

HOUSE BILL REPORT

HB 1364

As Reported by House Committee On:

Environment

Appropriations Subcommittee on General Government

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

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

Sponsors: Representatives Tharinger, Zeiger, Moscoso, Crouse, Liias, McCoy, Fitzgibbon, Upthegrove, Maxwell, Morrell, Pollet and Fey.

Brief History:

Committee Activity:

Environment: 2/7/13, 2/19/13 [DPS];

Appropriations Subcommittee on General Government: 2/23/13 [DPS(ENVI)].

Brief Summary of Substitute Bill

- Requires manufacturers of small rechargeable batteries and portable rechargeable products to participate in a battery recycling program approved by the Department of Ecology, beginning July 1, 2014.
- Prohibits retailers from selling small rechargeable batteries or portable rechargeable products that are unmarked or made by a manufacturer not in compliance with program requirements, beginning July 1, 2014.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Upthegrove, Chair; McCoy, Vice Chair; Farrell, Fey, Kagi, Liias, Morris and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Crouse, Nealey and Overstreet.

Staff: Jacob Lipson (786-7196).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Rechargeable batteries are commonly found in cellular and cordless telephones, video cameras, portable power tools, and laptop computers. There are several chemical compositions of rechargeable batteries in common commercial use, including nickel-cadmium, nickel-metal hydride, lithium ion, and small sealed lead acid.

In 1996 the Mercury-Containing and Rechargeable Battery Management Act (Battery Act) was passed by Congress. The Battery Act facilitates increased collection and recycling of nickel-cadmium and certain small sealed lead-acid rechargeable batteries. The Battery Act addresses battery and product manufacturers and battery waste handlers, not consumers.

According to the Department of Ecology (DOE), consumers are not required to manage their batteries as universal waste, but are strongly encouraged to take them to a household hazardous waste collection facility. Another option is to return the batteries to the place of purchase, if the retailer participates in a battery return program. Some rechargeable product and battery manufacturers and retailers participate voluntarily in programs to promote rechargeable battery recycling.

Summary of Substitute Bill:

Rechargeable Battery Recycling Program.

Manufacturers of small rechargeable batteries and products containing easily removable small rechargeable batteries must participate in one of two types of rechargeable battery stewardship programs: a multiparty program or a program operated by a retailer. Both retailer and multiparty collection programs must accept rechargeable batteries regardless of brand, and must comply with any legal and regulatory requirements pertaining to battery collection, storage, and transportation. Retailer programs must provide collection locations at every retail location at which the retailer sells rechargeable batteries.

Both retailer and multiparty programs must submit plans which will govern their stewardship program operations to the DOE. Retailer and multiparty programs and plans must include:

- a description of the battery recycling program to be implemented and an identification of sorting and reclamation facilities to be used;
- a statement certifying that plan operations will adhere to certain requirements;
- identification of the collection locations of rechargeable batteries and products, including any restrictions on the number of batteries that may be returned;
- the process and timeline that has been followed in soliciting and responding to public comments on the plan; and
- a response mechanism for public inquiries.

In addition to the above requirements, multiparty programs and plans must also:

- identify participating manufacturers or marketers;
- collect rechargeable batteries and products at multiple retail locations;
- collect rechargeable batteries and products from government facilities;

- provide at least one collection location in every county of the state, and every city or town with a population of more than 10,000; and
- conduct public outreach and marketing for the recycling program.

Manufacturer Responsibilities.

Beginning July 1, 2014, manufacturers of small rechargeable batteries or portable rechargeable products containing easily removable small rechargeable batteries must participate in a stewardship program. Manufacturers whose products are only sold through retailers that participate in a retailer plan are not subject to the stewardship program participation requirement.

Retailer Responsibilities.

Beginning July 1, 2014, with the exception of stores operated by nonprofit charities, retailers are prohibited from selling:

- batteries that are not marked with an identification of the manufacturer; or
- batteries or rechargeable products that the retailer knows are manufactured by someone not in compliance with program requirements, per the receipt of a notification from the DOE or the stewardship program operator.

Although a battery stewardship program must have retail collection locations, individual retailers are not required to participate in or cooperate with a program. Retailers may not require program operators to pay them in order to cooperate with the program.

Retailers who choose to cooperate with a stewardship program must:

- inform consumers of the battery recycling program; and
- ensure safe storage and prevent short-circuiting of the batteries.

Retailers who purchase noncompliant batteries, which they are prohibited from selling, may compel the vendor to designate a place for the retailer to ship the battery or product for further handling. The vendor must reimburse the retailer for the shipping costs and the costs of the unsellable product.

Oversight and Compliance Mechanisms.

When a manufacturer submits a plan, the DOE must acknowledge receipt within 14 days. If the plan meets the operational requirements, the DOE must approve it, and if a plan is deemed incomplete, the DOE must notify the applicant within 90 days of submission. If an applicant submits a revised plan to address initial deficiencies, the DOE again has 90 days to review the revised plan, after which it is either approved or deemed denied.

A program operator is only obligated to amend an approved plan if there are significant changes to program operations, or the program wishes to expand to cover new products. A change in collection locations or in the composition of program participants does not require a plan amendment and resubmission. The DOE must approve plan amendments within 60 days of submission unless it identifies deficiencies in the amended plan, in which the original, unamended plan remains in effect. A program operator may terminate its program by giving six months' notice to the DOE and program participants.

The DOE may recover civil penalties from manufacturers and marketers that fail to operate or participate in a qualified program in the amount of up to \$5,000 for the first violation, \$10,000 for the second violation, and \$50,000 for the third and subsequent violations.

The DOE may issue civil penalties of up to \$1,000 to retailers that sell rechargeable batteries or portable rechargeable products that are unmarked or produced by noncompliant manufacturers.

The DOE is given the authority to inspect battery collection, storage, sorting, processing, and reclamation locations only after being informed by a retail or battery program operator that a person is not in compliance. Before seeking to assess any penalty, the DOE will notify the violator. A penalty will not be recovered if the recipient of the notice comes into compliance within 90 days. Penalties may be appealed to the Pollution Control Hearings Board.

In addition, if a qualified small rechargeable battery stewardship program incurs costs in excess of \$5,000 in recycling 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; and attorneys' fees and litigation costs.

Reporting Requirements.

Upon plan approval by the DOE, the operator of a stewardship program must post the following information on the internet:

- the program plan;
- a collection site locator to assist consumers; and
- contact information, including an avenue for technical assistance.

Multiparty programs must also post a list of rechargeable battery and product manufacturers participating in the program.

By April 1 of the year following DOE approval of a plan, the program operator must also create a report that it provides to the DOE and posts on the internet. This report must include the following:

- information on program costs;
- the weight of batteries collected;
- the collection, transportation, and processing destinations of recycled batteries; and
- an independently audited financial statement.

Rechargeable Battery Stewardship Program Funding.

Stewardship program operators must pay a fee accompanying the submission of any new or amended plans requiring DOE approval. For multiparty plans, this plan submission or amendment fee is \$20,000; for retailer plans, the plan submission or amendment fee is \$10,000. In addition, both types of programs must pay an annual fee of \$15,000, beginning in July 2015. Fees collected in excess of the DOE's costs of administration and enforcement of the program may be carried over to reduce the amount of the fees paid by stewardship programs in the following year. Fees, as well as any penalties recovered by the DOE, are placed in a newly-created Used Battery Stewardship Account (Account). The DOE may use funds from the Account to fulfill its battery stewardship administrative responsibilities.

Other Stewardship Programs.

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. Nonrechargeable battery stewardship programs are allowed to charge any participating rechargeable battery manufacturers a fee covering their share of program costs.

Other Provisions.

Program operators and participants in stewardship programs are not considered in violation of the Consumer Protection Act.

The law is deemed void if a federal battery recycling program is established.

Substitute Bill Compared to Original Bill:

The substitute bill: delays the program implementation date from January 1, 2014 until July 1, 2014; changes the amount of administrative fees charged to battery recycling plans; amends plan and program operational requirements; and makes changes to the enforcement authority and procedures to be followed by the DOE.

The fees paid by battery stewardship programs to the DOE are increased as follows:

- the retailer plan submission and plan amendment fees are \$10,000 (up from \$3,000);
- the multiparty plan submission and plan amendment fees are \$20,000 (up from \$5,000); and
- the annual fee for both retailer and multiparty programs may be up to \$15,000 per program, as necessary to cover the DOE's administration and enforcement costs (up from \$5,000 per program).

Any annual fees collected by the DOE in excess of program administration and enforcement costs may offset against annual fee amounts charged to program operators in the following year.

A variety of changes are made to certain plan approval and program operational requirements:

- nonprofit charity retail stores are exempted from requirements for retailers to sell batteries manufactured by a manufacturer participating in a stewardship program;
- retailer stewardship programs must collect rechargeable batteries at all retail locations at which rechargeable batteries are sold;
- multiparty programs are no longer required to collect a minimum tonnage of batteries;
- stewardship programs must identify any restrictions on the number of batteries that may be returned to collection sites, and multiparty programs must also offer a collection site in every county;
- plans are not required to be amended to reflect changes in a stewardship program's collection sites or the composition of participating manufacturers; and
- the process and timeline for the DOE review of a submitted stewardship plan is specified to include an initial 90 day review period for the initial plan and, if deficiencies are identified, an additional 90 day review period for a revised plan, after which the plan is deemed denied if it remains inadequate to meet plan requirements.

The DOE's enforcement authority is amended so that the DOE is only authorized or required to inspect a facility involved in the collection, storage, sorting, or processing of batteries if the DOE learns from a qualified program operator that a location is not in compliance. The forum for appeals of DOE-issued penalties is moved so that such appeals are heard by the Pollution Control Hearings Board.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 19, 2013.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 14 relating to the jurisdiction of the Pollution Control Hearings Board to hear appeals, which takes effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) Rechargeable batteries contain toxic heavy metals which can be re-used and recovered. This bill will increase the number of batteries recycled in Washington, and thereby take toxics out of the waste stream. Items that are toxic and not easily dealt with through the solid waste stream should be considered for management through product stewardship programs. Nongovernmental battery collection services provide an important service used by local governments, which would incur costs in disposing of batteries if the programs did not exist. Without this bill, currently operational battery recycling programs may no longer have a viable business model in five or 10 years. There are too many manufacturers who do not voluntarily participate in battery recycling programs, and good corporate citizens have to bear the burden of other companies who do not take responsibility for their products. All companies cannot automatically be expected to be proactive about recycling their wastes. This bill levels the playing field among manufacturers by providing a strong participation incentive for manufacturers who are not currently participating in battery recycling programs. This bill places few burdens on retailers; the onus is on the manufacturers. The program will be convenient and free of charge to consumers. We are hopeful for resolving how the program's funding methods can cover the DOE's costs. Battery recycling programs that do not apply to become qualified programs will not be affected by this law; only manufacturers will have a requirement to participate in a program.

(With concerns) We are concerned that this bill may restrict existing battery recycling program operations. The program's funding will not cover the DOE's anticipated costs, especially if multiple operators apply to the DOE for program approval.

(Other) We are concerned that all battery recycling programs might have to pay the \$5,000 to the DOE, and get certified as a qualified program.

(Opposed) We prefer a national, market-driven solution to the problem of how to manage battery waste. This bill would push costs onto industry, and restrict the ability of companies to collect their own wastes. Most manufacturers of covered products are already recycling their own waste. Of their own volition, most manufacturers take action to meet the

objectives of this bill, which would not meet the requirements in the bill. The restriction on the weight of batteries that must be collected is unnecessarily limiting.

Persons Testifying: (In support) Representative Tharinger, prime sponsor; Carl Smith, Call2Recycle; Margaret Shield, King County Local Hazardous Waste Management Program; Rick Gilbert, Kitsap County Solid Waste; Vicki Christophersen, Washington Refuse and Recycling Association; and Suelen Mele, Zero Waste Washington.

(With concerns) Craig Lerch, Total Reclaim; and Laurie Davies, Department of Ecology.

(Other) Jack Bradbury, All Battery Sales and Service.

(Opposed) Mark Johnson, Washington Retail Association; and Tom McBride, TechAmerica.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill by Committee on Environment be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hudgins, Chair; Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 4 members: Representatives Parker, Ranking Minority Member; Buys, Chandler and Taylor.

Staff: Michael Bennion (786-7118).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government Compared to Recommendation of Committee On Environment:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 14 relating to the jurisdiction of the Pollution Control Hearings Board to hear appeals, which takes effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) There is a priority on ensuring a fully funded, sustainable infrastructure to recycle rechargeable batteries that eliminates the free riders who choose to not participate in the existing Call 2 Recycle program or other product stewardship programs. The large entities that put rechargeable batteries into the market have supported the voluntary recycling program since its inception, yet 40 percent of rechargeable batteries collected in the state are

so-called 'orphan' without a revenue stream from obligated companies to support their proper disposal. Some batteries pose a health risk, and this bill emphasizes private sector solutions that minimize costs and ensure an effective stewardship program.

The existing voluntary program has been beneficial to consumers, local governments, and the business community. It saves money because approximately 50 local governments send the rechargeable batteries to Call 2 Recycle at no cost. The existing system has drop off boxes at more than 400 locations and provides recycling services for businesses across the state that collect batteries at their own site. The bill is supported by a broad stakeholder group and ensures there will be a financially viable stewardship system well into the future, with options to manufacturers to achieve compliance.

The major battery manufacturers started the program so that heavy metals and materials in batteries would be reused in manufacturing rather than deposited in landfills. As more batteries come in from places like China, responsible manufacturers have found themselves footing the bill for companies that choose not to participate. This bill provides a mechanism that levels the playing field. This is not a typical regulatory program. It is industry coming forward in a simple, streamlined collection service with low overhead, and it is free to government entities, hospitals, and others who voluntarily collect batteries now. The only cost is if a manufacturer requests the help of the state.

The electronics law that has been in place since 2009 has collection sites in every county, and in towns with over 10,000 people. The standards are equally workable for rechargeable batteries. The result of this bill will be convenience, with proper recycling ensuring safety to citizens. The bill will also promote the retrieving of valuable materials and put them back into commerce.

(With concerns) The bill supports the state policies in reducing toxic threats, and the Department of Ecology supports the concepts of producer responsibility for waste disposal. However, the agency would have to oversee the product stewardship plan, but does not provide sufficient funds to bridge the gap between revenues and costs to the department. There is not another funding source with the resources to fill the gap.

(Opposed) The dispute is not in the recycling, but how it is achieved. One of the requirements is that the collection sites be available in towns with greater than 10,000 people, which is a strict and arbitrary threshold. Another requirement is that the participant take back all battery brands, which does not take into account that this is already in place with programs that are working. Mandatory participation is not necessary. The bill does not take into account how the product is sold and the proper way to take the battery back.

Persons Testifying: (In support) Emily Phillips, Washington State Recycling Association; Margaret Shield, Local Hazardous Waste Management Program; Heather Hansen, Rechargeable Battery Association; and Suellen Mele, Zero Waste Washington.

(With concerns) Laurie Davies, Department of Ecology.

(Opposed) Tom McBride, Tech America.

Persons Signed In To Testify But Not Testifying: None.