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**HOUSE BILL 2496**

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**State of Washington 66th Legislature 2020 Regular Session**

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

AN ACT Relating to providing for responsible environmental management of batteries; amending RCW 70.375.130 and 43.21B.300; reenacting and amending RCW 42.56.270, 43.21B.110, and 43.21B.110; adding a new chapter to Title 70 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  INTENT. The legislature finds that:

(1) It is in the public interest of the citizens of Washington to encourage the recovery and reuse of materials, such as metals, that replace the output of mining and other extractive industries.

(2) Without a dedicated battery stewardship program, consumer confusion regarding proper disposal options for batteries will continue to persist.

(3) Ensuring the proper handling, recycling, and end-of-life management of used batteries prevents the release of toxic materials into the environment and removes materials from the waste stream that, if mishandled, may present safety concerns to workers, such as by igniting fires at solid waste handling facilities. For this reason, batteries should not be placed into commingled recycling containers or disposed of via traditional garbage collection containers.

(4) Many other states have successfully implemented battery stewardship laws that have helped address the challenges posed by the end-of-life management of batteries. Because it is difficult for customers to differentiate between types and chemistries of batteries, it is the best practice for battery stewardship programs to collect all battery types and chemistries.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Battery containing product" means a product containing primary or rechargeable batteries that are covered batteries.

(2) "Battery management hierarchy" means a management system of covered batteries that is put into the marketplace, collected, sorted, and reprocessed and prioritized in descending order as follows:

(a) Prevention and waste reduction;

(b) Reuse, when reuse is appropriate;

(c) Recycling, as defined in RCW 70.95.030; and

(d) Other means of end-of-life management, which may only be utilized no earlier than three hundred sixty-five days after the collection of the battery by a battery stewardship organization.

(3) "Battery stewardship organization" means a producer that directly implements a battery stewardship plan required under this chapter or a nonprofit organization designated by a producer or group of producers to implement a battery stewardship plan required under this chapter.

(4) "Covered battery" means a primary battery that weighs twenty-five pounds or less or a rechargeable battery or battery pack weighing less than twenty-five pounds. "Covered battery" does not include:

(a) A battery contained within a medical device, as specified in Title 21 U.S.C. Sec. 360c as it existed as of the effective date of this section if, when the device or battery is discarded, the device or battery must be treated as infectious waste;

(b) A battery that contains an electrolyte as a free liquid; or

(c) An unsealed battery or battery pack that employs lead acid technology.

(5) "Department" means the department of ecology.

(6) "Easily removable" means readily detachable by a consumer with or without the use of common household tools.

(7) "Environmentally sound management practices" means practices that: (a) Comply with all applicable laws and rules to protect workers, public health, and the environment; (b) provide for adequate recordkeeping, tracking, and documenting of the fate of materials within the state and beyond; and (c) include environmental liability coverage for the battery stewardship organization.

(8) "Final disposition" means the point beyond which no further processing takes place and batteries have been transformed for direct use as a feedstock in producing new products or are disposed of in permitted facilities.

(9) "Hefty battery" means a primary or rechargeable covered battery that weighs at least twelve pounds or has a capacity of at least three hundred watt hours.

(10) "Primary battery" means a battery that is not capable of being recharged.

(11)(a) "Producer" means with respect to a covered battery or battery containing product that is sold, offered for sale, or distributed for sale in the state:

(i) The person that manufactures the covered battery or battery containing product and sells or offers for sale in the state that battery or product under the person's own brand;

(ii) If there is no person to which (a)(i) of this subsection applies, the owner or licensee of a brand under which the covered battery or covered battery containing product is sold or distributed in the state; or

(iii) If there is no person to which (a)(i) or (ii) of this subsection applies, a person including, but not limited to, the first person who sells a covered battery or covered battery containing product in the state, including through a remote offering for sale, such as a sales outlet or sales catalog or via an internet web site, with the expectation that the purchaser will put the covered battery or covered battery containing product to its intended use.

(b) A producer does not include any person who only manufactures, sells, offers for sale, distributes, or imports into the country for sale in the state a battery containing product if the only batteries used by the battery containing product are supplied by a producer participating in an approved stewardship plan.

(c) A retailer that sells covered batteries or battery containing products under its own brand, or that otherwise meets the definition of a producer in (a) and (b) of this subsection, is a producer for purposes of this chapter.

(12) "Retailer" means a person who sells covered batteries or battery containing products in or into this state or offers or otherwise makes available covered batteries or battery containing products to a customer, including other businesses, for use in this state.

NEW SECTION. **Sec.**  REQUIREMENT THAT PRODUCERS IMPLEMENT A STEWARDSHIP PLAN. (1) Beginning January 1, 2024, each producer selling in or into the state of Washington shall participate in an approved Washington state battery stewardship plan through participation in and appropriate funding of a battery stewardship organization.

(2) Except as provided in subsection (3) of this section, a producer that does not participate in a battery stewardship organization and battery stewardship plan may not sell covered batteries or battery containing products covered by this chapter in or into Washington.

(3)(a) A producer is a de minimis producer and is not subject to battery stewardship organization and battery stewardship plan participation requirements if the department determines that the producer annually sells, offers for sale, distributes, or imports into the country for sale in the state:

(i) A total of less than five thousand battery units, including batteries contained within battery containing products; or

(ii) Batteries, including batteries contained within battery containing products, with a total retail value of less than five thousand dollars.

(b) A de minimis producer under this section must annually submit documentation to the department demonstrating that the producer meets the de minimis producer criteria under this section.

NEW SECTION. **Sec.**  RETAILER OBLIGATIONS. (1) Beginning January 1, 2025, a retailer may not sell, offer for sale, or otherwise make available for sale a covered battery or battery containing product unless the producer of the covered battery or battery containing product:

(a) Participates in a battery stewardship organization whose plan has been approved by the department; or

(b) Is a de minimis producer under section 3(3) of this act.

(2) A retailer is in compliance with the requirements of subsection (1) of this section and is not subject to penalties under section 12 of this act as long as the web site made available by the department under section 11 of this act lists, as of the date a product is made available for retail sale, a producer or brand of covered battery or battery containing product sold by the retailer as being either a:

(a) Participant in an approved plan or the implementer of an approved plan; or

(b) De minimis producer under section 3(3) of this act.

(3) Retailers of covered batteries or battery containing products are not required to make retail locations available to serve as collection locations for a stewardship plan operated by a battery stewardship organization. However, a retailer that agrees to make a retail location available to serve as a collection location for a stewardship plan must comply with the requirements for collection locations, consistent with section 8 of this act.

(4) A retailer may only sell, offer for sale, or otherwise make available for sale covered batteries, including those contained in battery containing products, that are labeled consistent with the requirements of section 14 of this act.

(5) At the time of sale to a consumer, a retailer selling or offering covered batteries or battery containing products for sale in Washington must provide the consumer with information, provided to the retailer by the battery stewardship organization, regarding available end-of-life management options for covered batteries collected by the battery stewardship organization.

(6) Retailers, producers, or stewardship organizations may not charge a specific point-of-sale fee to consumers to recoup the costs of the battery stewardship program.

NEW SECTION. **Sec.**  STEWARDSHIP PLAN COMPONENTS. (1) By June 1, 2023, or no less than six months before a plan begins to be implemented, each battery stewardship organization must submit a plan to the department for approval. The department must review and may approve a plan on the basis of whether it contains and adequately addresses the following components:

(a) Lists and provides contact information for each producer, battery brand, and battery containing product brand covered in the plan;

(b) Proposes performance goals, consistent with section 6 of this act, including establishing performance goals for each of the next three upcoming years of program implementation;

(c) Describes how the battery stewardship organization will make retailers aware of their obligation to sell only covered batteries and battery containing products of producers participating in an approved plan;

(d) Includes a detailed and comprehensive list of promotion activities to be undertaken as part of the educational and outreach program required in section 9 of this act;

(e) Includes an operations manual or other safety information related to covered battery collection activities at collection sites, including appropriate protocols to reduce risks of spills or fires and response protocols in the event of a spill or fire;

(f) Describes the financing methods used to implement the plan, consistent with section 7 of this act;

(g) Describes how the program will collect all covered battery chemistries and brands on a free, continuous, convenient, visible, and accessible basis, and consistent with the requirements of section 8 of this act, including a description of how the statewide convenience standard will be met;

(h) Describes the criteria to be used in the program to determine whether an entity may serve as a collection location for discarded batteries under the program;

(i) Describes how the program will offer additional supervised collection opportunities at special locations where batteries are often spent and replaced, such as parks with stores and campgrounds;

(j) Describes how the battery stewardship organization will determine whether the stewardship plan is collecting batteries in an amount roughly equivalent to the national market share of participating producers consistent with the requirements of section 8 of this act, and how the battery stewardship organization will:

(i) Seek reimbursement from other battery stewardship organizations that underperform on their battery collection obligations under section 8 of this act; and

(ii) Reimburse other battery stewardship organizations if the battery stewardship organization underperforms on its battery collection obligations under section 8 of this act;

(k) Identifies proposed transporters, processors, and facilities to be used by the program for the final disposition of batteries and how collected batteries will be managed in an environmentally sound manner and consistent with the battery management hierarchy, including how each proposed facility used for the final disposition of batteries will recycle or otherwise manage batteries;

(l) Details how the program will maximize the proportion of batteries collected by the program that are recycled; and

(m) Proposes goals for increasing public awareness of the program and describes how the public education and outreach components of the program under section 9 of this act will be implemented.

(2) If required by the department, a battery stewardship organization must submit a new plan to the department for approval:

(a) When there is a change to the method of financing plan implementation under section 7 of this act;

(b) If there are significant changes to the methods of collection, transport, or end-of-life management of covered batteries under section 8 of this act that are not covered by the plan; and

(c) No less than every five years.

(3) If required by the department, a battery stewardship organization must provide notice to the department for approval:

(a) No later than thirty days after a producer begins or ceases to participate in a battery stewardship organization;

(b) When proposing changes to the performance goals under section 6 of this act; or

(c) Proposing updated performance goals based upon the to-date experience of the program, which must be submitted at the time the second annual report is submitted to the department by a battery stewardship organization under section 10 of this act and every two years thereafter.

(4) No earlier than five years after the initial approval of a plan, the department may require a battery stewardship organization to submit a revised plan, which may include improvements to the collection site network or increased expenditures dedicated to education and outreach, if the approved plan does not meet the performance goals under section 6 of this act.

NEW SECTION. **Sec.**  STEWARDSHIP PROGRAM COMPONENTS—PERFORMANCE GOALS. (1) Each plan must include performance goals that measure, on an annual basis, the achievements of the plan. Performance goals must take into consideration technical feasibility and economic practicality in achieving continuous, meaningful progress in improving the rate of battery recycling in Washington.

(2) The performance goals established in each plan must include, but are not limited to:

(a) Target collection rates;

(b) For each battery recycling process, targets for the amount of secondary material derived from the recycling processes as measured by average weights; and

(c) Goals for convenience and accessibility that exceed the minimum requirements established in section 8 of this act.

NEW SECTION. **Sec.**  STEWARDSHIP PROGRAM COMPONENTS—FUNDING. (1) Each producer must ensure adequate funding is available to fully implement approved stewardship plans, including the implementation of aspects of the plan addressing:

(a) Battery collection and processing;

(b) Education and outreach;

(c) Program evaluation; and

(d) Payment of the administrative fees to the department under section 11 of this act.

(2)(a) Each battery stewardship organization is responsible for all costs of participating covered battery collection, transportation, processing, education, administration, agency reimbursement, recycling, and end-of-life management in accordance with the battery management hierarchy and environmentally sound management practices.

(b) Each battery stewardship organization must collect and provide for the end-of-life management of batteries in an amount roughly equivalent to the national market share of the batteries of producers participating in the plan. A battery stewardship organization may seek or provide reimbursement, consistent with the provisions of the stewardship plan, from a different battery stewardship organization that fails to collect and provide for the end-of-life management of batteries in an amount roughly equivalent to the national market share of the batteries of producers participating in the plan.

(c) A battery stewardship organization is not authorized to reduce or cease collection, education and outreach, or other activities implemented under an approved plan on the basis of achievement of program performance goals or upon collecting and providing for the end-of-life management of more batteries than required under (b) of this subsection.

(3) A battery stewardship organization must reimburse local governments for reasonable and demonstrable costs incurred as a result of a local government facility serving as a collection location for a plan, including associated labor costs.

NEW SECTION. **Sec.**  STEWARDSHIP PROGRAM COMPONENTS—COLLECTION AND MANAGEMENT REQUIREMENTS. (1) Battery stewardship organizations implementing a stewardship plan must provide for the collection of all covered batteries, including all chemistries and brands of covered batteries, on a free, continuous, convenient, visible, and accessible basis to any person, business, government agency, or nonprofit organization. A fee may not be charged at the time unwanted covered batteries are delivered or collected for management. Each battery stewardship plan must allow any person, business, government agency, or nonprofit organization to discard each chemistry and brand of nonhefty covered battery at each collection site operated under the plan.

(2) At each collection site utilized by the program, each battery stewardship organization must provide suitable collection containers for segregated discarded batteries or make mutually agreeable alternative arrangements for the collection of batteries at the site. The location of collection containers at each collection site used by the plan must be within view of a responsible person. Each collection site must adhere to the operations manual and other safety information provided to the collection site by the battery stewardship organization. Hefty batteries may only be collected at locations operated by entities certified to handle and ship class nine hazardous materials under federal regulations adopted by the United States department of transportation pipeline and hazardous materials safety administration.

(3)(a) Each battery stewardship organization implementing a plan shall ensure statewide collection opportunities for all covered batteries other than hefty batteries. Statewide collection opportunities must be determined by geographic information modeling and may rely, in part, on collection events to supplement service required in (a) and (b) of this subsection. Statewide collection opportunities must include, but are not limited to, the provision of:

(i) At least one permanent collection site within a fifteen mile radius for at least ninety-five percent of Washington residents;

(ii) At least one permanent collection site in addition to those required in (a)(i) of this subsection for every thirty thousand residents of an urbanized area and for every urban cluster of at least thirty thousand residents;

(iii) Collection opportunities and service to all counties and tribal lands in Washington;

(iv) Collection opportunities at special locations where batteries are often spent and replaced, such as supervised locations at parks with stores and campgrounds; and

(v) Service to areas without a permanent collection site, including service to island and geographically isolated communities.

(b) Each battery stewardship organization implementing a plan shall ensure collection opportunities for hefty batteries that exceed the following minimum convenience standards:

(i) At least twenty-five collection sites in Washington;

(ii) Reasonable geographic dispersion of collection sites throughout the state; and

(iii) A collection location in each county of at least two hundred thousand persons, as determined by the most recent population estimate of the office of financial management.

(4)(a) Stewardship plans must use existing and public and private waste collection services and facilities, including battery collection locations that are established through other battery collection services, transporters, consolidators, processors, retailers, and curbside services, where cost-effective, mutually agreeable, and otherwise practicable.

(b) Stewardship plans must use as a collection site any retailer, wholesaler, municipality, solid waste management facility, or other entity that meets the collection site criteria provided in this section and the criteria for collection locations in the approved plan, upon the submission of a request by the entity to the battery stewardship organization to serve as a collection site.

(c) A stewardship organization may suspend or terminate a collection site or service that does not adhere to the collection site criteria in the approved plan.

(5)(a) Stewardship plans are not required to provide for the collection of battery containing products.

(b) Stewardship plans are not required to provide for the collection of batteries that:

(i) Are not intended or designed to be easily removable from the product other than by the manufacturer; and

(ii) Remain contained in a battery containing product at the time of delivery to a collection site.

(c) Stewardship plans are required to provide for the collection of covered batteries that were once contained in battery containing products but that are not contained in the battery containing product at the time of delivery to a collection site.

(d) Each stewardship plan must arrange for the collection of covered batteries from collection locations established under chapter 70.95N RCW.

(6) Batteries collected by the program must be managed consistent with the battery management hierarchy. Lower priority end-of-life battery management options on the battery management hierarchy may be used by a program only when a battery stewardship organization documents to the department that all higher priority battery management options on the battery management hierarchy are not technologically feasible or economically practical.

(7) Batteries collected by the program created under this chapter may be managed as universal waste where required by state and federal hazardous waste laws and regulations.

NEW SECTION. **Sec.**  STEWARDSHIP PROGRAM COMPONENTS—EDUCATION AND OUTREACH REQUIREMENTS. (1) Each battery stewardship organization must carry out promotional activities in support of plan implementation including, but not limited to, the development:

(a) And maintenance of a web site;

(b) And distribution of periodic press releases and articles;

(c) And placement of graphic advertisements for use on social media or other relevant media platforms;

(d) Of promotional materials about the program and the restriction on the disposal of covered batteries in section 15 of this act to be used by retailers, government agencies, and nonprofit organizations;

(e) And distribution of a collection site procedural manual to collection sites to help ensure proper management of covered batteries at collection locations; and

(f) And implementation of outreach and education suitable for the state's diverse ethnic populations, through translated and culturally appropriate materials, including in-language and targeted outreach.

(2) Each battery stewardship organization must provide:

(a) Consumer-focused educational promotional materials to each collection location used by the plan and at each retailer that sells covered batteries or battery containing products; and

(b) Safety information related to covered battery collection activities to the operator of each collection site, including appropriate protocols to reduce risks of spills or fires and response protocols in the event of a spill or fire.

(3) A producer that supplies batteries to a retailer must provide the retailer with educational materials developed by the battery stewardship organization describing collection opportunities for batteries or must arrange for the stewardship program implementing the plan in which the producer participates to provide such materials.

(4) During the first year of program implementation and every five years thereafter, each battery stewardship organization must carry out a survey of public awareness regarding the requirements of the program established under this chapter, including the provisions of section 15 of this act. Each battery stewardship organization must share the results of the public awareness surveys with the department.

NEW SECTION. **Sec.**  REPORTING REQUIREMENTS. (1) By June 1, 2025, and each June 1st thereafter, each battery stewardship organization must submit an annual report to the department covering the preceding calendar year of stewardship plan implementation. The report must include:

(a) An independent financial audit of a stewardship program implemented by the battery stewardship organization, including a breakdown of the program's expenses, such as collection, recycling, education, and overhead, when required by the department;

(b) A summary financial statement documenting the financing of a battery stewardship organization's plan and an analysis of program costs and expenditures, including an analysis of the program's expenses, such as collection, transportation, recycling, education, and administrative overhead. The summary financial statement must be sufficiently detailed so as to provide transparency that funds collected from producers as a result of their activities in Washington are spent on plan implementation in Washington. Battery stewardship organizations implementing similar battery stewardship plans in multiple states may submit a financial statement including all covered states, as long as the statement breaks out financial information pertinent to Washington;

(c) The weight, by chemistry, of covered batteries collected under the plan;

(d) The weight of materials recycled from covered batteries collected under the plan, in total, and by battery recycling process;

(e) For each facility used for the final disposition of batteries, a description of how the facility recycled or otherwise disposed of batteries and battery components;

(f) The weight and chemistry of batteries sent to each facility used for the final disposition of batteries. The information in this subsection (1)(f) may be approximated for plan operations in Washington based on extrapolations of national or regional data for programs in operation in multiple states;

(g) The collection rate achieved by battery chemistry under the plan, including a description of how this collection rate was calculated;

(h) The estimated total sales, by weight and chemistry, of batteries and batteries contained in or with battery containing products sold in Washington by participating producers for each of the previous three calendar years;

(i) A description of the manner in which the collected batteries were managed and recycled, including a discussion of best available technologies and the amounts of secondary material derived from the recycling processes as measured by average weights;

(j) A summary of the education and outreach supporting plan implementation, including a description of how that education and outreach met the requirements of section 9 of this act and any changes made during the previous calendar year to education and outreach activities;

(k) An up-to-date map indicating the location of all collection sites used to implement the plan, with links to appropriate web sites;

(l) A description of the manner in which the collected batteries were sorted, consolidated, and processed;

(m) A summary on progress made towards the program performance goals established under section 6 of this act, and an explanation of why performance goals were not met, if applicable; and

(n) An evaluation of the effectiveness of education and outreach activities.

(2) If a battery stewardship organization has disposed of covered batteries though energy recovery, incineration, or landfilling during the preceding calendar year of plan implementation, the annual report must specify the steps that the battery stewardship organization will take to make the recycling of covered batteries cost-effective, where possible, or to otherwise increase battery recycling rates achieved by the battery stewardship organization.

NEW SECTION. **Sec.**  FEE AND DEPARTMENT OF ECOLOGY ROLE. (1) The department must adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. The department must by rule establish fees, to be paid annually by a battery stewardship organization, that are adequate to cover the department's full costs of implementing, administering, and enforcing this chapter. All fees must be based on costs related to implementing, administering, and enforcing this chapter, not to exceed expenses incurred by the department for these activities.

(2) The responsibilities of the department in implementing, administering, and enforcing this chapter include, but are not limited to:

(a) Reviewing submitted stewardship plans and plan amendments and making determinations as to whether to approve the plan or plan amendment;

(i) The department must provide a letter of approval for the plan or plan amendment if it provides for the establishment of a stewardship program that meets the requirements of sections 3 through 9 of this act;

(ii) If a plan or plan amendment is rejected, the department must provide the reasons for rejecting the plan to the battery stewardship organization. The battery stewardship organization must submit a new plan within sixty days after receipt of the letter of disapproval; and

(iii) When a plan or an amendment to an approved plan is submitted under this section, the department shall make the proposed plan or amendment available for public review and comment for at least thirty days;

(b) Reviewing annual reports submitted under section 10 of this act within ninety days of submission to ensure compliance with that section;

(c)(i) Maintaining a web site that lists producers and their brands that are participating in an approved plan, and that makes available to the public each plan, plan amendment, and annual report received by the department under this chapter;

(ii) Upon the date the first plan is approved, the department must post on its web site a list of producers and their brands for which the department has approved a plan. The department must update the list of producers and brands participating under an approved program plan on a monthly basis based on information provided to the department from battery stewardship organizations; and

(d) Providing outreach and assistance to producers and retailers related to the requirements of this chapter and issuing orders or imposing civil penalties authorized under section 12 of this act where such outreach and assistance efforts do not lead to compliance by a producer or retailer.

NEW SECTION. **Sec.**  PENALTIES AND CIVIL ACTION PROVISIONS. (1)(a) A battery stewardship organization implementing an approved plan may bring a civil action or actions to recover costs, damages, and fees, as specified in this section, from any producer who sells or otherwise makes available in Washington covered batteries or battery containing products not included in an approved plan. An action under this section may be brought against one or more defendants. An action may only be brought against a defendant producer when the stewardship program incurs costs in Washington, including reasonable incremental administrative and program promotional costs, in excess of one thousand dollars to collect, transport, and recycle or otherwise dispose of the covered batteries or battery containing products of a nonparticipating producer.

(b) A battery stewardship organization may only bring a civil action authorized under (a) of this subsection if the most recent annual report filed with and approved by the department indicates that the battery stewardship organization has achieved the collection rate performance goal established consistent with section 6 of this act.

(c) A battery stewardship organization implementing an approved stewardship plan may bring a civil action against another battery stewardship organization that underperforms on its battery collection obligations under this chapter by failing to collect and provide for the end-of-life management of batteries in an amount roughly equivalent to the national market share of the batteries of producers participating in the plan.

(d) The remedies provided in this subsection are in addition to the enforcement authority of the department and do not limit and are not limited by a decision by the department to impose a civil penalty or issue an order under subsection (2) of this section. The department is not required to audit, participate in, or provide assistance to a battery stewardship organization pursuing a civil action authorized under this subsection.

(2)(a) The department may administratively impose a civil penalty on any person who violates this chapter in an amount of up to one thousand dollars per violation per day.

(b) The department may administratively impose a civil penalty of up to ten thousand dollars per violation per day on any person who intentionally, knowingly, or negligently violates this chapter.

(c) Whenever on the basis on any information the department determines that a person has violated or is in violation of this chapter, the department may issue an order requiring compliance. A person who fails to take corrective action as specified in a compliance order is liable for a civil penalty as provided in (a) and (b) in this subsection.

(d) Any person who is issued an order or incurs a penalty under this section may appeal the order or penalty to the pollution control hearings board established by chapter 43.21B RCW.

(e) Prior to imposing penalties under this section, the department must provide a producer, retailer, or battery stewardship organization with a written warning for the first violation by the producer, retailer, or battery stewardship organization of the requirements of this chapter. The written warning must inform a producer, retailer, or battery stewardship organization that it must participate in an approved plan or otherwise come into compliance with the requirements of this chapter within thirty days of the notice. A producer, retailer, or battery stewardship organization that violates a provision of this chapter after the initial written warning must be assessed a penalty as provided in this subsection.

(3) Penalties levied under subsection (2) of this section must be deposited in the responsible battery management account created in section 13 of this act.

NEW SECTION. **Sec.**  RESPONSIBLE BATTERY MANAGEMENT ACCOUNT. The responsible battery management account is created in the custody of the state treasurer. All receipts from activities undertaken consistent with chapter 70.--- RCW (the new chapter created in section 21 of this act) must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Moneys in the account may be used solely by the department for administering, implementing, and enforcing the requirements of this chapter. Funds in the account may not be diverted for any purpose or activity other than those specified in this section.

NEW SECTION. **Sec.**  LABELING REQUIREMENTS FOR BATTERIES. Beginning January 1, 2024, a producer or retailer may only sell, distribute, or offer for sale in or into Washington a covered battery or battery containing product if the battery is:

(1) Labeled to identify the chemistry employed in storing energy in the battery; and

(2) Marked with an identification of the producer of the battery, unless the battery is less than one-half inch in diameter or does not contain a surface whose length exceeds one-half inch.

NEW SECTION. **Sec.**  REQUIREMENT TO USE BATTERY COLLECTION PROGRAMS. Effective January 1, 2024:

(1) All persons, residents, businesses, and government, commercial, industrial, and retail facilities and office buildings must dispose of unwanted covered batteries through the collection locations established by the programs created by this chapter.

(2) Generators may not place covered batteries in waste containers for disposal at incinerators, waste to energy facilities, or landfills.

(3) Generators may not place covered batteries in or on a container for mixed recyclables unless there is a separate location or compartment for the covered battery that complies with local government collection standards or guidelines.

(4) An owner or operator of a solid waste facility may not be found in violation of this section if the facility has posted in a conspicuous location a sign stating that covered batteries must be recycled and are not accepted for disposal.

(5) A solid waste collector may not be found in violation of this section for a covered battery placed in a disposal container by the generator of the covered battery.

**Sec.**  RCW 70.375.130 and 2019 c 344 s 13 are each amended to read as follows:

PUBLIC RECORDS, PART 1.

(1) Except as provided in subsection (3) of this section, records related to this chapter or chapter 70.--- RCW (the new chapter created in section 21 of this act), subject to chapter 42.56 RCW, filed with the department from any person that contain valuable commercial information, including trade secrets, confidential marketing, cost, or financial information, or customer-specific usage information, are not subject to inspection or copying under chapter 42.56 RCW. When providing information to the department, a person shall designate which records or portions of records contain valuable commercial information.

(2) Upon receipt of a request to disclose valuable commercial information submitted under this chapter or chapter 70.--- RCW (the new chapter created in section 21 of this act), the department must provide notice to the person or persons whose information is subject to possible inspection or copying under chapter 42.56 RCW.

(3) Upon the notice provided under subsection (2) of this section of the possible inspection or copying of valuable commercial information pursuant to chapter 42.56 RCW, a person may petition the superior court for an order protecting the records as confidential. The superior court must determine that the records are confidential and are not subject to inspection or copying if disclosure would result in private loss, including an unfair competitive disadvantage. If a person does not obtain an order protecting submitted records as confidential within ten days of receiving a notice from the department under subsection (2) of this section, the department may make the records available for public inspection and copying pursuant to chapter 42.56 RCW.

**Sec.**  RCW 42.56.270 and 2019 c 394 s 10, 2019 c 344 s 14, and 2019 c 212 s 12 are each reenacted and amended to read as follows:

PUBLIC RECORDS, PART 2.

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW; and

(31) Records filed with the department of ecology under chapter 70.375 or 70.--- RCW (the new chapter created in section 21 of this act) that a court has determined are confidential valuable commercial information under RCW 70.375.130.

**Sec.**  RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and 2019 c 290 s 12 are each reenacted and amended to read as follows:

POLLUTION CONTROL HEARINGS BOARD.

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70.--- RCW (the new chapter created in section 21 of this act).

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330 and chapter 70.--- RCW (the new chapter created in section 21 of this act).

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec.**  RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and 2019 c 290 s 12 are each reenacted and amended to read as follows:

POLLUTION CONTROL HEARINGS BOARD.

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 70.365.070, 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70.--- RCW (the new chapter created in section 21 of this act).

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330 and chapter 70.--- RCW (the new chapter created in section 21 of this act).

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec.**  RCW 43.21B.300 and 2019 c 64 s 19 are each amended to read as follows:

PENALTY PROCEDURES.

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapters 90.76 and 70.--- RCW (the new chapter created in section 21 of this act) shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within thirty days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100.

NEW SECTION. **Sec.**  CODIFICATION. Sections 1 through 15 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  EXPIRATION DATE. Section 18 of this act expires June 30, 2021.

NEW SECTION. **Sec.**  EFFECTIVE DATE. Section 19 of this act takes effect June 30, 2021.

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**