

Environment & Energy Committee

HB 2496

Brief Description: Providing for responsible environmental management of batteries.

Sponsors: Representatives Mead, Fitzgibbon, Peterson, Lekanoff, Shewmake, Doglio, Fey, Gregerson, Slatter, Walen, Thai, Kloba, Robinson, Senn, Davis, Ramel, Tharinger, Pollet and Goodman.

Brief Summary of Bill

- Requires producers of certain batteries to participate in a battery stewardship plan implemented by a stewardship organization that provides for battery collection and end-of-life management, beginning January 1, 2024.
- Prohibits retailers from selling certain batteries whose producers do not participate in an approved stewardship plan, beginning January 1, 2025.
- Requires stewardship organizations implementing a stewardship plan to establish performance goals, follow program funding criteria, meet collection and management criteria, conduct public education and outreach, and report on program operations to the Department of Ecology.
- Prohibits persons from disposing of covered batteries except through stewardship programs.
- Establishes labeling requirements for batteries sold in Washington.

Hearing Date: 1/30/20

Staff: Jacob Lipson (786-7196).

Background:

There are several chemical compositions of single-use and rechargeable batteries in common commercial use, including alkaline, nickel cadmium, lithium ion, and lead acid. The dangerous waste rules adopted by the Department of Ecology (Ecology) allow businesses to manage most types of batteries as universal waste, which allows the batteries to be managed consistent with

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universally-applicable waste containment, management, accumulation, labeling, shipment, and release response criteria. Ecology encourages household generators of battery waste 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 product and battery manufacturers and retailers participate voluntarily in programs to promote battery recycling.

Washington has established five types of product stewardship programs: electronic products, light bulbs that contain mercury (such as compact fluorescent lights), photovoltaic solar panels, pharmaceuticals, and paint. These product stewardship programs require producers to participate in a stewardship organization or program that is responsible for the collection, transport, and end-of-life management of covered products. Ecology is responsible for the oversight of the state's product stewardship programs, with the exception of the pharmaceutical stewardship program, which is overseen by the Department of Health.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review. Penalties that are appealable to the PCHB may be imposed and collected following certain protocols.

The Utilities and Transportation Commission supervises and regulates private solid waste companies, including reviewing and approving their rates and fees. Cities and towns also sometimes provide solid waste collection services.

The Public Records Act requires state and local government agencies to make all public records available for public inspection and copying unless the records fall within a statutory exemption. Under the Washington's paint stewardship laws, valuable commercial information submitted to Ecology is exempt from disclosure under the Public Records Act, although information that does not directly or indirectly identify an individual producer or stewardship organization may be disclosed. Persons submitting information to Ecology must designate records or portions of records that are valuable commercial information. Records that are valuable commercial information submitted to Ecology may not be disclosed without advance notice to the submitter, although reports and aggregated or summary information are not subject to this notification requirement. If a person who submitted records does not obtain a superior court order protecting the records within 10 days of receiving notice of a request to release the records, Ecology may release them. A superior court must protect the records if disclosure would result in private loss, including unfair competitive disadvantage.

Summary of Bill:

Battery Manufacturer and Retailer Responsibilities.

Producers of covered batteries or battery containing products selling in or into Washington must participate in a battery stewardship plan (Plan) through participation in or funding of a stewardship organization (Organization), beginning January 1, 2024. Producers that do not participate in a Plan and Organization may not sell covered batteries or battery-containing products in or into Washington.

Producers are defined as either:

- (a) the person that manufactures a covered battery or battery containing product and sells that battery or product under the person's brand in Washington;
- if no person meets the criteria of (a), then (b) the owner or licensee of a brand under which a battery or product is distributed in Washington; or
- if no person meets the criteria of (a) or (b), then (c) the first person who sells a battery or product in the state.

Producers of battery-containing products are not considered producers if the only batteries used in their battery-containing products are supplied by battery producers that are themselves participating in an approved stewardship plan. Producers are not subject to plan and organization participation requirements if the producer annually sells a total of less than 5,000 battery units or batteries with a total retail value of less than \$5,000.

Covered batteries are defined as primary batteries, rechargeable batteries, or battery packs weighing less than 25 pounds. Covered batteries do not include batteries contained in certain medical devices that must be treated as infectious waste when discarded, unsealed lead acid batteries and battery packs, or free liquid electrolyte batteries.

Beginning January 1, 2025, retailers may not sell covered batteries or battery-containing products of producers that do not participate in a organization with an approved plan. Retailers are not required to make retail locations available to serve as collection locations. Retailers must provide consumers with information provided by organizations regarding end-of-life battery management options provided by the organization. Retailers, producers, and organizations may not charge a point-of-sale fee to consumers to recoup costs of a battery stewardship program.

Stewardship Plan Submission and Performance Goals, Funding, Collection and Management, and Education and Outreach.

Stewardship organizations must submit a plan to the Department of Ecology (Ecology) for approval by June 1, 2023, or at least six months before the organization plans to begin implementing a plan. Ecology must review plans for approval based on whether the plans contain 13 specified components. Major elements of both the plan submitted to Ecology for approval and of stewardship program operations include:

- *Performance Goals:* Each stewardship organization must propose performance goals in the plan. Performance goals must include target collection rates, target amounts of secondary material derived from recycling processes, and goals for the convenience and accessibility of program collection. Ecology may require stewardship organizations to submit a new plan if the approved plan does not meet performance goals after five years of plan implementation.
- *Funding:* The plan must describe how the stewardship organization will be funded. Each producer must ensure adequate funding is available to implement the approved plan. Battery stewardship organizations are responsible for all costs of participating covered battery collection transportation, processing, education, administration, agency reimbursement, recycling, and end-of-life management. Battery stewardship organizations must reimburse local governments for costs incurred as a result of local government facilities serving as collection locations.
- *Battery Collection and Management:* Each stewardship program must provide an operations manual or safety information related to operations at battery collection sites

and must provide collection sites with suitable collection containers or must make mutually agreeable alternative arrangements. The program must collect all covered battery chemistries and brands on a free, continuous, convenient, visible, and accessible basis. Stewardship plans must use as a collection site any location that requests to serve as such and that meets criteria in the approved plan. The program is not required to collect battery-containing products, but is required to collect covered batteries removed from battery-containing products. For covered batteries of less than 12 pounds, the program must provide statewide collection opportunities, which must exceed five specified criteria based on the populations and geographic characteristics of the areas served by collection locations. For hefty batteries, which are batteries weighing between 12 and 25 pounds, the program must provide at least 25 collection locations statewide, with reasonable geographic dispersion and one collection location in each county of at least 200,000 people.

- *Education and Outreach:* Stewardship organizations must carry out promotional activities, including developing a website, distributing press releases and articles, placing advertisements, distributing collection site procedural manuals, implementing education and outreach suitable to the state's diverse ethnic populations, and for distributing consumer-focused education materials to collection locations. A stewardship organization must carry out a public awareness survey during the first year of program implementation and every five years thereafter.

When certain changes occur to program operations, stewardship organizations must submit new plans to Ecology or must notify Ecology, depending on the nature of the operational change.

Battery Labeling and End of Life Management Requirements.

Beginning January 1, 2024, producers and retailers may only sell covered batteries and battery containing products that are:

- labeled to identify the chemistry used to store energy in the battery and
- marked with an identification of the producer, unless smaller than 0.5 inches in diameter or in surface length.

Beginning January 1, 2024, all persons must dispose of unwanted covered batteries through the collection locations established by battery stewardship programs. Generators may not place covered batteries in containers for disposal at incinerators, waste-to-energy facilities, or landfills, or in containers for mixed recyclables that do not contain a separate location or compartment for covered batteries that meets local governments standards. Solid waste facility owners or operators are not in violation of these requirements if facilities post a sign in a conspicuous location noting that covered batteries must be recycled and are not accepted for disposal. Solid waste collectors are not in violation of these requirements if covered batteries are placed in disposal containers.

Program Oversight, Fees, Penalties, Civil Actions, Reporting, and Other Provisions.

Stewardship organizations must submit an annual report to Ecology by June 1 of each year beginning in 2025. Annual reports must cover 14 specified aspects of stewardship program operations, including data related to the weight and chemistries of different batteries collected and recycled or otherwise disposed of under the program. If a stewardship organization has disposed of batteries by energy recovery, landfilling, or incineration during the preceding year,

the annual report must specify steps to be taken to make the recycling of covered batteries cost-effective, where possible, or to otherwise increase battery recycling rates.

Ecology must adopt rules to implement the program, including a rule to establish fees paid annually by stewardship organizations. Fees must be of an amount adequate to cover Ecology's implementation, administration, and enforcement costs. Ecology's specified responsibilities include reviewing submitted stewardship plans, following specified stewardship plan approval or rejection processes, reviewing annual reports, maintaining a website detailing specified types of program activities, and providing outreach and assistance to covered battery and battery-containing product producers and retailers.

Ecology may impose civil penalties of up to \$1,000 per violation per day, or up to \$10,000 per violation per day for intentional, knowing, or negligent violations. Ecology may issue orders requiring compliance, the violation of which may result in the imposition of a civil penalty. Prior to imposing penalties, Ecology must provide producers, retailers, or stewardship organizations with a written warning for a first violation.

Battery stewardship organizations may bring civil actions to recover costs, damages, and fees from producers who sell covered batteries or battery-containing products not included in an approved plan. In order to bring a civil action, a stewardship organization must incur costs for managing batteries in excess of \$1,000 associated with a nonparticipating producer. Stewardship organizations may only bring civil actions if the stewardship organization has achieved collection rate performance goals. Battery stewardship organizations may also bring civil actions against other battery stewardship organizations that underperform on their battery collection responsibilities by failing to collect and manage batteries in an amount roughly equivalent to the national market share of producers participating in the plan. Civil actions are in addition to Ecology's penalty authority.

The Responsible Battery Management Account (Account) is created in the custody of the state treasurer for receipts from battery stewardship organization fees, and other program activities. Money in the Account may only be used for administering, implementing, and enforcing battery stewardship program requirements.

Penalties may be appealed to the Pollution Control Hearings Board (PCHB). Penalties must be imposed consistent with protocols for penalties that are appealable to the PCHB.

The same protocols and standards that apply to the designation of confidential business information under the state's paint stewardship law also apply to the designation of confidential business information submitted to Ecology in the context of battery stewardship programs.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 19 of the act, which addresses the jurisdiction of the Pollution Control Hearings Board and takes effect June 30, 2021.