

SENATE BILL REPORT

SB 5457

As of February 8, 2013

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, Delvin, Ranker, Kohl-Welles and Kline.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 2/13/13.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Diane Smith (786-7410)

Background: Small 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.

The Department of Ecology (DOE) does not require that consumers manage their batteries as universal waste, but strongly encourages them to take used batteries 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 small rechargeable battery recycling.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Program. The batteries eligible for recycling under this stewardship program are small, rechargeable batteries, or battery packs, weighing less than 11 pounds that are easily removable, referred to herein as batteries.

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.

Two forms of batteries are included in the program, batteries and portable rechargeable products that contain these batteries, such as power drills.

Two commercial entities are assigned roles in the stewardship program, manufacturers and retailers of both forms of batteries. No retailer in Washington is obliged to participate in a stewardship program unless it is a private label retailer. Private label retailers are those that sell batteries under one or more store-brand names that the retailer owns or licenses. However, beginning July 1, 2014, no retailer may sell batteries unless the batteries are marked with the identity of the manufacturer or marketer.

Manufacturers include manufacturers of both forms of batteries. As of January 1, 2014, if a retailer is selling that manufacturer's batteries and the retailer does not operate a stewardship program, then the manufacturer must participate in a multiparty program, retailer program, or a multiparty program operated by another person. A retailer program must operate either solely in Washington or operate at least 20 drop-off locations in the United States. A multiparty program means a Washington-only or multistate program that collects used, small batteries regardless of brand.

Program Approval. The person who wants a retailer program approved must submit a fee of \$3,000 when the program is submitted to DOE for approval. The program must include the following:

- a description of the battery recycling program to be implemented and identification of sorting and reclamation facilities to be used;
- a statement certifying that plan operations adheres to certain requirements;
- identification of the collection locations for rechargeable batteries and products;
- a process and timeline for responding to public comments on the plan; and
- a response mechanism for public inquiries.

The person seeking approval of a multiparty plan must submit a fee of \$5,000. In addition to the above requirements, the plan must:

- identify participating manufacturers or marketers;
- collect batteries and products at multiple retail locations;
- collect batteries and products from government facilities;
- provide at least one collection location in every county and in every city or town with a population of more than 10,000; and
- conduct public outreach and marketing for the recycling program.

Person is defined as a business entity located within or outside Washington.

DOE must approve any plan that includes all of the requirements that apply to that plan.

Post-Approval. After a plan is approved by 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 manufacturers participating in the program.

By March 1 of the year following DOE approval of a plan, the program operator must also create a report that it provides to 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.

Funding. Fees to DOE. In addition to the application fees, both types of programs must pay a fee of \$5,000 annually, beginning in March the year after DOE approves the program. These fees, as well as any penalties recovered by DOE, are placed in a newly-created Used Battery Stewardship Account. DOE may use funds from the account to fulfill its battery stewardship administrative responsibilities.

Funding. Fees to Entity That Operates a Stewardship Program. Any entity that operates a state or multi-state program for the stewardship of multiple brands of batteries must allow battery manufacturers and marketers the opportunity to participate in its program. This program is allowed to charge any participating battery manufacturers or marketers a fee covering their share of batteries sold as compared to the total of program costs.

Enforcement. The failure on the part of a manufacturer, marketer, portable rechargeable product manufacturer, or private label retailer to operate or participate in a qualified program makes that party liable for a civil penalty. The fine is \$5,000 for the first violation, \$10,000 for the second violation, and \$50,000 for the third and subsequent violations.

Retailers who sell rechargeable batteries or portable rechargeable products that are unmarked or produced by noncompliant manufacturers are liable for a civil penalty in the amount of \$1,000. Any person assessed a penalty may appeal the penalty to the Pollution Control Hearings Board.

In addition, if a stewardship program incurs costs in excess of \$5,000 in recycling batteries from a manufacturer or marketer that did not participate in a qualified program, the stewardship program may bring a civil action to recover costs, damages of at least three times those costs, and attorneys' fees and litigation costs.

Effect of Other Laws. 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.

Appropriation: None.

Fiscal Note: Requested new fiscal note on February 11, 2013.
[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.