

By: Barrientos

S.B. No. 1239

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a program for the disposition of electronic equipment in a manner that protects the water and other natural resources of the state; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter W to read as follows:

SUBCHAPTER W. ELECTRONIC EQUIPMENT

Sec. 361.801. DEFINITIONS. In this subchapter:

(1) "Electronic equipment" means equipment that depends on electric current or an electromagnetic field to work properly and that contains one or more printed circuit boards. The term includes:

(A) computer equipment, including a central processing unit or a peripheral device, including a display monitor, keyboard, or printer;

(B) video equipment, including a television;

(C) telecommunications equipment, including a wireline or cellular telephone, facsimile machine, or answering machine;

(D) a small electronic device or appliance;

(E) audio equipment;

(F) a toy, game, or educational device; or

(G) a major household appliance.

1           (2) "Electronic equipment waste" means electronic  
2 equipment or a component of electronic equipment that has been  
3 discarded, become obsolete, or ceased to function, is no longer  
4 wanted by its owner, or for any other reason enters the collection,  
5 recovery, treatment, processing, or recycling system.

6           (3) "Historical waste" means electronic equipment  
7 that:

8                   (A) became electronic equipment waste before  
9 September 1, 2003; and

10                   (B) was manufactured by or bears the brand name  
11 of a company that was still in business on September 1, 2003.

12           (4) "Orphan waste" means electronic equipment that:

13                   (A) became electronic equipment waste before  
14 September 1, 2003; and

15                   (B) was manufactured by or bears the brand name  
16 of a company that was no longer in business on September 1, 2003.

17           (5) "Plan" means a plan for producer-financed  
18 collection, treatment, recovery, reuse, recycling, and disposition  
19 of electronic equipment waste required by Section 361.803.

20           (6) "Producer" means any person, without regard to the  
21 sales technique or channel used to sell the person's products,  
22 including means of distance communication, that:

23                   (A) manufactures and sells electronic equipment  
24 under its own brand;

25                   (B) resells under its own brand electronic  
26 equipment produced by another manufacturer; or

27                   (C) imports electronic equipment for first sale

1 in this state.

2 (7) "Recycling" means the reprocessing of electronic  
3 equipment or components of electronic equipment that have become  
4 electronic equipment waste so that they may be used for the purpose  
5 for which they were designed or for other purposes. The term does  
6 not include the recovery of energy or energy generation by means of  
7 combusting electronic equipment waste with or without other waste.

8 (8) "Reuse" means an operation by which electronic  
9 equipment or components of electronic equipment that have become  
10 electronic equipment waste are used for the purpose for which they  
11 were designed.

12 Sec. 361.802. COMMISSION POWERS AND DUTIES. The commission  
13 shall:

- 14 (1) implement this subchapter; and  
15 (2) include in its biennial reports under Section  
16 5.178, Water Code, any recommendations regarding amendments to this  
17 subchapter.

18 Sec. 361.803. PLAN APPROVAL AND IMPLEMENTATION REQUIRED. A  
19 producer may not sell or resell electronic equipment in this state  
20 unless:

- 21 (1) the commission approves a plan submitted by the  
22 producer under this subchapter; and  
23 (2) the producer implements the approved plan.

24 Sec. 361.804. CONTENTS OF PLAN. A plan must include:

- 25 (1) provisions for meeting the requirements of this  
26 subchapter regarding financing the collection, treatment,  
27 recovery, reuse, recycling, and disposition of:

1           (A) the electronic equipment sold by the producer  
2 in this state; and

3           (B) the producer's share of the orphan waste and  
4 historical waste in this state;

5           (2) provisions for meeting the requirements of this  
6 subchapter regarding product recovery and component and material  
7 recycling;

8           (3) a description of:

9           (A) the performance measures to be used and  
10 reported by the producer to determine whether the producer is  
11 meeting the requirements described by Subdivision (2); and

12           (B) any other measures to be used in evaluating  
13 the producer's implementation of the plan;

14           (4) a description of the alternative or additional  
15 actions to be taken by the producer to meet the requirements  
16 described by Subdivision (2) if those requirements are not being  
17 met;

18           (5) provisions for meeting the requirements of this  
19 subchapter regarding labeling of electronic equipment and  
20 education of consumers, recyclers, and processors;

21           (6) documentation of the willingness of all necessary  
22 parties to implement the proposed plan for the collection,  
23 treatment, recovery, reuse, recycling, and disposition of  
24 electronic equipment and electronic equipment waste;

25           (7) assurance that all facilities to be used to  
26 collect, treat, recover, reuse, recycle, or dispose of electronic  
27 equipment or electronic equipment waste will comply with all

1 applicable existing environmental laws, rules, and regulations;  
2 and

3 (8) a financial guarantee in the amount determined in  
4 accordance with a schedule adopted by the commission by rule to be  
5 sufficient to ensure that the costs of enforcing the plan and of  
6 managing the producer's share of orphan and historical waste is not  
7 borne by the public.

8 Sec. 361.805. FINANCIAL RESPONSIBILITY OF PRODUCERS. (a)  
9 Each producer of electronic equipment sold or resold in this state  
10 shall implement a program for financing the environmentally sound  
11 collection, treatment, recovery, reuse, recycling, and disposition  
12 of:

13 (1) the electronic equipment sold or resold by that  
14 producer that becomes electronic equipment waste; and

15 (2) the producer's share of orphan waste and  
16 historical waste derived from electronic equipment of a type sold  
17 by that producer.

18 (b) Producers may satisfy the requirements of this section  
19 individually or in cooperation with other producers.

20 (c) Although a producer is encouraged to provide in the plan  
21 for direct collection or reverse delivery systems, the plan may  
22 require consumers and other electronic equipment end users to  
23 deliver electronic equipment waste into the collection system. The  
24 plan must permit consumers to return electronic equipment waste  
25 without charge.

26 Sec. 361.806. PRODUCER'S SHARE OF ORPHAN AND HISTORICAL  
27 WASTE. (a) A producer's share of orphan waste and historical waste

1 derived from electronic equipment of a type sold by the producer is  
2 proportional to the producer's share of the market for that type of  
3 equipment at the time waste management costs are incurred.

4 (b) The commission shall determine annually the market  
5 share of each producer for purposes of this section.

6 Sec. 361.807. LABELING OF EQUIPMENT. Each producer of  
7 electronic equipment sold or resold in this state must mark or label  
8 the equipment to provide consumers and other end users with  
9 information relating to:

10 (1) the hazardous materials contained in the  
11 electronic equipment and the components of the electronic equipment  
12 containing those materials;

13 (2) the restrictions on the manner of disposal of  
14 electronic equipment waste provided by Section 361.819 and the  
15 producer's plan; and

16 (3) a toll-free telephone number or Internet website  
17 address at which consumers and other end users of electronic  
18 equipment may obtain information and instructions about the  
19 procedure for disposing of the electronic equipment that becomes  
20 electronic equipment waste.

21 Sec. 361.808. CONSUMER EDUCATION PLAN. Each producer of  
22 electronic equipment sold or resold in this state must implement a  
23 consumer education plan designed to ensure that consumers and other  
24 end users of electronic equipment understand:

25 (1) the restrictions on the manner of disposal of  
26 electronic equipment waste provided by Section 361.819 and the  
27 producer's plan;

1           (2) the systems available for returning and collecting  
2 electronic equipment waste;

3           (3) the potential effects on the environment and human  
4 health of the presence of hazardous substances in electronic  
5 equipment and the dangers of improper disposal of that equipment;  
6 and

7           (4) the roles of consumers and other end users in  
8 contributing to the reuse or recycling of electronic equipment or  
9 to other means of recovering electronic equipment waste.

10           Sec. 361.809. DEMONSTRATION OF PUBLIC AWARENESS. (a) Not  
11 later than the second anniversary of the date the commission  
12 approves a producer's plan, the producer must demonstrate by means  
13 of an independent public poll that at least 85 percent of the public  
14 is aware of the producer's plan for the collection, treatment,  
15 recovery, reuse, recycling, and disposition of the electronic  
16 equipment sold by the producer that becomes electronic equipment  
17 waste.

18           (b) In the alternative, producers may collectively satisfy  
19 the requirements of this subsection by means of a single poll that  
20 demonstrates that at least 85 percent of the public is aware of a  
21 majority of producers' plans for the collection, treatment,  
22 recovery, reuse, recycling, and disposition of the electronic  
23 equipment waste that is derived from a majority of the types of  
24 electronic equipment covered by this subchapter.

25           (c) The design, protocols, and implementation plan for the  
26 polling required by this section must be approved by the  
27 commission.

1       Sec. 361.810. PROVISION OF INFORMATION TO RECYCLERS AND  
2 PROCESSORS. (a) A producer's plan must require the producer to  
3 demonstrate that the producer will take adequate measures to  
4 provide information to recyclers and processors of the producer's  
5 electronic equipment.

6       (b) Not later than the first anniversary of the date a  
7 producer begins selling or reselling electronic equipment in this  
8 state, the producer shall provide to recyclers and processors  
9 information regarding the following matters for purposes of  
10 end-of-life treatment of the equipment:

- 11           (1) disassembly of the equipment;
- 12           (2) the material contained in the equipment; and
- 13           (3) safety concerns associated with the equipment.

14       Sec. 361.811. ENVIRONMENTAL PERFORMANCE REQUIREMENTS. (a)  
15 For orphan and historical waste, a producer is responsible for  
16 demonstrating:

17           (1) not later than the second anniversary of the date  
18 the commission approves the producer's plan, that the producer is  
19 collecting in this state at least two kilograms of electronic  
20 equipment waste per person each year and is reusing or recycling at  
21 least 1.5 kilograms per person each year of that waste; and

22           (2) not later than the fifth anniversary of the date  
23 the commission approves the producer's plan, that the producer is  
24 collecting in this state at least four kilograms of electronic  
25 equipment waste per person each year and is reusing or recycling at  
26 least 3.5 kilograms per person each year of that waste.

27       (b) For electronic equipment waste other than orphan or



1 historical waste, a producer is responsible for demonstrating:

2 (1) not later than the second anniversary of the date  
3 the commission approves the producer's plan, that the producer is  
4 recovering at least 75 percent by number of the producer's products  
5 sold or resold in this state and is reusing or recycling at least 65  
6 percent of the components and materials contained in the producer's  
7 products sold or resold in this state; and

8 (2) not later than the fifth anniversary of the date  
9 the commission approves the producer's plan, that the producer is  
10 recovering at least 95 percent by number of the producer's products  
11 sold or resold in this state and is reusing or recycling at least 95  
12 percent of the components and materials contained in the producer's  
13 products sold or resold in this state.

14 Sec. 361.812. RESTRICTIONS ON USE OF PRISON LABOR. A plan  
15 may not include reliance on prison labor unless all incarcerated  
16 workers involved in the processing and recycling of electronic  
17 equipment waste are:

18 (1) provided with compensation equivalent to market  
19 rate wages for the work performed; and

20 (2) afforded the protections of:

21 (A) state occupational safety and health laws,  
22 rules, and regulations; and

23 (B) the worker safety and health protections  
24 required by Section 361.816.

25 Sec. 361.813. PROHIBITION ON EXPORTING ELECTRONIC  
26 EQUIPMENT WASTE. A plan must prohibit the export of electronic  
27 equipment waste to any country that is not a member of the

1 Organization for Economic Cooperation and Development.

2 Sec. 361.814. SUBMISSION, REVIEW, AND APPROVAL OF PLAN.

3 (a) A producer that desires to sell or resell electronic equipment  
4 in this state must submit a plan to the commission for review. The  
5 plan must be accompanied by an application fee in an amount  
6 determined by the commission to be sufficient to cover the cost of  
7 reviewing the plan.

8 (b) The commission shall review a plan submitted under this  
9 section. If the commission determines that the plan does not meet  
10 the requirements of this subchapter, the commission shall advise  
11 the producer of any necessary amendments to the plan and provide the  
12 producer an opportunity to submit an amended plan.

13 (c) The commission shall approve a plan if the plan meets  
14 the requirements of this subchapter.

15 Sec. 361.815. RESTRICTIONS ON HAZARDOUS MATERIALS. (a) A  
16 producer may not sell electronic equipment in this state that  
17 contains:

- 18 (1) lead;  
19 (2) mercury;  
20 (3) cadmium;  
21 (4) hexavalent chromium;  
22 (5) brominated flame retardants; or  
23 (6) polyvinyl chloride.

24 (b) The commission by order may allow a producer to sell  
25 electronic equipment in this state that contains a substance  
26 prohibited by Subsection (a) for a period specified by the  
27 commission if the producer demonstrates that it is not technically

1 possible to produce the type of electronic equipment in question  
2 without using that substance.

3 (c) The commission may rescind an order issued under  
4 Subsection (b) if the commission subsequently determines that it is  
5 technically possible to produce the type of electronic equipment in  
6 question without using the substance in question.

7 Sec. 361.816. WORKER SAFETY AND HEALTH PROTECTIONS. An  
8 owner or operator of a facility used to collect, recover, or recycle  
9 electronic equipment waste as part of a plan must protect the health  
10 and safety of the persons employed at the facility by:

11 (1) providing to the commission in the manner provided  
12 by commission rule clear evidence of compliance with all applicable  
13 state and federal occupational safety and health laws, rules, and  
14 regulations;

15 (2) performing routine industrial hygiene monitoring  
16 of the facility for all hazardous materials of concern, including  
17 monitoring for airborne lead and bromine, chlorine, and mercury  
18 compounds, and reporting the results of that monitoring to the  
19 commission quarterly; and

20 (3) performing routine human health monitoring, in  
21 accordance with all applicable laws governing protection of  
22 privacy, of all persons employed at the facility, including  
23 conducting blood tests to determine whether persons have been  
24 exposed to airborne lead and bromine, chlorine, and mercury  
25 compounds, and reporting the results of that monitoring to the  
26 commission quarterly.

27 Sec. 361.817. STATE PURCHASING AND LEASING. Each state

1 agency shall adopt policies that:

2 (1) require vendors of electronic equipment sold or  
3 leased to the state to reclaim the equipment when it becomes  
4 electronic equipment waste; and

5 (2) establish a preference for purchasing or leasing  
6 electronic equipment that meets specified environmental  
7 performance standards relating to the reduction or elimination of  
8 hazardous materials.

9 Sec. 361.818. REPORTS. (a) Each producer must submit an  
10 annual report to the commission detailing the producer's:

11 (1) implementation of the producer's plan; and

12 (2) compliance with this subchapter.

13 (b) The annual report must document that the implementation  
14 of the plan has not resulted in the export of electronic equipment  
15 waste to any country that is not a member of the Organization for  
16 Economic Cooperation and Development.

17 (c) The commission shall review the report not later than  
18 the 180th day after the date the report is submitted. If the  
19 commission determines that the producer is not in compliance with  
20 this subchapter, the commission shall notify the producer not later  
21 than the end of the following quarter. If the producer fails to  
22 comply with this subchapter by the end of the quarter following the  
23 quarter in which the notice is given, the commission may take action  
24 to enforce this subchapter.

25 (d) The commission shall post on the commission's Internet  
26 website:

27 (1) the annual report required by this section for the

1 current year and the two preceding years; and

2 (2) any other report detailing the implementation of  
3 the producer's plan for the current year and the two preceding  
4 years.

5 Sec. 361.819. BAN ON INCINERATION OR DISPOSAL IN LANDFILL.

6 (a) Electronic equipment and electronic equipment waste may not be  
7 disposed of in a landfill, incinerator, or cement kiln or used for  
8 another form of energy recovery or energy generation dependent on  
9 combustion of the waste.

10 (b) This section applies to whole units of electronic  
11 equipment waste as well as to the constituent components or  
12 materials from which the units are made.

13 Sec. 361.820. IMMUNITY FROM LIABILITY. An owner or  
14 operator of a landfill who disposes of electronic equipment or  
15 electronic equipment waste in a landfill is immune from liability  
16 under this code or the Water Code for disposing of the electronic  
17 equipment or electronic equipment waste in violation of this  
18 subchapter if:

19 (1) the electronic equipment or electronic equipment  
20 waste was commingled with other solid waste; and

21 (2) the owner or operator did not know when the owner  
22 or operator accepted the other solid waste for disposal that it was  
23 commingled with electronic equipment or electronic equipment  
24 waste.

25 SECTION 2. Subchapter E, Chapter 7, Water Code, is amended  
26 by adding Section 7.1855 to read as follows:

27 Sec. 7.1855. KNOWING UNAUTHORIZED DISPOSAL OF ELECTRONIC

1 EQUIPMENT OR ELECTRONIC EQUIPMENT WASTE. (a) A person commits an  
2 offense if the person knowingly disposes of electronic equipment or  
3 electronic equipment waste in a manner that violates Subchapter W,  
4 Chapter 361, Health and Safety Code.

5 (b) An offense under this section is a Class C misdemeanor.

6 SECTION 3. (a) Except as otherwise provided by this  
7 section, this Act takes effect September 1, 2003.

8 (b) Each producer who is engaged in the sale or resale of  
9 electronic equipment in this state on September 1, 2003, must:

10 (1) submit to the Texas Commission on Environmental  
11 Quality a plan required by Section 361.803, Health and Safety Code,  
12 as added by this Act, not later than March 1, 2004;

13 (2) provide to the Texas Commission on Environmental  
14 Quality a financial guarantee required by Section 361.804(8),  
15 Health and Safety Code, as added by this Act, not later than the  
16 earlier of:

17 (A) September 1, 2004; or

18 (B) the date the producer's plan is approved  
19 under Section 361.814(c), Health and Safety Code, as added by this  
20 Act;

21 (3) except as provided by Subdivision (4) of this  
22 subsection, implement a plan required by Section 361.803, Health  
23 and Safety Code, as added by this Act, not later than September 1,  
24 2005; and

25 (4) comply with Sections 361.807 and 361.810(b),  
26 Health and Safety Code, as added by this Act, not later than  
27 September 1, 2004.

1           (c) Section 361.815, Health and Safety Code, as added by  
2 this Act, takes effect January 1, 2006.

3           (d) Each state agency shall adopt policies under Section  
4 361.817, Health and Safety Code, as added by this Act, not later  
5 than March 1, 2004.

6           (e) Sections 361.819 and 361.820, Health and Safety Code,  
7 and Section 7.1855, Water Code, as added by this Act, take effect  
8 September 1, 2005.