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HOUSE BILL 1393

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State of Washington

67th Legislature

2021 Regular Session

By Representatives Shewmake, Ramel, Lekanoff, and Duerr

Read first time 01/27/21. Referred to Committee on Environment & Energy.

1 AN ACT Relating to delaying certain implementation dates for the  
2 photovoltaic module stewardship and takeback program; and reenacting  
3 and amending RCW 70A.510.010.

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

5 **Sec. 1.** RCW 70A.510.010 and 2020 c 287 s 1 are each reenacted  
6 and amended to read as follows:

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

14 (2) The definitions in this subsection apply throughout this  
15 section unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (i) Are installed on, connected to, or integral with buildings;

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

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

7 (g) "Predecessor" means an entity from which a manufacturer  
8 purchased a photovoltaic module brand, its warranty obligations, and  
9 its liabilities. "Predecessor" does not include entities from which a  
10 manufacturer purchased only manufacturing equipment.

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

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

19 (j) "Reuse" means any operation by which a photovoltaic module or  
20 a component of a photovoltaic module changes ownership and is used  
21 for the same purpose for which it was originally purchased.

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

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

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

9 (5) Each manufacturer must prepare and submit a stewardship plan  
10 to the department by the later of July 1, (~~2022~~) 2024, or within  
11 thirty days of its first sale of a photovoltaic module in or into the  
12 state.

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

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

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

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

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

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

38 (vi) Establish performance goals, including a goal for the rate  
39 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) The department must approve a stewardship plan if it  
10 determines the plan addresses each element outlined in the  
11 department's guidance.

12 (7) (a) Beginning April 1, (~~2024~~) 2026, and by April 1st in each  
13 subsequent year, a manufacturer, or its designated stewardship  
14 organization, must provide to the department a report for the  
15 previous calendar year that documents implementation of the plan and  
16 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 website.

25 (8) Beginning July 1, (~~2023~~) 2025, no manufacturer,  
26 distributor, retailer, or installer may sell or offer for sale a  
27 photovoltaic module in or into the state unless the manufacturer of  
28 the photovoltaic module has submitted to the department a stewardship  
29 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 for which a  
36 stewardship plan has not been submitted by the manufacturer and  
37 approved by the department after the initial written warning. A  
38 manufacturer may appeal a penalty issued under this section to the  
39 superior court of Thurston county within one hundred eighty days of  
40 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 (9) The department may collect a flat fee from participating  
10 manufacturers to recover costs associated with the plan guidance,  
11 review, and approval process described in subsection (3) of this  
12 section. Other administrative costs incurred by the department for  
13 program implementation activities, including stewardship plan review  
14 and approval, enforcement, and any rule making, may be recovered by  
15 charging every manufacturer an annual fee calculated by dividing  
16 department administrative costs by the manufacturer's pro rata share  
17 of the Washington state photovoltaic module sales in the most recent  
18 preceding calendar year, based on best available information. The  
19 sole purpose of assessing the fees authorized in this subsection is  
20 to predictably and adequately fund the department's costs of  
21 administering the photovoltaic module recycling program.

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

32 (11) The department may adopt rules as necessary for the purpose  
33 of implementing, administering, and enforcing this chapter.

34 (12) In lieu of preparing a stewardship plan and as provided by  
35 subsection (5) of this section, a manufacturer may participate in a  
36 national program for the convenient, safe, and environmentally sound  
37 takeback and recycling of photovoltaic modules and their components  
38 and materials, if substantially equivalent to the intent of the state  
39 program. The department may determine substantial equivalence if it  
40 determines that the national program adequately addresses and

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

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