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## FISCAL IMPACT REPORT

ORIGINAL DATE 3-05-07

SPONSOR SPAC LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Info Technology Producer Responsibility SB 1184/SPACS

ANALYST Aubel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		.01*	.01*	*See narrative	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 84 and SB 193 (duplicate)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Environment Department (NMED)  
 Office of the chief Information Officer (OCIO)  
 Energy, Minerals, and natural Resources (EMNRD)  
 Attorney General's Office (AGO)  
 General Services Department (GSD)

### SUMMARY

#### Synopsis of Bill

The Senate Public Affairs Committee Substitute for Senate Bill 1184 proposes the Consumer Information Technology Recycling Act (Act) to develop and implement a state system to recover computing or display devices. The bill defines "covered device" to include desktop or portable computers or monitors but excludes televisions, parts of vehicles, personal digital assistants and telephones. Printing and printing devices are not specified as being covered under the Act. The Act would apply to covered devices purchased and used by consumers in this state.

The Act would require manufacturers of covered devices to label all devices and establish a "reasonably" convenient, no-cost recovery system for equipment sold in the state, whether by sales outlets, catalogs or the Internet. It would also limit retailers to sell any covered device unless it has the manufacturer's label and the manufacturer is included on the state list of manufacturers with recovery plans. The manufacturer must be in compliance with the Act to bid on any contract with the state.

Under the Act, the New Mexico Environment Department (NMED) is responsible for educating

consumers about the recovery program and hosting an informational Web-site for consumers of the devices and recovery plans. The bill states NMED and the Attorney General, as appropriate, enforce compliance, with maximum penalties for each violation. NMED will also be responsible for compiling rules and regulations deemed necessary to clarify the explicit requirements of the Act, taking into consideration the impact of the rule on public health and safety, the economic impact of the rule, and whether the rule promotes manufacturer responsibility. NMED must compile the yearly information provided by the manufacturers, which is reported to the Legislature by April 1. However, the bill prohibits NMED from assessing fees on the manufacturer, consumer, retailers, or entities recovering the devices.

## **FISCAL IMPLICATIONS**

Both NMED and AGO indicate that additional staff would most likely be required to implement and sustain the e-waste recovery program as defined by the SPAC Substitute for SB 1184. In particular, NMED notes that additional staff may be necessary for administrative, outreach, and enforcement requirements under the Act. Because no fee of any kind is permitted by the bill, any operational expansions would necessarily be supported by general fund. However, no appropriation is included in the bill.

The bill also prohibits manufacturers from charging consumers for its recovery program. Because of this no-cost provision, GSD points out that the state could see an increase in the purchase price for devices sold in New Mexico for manufacturers to recover the cost of the disposal program.

## **SIGNIFICANT ISSUES**

### Background

The 2005 task force report regarding e-waste, conducted pursuant to SJM 5, provides background information, as follows:

*The US Environmental Protection Agency (EPA) has defined e-waste as:*

*“electronic products being discarded by consumers. These include a wide range of items, such as: televisions; computers and computer peripherals; audio and stereo equipment; VCRs and DVD players; video cameras; telephones; cellular phones and other wireless devices; fax machines; copy machines; and video game consoles.”*

*Senate Joint Memorial 9, passed in the 2005 legislative session, recognized that e-waste is increasing in volume and contains dangerous substances such as lead, mercury, and polychlorinated biphenyls that can pollute air and water...*

*In 1998, the EPA estimated that e-waste was approximately 4% of the total solid waste stream in the United States and was projected to grow two to three times faster than any other component of the waste stream. In 2002, the EPA estimated that every day Americans dispose of 3,000 tons of computers alone. According to the Consumer Electronics Association, in 2003 the e-waste component of the municipal solid waste stream was 1.5%.*

*The EPA estimates that 57 million replacement televisions and computers are sold annually to households and businesses in the United States. The EPA also estimates that 20 to 24 million old computers and televisions are added to storage each year, rather than being discarded. The EPA's explanation is that consumers tend to store old equipment rather than discard it.*

*According to a Consumer Electronics Association study released October 19, 2005, "most unwanted consumer electronics go to secondary users, not into America's waste stream. Nine out of ten computers and PC notebooks, eight out of ten televisions, and seven out of ten cell phones were donated, recycled or sold in the last 12 months. Charities (34%), friends (28%) and family members (26%) were the biggest beneficiaries of hand-me-down products."*

*Regardless of the explanation, according to industry and EPA publications it is anticipated that e-manufacturing and sales exceed the rate of e-waste disposal. These sources also predict continued growth in the sales of electronic equipment, and therefore a growing demand on appropriate diversion options. The Task Force concluded that there is no reasonable or accurate way to discuss the actual volume of e-waste needing to be managed.*

According to the report, businesses and organizations have more stringent requirements for e-waste management in comparison to household generators. High volume generators are subject to the federal Resource Conservation and Recovery Act (RCRA), Subtitle C.

### Recovery Program

The Act generally prohibits a manufacturer of computers and monitors from selling those devices in this state unless the manufacturer has labeled those devices with their brand and has implemented a recovery plan for collecting them from consumers. The Act requires manufacturers to offer collection services for used devices to consumers at no charge, and must provide a convenient way for consumers to participate, such as through collection by mail, or through staffed collection facilities, or through one collection event each year. "Collection" is not defined with a reference to the purpose of "recovery". "Convenience" is not clearly designated by reference to the original purchase or specified by being "geographically central" to the people served. The Act also requires the manufacturer to inform the consumer of its recovery program.

Manufacturers would be required to report to NMED the weight of covered devices collected and recovered during the previous calendar year. The report must also include documentation verifying proper collection and recovery of such material compliant with the sound environmental management provisions the new Act. NMED is given the authority to access penalties for noncompliance with the Act.

The collection services may use existing services and all covered devices collected pursuant to the Act should be recovered in compliance with all applicable federal, state and local laws and requirements. "Recoverers" are not required to be certified pursuant to the recycling industry operating standard but must be in compliance with the institute of scrap recycling industries publication titled "Electronic Recycling Operating Practices."

NMED has stated that recycling programs for e-waste (used televisions, computers, audio and stereo equipment, printers, faxes, copy machines, telephones, etc), household hazardous waste, and diversion programs are expensive. Only five counties or municipalities have the resources to implement household hazardous waste collection programs and only a handful of governmental entities can afford to hold e-waste collection events, which can coast as much as \$70.0 thousand for a one day event. This bill proposes that the e-waste contained in this bill is handled by the industry, not by the individual landfills.

NMED expresses some concern over the mandatory nature of the bill, as follows:

A memorial passed by the Legislature in 2005 instructed NMED to form a task force to study the recovery and recycling of electronic waste (e-waste)...A key tenet of the report was the recommendation that mandatory recovery programs (such as suggested in the Act) not be utilized in New Mexico. Rather, the task force recommended that a voluntary system for collecting e-waste should be pursued to encourage the collection of these items. The bill does the opposite by making manufacturers responsible for recycling, as opposed to the existing network of public and private entities who recover e-waste.

The task force summary of recommendations, included as Attachment 1, also states, as follows:

Mandatory recycling should be considered if voluntary approaches do not achieve estimated results. Also, mandatory recycling now is not considered a preferred approach due to the lack of existing infrastructure to collect the e-waste.

## **PERFORMANCE IMPLICATIONS**

Reducing e-waste in landfills by diverting the devices will reduce hazardous waste exposure to the environment and public health. However, this bill deals strictly with computers and monitor and is silent regarding other e-waste, such as stereo equipment, VCRs, DVD players, video cameras, telephones, cell phones, fax machines, copiers, calculators and video game consoles.

GSD states that the Act would be minimal impact on the Surplus Property Bureau (SPD) of the Transportation Services Division of the General Services Department, as long as the bureau's right of refusal to claim surplus state property is protected.

## **ADMINISTRATIVE IMPLICATIONS**

The AGO notes that the bill's requirement for the AG to enforce the provisions of the Act against manufacturers, retailers, and recoverers would necessitate additional staffing resources and time.

NMED would have additional administrative responsibilities, as detailed above. SPD would have an increased responsibility to verify that manufacturers have a disposal program.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The SPAC Substitute for SB 1184 may be incompatible with SB 193/ HB 84 because they offer competing methods as identified by taskforce stakeholders for the recovery of e-waste.

SB 193 and HB 84 seek a \$1 million appropriation for helping communities – especially rural ones – with collection programs for e-waste and household hazardous waste.

## TECHNICAL ISSUES

The AGO offers potential technical issues, as follows:

- Because the Act defines “retailer” as any person that owns or operates a business that sells covered devices to a consumer, including through sales outlets, catalogs or the internet, *whether or not the seller has a physical presence in this state*; and also regulates persons who manufacture “covered devices” for sale within this state, it appears that the Act will have some impact on the interstate sale of those devices. Its provisions may therefore implicate the Interstate Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3, as a possibly unconstitutional burden on interstate commerce. The Courts will generally examine the impact of this Act to determine whether it discriminates against out-of-state manufacturers or retailers, and if not, then they will balance the burden on interstate commerce against the state’s interests in order to determine whether the interstate impacts are infrequent or insignificant in relation to the alleged benefits to the state. See *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), and *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945).
- The Act provides that it is “deemed repealed” if a federal law takes effect that establishes a national program for the collection and recycling of covered devices that substantially meets the intent of that act. This would require a determination by unknown persons as to the continued validity of the Act. It would constitute “repeal by implication”, without affirmative action by the State Legislature actually repealing the Act. Repealing state laws in that manner is not favored by the Courts. See *Stennis v. City of Santa Fe*, 2006-NMCA-125 (Ct. App. 2006).
- Further, the Legislature appears to be improperly delegating its power to repeal state laws to unknown individuals. See Article IV Section 1 of the New Mexico Constitution, vesting the legislative power of the state in the Senate and House of Representatives.

GSD suggests that the preference to manufacturers that have programs to recover other manufacturer’s devices is not clearly defined.

## OTHER SUBSTANTIVE ISSUES

According to NMED, many device manufacturers (Hewlett-Packard, Dell, IBM, Sony and Apple) currently offer programs whereby consumers can mail back their obsolete e-waste. While this is a viable recycling scheme for anyone wishing to recycle their e-waste, consumers must pay for shipping costs. Under this bill consumers will not bear any costs.

The terms “manufacturer” and “retailer” are broad enough to include small custom computer assemblers, anyone who assembles a computer and sells it to another person or resells a used computer, and small business computer resellers. Those individuals would also have to implement and maintain the collection services required by this bill.

The Economic Development Department also expresses concern for the expense the bill may layer on the smaller business, which traditionally operates with very thin profit margins. In addition, EDD points out that if the expense of implementing a recovery program causes business to withdraw from the New Mexico market, the state could lose gross receipts tax. On the other hand, GSD assumes that the manufacturer or responsible party will simply increase the purchase price of the products to cover the recovery programs.

It is a policy decision to weight these indirect costs against the costs to the environment and public health of improper e-waste disposal for computing and display devices.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Without a program for recycling e-waste, hazardous materials will accumulate in landfills and pose significant health and environmental risks.

### **POSSIBLE QUESTIONS**

1. Do “telephones”, as defined in the Act, include cell phones?
2. Could a program to properly handle “exploding” televisions be included, since cathode ray tubes contribute lead to the environment when crushed? (Cathode ray tubes are installed “under pressure” in televisions and pose a more difficult disposal protocol.)
3. Why are printers and printing devices not included as a “covered device”?
4. How can this program be integrated into a voluntary program that would cover more devices?
5. Will NMED and the AGO require additional full-time-equivalent (FTE) staff to administer the program?
6. What will be the cost to the state for implementing the program using general fund for additional FTE? Would including more devices make the return on this investment and program more economical?

MA/nt

Attachment

## TASK FORCE RECOMMENDATIONS

The Task Force recommends a voluntary statewide e-waste collection and recycling program be implemented, first as a pilot program, then statewide. Mandatory recycling should be considered if voluntary approaches do not achieve estimated results. Also, mandatory recycling now is not considered a preferred approach due to the lack of existing infrastructure to collect the e-waste.

The Task Force believes a voluntary collection program should be based on a regional concept taking into consideration population densities, housing units, and proximity to major transportation routes.

The Task Force recommends that the legislature fund a voluntary e-waste collection pilot program. The pilot program would: 1) identify collection sites, 2) enable the Solid Waste Bureau of the NMED and communities to standardize e-waste collection operations, 3) establish a best practices procedure, 4) develop an educational package tailored to rural and urban communities, 5) validate that a regional “hub and spoke” approach is most functional, 6) determine if volumes and participation match previous collection events, 7) help evaluate if computer e-waste stored throughout the region is reduced, 8) provide an opportunity to query participants (and perhaps non-participants) on a wide-range of e-waste collection issues, 9) generate data and statistical information that will be used to establish a baseline for subsequent collections, and 10) help identify unanticipated problems and provide time to implement solutions.

Voluntary e-waste recycling can be implemented quickly and is supported by professional solid waste and recycling businesses and organizations such as the Solid Waste Association of North America and the New Mexico Recycling Coalition. Voluntary e-waste recycling already is established in New Mexico. It could be expanded efficiently with the cooperation of the above-mentioned organizations and those businesses involved in e-waste collection/processing. Currently most e-waste collection events are associated with city sponsored Household Hazardous Waste collection events and special events arranged specifically for e-waste (e.g., City of Albuquerque).

The Task Force recommends that the amount of e-waste recycled through the voluntary program be reported via the Solid Waste Bureau Annual Report Questionnaire. This questionnaire is an established reporting process for all permitted and registered solid waste facilities in the state.

The Task Force recommends that an educational component accompany the pilot voluntary e-waste recycling program and that the Solid Waste Bureau manage the education activity. The Solid Waste Bureau, through its Outreach Section, conducts community education and regional summits for a variety of solid waste disposal options. With additional FTEs, the Outreach Section could develop and coordinate the education efforts and provide oversight of the e-waste program. The Task Force recommends that the Legislature fund this educational activity.

The Task Force recommends that the Hazardous Waste Bureau of the Environment Department provide a guidance document for local public bodies clarifying hazardous waste rules related to the collection and management of e-waste destined for recycling and resale. Such a document

may help diminish local communities' concerns regarding the collection and transportation of hazardous components in e-waste.

The Task Force recommends that electronic retailers (local and national corporations) provide their customers with information regarding the voluntary e-waste recycling program. Further, some members of the Task Force suggested that computer manufacturers might be able to assist in various ways such as informational and financial.

The Task Force recommends that state purchasing rules and regulations be revised to enable recycling as a statewide disposal option.

The Task Force recommends that a state e-waste recycling contract be developed by the General Services Department (Purchasing Division). This contract would enable local public bodies, State agencies, school districts and other governmental entities to participate in e-waste recycling using one contract. This will relieve local communities from having to undergo the cost of researching and developing specifications of a recycling contract. It would provide standardization and a means of accurate reporting throughout the state for e-waste recycling. A single state contract may also provide the means to negotiate more favorable contract terms.

#### **Applicable Rules and Regulations**

- Title 40 Code of Federal Regulations, parts 258, 260, and 273 et al.
- New Mexico Statutes Annotated (NMSA) 1978, Chapter 13 - Public Purchases and Property, Article 6, Section 1 thru Section 4, Disposition of obsolete, worn-out or unusable tangible personal property, NMSA 1978, Chapter 74-9, Articles 4 (Hazardous Waste Act) and Article 9 (Solid Waste Act).
- New Mexico Environment Department (NMED), Solid Waste Management Regulations 20 NMAC 9.1, October 27, 1995, Subpart II.
- NMED, Hazardous Waste Management Regulations 20.4.1 through 20.4.3, 1995-2003.

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