

# SENATE BILL REPORT

## ESHB 1364

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As of March 21, 2013

**Title:** An act relating to adopting the Washington small rechargeable battery stewardship act.

**Brief Description:** Concerning small rechargeable battery stewardship.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Tharinger, Zeiger, Moscoso, Crouse, Lias, McCoy, Fitzgibbon, Upthegrove, Maxwell, Morrell, Pollet and Fey).

**Brief History:** Passed House: 3/06/13, 57-40.

**Committee Activity:** Energy, Environment & Telecommunications: 3/20/13.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** Diane Smith (786-7410)

**Background:** Small rechargeable batteries are commonly found in cellular and cordless telephones, video cameras, portable power tools, and laptop computers. There are several chemical compositions of rechargeable batteries in common commercial use, including nickel-cadmium, nickel-metal hydride, lithium ion, and small sealed lead acid.

In 1996, the Mercury-Containing and Rechargeable Battery Management Act (Battery Act) was passed by Congress. The Battery Act facilitates increased collection and recycling of nickel-cadmium and certain small sealed lead-acid rechargeable batteries. The Battery Act addresses battery and product manufacturers and battery waste handlers, not consumers.

The Department of Ecology (DOE) does not require that consumers manage their batteries as universal waste, but strongly encourages them to take used batteries 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 rechargeable product and battery manufacturers and retailers participate voluntarily in programs to promote small rechargeable battery recycling.

**Summary of Bill:** Rechargeable Battery Recycling Program. Manufacturers of small rechargeable batteries and products containing easily removable small rechargeable batteries must participate in one of two types of rechargeable battery stewardship programs: a managed program or a program self-operated by a retailer. Unless so participating, no person

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may sell small rechargeable batteries to a wholesaler or retailer in Washington. Both self-operated and managed collection programs must:

- accept rechargeable batteries regardless of brand;
- comply with any legal and regulatory requirements pertaining to battery collection, storage, and transportation;
- provide education and outreach activities;
- provide battery recycling services free of charge to consumers; and
- provide collection locations that are open to the public at all hours that collection locations are normally open for business.

Self-operated and managed programs must post the following information on the internet:

- a description of the battery recycling program's collection, transportation, sorting, reclamation, and battery-tracking procedures;
- an identification of sorting and reclamation facilities used;
- an identification of participating locations, and any restrictions on the number of batteries accepted at specific sites;
- a consumer inquiry mechanism;
- information regarding education and outreach; and
- by April 1 of each year, an annual report including certain information about program operations, including for managed programs, an independently audited financial statement.

In addition to the above requirements applying to both managed and self-operated programs, managed programs must also:

- identify participating manufacturers or marketers;
- provide a collection-site locator on its website;
- collect rechargeable batteries and products at multiple retail locations;
- collect rechargeable batteries and products from governmental facilities;
- provide at least one collection location in every county and in each city or town with a population of more than 10,000 persons;
- conduct public outreach and marketing for the recycling program; and
- include an audited financial report in its annual report.

Manufacturer and Marketer Responsibilities. Manufacturers and marketers of small rechargeable batteries or portable rechargeable products containing easily removable small rechargeable batteries must participate in a managed or self-operated battery recycling program. The activities of retailers are excluded from the definition of manufacturer or marketer.

Oversight and Compliance Mechanisms. If a qualified small rechargeable battery stewardship program incurs costs in excess of \$3,000 in recycling used small rechargeable batteries from a manufacturer or marketer that did not participate in a qualified program, the small rechargeable battery stewardship program may bring a civil action to recover costs, damages of at least three times those costs, and attorneys' fees and litigation costs. Suits may be simultaneously filed against multiple defendants, and brought in any superior or district court in the state. If there are multiple entities that meet the definition of manufacturer or marketer for a single rechargeable battery or product, only one of those entities is required to participate in a recycling program.

Other Provisions. The law is deemed void if a federal battery recycling program is established. The proscription on sales of batteries not enrolled in a stewardship program to wholesalers or retailers does not apply to some telecommunications providers. The act does not affect the authorities of the Utilities and Transportation Commission, cities, or towns.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on January 1, 2014.

**Staff Summary of Public Testimony:** PRO: This bill is intended to preserve an industry-sponsored battery recycling program that helps manage the toxins contained in used batteries. Kitsap County got money back from this program. The bill gets outliers to participate in order to sustain the robustness of the program. All manufacturers share in the responsibility for the management of this waste. A private right of action is a step forward.

CON: This bill is not in the best interests of the management of this waste stream. It puts a particular approach into state law while providing no accountability or oversight. Wireless carriers have a robust program now and it should be retained.

OTHER: Retailers take issue with the definition of retailer and with the private right of action.

**Persons Testifying:** PRO: Representative Tharinger, prime sponsor; Carl Smith, Call2Recycle; Rick Gilbert, Kitsap County; Margaret Shield, Local Hazardous Waste Management Program in King County; Suellen Mele, Zero Waste WA.

CON: Tom McBride, Tech America; Milt Doumit, Verizon.

OTHER: Mark Johnson, WA Retail Assn.; Laurie Davies, DOE.