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HOUSE BILL 2645

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State of Washington

66th Legislature

2020 Regular Session

By Representatives Smith, Eslick, and Pollet

Read first time 01/16/20. Referred to Committee on Environment & Energy.

1 AN ACT Relating to the photovoltaic module stewardship and  
2 takeback program; and amending RCW 70.355.010.

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

4 **Sec. 1.** RCW 70.355.010 and 2017 3rd sp.s. c 36 s 12 are each  
5 amended to read as follows:

6 (1) (~~(Findings.)~~) The legislature finds that a convenient, safe,  
7 and environmentally sound system for the recycling of photovoltaic  
8 modules, minimization of hazardous waste, and recovery of  
9 commercially valuable materials must be established. The legislature  
10 further finds that the responsibility for this system must be shared  
11 among all stakeholders, with manufacturers financing the takeback and  
12 recycling system.

13 (2) (~~(Definitions. For purposes of this section the following~~  
14 ~~definitions apply:)~~) The definitions in this subsection apply  
15 throughout this section unless the context clearly requires  
16 otherwise.

17 (a) "Consumer electronic device" means any device containing an  
18 electronic circuit board that is intended for everyday use by  
19 individuals, such as a watch or calculator.

20 (b) "Department" means the department of ecology.

1 (c) "Distributor" means a person who markets and sells  
2 photovoltaic modules to retailers in Washington.

3 (d) "Installer" means a person who assembles, installs, and  
4 maintains photovoltaic module systems.

5 (e) "Manufacturer" means any person in business or no longer in  
6 business but having a successor in interest who, irrespective of the  
7 selling technique used, including by means of distance or remote  
8 sale:

9 (i) Manufactures or has manufactured a photovoltaic module under  
10 its own brand names for use or sale in or into this state;

11 (ii) Assembles or has assembled a photovoltaic module that uses  
12 parts manufactured by others for use or sale in or into this state  
13 under the assembler's brand names;

14 (iii) Resells or has resold in or into this state under its own  
15 brand names a photovoltaic module produced by other suppliers,  
16 including retail establishments that sell photovoltaic modules under  
17 their own brand names;

18 (iv) Manufactures or has manufactured a cobranded photovoltaic  
19 module product for use or sale in or into this state that carries the  
20 name of both the manufacturer and a retailer;

21 (v) Imports or has imported a photovoltaic module into the United  
22 States that is used or sold in or into this state. However, if the  
23 imported photovoltaic module is manufactured by any person with a  
24 presence in the United States meeting the criteria of manufacturer  
25 under ~~((a))~~ (e)(i) through ~~((d))~~ (vi) of this subsection, that  
26 person is the manufacturer;

27 (vi) Sells at retail a photovoltaic module acquired from an  
28 importer that is the manufacturer and elects to register as the  
29 manufacturer for those products; or

30 (vii) Elects to assume the responsibility and register in lieu of  
31 a manufacturer as defined under ~~((b))~~ (e)(i) through (vi) of this  
32 subsection.

33 ~~((d))~~ (f) "Photovoltaic module" means the smallest  
34 nondivisible, environmentally protected assembly of photovoltaic  
35 cells or other photovoltaic collector technology and ancillary parts  
36 intended to generate electrical power under sunlight, except that  
37 "photovoltaic module" does not include a photovoltaic cell that is  
38 part of a consumer electronic device for which it provides  
39 electricity needed to make the consumer electronic device function.  
40 "Photovoltaic module" includes but is not limited to

1 interconnections, terminals, and protective devices such as diodes  
2 that:

3 (i) Are installed on, connected to, or integral with buildings;  
4 (~~(e)~~)

5 (ii) Are used as components of freestanding, off-grid, power  
6 generation systems, such as for powering water pumping stations,  
7 electric vehicle charging stations, fencing, street and signage  
8 lights, and other commercial or agricultural purposes; or

9 (iii) Are part of a system connected to the grid or utility  
10 service.

11 (~~(e)~~) (g) "Rare earth element" means lanthanum, cerium,  
12 praseodymium, neodymium, promethium, samarium, europium, gadolinium,  
13 terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium,  
14 yttrium, or scandium.

15 (~~(f)~~) (h) "Reuse" means any operation by which a photovoltaic  
16 module or a component of a photovoltaic module changes ownership and  
17 is used for the same purpose for which it was originally purchased.

18 (~~(g)~~) (i) "Retailer" means a person who offers photovoltaic  
19 modules for retail sale in the state through any means including, but  
20 not limited to, remote offerings such as sales outlets, catalogs, or  
21 internet sales.

22 (j) "Stewardship plan" means the plan developed by a manufacturer  
23 or its designated stewardship organization for a self-directed  
24 stewardship program.

25 (~~(h)~~) (k) "Stewardship program" means the activities conducted  
26 by a manufacturer or a stewardship organization to fulfill the  
27 requirements of this chapter and implement the activities described  
28 in its stewardship plan.

29 (3) (~~(Program guidance, review, and approval.)~~) The department  
30 must develop guidance for a photovoltaic module stewardship and  
31 takeback program to guide manufacturers in preparing and implementing  
32 a self-directed program to ensure the convenient, safe, and  
33 environmentally sound takeback and recycling of photovoltaic modules  
34 and their components and materials. By January 1, 2018, the  
35 department must establish a process to develop guidance for  
36 photovoltaic module stewardship plans by working with manufacturers,  
37 stewardship organizations, and other stakeholders on the content,  
38 review, and approval of stewardship plans. The department's process  
39 must be fully implemented and stewardship plan guidance completed by  
40 July 1, 2019.

1           (4) (~~(Stewardship organization as agent of manufacturer.)~~) A  
2 stewardship organization may be designated to act as an agent on  
3 behalf of a manufacturer or manufacturers in operating and  
4 implementing the stewardship program required under this chapter. Any  
5 stewardship organization that has obtained such designation must  
6 provide to the department a list of the manufacturers and brand names  
7 that the stewardship organization represents within sixty days of its  
8 designation by a manufacturer as its agent, or within sixty days of  
9 removal of such designation.

10           (5) (~~(Stewardship plans.)~~) Each manufacturer must prepare and  
11 submit a stewardship plan to the department by the later of January  
12 1, 2020, or within thirty days of its first sale of a photovoltaic  
13 module in or into the state.

14           (a) A stewardship plan must, at a minimum:

15           (i) Describe how manufacturers will finance the takeback and  
16 recycling system, and include an adequate funding mechanism to  
17 finance the costs of collection, management, and recycling of  
18 photovoltaic modules and residuals sold in or into the state by the  
19 manufacturer with a mechanism that ensures that photovoltaic modules  
20 can be delivered to takeback locations without cost to the last owner  
21 or holder;

22           (ii) Accept all photovoltaic modules sold in or into the state  
23 after July 1, 2017;

24           (iii) Describe how the program will minimize the release of  
25 hazardous substances into the environment and maximize the recovery  
26 of other components, including rare earth elements and commercially  
27 valuable materials;

28           (iv) Provide for takeback of photovoltaic modules at locations  
29 that are within the region of the state in which the photovoltaic  
30 modules were used and are as convenient as reasonably practicable,  
31 and if no such location within the region of the state exists,  
32 include an explanation for the lack of such location;

33           (v) Identify how relevant stakeholders, including consumers,  
34 installers, building demolition firms, and recycling and treatment  
35 facilities, will receive information required in order for them to  
36 properly dismantle, transport, and treat the end-of-life photovoltaic  
37 modules in a manner consistent with the objectives described in  
38 (a)(iii) of this subsection;

39           (vi) Establish performance goals, including a goal for the rate  
40 of combined reuse and recycling of collected photovoltaic modules as

1 a percentage of the total weight of photovoltaic modules collected,  
2 which rate must be no less than eighty-five percent.

3 (b) A manufacturer must implement the stewardship plan.

4 (c) A manufacturer may periodically amend its stewardship plan.  
5 The department must approve the amendment if it meets the  
6 requirements for plan approval outlined in the department's guidance.  
7 When submitting proposed amendments, the manufacturer must include an  
8 explanation of why such amendments are necessary.

9 (6) (~~(Plan approval.)~~) The department must approve a stewardship  
10 plan if it determines the plan addresses each element outlined in the  
11 department's guidance.

12 (7) (~~(Annual report.)~~) (a) Beginning April 1, 2022, and by April  
13 1st in each subsequent year, a manufacturer, or its designated  
14 stewardship organization, must provide to the department a report for  
15 the previous calendar year that documents implementation of the plan  
16 and assesses achievement of the performance goals established in  
17 subsection (5) (a) (vi) of this section.

18 (b) The report may include any recommendations to the department  
19 or the legislature on modifications to the program that would enhance  
20 the effectiveness of the program, including management of program  
21 costs and mitigation of environmental impacts of photovoltaic  
22 modules.

23 (c) The manufacturer or stewardship organization must post this  
24 report on a publicly accessible web site.

25 (8) (~~(Enforcement.)~~) Beginning January 1, (~~(2021)~~) 2022, no  
26 manufacturer, distributor, retailer, or installer may sell or offer  
27 for sale a photovoltaic module in or into the state unless the  
28 manufacturer of the photovoltaic module has submitted to the  
29 department a stewardship plan and received plan approval.

30 (a) The department must send a written warning to a manufacturer  
31 that is not participating in a plan. The written warning must inform  
32 the manufacturer that it must submit a plan or participate in a plan  
33 within thirty days of the notice. The department may assess a penalty  
34 of up to ten thousand dollars upon a manufacturer for each sale that  
35 occurs in or into the state of a photovoltaic module (~~(in or into the~~  
36 ~~state that occurs)~~) for which a stewardship plan has not been  
37 submitted by the manufacturer and approved by the department after  
38 the initial written warning. A manufacturer may appeal a penalty  
39 issued under this section to the superior court of Thurston county  
40 within one hundred eighty days of receipt of the notice.

1        (b) The department must send a written warning to a distributor,  
2 retailer, or installer that sells or installs a photovoltaic module  
3 made by a manufacturer that is not participating in a plan. The  
4 written warning must inform the distributor, retailer, or installer  
5 that they may no longer sell or install a photovoltaic module if a  
6 stewardship plan for that brand has not been submitted by the  
7 manufacturer and approved by the department within thirty days of the  
8 notice.

9        (~~Fee.~~) The department may collect a flat fee from  
10 participating manufacturers to recover costs associated with the plan  
11 guidance, review, and approval process described in subsection (3) of  
12 this section. Other administrative costs incurred by the department  
13 for program implementation activities, including stewardship plan  
14 review and approval, enforcement, and any rule making, may be  
15 recovered by charging every manufacturer an annual fee calculated by  
16 dividing department administrative costs by the manufacturer's pro  
17 rata share of the Washington state photovoltaic module sales in the  
18 most recent preceding calendar year, based on best available  
19 information. The sole purpose of assessing the fees authorized in  
20 this subsection is to predictably and adequately fund the  
21 department's costs of administering the photovoltaic module recycling  
22 program.

23        (~~Account.~~) The photovoltaic module recycling account is  
24 created in the custody of the state treasurer. All fees collected  
25 from manufacturers under this chapter must be deposited in the  
26 account. Expenditures from the account may be used only for  
27 administering this chapter. Only the director of the department or  
28 the director's designee may authorize expenditures from the account.  
29 The account is subject to the allotment procedures under chapter  
30 43.88 RCW, but an appropriation is not required for expenditures.  
31 Funds in the account may not be diverted for any purpose or activity  
32 other than those specified in this section.

33        (~~Rule-making.~~) The department may adopt rules as necessary  
34 for the purpose of implementing, administering, and enforcing this  
35 chapter.

36        (~~National-program.~~) In lieu of preparing a stewardship  
37 plan and as provided by subsection (5) of this section, a  
38 manufacturer may participate in a national program for the  
39 convenient, safe, and environmentally sound takeback and recycling of  
40 photovoltaic modules and their components and materials, if

1 substantially equivalent to the intent of the state program. The  
2 department may determine substantial equivalence if it determines  
3 that the national program adequately addresses and fulfills each of  
4 the elements of a stewardship plan outlined in subsection (5)(a) of  
5 this section and includes an enforcement mechanism reasonably  
6 calculated to ensure a manufacturer's compliance with the national  
7 program. Upon issuing a determination of substantial equivalence, the  
8 department must notify affected stakeholders including the  
9 manufacturer. If the national program is discontinued or the  
10 department determines the national program is no longer substantially  
11 equivalent to the state program in Washington, the department must  
12 notify the manufacturer and the manufacturer must provide a  
13 stewardship plan as described in subsection (5)(a) of this section to  
14 the department for approval within thirty days of notification.

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