
HOUSE BILL 2645

State of Washington

66th Legislature

2020 Regular Session

By Representative Smith

1 AN ACT Relating to the photovoltaic module stewardship and
2 takeback program; and amending RCW 70.355.010.

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

4 **Sec. 1.** RCW 70.355.010 and 2017 3rd sp.s. c 36 s 12 are each
5 amended to read as follows:

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

13 (2) (~~(Definitions. For purposes of this section the following~~
14 ~~definitions apply:)~~) The definitions in this subsection apply
15 throughout this section unless the context clearly requires
16 otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 interconnections, terminals, and protective devices such as diodes
2 that:

3 (i) Are installed on, connected to, or integral with buildings;
4 ~~((e))~~

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

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

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

15 ~~((f))~~ (h) "Reuse" means any operation by which a photovoltaic
16 module or a component of a photovoltaic module changes ownership and
17 is used for the same purpose for which it was originally purchased.

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

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

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

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

10 (5) (~~(Stewardship plans.)~~) Each manufacturer must prepare and
11 submit a stewardship plan to the department by the later of January
12 1, 2020, or within thirty days of its first sale of a photovoltaic
13 module in or into the state.

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

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

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

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

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

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

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

12 (7) (~~(Annual report.)~~) (a) Beginning April 1, 2022, and by April
13 1st in each subsequent year, a manufacturer, or its designated
14 stewardship organization, must provide to the department a report for
15 the previous calendar year that documents implementation of the plan
16 and 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 web site.

25 (8) (~~(Enforcement.)~~) Beginning January 1, (~~(2021)~~) 2022, no
26 manufacturer, distributor, retailer, or installer may sell or offer
27 for sale a photovoltaic module in or into the state unless the
28 manufacturer of the photovoltaic module has submitted to the
29 department a stewardship 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 (~~(in or into the~~
36 ~~state that occurs)~~) for which a stewardship plan has not been
37 submitted by the manufacturer and approved by the department after
38 the initial written warning. A manufacturer may appeal a penalty
39 issued under this section to the superior court of Thurston county
40 within one hundred eighty days of 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) (~~Fee.~~) The department may collect a flat fee from
10 participating manufacturers to recover costs associated with the plan
11 guidance, review, and approval process described in subsection (3) of
12 this section. Other administrative costs incurred by the department
13 for program implementation activities, including stewardship plan
14 review and approval, enforcement, and any rule making, may be
15 recovered by charging every manufacturer an annual fee calculated by
16 dividing department administrative costs by the manufacturer's pro
17 rata share of the Washington state photovoltaic module sales in the
18 most recent preceding calendar year, based on best available
19 information. The sole purpose of assessing the fees authorized in
20 this subsection is to predictably and adequately fund the
21 department's costs of administering the photovoltaic module recycling
22 program.

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

33 (11) (~~Rule-making.~~) The department may adopt rules as necessary
34 for the purpose of implementing, administering, and enforcing this
35 chapter.

36 (12) (~~National-program.~~) In lieu of preparing a stewardship
37 plan and as provided by subsection (5) of this section, a
38 manufacturer may participate in a national program for the
39 convenient, safe, and environmentally sound takeback and recycling of
40 photovoltaic modules and their components and materials, if

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

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