

HOUSE BILL REPORT

ESHB 1364

As Passed House:
March 6, 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: House Committee on Environment (originally sponsored by 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)].

Floor Activity:

Passed House: 3/6/13, 57-40.

Brief Summary of Engrossed Substitute Bill

- Requires manufacturers or marketers of small rechargeable batteries and portable rechargeable products to participate in a battery recycling program that meets certain operational criteria, beginning January 1, 2014.
- Allows operators of battery recycling programs to bring civil actions to recover costs, damages, and attorneys' fees against manufacturers or marketers who sell rechargeable batteries or products in Washington, but who do not operate or participate in a battery recycling program.

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.

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: Jacob Lipson (786-7196).

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).

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 Engrossed 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 managed program or a program self-operated by a retailer. Both self-operated and managed collection programs must:

- accept rechargeable batteries regardless of brand;
- comply with any legal and regulatory requirements pertaining to battery collection, storage, and transportation;
- provide education and outreach activities;
- provide battery recycling services free of charge to consumers; and
- provide collection locations that are open to the public at all hours that collection locations are normally open for business;

Self-operated and-managed programs must post the following information on the internet:

- a description of the battery recycling program's collection, transportation, sorting, reclamation, and battery-tracking procedures;
- an identification of sorting and reclamation facilities used;
- an identification of participating locations, and any restrictions on the number of batteries accepted at specific sites;
- a consumer inquiry mechanism;
- information regarding education and outreach; and
- by April 1 of each year, an annual report including certain information about program operations, including, for managed programs, an independently-audited financial statement.

In addition to the above requirements applying to both managed and self-operated programs, managed programs must also:

- identify participating manufacturers or marketers;
- provide a collection-site locator on its website;
- 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 city or town with a population of more than 10,000; and
- conduct public outreach and marketing for the recycling program.

Manufacturer and Marketer Responsibilities.

Manufacturers and marketers of small rechargeable batteries or portable rechargeable products containing easily removable small rechargeable batteries must participate in a managed or self-operated battery recycling program. The activities of retailers are excluded from the definition of manufacturer or marketer.

Oversight and Compliance Mechanisms.

If a qualified small rechargeable battery stewardship program incurs costs in excess of \$3,000 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. Suits may be simultaneously filed against multiple defendants, and brought in any superior or district court in the state. If there are multiple entities that meet the definition of manufacturer or marketer for a single rechargeable battery or product, only one of those entities is required to participate in a recycling program.

Other Provisions.

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

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2014.

Staff Summary of Public Testimony (Environment):

(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.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government):

(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 (Environment): (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 Testifying (Appropriations Subcommittee on General Government): (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 (Environment): None.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government): None.