

HOUSE BILL REPORT

E2SSB 5144

As Reported by House Committee On:

Environment & Energy
Appropriations

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

Brief Description: Providing for responsible environmental management of batteries.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Stanford, Nguyen, Cleveland, Frame, Hasegawa, Hunt, Keiser, Kuderer, Lovelett, Nobles, Pedersen, Rolfes, Valdez and Wilson, C.).

Brief History:

Committee Activity:

Environment & Energy: 3/14/23, 3/21/23 [DPA];
Appropriations: 3/30/23, 3/31/23 [DPA(APP w/o ENVI)].

Brief Summary of Engrossed Second Substitute Bill (As Amended By Committee)

- Requires the producers of certain batteries to participate in a stewardship organization that plans and provides for battery collection and end-of-life management, beginning January 1, 2027, for portable batteries and January 1, 2029, for medium-sized batteries.
- Directs the Department of Ecology (Ecology) to assess the opportunities and challenges of managing batteries other than covered portable and medium-sized batteries.
- Directs Ecology to report policy recommendations to the Legislature related to the collection and management of electric vehicle batteries by April 2024.
- Prohibits retailers from selling covered batteries whose producers do not participate in an approved stewardship plan.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires battery stewardship organizations implementing a stewardship plan to establish performance goals, follow program funding criteria, meet collection and management standards, conduct public education and outreach, and report on program operations to Ecology.
- Requires battery disposal to occur via collection sites provided by a battery stewardship organization or other specified battery management arrangements.
- Establishes labeling requirements for batteries sold in Washington.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Doglio, Chair; Mena, Vice Chair; Berry, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

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

Minority Report: Without recommendation. Signed by 1 member: Representative Barnard.

Staff: Jacob Lipson (786-7196).

Background:

There are several chemical compositions of single-use and rechargeable batteries in common commercial use, including alkaline, nickel cadmium, lithium ion, and lead acid. The dangerous waste rules adopted by the Department of Ecology (Ecology) allow businesses to manage most types of batteries as universal waste, which allows the batteries to be managed consistent with universally applicable waste containment, management, accumulation, labeling, shipment, and release response criteria. Ecology encourages household generators of battery waste to take them to a household hazardous waste collection facility. Batteries can also be returned to the place of purchase if the retailer participates in a battery return program. Some product and battery manufacturers and retailers participate voluntarily in programs to promote battery recycling.

Washington has established stewardship programs for five categories of products: (1) electronics; (2) light bulbs containing mercury, such as compact fluorescent lights; (3) photovoltaic solar panels; (4) pharmaceuticals; and (5) paint. The Electronic Products Stewardship Program provides for the collection and management of batteries and other components contained in covered electronic products.

In general, the state's product stewardship programs require producers to participate in a stewardship organization or program that is responsible for the collection, transport, and end-of-life management of covered products. Ecology is responsible for the oversight of the state's product stewardship programs, with the exception of the Pharmaceutical Stewardship Program, which is overseen by the Department of Health.

Under state solid waste laws, Ecology implements and enforces a Vehicle Battery Recycling Program. Batteries covered by the Vehicle Battery Recycling Program include batteries with a core of elemental lead that are capable of use in any vehicle, truck, boat, airplane, or utility vehicle, and capable of producing 6 or more volts. The Vehicle Battery Recycling Program prohibits the disposal of covered batteries except by delivery to a person selling lead acid batteries, Ecology-authorized collectors, or to a secondary lead smelter. The retail sale of each vehicle battery must include in the price of a battery sale a core charge of at least \$5, which is applied unless the purchaser offers the seller an equivalent used battery. People that sell vehicle batteries at retail in Washington must accept used vehicle batteries from a battery purchaser at the time of purchase of a replacement battery, and must post notices to inform customers of certain requirements of the Vehicle Battery Recycling Program.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review. Penalties that are appealable to the PCHB may be imposed and collected following certain protocols.

The Utilities and Transportation Commission supervises and regulates private solid waste companies, including reviewing and approving their rates and fees. Cities and towns also sometimes provide solid waste collection services.

Summary of Amended Bill:

Battery Labeling Requirements.

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

- portable batteries, which include rechargeable batteries 11 pounds or less with a rating of 300 watt hours or less and primary batteries weighing 4.4 pounds or less;
- medium format batteries, which include rechargeable batteries between 11 and 25 pounds with a rating of between 300 or 2,000 watt hours and primary batteries of between 11 and 25 pounds; and
- large format batteries of at least 25 pounds or a rating of a least 2,000 watt hours.

Beginning January 1, 2028, producers and retailers may only sell, distribute, or offer for sale portable batteries, medium format batteries, large format batteries, and battery-containing products containing a battery designed or intended to be easily removable from

the product if the batteries are:

- marked with an identification of the battery's producer, unless the battery is less than half an inch in diameter or does not have a surface of longer than half an inch; or
- beginning in 2030, marked with proper labeling to ensure collection and recycling, by identifying the chemistry of the battery and an indication that the battery should not be disposed of as household waste.

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

Battery Manufacturer and Retailer Responsibilities.

Beginning January 1, 2027, each producer selling, distributing, or offering for sale portable batteries or battery-containing products must participate in and fund a stewardship organization that implements a stewardship plan approved by Ecology. This requirement applies to producers of medium format batteries beginning January 1, 2029. Producers that do not participate in a stewardship plan may not sell covered batteries in Washington. Excluded from these requirements are producers of batteries contained within medical devices, batteries that contain electrolyte as a free liquid, lead acid batteries weighing more than 11 pounds, batteries subject to the Ecology-implemented lead Vehicle Battery Recycling Program, and batteries contained in battery-containing products that are not intended or designed to be easily removed from the product. Covered electronic products under the state's electronic product recycling law are excluded from the battery-containing products subject to product stewardship program participation requirements. Producer responsibility for a covered battery or battery-containing product is assigned to one of a number of entities associated the battery or product, or to be a party that has contractually accepted responsibility as the producer for a battery or battery-containing product.

Beginning July 1, 2027, for portable batteries, and July 1, 2029, for medium format batteries, retailers may not sell, distribute, or offer for sale covered batteries or battery-containing products unless the producer participates in a battery stewardship organization. Retailers are in compliance and not subject to penalties so long as a website made available by Ecology lists the producer or brand of battery or battery-containing product as being a stewardship plan participant. Retailers are not required to make retail locations available to serve as collection sites for a battery stewardship program; however, retail locations that do serve as collection sites must comply with requirements for battery collection sites established for the battery stewardship organization.

Retailers may not sell batteries that are not marked consistent with battery labeling requirements. Producers must certify to retailers that the batteries in their battery-containing products are labeled consistent with battery labeling requirements. Retailers may provide information supplied by the battery stewardship organization regarding the options for end-of-life management provided through the battery stewardship program. Battery stewardship organizations must make specified types of information available to retailers. Retailers, producers, or battery stewardship organizations may not charge a point-

of-sale fee to consumers to cover stewardship organization or battery stewardship program costs.

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

By the later of July 1, 2026, or within six months of Ecology adopting program rules, a battery stewardship organization must submit a plan for covered portable batteries to Ecology for approval. A battery stewardship organization must submit a plan for covered medium format batteries within two years of Ecology adopting rules to implement battery stewardship law requirements. Ecology must review a submitted plan and may approve it based on consideration of 15 specified components. When certain changes occur to program operations, battery stewardship organizations must submit new plans to Ecology or submit plan amendments to Ecology, depending on the nature of the operational change. Battery stewardship organizations must submit new plans for approval to Ecology at least every five years. Ecology may require the submission of a revised plan at least five years after the approval of an initial plan if the battery stewardship organization fails to meet specified performance goals.

A battery stewardship organization's plan submitted to Ecology for approval and implemented by the battery stewardship organization must include the following:

- *Performance Goals.* Each battery stewardship plan must include performance goals that annually measure program achievements. Performance goals must include targeted collection rates, a target recycling efficiency rate of at least 60 percent for rechargeable batteries and 70 percent for primary batteries, and public awareness, convenience, and accessibility goals. Beginning in 2032, and every five years thereafter, Ecology may adopt rules to increase the minimum recycling efficiency rates based on economically and technically feasible processes and methodology.
- *Program Funding.* Battery stewardship organizations must ensure funding is available to fully implement a program in an environmentally sound and socially just manner, including: (1) battery collection; (2) transport and recycling; (3) education and outreach; (4) administrative fees; and (5) program evaluation. The system of charges paid by participating producers must encourage design attributes that reduce environmental impacts, such as through eco-modulated fees. Battery stewardship organizations must reimburse local governments for demonstrable costs for battery collection site services.
- *Battery Collection and Management.* Battery stewardship organizations must provide for the collection of all chemistries and brands of covered batteries on a free, continuous, convenient, visible, and accessible basis to any person, business, or government. Battery stewardship organizations must provide suitable collection containers, and collection sites must adhere to an operations manual. Statewide collection opportunities meeting enumerated criteria must be provided, as demonstrated using geographic information modeling. Medium format batteries may only be collected at household hazardous waste facilities or other sites with persons certified to ship and handle hazardous materials under federal regulations. Entities

- operating collection events for a stewardship program may retain collected materials under certain circumstances. Local governments may collect batteries from sites operating outside of the battery stewardship program if they meet certain collection, transport, and processing standards applicable to battery stewardship organizations. Damaged and defective batteries are intended to be collected at collection sites staffed by trained persons, and battery stewardship organizations must provide for the collection of damaged and defective batteries in each county through collection sites or events. Stewardship organizations are not required to provide for the collection of battery-containing products or batteries that remain in battery-containing products at the time of delivery to a collection site, but are required to collect loose batteries. Collected batteries must be managed by a battery stewardship organization in a hierarchy that prioritizes, in descending order, waste prevention and reduction, reuse, recycling, and other end-of-life management options, which are allowed only if demonstrated to Ecology that other management options are infeasible.
- *Education and Outreach.* Battery stewardship organizations must carry out specified promotional activities, including developing a website and collection site safety training procedures, and providing collection sites with information about the management of recalled batteries, which are not intended to be part of the battery stewardship organization's collection program. Retailers must be provided promotional materials by stewardship organizations, and collection sites must be provided safety information. Battery stewardship organizations must carry out a public awareness survey at the beginning of the battery stewardship program at least every five years.

Battery Stewardship Program Administration, Enforcement, and Reporting.

Battery stewardship organizations must submit annual reports to Ecology, beginning June 1, 2028. Annual reports must include financial assessments and statements, operational and logistical information such as the location of collection sites, and specified statistics regarding program operations, including statistics used to determine the satisfaction of battery stewardship program performance goals under the plan. Battery stewardship organizations may request that Ecology keep submitted information confidential. Ecology must adopt rules to implement, administer, and enforce battery management requirements. Ecology must establish annual fees to be paid by battery stewardship organizations. Ecology is assigned specific roles and responsibilities, including reviewing submitted stewardship plans and annual reports, and maintaining a website that lists producers and brands participating in an approved battery stewardship organization.

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

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

Civil Actions Among Producers and Battery Stewardship Organizations.

Battery stewardship organizations may bring civil actions to recover costs, damages, and fees from producers who sell covered batteries or battery-containing products not included in an approved plan. In order to bring a civil action, a battery stewardship organization must incur costs for managing batteries in excess of \$1,000 associated with a nonparticipating producer. Battery stewardship organizations may also bring civil actions against other battery stewardship organizations that underperform on their battery collection responsibilities by failing to collect and manage batteries in an amount roughly equivalent to the costs imposed on the plaintiff battery stewardship organization by the defendant, plus legal fees. Civil actions are in addition to Ecology's penalty authority.

Evaluations of Electric Vehicle Batteries and Other Non-Covered Batteries.

Ecology must submit a report to the Legislature making policy recommendations for the collection and management of electric vehicle batteries, with a preliminary report due in November 2023 and a final report due in April 2024. In developing recommendations, Ecology must solicit stakeholder input and examine best practices in other jurisdictions.

By July 1, 2027, Ecology must complete an assessment of the opportunities and challenges for the end-of-life management batteries that are not required to participate in a battery stewardship organization, including large format batteries, lead acid batteries subject to the existing lead acid vehicle battery program, and batteries that are not easily removable from a product by a customer, including batteries in medical devices or electronic products. Ecology must consult with the Department of Commerce and stakeholders in completing the assessment, and consider specified aspects of battery management. Ecology must submit a report to the Legislature by October 2027 with the findings of the assessment.

By January 1, 2030, Ecology may adopt rules to require producers of batteries and battery-containing products covered by the assessment completed in 2027 to participate in a battery stewardship organization that achieves environmentally positive outcomes similar to the stewardship organization for medium format and portable batteries. Rules may require producer participation in a battery stewardship organization no earlier than July 1, 2031, and may exclude or delay requirements for categories of batteries based on the results of the assessment. Ecology must exclude large format batteries from electric vehicles if electric vehicle batteries are managed under state law by 2030 in a manner that achieves similar outcomes.

Battery Disposal Requirements.

Persons must dispose of unwanted covered batteries through one of the following: (1) battery stewardship program collection sites; (2) local government facilities operating outside of the battery stewardship program that meet specified collection, transport, and processing standards; and (3) for regulated generators of covered batteries, using disposal

methods that meet the requirements of federal or state hazardous and solid waste laws. Fees may not be charged at the time unwanted covered batteries are delivered or collected for management. Batteries may not be placed in waste containers for disposal in landfills, incinerators, or waste-to-energy facilities, or in mixed recyclable containers that do not have a separate location or compartment for covered batteries.

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

Battery disposal requirements take effect July 1, 2027, for portable batteries and July 1, 2029, for medium format batteries, or on the first date when a battery stewardship organization begins implementing an approved plan.

Other.

The Business and Occupation Tax does not apply to receipts by a battery stewardship organization from participating producers.

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

The creation of battery management requirements and the battery stewardship program does not change or limit the authority of the Utilities and Transportation Commission or cities and towns related to solid waste services.

A severability clause is included.

Amended Bill Compared to Engrossed Second Substitute Bill:

As compared to the engrossed second substitute bill, the amended bill:

- prohibits fees from being charged at the time of unwanted covered battery collection by any person, and requires that collected batteries be collected, transported, and processed in a manner that meets standards applicable to a battery stewardship organization, instead of those provisions applying only to batteries collected under a battery stewardship organization's program;
- requires battery stewardship programs to use any entity that meets the criteria in a battery stewardship organization's approved plan as a site for a collection event if the entity has an agreement in place with the battery stewardship organization at least 60 days prior to an event;
- provides that an entity initiating a battery collection event must pay for the costs associated with the event unless a battery stewardship organization agrees otherwise, and must allow any brand or chemistry of battery to be discarded at the event;
- authorizes entities that operate temporary collection events for a battery stewardship

- program to retain collected materials, provided that collection, transport, and processing standards applicable to the battery stewardship organization are met and provides for entities to report information related to collections from such events, and for a battery stewardship organization to count collected batteries towards performance targets;
- authorizes a local government facility to collect batteries through sites or events outside of the program implemented by the battery stewardship organization, and establishes that: (1) each chemistry and brand of covered battery must be collected by the local government facility; (2) the batteries must be collected, transported, and processed in a manner that meets the standards applicable to a battery stewardship organization; (3) the local government must report information related to collections to a battery stewardship organization; and (4) a battery stewardship organization may count covered batteries collected in this manner towards program performance goals;
 - provides for a battery stewardship organization to submit a plan to the Department of Ecology (Ecology) by the later of July 1, 2026, or within six months of the adoption of Ecology rules, rather than requiring a plan to be submitted by July 1, 2026, without consideration of the date on which Ecology's rules are adopted;
 - changes the mechanism for the proposal of updated performance goals by a battery recycling program to provide for updated plans or plan amendments to include any updated performance goals, rather than requiring updated goals to be proposed biennially as part of the annual report;
 - deposits penalties paid for violations of battery stewardship program requirements into the Model Toxics Control Operating Account rather than the new Responsible Battery Management Account, into which battery stewardship program fees are also deposited; and
 - makes numerous clarifications and logistical specifications related to plan implementation, including:
 - clarifying the relevant years to be used for the calculation of a program's collection rate;
 - specifying that a producer may include the first person who sells or offers for sale a battery in or into Washington, in addition to a first person who distributes a battery in or into Washington;
 - specifying that restrictions on producers apply to persons making available and distributing covered batteries or battery-containing products, in addition to those selling such products;
 - updating the convenience standards to reference the current urban area definition used by the United States Census Bureau;
 - standardizing references to "collection sites," rather than interchangeably referencing "collection sites" and "collection locations";
 - specifying that Ecology may adopt rules to update references to federal standards;
 - specifying that certain provisions related to collection of covered batteries apply only to permanent collection sites or to temporary collection events;
 - clarifying that covered batteries that are generated by regulated generators of

waste under federal and state hazardous waste or solid waste laws must manage those batteries in a manner consistent with federal and state hazardous waste and solid waste laws; and

- clarifying that Ecology's 2027 assessment of non-covered batteries must include batteries that are not subject to Ecology's existing lead acid vehicle battery program and to electronic products that are not covered electronic products under the state's electronic waste management laws.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Battery use is increasing. Batteries contain critical resources that are in limited supply, and which should be reused and recycled to reduce the environmental impacts of mining and processing metal ores. Batteries contain toxic materials, and can cause fires if improperly handled or commingled in the curbside solid waste or recycling streams. Battery fires have destroyed local government and solid waste collection company assets, hurt employees and presented safety hazards for workers, and required investments in fire-prevention technologies. Batteries are labor-intensive for solid waste facilities to manage, and often require hand sorting and packaging for transport. Creating a producer responsibility program for batteries that fully reimburses the costs of the collection system will reduce financial burdens on solid waste utility ratepayers. A battery stewardship program will increase consumer convenience for responsible disposal options and increase recycling rates for batteries. The public is unsure of how to properly dispose of batteries. The electric vehicle study in the bill is important because auto wrecking yards currently have no training or viable options for the disposal of electric vehicle batteries. The Legislature could enact a bill in coming years to address electric vehicle battery management.

(Opposed) Businesses that currently refine and recycle battery materials should not be prevented from working with businesses or the battery stewardship organizations to allow for them to continue to collect batteries and manage their collected battery materials.

(Other) This bill exempts batteries that are covered by the state's electronic waste recycling program. This bill will reduce the environmental impacts of batteries but the funds to implement it are not in the Governor's budget. The program is not funded based on a point-of-sale fee, and does not require retailers to serve as takeback locations. The deadline for a battery stewardship organization to submit a plan should be linked to the date on which the

Department of Ecology finishes adopting rules to implement the program. Ecology should not, by rule, be allowed to reverse the statutory exemption in the bill for medical products from battery stewardship program participation requirements in future years.

Persons Testifying: (In support) Senator Derek Stanford, prime sponsor; James King, Independent Business Association; Ann Murphy, League of Women Voters of Washington; Travis Dutton, Washington State Association of Counties and Washington Association of County Solid Waste Managers; Rick Gilbert, Kitsap County Solid Waste Division; Suzanne Hildreth, Seattle Public Utilities; George Kerchner, The Rechargeable Battery Association; Heather Trim, Zero Waste Washington; Preston Peck, City of Tacoma Environmental Services; Ashley Evans; and Logan Harvey, Recology King County.

(Opposed) Don Tatro, Redwood Materials.

(Other) Mark Johnson, Washington Retail Association; Megan Warfield, Department of Ecology; Carin Stuart, Call2Recycle; Brandon Houskeeper, Northwest Grocery Association; Charlie Brown, Consumer Technology Association; and Bobby Patrick, AdvaMed.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Environment & Energy. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Rude, Sandlin, Schmick and Steele.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Environment & Energy:

The Appropriations Committee recommendation removes the authority for the Department of Ecology to adopt rules by 2030 to establish battery stewardship program requirements based on the results of a 2027 assessment applicable to large format batteries, medical devices, lead-acid batteries, and battery-containing products.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 23, 2023.

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

Staff Summary of Public Testimony:

(In support) Currently, the disposal of batteries is costly. Lithium batteries cause fires in trucks and trailers, and means of preventing fires, such as thermal imaging cameras, are expensive. Local governments should receive funding to implement this bill. There has been recent legislation in California and Washington, D.C. with a similar model. There is consumer confusion over which batteries potentially cause fires. It is difficult for recycling facilities to get insurance because people put batteries which may cause fires in the recycling. Batteries should be recovered because there are minerals in them that are mined in countries that have labor and other issues. There is a need for better product stewardship programs, such as the one created in this bill. Batteries need to be kept out of the recycling, garbage, and compost streams.

(Opposed) The battery stewardship organization in this bill is overly complex and would create a virtual monopoly. The battery assessment in the bill should be done first, not after the program has been in place for years. Batteries should be collected for free without this bill.

(Other) Changes made by the House Environment and Energy Committee were welcomed and should remain in the bill. There are concerns that some of the changes made by the House Environment and Energy Committee will have a fiscal impact, or create a risk of litigation.

Persons Testifying: (In support) Preston Peck, City of Tacoma, Environmental Services; Logan Harvey, Recology; and Heather Trim, Zero Waste Washington.

(Opposed) Dave Warren, Redwood Materials.

(Other) Eric Frederickson, Call2Recycle; and George Kerchner, The Rechargeable Battery Association.

Persons Signed In To Testify But Not Testifying: None.