H-2523.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE HOUSE BILL 1896**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 67th Legislature 2022 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Harris-Talley, Berry, Ryu, Simmons, Slatter, Peterson, Gregerson, Goodman, Ormsby, Ramel, Kloba, Frame, Bateman, Macri, Valdez, Duerr, and Pollet)

AN ACT Relating to providing for responsible environmental management of batteries; reenacting and amending RCW 43.21B.110 and 43.21B.300; adding a new chapter to Title 70A RCW; and prescribing penalties.

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, battery user confusion regarding proper disposal options 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) Jurisdictions around the world 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. Furthermore, it is appropriate for larger batteries used in emerging market sectors such as electric vehicles, solar power arrays, and data centers, to be managed to ensure environmentally positive outcomes similar to those achieved by a battery stewardship program, both because of the potential economic value of large batteries used for these purposes and the anticipated profusion of these larger batteries as these market sectors mature.

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

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

(b) A battery containing product does not include a covered electronic product under an approved plan implemented under chapter 70A.500 RCW.

(2) "Battery management hierarchy" means a management system of covered batteries prioritized in descending order as follows:

(a) Prevention and waste reduction;

(b) Reuse, when reuse is appropriate;

(c) Recycling, as defined in RCW 70A.205.015; and

(d) Other means of end-of-life management, which may only be utilized after demonstrating to the department that it is not feasible to manage the batteries under the higher priority options in (a) through (c) of this subsection.

(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) "Button cell battery" means a round small cell or battery with an overall cell or battery height that is less than the diameter of the battery or cell.

(5)(a) "Covered battery" means a portable battery or, beginning January 1, 2028, a medium format battery.

(b) "Covered battery" does not include:

(i) 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 the device or battery must be treated as infectious waste when the device or battery is discarded;

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

(iii) A button cell battery contained in circuit boards or equipment;

(iv) A battery subject to the provisions of RCW 70A.205.505 through 70A.205.530 or other portable batteries contained in a motor vehicle, part of a motor vehicle, or a component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle; and

(v) A battery in a battery containing product that is not intended or designed to be easily removable from the battery containing product.

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

(7) "Easily removable" means designed by the manufacturer to be removable by the customer.

(8) "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 comprehensive liability coverage for the battery stewardship organization, including environmental liability coverage.

(9) "Final disposition" means the end products for which materials contained in a covered battery collected by the program will be used, at the point where the material is in its constituent parts and is no longer considered waste.

(10) "Large format battery" means a battery that weighs more than 25 pounds or has a rating of more than 1,000 watt hours, if labeled with a watt-hour rating.

(11) "Medium format battery" means a primary or rechargeable covered battery that weighs:

(a) More than 11 pounds or, if labeled with a watt-hour rating, has a rating of more than 300 watt hours, or both; and

(b) No more than 25 pounds and has a rating of no more than 1,000 watt hours, if labeled with a watt-hour rating.

(12) "Portable battery" means a primary or rechargeable battery that weighs no more than 11 pounds and, if labeled with a watt-hour rating, has a rating of no more than 300 watt hours.

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

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

(i) The person that manufactures the covered battery or covered battery containing product and sells or offers for sale in or into 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, offered for sale, or distributed in or into the state;

(iii) If there is no person to which (a)(i) or (ii) of this subsection applies, a person that imports the covered battery or covered battery containing product into the United States for sale or distribution into Washington; or

(iv) If there is no person described in (a)(i), (ii), or (iii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered battery or covered battery containing product in or into the state.

(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.

(15) "Program" means a program implemented by a battery stewardship organization consistent with an approved battery stewardship plan.

(16) "Rechargeable battery" means a battery that contains one or more voltaic or galvanic cells, electrically connected to produce electric energy, designed to be recharged.

(17) "Recycling efficiency rate" means the ratio of the weight of resources recovered from batteries received by a battery processor to the weight of batteries received by that battery processor.

(18) "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.

(19) "Urban cluster" means areas of population density of 2,500 to 50,000, as defined by the United States census bureau.

(20) "Urbanized area" means areas of high population density with populations of 50,000 or greater, as defined by the United States census bureau.

NEW SECTION. **Sec.**  REQUIREMENT THAT PRODUCERS IMPLEMENT A STEWARDSHIP PLAN. (1) Beginning January 1, 2026, each producer selling covered batteries or battery containing products 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) 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.

NEW SECTION. **Sec.**  RETAILER OBLIGATIONS. (1) Beginning July 1, 2026, for portable batteries, and July 1, 2028, for medium format batteries, 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 participates in a battery stewardship organization whose plan has been approved by the department.

(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 website 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 a participant in an approved plan or the implementer of an approved plan.

(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 program 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 program must comply with the requirements for collection locations, consistent with section 8 of this act.

(4) A retailer may not sell, offer for sale, or otherwise make available for sale covered batteries, other than batteries contained in battery containing products, unless those batteries are marked consistent with the requirements of section 14 of this act. A producer of a battery containing product containing a covered battery must certify to the retailers of their product that the battery contained in the battery containing product is marked consistent with the requirements of section 14 of this act.

(5) At the time of sale, a retailer selling or offering covered batteries or battery containing products for sale in Washington must provide 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 cover the administrative or operational costs of the stewardship organization or the battery stewardship program.

NEW SECTION. **Sec.**  STEWARDSHIP PLAN COMPONENTS. (1) By July 1, 2025, 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. A battery stewardship organization may submit a plan at any time to the department for review and approval. The department must review and may approve a plan based on 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 calendar 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 first year of the educational and outreach program required in section 9 of this act, and the identification of consumer awareness goals, and strategies that the program will employ to achieve these goals after the program begins to be implemented;

(e) Includes a collection site procedural manual, and 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, and a protocol for safe management of damaged batteries that are returned to collection sites;

(f) Describes the financing methods used to implement the plan, consistent with section 7 of this act, including how producer fees and fee modulation will incorporate design for recycling and resource conservation as objectives, and a template reimbursement agreement, developed in consultation with local governments, for local governments and other program stakeholders;

(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 and a list of collection sites, including the latitude and longitude of collection sites;

(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 portable battery collection opportunities and pick-up service at special locations where batteries are often spent and replaced and that will provide adequate supervision of collection containers, such as parks with stores and campgrounds;

(j) Describes the methods used to calculate whether the stewardship program is collecting batteries in an amount roughly equivalent to the weight of covered batteries sold by producers into Washington, 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 brokers, transporters, processors, and facilities to be used by the program for the final disposition of batteries and how collected batteries will be managed in:

(i) An environmentally sound and socially just manner at facilities operating with human health and environmental protection standards that are broadly equivalent to or better than those required in the United States and other countries that are members of the organization for economic cooperation and development. A stewardship organization is in compliance with the requirements of this subsection if it meets standards broadly equivalent to, contained in, or better than the sustainable electronics reuse and recycling standard, version 3.0, as it existed as of July 1, 2020, published by sustainable electronics recycling international, and that uses only facilities for the final disposition of batteries that meet that standard; and

(ii) A manner 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 achieve a recycling efficiency rate, calculated consistent with section 10 of this act, of at least 70 percent for rechargeable batteries and at least 80 percent for primary batteries; and

(m) Proposes goals for increasing public awareness of the program, including subgoals applicable to public awareness of the program in vulnerable populations and overburdened communities identified by the department under chapter 70A.02 RCW, 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. The department may, by rule, identify the types of significant changes that require a new plan to be submitted to the department for approval. For purposes of this subsection, adding or removing a processor or transporter under the plan is not considered a significant change that requires a plan resubmittal;

(c) To address the novel inclusion of medium format batteries or large format batteries as covered batteries under the plan; and

(d) No less than every five years.

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

(a) After a producer begins or ceases to participate in a battery stewardship organization, as part of a quarterly update submitted to the department that also includes a current identification of the producers and brands participating in the plan;

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

(c) When adding or removing a processor or transporter, as part of a quarterly update submitted to the department; or

(d) 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 battery stewardship plan must include performance goals that measure, on an annual basis, the achievements of the program. Performance goals must take into consideration technical feasibility and economic practicality in achieving continuous, meaningful progress in improving:

(a) The rate of battery collection for recycling in Washington;

(b) The recycling efficiency of the program; and

(c) Public awareness of the program.

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

(a) Target collection rates;

(b) Target recycling efficiency rates of at least 70 percent for rechargeable batteries and at least 80 percent for primary batteries;

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

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

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

(a) Battery collection, transporting, 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) A battery stewardship organization implementing a battery stewardship plan on behalf of producers must develop, and continually improve over the years of program implementation, a system to collect charges from participating producers to cover the costs of plan implementation in an environmentally sound and socially just manner that encourages the use of design attributes that reduce the environmental impacts of covered batteries, such as through the use of eco-modulated fees to:

(i) Encourage designs intended to facilitate reuse and recycling;

(ii) Encourage the use of recycled content;

(iii) Discourage the use of problematic materials that increase system costs of managing covered products; and

(iv) Encourage other design attributes that reduce the environmental impacts of covered products.

(b) Beginning during the first year of program implementation, at a minimum for purposes of fulfilling the requirements of (a) of this subsection, a battery stewardship organization must proportionally reduce the financial obligations of producers for their use of batteries that contain recycled content.

(3)(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 weight of batteries sold by covered producers into Washington. 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 based on 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.

(4)(a) A battery stewardship organization must reimburse local governments for demonstrable costs incurred as a result of a local government facility or solid waste handling facility serving as a collection location for a program including, but not limited to, associated labor costs and other costs associated with accessibility and collection site standards such as storage.

(b) A battery stewardship organization must include in its battery stewardship plan, and provide upon request, a template of the service agreement and any other forms, contracts, or other documents for use in distribution of reimbursements. The service agreement template must be developed with local government input. The entities seeking or receiving reimbursement from the battery stewardship organization are not required to use the template agreement included in the program plan and are not limited to the terms of the template agreement included in the program plan.

NEW SECTION. **Sec.**  STEWARDSHIP PROGRAM COMPONENTS—COLLECTION AND MANAGEMENT REQUIREMENTS. (1) Battery stewardship organizations implementing a battery 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. Except as provided in subsection (2)(b) of this section, each battery stewardship plan must allow any person, business, government agency, or nonprofit organization to discard each chemistry and brand of covered battery at each collection site that counts towards the satisfaction of the collection site criteria in subsection (3) of this section.

(2)(a) At each collection site utilized by the program, each battery stewardship organization must provide suitable collection containers for discarded batteries that are segregated from other solid waste 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 program 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.

(b) Medium format batteries may only be collected at household hazardous waste collection locations or other locations that are staffed by persons who are certified to handle and ship 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 battery stewardship plan shall ensure statewide collection opportunities for all covered batteries. Statewide collection opportunities must be determined by geographic information modeling that considers permanent collection sites. The program may rely, in part, on collection events to supplement the permanent collection services required in (a) and (b) of this subsection. However, only permanent collection services specified in (a) and (b) of this subsection qualify towards the satisfaction of the requirements of this subsection.

(b) For portable batteries, each battery stewardship organization must provide statewide collection opportunities that include, but are not limited to, the provision of:

(i) At least one permanent collection site for portable batteries within a 15 mile radius for at least 95 percent of Washington residents;

(ii) The establishment of collection sites that are accessible and convenient to overburdened communities identified by the department under chapter 70A.02 RCW, in an amount that is roughly proportional to the number and population of overburdened communities identified by the department under chapter 70A.02 RCW relative to the population or size of the state as a whole;

(iii) At least one permanent collection site for portable batteries in addition to those required in (b)(i) of this subsection for every 30,000 residents of an urbanized area and for every urban cluster of at least 30,000 residents;

(iv) Collection opportunities and service for portable batteries to all counties and tribal lands in Washington;

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

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

(c) For medium format batteries, a battery stewardship organization must provide statewide collection opportunities that include, but are not limited to, the provision of:

(i) At least 25 collection sites in Washington;

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

(iii) A collection location in each county of at least 200,000 persons, as determined by the most recent population estimate of the office of financial management;

(iv) The establishment of collection sites that are accessible to public transit and that are convenient to overburdened communities identified by the department under chapter 70A.02 RCW; and

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

(4)(a) Stewardship programs must use existing 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 programs must use as a collection site for portable batteries 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 and that poses an immediate health and safety concern. The stewardship organization must notify the department upon suspending or terminating a collection site or service.

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

(b) Stewardship programs 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 programs 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) Stewardship programs are not required to provide for the collection of batteries still contained in covered electronic products under chapter 70A.500 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) The department must adopt rules to clarify the protocols that a collection site must follow for the collection of batteries that do not bear a label or marking that clearly conveys information related to the battery's watt-hour capacity or weight.

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 website;

(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 the collection site procedural manual approved by the department to collection sites to help ensure proper management of covered batteries at collection locations; and

(f) And implementation of outreach and educational resources targeted to overburdened communities and vulnerable populations identified by the department under chapter 70A.02 RCW that are conceptually, linguistically, and culturally accurate for the communities served and reach the state's diverse ethnic populations, including through meaningful consultation with communities that bear disproportionately higher levels of adverse environmental and social justice impacts.

(2) Each battery stewardship organization must provide:

(a) Consumer-focused educational promotional materials to each collection location used by the program 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 these materials.

(4) If multiple battery stewardship organizations are implementing plans approved by the department, the battery stewardship organizations must coordinate in carrying out their education and outreach responsibilities under this section and must include in their annual reports to the department under section 10 of this act a summary of their coordinated education and outreach efforts.

(5) 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, 2027, and each June 1st thereafter, each battery stewardship organization must submit an annual report to the department covering the preceding calendar year of battery stewardship plan implementation. The report must include:

(a) An independent financial audit of a 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 program 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 to provide transparency that funds collected from producers as a result of their activities in Washington are spent on program implementation in Washington. Battery stewardship organizations implementing similar battery stewardship programs 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 program;

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

(e) A calculation of the recycling efficiency rate, as measured consistent with subsection (2) of this section;

(f) 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;

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

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

(i) The estimated aggregate 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;

(j) A description of the manner in which the collected batteries were managed and recycled, including a discussion of best available technologies and the recycling efficiency rate;

(k) 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, samples of education and outreach materials, a summary of coordinated education and outreach efforts with any other battery stewardship organizations implementing a plan approved by the department, and a summary of any changes made during the previous calendar year to education and outreach activities;

(l) A list of all collection locations and accompanying latitude and longitude data for each listed site, and an up-to-date map indicating the location of all collection sites used to implement the program, with links to appropriate websites where there are existing websites associated with a location;

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

(n) 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

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

(2)(a) The weight of recovered resources from batteries counted towards satisfaction of the recycling efficiency rate requirement must, by the end of a program calendar year, be used:

(i) Or destined to be used by a person for the making of products or packaging;

(ii) As zinc manganese fertilizer; or

(iii) As aggregate. The weight of aggregate may only account for up to 15 percent of the materials counted towards satisfaction of the recycling efficiency rate requirement.

(b) The weight of batteries or recovered resources from those batteries must only be counted once and may not be counted by more than one producer.

(c) The following may not be counted towards satisfaction of the recycling efficiency rate requirement:

(i) The weight of materials that are land disposed;

(ii) The weight of materials that are incinerated;

(iii) The weight of materials that are used as a fuel or fuel supplement;

(iv) The weight of materials that are stored, stockpiled, used as landfill cover, or otherwise deposited on land in a manner that does not meet the criteria of (a) of this subsection.

(3) In addition to the requirements of subsection (1) of this section, with respect to each facility used in the processing or disposition of batteries collected under the program, the battery stewardship organization must report:

(a) Whether the facility is located domestically, in an organization for economic cooperation and development country, or in a country that meets organization for economic cooperation and development operating standards;

(b) Emissions of pollutants to air and water, or other activities that impact public health or the environment. A battery stewardship organization may satisfy the requirement established in this subsection through the submission of data contained in any reporting required under existing permits where applicable, if the permits and reporting are similar to the permits and reporting that would be required of a facility located in the United States; and

(c) Labor metrics including, but not limited to, wages, unions, and workforce demographics.

(4) If a battery stewardship organization has disposed of covered batteries though energy recovery, incineration, or landfilling during the preceding calendar year of program 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.

(5) A producer or battery stewardship organization that submits information or records to the department under this chapter may request that the information or records be made available only for the confidential use of the department, the director of the department, or the appropriate division of the department. The director of the department must consider the request and if this action is not detrimental to the public interest and is otherwise in accordance with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

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, including the provisions of this chapter applicable to producers of large format batteries, if any. 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 60 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 30 days;

(b) Reviewing annual reports submitted under section 10 of this act within 90 days of submission to ensure compliance with that section;

(c)(i) Maintaining a website 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 website 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 based on information provided to the department from battery stewardship organizations; and

(d) Providing technical 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 the technical 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 a producer who sells or otherwise makes available in Washington covered batteries, battery containing products, or large format batteries not included in an approved plan in violation of the requirements of this chapter. 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 $1,000 to collect, transport, and recycle or otherwise dispose of the covered batteries, battery containing products, or large format batteries 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 a person who violates this chapter in an amount of up to $1,000 per violation per day.

(b) The department may administratively impose a civil penalty of up to $10,000 per violation per day on a person for repeated violations of this chapter or failure to comply with an order issued under (c) of this subsection.

(c) Whenever on the basis of 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 (b) of this subsection, without receiving a written warning prescribed in (e) of this subsection.

(d) A 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 30 days of the notice. A producer, retailer, or battery stewardship organization that violates a provision of this chapter after the initial written warning may 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 70A.--- 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.**  MARKING REQUIREMENTS FOR BATTERIES. (1) Beginning January 1, 2027, a producer or retailer may only sell, distribute, or offer for sale in or into Washington a large format battery, covered battery, or battery containing product that contains a battery that is designed or intended to be easily removable from the product, if the battery is:

(a) Marked, including with a color code mark beginning January 1, 2029, to identify the chemistry employed in storing energy in the battery;

(b) Marked with an identification of the producer of the battery, unless the battery is less than .5 inch in diameter or does not contain a surface whose length exceeds .5 inch;

(c) Marked with the weight and watt-hour rating of the battery, for batteries that exceed 300 watt hours or 11 pounds in weight; and

(d) Labeled to clearly indicate that the battery is recyclable and should not be disposed of in solid waste or recycling containers other than stewardship program collection containers.

(2) The department may amend, by rule, the requirements of subsection (1) of this section to maintain consistency with the labeling requirements or voluntary standards for batteries established in federal law or the laws of other states, or an international battery labeling standard.

NEW SECTION. **Sec.**  REQUIREMENT TO USE BATTERY COLLECTION PROGRAMS. (1) Effective July 1, 2026, for portable batteries and July 1, 2028, for medium format batteries, or the first date on which an approved plan begins to be implemented under this chapter by a battery stewardship organization, whichever comes first:

(a) 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, except commercial, industrial, or government facilities and programs that utilize other responsible battery management arrangements.

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

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

(d) 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 managed through collection locations established by a stewardship organization and are not accepted for disposal.

(e) 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.

(2) Beginning July 1, 2030, the provisions of subsection (1) of this section apply to large format batteries unless the department provides otherwise by rule under section 17 of this act.

NEW SECTION. **Sec.**  DEPARTMENT OF COMMERCE ASSESSMENT OF LARGE FORMAT BATTERIES. (1) By July 1, 2026, the department of commerce must complete an assessment of the opportunities and challenges associated with the end-of-life management of large format batteries. The department of commerce must consult with the department and interested stakeholders in completing the assessment, including consultation with overburdened communities and vulnerable populations identified by the department under chapter 70A.02 RCW. The assessment must identify any needed adjustments to the stewardship program requirements established in this chapter that are necessary to maximize public health, safety, and environmental benefits, such as battery reuse. The study must assess how to design stewardship program requirements to encourage the development of battery technology that reduces reliance on rare earth and conflict materials and uses more earth abundant materials. The assessment must survey existing studies of large format batteries, including studies completed by the state of California, and include the department of commerce's analysis of:

(a) The different categories and uses of large format batteries;

(b) The current economic value and reuse or recycling potential of large format batteries or large format battery components;

(c) The current methods by which unwanted large format batteries are managed in Washington and nearby states and provinces;

(d) The risks to human health and the environment if an accessible, safe, and verifiable end-of-life management system is not instituted statewide for large format batteries;

(e) Challenges posed by the potential collection, management, and transport of large format batteries, including challenges associated with removing large format batteries that were not intended or designed to be easily removable from products containing large format batteries, other than by the manufacturer;

(f) The environmental and equity implications of displacing demand for new rare earth materials, critical materials, and other conflict materials through the reuse and recycling of batteries; and

(g)(i) Which criteria of this chapter should apply to large format batteries in a manner that is identical or analogous to the requirements applicable to covered batteries; and

(ii) Which criteria of this chapter should not apply to large format batteries in any manner.

(2) By October 1, 2026, the department of commerce must submit a report to the department and the appropriate committees of the legislature containing the findings of the assessment required in subsection (1) of this section.

NEW SECTION. **Sec.**  DEPARTMENT OF ECOLOGY RULE MAKING TO REQUIRE THE ESTABLISHMENT OF STEWARDSHIP PROGRAM PARTICIPATION REQUIREMENTS FOR LARGE FORMAT BATTERIES. (1) By January 1, 2029, the department may, but is not required to, adopt rules that require producers of large format batteries to participate in a stewardship program that achieves environmentally positive outcomes similar to those achieved by a battery stewardship program for medium format and portable batteries.

(2) Any rules adopted by the department under this section must require producers of large format batteries to participate in a stewardship program by no earlier than July 1, 2030. The department must submit a report to the appropriate committees of the legislature by July 1, 2029, addressing any proposed product stewardship program for large format batteries that may be established by any rules adopted by the department.

(3) In adopting rules, the department must consider the results of the assessment by the department of commerce required under section 16 of this act and involve the expertise of the department's recycling development center created in chapter 70A.240 RCW.

(4) The department must delay or exclude categories of large format batteries, including categories of large format batteries that are excluded from the definition of a covered battery in section 2 of this act, based on the results of the assessment by the department of commerce required under section 16 of this act, from stewardship program requirements, if the department determines that stewardship program requirements are infeasible for a category of large format batteries due to:

(a) An existing industry or other battery management system exists for a category of large format batteries that currently attains a rate of collection that exceeds 95 percent of the number of that category of batteries sold in Washington each year, and the existing battery management system processes the batteries using environmentally sound management practices; or

(b) If delay or exclusion from program participation requirements is necessary to protect human health or the environment.

(5) In addition to the exemptions established in subsection (4) of this section, the department may exclude producers of large format batteries from some or all of the stewardship program requirements under the rules adopted by the department, based on other factors determined by the department.

NEW SECTION. **Sec.**  ANTITRUST. Producers or battery stewardship organizations acting on behalf of producers that prepare, submit, and implement a battery stewardship program plan pursuant to this chapter and who are thereby subject to regulation by the department are granted immunity from state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade and commerce, for the limited purpose of planning, reporting, and operating a battery stewardship program, including:

(1) The creation, implementation, or management of a battery stewardship organization and any battery stewardship plan regardless of whether it is submitted, denied, or approved;

(2) The cost and structure of a battery stewardship plan; and

(3) The types or quantities of batteries being recycled or otherwise managed pursuant to this chapter.

**Sec.**  RCW 43.21B.110 and 2021 c 316 s 41 and 2021 c 313 s 16 are each reenacted and amended to read as follows:

(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 70A.15 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, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 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 70A.--- 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, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330 and chapter 70A.--- 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 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(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 70A.205.145.

(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.

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(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 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, 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 2021 c 316 s 42 and 2021 c 313 s 17 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapters 70A.355 and 70A.--- 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 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.245.040 and 70A.245.050, which shall be credited to the recycling enhancement account created in RCW 70A.245.100, RCW 70A.300.090, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 70A.65.200, which shall be credited to the climate investment account created in RCW 70A.65.250, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, chapter 70A.--- RCW (the new chapter created in section 21 of this act), which shall be credited to the responsible battery management account created in section 13 of this act, and RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090.

NEW SECTION. **Sec.**  CODIFICATION. Sections 1 through 18 of this act constitute a new chapter in Title 70A RCW.

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 ---**