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# *Committee Meeting*

of

## SENATE ENVIRONMENT COMMITTEE

*"The Committee will take testimony from the public on how to structure an electronic waste management program in New Jersey"*

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**LOCATION:** Committee Room 10  
State House Annex  
Trenton, New Jersey

**DATE:** February 8, 2007  
1:00 p.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Bob Smith, Chair  
Senator Stephen M. Sweeny, Vice-Chair  
Senator John H. Adler  
Senator Henry P. McNamara



**ALSO PRESENT:**

Judith L. Horowitz  
Algis P. Matioska  
*Office of Legislative Services*  
*Committee Aides*

Kevil Duhon  
*Senate Majority*  
*Committee Aide*

John Hutchison  
*Senate Republican*  
*Committee Aide*

***Meeting Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**SENATOR BOB SMITH (Chair):** Can we come to order.

We have a very interesting topic for today's hearing, which is what is the right way for New Jersey to develop its electronic waste recycling program. I have no doubt that we're going to have one. But there are a couple of alternatives about the way in which it can be conducted.

Putting everything in context, I think our Committee members will remember that in New Jersey, according to the Department of Environmental Protection of our State, we dispose of approximately two million television sets every year, and 400,000 computer monitors. And of course, in every television set, you have something on the equivalent of about four pounds of lead. And in all of these monitors, you have a whole bunch of heavy metals that are just terrible for the environment. So we really need to get a handle on this problem and to solve it.

I think we're at the early stages of this being solved in America. There's really only two or three states that have gotten their programs underway. California is the one that is the furthest underway. It's had a program that's been in operation for about two years. And through the wonder of modern technology, we can talk to the program Manager of the California Electronic Waste Recycling program -- even though it's three hours earlier than now in California -- and that person is Shirley Willd Wagner, who manages California's Electronic Waste Recycling Program. She has terrific experience in this.

And actually I think you may have the most experience in all of the United States of America. I think you need to turn on your microphone on your side of the electronic connection, Shirley, if you would.

And I can continue to talk, too, right guys?

UNIDENTIFIED PERSON FROM AUDIENCE: Yes.

SENATOR SMITH: If it's okay, we'd like to keep you with us for the hearing, because we have some people who need -- we have some legislators who are going to need to come in and testify. But we'd like to start the discussion with you, and I think you would be a great resource person if we could keep you with us -- probably for about an hour, an hour and a half -- if that's possible.

**S H I R L E Y W I L L D - W A G N E R:** Yes, certainly.

SENATOR SMITH: Good. And just putting the issue in context again, we have two-- We have a major issue with regard to how this electronic waste program should be set up in New Jersey. I think everybody agrees that we need to do it. But there's two basic approaches: And one is what's called the *ARF* approach, which is an advanced recovery fee. Which is the program, as I understand it, that's currently going on in California, where when consumers buy a computer or buy a television set, the retailer collects \$6, \$8, whatever, maybe even \$10, for the ultimate disposal cost, to support the recycling of the product.

The other approach is called *producer responsibility*. And in that particular approach, which is being considered by some of the states in the United States, the company that manufactures the computer and/or the television set has to develop a system to be responsible for the ultimate recycling of the material or of the product.

And we really need to decide what's in the best interest of New Jersey. I don't think we're in any way committed to one side or the other. On the Assembly side -- and as a matter of fact, even while we're sitting here -- I think the Assembly version is going through the Appropriations

Committee, and that is a producer responsibility bill. On the Senate side, which is the side that we're on today, we've already released an advanced recovery fee bill. But in truth, we're doing this today because we want to get some additional information and figure out the best way to go.

And Shirley, if -- is it okay if I call you Shirley?

MS. WILLD-WAGNER: Please. Yes.

SENATOR SMITH: Okay.

You now have two years of experience in the largest state in the United States of America, with 10 percent of the population of this country. Would you tell us about the California program? How it works? What kind of experience you've had with it? If you had to do it over, would you do it differently? And maybe, how it is that California ultimately decided on advanced recovery fee versus producer responsibility? So there's a whole number of questions, and you probably could talk to us for about a couple of hours. But if you would, take it away, Shirley.

MS. WILLD-WAGNER: I'll try to keep away from a couple of hours. I did send some prepared testimony. I'll go ahead and start with that, or start with just, right out, answering your questions.

SENATOR SMITH: Well, let's see. How long is the prepared testimony?

MS. WILLD-WAGNER: Probably about six or seven minutes.

SENATOR SMITH: All right. Why don't you start with that to give us the overview, and then go for the questions, if you would.

MS. WILLD-WAGNER: All right. Thank you, Mr. Chairman.

As Chairman Smith mentioned, I'm Shirley Willd-Wagner, and I manage California's Electronic Waste Recycling program at the California

Integrated Waste Management Board. And because it's such a long acronym, I will say CIWMB. At the request of the Senator, I have provided an update to our implementation of the California's Electronic Waste Recycling Act. And I will be happy to answer questions, or follow up with you further at a later time, also.

In 2001, California clarified that cathode ray tubes, which are also known as CRTs, are presumed to be hazardous and cannot be disposed of in landfills. In a survey that we did, it was estimated that more than six million old televisions and computer monitors were stockpiled in California homes alone. Obviously, that created a management and disposal issue that needed to be addressed -- somewhat of what you're facing in New Jersey.

Local jurisdictions were shouldering the primary financial burden, and consumers were frequently facing end-of-life fees when they disposed of their devices -- between \$10 and \$30 here in California. For a response to the dilemma, state agencies worked with many other stakeholders, local jurisdictions, industry, environmental groups to try to seek a solution. And a lot of the options were discussed, including those that you mentioned, Mr. Chairman, such as the producer responsibility act.

In 2003, the outcome was that the California Legislature signed Senate Bill 20, the Electronic Waste Recycling Act. As you've mentioned, it was the first move of its kind in the nation, and it established a funding mechanism to provide for proper end-of-use management for electronics products from all consumers -- not just the households, but also businesses, schools. Everyone plays and everyone pays.

The driving forces behind the act are primarily financial, related to local jurisdictions who are bearing the brunt of the full, significant

burden of the new waste management; cost-free opportunities for consumers throughout the state; reduction and prevention of illegal dumping of the consumer electronic devices; elimination of the stockpile of the waste televisions and computer monitors; and to decrease the amount of hazardous materials used in the products.

So to try to achieve the objectives, the Legislature established a financing system to support the infrastructure that would provide for this convenient management of the devices. As you mentioned earlier, the act does call for an advanced recycling fee -- \$6, \$8, or \$10 is paid upon those devices at the point of retail sale. The retailers collect that fee and transfer it to the Board of Equalization, our revenue collection agency.

The program has flexibility to add or remove electronic products so that we can keep up with the rapid growth in the electronics industry. And we also have provisions to adjust either that fee that is paid or the payments that we make to electronic waste collectors and recyclers.

We began program activities in January of 2005. And to implement the act was a cooperative arrangement between our Board, the Waste Management Board, the Department of Toxic Substances Control -- which I will call DTOC for another mouthful; and the State Board of Equalization is our revenue collection agency.

DTOC is tasked with identifying and listing covered electronic devices that are deemed hazardous when disposed. Current devices listed are cathode ray tube devices; televisions and computer monitors containing cathode ray tubes; televisions and computer monitors containing liquid crystal displays, or the LCDs; laptop computers with the LCD screens; and

plasma televisions. In 2007 -- later this year, July -- we are adding portable DVD players.

From the retailers' collected fees from consumers at the point of sale, they're also allowed to keep 3 percent of that fee to cover their operational costs. The flow of materials and money is -- I sent along with the written testimony. But in summary, what happens is that the money is placed into a fund that CIWMB manages, and we pay recovery and recycling payments to electronic waste recyclers to cover the net cost for collecting and recycling these devices. Approved recyclers have to submit payment claims to the Waste Board for the amount of the material that was actually collected and recycled. And our program staffer views the claims in detail and we pay a total of 48 cents per pound of the material that's collected and managed properly. The recycler then has to pay the approved collector 20 cents per pound of an eligible material that has been transferred. We only make payment on eligible material that's properly documented, and we'll only make payment on activities that occur in the state of California. The cancellation has to actually occur here.

Voluntary participants: The types of participants in the system range from local governments to landfill operators, nonprofit organizations, and private entities. We have over 500 collectors in the system, and 55 recyclers that are approved by the state to participate in our program. Our Board works with the Department of Toxics to ensure that collectors and recyclers are handling the material in a manner that's protective of public health and safety, and the environment.

Right now, we're collecting about \$77 million in those advanced recycling fees. And the program growth is being shown through

the payouts to the collectors and the recyclers. In 2005, the first year, we had about \$31 million paid out, representing 64.8 million pounds of covered electronic waste. And in 2006, we've doubled the volume with over \$62 million paid out for claims of 130 million pounds.

We're often asked, as you mentioned earlier, if the e-waste recycling program has been a success. And if the success is judged by the progress towards the legislative objectives, the answer is yes. Local government is no longer bearing the costs. They have full cost relief under the Act. California consumers who pay the fee now have widespread access to cost-free opportunities to recycle.

The electronic waste collection and recycling infrastructure has grown. Jobs have been created; business opportunities have been created. And interestingly, we are finding that due to the inspections that are required under the Act by the Department of Toxics, more recycling facilities are actually operating in compliance with environmental standards than ever before.

Now, of course, implementing a comprehensive e-waste management law has not been without challenges. And primary among those is ensuring that payment is made only for eligible material that was generated in California. This has been our biggest challenge, so that we look at the paperwork so that we make sure that we're not paying for devices that have been brought in from out of state. We are the only state right now paying for these collection and recycling activities, and so certain entrepreneurs might find it very profitable to bring in out-of-state material. We're working closely with partners at the Department of Toxics to establish a fraud prevention and enforcement effort to try to avoid that

situation. We've worked extensively with stakeholders to try to develop procedures that will protect the integrity of the fund, yet still provide efficient and flexible business operations so that the system won't grind to a halt.

Another issue that had been brought up before was concern about Internet sellers from out of state creating a competitive disadvantage to California retailers. And we really haven't found that to be the case in the first two years of operation. The Board of Equalization believes that the majority of the affected Internet and catalog retailers are all voluntarily or, by law, participating in the system by remitting the fee.

Now, looking ahead, some issues that might be coming up, not only for California, but for any national program and any other states that are considering this law. Export of hazardous waste is a big issue. And really, this can only be effectively addressed at the national level. It becomes a constitutional issue exporting out of the United States borders.

California's program requires that notification of export activities be given at least 60 days before the exportation. And the law limits exportation to countries whose facilities demonstrate that they are in accordance with the Organization for Economic Cooperation and Development, you may know as OECD. And this deals with the environmentally sound management of the waste being exported. But because of the way the law is written, we're not really certain that those measures are sufficient to ensure proper management at the end of the life for the residual material.

Another challenge we all may face nationally is the market for the processed CRT glass. Apparently, glass-to-glass recycling is the primary

market for the leaded glass. But markets may become a considerable concern as the demand for CRT devices, even in developing countries, decreases. The estimates are that we'll see CRT devices in the waste stream for another 10 to 12 years, but the market for leaded glass may be nonexistent in three to five years. You have the primary use of the leaded glass in smelting operations; and the sole, United States lead smelter has experienced delays, and has not been able to keep up with the material generated in California.

Another key is that public education -- that the California consumers and retailers play a key role in the collection and recycling of the material. So we've undertaken an extensive outreach campaign and partnership with those retailers, who are really the face of our program, to explain the need for the proper recycling and to explain the fees that are paid. The major part of the campaign is *eRecycle.org* Web site, which is the one-stop portal for information on e-waste and the specific locations of e-waste recyclers -- so that you can actually search for the location nearest to your home.

Our Governor, Arnold Schwarzenegger, has been fully supportive of the implementation of the legislation and has reaffirmed his commitment in both the State of the State Address and continued support through the budget process; and continues to support our active work with the industry recyclers, local jurisdictions, nonprofit organizations; and tasked us to build a program that is sustainable and workable for all of those involved.

Our stakeholders have been very engaged in the process. And as we went through the first one in the country, they were very helpful in

helping us establish the rules so that it would work to get the program going.

Are there -- let's see, any other questions that I didn't get to? Perhaps what we might do differently?

SENATOR SMITH: I think there's going to be a ton of questions, but you've given us a good overview of the program.

Maybe one question for you. In that last number that you gave us for last year's results, how many units of electronic waste does that compute to? I think you gave it to us in pounds.

MS. WILLD-WAGNER: I did give it to you in pounds. Anybody have a calculator? We're averaging about 50 pounds -- we said about 50 pounds per device; and let's see, I was saying that we're about 130 million pounds for this year. Everything is in pounds in our system.

SENATOR SMITH: So we have to divide by 50.

MS. WILLD-WAGNER: By 50 pounds.

UNIDENTIFIED PERSON FROM AUDIENCE: What was the numbers again?

MS. WILLD-WAGNER: One hundred and thirty million, at 50 pounds each.

Technical support here, that helped set up the video conferencing, also has a calculator.

About 2.6 million.

SENATOR SMITH: Units of electronic waste. Well, that's great.

Listen, we want to applaud California. We need you to -- and you can hear what's being said here, correct, obviously?

MS. WILLD-WAGNER: Yes, clearly.

SENATOR SMITH: We have a number of legislators--

Oh, I'm sorry. Senator McNamara has a question.

SENATOR McNAMARA: Just one question. I may have missed what you said when you talked about voluntary compliance. Take a company like Dell that has no facilities, ships everything. How do you collect the tax or mandate a tax when it's an interstate entity?

MS. WILLD-WAGNER: Well, Dell was one of the first organizations. And the manufacturers, they stepped right up to the plate, and have been involved with us since day one. Because of them wanting to show their corporate sustainability policy in support of these initiatives, they stepped up right away and said that they would pay the fee. Also, because Dell deals with some return warranty issues and repair issues-- Any manufacturer or retailer that has a nexus -- sales tax nexus in California-- And that's a term that's defined in technicalities -- I can't tell you all about -- from my Board of Equalization. But anything with repair warranties, even if it's not a brick-and-mortar store in California, is required to pay the fee.

SENATOR McNAMARA: All right. So that's also included in the bill that authorized this particular--

MS. WILLD-WAGNER: The sales tax nexus is. It's written into the definition of person and retail sale. Yes.

SENATOR McNAMARA: Step one -- aside from a company like Dell, which is responsible, let's say, and someone chooses not to contribute to this -- how do you force them to do it?

MS. WILLD-WAGNER: If they're-- For instance, if an Internet seller, selling directly to consumers, the law actually says -- and this is very far-fetched -- that the consumer is responsible to pay. So when you fill out your taxes, you're supposed to be able to check a box and say, "I did buy this type of device or any other product over the Internet, and I am going to pay sales tax to the state of California."

SENATOR McNAMARA: I see you smiling. (laughter)

MS. WILLD-WAGNER: You see I'm smiling. Yes.

The other thing is, as I said, many of the Internet sellers are participating voluntarily, and many of them have some type of sales tax nexus. Our collection agency, the Board of Equalization, is going out and looking at those retailers who are saying that they do not have nexus, and they're verifying if they're out of state. Then there is no -- currently, there is no mechanism to force them to pay the fee.

SENATOR McNAMARA: Okay. Thank you.

MS. WILLD-WAGNER: And I could get more details from the experts at the Board of Equalization.

SENATOR McNAMARA: I would appreciate that, through the Chair.

Thank you.

SENATOR SMITH: Shirley, that would be very helpful if you could forward that information to us.

MS. WILLD-WAGNER: Certainly.

SENATOR SMITH: We have with us, today, Assemblyman Reed Gusciora and several very prominent legislators from other states. Reed has been working very hard on the Assembly side to help us get to an

electronic waste recycling program here in New Jersey. And on this side right now, we have the ARF proposal out of Committee. On the Assembly side, Reed is working on the producer responsibility side. And we're ultimately going to figure all this out. But Reed was kind enough to indicate he'd be willing to come in today with the panel of legislators who are trying this in some other states.

Assemblyman, if you want to testify there and have the two other legislators come in. If you'd introduce them, we'd really appreciate it.

**A S S E M B L Y M A N R E E D G U S C I O R A:** Thank you very much, Mr. Chair, for allowing us to come here.

I would like to introduce two distinguished legislators: One from the state of New York, Assemblyman Bill Colton, from Bensonhurst; and Representative Chris Ross, from Chester County, Pennsylvania. And if they could come up to here-- And I also have Rona Cohen, from the Council of State Governments.

And just by -- a brief overview, Senator. For the last three years, under the auspices of the Council of State Governments, we've studied the issue of the ewaste. And I think everyone understands the scope of the problem. But the main objective was not only to resolve the problem of e-waste, but not to have a patchwork of laws in the northeast.

After a three-year effort, I do want to applaud these two distinguished legislators for really creating a model legislation, and that was a producer-responsibility-type model. And so I'd like to introduce Assemblyman Bill Colton to lead off, and to talk about the process and what the bill -- the producer responsibility model, how it is effectuated.

A S S E M B L Y M A N   W I L L I A M   C O L T O N: Good afternoon.

First, let me thank Chairman Bob Smith and members of the Senate Environment Committee for affording the opportunity to testify about our legislative initiatives for electronic equipment recycling in New York State. Public hearings on this issue are very important because of the ever-increasing problems associated with the disposal of electronic equipment, both in our states, the nation, and the international community.

While I believe the ideal policy for electronics recycling should be established at the Federal level, it is clear there is insufficient support for passage of any comprehensive Federal legislation. And after years of discussion among shareholders, a consensus has not be reached on the Federal level. In the absence of that consensus, state policymakers have moved to address the problem of electronic waste at the state level. States including Maine, California, Maryland, and Washington have initiated electronic recycling programs.

I and my staff at the Legislative Commission of Solid Waste Management in New York have initiated and organized workshops and roundtables throughout the state, meeting with all the stakeholders. One of the most successful efforts was spearheaded by the Council of State Governments and the Northeast Recycling Council. That process began in 2005, and it has resulted in the development of model legislation for potential adoption by 10 northeastern states. For more than a year, over 50 legislators, legislative and environmental agencies' staff, and other

stakeholders have contributed to that effort. Rona Cohen, who is here, will describe that in greater detail.

The final consensus among the participants in this process -- the Council of State Governments and NERC process -- reached a consensus around model legislation employing the producer responsibility model for electronic equipment recycling, recovery, and use. For years I have supported producer responsibility as a most appropriate mechanism to finance and promote environmental stewardship. The principle alternative to a producer responsibility system, the advanced recovery fee, was considered early in the Council of State Governments' process, but the process basically came out in favor of a producer responsibility system. Some of the objections that we incurred as we studied the ARF model were the difficulty or the question of it being anti-consumer by charging consumers an additional fee at the time of purchase; while a producer responsibility model internalizes recycling costs of the products, which will likely encourage greater green manufacturer design.

Also, concerns were raised that the ARF puts responsibility and the cost burden on consumers and governments -- which in the case of New York state would be the local governments -- to establish collection, recycling systems, while the producer responsibility places the primary responsibility on the electronic manufacturers who basically have put these products into the marketplace and have designed them and marketed them. Also, there were concerns that the ARF puts greater and more cumbersome responsibility on retailers, among whom many are small businesses, sometimes independent neighborhood stores, that might lack the capacity

to store electronic products and might find it difficult to keep track of them, as opposed to a producer responsibility system.

It has been my belief that the producer responsibility philosophy provides a more appropriate policy initiative for electronics recycling in New York state. This year, I have reintroduced two major electronic recycling bills, both of them supporting the producer responsibility for the take back of covered electronic products. These bills would require the manufacturer to take back or pay for their share of the covered electronic devices which, in the bill in New York, I defined as personal computers, computer monitors, and televisions.

Both these bills would require the manufacturers to pay a registration fee of \$5,000. They would also require the manufacturers to select one of the two options: Either, one, they could establish their own collection system, their own collection program for the recycling of their share of returned electronics. And that would not necessary be limited just to their brand -- they could accept other brands also as part of that.

Or the second alternative would be that they would pay a fee based upon the weight of their share to fund a state-administered program, which would collect, handle, and recycle the returned electronics. And the reason we chose the weight was, we felt that it would be easier to determine the amount of the share weighing them, rather than counting each individual unit, individually.

These bills evolved from my participation in the Council of State Governments process. The primary difference in the two bills is how the determination of the manufacturers' share of electronics would be made.

One of these calculates the share by weight in annual sales. The other calculates the share by weight of returns of covered electronic devices.

While there can be reasonable arguments favoring either the return share or the market share approach, it has been my opinion that there is no doubt that electronics recovery must incorporate producer responsibility for the system. Therefore, I put these two bills forward. And basically what I found, in the roundtables that I held throughout the last five or six years, is that the producer responsibility model will have support from all of the stakeholders, parts of all of the stakeholders. So the producer responsibility model has support from environmentalists, it has support from consumers, it has support from retailers, and it has support from some manufacturers.

Hewlett-Packard has openly supported one of the versions -- the return share version of the producer responsibility bill. Dell has also come out now in support of a producer responsibility model. The ARF may have some support from manufacturers. Some of the manufacturers do support the ARF, but it does not have a great deal of support in terms of the retailer stakeholders. In fact, there's a lot of opposition there. It also may result in problems getting support from consumers, because ultimately they're going to have to pay for that.

A producer responsibility bill has the advantage over an ARF approach in that it is more directly related to the actual number of covered electronic devices recycled and the cost of recycling of such covered electronic devices, rather than what the cost of recycling those devices might be in future years. And ARF basically does not -- has no direct relationship to the cost of recycling for the devices when they actually are

brought back in for the purpose of recycling, when they reached their end of life. So we don't know whether it's going to cover the cost that will be required to recycle those devices three, four, five years down the line, when the consumer now is ready to say, "I've used it. Now I want to get another one, and I'm bringing this one back."

Additionally, the producer responsibility approach is better able to place responsibility for recycling on manufacturers who will be in a better position to design products in a more environmentally favorable way, rather than upon taxpayers, or consumers, or retailers. One of the problems here could be that, let's say for example-- Let's say marketing shows that if a particular unit is painted a particular color -- red, yellow, whatever -- that it might be marketed better. But by painting it that color, you make it so the plastic is almost impossible to recycle. So if the decision is made by the manufacturer without having the responsibility of actually recycling that product, or pay for the recycling of it, they might very well decide, "Well, we can sell this many more, according to our marketing people, if we paint it a particular color." If they're responsible for the actual recycling of it, then they might consider the green aspects of the design, and the cost that will be to recycle it. So that is an advantage when you place the responsibility on the producer.

Although neither of these bills -- both of these bills were introduced towards the end of the session last year. Neither reached the Assembly floor for a vote. But the return share bill was favorably reported out of the Environmental Conservation Committee in the last month of the session. These bills were basically not introduced until May. Session ends at the end of June. So both of these bills have been reintroduced again this

year. Both of these bills also, both versions, have been also introduced in the Senate by the Chair of the Environmental Conservation Committee in the New York Senate. And we plan on moving forward with these bills this year.

The success will be determined by a number of factors, including the support generated by the various shareholders. Now, as I said, the return share-- Both of these bills have been openly supported by Retail Council of New York State, environmental groups, consumer groups; and the return share version has been openly supported by Hewlett-Packard. So we're proceeding on that basis.

The new governor and the Senate will, obviously, play a key role in the ultimate enactment of it. Governor Spitzer's Executive Budget, which was released last week, recommended the addition of two staff persons in the state's Department of Environmental Conservation, specifically assigned to electronics recycling. That is a good sign that the new administration plans to increase attention on this issue in New York.

Hopefully, with increased understanding and support for environmental stewardship for electronics recycling and recovery, and through increased opportunities for the development of more sustainable products, we will be able to enact one of the two producer responsibilities for the management of electronic waste this year.

In fact, last year New York successfully enacted a bill which requires the wireless service providers to take back cell phones, up to 10 cell phones, without charge to the consumer, and to environmentally recycle those cell phones. So that was passed in the closing days of the New York session last year. It was signed by the governor, and now that is the law in

New York. And this year, we hope to move forward with these electronic recycling bills dealing with the other parts -- computers, monitors, laptops, and so forth.

SENATOR SMITH: Chairman Colton, thank you very much for your comments and your experience in New York.

Senator McNamara.

SENATOR McNAMARA: Just one question.

You mentioned manufacturers' responsibility. What happens to, like, an AT&T that now no longer builds a personal computer. Who pays for that?

ASSEMBLYMAN COLTON: Well, if we can identify who the manufacturer was, they would still be responsible under the New York version. If we could not identify who the manufacturer was, then the existing manufacturers who were producing and selling computers in New York state and were registered for the program would share in the cost of what would then be an orphan product. But if we can identify them, we would hold them responsible.

SENATOR McNAMARA: But wouldn't it be better to collect the money up front?

ASSEMBLYMAN COLTON: The problem with that is-- And, you know, the problem is, we don't know how much it's going to cost to recycle it at the time. And--

SENATOR McNAMARA: Well, that's-- I follow that. But if you're getting nothing from the company, as opposed to \$8 a unit, or \$5 a unit, something tells me the zero is not as great as the \$5 or \$8.

ASSEMBLYMAN COLTON: That is an argument for an ARF; but the other argument is, the consumer is paying it. And when it turns out that the consumer now redeems it and finds out that additional moneys are going to be required of them, then the consumer gets very angry and that presents a problem.

SENATOR McNAMARA: No, the consumer--

ASSEMBLYMAN COLTON: So in New York state, that was a problem for us.

SENATOR McNAMARA: I'm just-- I'm kind of fascinated, because you really can't-- Are you suggesting that the companies will absorb this cost and they will not pass it on?

ASSEMBLYMAN COLTON: It depends on the companies. A good company, I believe, will find ways to design the product in a way that will reduce the costs. And in fact, that would give them an advantage over competitors. So the old American idea of market competition -- free market competition in the producer responsibility model would work to make the companies design it less bulky, more environmentally friendly, which would then give them a competitive edge over the other companies.

SENATOR McNAMARA: Well, if they're collecting \$10 -- let's arbitrarily say \$10 per unit -- and they can design their units to where it only costs \$7, they just made three bucks additional on the sale. So the incentive still remains, as far as I'm concerned. I don't-- I think that we have to understand one basic thing -- ultimately the consumer pays. He's going to pay now or he's going to pay later. But there isn't any company I know, other than the oil companies -- that are working on margins of profit that are mind-boggling, and they don't seem to be dropping the price. So--

ASSEMBLYMAN COLTON: Well, I mean-- The only comment I would make would be that in the example I gave, for example, you may have a situation where a company may decide they could sell a few more products by painting them a particular color, which would make them a lot less -- more costly in order to recycle. Now, in the producer responsibility model, the company would be discouraged from doing that, because not only they will have to pay for the cost of recycling them, but in the ARF model, the company might go ahead and say, "We're going to produce this less environmentally friendly product, because it's the consumer who is going to have to pay the cost of it, and it really doesn't come out of our profits." So that, I think, is one of the arguments that could be made why the producer responsibility model will make it a lot--

And then the second argument is that in the ARF model, the company is not responsible for recycling it. It is going to be done through a system that-- Money is not paid to the company. The \$10 doesn't get paid to the company. It gets paid to a third party agency -- maybe the state, maybe a not-for-profit corporation. So the company is not going to be able to influence the efficiency in which the things are recycled. But if they're setting up their own recycling system, they have an opportunity to lower the price of the product below that of other competitors by setting up a system that is more efficient and more environmentally friendly.

So that's basically what I see, and what I think many environmentalists see, as the reason why they would tend to favor a producer responsibility, in terms of an ARF. I mean, both approaches obviously-- Here is what's getting these products off the back of the cost of government recycling them. But in one case, it's going to be the producer

responsibility, it's going to be the producer who is going to set up the system, be encouraged to set up the system and pay for the cost. Whereas, in the other case, it's the consumer who may not have the same control or ability to determine that it will be done efficiently.

SENATOR SMITH: Mr. Chairman, we appreciate your comments.

Assemblyman Gusciora, if you'd introduce our other Legislator.

ASSEMBLYMAN GUSCIORA: One of the distinguished legislators from next door, Chris Ross.

REPRESENTATIVE CHRIS ROSS: I think I'm going to, with the Committee's indulgence, maybe allow Rona to go next. And I'm going to be brief. So I'll try to get directly to your questions.

SENATOR SMITH: Brevity is the soul of wit. (laughter)

Rona Cohen is from the Council of State Governments, Eastern Regional Office. Rona, tell us how you're involved in this.

RONA COHEN: Thank you.

Thank you, Representative.

And good afternoon, Chairman Smith and members of the Committee. I'm going to be brief as well.

My name is Rona Cohen, and I'm the Senior Policy Analyst in the Energy and Environment Program at the Council of State Governments, Eastern Regional Conference. And I greatly appreciate having the opportunity to testify at today's hearing regarding our efforts at CSG/ERC to address the proliferation of electronic waste in our region.

From February 2005 through April 2006, CSG/ERC, in collaboration with the Northeast Recycling Council, facilitated a dialogue

among legislators in 10 states in the northeastern U.S. with the goal of creating model legislation governing end-of-life electronics management that can be filed with each of the participating states.

As part of this dialogue, CSG/ERC and NERC hosted two multi-stakeholder meetings, and additional single stakeholder meetings, that brought together more than 50 state legislators, legislative staff, and environmental agency solid waste management staff, and more than 100 different stakeholders to hear their suggestions regarding key elements of potential electronics legislation.

In April of last year, CSG/ERC and NERC released model legislation that reflected the consensus of the state legislators who participated in the project. The legislation requires manufacturers of computers and televisions to take full financial responsibility for the collection, transportation, and recycling of their products that are sold to individual consumers in the state. The legislators participating in our project favored the producer responsibility approach for the following four reasons.

First, legislators felt strongly that the financing mechanism for an end-of-life electronics management system must not impose direct fees on a consumer, either in the form of an advanced recycling fee paid at the point of retail sale of a covered electronic device, or an end-of-life fee paid at the time of disposal of the device. The general consensus among participants in our project was that mandating an ARF, or any other direct fee, would be akin to levying a new tax on consumers. The officials believed that there would be little public support for such a tax, especially for states in our region that do not have a sales tax.

Secondly, participants determined that retailers should not be involved in the collection of fees. The legislators based this decision on their extensive discussions with representatives of several national retail chains, who maintained that collection of an ARF at the point of retail sale would be costly and overly burdensome for the industry.

Third, by requiring manufacturers to accept full financial responsibility of the collection and recycling of covered electronic devices sold to consumers in a state, legislation based on producer responsibility would provide incentives for manufacturers to drive down the costs of collection and recycling, leading to greater market efficiencies, as Assemblyman Colton has already talked about extensively.

And finally, the producer responsibility approach would also create an incentive for manufacturers to design products that would be more easily recyclable.

Legislation based on the model has been filed in the New Jersey State Assembly, and also in Connecticut, New York, Pennsylvania, Vermont, and Puerto Rico.

Thanks very much.

SENATOR SMITH: I want to thank you.

Representative Ross.

REPRESENTATIVE ROSS: Thank you, Mr. Chairman, Senator McNamara, staff; and of course, Assemblymen Gusciora and Gordon, who have invited us here today, as well.

I sent around a simple, one-sheet grid which, hopefully, you all have on your desk. Because I find this a pretty complicated process, and we spent several years and we really went through many, many hours of

discussion about the alternatives. There are a few things that I think everybody agrees on. One is that we absolutely need to find some additional funds to help with the collection, transportation of the devices. We want to get them out of the landfills. We want to make sure that they're not dumped on the side of the road and that they're responsibly dealt with. I think that's pretty clear.

We do have a nascent recycling industry available in this field, but I think they're having a hard time getting the product to them properly. So the question is, how do you fund that transportation and collection, and support it properly. And I've given you what we kind of figured out to be the four main options, which is either that the consumer goes into the recycling operation and pays, either by driving the object to a centralized location, or pays somebody else to have it hauled; that the government, through your regular general revenues, could pay for this. I'm not sure how your budget is doing over here, but ours isn't looking very good right now.

SENATOR McNAMARA: Yours looks much better than ours.  
(laughter)

REPRESENTATIVE ROSS: Well, we all have to talk about that one in more detail.

But actually the other downside of that is that we all know, from having been involved in this a little bit, that government funds come and go a little bit. And in times of pressure, programs like this tend to get underfunded or defunded. So a consistent way of funding a program like this is critical to make sure that the recyclers can be supported adequately and continue to operate. We have the advanced recycling fee, which has been used by California, and I'm sure you -- I came in, in the middle of her

testimony, but I'm sure you had good discussion of that. And then finally, you have the manufacturer responsibility. So we concentrated on the last two, primarily when we were discussing it.

Now, I love bills where everybody likes it, and everybody's happy, and we get them all to go away quietly and happily. All the different parties are satisfied. And I and others spent an awful long time trying to figure out how to make the manufacturers and the retailers happy. And I can tell you, after several years of effort, it's not possible, as far as I can tell. Unfortunately, there has to be one point of collection, and it's either going to be the producers or the retailers. So we had to really struggle with that.

And I did say -- I tried to give you as fair an analysis of who likes what and why, and what the advantages and disadvantages are. I noticed, as you always do when you do something like this, there's a revision I'd like to make on the manufacturer responsibility to say *high resistance from manufacturers*. That's not completely true. It is fair to say that quite a number of my friends that I see behind me here, that I've spent a fair amount of time with, are pretty unhappy with this model; but as has been pointed out, Hewlett-Packard and Dell, with some modifications, are looking at the opportunity to work in that kind of a system.

So there are pluses and minuses to each of these. I think you probably are familiar with some of them already. And what I'd like to do now is open it up for questions, so that you can see how we're looking at it.

By the way, in Pennsylvania, I did get my bill in toward the end of last session. But with the election and a few other little distractions we had over in Pennsylvania, it really didn't get too far yet. But I do have cooperation from both sides of the aisle, both sides of the capital -- with the

Senate as well. The administration seems quite interested in this model and is eager to move it forward. So I'm hoping that we're going to be able to move it in the new session.

SENATOR SMITH: Representative, are you running into any resistance to the legislation?

REPRESENTATIVE ROSS: Well, I think there are questions. And I say, I think that from my point of view it was very clear to me that we were going to have some very, very difficult problems with the ARF in Pennsylvania. That when you think about the number of retailers that you're dealing with, the burden is on, particularly, small retailers -- that that was one of the things that I just couldn't wrap my mind around at the end of the day, in terms of trying to push that model forward.

I recognize there are challenges. And I don't want to say that any one of these is going to be a clean, easy thing to do. There are technical issues associated with each of them, and I think in all of the alternatives there are places where it gets a little messy, quite frankly. There are questions that I know you can ask me that I'm going to have to tell you, "You know, we had to fudge a little bit on that, one way or another." But that's true of the ARF as well, and I think you were asking some questions of California that highlighted some of the challenges that they face as well. It's not perfectly fair. I think you can go pretty far down the road to make it as fair as possible. And at the end of the day, I think there is a tremendous public policy purpose to try to make sure that we have a good functioning collection and transportation system.

SENATOR SMITH: Great.

Senator McNamara, any questions?

SENATOR McNAMARA: No.

SENATOR SMITH: Then let me thank all three of you for coming in today. I know that it's a real sacrifice to make the trip from the various locations that you came from, and I think it demonstrates the importance of the issue and your commitment to getting electronic waste out of the waste stream. We do appreciate your being here today.

Is our California person, Shirley, out there? Ah, you were getting some work done.

MS. WILLD-WAGNER: There. Okay.

SENATOR SMITH: You were getting some work done?

MS. WILLD-WAGNER: No, I was just standing aside, so that I didn't have to be on the screen.

SENATOR SMITH: Okay.

Did you hear some of the testimony from some of the legislators?

MS. WILLD-WAGNER: I did. Yes, I did.

SENATOR SMITH: Let's go back to California for a moment. And you now have an operating advanced recovery fee program, and it sounds like you're generating some tremendous volume doing some great collection. But just as the legislator has indicated, nobody knows how this stuff necessarily ends up. Why did California ultimately select the advanced recovery fee model?

MS. WILLD-WAGNER: It was quite the process, actually. Two years earlier, a manufacturer responsibility bill was introduced by Senator Sher, and it was all the way passed through, up to the governor, who actually vetoed it at that point in time. Actually -- I'm sorry, he vetoed

an advance recycling fee bill, because he thought that there needed to be more responsibility on the part of manufacturers. A year later, virtually the same bill came back and Governor Davis did sign it at the time. It changed again. As I said, there was a lot of discussion about manufacturer responsibility. Some of the same issues that have been mentioned by some of your other speakers here today were mentioned. Now, because the national dialogue had not gone very far, this is why California decided to step up and have something done. The bill is actually sponsored by the environmental group here in California, and also was not opposed by the Retailers Association or the manufacturers. I think at that point in time -- since it was the first, everyone was trying to compromise, as someone else mentioned, trying to come to a program and a situation that would work to basically meet the objectives I laid out earlier -- the big impetus here was no end-of-life fee for consumers, and that was a very big concern of the Senator who sponsored the bill, as well as getting the burden off of local governments. And they felt that this was a way that it could be done.

SENATOR SMITH: Okay. You now have two years of operation, and you're the head of the program. What are you hearing from manufacturers, retailers, and consumers now? How do they feel about the program after it's been in operation for two years?

MS. WILLD-WAGNER: I think, perhaps, the retailers might have preferred that they had been more involved at the beginning so they could have had a little bit more influence on the legislation as it was written. They are able to keep 3 percent, as I said. Some retailers find that that is sufficient to cover their costs, some find it is not. I think after they have once-- The biggest part was trying to get the initial programming up at

the retail level, because our bill requires that the \$6, \$8, or \$10 be actually listed separately on the receipt. So once they have that operating in their retail market, it's been much easier to implement.

The actual consumers -- we haven't heard that many complaints, as long as they understand that they can take their devices someplace at the end of life. There's certainly some misunderstanding that -- thinking it's a deposit, like the California bottle bill; and many of your states also have bottle bills, I'm sure. It's not a deposit. There's been some misunderstanding of that, that they try to bring the devices back and get their \$8 back. And that's not going to happen.

So other than-- Once consumers have called us or called any of the other state agencies -- those consumers that do seem to understand, as long as they're understanding that there's a location to take their device at the end, we haven't heard any hue and cry about that.

Manufacturers have been, since the very beginning of the law, have been very supportive in helping us come up with the rules and how we can make this operate effectively. Certainly, HP and Dell, as you have mentioned, have another proposal, and they're -- have input on that at the state and national level. But they have been nothing but supportive in California.

And, of course, the recycling businesses themselves are very pleased with the system, because they've got the business opportunities and are able to make their business decisions based on what they know is a steady recycling payment. It was mentioned about the costs of recycling not being tied directly to a fee. In California, the recycling payment rate of 48 cents a pound, total, can be adjusted each year by the Waste

Management Board. It does not have to go back through statute or regulations. It can be adjusted by the Waste Management Board if we're finding that that payment is too great or too little.

SENATOR SMITH: Yes.

One of the comments that you made that I thought was pretty interesting was the comment about the concern for the ultimate disposal out of California, and that you in California, in your law, you have a notice that has to be filed -- of export -- 60 days prior to the export of this equipment. Is that correct?

MS. WILLD-WAGNER: That's correct.

SENATOR SMITH: Why not just simply mandate that disposed computer, TV sets have to be crushed and recycled in California, in that they can't be exported? Or did you see that as a interstate commerce problem?

MS. WILLD-WAGNER: Sort of both. We do require that cancellation itself has to happen in California, so that California businesses benefit from the fee that California consumers are paying. But cancellation is really defined as either dismantling the device to a bare CRT, cathode ray tube; or crushing the glass. And our Department of Toxic Substances Control regulates hazardous materials and the treatment of hazardous materials in California, and has very strict requirements as far as washing, for instance, or separating -- what processes of the leaded CRT glass. The glass can be crushed here if the facility has been inspected by the Department of Toxics and found to be in conformance of all of the laws. But the actually washing and making that glass ready, actually furnace-ready for glass-to-glass recycling, we don't have any facilities in California to

do that. So we require cancellation to happen up to a certain point in California, so that the device cannot come back into the system. It takes it out of the payment system, and then it can go someplace else for the final making into another new product.

SENATOR SMITH: In California, does your agency have the ability to change the advanced recovery fee if it's either insufficient or if there's an excess?

MS. WILLD-WAGNER: Yes. Again annually, the same as the payment rate, we can change the \$6, \$8, or \$10 fee also.

SENATOR SMITH: All right.

MS. WILLD-WAGNER: And we get that information based on cost reports that are submitted by all the participants in our system. So each of the participants, or recyclers, or collectors submit a report that details their costs.

SENATOR SMITH: And what-- In the two years that you've been doing this, what is your experience? Do you think -- and I hate to sound like Goldilocks -- but is the fee too high, too low, or just right?

MS. WILLD-WAGNER: For right now, it's just right. But we've only had one year of those manufacturer costs or the net cost reports being submitted. And the first year, although we've provided a lot of training, you could imagine that people are having a hard time knowing how to separate out what are their costs for just this program versus other collection and recycling operations that they may have. So we're not yet at the point where we want to recommend any changes, because we don't feel that we have the data to support that. But at this point, the recycling costs

are coming in. We pay out 48 cents a pound. They're coming in, totaled, being reported about 46 cents a pound. So we think that we're pretty close.

SENATOR SMITH: Do you feel, after those two years of experience, that California is substantially and significantly dealing with this issue, or is any of this stuff getting away from you? Do you feel the program's working, not working?

MS. WILLD-WAGNER: I feel that it's definitely working; it's not completely ideal. There are challenges. I do feel that most of the -- we have found that most of the covered electronic wastes are being handled now, and managed, through our program. We're not finding-- With the end-of-life fees, of course you have the major threat of illegal disposal outside of landfills, outside of Goodwills. And if you talk with our Goodwills, Salvation Army's in California, their illegal disposal has been pretty much eliminated. And even for overnight drop-offs, we have ways of bringing those materials into the system. So I think we have been effective in getting those devices out of the illegal waste stream.

SENATOR SMITH: Now you mentioned Goodwills. Is this the Dell computer program where they've asked the Goodwills to be deposits sites for this equipment?

MS. WILLD-WAGNER: That's one of the models, yes. Dell and Goodwill have been working together on that, but many Goodwills are just simply doing it on their own. Consumers are aware of traditional collection opportunity at Goodwill for all of their household products, and so Goodwills have been receiving these devices for a long time. And they can directly send the devices that they receive, if they're not good enough for resale. Those that they want to just dispose of, they can send it to a

recycler and we will then pay the fee to the recycler, who turns around and pays it to Goodwill.

SENATOR SMITH: In California, if a citizen puts a computer monitor at the curb for collection by either the city garbage collector or the private collector, what would happen?

MS. WILLD-WAGNER: It would really depend on which city you were in, because some cities do have that type of collection. Most do not. Most of the cities either would need to call to have a private hauler make an appointment to come to your home, or your consumer would take the device to a Goodwill or a household hazardous collection waste event, something like that, where the consumer would actually bring the monitor to-- Now, if it comes and it's collected at the curb, then that collector, the hauler, would take it back to either a consolidation center -- it depends on the local government model -- sometimes to the local government, who can then transfer it to a recycler; or sometimes a hauler is an approved collector themselves and they take it directly to a recycler -- people who will actually crush the glass.

SENATOR SMITH: Okay.

Senator McNamara, do you have some questions?

SENATOR McNAMARA: No.

SENATOR SMITH: Shirley, is it possible for you to stay with us. You don't have to stay on camera again, if you want to--

MS. WILLD-WAGNER: Okay.

SENATOR SMITH: But if you can stay around for a little bit, because we have some people who would like to testify and they may react to some of the things that you've said, or we may have some additional

questions on the results of their testimony. So, if you could stick around a little bit, we'd appreciate it.

MS. WILLD-WAGNER: Okay, great. Thanks.

SENATOR SMITH: Thank you so much.

Our next witnesses will be the Electronics Manufacturers Coalition for Responsible Recycling. And David, is that you -- Dave Brogan? Are we doing this en masse or are we doing this one at a time? How are we doing it? Who's coming up first?

UNIDENTIFIED PERSON FROM AUDIENCE: Senator, because of the Appropriations Committee on--

SENATOR SMITH: Right, the other bill.

UNIDENTIFIED PERSON FROM AUDIENCE: --would you start with Ric Erdheim and Frank Morella, from Sharp and Philips?

SENATOR SMITH: Okay.

UNIDENTIFIED PERSON FROM AUDIENCE: And then they'll leave.

SENATOR SMITH: No problem.

Gentlemen, if you'd introduce yourselves?

**R I C E R D H E I M, ESQ.:** Good afternoon, Mr. Chairman.

My name is Ric Erdheim. I'm Senior Counsel for Philips Electronics. We have two major facilities in New Jersey -- our lighting facility, which is headquartered in Somerset; and our consumer electronic peripherals division, which is headquartered in Ledgewood. We employ close to a thousand people in the state.

We support the California approach. In view of the time, I'm not going to list all the reasons that we support it. I thought Shirley did an excellent job of describing how successful the program has been.

What I want to do in my own bit of time is address the issue that Representative Colton raised about the need for a producer responsibility model to have manufacturers design their products better. And presumably, if manufacturers need an incentive to design their products better, they're not designing their products very well now. So I'm going to hold my company up as an example.

Philips Electronics has been listed on the worldwide Global 100 list of the world's most sustainable companies for three years in a row. And Panasonic and Canon -- two of our other Coalition members -- have also been listed in the past. We're number one in the Dow Jones Sustainability Index for our category for three of the last four years. The year we weren't first, Sony -- another Coalition member -- was number one. We've won awards. In fact, last year we won the award for Green TV of the Year in Europe.

And just to give you an example, two weeks ago in *Business Week* -- and I've included this chart in my testimony; I don't know if that's been handed out or not. But the story in *Business Week* was: imagine a world of socially responsible companies doing all sorts of good things. And then there's a chart of companies -- it's on the last page of my testimony -- "Who's Doing Well by Doing Good." And if you look at that chart, Mr. Chairman, what you'll see, in the Household Durables area, you'll see Philips Electronics -- "Top innovator of energy-saving appliances, lighting, and medical gear and goods for the developing world." Sony "Is ahead on

green issues and ensuring quality, safety, and labor standards of global supplies.” Matsushita, or Panasonic, “State-of-the-art green products. Eliminated 96 percent of the most toxic substances in its global operations.” And Toshiba, “At the forefront of developing eco-efficient products, such as fuel cells for notebook PC batteries.”

So, Mr. Chairman, you have a wonderful situation here. You have four companies with major New Jersey presence who are acknowledged leaders in designing better products, whether from an environmental point of view or an energy-efficiency point of view. That doesn’t suggest we need an incentive to make better products. It suggests that we need an economic model that will allow us to continue to operate.

Now, here’s what -- the bill that the House Committee is considering. We are, right now, being subjected to intense competition from Chinese manufacturers. And if you look at any list of sustainable companies, you won’t see those companies on the list of the most sustainable companies. And they’re all new; they’re all popping up. They have no return share -- no return share. So if you adopt a return-share approach, what you’re saying is that the established manufacturers who are on this list, who are making all the environmental changes that you want to see, they’re going to have costs; and the new Chinese manufacturers who are already undercutting them will have no cost, because they have no return share. They have nothing in the waste stream.

Now, why would New Jersey legislators give an advantage to Chinese companies when you have New Jersey facilities, New Jersey manufacturers who are leaders in environmental design? It’s exactly the wrong approach.

The other reason that this makes no sense -- Representative Colton said, "Well, you're making a deal. You'll be able to collect it when the product comes back." We know from waste stream sorts that have been conducted in other states that the average TV lasts 17 years. That means that anything that's been out, for the next 17 years has already been manufactured. There's nothing that can be done about that. So what you're really saying is, "Well, you manufacturers make an investment over those next 17 years. And 17 years from now, because you've theoretically designed a product better and the recycling costs are lower, you'll be able to recapture their cost."

Now I don't know -- I can't imagine anyone really thinks that manufacturers make economic decisions based on a return 17 years from now. That's simply not the case. And so the argument that manufacturers need an incentive is wrong. The argument that it provides an incentive is wrong. And so that's why we think that that approach makes no sense at all.

With that, Mr. Chairman, I will end my comments, and turn to Mr. Marella.

SENATOR SMITH: Thank you.

Mr. Marella.

**F R A N K M A R E L L A:** Thank you, Mr. Chairman, and members of the Committee.

I'm here on behalf of Sharp Electronics and the other Coalition companies. The Sharp U.S. Headquarters is located in Mahwah, New Jersey, which is the district of Senator McNamara. We're pleased to support SB 554. There are a lot of reasons why we like it. And the biggest

one is, it works. Even its critics cannot say it doesn't work. Okay? It treats all manufacturers equally. It provides funding for everything -- collection, transportation, recycling, administration, education -- all in one shot.

Assemblyman Colton's point of, manufacturers should include that cost with their product -- we are doing that in California. We're doing it in a way that the consumer only pays that cost and doesn't pay any markups. If you assume the California numbers are correct with the cost, with it being \$10, if I put that \$10 on the price that I sell when I introduce it into the stream of commerce, by the time the consumer pays it he's probably paying \$15 or more. The consumer is deluded if he thinks under producer responsibility he gets a free ride. There is no free ride. He's actually going to be paying more than he would be under the California system. And we think that's incorrect. That's why we like Senate Bill 554.

Consumers do not have to look at the brand of product under SB 554 to determine how to recycle it. It all goes out. There's no sorting. There's no weighing of the individual to determine shares. Everything that comes back today is paid for, for the recycling. We don't look at it by brand. It's the fairest way to do it. It's the most efficient way to do it. Okay?

In California, there are over 450 collectors and recyclers that are now in business, many of which weren't in business before the program started. In contrast, Maine has five consolidators and recyclers. The two largest -- the ones that handle most of the state -- one is located in New Hampshire and the other is located in Massachusetts. I don't think there's a lot of Maine jobs coming out of that program. Okay?

Maine also is not having the success in collection and recycling that California has. California's collection rate, I believe, now is over four pounds per citizen, if you do the math. It comes out to somewhere around that, just of the covered products. Maine's is significantly below that. California's is clearly the highest in the nation.

In comparison, Hennepin County, Minnesota, which has had a curbside collection program for 15 years or more, is only collecting 2.5 pounds -- 2.7 pounds per citizen. So California, in two years, is better than Hennepin County in over 15.

The burden on the retailers is minimized as much as it can. Retailers are already collecting and remitting sales tax. In California, they collect and remit this fee. They get to keep 3 percent, but they also only have to pay that fee four times a year. So they get to play on that money. Which I think if you look at it, it's probably about 15 million a year, figuring it's about 15 million a quarter (*sic*). So they're playing with 15 million a year, where they can get interest and everything else on it. Nothing wrong with that. But I don't think they're losing money or getting hurt under the California system. Okay?

Important to note, environmental design -- there's a benefit that's coming out in the California program, which many companies like Sharp are already doing. The products are now RoHS compliant, which means they're lead free, under the terms of RoHS. They contain no hexavalent chrome, they contain no cadmium, and the mercury is reduced.

SENATOR SMITH: Mr. Marella, that was for CRTs, we're talking about?

MR. MARELLA: CRT -- for all covered products.

SENATOR SMITH: Okay, thank you.

MR. MARELLA: All covered products have that benefit in California. And that benefit that's in California, that's a benefit that everyone in the U.S. is getting, just from the California law.

SENATOR SMITH: Can you stop for one second?

MR. MARELLA: Sure.

SENATOR SMITH: Let me ask Shirley if she'd flip back on.

MS. WILLD-WAGNER: Yes.

SENATOR SMITH: Did you hear that comment?

MS. WILLD-WAGNER: Yes, about the restriction for hazardous substances, yes.

SENATOR SMITH: Yes. Has that turned into-- First of all, you can confirm that, the comment that was made?

MS. WILLD-WAGNER: Yes. And the regulation was just passed and adopted by Department of Toxics and our Office of Administrative Law in January -- 1st of this year. And it does require the same requirements that the European Union adopted several years ago, in the RoHS directive -- this is known as RoHS. And it does restrict lead, mercury, cadmium, and hexavalent chromium, like Mr. Morella said.

SENATOR SMITH: Thank you to California.

MS. WILLD-WAGNER: There are certain devices which are exempt from -- not certain devices, certain exemptions, under RoHS, of which I could not give you the full list. But the impact is--

SENATOR SMITH: No, but it sounds like your regulation has resulted in--

MS. WILLD-WAGNER: Yes.

SENATOR SMITH: --much less environmentally damaging CRTs around the country. So thank you.

MS. WILLD-WAGNER: Globally, yes.

SENATOR SMITH: Okay.

MR. MARELLA: And I just want to point out, companies like Sharp were -- one, we supported it, this requirement, in the California law. We would support it in this bill. And we were also compliant with those requirements a year and a half before they became effective. Sharp products were compliant with that by August of 2005. So it's a design improvement that you're getting from California. And Mr. Erdheim has already explained the other design activities that we put in our business already. So you're getting that.

So it's achieving all the goals that the environmentalists that Assemblyman Colton, Assemblyman Gusciora are looking at, but it's doing it in a much more cost-efficient and effective manner. It does it without impacting the jobs of the New Jersey companies -- the 30,000 jobs of our industry that are here. Of course, Hewlett-Packard does not support this, that's quite clear. The program is working in California. Hewlett-Packard is a recycler in California. I believe they are included in those companies that get reimbursed under the program in California, but they can speak to that.

In short, we do support this bill, and we will do everything we can to ensure that it's enacted.

Thank you very much. I'll take any questions.

SENATOR SMITH: Thank you, Mr. Marella.

Mr. Brogan, did you have other individuals that you wanted to come up, or did you want to come up?

Gentlemen, thank you for your appearance today and your testimony.

MR. ERDHEIM: Thank you.

MR. MARELLA: Thank you.

**DAVID BROGAN:** Thank you, Mr. Chairman.

I'm not going to repeat the points that were made.

SENATOR SMITH: Just for the record, if you would, identify yourself for those people listening at home. (laughter)

MR. BROGAN: My name is David Brogan. I'm Vice President of Environmental Policy of the New Jersey Business & Industry Association. We wholeheartedly support your Committee Substitute, which establishes an advanced recovery fee model in the State of New Jersey.

The only thing I'll repeat is that it should be made clear that in both programs, whether it's an advanced recovery fee model or a producer pays model, the consumer ultimately pays. And I hope that resonates after this Committee meeting is over.

Some of the things that concern me about the producer pays model is that it's modeled after a law, or formula, that's used in Maine. Now, Maine has one-seventh the population of New Jersey. It does not have the infrastructure in place that we have in New Jersey for the collection and management of waste. Their DEP is something like one-tenth the size of New Jersey. I think they have three people working on the program. The producer pays model could create a patchwork of programs throughout the state, which would only add confusion to the consumers.

And if this is going to work, we really need to have a unified model that consumers can understand right from the start. In Maine, a patchwork of programs probably doesn't matter because the remoteness of the collection points and the remoteness of where people live.

I just wanted to touch base on a couple of the things that were said by some of the Representatives from Pennsylvania and New York. They did mention that they -- one of the things that they really wanted to try to do is make sure that the municipalities had the money to deal with the collection of this material. Advanced recovery fee provides the most amount of money directly to the state, and then to the municipalities.

I understand that initially the advanced recovery fee could be difficult for retailers. But once that initial programming change is made, they no longer have to internalize the cost. Every percentage that they're getting is going into their pockets. And also, at the same time, if there does need to be an increased amount, or an increased percentage in the beginning, we would support that. We don't want to hurt retailers; we just want to make sure that they can do what needs to be done to implement the program.

Many of the states that participate in CSG have varying models of legislation. They haven't passed this legislation. So there is no regional approach that exists right now. So the idea of us joining in a regional approach, it just hasn't happened yet.

One thing that I've always had a question about, and that is in terms of-- I know that HP, Dell has brought it up, in terms of the fact that they don't like it. But I think that they, too, could benefit from the advanced recovery fee model because they are participating in California as

a recycler. So it's not as if their model would be thrown out the window. They would still have the ability to work with the state and still participate.

Again, the only other thing that I would say is, I know-- California, they mentioned and rightfully so, that there needs to be a sustainable funding source. And I don't know if the necessary thing in this bill would be a poison pill of some sort, or something to ensure that this money continually goes through. But it's clear that the California model works. They have created, as they have said -- they have created over 500 approved collectors and 50 new recycling companies. They've established a program that has educated the public, created a transparent system, and assisted in the creation of a new industry. And they use the existing infrastructure that's in place. I just hope that we wouldn't completely disregard the existing infrastructure we have in place for recycling material now, just for the purpose of implementing any waste program.

That's all I have to say.

SENATOR SMITH: Thank you, Mr. Brogan.

MR. BROGAN: Thank you.

**DAVID A. THOMPSON:** Mr. Chairman and members of the Committee, my name is David Thompson. I'm the Director of Corporate Environmental Affairs for Panasonic. We have our North American Headquarters in Secaucus, New Jersey; and we also have facilities in Denville, Moorestown, New Providence, Princeton, and West Hampton; and collectively employ over 2,000 people in this state.

We are here today to support SB 554, the Substitute language, because -- I think you've heard many reasons explained thus far by both Shirley from California and my colleagues here. We think it's the best way

to solve this problem. It's the simplest way to eliminate most of the problems that you will find when you're trying to implement and operate a recycling system. It provides a strong educational message to the consumer. When they purchase the product, they know they need to participate in a recycling system at some point in time. It gives, I think, manufacturers an incentive to reduce costs, because we want to keep the lowest recycling costs possible. It avoids the consumer paying more than they have to for recycling, because it avoids the markup that will occur every time their product is handled in the distribution chain. It eliminates the disadvantages associated with the waste stream share model -- the competitive disadvantages -- it's a unified system; no competition among systems. It eliminates brand sorting.

And I can tell you that in Maine -- we've heard a little bit about the Maine program. There are five consolidators/recyclers. One of them has almost all of the Maine business. He's located in New Hampshire. And he recently increased his costs to us, as manufacturers, by 74 percent -- his price. And the reason he gave us was that the brand sorting is very -- more costly than he had ever imagined; plus he is having a very difficult time in enforcing his payments, or his invoices, against overseas manufacturers located in China and Taiwan and India -- wherever they may be. So I think the ARF system is easier to enforce, and that's a major advantage that we will find.

We have advocated this system based on what we think is a shared responsibility approach. And we thought that our responsibility should be design. We thought that the retailers -- seems like they think it's very burdensome, that they should collect a small fee, and that that money

be made available either through the state government or through a third party organization -- that we would be willing to help establish and manage -- to local governments, who are probably going to be the only logical source of collection, assuming that retailers don't take products back. We, as manufacturers, generally sell through a retail distribution chain and really have virtually no direct relationship with retail -- the end user who has the products. They have to come back either through a retail chain or through some sort of collection depot or collection system.

So let me just talk a little bit about design. My company has been recognized by U.S. EPA seven times for our energy efficiency design achievements in our products. We have been recognized by U.S. EPA as the WasteWise Electronics Challenge recycling partner of the year in 2002, because of our system then, where we were collecting back, through one of our recyclers, and reusing post-consumer CRT glass to manufacture new picture tubes in Troy, Ohio. We had achieved 15 percent post-consumer CRT glass recycled content. And also, we have spent an enormous amount of resources designing our products so that we can eliminate the use of toxic materials and make our products more easy to recycle.

I see that you're watching the transmission from California on, probably, a 42-inch LCD television made by one of my competitors. (laughter) Well, I'm happy to tell you that we have just introduced a lead-free plasma display. And it's really the first display, whether it's CRT or LCD or projection -- our plasma that has eliminated the use, virtually, of cadmium, hexavalent chromium, mercury, and lead. We've had some discussion about RoHS in the California system. But essentially, under RoHS, all the major television, video, projection technologies have

exemptions for certain components. The CRT glass is exempt from the lead-elimination requirement. The mercury lamps in the LCD televisions are exempt from the RoHS requirement. The lead in plasma glass is exempt from the RoHS requirements.

But with our introduction of a new lead-free, mercury-free display device, we think that the California system and its design incentives really does motivate manufacturers to eliminate these materials. And I think that it's the only law in this country today, whether you look at Washington or Maine or Maryland or California, it -- well, California is the only law in this country today that provides any design incentive for manufacturers. And I'll say that, because under the way the California law is written and works with the RoHS exemptions, once a technology to eliminate one of these hazardous materials is proven to be technologically feasible and economically feasible, that exemption will disappear over time. So going forward, at least for plasmas, the lead exemption in California and in Europe will disappear, and all manufacturers that want to continue making plasmas and selling them will have to eliminate lead from the glass.

SENATOR SMITH: Let me ask you to stop for a second.

And I think I need Shirley to turn the microphone on, on that side.

Tell us a little bit more about why you believe the California law provides greater incentive to make design changes to reduce environmental impact. And then, Shirley, I need you to respond to it after he--

MR. THOMPSON: We have developed this product and introduced it to the marketplace. The exemption will disappear over time --

the exemption that plasma TVs have, because the plasmas today can contain lead in the glass. That's an exempt component under ROHS. When that exemption disappears, every manufacturer that wants to continue selling a plasma television will have to manage to make a lead-free glass display. And we, as a patent holder for that technology, have the opportunity to license it; or the other manufacturers will have to incur the expense that's necessary to develop that technology, or disappear from the marketplace.

Under the Maine system, under the Washington system, under 3572 that's being advocated in the Assembly, all of my competitors can just go ahead and continue selling their products and they can deal with this problem, if you will, 16, 17, 18 years later when these TVs come back in the waste stream. They don't have to do anything under 3572, the Maine law, or the Washington law, like changing their design.

So I think that the California system, if you will, does have a set of incentives that manufacturers can avail themselves of, at least those of us who make long-life products.

SENATOR SMITH: So the moral of this story is that in the California law, there's a requirement to update the design of the equipment, based on the European Union's acceptance of a new standard. Is that what you're saying?

MR. THOMPSON: Something like that. These exemptions, once we've demonstrated the alternatives available, they will disappear over time. Either then, or two years, four years, and they will-- And when they come up for review, a new exemption for lead and plasma glass will not be granted.

SENATOR SMITH: And that's -- the European government's doing that?

MR. THOMPSON: And California will follow.

SENATOR SMITH: And California will follow, right?

Yes, Shirley--

MS. WILLD-WAGNER: California law says -- yes, California law says that we had to adopt regulations that were no-- First, devices couldn't be operated in California that did not meet the requirements directed in the European RoHS directive. And also, that our requirements could not be any more stringent.

So as Mr. Thompson mentioned, there are certain exemptions right now. I can't say exactly when or how the exemptions will go away, but it will be continued to be mirrored in California and the European Union.

SENATOR SMITH: All right. Just for everybody's information, that is in S554. We have that same provision in our--

MR. THOMPSON: But we would support that.

SENATOR SMITH: --legislation, as in the California legislation.

MR. THOMPSON: And Panasonic would support that wholeheartedly in the State of New Jersey.

SENATOR SMITH: By the way, we should probably communicate to Assemblyman Gusciora that -- you don't know what bill is going to get to the finish line here. But there would be nothing in the producer responsibility bill that would be necessarily contrary to a provision like that being in that bill, correct? I mean, they could put it in if they

wanted to. We should definitely let them know that, so that whatever bill gets to the finish line, we do have that in. That's sounds like a very important provision.

MR. THOMPSON: We're hoping that SB-554 will get to this finish line--

SENATOR SMITH: We hope so, too.

MR. THOMPSON: --and we're here to offer our support and do anything we can in the State of New Jersey to help with that process.

SENATOR SMITH: Thank you so much.

Mr. Brogan, do you have anybody else?

Yes, sir.

**D A V I D H. A R L A N D:** Senator, my name is Dave Arland. I'm from Thomson, incorporated, which is a name you may not know right off the bat, but certainly know our main brand name, and that is RCA. It's a name that everybody has known for a long time.

Thomson has about 125 people working in the State of New Jersey about 15 minutes up Route 1 in Princeton. We have our major licensing activity there, as well as advanced engineering. And it's a \$16 million payroll. So it's some very well-paid attorneys who are working here in the State of New Jersey.

We support the advanced recovery fee method that Shirley has explained. I must say, success has many fathers. And as somebody who was involved five years ago in the California lobbying effort there, it is so gratifying to hear that the State has taken the suggestion and they've run with it. And of course, there's some issues that need to be worked out, but it's working. And I think if there's no other reason to put forward Senate

Bill 554 and take it to the finish line, it's because the advanced recovery fee is best, because it works. It provides a reliable, growing source of revenue. Shirley mentioned that a few minutes ago. And immediately, it helps address a problem. And that's one of the issues that I think some of the other proposals don't get into. The problem is not the television being sold today. The problem is the television that's in the basement. The problem is the old, big TV that's in the kids' room that you want to dispose of, and how do I get rid of that today?

As Shirley mentioned, we believe the ARF proposal will create jobs in the State of New Jersey. Another important point is that TV sets last on the average of 14 to 17 years, which is a good thing. Though when you look at who actually produced that set, in terms of RCA televisions, we got out of that business three years ago. We couldn't make money at it any more.

And if I look back over the past 17 years, four different companies have made RCA televisions. So when you talk about the state of Maine and the system they have, there is a very elaborate system set up that is very costly for the state to administer, where they have to record everything that comes in, prove to manufacturers what models they were, when they were made, what the brand names are, sort by brand, invoice the manufacturers, and then deal with dispute resolution, of which there is a lot, before being able to get the first dollar in the coffers to recycle the products. And that's again why we think ARF is a better option.

Price erosion is another concern. My last point here is that if you go into a major electronic store today, you're going to see prices falling precipitously. That's great for those of us-- I come from Indianapolis, so a

lot of people went out and bought new sets to watch the Super Bowl and see the Colts win, which was great. But as a matter of fact, one of our nation's largest retailers today announced that they are closing more than 70 stores because they can no longer afford to do business, largely because of flat-panel TV price erosion. And they're going to take more than a \$100 million charge this year because of erosion of prices in the market. Thus, adding more cost to that product -- internalizing that cost really is not feasible.

So I think the proposed ARF response makes sense. It provides an immediate source of revenue, and it's something that's working, which I think is most important.

SENATOR SMITH: We appreciate your comments.

We have another gentleman at the microphone -- part of the same group. Go ahead.

**EDWARD NEVINS:** Senator, thank you very much.

My name is Ed Nevins. I'm the Manager for Environmental Affairs for JVC Americas Corp. We're a small company, compared to some of the other companies here. We have our North American offices in Wayne. We employ about 300 employees. We certainly support SB-554. It's an upfront financing system, which really is the simplest method for providing local municipalities funding for collection. It's fully funding the local waste collectors. It's an opportunity to increase jobs. It's an opportunity to build infrastructure. And I'd like to repeat that word *infrastructure*, and I believe Shirley can support this as well.

The collection business -- getting TVs, or computers out of people's basements -- you need an infrastructure, you need a simple system

that is convenient to consumers. And by providing funds for collectors and recyclers within the state with up-front funding, it builds that infrastructure. That's the only way that an increase in recycling can really occur.

In my job, I refer to my side of the business as the back end of the business -- you have sales and then you have the back end of the business, and that's where we get involved in recycling. I work with people in California to comply with all their regulations. I work with the people in Maine to do the compliance and pay the bills, as the case may be.

We see the California program working, and we see the pressure on manufacturers to comply with the restrictions for developing cleaner products. I can assure you that it was not easy in our factories over the last year to make the changes and develop the products that would continue to meet the requirements in the state of California. We have gone through that step. We are providing cleaner and better products, because of California and because of the European Union. But with our local manufacturing, California has really made a difference for us.

We fully support this because it is a shared responsibility bill. The manufacturers certainly have their responsibility. We're producers of products; we are developers; we are designers. We're not collectors. We don't know that business. Our business is developing the products that work for the consumers and that consumers will buy. And also, we have the responsibility to provide a clean and environmentally safe products.

Governments involved here -- local government, collectors, and so forth -- they're the people with their feet on the streets. They're the people that have to be involved in this. They have the close contact with

the consumers. Obviously, the retailers are a major part of this program. You can't have a program without retailers involved. Retailers handle every product that we manufacture. They have the close contact with the consumers, and they have the consumers' confidence in their hands. We need to have them involved.

Obviously, the recyclers are a big portion of this. In the California program, we feel that the recyclers that have participated in this program have met the requirements of this program in terms of having -- providing the documentation of how they recycle, where the material goes. So it's really kind of cleaned up that business, that side of the business, as well.

And of course, the consumers. Having an advanced recycling fee, the consumer is immediately -- have a piece of this program. They know up front they've invested in the recycling program. And myself, as a consumer, I know for sure I'll get my moneys back at the end when I go to deposit a product for recycling. So--

SENATOR SMITH: That's not in this bill.

MR. NEVINS: Pardon me?

SENATOR SMITH: This is not a deposit bill.

MR. NEVINS: Well, for an advanced fee. I understand.

SENATOR SMITH: Right. They don't get that back.

MR. NEVINS: No, no, I understand.

SENATOR SMITH: Okay.

MR. NEVINS: I get my moneys worth, is what I'm trying to say, when I--

SENATOR SMITH: Correct. In good health and a clean environment. Absolutely.

MR. NEVINS: Absolutely.

So I feel that the advanced recycling fee is the easiest, and simple program that we should have in the State of New Jersey. And I see it both from a manufacturer's side and also from the consumer's side. It's the best bill we can move forward.

Thank you very much.

SENATOR SMITH: Thank you for your comments.

I just think I saw Christina Meo walk out the door, right? If she's in the hall, ask her to come back in.

Otherwise, our next witness is Morgan Johnson.

Is she there?

UNIDENTIFIED PERSON FROM AUDIENCE: No.

SENATOR SMITH: No.

UNIDENTIFIED PERSON FROM AUDIENCE: He's with her.

SENATOR SMITH: Oh, he's with her.

Would you like us to wait for Christina to come back?

**L A W R E N C E K I N G:** No, that's all right.

SENATOR SMITH: Okay, good.

Mr. Johnson. This is not Mr. Johnson?

Are you Larry King?

MR. KING: Yes, I am.

SENATOR SMITH: Larry King, you're live. (laughter)

MR. KING: Mr. Chairman, Committee members, thank you for the opportunity to speak to you today.

Before I get started in my presentation, my name is Larry King, and I'm part of Hewlett-Packard's Americas Product Take Back. And I need to clarify a couple of points that were brought up earlier. And I don't know whether our California regulator is listening -- HP is not a registered collector or recycler in the state of California. I just wanted to make that clear, in case Shirley is still listening.

The other point I want to make is the topic of RoHS, that has been brought up just recently. And I'll try to clarify a couple of points. HP is a worldwide manufacturer. We sell worldwide, much like the Japanese TV manufacturers who spoke earlier. They sell to a worldwide audience. And when we made changes for Europe, we made changes for the world. So when the RoHS directive was passed in Europe and that was coming down the track, we made the changes for all of our customers.

I think Frank mentioned that Sharp was compliant a number of years ago, before the California bill was even introduced. If New Jersey put a clause in the bill that addresses the RoHS compliance, that would have no impact on HP. It would have no impact on most of the companies. And so whatever the form of the bill that gets passed, we have no problem having a RoHS clause in there. Because like I said, it doesn't have an impact on us.

HP has been recycling end-of-life electronics since the '80s. We're very proud of the fact that we're on track to, by the end of 2007, recycle over one billion pounds of electronics products. It's from this extensive experience recycling the material, and conversations we've had in most of the state legislatures and around the world, that we've concluded

the correct solution for this issue is producer responsibility. And many of the reasons have already been spoken to and addressed by Senator (*sic*) Colton, and Senator (*sic*) Ross.

There are many aspects of producer responsibility that we can talk about. Just from the issues that were brought up today, we could spend hours discussing it. I want to focus on just one. The issues range from some of the things we've heard -- design. We can also talk about the low participation rate in California.

SENATOR SMITH: What low participation rate in California?

MR. KING: Well, the sponsor of the bill -- Californians Against Waste -- testified before Congress that they are capturing 75 percent of the sales. I view that as saying they are missing 25 percent. So the burden for our customers who are participating -- to buy at a local retail store, pay the fee through the HP Internet, and we pay the fee -- they are being burdened by the 25 percent of sales who aren't.

SENATOR SMITH: Okay, hold on.

Shirley, can you hear me?

MS. WILLD-WAGNER: Yes. I am back and can hear you.

SENATOR SMITH: All right. Did you hear Mr. King's comment that the testimony to Congress was that you're catching 75 percent, that 25 percent is getting away? Number one, can you confirm or respond to that statistic? And then, what are you doing, if there's any truth to it? How are you dealing with it?

MS. WILLD-WAGNER: I believe the testimony was back in 2005, and it was referring to the Internet sales only, as far as I know. That it would have been 75 percent of the Internet sales, we believe, that were

being collected. And the Board of Equalization, as I mentioned earlier, as far as what they're doing about it is, is doing, as I said earlier -- they actually have an out-of-state fee collection unit at the Board of Equalization, and they investigate all of these fees that could be from out of state -- all the retailers that might be selling from out of state.

SENATOR SMITH: All right. But in terms of in-state sales, you believe you're getting 100 percent?

MS. WILLD-WAGNER: Oh, I doubt that there would be 100 percent, no. I would really have to call our colleagues at the Board of Equalization to come up with a percentage. When I have had correspondences, as recently as yesterday, with them, they said they believe they are getting the vast majority of the market share, or there may be some small mom-or-pop-type retailers that are not even yet aware of the program. But by and large, and as I said, the testimony earlier was from 2005, the first few months of the program. So we've also had two years of the Board of Equalization doing audits and investigations out in the field.

SENATOR SMITH: Okay, thank you.

MR. KING: Mark Murray, who made the testimony -- that was last year, in 2006, in the Summer.

MS. WILLD-WAGNER: Oh, okay. I thought it was 2005. Sorry.

MR. KING: The point that I want to focus on -- because like I said, there are many points we could talk about -- are the inefficiencies of the California system. In California, there are three different state agencies who have to manage/administer the system. There's the Integrated Waste Management Board; the Department of Toxic Substance Control; and the

Board of Equalization, the tax agency for the state of California. Now, I haven't -- and maybe Shirley can help me here -- got the exact cost burden to the state on the system. But I know that the Board of Equalization budget that they had prepared was for approximately \$6 million and 71 employees. I believe they have hired about 60 of those. And remember that California already had a sales tax infrastructure in place, so these were added hits.

SENATOR SMITH: All right, stop for a second. Let's see if we can get a reaction.

MS. WILLD-WAGNER: Yes, I do have those figures. The budget for 2006/2007 for the Board of Equalization is 3.8 million, and that equates to, they confirmed this morning, 50 employees -- 50.8 employees.

SENATOR SMITH: And is that solely for this program, or is that for a number of programs?

MS. WILLD-WAGNER: Yes. And that's a direct appropriations through the bill, so yes. And that is directly for this program. That includes the auditors and the collectors, and all of that.

SENATOR SMITH: Thank you.

MS. WILLD-WAGNER: And outreach.

MR. KING: And I'm not sure, and I haven't seen anything in writing on the cost structure for the Integrated Waste Management Board, or the DTSC. Shirley, maybe you can fill that in for me. But all that overhead cost is an additional tax to the citizens of California, that pay the tax thinking that they are getting recycling, and none of that money goes to recycling one pound.

Let's compare that to the state of Washington. Jay Shepard, the program lead for the Department of Ecology in Washington, has told me that the annual budget he's looking at is less than \$300,000. Now, are the state of Washington and the state of California doing the same thing with the money being spent? No. And that's the point. The state of Washington doesn't have to do a lot of the things that the state of California is doing, and the state of Washington is getting what we feel is a superior, more dynamic take-back system.

Producer responsibility legislation is being adopted across the U.S. The last three bills that have been passed by a state have been producer responsibility.

SENATOR SMITH: Mr. King, question for you?

MR. KING: Yes.

SENATOR SMITH: Is Washington in operation?

MR. KING: It is being set up as we speak.

SENATOR SMITH: But it's not in operation?

MR. KING: It's not in operation. And that \$300,000 figure is anticipating for next year.

SENATOR SMITH: I think we're into apples and oranges here.

MR. KING: Okay. I can tell you what the fee was this year, because we paid it, and it was \$400,000 for 18 months. And we paid our fair share of that.

SENATOR SMITH: How many units have you collected in Washington?

MR. KING: That system will up and running--

SENATOR SMITH: Apples and oranges.

MR. KING: We anticipate a number of other states following the lead of Maryland, Maine, and Washington this term. In addition, you've heard the other Council of State Governments supporting producer responsibility as their preferred take-back model.

We're very supportive of Assembly Bill 3572, and hope that the Senate would look at it and embrace some of the elements of that bill. We believe that a successful take-back program -- there must be some flexibility for how the manufacturer meets that obligation. Just as our customers are looking to purchase products in a variety of ways, we also have different needs when it comes time to dispose of their old products. Going hand in hand with a dynamic take-back program are high environmental standards.

On HP's Web site, at *hp.com*, there are documents that outline the worldwide recycling standard HP holds our recycling vendors to. As part of that standard is a supplier code and conduct that relays how our vendors treat their employees.

Finally, I want to thank the Committee for looking at this issue. As we all know, it's very complicated or it would have been solved a long time ago. It's not an easy issue, but we believe it's an important issue which the State of New Jersey needs to address.

So thank you very much.

SENATOR SMITH: Thank you, sir. Thank you.

We have Morgan Johnson, from Sims Hugo Neu. And Mr. Johnson, if you would, tell us a little bit about the organization that you represent.

**M O R G A N   J O H N S O N:** Good afternoon, Mr. Chairman, members of the Committee. My name is Morgan Johnson. I'm the General Manager of Sims Recycling Solutions, which is a specialist in electronic recycling. We're a part of the Sims group, which has 350 employees in the State of New Jersey. However, our electronics recycling operations are focused, for the time being, in Europe, where we do 200,000 tons of material a year, which is 440 -- metric tons that is -- that's 440 million pounds of material. So we're one of the biggest electronics recyclers in the world. We also have an operation in California -- Shirley should remember me from that -- and I've been running that for a year and a half. So I've got experience in Europe under extended producer responsibility type environment, and in California where I've been working under an ARF environment.

And I have to say, and this might not be the perfectly appropriate thing to say, that we're relatively ambivalent as to which system is adopted. In California, I would say, the system is working fairly well. By my calculations, which include not just the material that Shirley includes -- which is the material that she receives claims for -- but also the material that's sucked in by virtue of that flow, which is quite a bit of material-- We've found, in general, between 30 and 40 percent of the material that we get in, under our programs there in California, is not covered material; it's extra material. And so we think that the system has drawn in something -- or drawn out of the waste stream something in the order of 150 to 160 million pounds, which equates to, by my estimate, about 1.2 million cubic yards of material diverted from landfill, and about 4.5 pounds per head, in California. Which is good -- much better than other numbers that were

quoted for other states in America, where there is no such legislation and only voluntary participation.

And we also have a smaller operation in Virginia where I've seen how that works. And really, all you get there is tree huggers, who come and who are willing to pay the price to have their monitors and TVs properly recycled. So you really get very low participation rates.

Rates in Europe, though--

SENATOR SMITH: I have to give you a PC, minus one.

MR. JOHNSON: Pardon?

SENATOR SMITH: I have to give you a PC, minus one. Tree huggers are environmentalists, thank you very much. (laughter)

MR. JOHNSON: Well, I've stood there and talked to them at these events, and they're very concerned and conscientious individuals. But they represent a small portion of the population -- that's probably a better way I should have put it.

And in Europe, the kind of rates at which the programs are running vary from Sweden, where they're collecting 18.5 pounds per person; to Switzerland, which was at 7.3. And there are quite a few. Those are statistics from a few years ago, quoting from pre-emptive WEEE-type legislative environments that were existent in Europe since 1999. But there's quite a few more states now involved in it through the WEEE directive.

But what I'd like to say is that, from our point of view, what's most important is that the standards are maintained and a level playing field is set, so that all the recyclers that are competing in the market are competing on level terms. And therefore, we support the ISRI standards,

which are a little bit tougher in terms of export, which is a low-cost alternative. And in fact, in the state of California, it would be -- the regimen is tough. But for the material that I referred to before -- which is not covered by the legislation, but is being sucked in by the kind of force of the flow coming in to us that's generated by the legislation -- that type of material can be dealt with and is being dealt with, I'm sure, by being pushed into containers and shipped to China. And I would like to see that type of activity ruled out, basically, so that it would be difficult for people to deal with the waste in that kind of way.

SENATOR SMITH: Based on your experience both in the United States and in other countries, have these sovereign nations or states prohibited the exportation of the consoles or the computer equipment?

MR. JOHNSON: Lots of sovereign states do prohibit the importation into their territories of electronic devices. However, there are lots of ways that people think to get around those prohibitions, and the flows continue.

SENATOR SMITH: Okay. Tell me about ISRI recycling practices. What does that mean? Give me a clue.

MR. JOHNSON: Well, it's a standard that has been developed by ISRI, and ISRI -- representatives of ISRI's members. ISRI is the scrap metal organization. And it's basically-- It's based upon 14 -- and we reviewed 14 standards that existed throughout the world. We've gathered some from Canada -- various standards.

SENATOR SMITH: Give me an example.

MR. JOHNSON: Well, an example is that the ISRI specifically attempts to prohibit or make difficult sham recycling. So that where it says

that exporting for disposal is prohibited, just as in several bills I've looked at -- but it also says that export for reuse should be real; so that there is a warrantee behind the product being exported, such that 90 percent of them at least will work, and that they're being tested here so that the exporter knows that they are working before he exports them. Because it's very easy to disguise exportation for reuse, or disguise recycling -- exportation for recycling as exportation for reuse, simply by not testing and stuffing products in containers that, nevertheless, still have their plugs attached and could be working.

SENATOR SMITH: Did the California law adopt ISRI standards?

MR. JOHNSON: No. ISRI didn't exist at the time that California-- This standard did not exist at the time that California adopted legislation.

SENATOR SMITH: Shirley, can I ask you if California is anticipating something like that, or if you're doing it some other way in the regulatory process?

MS. WILLD-WAGNER: We're simply supporting the various efforts of ISRI; and there's a couple of others, that I'm aware of, that are a certification-type standard for recyclers. And as I mentioned earlier, that's really going to be something that's either got to be a voluntary sign-on from the recyclers and manufacturers, or something that's dealt with on a national level, because California does not feel that we have the authority to mandate that type of requirement.

SENATOR SMITH: Thank you.

MR. JOHNSON: I would say that the regs should be kept in sync with the legislation. In California, the regulations are controlled by the DTSC, who make chemical analysis of products and determine whether they are to be considered universal waste or not. And the DTSC has gone ahead -- about this time last year, determined that many products are not universal waste, which nevertheless are not covered within the funding mechanism of the SB20 legislation. So the legislation's scope is not set to be in sync with the definition of hazardous waste, whereas it could be in some future legislation by adding something to the scope, such to the effect that, for instance, X, Y, and Z, or any other products in the future held to the universal waste by the appropriate authorities; so that it keeps in sync with the regulations.

That has been a problem for us in California, because this stuff which no longer can go in landfill, it can't go through our shredders, nevertheless can be stuffed in a container and shipped abroad. So we're not in a position competitively to charge for it, but we have to take it. So we're winding up with a lot of material coming in, being drawn into the flow, which isn't really covered in the scope of the legislation. And that type of thing I would like to see (indiscernible) minimizing paperwork. California had a big issue with determining that the products that are being submitted for claims to the state actually originated in California, and there's a very thorough system for determining matter. But it's very paper-intensive, and there might be some sort of way to achieve the same end through auditing and less paper chasing.

I have submitted bills that stood a yard -- invoices for months that stood a yard high to create the paperwork required for the California bill.

SENATOR SMITH: Let me ask Shirley, any suggestions on that?

MS. WILLD-WAGNER: Well, it was a huge concern and has been, as our primary responsibility is to maintain the fiduciary integrity. This is a lot of money, and we're paying out a lot of money, as I mentioned earlier on the statistic. So it's a huge concern bringing in material from out of state. That's the primary focus of all of my staff -- is making sure, and looking at that documentation and making sure the devices were generated in California.

So Mr. Johnson is correct. It's very difficult right now. It is intensive as far as the paperwork. We're looking -- as we've gotten stakeholders all sort of trained and understanding the system -- we're looking to try to make some streamlining, where appropriate.

SENATOR SMITH: Great. Thank you.

MS. WILLD-WAGNER: One of our challenges.

MR. JOHNSON: There has been some increased stream money through the designated agent system, which definitely cuts down on the-- So that the state of California has done quite a bit to try and ease the burden.

And lastly, I'd say that the system should set targets, measurable targets -- something like the per capita numbers that I quoted before -- which would be compared across similar countries and can help keep the system in line with what's being achieved elsewhere.

That's all I have to say.

SENATOR SMITH: Mr. Johnson, thank you for your comments. They're very helpful.

MR. JOHNSON: Thank you.

SENATOR SMITH: Our next witness is Fred Stanger, Association of New Jersey Household Hazardous Waste Coordinators.

**F R E D S T A N G E R:** Thank you.

Good afternoon.

I'll just read a prepared statement.

Senator Smith and the members of the Senate Environment Committee, thank you for holding this hearing so that we can comment on how to structure an electronic waste management program in New Jersey.

The Association of New Jersey Household Hazardous Waste Coordinators does not believe that the producer responsibility model is the correct one for New Jersey. Most New Jersey counties have health (*sic*) collection events or have drop-off facilities for consumer electronics, since the year 2000. These collections are held by various solid waste agencies and utilize local recycling facilities.

Under a producer responsibility program, counties would need to start sorting electronics by brand and to utilize different recycling facilities depending on the brand. We do not feel this is feasible or cost-effective. We would prefer a model similar to the California system, which provides funding back to the collectors and recyclers of consumer electronics. This would enable us to expand our program so that we can increase participation rates and offer a more convenient system to our residents.

We are in support of a disposal ban of electronics, assuming a new source of funding is available to handle the increase of material to our recycling programs. We also support labeling to educate consumers about the recycling of consumer electronics.

Thank you again, and please feel free to contact us with any questions you may have.

SENATOR SMITH: Thank you, Mr. Stanger.

MR. STANGER: Thank you.

SENATOR SMITH: Steve Changaris, New Jersey Solid Waste Management Association.

**STEVE CHANGARIS:** Thank you, Mr. Chairman.

My name is Steve Changaris. I work at the National Solid Waste Management Association. I'm the Northeast Regional Manager, and I appreciate the opportunity to testify today on the issue.

What I'm distributing today are some policy position papers that NSWMA has worked, together with SWANA and the National Recycling Coalition and Integrated Waste Management Association. Basically, we're in favor of programs to divert e-scrap or e-waste from disposal systems. And we applaud the efforts of the Committee in New Jersey to move this forward.

What you've been talking about all day today is an issue that, as you'll see in the policy position papers -- the advanced deposit fee or the producer responsibility -- our basic objective is that we don't want to see our communities, or our (indiscernible) businesses and our customers pay for this in indirect ways. So the idea of some kind of a stable funding source to take care of the recycling programs is appropriate.

The other--

SENATOR SMITH: Steve, as I understand it, your Association is saying that you believe that advanced recovery fee is preferable to producer responsibility?

MR. CHANGARIS: No, sir. We're at the range -- that that's up to you guys to decide. We're just trying to suggest that we don't want to see that cost hidden in the trash bill, or displaced on the disposal facilities or on the communities budgets. That's what we've said.

SENATOR SMITH: So you're saying you have no preference between the two systems.

MR. CHANGARIS: Correct. Much like the (indiscernible) Sims--

The other issue is the unfunded mandate issue. And we want us to get the material and take it out of the waste stream and recycle it responsibly.

One of the other issues -- and I'm not going to go over them; you've had a long hearing today. I just wanted to mention, it was in the original legislation when you heard it in the Spring. We have serious problems, and you raised the question to the California Integrated Waste Management Program, about what happens when, inadvertently, e-waste gets into the waste stream. And as a representative of an industry that holds permits -- and we have responsibilities for regulations and abiding by them -- we're very concerned that if the major effort here is to set up a program to divert the material-- If intermittently, minor quantities of this material come into the stream, what happens to us at the transfer station? What happens to us at the landfill or the waste energy facility when the

material appears there? So I understand that as the disposal is shifted to e-waste recycling and e-scrap recycling, along those lines, we'll-- What I'm trying to get at is, that it's not an issue when -- if you had developed the programs for the management and the recycling of these materials. And we're just very concerned about what happens to the facilities for those minor quantities that still make their way through, because customers put them in the trash or they're not identifiable in the trash. We have regulatory concerns along those lines. We're looking for some protections in the legislation as it's advanced.

SENATOR SMITH: Thank you, Steve.

Next is John Holub, from the New Jersey Retail Merchants Association. John?

**J O H N H O L U B:** Thank you, Mr. Chairman.

I appreciate the opportunity to testify. I do have a couple of letters here of some individuals that unfortunately were unable to join me today. One being from the Director of the Consumer Electronics Retailers Coalition; as well as a letter from one of our members, Best Buy, who, as you know, is one of the largest consumer electronic retailers in the country -- but unfortunately, were unable to join us.

But I'll be very brief, because I don't think there's a whole lot I can add that wasn't touched on by our distinguished guests from Pennsylvania and from New York, as well as Assemblymen Gusciora and Gordon. Other than, as retailers, we always like to say we support the three Rs, when it comes to a consumer having a product that they no longer need or want to use. The first is, they should have an option to reuse that product. The second option should be they should be able to refurbish that

product. And the third option, that when a product truly reaches its end of life, is the consumer should have an option to have a cost-effective and efficient way of recycling that product. And as retailers, we believe the only option that meets that criteria of being efficient and cost-effective is that of a producer responsibility, a piece of legislation similar to what is advancing through the Assembly as we speak.

Now, just a couple things I'd like to touch on that I know some of the proponents of the ARF have been talking about. I know they were kind enough to speak on retailers' behalf and say that they didn't think it would be a problem. But I can assure you, an ARF is a burden to retailers. First of all, it further complicates an already unfair tax system. On-line sellers without nexus would put New Jersey stores at a competitive disadvantage. I know that California had mentioned that maybe 75 percent -- they were capturing about 75 percent of on-line sales. I think that number seems awfully high. But even if that would be the case, there's 25 percent that you're not capturing. What would it be -- I find it difficult to believe that New Jersey would be able to find those 25 percent, those individuals -- find them, track them down, get the \$8 to \$10 from that individual. I have a feeling it would cost the State a lot more than \$8 to \$10, to go after those specific individuals.

I know we see -- and I guess I'm kind of comparing it to-- I just saw an article in the paper about the State going after some people with the sales tax with on-line purchase of cigarettes. So those are much bigger dollar amounts that they're going after. We're going after individuals that we're looking -- what -- \$8 to \$10. And I just find it hard to believe that, especially in this environment of the State trying to be cost-efficient and

trying to find various savings, with the property tax debates that we've been having for months now-- We just feel that the ARF is just not the appropriate avenue to go to.

And also, too, on that point, is getting to the efficiency and cost-effectiveness. When it comes to a producer responsibility bill, the State will only be dealing with, at most, I think the number is 150 manufacturers. If you were to go to the ARF avenue, you're dealing with thousands and thousands -- I can't even actually give you the number of how many retailers there are, but I know it's in the thousands of retailers that sell consumer electronics. So it's a much more smaller pool that the State would have to organize and implement a program for. And I think, again, getting back to the current environment in the State, with the State trying to reduce costs and find efficiencies in every way possible, I think that lends to the importance of going towards the producer responsibility approach.

Another issue too: As far as the ARF is concerned, this does complicate the streamlining of the sales tax system, which has been a big initiative nationwide in trying to make the sales tax system simpler. This, I think, further complicates that. And as I mentioned, some of the producer responsibility opponents were kind enough to say that just because retailers collect sales tax, it shouldn't be that difficult to collect an ARF as well. And nothing could be further from the truth. It's just not -- it costs retailers-- When the State Sales Tax was increased -- you know, the 1 percent, from 6 to 7 -- it cost retailers a significant amount of money to recalibrate all their machines. Now we're talking something a little more complicated than that, where you would have to recalibrate your machines and make sure

that you only charge a certain amount for one size product, another amount for another size product. That is a significant cost in recalibrating machines, as well as on top of administrating the program, collecting that money, remitting it to the State. It's a significant cost.

And I know one of my members, in discussion with them a while back, they told me in California it cost them well over a million dollars just to comply initially with the program, and they did not come close to receiving any payment. I guess there's a 3 percent allowance that they receive back, and what they receive back wasn't even close to that million-dollar initial outlay just to recalibrate their machines. So it's a major problem, I think, when it comes to the ERA.

And also, just to get back to -- as far as the producer responsibility legislation, that we believe is the appropriate approach, is that it's a well-balanced approach. And I think nothing says that better than the constituencies that are supporting it. Retailers are supporting it; environmentalists are supporting it; certain manufacturers are supporting it; consumer groups are supporting it. That leads me to believe that it is the appropriate way to go. Whereas on the ARF approach, the advocates of that seem to be about one constituency that really is pushing that. So I think that tells a lot -- is quite telling of what is probably the more appropriate approach to take.

So with that, I'd be happy to answer any questions or--

SENATOR SMITH: John, we appreciate your testimony today.

MR. HOLUB: Good. Thank you.

SENATOR SMITH: And our next witness is Linda Klose, AeA -- advancing the business of technology.

Ms. Klose.

**L I N D A K. K L O S E:** Yes.

Good afternoon.

I decided I'll make my presentation very, very brief because you have it in writing. My main concern is not the financial model. Our members are still divided. HP is a member, as is Sharp. So I'm not going to state just to that. I'm only concerned that when you look at the material restrictions, that you make sure that we go with the harmonization with the EU standards, so that our people who are already in compliance have no problem, and that we keep the labeling, as was discussed a year ago, to an absolute minimum. Because that will make the New Jersey standard fit in with the rest.

Thank you.

**SENATOR SMITH:** Thank you very much.

Is Mr. Matt Gobble, from Toshiba, here? Mr. Gobble.

**M A T T H E W G. G O B B L E:** Mr. Chairman, good afternoon.

I'll be very brief with my comments. My name is Matt Gobble, and I'm the Environmental Manager for Toshiba America Consumer Products. We are a manufacturer and seller of consumer electronics. Our corporate headquarters in North America is located in Wayne, New Jersey.

I'll simply say, we'd like to indicate our strong support for SB-554, for the various reasons my colleagues have already gone over. We feel this is the best concept of true shared responsibility for the management of end-of-life electronics within New Jersey.

Thank you.

**SENATOR SMITH:** Thank you very much.

Mr. Mike Pisauro, New Jersey Environmental Lobby. Not here.

Lloyd Hicks, from INFORM. Mr. Hicks.

**LLOYD HICKS:** Good afternoon, Mr. Chairman and members of this Committee. My name is Lloyd Hicks. I'm the Director of the Solid Waste Prevention Program at INFORM. It's a national, nonprofit, environmental research organization. I have some written comments that I can provide at a later date.

But I would just like to just be brief. And I have a summary of California and Maine, and also talk about some directions for New Jersey.

So we have two states now that adopted their own laws to address discarded electronics. As we've heard today, there's one system -- the manufacturer-financed system with costs that are incorporated into the price of the products; and two, consumer-financed system, the tax collected at the time of purchase. According to some preliminary cost data, one thing we can see, the higher management costs associated with our ARF-based systems, the \$11.6 million in California -- that comes to 32 cents per capita; versus 207,000 in Maine, that comes to about 16 cents per capita. That's half of the management cost for those two systems.

And the second is that the market-based prices for processing the electronics, as in Maine, have been found to be lower than the fixed prices set by regulation, as in California. Regarding system management, in California there are 8,000 to 9,000 retailers that regularly remit the fees to the Board of Equalization. And Maine receives financing from approximately 150 manufacturers that own the grants collected within the state.

Regarding the cost of collection processing, it's 20 cents a pound for collectors and 28 cents for processors, used to reimburse operating costs. Whereas in the Maine system, the market-based price has turned out to be less. The total operating costs range from 17 cents to 38 cents per pound, in total.

And to address one of the comments earlier about brand sorting. As I understand that law in Maine, that is requested only by the manufacturers. And so Maine does not require sorting by brands, and Washington state also does require sorting by brands. So the comment about it raising the costs is actually a cost that would be borne by the manufacturers that's ask for -- to sort their own products.

So in addition to these environmental goals, what really matters is the actual cost to the end user. The ARF takes money from consumers at sales counters and directs it towards government-run programs, some of which can end up generating a large financial reserve, rather than being used to fund the actual operational cost of processing the discarded electronics. For example, California collected 116 million in their first 18 months of operating its collection program, and processors claimed only 16.6 million on it. And this is from Shirley's presentation last October.

SENATOR SMITH: Right. Stop for a second. I see a big head shake out in California.

MS. WILLD-WAGNER: The amount collected is correct, but the amount claimed is not. As I said, it was \$31 million the first year and \$62 million in the second year.

SENATOR SMITH: Okay. Thank you, Shirley.

MR. HICKS: So that's about 93 million that has been paid out to processors.

MS. WILLD-WAGNER: Yes.

MR. HICKS: So I stand corrected.

So based on, I think--

SENATOR SMITH: By the way, isn't this great?

MS. WILLD-WAGNER: Pardon?

SENATOR SMITH: This is just great. You have immediate feedback on the issues and the facts. This is just the best kind of a hearing to have on a complicated issue.

MS. WILLD-WAGNER: Absolutely.

SENATOR SMITH: Sorry to interrupt, but I just was bursting with enthusiasm.

MR. HICKS: I think the point that I would still like to make, and still holds true -- that based on the programs operation, the fees really have no apparent relationship to the actual amounts collected and recycled, in comparing it to the system that actually is running in Maine, which is based on the actual weight of the products returned. And the market-based rates paid in Maine don't create a monetary reserve, while the fixed rates fed from the ARF have created a reserve in California.

And I'll just add that this has been the major criticism in Europe for a number of systems that also have an ARF.

SENATOR SMITH: Mr. Hicks, just one thing for you. I don't know if you had a chance to look at the bill -- the advanced recovery fee bill. But it actually provides, for the DEP, the ability and the requirement every six months to take a look at the fees that are being charged, and to

reduce them if they're collecting significantly more than they need from the operation. So ours is a little different than--

And I'm not sure. I think Shirley, out in California, you have a chance to change your fees based on cost of operations, right?

MS. WILLD-WAGNER: Yes, we do.

SENATOR SMITH: So--

MS. WILLD-WAGNER: Yes. And it does not have to be by law. It can be by the vote of the Board at a public hearing.

SENATOR SMITH: So if it turns out you start to run a significant surplus over a series of years, I would assume that that would be one of the things that you'd consider -- lowering the fee.

MS. WILLD-WAGNER: Correct. Or adjusting the payment rate at the other end.

And Mr. Hicks is correct that the (video malfunction) year we did have more revenue than we had paying out, because the infrastructure was still maturing and getting used to our paperwork requirements, documentation rules, and regulations. But we believe now the forecasts, if you look at what we're collecting this year versus what we're paying out -- probably 75 to 77 million of revenue versus \$62 million in claims -- is going to be coming to the point for, perhaps, we might even have to adjust the fee the other direction.

SENATOR SMITH: Okay.

Mr. Hicks.

MR. HICKS: So I think I'll just make a few points about the direction for New Jersey. In S54, it does say that televisions are sold, and utilized, and discarded with far less frequency than personal computers.

The findings from a consumer survey by the Consumer Electronics Association do suggest that the average lifetime of a television is more than a personal computer, ranging 5.7-6.7 for personal computers and 11.4 years for colored TV. The survey also showed that the televisions have a saturation rate of 75 percent, compared to 73 percent for personal computers. So this was the reason that was held up for a hybrid ARF/EPR approach -- that there was a difference, basically, in a functional lifetime for the products.

But what I'd like to bring to your attention is that there is a system, that fulfills the requirements of a German law, that factors in the rate of return for products to calculate a manufacturer's respective financial obligation. This system most importantly addresses the new entrants. These are the Chinese manufacturers that manufacturers talk about. In other words, companies with no returns here. So what it does is, it looks at the weight of the products placed on the market, and that's multiplied by the expected percentage of returns, and that's multiplied by expected costs for recycling. This is basically the financial assurance mechanism, just like an operator of a landfill has to have assurance for post-closure cost. But this financial assurance mechanism is used for future recycling. So as this example shows, it's not necessary to use an ARF system to accommodate for functional lifetimes of electronics.

And Washington state's law actually contains provisions that will address new entrants. And as part of a standard plan, if the manufacturers choose to join that standard plan, these new entrants would be addressed; and they might be addressed in this fashion. So just to touch more on Washington's plan, it is -- there's two options: You can join the

standard plan, on which economies of scale can be reached collectively as a group; or they can operate their own program if they have brands that make up at least 5 percent of the products collected for recycling. So the Washington plan will include new market entrants, an exact and appropriate financial contribution from each participant to cover program operations. And so to cover the long-term operating costs and to prevent unfunded orphan products in the future, new entrants may be required to provide some type of financial assurance mechanisms in that state.

So I think, just to summarize, I think a standard plan that is based on Washington state's model can have less administrative costs due to the direct participation of manufacturers and thousands of retailers. There can be a competitive bidding process that attracts the market-based rates instead of fixed rates. And there could be limitations on a reasonable operating contingency, instead of generating excessive reserves. And as I said earlier, that the relationship in California to the actual amounts collected is not as strong as it could be, and those costs to consumers are not necessarily justifiable if those reserves are that high. So I think, just to end--

SENATOR SMITH: Summarize the summary.

MR. HICKS: To place a significant responsibility in the hands of manufacturers will lead to a system that will be better to control costs, encourage manufacturers to make continual design improvements to make this whole process (indiscernible) resource issues.

SENATOR SMITH: Thank you, Mr. Hicks.

Abigail Field, from New Jersey PIRG.

**ABIGAIL FIELD:** Good afternoon, Chairman, and thank you for this opportunity to testify.

Unsurprisingly, New Jersey PIRG, a consumer group, strongly supports a producer responsibility model of electronic waste recycling, and we think this is an incredibly important issue. We need electronic waste recycling in this state. It is a serious problem, but we strongly believe that the most effective approach, to be dealing with this problem now and in the future, is a producer responsibility model.

Now, you've heard a lot of testimony today on both sides of the issue, and I am not going to reiterate the standard arguments. But I do want to address a couple of things that have been said. Everybody's talking about this sorting problem if you do producer responsibility, and I'm not understanding why. As the bill is designed, it doesn't require municipalities to sort, for example. The bill is why HP doesn't recycle only HP products -- they have to recycle a certain amount of a waste stream. They just set up the system. But what the producer responsibility model does is, it inspires HP and all the rest of them to design their parts so that they are cheaper to recycle. So that when that waste stream that HP has to pay for comes in the door, and they put their contracts for recycling out to bid, the bids will come in lower because the costs are less, and a profit can be made on the recycling more easily.

Indeed, you've heard the recyclers say that they don't care really how you fund it, it works for them either way. So this (indiscernible) the funding mechanism has got two purposes: One is a matter of equity. And we think that as the creators of these devices, and the people who have the control over what goes into them and putting them into the

marketplace, they bear the responsibility for designing them effectively. And then the second question is, which way will get you a better design down the road? And you've heard some of the manufacturers say, "Hey, we do it anyway." But one of the things they kept talking about was how they made energy-efficient products, which New Jersey PIRG very much supports, right? However, an energy-efficient product has nothing to do with its ease of recyclability.

And so, for example, the flat-panel TVs that are all the rage right now, apparently they're very hard to recycle because they use mercury lamps to illuminate the LCD screen. And these mercury lamps are attached with very small clips that are not in standard positioning -- it varies by brand, they're hard to find. And a lot of recyclers, in turn, just end up shredding these devices, releasing mercury to the atmosphere -- small amounts, but it's pretty toxic. You don't want this happening because it's too difficult for them to pull these things apart properly. If the manufacturers had an incentive to design this correctly, that wouldn't happen. It's relatively easy to set up how you design this stuff if you have a reason.

And in terms of how often TVs are going to get returned, well, now with the switch to digital television that is now mandated by Congress, we will probably see an avalanche of TVs come in, and we're already seeing explosive numbers of TVs sold. So even if it's 14 years from now, when these massive numbers of TVs that are being bought -- it was just this past year, 2.5 million TVs to watch this year's Super Bowl -- this year's Super Bowl. There's a tremendous consumption of television sets. If we don't design these things correctly now, we will have a huge problem later.

So I wanted to touch on, one, maybe there are companies out there doing the right thing anyway. Clearly, there are. HP is one of them, right? Some of the other members of that coalition with Philips, that were up here, perhaps some of them are doing it as well. But by no means is it the industry standard that companies are out there designing the products for efficient recycling. Secondly, I think you have had red-herring arguments raised today. I think the sorting one is the biggest. Third, the efficiencies involved in producer responsibility seem to me quite obvious, in terms of both the State's role in trying to collect and oversee, and then pay these things -- I mean, versus the producer responsibility model. But also the cost involved in -- to the retailers, to the consumers up front. We just think the equities are the other way. I don't want to get repetitive; it's been a long day.

So with that said, we strongly urge you to adopt a producer responsibility model. New Jersey could design an opinion on return share versus market share. Just like the recyclers don't have an option on ARF versus the other, we can see arguments both ways. We agree this is a complicated issue, and you're going to have to make decisions on how this all comes out. But we think producer responsibility versus ARF should actually be one of the simpler ones, because of the dynamics of it.

And if you have any questions, I'm happy to take them.

SENATOR SMITH: Thank you, Ms. Field.

We have Mike Pisauero, New Jersey Environmental Lobby.

**MICHAEL L. PISAURO, ESQ.:** Good afternoon, Senator.

Thank you very much for holding this hearing. I've learned more than I ever thought I would, and I just have a couple of comments.

And I've said this before, whether it be the Senate bill or the Assembly bill, the universe of covered products are too small. I thought that since the beginning, and I understand the rationale. The gentleman from Sims, I thought, said something very interesting -- 30 to 40 percent of the items he's collecting in California are non-covered items -- cell phones, PDAs, MP3 players, what have you. So those are already getting recycled in the covered stream, and we create a universe so these people -- the recyclers are getting compensated so they can do the right thing with these products versus being incentivized to do something that is not. It might be an argument for another day. But I wanted to point that out, because I thought that was extremely interesting -- 30 to 40 percent of their stream is already non-covered items--

SENATOR SMITH: Right.

MR. PISAURO: --one we covered.

And whatever bill that does reach the finish line -- and one of them will, and the Governor will sign it -- and it will be a good day for New Jersey. Those companies that are not doing the right thing, the green thing, for whatever reason they're doing it, they need to be incentivized to do it. I think I'm (indiscernible) to a government auditing office or accounting office quote that indicated a \$1 change in the design of a HP product would have resulted in a \$4 savings in the cost of recycling a product -- and that was screws that had to be removed to remove a lithium battery. So whatever we do, we've got to make sure we are incentivizing those, to make these products easier to recycle so the costs are minimal, and so the ultimate cost to the citizens of this state are less.

Again, I want to thank you for holding this hearing, and I want to thank everyone who has testified.

SENATOR SMITH: And let's get to the finish line.

MR. PISAURO: Let's get it done. It's been too long.

SENATOR SMITH: Yes, absolutely.

Thank you, Mike.

MR. PISAURO: Thank you, Mr. Chairman.

SENATOR SMITH: Jeff Tittel is not in the room.

My last set of witnesses are the NJDEP -- John Hazen and Frank Coolick. Gentlemen, why don't--

Is John out there?

UNIDENTIFIED SPEAKER FROM AUDIENCE: John got a call. He might have gone to the Assembly.

SENATOR SMITH: Okay.

Well, Frank, come on up. I'm not going to put you on the ultimate spot. The ultimate spot is, tell us which one you think is the best system? I'm not going to put you on that spot now, but I think in all fairness to legislative sponsors in both Houses, in terms of the legislative leadership, at some point we're going to need something in writing from the New Jersey Department of Environmental Protection: after having listened to all the arguments and analyzing both of the bills, both approaches, which approach do you think is going to work best for our State government? You don't have to answer that today, all right? But we do think--

**F R A N K C O O L I C K:** I thank you for that, sir. (laughter)

SENATOR SMITH: Well, you can get hurt in this room if you're not careful. (laughter)

But we do think that we need to know from the experts, the people who are entrusted with the stewardship of New Jersey's environment and who have now -- what? -- 36 years-- When did we get a DEP, 1970?

UNIDENTIFIED SPEAKER FROM AUDIENCE: Nineteen-seventy.

SENATOR SMITH: You now have 36 years of experience of that stewardship and doing environmental regulation and enforcement. You know, you have plenty of institutional experience. We do need to get, ultimately, an opinion from the DEP; but I'm not asking for that today.

What I would ask today is if any of our witnesses have raised issues in your minds that we are not addressing in these bills, that need to be addressed?

J O H N H A Z E N: Well, actually the one issue that came to mind today, that I don't think they've thought a lot about in terms of it being a problem for us, if we had in our -- and that's dealing with the out-of-state, in-state--

SENATOR SMITH: Waste.

MR. HAZEN: --waste coming in.

You know, Shirley talked about it in California. If you look at the geography of California, you actually -- it's almost surprising that they'd be worried about it. I mean, there's not a lot of population area right next door. Whereas New Jersey, you know, with the Philadelphia area, with the New York area, I think that's an issue that we have to give some thought to, that -- on how do we control that. And I don't know -- is there a bar-coding issue, you know, that could be simply added to bar codes of stuff sold in New Jersey? I don't know.

SENATOR SMITH: Let's see if Shirley has any insight into that.

Shirley, there's clearly the concern here that, because we have major population centers all around our state, that we would become a sink for the electronic waste from the other states. How is California dealing with it? What is it that you're doing to take care of your own waste, and not somebody else's waste?

MS. WILLD-WAGNER: That's what Mr. Johnson, from Sims, was speaking about, as far as the documentation. We actually are requiring the source to be shown, and that would be either the name and address of the person that generated the device, or the business -- or if it's a local government, you don't have to provide the name and address, but you need to provide the dates things were collected. So it's pretty significant documentation requirements right now.

And, Frank, the very first day we had our program-- And yes, you're right, our boundaries are large, and we didn't think it would be an incentive. But January 2, of 2005, there were two big truck and trailer loads from, I believe it was, from Texas, that showed up at one of our biggest recycler's doors, expecting to get their material paid for, because we're the last port, probably, shipping to Asia. It's definitely something that you would want to consider as you move forward.

SENATOR SMITH: Shirley, do you believe that the documentation requirements are significantly handling the problem, or do you think the problem is still enormous and it's not being addressed?

MS. WILLD-WAGNER: I believe that it is handling the majority of the problem. I do know that we are starting to ramp up,

however, our enforcement efforts, so that we can be out on site in the field. And it's not just material coming from out of state either, at all, that we're worried about. We're also concerned about materials simply being made up, with addresses out of the phonebook or something. Again, several things to try to ensure against that -- including transfer receipts that are signed by both the collector and a recycle, so whoever is doing the collection and transportation is also signing a weight ticket that the recyclers then have to provide to us. So there are some checks and balances, and some internal pressures, but truthfully I'm certain that some fraud is going on.

SENATOR SMITH: One of the good things about that--  
Do you have a TV monitor on your side?

MS. WILLD-WAGNER: Yes, I do.

SENATOR SMITH: Okay. Well, one of the good things here is that you-- And I don't know if it's just aimed up this way or--

MS. WILLD-WAGNER: It is. I've only been able to see you, yes.

SENATOR SMITH: Oh, my. (laughter) My condolences.  
(laughter)

MS. WILLD-WAGNER: So, Frank, I can't see you.

SENATOR SMITH: But one of the good things is that you're now -- actually, the people in both states who are in this business and who are responsible for it are actually talking to each other, which is a wonderful thing. And I would hope that Mr. Hazen and Mr. Coolick can contact you to get the benefit of California's two years of experience, no matter which program we end up with.

MS. WILLD-WAGNER: Sure.

SENATOR SMITH: I think some of that paperwork should certainly be shared in the event that this particular approach is taken.

John, you're trying to get a word in.

MR. HAZEN: I just had one question for California. I know one of things that we've always said, in terms of whatever system comes in New Jersey, we wanted it to be simple and straightforward; but we also wanted to build on existing infrastructure that we've developed. And New Jersey has had a mandatory recycling for over 20 years now that has been developed at the county level. And we have a lot of both public and private entities that are involved in recycling. We always thought, well, we should be able to build on that. And I just wanted to know, from California's experience, whether they had that infrastructure or whether it was -- you're relying primarily on the private recyclers to do the collection and the actual recycling.

MS. WILLD-WAGNER: Sure. The California program has had household hazardous collection programs throughout the state -- very strong, very well organized group of local government entities -- that have either permanent collection facilities, mobile events, or curbside collection -- those types of activities. And we'd fully expected them to be, all the local governments, to become approved collectors. Most of them are involved with the program in one way or another. I would say the local governments, cities, and counties are still the primary collection route that materials enter our system.

The recyclers, on the other hand -- virtually all but maybe one local government is-- Only one recycler is a local government, the rest are all private entities. Most of those recyclers -- there's about 55 -- most of

them will also take individual devices from the consumer. But by far, the larger portion of their market is coming through the existing infrastructure of the local governments. And the local governments have experienced the cost relief, and don't have the cost any more to either collect or recycle the waste.

So does that answer that question?

MR. HAZEN: Yes.

SENATOR SMITH: Yes. I think-- It sounds like you have a good infrastructure in place as well.

Do you have any other questions for Shirley, from the DEP?

MR. HAZEN: No, not really.

SENATOR SMITH: Shirley, do you have any suggestions for us? You're the world's expert at this point; and we're trying to do this right.

MS. WILLD-WAGNER: You've really assembled a wonderful panel of experts. Obviously, you've done a great job. I think really important for us and for you to move forward is to think about which of those issues are the most important for New Jersey to address; and the economics and job creation that we looked at in California; the local government cost relief; the end-of-life fees for the consumer -- all those are just -- and design for recycling and less toxic materials are all huge. My advice is, I guess, to continue the research that you're doing. And I would certainly offer to work with Frank, and anyone on your staff, Senator Smith, to help you as you go forward.

SENATOR SMITH: Shirley, thank you for all your help today.

We have one other question -- Frank has one.

MR. COOLICK: Well, just one comment, Senator. Well, as you know, I've been involved in this debate for a long time. I sat on the NEPSI table on the national debate, when we tried to determine what the best financial model is. And we've heard a lot of people say it's complicated. Obviously, there's not an easy solution. There's no, what I call, silver bullet in terms of legislation, where everybody says, "Yay, it's going to work and it's a great thing." But I think this is a complicated issue.

The one thing I would say is that there is an ARF in place that's working in California. Now, whether that's the best model for New Jersey, I don't know. But it is working. It is getting the material out of the waste stream, and it is being recycled. And that's not insignificant.

SENATOR SMITH: And with those words of wisdom, our hearing is concluded. Thank you all for attending, and thank you again, Shirley, for helping us so much.

MS. WILLD-WAGNER: Thank you. It was a pleasure.

Thank you.

**(MEETING CONCLUDED)**