

# SENATE BILL REPORT

## SB 6148

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As of January 26, 2012

**Title:** An act relating to adopting the Washington small rechargeable battery stewardship act.

**Brief Description:** Adopting the Washington small rechargeable battery stewardship act.

**Sponsors:** Senators Nelson, Swecker, Pridemore, Chase, Rolfes, Keiser, Kline, Conway and Frockt.

**Brief History:**

**Committee Activity:** Environment: 1/24/12.

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### SENATE COMMITTEE ON ENVIRONMENT

**Staff:** Diane Smith (786-7410)

**Background:** Rechargeable nickel-cadmium (Ni-Cd) batteries are used in cellular phones, laptop computers, cordless power tools, and video cameras, among other uses. These account for 80 percent of rechargeable batteries. Small rechargeable sealed lead-acid (SSLA) batteries are used in cellular phones, laptop computers, and power tools. More than 350 million rechargeable batteries are purchased annually in the United States. When discarded, these batteries can contribute to the toxicity levels of landfills and incinerator ash, as many of them contain heavy metals. Some of the contaminants they contain are lead, cadmium, nickel, cobalt, lithium salts, potassium hydroxide, sodium hydroxide, and mercury.

Batteries stored in contact with each other can generate heat and hydrogen gas; they can explode if the storage container is not ventilated.

In 1996 the Mercury-Containing and Rechargeable Battery Management Act was passed by Congress. The Battery Act facilitates increased collection and recycling of Ni-Cd and certain SSLA rechargeable batteries. This Act targets battery and product manufacturers and battery waste handlers, not consumers.

In recycling, the metals are recovered from the used batteries and the remainder is recycled or discarded. Used batteries were the source of 62 percent of the lead consumed in 1999.

The Department of Ecology (DOE) states that homeowners are not required to manage their batteries as universal waste but are strongly encouraged to take them to a household

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hazardous waste collection facility. Another option for rechargeable batteries is to return them to the place of purchase, if the retail store participates in a battery return program. Many retailers participate in the Rechargeable Battery Recycling Corporations' recycling program.

**Summary of Bill:** Within 180 days of the effective date, manufacturers that sell easily removable, rechargeable batteries weighing 11 pounds or less, in Washington, must have their own program or participate in a qualified program for collecting, transporting, recycling, and disposing of used rechargeable batteries. The service must be free to the consumer; however, if a consumer brings a battery to a retail store for recycling and the battery's manufacturer does not participate in a program, the consumer must designate a location where the retailer is to ship the battery, and the consumer must pay for this service.

These batteries and portable rechargeable products that contain these batteries are included in the program.

No retailer may offer a battery for sale that is not marked with an identification of the battery manufacturer or marketer. Retailers are not required to participate in a program unless the retailer is a private label battery retailer. Retailers that sell small rechargeable batteries or portable rechargeable products to consumers in Washington must put up signs or use equivalent mechanisms to inform consumers of qualified programs that are available.

One of the criteria for a qualified program is that it is free to consumers. A qualified program must provide appropriate containers and make agreed-upon payments to any governmental entity that operates, contracts for, or supervises a drop-off location for recycling or for a curbside collection program, if the governmental entity reaches agreement with the qualified program on the terms for these services.

Plans must be submitted to DOE for approval no later than 90 days before the program begins operation. DOE must acknowledge the application and make a fiscal review within 14 days of submission. During the next 60 days, DOE must certify the proposed plan if it meets certain criteria. If DOE does not meet these deadlines, the program is considered to be certified. There is a submission fee of \$5,000. Amending a program requires a \$500 administrative fee. The operator of the program pays an annual fee of \$5,000 into the used battery stewardship fund. The Used Battery Stewardship Account is created in the state treasury.

Failure to operate or participate in a qualified program makes the small rechargeable battery manufacturer, marketer, portable rechargeable product manufacturer, or private label retailer liable for a civil penalty recoverable in a proceeding before DOE. The fine is \$5,000 for the first violation, \$10,000 for the second violation, and \$50,000 for the third or subsequent violation. Before seeking to assess any penalty, DOE must notify the violator. A penalty will not be recovered if the recipient of the notice comes into compliance within 90 days.

In addition, a private right of action is available to a program. If a qualified small rechargeable battery stewardship program incurs costs in excess of \$5,000 in recycling free rider used small rechargeable batteries from a manufacturer or marketer that did not participate in a qualified program, the small rechargeable battery stewardship program may

bring a civil action to recover costs, damages of at least three times those costs, plus attorneys' fees and litigation costs.

If a retailer in Washington is cooperating with a qualified program, the retailer must ensure that all used batteries placed in any collection container in the retailer's facility are properly protected from short circuiting. The retailer must also make reasonable efforts to prevent other items from being collected in the collection container. Retailers may require the qualified program to pay the retailer for the reasonable cost of cooperating with the program if the operator does not provide unique materials or mechanisms needed to implement the program. However, the retailer may not require the qualified program operator to pay the retailer for the cost of cooperating with that program.

Any entity that operates a program for the stewardship of multiple brands of used nonrechargeable batteries on behalf of more than one manufacturer must allow small rechargeable battery manufacturers the opportunity to participate in its program. A fee may be imposed on the small rechargeable battery manufacturer, marketer, or portable rechargeable product manufacturer to cover its share of the program cost.

Any activities undertaken by a qualified program or a participant to: (1) operate a small rechargeable battery stewardship program; (2) coordinate its stewardship program with a program to collect used electronic waste under the Electronic Product Recycling Act; or (3) coordinate with or participate in a program for the stewardship of multiple brands of used nonrechargeable batteries is not considered to be in violation of the unfair business practices provisions in the Consumer Protection Act.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: One wants to make recycling as easy as purchasing batteries. Only about 10 to 12 percent of rechargeable batteries sold are currently recovered nationwide. Call-2-Recycle is currently providing recycling and disposal services collected by the King County household hazardous waste facility as well as 700 collection locations representing 200 manufacturers. All programs operating in the state should be required to follow protective standards. All costs are financed by the industry. There are amendments that are largely supported. The convenience standards are adequate, and the bill does level the playing field. More language is desired to ensure that batteries are recycled properly and managed in facilities that are properly licensed. The non-rechargeable battery program has no standards – they should meet the same standards as are in the bill.

OTHER: The private right of action shifts enforcement to self-enforcement, which is concerning. The bill has the potential to increase batteries in the landfills. The duties are not

clear for manufacturers, marketers, retailers, and DOE. The convenience standards are not adequate; neither is the dollar figure for meeting DOE's costs.

CON: The bill, as written, seems to require ATT to be licensed as a battery recycler, though that may not be the intent. The issue is not recycling but going about it the best way. This mandate will cause costs to consumers. The private right of action is concerning. An alternative to the bill, the existing infrastructure could be used. By apparently including toy manufacturers in the definition of manufacturers, the focus on the batteries is lost. Toy manufacturers are battery users, not battery makers, and should not be part of this bill. There are numerous private rights of action that inundate small businesses, the costs of which have put some out of business.

**Persons Testifying:** PRO: Margaret Shield, Local Hazardous Waste Management Program of King County; Heather Hansen, Rechargeable Battery Assn.; Suellen Mele, Zero Waste WA.

OTHER: Laurie Davies, DOE; Mark Johnson, WA Retail Assn.

CON: Steve Gano, ATT; Tom McBride, Technology Assn. of America; Grant Nelson, Toy Industry Assn.; Gary Smith, Independent Business Assn.