

# HOUSE BILL REPORT

## HB 2450

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**As Reported by House Committee On:**  
Environment

**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, Wylie, Zeiger, Lytton, Fitzgibbon, Upthegrove, Pollet, Ormsby, Kenney and Moscoso.

**Brief History:**

**Committee Activity:**

Environment: 1/20/12, 1/31/12 [DPS].

**Brief Summary of Substitute Bill**

- Requires small rechargeable battery manufacturers, portable rechargeable product manufacturers, and marketers of either small rechargeable batteries or portable rechargeable products to participate in a program for recycling small rechargeable batteries, beginning 180 days after the effective date of this act.
- Requires retailers that sell small rechargeable batteries or portable rechargeable products to consumers to use signs or other mechanisms to inform consumers of available recycling programs.
- Prohibits retailers from selling small rechargeable batteries or portable rechargeable products that are not marked with an identification of the manufacturer or marketer, beginning a year after the effective date of this act.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Upthegrove, Chair; Tharinger, Vice Chair; Fitzgibbon, Hansen, Jinkins, Morris, Moscoso, Pollet, Takko and Wylie.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Nealey, Pearson, Shea and Taylor.

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*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.*

**Staff:** Kara Durbin (786-7133).

**Background:**

Battery recycling programs prevent lead and mercury contamination from entering landfills by taking batteries out of the waste stream. In recycling, the metals are recovered from the used batteries, and the remainder of the product is recycled or discarded.

Rechargeable batteries are commonly found in cellular and cordless telephones, video cameras, portable power tools, and laptop computers. The majority of rechargeable batteries are nickel-cadmium (Ni-Cd), but some are small rechargeable sealed lead acid batteries. When discarded, these batteries can contribute to the toxicity level of landfills and incinerator ash, as many of them contain heavy metals.

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 Ni-Cd 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, homeowners 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. Many rechargeable product and battery manufacturers participate voluntarily in programs to promote rechargeable battery recycling.

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**Summary of Substitute Bill:**

Recycling Programs for Rechargeable Batteries.

*Required Participation.* Within 180 days of the effective date of this act, small rechargeable battery manufacturers in Washington must either have their own program or participate in a qualified program for collecting, transporting, recycling, and disposing of used rechargeable batteries.

Retailers are not required to participate in a program unless the retailer is a private label battery retailer. Private label retailers must cooperate with an operator of a qualified program upon request by displaying a collection container and otherwise complying with the program, if the private label retailer does not operate its own program or participate in another qualified program.

This service must be free to the consumer. If a person brings a battery for recycling to a retail store and the manufacturer of the battery is not participating in a qualified program, the person must designate a location to which the retailer must ship the battery and the person must pay for this service.

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.

An operator of a qualified program is not required to make its program available through any retailer or other entity.

*Optional Participation.* 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 and make reasonable efforts to prevent other items from being collected in the collection container. Such 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.

*Application Process.* Any entity seeking to have a used small rechargeable battery stewardship program certified as a qualified program must submit a plan to the Department of Ecology (DOE) at least 120 days before the date it intends to commence operation. The DOE must acknowledge receipt of the plan and conduct a facial review within 14 days of submission. The DOE will certify any small rechargeable battery stewardship program as a qualified program within 90 days if the applicant pays a \$5,000 application fee and meets certain program requirements. If the DOE does not meet these deadlines, the program is considered to be certified as a qualified program.

An operator of a qualified program must pay an annual fee of \$5,000 into the Used Battery Stewardship Fund. If a qualified program plan changes, the new plan or plan amendment must be submitted to the DOE for approval. Any amendments made to a program plan must be accompanied by a \$500 administrative fee.

The DOE may not certify a plan if a solid waste company operating under a certificate from the Utilities and Transportation Commission or under a contract with a municipality is providing a substantially similar service within the same service territory as that proposed in the plan.

*Coordination with Governmental Entities.* 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 a curbside collection program, if the governmental entity reaches agreement with the qualified program on the terms for such services.

#### Identification of Small Rechargeable Batteries.

Within one year of the effective date of the act, retailers may not sell in Washington a small rechargeable battery or a portable rechargeable product, unless the battery or product is marked with an identification of the manufacturer or marketer.

#### Penalties for Noncompliance.

A person who fails to operate or participate in a qualified program will be liable for a civil penalty recoverable in a proceeding before the DOE. The fine will be \$5,000 for the first violation, \$10,000 for the second violation, and \$50,000 for the third or subsequent violation.

Failure to properly identify the manufacturer or marketer on a small rechargeable battery will result in the battery manufacturer or marketer being liable for a civil penalty in the amount of \$1,000 recoverable in a proceeding before the DOE.

Before seeking to assess any penalty, the DOE will notify the violator. The DOE may reduce or provide relief from a penalty if the entity comes into compliance within 90 days of receiving notice of non-compliance.

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

#### Used Battery Stewardship Account.

The Used Battery Stewardship Account is created in the State Treasury. All penalties assessed for noncompliance with this act and all fees submitted by operators of qualified programs will be deposited into the account and used by the DOE to fulfill its responsibilities under this act.

#### Other Stewardship Programs.

Any entity that operates a program for the stewardship of multiple brands of used non-rechargeable 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.

#### Other.

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 non-rechargeable batteries, will not be considered to be in violation of the unfair business practices provisions in the Consumer Protection Act.

#### Definitions.

Multiple definitions are provided, including definitions for terms used throughout the bill such as "small rechargeable battery," "qualified used small rechargeable battery stewardship

program," "portable rechargeable product manufacturer or marketer," "private label retailer," and "retailer."

**Substitute Bill Compared to Original Bill:**

The substitute bill adds that any batteries collected by a qualified program must be recycled in facilities that are properly licensed and permitted for battery recycling and materials reclamation under all applicable federal, state, and local laws and regulations. Any plan submitted to the Department of Ecology (DOE) must also include: (1) the recycling facilities and locations used to process small rechargeable batteries; and (2) documentation of audits of each recycling facility used in the plan.

The substitute bill clarifies that if a qualified program plan changes, then a new plan or plan amendment must be submitted to the DOE for approval.

The time frames for submitting a plan to the DOE and receiving certification from the DOE are increased. The DOE may not certify a plan if a solid waste collection company is providing a substantially similar service within the same territory as that proposed in the plan.

The substitute bill adds that an operator of a qualified program is not required to make its program available through any retailer or other entity.

The substitute bill specifies that the bill does not change or limit the authority of the Utilities and Transportation Commission to regulate collection of solid waste, nor does it change or limit the authority of a municipality to offer such services itself or by contract.

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**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, except for section 15, relating to appeals to the Pollution Control Hearings Board of decisions made by the Department of Ecology, which takes effect June 30, 2019.

**Staff Summary of Public Testimony:**

(In support) This bill represents industry coming up with a solution. It is important that we reduce the number of these batteries that go into landfills. Many battery manufacturers participate in the successful Call2Recycle Program. We are seeing increasing resistance from manufacturers in Asia to share in the cost of recycling batteries that are contained in products that are sold in Washington. Under this bill, the entity that puts a rechargeable battery in the state must bear the cost of recycling that product. The cost is not very large, a penny for every 100 grams.

(With concerns) This bill has the potential to increase the number of batteries recycled. However, it is not clear how the responsibilities between manufacturers and marketers are being defined. The bill does not describe how legacy products will be handled. The \$5,000 fee is probably not adequate to cover the cost of the program.

(Opposed) This bill will impose additional costs on consumers and the industry. It allows a private cause of action with significant penalties. There are already programs in place for take-back of these products. Counties and cities frequently accept these as part of recycling programs. This bill appears to require wireless carriers to participate in a recycling program because of the definition of a portable battery manufacturer. We already accept old wireless phones.

**Persons Testifying:** (In support) Representative Tharinger, prime sponsor; and David Weinberg, Rechargeable Battery Association.

(With concerns) Laurie Davies, Washington State Department of Ecology.

(Opposed) Tom McBride, Technology Association of America; Grant Nelson, Toy Industry Association; and Steve Gano, AT&T Services Incorporated.

**Persons Signed In To Testify But Not Testifying:** None.