



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2346

Introduced 2/16/2005, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

415 ILCS 5/Title XVIII heading new
415 ILCS 5/59 new
415 ILCS 5/59.5 new
415 ILCS 5/59.10 new
415 ILCS 5/59.15 new
415 ILCS 5/59.20 new
415 ILCS 5/59.25 new
415 ILCS 5/59.30 new
415 ILCS 5/59.35 new
415 ILCS 5/59.40 new
415 ILCS 5/59.45 new
415 ILCS 5/59.50 new
415 ILCS 5/59.55 new
415 ILCS 5/59.60 new
415 ILCS 5/59.65 new
415 ILCS 5/59.70 new
30 ILCS 105/5.640 new

Amends the Environmental Protection Act. Sets forth restrictions on the disposal of covered electronic devices. Creates the Electronics Recovery and Recycling Fund as a special fund in the State Treasury. Sets forth fees that must be paid by a retailer upon the sale of certain electronic products and requires that the moneys from the fees be deposited into the Fund. Sets forth the purposes for which the moneys in the Fund may be used. Requires retailers of electronic products to file a quarterly return concerning the fees for the sale of electronic products. Sets forth the procedures for the Department of Revenue's collection of the fees. Provides that any retailer who: fails to make a return; makes a fraudulent return; or willfully violates any rule or regulation of the Department of Revenue for the administration and enforcement of the fee is guilty of a Class 4 felony. Requires the Environmental Protection Agency to submit a report to the General Assembly before January 1, 2008 concerning the recycling of electronic products. Authorizes the Agency to propose regulations for a program requiring manufacturers to accept for disposal any electronic product that they have manufactured. Establishes an advisory committee concerning electronic products. Amends the State Finance Act to create the Electronics Recovery and Recycling Fund. Effective January 1, 2006.

LRB094 04198 RSP 34222 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning environmental protection.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 adding Title XVIII as follows:

6 (415 ILCS 5/Title XVIII heading new)

7 TITLE XVIII: ELECTRONIC PRODUCTS RECOVERY AND RECYCLING

8 (415 ILCS 5/59 new)

9 Sec. 59. Findings and intent.

10 (a) The General Assembly finds:

11 (1) That managing disposed of or discarded electronic
12 products is a rapidly growing waste problem due to the
13 proliferation of electronic products combined with their
14 rapid obsolescence.

15 (2) That electronic products contain toxic substances,
16 including, but not limited to, cathode ray tubes, lead,
17 mercury, cadmium, copper, lithium, brominated flame
18 retardants, and phosphorus, all of which, if released, can
19 pose a threat to public health and welfare and the
20 environment.

21 (3) That the State and local governments do not have
22 the existing infrastructure nor the funds necessary to
23 properly manage disposed of or discarded electronic
24 products.

25 (b) The intent of this Title is to ensure that disposed of
26 or discarded electronic products are managed in a way that
27 protects public health and welfare and the environment.

28 (415 ILCS 5/59.5 new)

29 Sec. 59.5. Definitions. For the purposes of this Title:

30 "Covered electronic device" means a cathode ray tube,

1 cathode ray tube device, flat panel screen, or any other
2 similar video display device with a screen size that is greater
3 than 4 inches in size measured diagonally or any cell phone.

4 "Covered electronic device" does not include an automobile or a
5 large piece of commercial or industrial equipment, including,
6 but not limited to, commercial medical equipment that contains
7 a cathode ray tube, cathode ray tube device, flat panel screen,
8 or other similar video display device that is contained within,
9 and is not separate from, the larger piece of industrial or
10 commercial equipment.

11 "Electronic product" means a covered electronic device, a
12 computer monitor, a central processing unit, a laptop computer,
13 a keyboard, a keyboard mouse, a computer speaker, and any other
14 peripheral, including a television.

15 "Manufacturer" means any person who:

16 (1) manufactures and sells at retail or offers for sale
17 at retail electronic products under its own brand in this
18 State; or

19 (2) sells at retail or offers for sale at retail, under
20 its own brand, electronic products manufactured by other
21 persons in this State.

22 "Retailer" means a person who sells a covered electronic
23 device in the State to a consumer but who did not manufacture
24 the device. "Retailer" includes a manufacturer of a covered
25 electronic device who sells that covered electronic device
26 directly to a consumer through any means, including, but not
27 limited to, transactions conducted through sales outlets,
28 catalogs, or the Internet or any other similar electronic
29 means, but does not include a sale that is a wholesale
30 transaction with a distributor or retailer.

31 "Recycling" means, for the purposes of this Title, any
32 process by which materials that are disposed of or discarded,
33 or would otherwise be disposed of or discarded, are collected
34 separated, or processed and returned to the economic mainstream
35 in the form of raw materials or products.

1 (415 ILCS 5/59.10 new)

2 Sec. 59.10. Restrictions on the disposal of covered
3 electronic devices.

4 (a) Beginning January 1, 2009, no person may knowingly mix
5 or cause or allow the mixing of a covered electronic device
6 with municipal solid waste.

7 (b) Beginning January 1, 2009, no person may knowingly
8 dispose of or cause or allow the disposal of a covered
9 electronic device in any municipal solid waste landfill unit.

10 (c) Beginning January 1, 2009, no person may knowingly
11 incinerate or cause or allow the incineration of a covered
12 electronic device.

13 (415 ILCS 5/59.15 new)

14 Sec. 59.15. Electronics Recovery and Recycling Fund.

15 (a) There is created in the State Treasury a special fund
16 to be known as the Electronics Recovery and Recycling Fund. All
17 moneys collected under this Title and all penalties or punitive
18 damages for violations of this Title must be deposited into the
19 Electronics Recovery and Recycling Fund. In addition, the
20 Electronics Recovery and Recycling Fund shall include other
21 moneys made available from any source for deposit into the
22 Fund.

23 (b) Beginning January 1, 2006, each person selling one or
24 more covered electronic products at retail in this State must
25 pay a fee for each covered electronic product sold and
26 delivered in this State to be paid to the Department of Revenue
27 and deposited into the Electronics Recovery and Recycling Fund,
28 as follows:

29 (1) For any cell phone--\$2.

30 (2) For each covered electronic device with a screen
31 size of less than 15 inches measured diagonally--\$6.

32 (3) For each covered electronic device with a screen
33 size greater than or equal to 15 inches but less than 35
34 inches measured diagonally--\$8.

35 (4) For each covered electronic device with a screen

1 size greater than 35 inches measured diagonally--\$10.

2 (c) Up to \$200,000 per fiscal year may be appropriated from
3 the Fund to the Department of Revenue to pay any costs
4 associated with the Department's collection of the fees
5 established under subsection (b).

6 (d) Subject to appropriation, the Agency must use 70% of
7 the moneys remaining in the Fund each fiscal year after the
8 appropriation, if any, under subsection (c) for the following
9 purposes:

10 (1) Collecting and recycling electronic products.

11 (2) Providing financial assistance for electronic
12 product collection and recycling projects that are
13 sponsored by units of local governments and not-for-profit
14 corporations.

15 (3) Inspecting, investigating, and enforcing the
16 provisions of this Title at sites where electronic products
17 have been discarded in open dumps.

18 (4) Providing financial assistance to units of local
19 government for the performance of inspection,
20 investigation, and enforcement activities under subsection
21 (r) of Section 4 of this Act at sites where electronic
22 products have been discarded in open dumps.

23 (5) Undertaking preventive, corrective, or removal
24 actions at sites where electronic products have been
25 discarded in open dumps and recovering costs for these
26 actions.

27 (6) Educating consumers about electronic-product
28 recycling.

29 (7) Paying for the cost of fee collection, regulation
30 implementation, and administration relating to electronic
31 products.

32 (8) Accomplishing any other purpose that is authorized
33 under this Act.

34 (e) Until January 1, 2009 and subject to appropriation, 30%
35 of the moneys remaining in the Fund each fiscal year after the
36 appropriation, if any, under subsection (c) shall be used by

1 the Department of Commerce and Economic Opportunity to develop
2 markets for reused and recycled electronic products.

3 (f) On an after January 1, 2009 and subject to
4 appropriation, 100% of the moneys remaining in the Fund each
5 fiscal year after the appropriation, if any, under subsection
6 (c) shall be used by the Agency for the purposes set forth in
7 subsection (d).

8 (g) Any moneys appropriated from the Electronics Recovery
9 and Recycling Fund but not obligated shall revert to the Fund.
10 All interest earned on moneys in the Fund must be deposited
11 into the Fund.

12 (415 ILCS 5/59.20 new)

13 Sec. 59.20. Collection of fee. The fee under subsection
14 (b) of Section 59.15 must be stated as a distinct item separate
15 and apart from the selling price of the electronic product. The
16 fee shall not be includable in the gross receipts of the
17 retailer subject to the Retailer's Occupation Tax Act, the Use
18 Tax Act, or any locally-imposed retailer's occupation tax or
19 use tax. The fee and any such fees collected by a retailer
20 constitute a debt owed by the retailer to the State of
21 Illinois.

22 (415 ILCS 5/59.25 new)

23 Sec. 59.25. Returns by retailer.

24 (a) Each retailer of electronic products maintaining a
25 place of business in this State must make a return to the
26 Department of Revenue on a quarter-annual basis, with the
27 return for January, February and March of a given year being
28 due by April 30 of that year; with the return for April, May
29 and June of a given year being due by July 31 of that year; with
30 the return for July, August and September of a given year being
31 due by October 31 of that year; and with the return for
32 October, November and December of a given year being due by
33 January 31 of the following year. Each return made to the
34 Department of Revenue must state:

1 (1) the name of the retailer;

2 (2) the address of the retailer's principal place of
3 business and the address of the principal place of
4 business, if different, from which the retailer engages in
5 the business of making retail sales of electronic products;

6 (3) the total number of electronic products sold at
7 retail for the preceding calendar quarter;

8 (4) the amount of fees due; and

9 (5) any other reasonable information that the
10 Department of Revenue may require.

11 (b) Notwithstanding any other provision of this Title
12 concerning the time within which a retailer may file his or her
13 return, if a retailer ceases to engage in the retail sale of
14 electronic products, then the retailer must file a final return
15 under this Act with the Department of Revenue not more than 30
16 days after discontinuing that business.

17 (415 ILCS 5/59.30 new)

18 Sec. 59.30. Application of the Retailers' Occupation Tax
19 Act. The provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f,
20 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, and 11 of the Retailers'
21 Occupation Tax Act that are not inconsistent with this Act
22 apply, as far as practicable, to the fee imposed by subsection
23 (b) of Section 59.15 of this Act to the same extent as if those
24 provisions were included in this Title. References in the
25 incorporated Sections of the Retailers' Occupation Tax Act to
26 "retailers", "sellers", or "persons engaged in the business of
27 selling tangible personal property" mean retailers of
28 electronic products for purposes of this Title.

29 (415 ILCS 5/59.35 new)

30 Sec. 59.35. Review under the Administrative Review Law.

31 (a) The circuit court of any county in which a hearing is
32 held has the power to review all final administrative decisions
33 of the Department of Revenue in administering the fee imposed
34 under subsection (b) of Section 59.15 of this Act. If, however,

1 the administrative proceeding that is to be reviewed judicially
2 is a claim for refund proceeding commenced under this Act and
3 Section 2a of the State Officers and Employees Money
4 Disposition Act, then the circuit court that has jurisdiction
5 over the action for judicial review under this Section and
6 under the Administrative Review Law shall be the same court
7 that entered the temporary restraining order or preliminary
8 injunction that is provided for in that Section 2a, and that
9 enables the claim proceeding to be processed and disposed of as
10 a claim for refund proceeding other than as a claim for credit
11 proceeding.

12 (b) The provisions of the Administrative Review Law, and
13 the rules adopted pursuant thereto, apply to and govern all
14 proceedings for the judicial review of final administrative
15 decisions of the Department of Revenue concerning the
16 provisions of this Title. The term "administrative decision" is
17 defined as in Section 3-101 of the Code of Civil Procedure.

18 (c) Service of summons issued in any action to review a
19 final administrative decision upon the Director or Assistant
20 Director of Revenue must be served upon the Department of
21 Revenue. The Department of Revenue must certify the record of
22 its proceedings if the taxpayer pays to it the sum of \$.075 per
23 page of testimony taken before the Department of Revenue and
24 \$0.25 per page of all other matters contained in the record.
25 These charges may be waived if the Department of Revenue is
26 satisfied that the aggrieved party cannot afford to pay the
27 charges.

28 (415 ILCS 5/59.40 new)

29 Sec. 59.40. Enforcement by the Department of Revenue.

30 (a) The Department of Revenue may adopt and enforce such
31 reasonable rules and regulations relating to the
32 administration and enforcement of the fee imposed by subsection
33 (b) of Section 59.15 of this Act as may be appropriate.

34 (b) Whenever the Department of Revenue is required to
35 provide notice to a retailer under this Title, that notice may

1 be personally served or given by United States certified or
2 registered mail, addressed to the retailer or taxpayer
3 concerned at his or her last known address. Proof of the
4 mailing shall be sufficient as proof of service for the
5 purposes of this Title. In the case of a notice of hearing, the
6 notice must be mailed no less than 7 days before the date fixed
7 for the hearing.

8 (c) All hearings provided by the Department of Revenue
9 under this Act concerning a taxpayer having his or her
10 principal place of business in this State, other than in Cook
11 County, shall be held at the Department's office nearest to the
12 location of the taxpayer's principal place of business. If the
13 taxpayer has his or her principal place of business in Cook
14 County, then the hearing shall be held in Cook County. If the
15 taxpayer does not have his or her principal place of business
16 in this State, then the hearing shall be held in Sangamon
17 County.

18 (d) If any proceeding provided by this Title has been
19 instituted by the Department of Revenue or by a retailer and
20 the retailer thereafter dies or becomes a person under legal
21 disability before the proceeding has been concluded, then the
22 legal representative of the deceased or disabled retailer must
23 notify the Department of Revenue of the death or legal
24 disability. The legal representative, as such, shall then be
25 substituted by the Department of Revenue in place of and for
26 the retailer. Within 20 days after notice to the legal
27 representative of the time fixed for that purpose, the
28 proceeding may proceed in all respects and with like effect as
29 though the retailer had not died or become a person under legal
30 disability.

31 (415 ILCS 5/59.45 new)

32 Sec. 59.45. Administrative procedures. The Illinois
33 Administrative Procedure Act is hereby expressly adopted and
34 shall apply to all administrative rules and procedures of the
35 Department of Revenue under this Act, except that: (i)

1 paragraph (b) of Section 4 of the Illinois Administrative
2 Procedure Act does not apply to final orders, decisions and
3 opinions of the Department of Revenue; (ii) paragraph (2) of
4 subsection (a) of Section 4 of the Illinois Administrative
5 Procedure Act does not apply to forms established by the
6 Department of Revenue for use under this Title; and (iii) the
7 provisions of Section 13 of the Illinois Administrative
8 Procedure Act regarding proposals for decision are excluded and
9 not applicable to the Department of Revenue under this Title.

10 (415 ILCS 5/59.50 new)

11 Sec. 59.50. Violations. Any retailer who: fails to make a
12 return; makes a fraudulent return; or willfully violates any
13 rule or regulation of the Department of Revenue for the
14 administration and enforcement of the fee imposed by subsection
15 (b) of Section 59.15 of this Act is guilty of a Class 4 felony.

16 (415 ILCS 5/59.55 new)

17 Sec. 59.55. Report; manufacturer Take-Back Program.

18 (a) Before January 1, 2008, the Agency must submit a report
19 to the General Assembly concerning its activities under this
20 Title. This report must include a summary of the funds
21 collected in the Electronics Recovery and Recycling Fund and
22 the Agency's expenditure of the funds, a recommendation as to
23 whether it is necessary to continue or modify the fees under
24 subsection (b) of Section 59.15, and information on collection
25 events. In addition, the report must include a discussion of
26 the status of any federal legislation enacted regarding
27 electronic products.

28 (b) By January 1, 2008, the Agency may propose to the Board
29 regulations for a program requiring manufacturers to accept any
30 electronic product that they have manufactured for disposal in
31 order to meet any specified disposal and recycling goals by
32 January 1, 2010. These regulations must require manufacturers
33 to submit an annual report to the Agency demonstrating their
34 compliance with any relevant recovery and recycling

1 requirements. The report must include, without limitation, the
2 amount of electronic products required to be recovered and
3 recycled during the previous calendar year, the amount of
4 amount of electronic products actually recovered and recycled
5 during the previous calendar year, and the disposition of the
6 electronic products recovered and recycled.

7 (c) No later than one year after the receipt of the
8 Agency's proposed regulations, the Board must adopt, in
9 accordance with Sections 27 and 28 of this Act, regulations
10 that are consistent with the provisions of this Title.

11 (d) In adopting regulations under this Section, the Board
12 may impose different requirements for different categories of
13 electronic products and electronic-product retailers.

14 (e) Nothing in this Section shall be construed as limiting
15 the general authority of the Board to promulgate regulations
16 under Title VII of this Act.

17 (415 ILCS 5/59.60 new)

18 Sec. 59.60. Regulations.

19 (a) The Agency may propose any Agency or Board rules that
20 it deems necessary for the administration of this Title and its
21 use of moneys from the Fund. These rules may include, without
22 limitation, rules for administering grants and loans from the
23 Fund.

24 (b) Nothing in this Section shall be construed as limiting
25 the general authority of the Board to promulgate regulations
26 pursuant to Title VII of this Act.

27 (415 ILCS 5/59.65 new)

28 Sec. 59.65. Advisory Committee. There is established the
29 Electronic Products Recycling Advisory Committee. The
30 Committee shall consist of the Director of the Agency or his or
31 her designee, who shall serve as chairperson, the Director of
32 Commerce and Economic Opportunity or his or her designee, the
33 Director of Central Management Services or his or her designee,
34 and 12 members appointed by the Governor, with the advise and

1 consent of the Senate, as follows: 2 representatives of
2 electronic product manufacturers; 2 representatives of
3 electronic product recyclers, processors, or refurbishers; 2
4 representatives of local government; 2 representatives of
5 public interest or environmental organizations; one
6 representative of electronic product retailers; one
7 representative of the waste management industry; and 2 members
8 representing the general public. The Governor must make all
9 appointments to the Committee on or before March 1, 2006.

10 (415 ILCS 5/59.70 new)

11 Sec. 59.70. Severability. The provisions of this Title are
12 severable under Section 1.31 of the Statute on Statutes.

13 Section 10. The State Finance Act is amended by adding
14 Section 5.640 as follows:

15 (30 ILCS 105/5.640 new)

16 Sec. 5.640. The Electronics Recovery and Recycling Fund.

17 Section 99. Effective date. This Act takes effect January
18 1, 2006.