the violation is of a continuing nature, each day during which  
32 it continues constitutes an additional, separate, and distinct offense.

33 The department may institute a civil action for injunctive relief  
34 to enforce this act and to prohibit and prevent a violation of this act,  
35 and the court may proceed in the action in a summary manner.**】**  
36 (Deleted by amendment, P.L. , c. ) (pending before the  
37 Legislature as this bill).

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

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

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

44 (3) the knowing failure to report or accurately report any data  
45 required to be reported to the department pursuant to this act; **【and】**

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

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

4       (6) failure to submit or implement a plan pursuant to section 3  
5 or 10 of P.L.2007, c.347 (C.13:1E-99.96 or C.13:1E-99.103) .

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

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

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

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

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

21       e. Whenever, on the basis of available information, the  
22 commissioner finds that a person has violated any provision of  
23 P.L.2007, c.347, or any rule or regulation adopted thereto, the  
24 commissioner may issue an administrative enforcement order: (1)  
25 specifying the provision or provisions of P.L.2007, c.347, or the  
26 rule or regulation, of which the person is in violation; (2) citing the  
27 action which constituted the violation; (3) requiring compliance  
28 with the provision or provisions violated; and (4) providing notice  
29 to the person of the right to a hearing on the matters contained in  
30 the administrative enforcement order. The ordered party shall have  
31 35 days from receipt of the order within which to deliver to the  
32 commissioner a written request for a hearing. An order shall be  
33 effective upon receipt and any person to whom such order is  
34 directed shall comply with the order immediately. A request for  
35 hearing shall not automatically stay the effect of the order.

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

41       (1) a temporary or permanent injunction;

42       (2) recovery of reasonable costs of any investigation or  
43 inspection which led to the discovery of the violation, and for the  
44 reasonable costs of preparing and bringing a civil action  
45 commenced under this subsection;

46       (3) recovery of reasonable costs incurred by the State in  
47 removing, correcting, or terminating the adverse effects resulting

1 from any violation of the provisions of P.L.2007, c.347, or any rule  
2 or regulation adopted pursuant thereto, for which a civil action has  
3 been commenced and brought under this subsection;

4 (4) recovery of compensatory damages caused by a violation of  
5 the provisions of P.L.2007, c.347, or any rule or regulation adopted,  
6 for which a civil action has been commenced and brought under this  
7 subsection. Assessments under this subsection shall be paid to the  
8 State Treasurer, or to the certified local health agency, as the case  
9 may be, except that compensatory damages may be paid by specific  
10 order of the court to any persons who have been aggrieved by the  
11 violation. If a proceeding is instituted by a certified local health  
12 agency, notice thereof shall be served upon the commissioner in the  
13 same manner as if the commissioner were a named party to the  
14 action or proceeding. The department may intervene as a matter of  
15 right in any proceeding brought by a certified local health agency.

16 g. (1) Except as authorized otherwise in paragraph (2) of this  
17 subsection, the commissioner is authorized to assess a civil  
18 administrative penalty of not less than \$500 nor more than \$1,000  
19 for each violation, provided that each day during which the  
20 violation continues shall constitute an additional, separate and  
21 distinct offense.

22 (2) For any violation of sections 3, 7, 8, 10 or 11 of P.L.2007,  
23 c.347 (C.13:1E-99.96, C.13:1E-99.100, C.13:1E-99.101, C.13:1E-  
24 99.103, or C.13:1E-99.104) or subsection a. or b. of section 6,  
25 subsection b. of section 9, or subsection a. of section 15 of  
26 P.L.2007, c.347 (C.13:1E-99.99, C.13:1E-99.102, C.13:1E-99.108),  
27 the commissioner is authorized to assess a civil administrative  
28 penalty not to exceed \$50,000 for each day during which a violation  
29 continues. In assessing a civil administrative penalty, the  
30 commissioner shall consider the severity of the violation, the  
31 measures taken to prevent further violations, and whether the  
32 penalty will maintain an appropriate deterrent.

33 Prior to assessment of a civil administrative penalty, the person  
34 committing the violation shall be notified by certified mail or  
35 personal service that the penalty is being assessed. The notice shall  
36 identify the section of the statute, rule, regulation, or order violated;  
37 recite the facts alleged to constitute a violation; state the basis for  
38 the amount of the civil administrative penalties to be assessed; and  
39 affirm the rights of the alleged violator to a hearing. The ordered  
40 party shall have 35 days from receipt of the notice within which to  
41 deliver to the commissioner a written request for a hearing. After  
42 the hearing and upon finding that a violation has occurred, the  
43 commissioner may issue a final order after assessing the amount of  
44 the fine specified in the notice. If no hearing is requested, the  
45 notice shall become a final order after the expiration of the 35-day  
46 period. Payment of the assessment is due when a final order is  
47 issued or the notice becomes a final order. The authority to levy an

1 administrative order is in addition to all other enforcement  
2 provisions in P.L.2007, c.347, and the payment of any assessment  
3 shall not be deemed to affect the availability of any other  
4 enforcement provisions in connection with the violation for which  
5 the assessment is levied. The department may compromise any  
6 civil administrative penalty assessed under this section in an  
7 amount and with conditions the department determines appropriate.

8 h. A person who violates any provision of P.L.2007, c.347, or  
9 any rule or regulation adopted pursuant thereto, or an administrative  
10 order issued pursuant to subsection e. of this section, or a court  
11 order issued pursuant to subsection f. of this section, or who fails to  
12 pay a civil administrative penalty in full pursuant to subsection g. of  
13 this section, or who knowingly makes any false or misleading  
14 statement on any application, record, report, or other document  
15 required to be submitted to the department, shall be subject, upon  
16 order of a court, to a civil penalty not to exceed \$50,000 per day of  
17 the violation, and each day during which the violation continues  
18 shall constitute an additional, separate, and distinct offense. Any  
19 civil penalty imposed pursuant to this subsection may be collected  
20 with costs in a summary proceeding pursuant to the "Penalty  
21 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),  
22 or may be collected in a civil action commenced by a certified local  
23 health agency, or the commissioner, as the case may be. In addition  
24 to any penalties, costs or interest charges, the Superior Court, or the  
25 municipal court as the case may be, may assess against the violator  
26 the amount of economic benefit accruing to the violator from the  
27 violation.

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

31 (cf: P.L.2008, c.130, s.14)

32  
33 9. (New section) In addition to the environmental health laws  
34 that are enforced by a certified local health agency pursuant to  
35 section 7 of P.L.1977, c.443 (C.26:3A2-25), a certified local health  
36 agency may agree to enforce the provisions of P.L.2007, c.347  
37 (C.13:1E-99.94 et seq.) as provided in section 17 of P.L.2007, c.347  
38 (C.13:1E-99.110).

39  
40 10. This act shall take effect immediately.

#### 41 42 43 STATEMENT

44  
45 This bill would amend the "Electronic Waste Management Act,"  
46 P.L.2007, c.347 (C.13:1E-99.94 et seq.) by revising its penalty  
47 provisions, deleting the credit-trading program, reallocating the

1 funds collected under registration fees, authorizing enforcement of  
2 the act by certified local health agencies, and removing audit and  
3 public hearing requirements under current law.

4 Under the bill, the Department of Environmental Protection  
5 (DEP) would use the registration fees from manufacturers to  
6 support the administration of the program. In addition, the bill  
7 would exempt manufacturers who sell less than 100 televisions or  
8 less than 100 covered electronic devices in the previous program  
9 year from paying the \$5,000 registration or registration renewal fee.  
10 Any manufacturer who sells 100 or more units, after being  
11 exempted from fees, would be required to pay the registration fee or  
12 the registration renewal fee for any year in which 100 or more units  
13 are sold.

14 Current law provides that a person in violation of this act may be  
15 subject to a civil penalty of not less than \$500 nor more than \$1,000  
16 for each offense, and the DEP is required to seek relief in Superior  
17 Court to enforce the statute. This bill would change the penalty  
18 provision to authorize the DEP to issue administrative orders, levy  
19 administrative penalties, bring a civil action seeking a court order,  
20 and bring an action for a civil penalty to enforce the act. The bill  
21 also authorizes the commissioner to assess a civil administrative  
22 penalty not to exceed \$50,000, for certain violations of the act, such  
23 as failure to register or submit or implement a plan. For other  
24 violations, the commissioner is authorized to assess a civil  
25 administrative penalty of not less than \$500 nor more than \$1,000  
26 for each violation. In addition, the bill would authorize a court to  
27 impose a civil penalty for violations of the act of up to \$50,000 per  
28 day. Further, the bill authorizes certified local health agencies to  
29 enforce the act.

30 This bill would limit the provision of law allowing  
31 manufacturers that collect electronics in excess of their obligation  
32 to either sell credits to other manufacturers or apply the credits to  
33 the next year's obligation by providing that no more than 25 percent  
34 of a manufacturer's obligation for any program year may be met  
35 with credits generated in a prior program year. The bill further  
36 provides that no manufacturer or group of manufacturers, as the  
37 case may be, may cease implementing its plan during any program  
38 year by using credits.

39 The bill would also allow the sale or offer for sale of new  
40 electronic devices that exceed the European Union heavy metal  
41 maximum concentration value on or after the date of manufacture if  
42 the use of the heavy metal is necessary to comply with consumer,  
43 health, or safety requirements imposed by the Underwriters  
44 Laboratories or federal or State law. The bill would also allow a  
45 nominal fee to be charged to a consumer for the collection,  
46 transportation, or recycling of a covered electronic device if a  
47 financial incentive, such as a coupon, of equal or greater value is

1 provided. Finally, the bill would also delete provisions that  
2 required: (1) the used television recovery and recycling program to  
3 be fully audited by an independent, certified public accountant each  
4 calendar year; and (2) the DEP to hold a public hearing every one to  
5 two years to review the covered electronic device recycling goals  
6 and registration fees.