

HOUSE BILL REPORT

HB 1896

As Reported by House Committee On:
Environment & Energy

Title: An act relating to providing for responsible environmental management of batteries.

Brief Description: Providing for responsible environmental management of batteries.

Sponsors: Representatives Harris-Talley, Berry, Ryu, Simmons, Slatter, Peterson, Gregerson, Goodman, Ormsby, Ramel, Kloba, Frame, Bateman, Macri, Valdez, Duerr and Pollet.

Brief History:

Committee Activity:

Environment & Energy: 1/25/22, 1/27/22, 2/3/22 [DPS].

Brief Summary of Substitute Bill

- Requires producers of certain batteries to participate in a stewardship organization that plans and provides for battery collection and end-of-life management, beginning January 1, 2026, for portable batteries and January 1, 2028, for medium sized batteries.
- Directs the Department of Commerce to assess the opportunities and challenges of managing large-sized batteries, and authorizes the Department of Ecology (Ecology) to adopt rules taking effect no earlier than 2030 to establish product stewardship program participation responsibilities applicable to producers of large-sized batteries.
- Prohibits retailers from selling covered batteries whose producers do not participate in an approved stewardship plan.
- Requires battery stewardship organizations implementing a stewardship plan to establish performance goals, follow program funding criteria, meet collection and management standards, conduct public education and outreach, and report on program operations to Ecology.
- Requires battery disposal to occur via collection locations provided by a

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stewardship organization or other responsible battery management arrangements.

- Establishes labeling requirements for batteries sold in Washington.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

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 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. The Electronic Products Stewardship Program provides for the collection and management of batteries and other components contained in covered electronic products.

In general, the state's 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.

Under state solid waste laws, Ecology implements and enforces a Vehicle Battery

Recycling Program. Batteries covered by the Vehicle Battery Recycling Program include batteries with a core of elemental lead that are capable of use in any vehicle, truck, boat, airplane, or utility vehicle and capable of producing six or more volts. The Vehicle Battery Recycling Program prohibits the disposal of covered batteries except by delivery to a person selling lead acid batteries, Ecology-authorized collectors, or to a secondary lead smelter. The retail sale of each vehicle battery must include in the price of battery sale a core charge of at least \$5, which is applied unless the purchaser offers the seller an equivalent used battery. People that sell vehicle batteries at retail in Washington must accept used vehicle batteries from a battery purchaser at the time of purchase of a replacement battery, and must post notices to inform customers of certain requirements of the Vehicle Battery Recycling Program.

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.

Summary of Substitute Bill:

Battery Labeling Requirements.

Three categories of batteries are established based on size and power storage capacity:

- portable batteries of less than 11 pounds and that have a rating of 300 watt hours or less, if labeled with watt-hour capacity;
- medium format batteries of between 11 and 25 pounds, and a watt rating of between 300 or 1,000 watt hours, if labeled with watt-hour capacity; and
- large format batteries of at least 25 pounds or a rating of a least 1,000 watt hours, if labeled with watt-hour capacity.

Beginning January 1, 2027, producers and retailers may only sell, distribute, or offer for sale portable batteries, medium-format batteries, large-format batteries, and battery-containing products containing a battery designed or intended to be removed from the product if the batteries are:

- marked to identify the chemistry employed in storing energy in the battery. Beginning January 1, 2029, this marking must include a color code mark;
- marked with an identification of the battery's producer, unless the battery is less than half an inch in diameter or does not have a surface of longer than half an inch;
- marked with the weight and watt-hour rating of the battery, if the battery is a medium format or large format battery; and

- labeled to indicate that the battery is recyclable and should not be disposed of in solid waste or recycling containers other than stewardship program collection containers.

By rule, the Department of Ecology (Ecology) may amend battery labeling requirements to maintain consistency with labeling requirements or voluntary standards in federal law, other states, or an international standard.

Battery Manufacturer and Retailer Responsibilities.

Beginning January 1, 2026, each producer selling portable batteries or battery-containing products must participate in and fund a stewardship organization that implements a stewardship plan approved by Ecology. This requirement applies to producers of medium format batteries beginning January 1, 2028. Producers that do not participate in a stewardship plan may not sell covered batteries in Washington. Excluded from these requirements are producers of batteries contained within medical devices, batteries that contain electrolyte as a free liquid, button cell batteries contained in circuit boards and equipment, batteries subject to the Ecology-implemented lead Vehicle Battery Recycling Program and other portable batteries contained in motor vehicles, and batteries contained in battery-containing products that are not intended or designed to be easily removed from the product. Covered electronic products under the state's electronic product recycling law are excluded from the battery-containing products subject to product stewardship program participation requirements. A producer of a covered battery or battery-containing product is:

- the person that manufactures the covered battery or battery-containing product and sells it in or into Washington under that person's brand;
- the owner or licensee of a brand under which the covered battery or battery-containing product is sold or distributed in or into Washington;
- a person that imports the covered battery or battery-containing product into Washington; or
- the person who imports or distributes the covered product in or into Washington, if there is no person over whom the state can constitutionally exercise jurisdiction that meets one of the above criteria for a covered producer.

Beginning July 1, 2026, for portable batteries, and January 1, 2028, for medium-format batteries, retailers may not sell or offer for sale covered batteries or battery-containing products unless the producer participates in a stewardship organization. Retailers are in compliance and not subject to penalties so long as a website made available by Ecology lists the producer or brand of battery or battery-containing product as being a stewardship plan participant. Retailers are not required to make retail locations available to serve as collection locations for a battery stewardship program; however, retail locations that do serve as collection locations must comply with standards for battery collection locations established for the stewardship organization.

Retailers may not sell batteries that are not marked consistent with battery labeling requirements. Producers must certify to retailers that the batteries in their battery-

containing products are labeled consistent with battery labeling requirements. At the time of sale, retailers must provide information supplied by the battery stewardship organization regarding the options for end-of-life management provided through the battery stewardship program. Retailers may not charge a point-of-sale fee to consumers to cover stewardship organization or battery stewardship program costs.

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

By July 1, 2025, or at least six months before a plan begins to be implemented, a battery stewardship organization must submit a plan to Ecology for approval. Ecology must review a submitted plan and may approve it based on consideration of 13 specified components. When certain changes occur to program operations, stewardship organizations must submit new plans to Ecology or must submit plan amendments to Ecology, depending on the nature of the operational change. Battery stewardship organizations must submit new plans for approval to Ecology at least every five years. Ecology may require the submission of a revised plan at least five years after the approval of an initial plan if the battery stewardship organization fails to meet specified performance goals.

Major elements of the plan submitted to Ecology for approval, and of battery stewardship program operations, include:

- *Performance Goals:* each battery stewardship plan must include performance goals that annually measure program achievements. Performance goals must include targeted collection rates, a target recycling efficiency rate of at least 70 percent for rechargeable batteries and 80 percent for primary batteries, targets for the amount of secondary material derived from battery recycling processes, and public awareness, convenience, and accessibility goals.
- *Program Funding:* stewardship organizations must ensure funding is available to fully implement a program in an environmentally sound and socially just manner, including battery collection, transport and recycling, education and outreach, administrative fees, and program evaluation. The system of charges paid by participating producers must encourage design attributes that reduce environmental impacts, such as through eco-modulated fees, and must, at minimum, reduce charges for batteries that contain recycled content. Stewardship organizations must reimburse local governments for demonstrable costs for battery collection location services.
- *Battery Collection and Management:* battery stewardship organizations must provide for the collection of all chemistries and brands of covered batteries on a free, continuous, convenient, visible, and accessible basis to any person, business, or government. Battery stewardship organizations must provide suitable collection containers, and collection sites must adhere to an operations manual. Statewide collection opportunities meeting enumerated criteria must be provided, as demonstrated using geographic information modeling. Medium format batteries may only be collected at household hazardous waste facilities or other locations with persons certified to ship and handle hazardous materials under federal regulations. Stewardship organizations are not required to provide for the collection of battery-

- containing products or batteries that remain in battery-containing products at the time of delivery to a collection site, but are required to collect batteries that are no longer in battery-containing products at the time of delivery to a collection site. Collected batteries must be managed by a battery stewardship organization in a hierarchy that prioritizes, in descending order, prevention and waste reduction, reuse, recycling, and other end-of-life management options, which are allowed only if demonstrated to Ecology that other management options are infeasible.
- *Education and Outreach:* stewardship organizations must carry out specified promotional activities, including developing a website and a collection site procedural manual. Retailers must be provided promotional materials by stewardship organizations, and collection sites must be provided safety information. Stewardship organizations must carry out a public awareness survey at the beginning of the battery stewardship program at least every five years.

Battery Stewardship Program Administration, Enforcement, and Reporting.

Battery stewardship organizations must submit annual reports to Ecology, beginning June 1, 2027. Annual reports must include financial audits and statements, operational and logistical information such as the location of collection sites, and specified statistics regarding program operations, including statistics used to determine the satisfaction of battery stewardship program performance goals under the plan. Battery stewardship organizations may request that Ecology keep submitted information confidential.

Ecology must adopt rules to implement, administer, and enforce battery management requirements. Ecology must establish annual fees to be paid by stewardship organizations. Ecology is assigned specific roles and responsibilities, including reviewing submitted stewardship plans and annual reports, and maintaining a website that lists producers and brands participating in an approved battery stewardship program.

Ecology may impose civil penalties of up to \$1,000 per violation per day after first issuing a written warning, or up to \$10,000 per violation per day for repeat violations or for violations of corrective action orders. Penalties are appealable to the Pollution Control Hearings Board (PCHB), and must be imposed in a manner consistent with the issuance of other penalties appealable to the PCHB.

An account is created for the deposit of administrative fees paid by stewardship organizations and of penalties.

Large Format Batteries.

By July 1, 2026, the Department of Commerce, in consultation with Ecology and interested stakeholders, must assess the opportunities and challenges for the end-of-life management of large format batteries. The assessment must identify any needed adjustments to battery stewardship program requirements that apply to portable and medium format batteries, and recommend how to design a battery stewardship program to encourage battery technology that reduces reliance on rare earth and conflict materials and uses more earth abundant

materials. The Department of Commerce must submit the assessment's findings to the Legislature by October 1, 2026.

By January 1, 2029, Ecology may adopt rules that require producers of large format batteries to participate in a battery stewardship program that achieves environmentally positive outcomes similar to the battery stewardship program for medium format and portable batteries. Rules adopted by Ecology may require producers of large format batteries to participate in a battery stewardship program no earlier than July 1, 2030, and must consider the Department of Commerce's assessment. Based on the Department of Commerce's assessment, if it is infeasible to include large format batteries in some or all product stewardship requirements, Ecology must delay or exclude categories of large format batteries from adopted program rules. Ecology must submit a report to the Legislature regarding any adopted rules addressing large-format batteries by July 1, 2029.

Battery Disposal Requirements.

Persons, residents, businesses, facilities, and office buildings must dispose of unwanted covered batteries through the battery stewardship program's collection locations, except for commercial, industrial, or government facilities that use other responsible battery management arrangements. Batteries may not be placed in waste containers for disposal in landfills, incinerators, or waste-to-energy facilities, or in mixed non-battery recyclable containers that do not have a separate location or compartment for covered batteries.

Solid waste facilities are not in violation of these requirements if they post conspicuous signage regarding the requirement to use stewardship program battery collection locations for battery disposal.

These battery disposal requirements take effect July 1, 2026, for portable batteries and July 1, 2028, for medium format batteries, or on the first date when a battery stewardship organization begins implementing an approved plan. The requirements take effect July 1, 2030, for large format batteries unless Ecology provides otherwise by rule.

Civil Actions Among Producers and Stewardship Organizations.

Each battery stewardship organization must collect and provide for end-of-life management in an amount roughly equal to the weight of batteries sold into Washington by participating producers. Under stewardship plans, battery stewardship organizations may seek or provide reimbursement from battery stewardship organizations that do not collect and manage their share of batteries of participating producers.

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 under perform 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.

Other.

Producers and battery stewardship organizations that prepare, submit, and implement a battery stewardship program are granted immunity from state antitrust and trade practice laws for the limited purpose of the battery stewardship program.

A severability clause is included.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- excludes producers of covered electronic products under the state's Electronic Product Stewardship Program (E-Cycle Program) from battery stewardship program participation obligations, and eliminates provisions addressing financial reconciliation and reporting between E-Cycle Program stewardship organizations and battery stewardship organizations;
- excludes, from battery stewardship program participation requirements, producers of batteries in battery-containing products that are not designed to be easily removable from the product, and excludes those batteries from collection, labeling, and disposal requirements;
- clarifies that the three categories of battery (large-format, medium-format, and portable batteries) are distinguished based on watt hour in addition to weight only if the battery is labeled with a watt hour rating;
- authorizes retailers to sell batteries contained in battery-containing products that are not labeled consistent with state requirements, but requires producers of battery-containing products that are designed to be easily removed from a product to certify to retailers of the products that the batteries contained in the products are labeled consistent with battery labeling requirements;
- requires battery stewardship plans to identify proposed battery brokers to be used by the battery stewardship program for the final disposition of batteries, in addition to identified transporters, processors, and facilities;
- specifies that stewardship organizations are in compliance with the requirement to operate in an environmentally sound and socially just manner if they meet standards better than, contained in, or broadly equivalent to a standard published by a specified electronics recycling organization;
- authorizes stewardship organizations to satisfy reporting obligations related to pollution emissions of processing facilities by submitting data contained in reporting and permits, if the reporting and permits are similar to those that would apply if the facility were located in the United States;

- eliminates the requirement that labor, domestic location, and pollution emission information reported by a stewardship organization be verified by an independent third party;
- delays battery labeling requirements by two years to 2027 for most requirements, and until 2029 for the requirement that covered batteries be marked by a color code;
- amends the authority for the Department of Ecology (Ecology) to adopt rules related to large-format batteries to require that such a program achieve environmentally positive outcomes similar to those of the battery stewardship program for portable and medium-format batteries, but without requiring that any large-format program rules contain plan submission, retailers, performance goals, program funding, collection and management, education and outreach, and reporting requirements similar to the stewardship program for portable and medium-format batteries;
- requires the submission of a report to the Legislature regarding any rules adopted by Ecology applicable to large-format batteries by July 1, 2029; and
- requires, rather than authorizes, Ecology to exclude from adopted product stewardship rules any large format batteries that attain collection rates of 95 percent through an existing battery management system.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Batteries are pervasive in everyday life, and rechargeable batteries are especially becoming increasingly relied-upon in a variety of devices. Clean energy policies will mean an increasing reliance on batteries. Recycling programs for batteries put valuable metals back into productive use in the economy, and reduce reliance on socially unjust and environmentally costly rare earth mining. Under international law, most batteries must be treated as hazardous waste, but the United States does not follow that standard. Without state action to place responsibility on battery producers, batteries will continue to be burned in poorly controlled environments or otherwise disposed of in ways that harm workers and cause air pollution. Few batteries are currently being recycled through existing and voluntary programs. Several other states have adopted battery stewardship programs similar to the one proposed in this bill, and have improved battery recycling rates in those states. Battery recycling would be convenient and free to Washington residents under this bill. The cost burdens of battery recycling and management should be shifted onto the producers of those batteries. Batteries can cause fires in waste hauling vehicles or waste management facilities, and be hazardous to workers. Lithium and other batteries must be correctly handled and stored in order to reduce safety and environmental risks. Batteries are

costly and labor-intensive for local government facilities to process appropriately, and local governments are also making uncompensated and costly investments in technology to try to reduce the risks of battery fires. Consumers are confused about how to properly dispose of their batteries. California is carrying out a study on how to manage large batteries that are used in electric vehicles and other emerging commercial applications.

(Opposed) Batteries should be managed without taxes or fees. The bill should focus on battery reuse and material repurposing, rather than recycling. The bill is too complex for producers and has a sufficient number of flaws that the Legislature should take another year to work on it. The bill should exempt electronic products rather than requiring a complex reimbursement scheme, since batteries in electronic products are currently collected under the state's electronic product stewardship program. The bill should not place financial responsibility on producers of battery-containing products whose batteries will remain embedded in the product and won't be collected by the stewardship program. Making certain batteries easily removable from products would increase safety risks, and is not a solution to managing embedded batteries. The provisions allowing for civil actions by battery stewardship organizations are excessive, since the Department of Ecology (Ecology) can also penalize battery producers for noncompliance. The bill should not presume that a product stewardship program is an appropriate management framework for large-format batteries, and additional region-wide studies are needed in order to ensure that recycling requirements do not undermine goals of encouraging battery storage on the electric grid.

(Other) Most jurisdictions in Washington currently host a battery recycling collection site hosted through voluntary programs. The large number of voluntary collection locations have collected a significant volume of batteries in Washington, and succeeded in diverting hazardous materials from landfills. Battery labeling requirements should be consistent with international standards. The bill should add clarity regarding how multiple battery stewardship organizations would work together. A national battery recycling program would be preferable to multi-state retailers. This bill does not contain a point-of-sale fee or tax. Labeling requirements are challenging for retailers to comply with, since many products have embedded batteries, and sell thousands of different battery-containing products. A battery product stewardship program would effectively divert batteries from the waste stream and reduce consumer confusion on how to properly dispose of batteries. The proposed battery stewardship programs would operate similarly to other product stewardship programs under Ecology's oversight.

Persons Testifying: (In support) Representative Kirsten Harris-Talley, prime sponsor; Rick Gilbert, Kitsap County Solid Waste Division; Heather Trim, Zero Waste Washington; Preston Peck, City of Tacoma Environmental Services Department; Ashley Evans, King County Hazardous Waste Management Program; Carl Schroeder, Association of Washington Cities; Paul Jewell, Washington State Association of Counties; and Jim Puckett, Basel Action Network.

(Opposed) Peter Godlewski, Association of Washington Business; Jeff Gombosky,

Renewable Northwest; Laurie Layne; George Kerchner, The Rechargeable Battery Association; Katie Reilly, Consumer Technology Association; and Jacob Cassidy, Association of Home Appliance Manufacturers.

(Other) Mark Johnson, Washington Retail Association; Leo Raudys, Call2Recycle; and Megan Warfield, Department of Ecology.

Persons Signed In To Testify But Not Testifying: Holly Chisa, Institute of Scrap Recycling Industries Pacific Northwest Chapter; and Jim King, Independent Business Association.