

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1393

67th Legislature
2021 Regular Session

Passed by the House February 26, 2021
Yeas 93 Nays 2

**Speaker of the House of
Representatives**

Passed by the Senate March 29, 2021
Yeas 45 Nays 4

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1393** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1393

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

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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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