

SENATE BILL REPORT

E2SSB 5144

As Passed Senate, March 7, 2023

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 & Technology: 1/24/23, 2/07/23 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/18/23, 2/24/23 [DP2S, w/oRec].

Floor Activity: Passed Senate: 3/7/23, 42-6.

Brief Summary of Engrossed Second Substitute Bill

- Requires producers of covered batteries and battery-containing products 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 format batteries.
- Directs the Department of Ecology to assess the opportunities and challenges of managing large format batteries, batteries contained in medical devices, and embedded batteries.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5144 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member;

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.

Lovick, Trudeau and Wellman.

Minority Report: Do not pass.
Signed by Senator Short.

Minority Report: That it be referred without recommendation.
Signed by Senator Boehnke.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5144 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Gildon, Assistant Ranking Member, Operating; Rivers, Assistant Ranking Member, Capital; Billig, Boehnke, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Braun, Torres, Van De Wege and Wagoner.

Staff: Wendy Brown (786-7359)

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 consistently 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.

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 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 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.

Summary of Engrossed Second Substitute Bill: Producer Stewardship Plans. Beginning January 1, 2027, each producer selling covered batteries or battery-containing products in or into Washington must participate in an approved battery stewardship plan through participation in and appropriate funding of a battery stewardship organization.

A producer that does not participate in a battery stewardship organization and battery stewardship plan may not sell covered batteries or battery-containing products in or into Washington.

"Covered battery" means a portable battery or, beginning January 1, 2029, a medium format battery. "Portable battery" means the following primary and rechargeable covered batteries:

- for rechargeable batteries, a battery weighing no more than 11 pounds and has a rating of no more than 300 watt-hours; and
- for primary batteries, a battery weighing no more than 4.4 pounds.

"Primary battery" means a battery that is not capable of being recharged.

"Medium format battery" means the following primary or rechargeable covered batteries:

- for rechargeable batteries, a battery weighing more than 11 pounds or has a rating of more than 300 watt-hours, or both, and no more than 25 pounds and has a rating of no more than 2000 watt-hours; and
- for primary batteries, a battery weighing more than 4.4 pounds but not more than 25 pounds.

Covered batteries do not include:

- a battery contained within a medical device, that is not designed and marketed for sale or resale principally to consumers for personal use;

- a battery that contains an electrolyte as a free liquid;
- a battery weighing greater than 11 pounds;
- a battery covered by the Vehicle Battery Recycling Program; and
- a battery contained in a battery-containing product that is not intended or designed to be easily removeable.

A "battery containing product" means a product containing or packaged with primary or rechargeable covered batteries, but does not include an electronic product covered by the Electronic Products Stewardship Program.

"Battery stewardship organization" means a producer that directly implements a battery stewardship plan or nonprofit organization designated by a producer or group of producers to implement a battery stewardship plan.

Marking Requirements. Beginning January 1, 2028, a producer or retailer may only sell a large format battery, covered battery, or battery-containing product that contains a battery designed or intended to be easily removeable from the product, if the battery is:

- marked with an identification of the producer of the battery, unless the battery is less than one-half inch in diameter or does not contain a surface whose length exceeds one-half inch; and
- beginning January 1, 2030, marked with labeling to ensure proper collection and recycling, by identifying the chemistry of the battery and including an indication that the battery should not be disposed of as household waste.

Role of Retailers. Beginning July 1, 2027, for portable batteries, and July 1, 2029, for medium format batteries, retailers are prohibited from selling a covered battery or battery-containing product unless the batteries are marked consistent with program requirements, and the producer of the covered battery or battery-containing product participated in a battery stewardship organization whose plan has been approved by Ecology.

Producers of covered batteries and battery-containing products are required to certify to a retailer they are participating in the program, and for battery-containing products, that the covered batteries contained in the product meet program marking requirements. A retailer may rely on this certification from producers of covered batteries and battery-containing products, as well as Ecology's published list of participating producers for purposes of complying with the sales prohibition.

Retailers of covered batteries or battery-containing products are not required to make retail locations available to serve as collection locations for a stewardship program operated by a battery stewardship organization. A retailer that chooses to serve as a collection location is subject to program collection site requirements. A retailer may provide information, provided by the battery stewardship organization, regarding available end-of-life management options for covered batteries.

Retailers, producers, or battery stewardship organizations may not charge a specific point-of-sale fee to cover the administrative or operational costs of the battery stewardship organization or program.

Stewardship Plan Components. By July 1, 2026, each battery stewardship organization must submit a plan for covered portable batteries to Ecology for approval. Within 24 months of rules adopted by Ecology for covered medium format batteries, each battery stewardship organization must submit a plan for covered medium format batteries to Ecology for approval.

Ecology must review and approve a plan based on whether it contains and adequately addresses several program components, including:

- a list and contact information for each producer, battery brand, and battery-containing product brand covered in the plan;
- a proposal of performance and collection goals, consistent with program requirements, and how those goals will be met;
- a description of how the battery stewardship organization will make retailers aware of their obligation to sell only covered batteries and battery-containing products of participating producers;
- a description of the education and communications strategy being implemented to effectively promote participation in the program;
- collection site safety training producers;
- a description of the method to establish and administer a means for fully funding the program in a manner that equitably distributes the program's costs among participating producers;
- a description of how the program will collect all covered battery chemistries and brands on a free, continuous, convenient, visible, and accessible basis, consistent with program requirements; and
- identification of brokers, transporters, processors and facilities used for the final disposition of batteries, including how collected batteries will be managed in an environmentally sound and socially just manner and consistent with the battery management hierarchy.

A battery stewardship organization must submit a new plan to Ecology for approval:

- if there are significant changes to the methods of collection, transport, or end-of-life management of covered batteries;
- to address novel inclusion of medium format batteries or large format batteries as covered batteries under the plan; and
- no less than every five years.

If required by Ecology, a battery stewardship organization must provide plan amendments to Ecology for approval when:

- proposing changes to program performance goals;
- there is a change to the method of financing plan implementation;

- adding or removing a processor or transporter, as part of a quarterly update; or
- proposing updated performance goals based upon the to-date experience of the program, which must be submitted every two years.

As part of a quarterly update, a battery stewardship organization must notify Ecology after a producer begins or ceases to participate in a battery stewardship organization.

No earlier than five years after initial approval of the plan, Ecology may require a battery stewardship organization to submit a revised plan, which may include improvements to the collection site network or increased expenditures dedicated to education and outreach if the approved plan has not met performance goals.

Performance Goals. Each battery stewardship plan must include performance goals that measure, on an annual basis, the achievements of the program. Performance goals must take into consideration technical feasibility and economic practicality in achieving continuous, meaningful progress for improving:

- the rate of battery collection for recycling in Washington;
- the recycling efficiency of the program; and
- public awareness of the program.

The performance goals established in each battery stewardship plan must include, but are not limited to:

- target collection rates;
- target recycling efficiency rates of at least 60 percent for rechargeable batteries and at least 70 percent for primary batteries; and
- goals for public awareness, convenience, and accessibility that meet or exceed minimum program requirements.

Funding. Each battery stewardship organization must ensure adequate funding is available to fully implement approved battery stewardship plans, including implementation of aspects of the plan addressing:

- battery collection, transporting, and processing;
- education and outreach;
- program evaluation; and
- payment of administrative fees to Ecology.

A battery stewardship organization implementing a battery stewardship plan on behalf of producers must develop, and continually improve over the years, a system to collect charges from participating producers to cover the costs of plan implementation in an environmentally sound and socially just manner that encourages the use of design attributes that reduce the environmental impacts of covered batteries, such as through the use of eco-modulated fees.

Examples of fee structures that meet these requirements include using eco-modulated fees

to:

- encourage designs intended to facilitate reuse and recycling;
- encourage the use of recycled content;
- discourage the use of problematic materials that increase system costs of managing covered products; and
- encourage other design attributes that reduce the environmental impacts of covered products.

A battery stewardship organization must reimburse local governments for demonstrable costs incurred as a result of a local government facility or solid waste handling facility serving as a collection location for the program.

Collection and Management. Battery stewardship organizations implementing a battery stewardship plan must provide for the collection of all covered batteries, including all chemistries and brands of covered batteries, on a free, continuous, convenient, visible, and accessible basis to any person, business, government agency, or nonprofit organization.

For each collection site used by the program, each battery stewardship organization must provide suitable collection containers for covered batteries segregated from other solid waste. Each collection site must adhere to the operations manual and other safety information provided by the battery stewardship organization.

Medium format batteries may only be collected at household hazardous waste collection locations or other locations staffed by persons who are certified to handle and ship hazardous materials.

Damaged and defective batteries are intended to be collected at locations staffed by persons trained to handle and ship those batteries. Each battery stewardship organization must provide for collection of damaged and defective batteries in each county of the state, either through collection sites or collection events.

For portable batteries, each battery stewardship organization must provide statewide collection opportunities that include, but are not limited to:

- at least one permanent collection site within a 15 mile radius for at least 95 percent of residents; and
- at least one permanent collection site for every 30,000 residents of an urbanized area and for every urban cluster of at least 30,000 residents.

For medium format batteries, collection opportunities must include, but are not limited to:

- at least 25 collection sites in Washington;
- a collection location in each county of at least 200,000 persons; and
- a collection site or event in each county.

Collection locations must also be convenient to overburdened communities, and collection

service or events must be provided to island and geographically isolated communities.

Stewardship programs must use as a collection site for portable batteries any retailer, solid waste management facility, or other entity that meets the criteria for collection locations in the stewardship plan, upon the submission of a request by the entity to serve as a collection site.

Education and Outreach. Each battery stewardship organization must carry out promotional activities supporting plan implementation, including:

- development and maintenance of a website;
- distribution of periodic press releases and articles;
- placement of advertisements for use on social media;
- development of promotional materials to be used by retailers, government agencies, and nonprofit organizations;
- distribution of collection site safety training procedures; and
- development of outreach and educational resources targeted to overburdened communities and vulnerable populations.

Each battery stewardship organization must provide educational materials to the operator of each collection site for the management of recalled batteries, which are not intended to be part of collection under the program, to help facilitate transportation and processing of recalled batteries.

Reporting. By June 1, 2028, and each June 1st thereafter, each battery stewardship organization must submit an annual report including:

- a financial assessment of program expenses;
- the weight of covered batteries collected and materials recycled from covered batteries;
- calculation of recycling efficiency rates, collection rates, and estimated aggregate sales; and
- other performance metrics to evaluate program progress and compliance.

Proper Disposal Requirement. Beginning July 1, 2027, for portable batteries and July 1, 2029, for medium format batteries, or the first date on which an approved stewardship plan is implemented, all persons and entities must dispose of unwanted covered batteries through designated collection locations under the program.

Commercial, industrial, or government facilities and programs that use other responsible battery management arrangements in ways substantially similar to the program may continue to use those methods.

Program Administration. Ecology must implement, administer, and enforce the program. Ecology must by rule establish fees, to be paid annually by a battery stewardship organization, adequate to cover Ecology's administrative costs. Ecology's responsibilities

include reviewing and approving stewardship plans and reports, and maintaining a website that lists participating producers and their brands.

Beginning January 1, 2032, and every five years thereafter, Ecology may, after consultation with battery stewardship organizations, increase the program's minimum recycling efficiency rates based on the most economically and technically feasible processes and methodology available.

Penalties and Civil Actions. Ecology may impose a civil penalty up to \$1,000 per violation per day on persons that violate provisions of the program, increasing to \$10,000 per violation per day for repeated violations. Prior to imposing penalties for the first violation, Ecology must provide a written warning.

A person who incurs a penalty may appeal the penalty to the Pollution Control Hearings Board. Penalties must be deposited in the Responsible Battery Management Account.

A battery stewardship organization is authorized to bring a civil action to recover costs, damages, or fees from a producer who sells covered batteries in violation of program requirements, or against another battery stewardship organization that underperforms on its battery collection obligations under the program.

No penalty may be assessed on an individual or resident for the improper disposal of covered batteries in a noncommercial or residential setting.

Responsible Battery Management Account. The Responsible Battery Management Account is created for Ecology to administer, implement, and enforce the program. All penalties and battery stewardship organization fees must be deposited in the account.

Assessment of Large Format Batteries and Other Batteries. By July 1, 2027, Ecology must complete an assessment of the opportunities and challenges associated with the end-of-life management of batteries that are not covered batteries, including large format batteries, lead acid batteries weighing more than 11 pounds, batteries contained in medical devices, and embedded batteries.

By January 1, 2030, Ecology may adopt rules that require producers of large format batteries, batteries in medical devices, and battery-containing products with embedded batteries to participate in a stewardship program that achieves environmentally positive outcomes similar to those achieved by a program for medium format and portable batteries.

"Large format battery" means a rechargeable battery that weighs more than 25 pounds or has a rating of more than 2000 watt-hours and a primary battery that weighs more than 25 pounds.

Recommendations for Electric Vehicle Batteries. By November 30, 2023, Ecology must

report to the Legislature on preliminary policy recommendations for the collection and management of electric vehicle batteries. By April 30, 2024, Ecology must report to the Legislature on final policy recommendations for the collection and management of electric vehicle batteries.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: We know the amount of batteries is increasing and expected to continue. There are toxic and hazardous materials ending up where they're not supposed to be. We're seeing fires in waste collection sites, because of rechargeable batteries that can cause those fire, creating danger and costs. This bill will help deal with that problem. We know there are some rare minerals that are needed and we can reclaim them from recycling these batteries.

Household batteries are labor intensive to safely handle, hand sort, and process for recycling. Confidence in ability to recover costs is low for local governments, we would like to see what is included in service agreements, such as liability and risks, and what's included in labor costs.

Funding for public education is extremely important. There is vast confusion over how to dispose of these batteries. Manufacturers should be required to have full ownership for the product's life cycle, taking responsibility for reducing waste, promoting safe disposal, and increasing recycling. This bill helps create these expectations. Requiring producers to be responsible will encourage them to design longer lasting batteries and move us one step closer to a circular economy.

CON: Businesses are generally supportive of generating useful materials away from landfills and decreasing the causing of fires but there a few substantive issues with the bill. We'd like to see definitions aligned across all product stewardship bills and an option for producers to contract a third party for eligibility of compliance under the program. We would like to slim down oversight of producers in both bills, the bill is too complex and should be simplified.

Battery hierarchy requirements should be eliminated and so should the ecomodulation factors. We would like to see an exemption for larger lead acid industrial batteries. Point of sale fees should be allowed. The bill fails to effectively address damaged and recalled batts. There is no recycling mechanism set up for electric vehicle batteries.

OTHER: Ecology supports product take back programs for toxic and hard to handle products. Producer responsibility shifts management from taxpayer run systems to industry designed and managed programs. Consumers cannot keep up with proper end-of-life management without industry assistance.

Ambiguities remain in how multiple organizations will operate. Many embedded battery products are excluded. In absence of guidance on these products, confusion will remain on how to manage these.

We would like some clarity around medical devices covered. Ecology's rulemaking authority for establishing a program for batteries not addressed in the bill should remain with the Legislature. Retailers would prefer a national solution to this issue, and we would like to ensure voluntary collection sites can continue to operate without being subject to the program.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Derek Stanford, Prime Sponsor; Travis Dutton, Washington State Association of Counties and Washington Association of County Solid Waste Managers; Ann Murphy, League of Women Voters of Washington; Chris Averyt, City of Spokane; Preston Peck, City of Tacoma; Tristen Gardner, King County Hazardous Waste Management Program; Rick Gilbert, Kitsap County Solid Waste Division; Andrew Lee, Seattle Public Utilities; Heather Trim, Zero Waste Washington.

CON: George Kerchner, PRBA - The Rechargeable Battery Association; Peter Godlewski, Association of Washington Business; James King, Independent Business Association.

OTHER: Leo Raudys, Call2Recycle; Laurie Davies, Washington State Department of Ecology; Mark Johnson, Washington Retail Association; Darbi Gottlieb, AdvaMed; Charlie Brown, Consumer Technology Association.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: EV batteries are an increasing hazard to the wrecking industry and people on the highways due to spontaneous combustion of the batteries. Section 18 of the bill provides a mechanism for passing on these batteries to the people who can recycle and reuse them. The funding for consumer education is very important. One issue to consider is the placement of the collection areas, particularly in the rural areas.

From the perspective of a county solid waste program, the collection of batteries is the most labor intensive waste stream. Every battery is sorted and taped by hand, and the labor impacts are significant. When these batteries are improperly managed, they pose a very

significant fire risk. We encourage the battery industry to provide a more comprehensive collection infrastructure that is safe and convenient for everyone.

Fire fighters and other first responders do not have a good playbook for handling emergencies related to batteries and green energy. We request that the Legislature direct and fund a work group to provide recommendations using the new national best practices to update the WAC to include EV and battery training.

OTHER: For the consumer technology association, it is important to maintain the current exemptions in the bill for embedded batteries.

We have concerns with the definition of producer in this bill, as it includes non-battery producers. Under the program as defined in the bill, manufacturers of consumer products would be mandated to fund the stewardship program for batteries, which are products that they do not manufacture nor have control over. We request an exclusion for consumer product manufacturers who purchase covered batteries from a battery manufacturer who is already paying into the stewardship program.

Persons Testifying (Ways & Means): PRO: James King, Independent Business Association; Rick Gilbert, Kitsap County Solid Waste Division; Heather Trim, Zero Waste Washington; Anthony Mixer; Harold Scoggins, Seattle Fire.

OTHER: Charlie Brown, Consumer Technology Association; Erin Raden, The Toy Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.