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## Environment & Energy Committee

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### HB 1896

**Brief Description:** Providing for responsible environmental management of batteries.

**Sponsors:** Representatives Harris-Talley, Berry, Ryu, Simmons, Slatter, Peterson, Gregerson, Goodman, Ormsby, Ramel, Kloba, Frame, Bateman, Macri, Valdez, Duerr and Pollet.

#### Brief Summary of Bill

- Requires 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, 2026, for portable batteries and January 1, 2028, for medium sized batteries.
- Directs the Department of Commerce to assess the opportunities and challenges of managing large-sized batteries, and authorizes the Department of Ecology (Ecology) to adopt rules taking effect no earlier than 2030 to establish product stewardship program participation responsibilities applicable to producers of large-sized batteries.
- Prohibits retailers from selling covered batteries whose producers do not participate in an approved stewardship plan.
- 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 locations provided by a stewardship organization or other responsible battery management arrangements.
- Establishes labeling requirements for batteries sold in Washington.

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*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.*

**Hearing Date:** 1/25/22

**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. Another option is to return the batteries 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 five types of product stewardship programs: electronic products, light bulbs that contain mercury (such as compact fluorescent lights), photovoltaic solar panels, pharmaceuticals, and 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 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 six 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 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 purchasers 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 Bill:**

#### Battery Labeling Requirements.

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

- portable batteries of less than 11 pounds and that have a rating of 300 watt hours or less;
- medium format batteries of between 11 and 25 pounds, and a watt rating of between 300 or 1,000 watt hours; and
- large format batteries of at least 25 pounds or a rating of a least 1,000 watt hours.

Beginning January 1, 2025, producers and retailers may only sell, distribute, or offer for sale portable batteries, large format batteries, or, beginning January 1, 2027, medium format batteries, if the batteries are:

- marked to identify the chemistry employed in storing energy in the battery. Beginning January 1, 2027, this marking must include a color code mark;
- 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;
- marked with the weight and watt-hour rating of the battery, if the battery is a medium format or large format battery; and
- labeled to indicate that the battery is recyclable and should not be disposed of in solid waste or recycling containers other than stewardship program collection containers.

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

#### Battery Manufacturer and Retailer Responsibilities.

Beginning January 1, 2026, each producer selling 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, 2028. 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, button cell batteries contained in circuit boards and equipment, and batteries subject to the Ecology-implemented lead vehicle battery recycling program and other portable batteries contained in motor vehicles. A producer of a covered battery or battery containing product is:

- the person that manufactures the covered battery or battery containing product and sells it in or into Washington under that person's brand;
- the owner or licensee of a brand under which the covered battery or battery containing

- product is sold or distributed in or into Washington;
- a person that imports the covered battery or battery containing product into Washington; or
- the person who imports or distributes the covered product in or into Washington, if there is no person over whom the state can constitutionally exercise jurisdiction that meets one of the above criteria for a covered producer.

Beginning July 1, 2026, for portable batteries and January 1, 2028, for medium-format batteries, retailers may not sell or offer for sale covered batteries or battery containing products unless the producer participates in stewardship organization. Retailers are in compliance and not subject to penalties so long as a website made available by the 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 locations for a battery stewardship program; however, retail locations that do serve as collection locations must comply with standards for battery collection locations established for the stewardship organization. Retailers may not sell batteries that are not marked consistent with battery labeling requirements. At the time of sale, retailers must provide information supplied by the battery stewardship organization regarding the options for end-of-life management options provided through the stewardship program. Retailers may not charge a point-of-sale fee to consumers to cover stewardship organization or stewardship program costs.

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

By July 1, 2025, or at least six months before a plan begins to be implemented, a battery stewardship organization must submit a plan to Ecology for approval. Ecology must review a submitted plan and may approve it based on consideration of 13 specified components. When certain changes occur to program operations, stewardship organizations must submit new plans to Ecology or must 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.

Major elements of the plan submitted to Ecology for approval, and of stewardship program operations, include:

- *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 70 percent for rechargeable batteries and 80 percent for primary batteries, targets for the amount of secondary material derived from battery recycling processes, and public awareness, convenience, and accessibility goals;
- *program funding*: stewardship organizations must ensure funding is available to fully implement a program in an environmentally sound and socially just manner, including battery collection, transport and recycling, education and outreach, administrative fees, and program evaluation. The system of charges paid by participating producers must

encourage design attributes that reduce environmental impacts, such as through eco-modulated fees, and must, at minimum, reduce charges for batteries that contain recycled content. Stewardship organizations must reimburse local governments for demonstrable costs for battery collection location 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 locations with persons certified to ship and handle hazardous materials under federal regulations. 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 batteries that are no longer in battery containing products at the time of delivery to a collection site. Collected batteries must be managed by a battery stewardship organization in a hierarchy that prioritizes, in descending order, prevention and waste reduction, reuse, recycling, and other end-of-life management options, which are allowed only if demonstrated to Ecology that other management options are infeasible; and
- *education and outreach*: stewardship organizations must carry out specified promotional activities, including developing a website and a collection site procedural manual. Retailers must be provided promotional materials by stewardship organizations, and collection sites must be provided safety information. Stewardship organizations must carry out a public awareness survey at the beginning of the 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, 2027. Annual reports must include financial audits 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 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 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 stewardship program.

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 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 stewardship organizations and of penalties.

#### Large Format Batteries.

By July 1, 2026, the Department of Commerce, in consultation with Ecology and interested stakeholders, must assess the opportunities and challenges for the end-of-life management of large format batteries. The assessment must identify any needed adjustments to stewardship program requirements that apply to portable and medium format batteries, and recommend how to design a stewardship program to encourage battery technology that reduces reliance on rare earth and conflict materials and uses more earth abundant materials. The Department of Commerce must submit the assessment's findings to the Legislature by October 1, 2026.

By January 1, 2029, Ecology may adopt rules that require producers of large format batteries to participate in a stewardship program that substantially fulfills the types of requirements established for medium format batteries, including program components addressing plan participation, retailer obligations, plan submission, performance goals, program funding, battery collection and management, education and outreach, reporting, and fee payment. Rules adopted by Ecology may require producers of large format batteries to participate in a stewardship program no earlier than July 1, 2030, and must consider the Department of Commerce's assessment. Based on the Department of Commerce's assessment, if it is infeasible to include large format batteries in some or all product stewardship requirements, Ecology may delay or exclude categories of large format batteries from adopted program rules.

#### Battery Disposal Requirements.

Persons, residents, businesses, facilities, and office buildings must dispose of unwanted covered batteries through the battery stewardship program's collection locations, except for commercial, industrial, or government facilities that use other responsible battery management arrangements. Batteries may not be placed in waste containers for disposal in landfills, incinerators, or waste-to-energy facilities, or in mixed non-battery 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 stewardship program battery collection locations for battery disposal.

These requirements take effect July 1, 2026, for portable batteries and July 1, 2028, for medium format batteries, or on the first date when a battery stewardship organization begins implementing an approved plan. The requirements take effect July 1, 2030, for large format batteries unless Ecology provides otherwise by rule.

#### Financial Reconciliations and Civil Actions Among Producers and Stewardship Organizations.

Each battery stewardship organization must collect and provide for end-of-life management in an amount roughly equal to the weight of batteries sold into Washington by participating producers. Under stewardship plans, battery stewardship organizations may seek or provide reimbursement from battery stewardship organizations that do not collect and manage their share of batteries of participating producers.

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 stewardship organization must incur costs for managing batteries in excess of \$1,000 associated with a nonparticipating producer. Stewardship organizations may only bring civil actions if the stewardship organization has achieved collection rate performance goals. 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 national market share of producers participating in the plan. Civil actions are in addition to Ecology's penalty authority.

For batteries collected by an organization implementing an electronic product stewardship program under the state's electronic product stewardship law:

- the electronic product stewardship organization must receive reimbursement, upon request, from a battery stewardship organization for costs associated with the electronic product stewardship program's management of covered batteries, including administrative, public education, collection, and transportation costs. Stewardship organizations under the state's electronic product stewardship program must credit cost reductions due to payments from battery stewardship organization to producers of covered electronic products associated with those batteries; or
- the battery stewardship organization must take possession of the covered batteries and arrange for their final disposition.

Electronic product stewardship programs that receive payment from or submit batteries to battery stewardship organizations must provide documentation to battery stewardship organizations as necessary for the battery stewardship organization to fulfill its reporting obligations to the Ecology.

Other.

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.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Requested on January 18, 2022.

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