



House of Representatives

General Assembly

File No. 564

January Session, 2015

Substitute House Bill No. 6957

House of Representatives, April 9, 2015

The Committee on Environment reported through REP. ALBIS of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT ESTABLISHING A HOUSEHOLD BATTERY RECYCLING STEWARDSHIP PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) For the purposes of sections
2 2 to 15, inclusive, of this act:

3 (1) "Department" means the Department of Energy and
4 Environmental Protection;

5 (2) "Brand" means a name, symbol, word or traceable mark that
6 identifies a primary battery and attributes the primary battery to the
7 owner or licensee of the brand or the producer;

8 (3) "Calendar year" means the period commencing January first and
9 ending December thirty-first of the same year;

10 (4) "Collection rate" means a percentage, by weight, that each
11 producer or primary battery stewardship organization collects by an
12 established date and that is calculated by dividing the total weight of

13 the primary batteries that are collected during a calendar year by the
14 average annual weight of primary batteries that were estimated to
15 have been sold in the state by participating producers during the
16 previous three calendar years whenever such estimate is based on a
17 reasonable pro rata calculation based on national sales;

18 (5) "Commissioner" means the Commissioner of Energy and
19 Environmental Protection;

20 (6) "Consumer" means any person who presents or delivers any
21 number of primary batteries to a collection facility or deposits such
22 primary batteries in a collection container that is part of an approved
23 primary battery stewardship plan;

24 (7) "Consumer product" means any product that is regularly used or
25 purchased to be used for personal, family or household purposes.
26 "Consumer product" does not include any product primarily used or
27 purchased for industrial or business use;

28 (8) "Discarded primary battery" means a primary battery that is no
29 longer used for its manufactured purpose;

30 (9) "Easily removable" means readily detachable by a person
31 without the use of tools or with the use of common household tools;

32 (10) "Participate" means to appoint a primary battery stewardship
33 organization to operate on behalf of oneself and to have such
34 appointment accepted by such primary battery stewardship
35 organization;

36 (11) "Primary battery" means a small rechargeable battery or a
37 nonrechargeable battery that weighs two kilograms or less, including
38 alkaline, carbon-zinc and lithium metal batteries. "Primary battery"
39 does not include: (A) Any battery intended for industrial, business-to-
40 business, warranty or maintenance services, or nonpersonal use; (B)
41 any battery that is sold in a computer, computer monitor, computer
42 peripheral, printer, television or device containing a cathode ray tube;
43 (C) any battery that is not easily removable or that is not intended to be

44 removed from a consumer product; or (D) any battery that is sold or
45 used in a medical device, as defined in 21 USC 321, as amended from
46 time to time;

47 (12) "Primary battery producer" or "producer" means one of the
48 following with regard to a primary battery that is sold or offered for
49 sale in the state: (A) Any person who manufactures a primary battery
50 and who sells or offers for sale such primary battery under such
51 person's own name or brand; (B) any person who owns or licenses a
52 trademark or brand under which a primary battery is sold or offered
53 for sale, regardless of whether the trademark is registered; or (C) any
54 person who imports a primary battery into the state for sale;

55 (13) "Primary battery stewardship organization" means an
56 organization appointed by one or more producers to act as an agent on
57 behalf of a producer or producers to design, submit, implement and
58 administer a primary battery stewardship plan pursuant to section 2 of
59 this act;

60 (14) "Primary battery stewardship plan" or "plan" means a plan
61 submitted to the commissioner pursuant to section 2 of this act by an
62 individual producer or a primary battery stewardship organization;

63 (15) "Program" or "stewardship program" means the system for the
64 collection, transportation, recycling and disposal of primary batteries
65 and small rechargeable batteries implemented pursuant to an
66 approved primary battery stewardship plan;

67 (16) "Recycling" means any process by which discarded products,
68 components and by-products are transformed into new usable or
69 marketable materials in a manner in which the original products may
70 lose their identity, but does not include energy recovery or energy
71 generation by means of combusting discarded products, components
72 and by-products with or without other waste products;

73 (17) "Retailer" means any person who offers a primary battery for
74 sale to any consumer or business at retail in the state through any

75 means, including, but not limited to, remote offerings such as sales
76 outlets, catalogues or an Internet web site; and

77 (18) "Small rechargeable battery" means one or more voltaic or
78 galvanic cells, electrically connected to produce electric energy that are
79 designed to be recharged, provide less than forty volts direct current
80 and that weighs less than five kilograms. "Small rechargeable battery"
81 does not include any battery that is not easily removable or that is not
82 intended to be removed from a product from any person other than
83 the manufacturer of such product, any battery that contains electrolyte
84 as a free liquid, any battery or battery pack that employs the use of
85 lead-acid technology, unless such battery or battery pack is sealed,
86 contains no liquid electrolyte and is intended by the manufacturer to
87 power a hand-held device or provide uninterrupted backup electrical
88 power protection for stationary consumer products or stationary office
89 equipment.

90 Sec. 2. (NEW) (*Effective from passage*) (a) On or before February 1,
91 2016, any producer selling, offering for sale, distributing or offering for
92 promotional purposes a primary battery in the state shall individually,
93 or as part of a primary battery stewardship organization, submit a
94 primary battery stewardship plan to the commissioner for the
95 establishment of a primary battery stewardship program.

96 (b) Any primary battery stewardship plan submitted pursuant to
97 this section shall include, at a minimum, each of the following
98 elements of a primary battery stewardship program: (1) A list of: (A)
99 All participating producers and contact information for each of the
100 participating producers, and (B) the brands of primary batteries
101 covered by the plan; (2) provisions for the collection of primary
102 batteries from consumers at no cost to consumers regardless of the
103 brand or producer of the primary battery; (3) provisions that enable
104 retailers who meet requirements specified in the plan, all
105 municipalities and all solid waste management facilities in the state to
106 serve as collection facilities; (4) agreements with municipalities and
107 collectors who offer curbside or backyard collection of designated

108 recyclable items, as described in section 22a-241j of the general
109 statutes, for the use of such collection and attendant collection
110 containers for the collection of primary batteries from consumers at no
111 additional cost to consumers; (5) establishment at a minimum, of not
112 fewer than seven collection facilities in each county in the state that
113 provide for collection of primary batteries throughout the calendar
114 year; (6) provision for the acceptance from a consumer of not more
115 than fifty batteries per weekly collection of curbside or backyard
116 collection of designated recyclable items, provided any other collection
117 facility utilized by such plan may agree to accept more than fifty
118 batteries per visit from any consumer; (7) a detailed method of
119 management for discarded primary batteries that ensures that the
120 components of primary batteries collected from consumers, to the
121 extent economically and technically feasible, are recycled; (8) a listing
122 of all key participants in the primary battery collection chain,
123 including, but not limited to: (A) The number and name of the
124 collection facilities, retailers, municipalities and collectors accepting
125 primary batteries under the plan, including the address and contact
126 information for each facility, retailer, collector and municipality, (B)
127 the name and contact information of a transporter or contractor
128 collecting primary batteries from collection facilities, retailers,
129 municipalities and collectors, and (C) the name, address and contact
130 information of the recycling facilities that process such collected
131 primary batteries; (9) an education and outreach program that
132 includes, but is not limited to, mass media advertising in radio or
133 television broadcasts, newspaper publications of general circulation in
134 the state, retail displays, articles in trade and other journals and
135 publications. Such education and outreach program shall describe the
136 outreach efforts that will be used to provide notice of the program to
137 consumers, municipalities, solid waste management facilities, retailers,
138 wholesalers and collectors. At a minimum, such education and
139 outreach program shall notify the public of the following: (A) That
140 there is a free collection program for all primary batteries; and (B) the
141 location of collection points and the availability of curbside or
142 backyard collection of designated recyclable items for collection of

143 such primary batteries and any other means of access for the collection
144 of such primary batteries; (10) procedures for reimbursement that are
145 consistent with the requirements of section 9 of this act; (11) a primary
146 battery collection rate performance goal that also includes the
147 estimated total weight of primary batteries that are offered for sale in
148 the state by the producer or the producers participating in such
149 primary battery stewardship plan; and (12) provisions concerning the
150 implementation of the primary battery stewardship program in
151 conjunction with those retailers, municipalities, collectors and solid
152 waste management facilities acting as collection facilities or collection
153 points pursuant to such program. Such provisions shall assure that:
154 (A) No transportation or recycling costs are imposed on retailers,
155 municipalities, collectors or solid waste management facilities acting as
156 collection facilities or collection points under such program, (B)
157 retailers, municipalities, collectors and solid waste management
158 facilities acting as collection facilities or collection points under such
159 program are provided with requisite products or equipment for
160 establishing a collection facility or collection point, and (C) primary
161 batteries are collected from such retailers, municipalities, collectors
162 and solid waste management facilities and responsibly managed in
163 accordance with the requirements of this section.

164 Sec. 3. (NEW) (*Effective from passage*) (a) Any producer of primary
165 batteries may meet the requirements of sections 2 to 13, inclusive, of
166 this act by participating in a primary battery stewardship organization
167 that undertakes the producer's responsibilities under sections 2 to 13,
168 inclusive, of this act.

169 (b) To qualify as a primary battery stewardship organization, an
170 organization shall: (1) Commit to assume the responsibilities,
171 obligations and liabilities of all producers participating in the primary
172 battery stewardship organization; (2) not create unreasonable barriers
173 for participation by producers in such primary battery stewardship
174 organization; and (3) maintain a public Internet web site that lists all
175 producers and producers' brands covered by the primary battery
176 stewardship organization's approved primary battery stewardship

177 plan.

178 (c) (1) On March 1, 2016, and annually thereafter, each primary
179 battery stewardship organization shall file a registration form with the
180 commissioner. Such registration form shall require submission of the
181 following information: (A) A list of the producers participating in such
182 primary battery stewardship organization, (B) the name, address and
183 contact information of a person responsible for ensuring a producer's
184 compliance with the provisions of sections 2 to 13, inclusive, of this act,
185 (C) a description of how the primary battery stewardship organization
186 proposes to meet the requirements of sections 2 to 13, inclusive, of this
187 act, including, but not limited to, the requirements for participation in
188 such primary battery stewardship organization, and (D) the name,
189 address and contact information of a person at such organization for a
190 nonmember producer to contact in order to learn how to participate in
191 such primary battery stewardship organization. Each such annual
192 registration and renewal shall be accompanied by a registration fee of
193 fifteen thousand dollars.

194 (2) Any such registration may be renewed, without changes, on a
195 form as prescribed by the commissioner.

196 Sec. 4. (NEW) (*Effective from passage*) (a) Not later than ninety days
197 after receipt of a proposed primary battery stewardship plan
198 submitted pursuant to section 2 of this act, the commissioner shall
199 determine whether the plan complies with the requirements of section
200 2 of this act. If the commissioner determines that such plan complies
201 with the requirements of section 2 of this act, the commissioner shall
202 notify the producer or primary battery stewardship organization, in
203 writing, of the plan's approval. If the commissioner rejects such
204 primary battery stewardship plan, the commissioner shall notify the
205 producer or primary battery stewardship organization, in writing, of
206 the reasons for rejecting the plan. Any producer or primary battery
207 stewardship organization whose plan is rejected by the commissioner
208 shall submit a revised plan to the commissioner not later than forty-
209 five days after receipt of such notice of rejection. Any primary battery

210 stewardship plan that is not approved or rejected by the commissioner
211 within such ninety day period shall be deemed approved.

212 (b) Any changes to a proposed primary battery stewardship plan
213 shall be approved by the commissioner in writing. The commissioner
214 may require a producer or a primary battery stewardship organization
215 to amend an approved plan.

216 (c) The commissioner shall post all proposed primary battery
217 stewardship plans and all proposed amendments to any primary
218 battery stewardship plan on the department's Internet web site for a
219 period of thirty days following the date that such plan or plan
220 amendment is deemed complete by the commissioner. Any such
221 posting shall be made in accordance with the provisions of chapter 14
222 of the general statutes. The commissioner shall establish a process for
223 the receipt of public comments during any such thirty-day period.

224 (d) The commissioner shall maintain on the department's Internet
225 web site a copy of all approved primary battery stewardship plans
226 along with the names of producers with approved plans. Additionally,
227 the commissioner shall list on said Internet web site all brands of
228 primary batteries that are covered by an approved plan. The
229 commissioner shall update such information not later than ten days
230 after receipt of notice of any change to the listed information. The
231 commissioner shall list on said Internet web site all known primary
232 battery producers who are exempt from the requirements of section 8
233 of this act.

234 (e) Any primary battery stewardship plan approved by the
235 commissioner pursuant to this section shall be valid for a period not to
236 exceed five years, provided that the primary battery producer or
237 primary battery stewardship organization remains in compliance with
238 the requirements of sections 2 to 13, inclusive, of this act and the terms
239 of such approved plan.

240 Sec. 5. (NEW) (*Effective from passage*) On or before March 1, 2018, and
241 annually thereafter, each producer or primary battery stewardship

242 organization shall submit a report to the commissioner that contains
243 the following: (1) The weight of primary batteries collected by the
244 producer or the primary battery stewardship organization in the prior
245 calendar year pursuant to the primary battery stewardship program;
246 (2) the percentage of primary batteries collected in the prior calendar
247 year that are from producers who are not participating in any
248 approved primary battery stewardship program, based on periodic
249 sorting of primary batteries by the reporting producer or primary
250 battery stewardship organization; (3) the collection rate achieved in the
251 prior calendar year pursuant to such primary battery stewardship
252 program, including, but not limited to, a report of the estimated total
253 sales data, by weight, for primary batteries sold in the state for the
254 previous three calendar years; (4) the locations for all collection
255 facilities established by the producers covered by the primary battery
256 stewardship plan and contact information for each location; (5)
257 examples and descriptions of educational materials used to increase
258 collection; (6) the manner in which the collected primary batteries were
259 managed and recycled; (7) any material changes to the primary battery
260 stewardship plan approved by the commissioner pursuant to section 4
261 of this act; and (8) the cost of implementation of the primary battery
262 stewardship program, including, but not limited to, the costs of
263 collection, recycling, education and outreach.

264 Sec. 6. (NEW) (*Effective from passage*) Five years after the
265 implementation of any approved primary battery stewardship plan
266 pursuant to sections 2 to 4, inclusive, of this act, the subject producer
267 or primary battery stewardship organization shall hire an independent
268 third-party auditor, as selected by the commissioner, to conduct a one-
269 time audit of the subject primary battery stewardship program. Such
270 auditor shall examine the effectiveness of the primary battery
271 stewardship program in collecting and recycling primary batteries.
272 The independent auditor shall examine the cost-effectiveness of such
273 program and compare it to collection programs for primary batteries in
274 other states. The independent auditor shall submit the results of such
275 audit to the commissioner and the subject producer or primary battery
276 stewardship organization.

277 Sec. 7. (NEW) (*Effective from passage*) (a) Except as set forth in
278 subsections (b) and (c) of this section, on and after January 1, 2017, any
279 producer of a primary battery shall not sell, offer for sale or deliver to a
280 retailer for subsequent sale a primary battery unless: (1) The producer
281 or the primary battery stewardship organization in which the producer
282 participates is registered under an approved and implemented
283 primary battery stewardship plan; (2) the producer or primary battery
284 stewardship organization remitted payment of the fee established
285 pursuant to section 3 of this act; and (3) the name of the producer and
286 the producer's brand is designated on the department's Internet web
287 site as covered by an approved primary battery stewardship plan.

288 (b) (1) Any producer of a primary battery who, on and after January
289 1, 2017, seeks to sell, offer for sale, or offer for promotional purposes in
290 the state a primary battery not previously sold in the state, shall notify
291 the commissioner prior to selling or offering for sale or promotion, a
292 primary battery not covered by an approved primary battery
293 stewardship plan.

294 (2) The commissioner shall list each producer who supplies notice
295 pursuant to this subsection as a "new producer" on the department's
296 Internet web site. Any producer that supplies notice pursuant to this
297 subsection shall have ninety days from the date of such notice to either
298 join an existing primary battery stewardship organization or submit a
299 primary battery stewardship plan for approval to the commissioner.

300 (c) The provisions of this section shall not apply to any producer
301 who annually sells, offers for sale, distributes or imports into the state
302 primary batteries with a total retail value of less than two thousand
303 dollars.

304 Sec. 8. (NEW) (*Effective from passage*) (a) Except as provided in
305 subsection (b) of this section, on and after January 1, 2017, no retailer
306 shall sell or offer for sale a primary battery unless the producer of the
307 primary battery has a primary battery stewardship plan approved by
308 the commissioner, is a member of a primary battery stewardship
309 organization with a primary battery stewardship plan approved by the

310 commissioner, or is exempt from the requirement to have such a plan
311 or participate in such an organization, as determined by review of the
312 producers listed on the department's Internet web site pursuant to
313 section 7 of this act.

314 (b) No retailer shall be deemed to be in violation of subsection (a) of
315 this section if: (1) The retailer purchased the primary battery prior to
316 January 1, 2017, and sells such primary battery on or before January 1,
317 2018; or (2) the producer's primary battery stewardship plan expired or
318 was revoked, and the retailer took possession of the in-store inventory
319 of primary batteries prior to the expiration or revocation of the
320 producer's primary battery stewardship plan.

321 (c) Any producer who supplies primary batteries to a retailer shall
322 provide, or have such producer's primary battery stewardship
323 organization provide, such retailer with educational materials
324 describing collection opportunities for primary batteries. Such retailer
325 shall make such educational materials available to consumers.

326 Sec. 9. (NEW) (*Effective from passage*) (a) (1) Any producer or a
327 primary battery stewardship organization operating under an
328 approved primary battery stewardship plan that collects primary
329 batteries that are not listed under such producer's or organization's
330 approved plan shall be entitled to reimbursement from the producer of
331 such collected primary batteries, or such producer's primary battery
332 stewardship organization, for the reimbursable costs per unit of weight
333 incurred in collecting such batteries.

334 (2) Reimbursement pursuant to subdivision (1) of this subsection
335 may be requested by a producer or primary battery stewardship
336 organization only after such producer or organization achieves the
337 collection rate performance goal of such producer's or organization's
338 primary battery stewardship program.

339 (3) Reimbursement shall be allowed pursuant to subdivision (1) of
340 this subsection only for costs incurred in collecting the batteries that
341 are the subject of such reimbursement request. Such reimbursable costs

342 shall include: (A) Costs of collection, transport, recycling and other
343 methods of disposition identified in a primary battery stewardship
344 plan approved pursuant to section 4 of this act, and (B) reasonable
345 educational and promotional and administrative costs.

346 (b) (1) Any producer or primary battery stewardship organization
347 that incurs reimbursable costs, as described in subsection (a) of this
348 section, shall submit a request to the producer of the collected primary
349 battery or such producer's primary battery stewardship organization.
350 Any producer or primary battery stewardship organization that
351 receives a request for reimbursement pursuant to this subsection may,
352 prior to payment of such request and not later than thirty days after
353 receipt of such request for reimbursement, request an independent
354 audit of the requested reimbursement costs. The independent auditor
355 shall verify the reasonableness of the reimbursement request. If the
356 independent auditor confirms the reasonableness of such
357 reimbursement request, the producer or primary battery stewardship
358 organization that requested the audit shall pay the costs of the
359 independent auditor and the requested amount of reimbursement. If
360 the independent auditor determines that the reimbursement request
361 was not reasonable, the producer or primary battery stewardship
362 organization that initiated such reimbursement request shall pay the
363 cost of the independent auditor and shall only be paid the amount of
364 reimbursement request that the independent auditor determines to be
365 reasonable.

366 (2) The department shall not be required to provide assistance or
367 otherwise participate in a reimbursement request or independent audit
368 described in subdivision (1) of this subsection.

369 Sec. 10. (NEW) (*Effective from passage*) (a) Any producer or primary
370 battery stewardship organization implementing an approved primary
371 battery stewardship plan in compliance with the requirements of
372 sections 2 to 4, inclusive, of this act, may bring a civil action against
373 another producer or primary battery stewardship organization for
374 damages when: (1) The plaintiff producer or primary battery

375 stewardship organization incurs more than one thousand dollars in
376 actual reimbursable costs, collecting, handling, recycling or properly
377 disposing of primary batteries sold or offered for sale in the state by
378 the defendant producer; (2) the producer from whom damages are
379 sought in such action: (A) Can be identified as the producer of the
380 collected primary batteries from a brand or marking on the discarded
381 battery or from other information available to the plaintiff producer or
382 primary battery stewardship organization, and (B) does not operate or
383 participate in an approved primary battery stewardship organization
384 in the state or is not otherwise in compliance with the requirements of
385 sections 2 to 4, inclusive, of this act; or (3) the plaintiff producer or
386 primary battery stewardship organization submitted a reimbursement
387 request to another producer or primary battery stewardship
388 organization pursuant to section 9 of this act and the plaintiff producer
389 or primary battery stewardship organization does not receive
390 reimbursement within: (A) ninety days of such reimbursement request,
391 provided an independent audit was not requested in accordance with
392 section 9 of this act, or (B) sixty days of completion of an independent
393 audit and the independent auditor determined that reimbursement
394 was owed to the plaintiff producer or primary battery stewardship
395 organization.

396 (b) Any action brought against a producer who participates in a
397 primary battery stewardship program that covers multiple producers
398 shall be brought against such primary battery stewardship
399 organization rather than such individual producer.

400 (c) The department shall not be a party to or be required to provide
401 assistance or otherwise participate in any civil action brought pursuant
402 to this section.

403 Sec. 11. (NEW) (*Effective from passage*) Each producer and primary
404 battery stewardship organization shall be immune from liability for
405 any claim of a violation of antitrust law or unfair trade practice, if such
406 conduct is a violation of antitrust law, to the extent such producer or
407 organization is exercising authority pursuant to the provisions of

408 sections 2 to 4, inclusive, of this act.

409 Sec. 12. (NEW) (*Effective from passage*) Any information received by
410 the department pursuant to the provisions of sections 2 to 13,
411 inclusive, of this act shall be disclosed in accordance with the
412 provisions of chapter 14 of the general statutes except that the
413 commissioner shall not make public information which, in the
414 commissioner's judgment, contains or relates to trade secrets or
415 commercial or financial information obtained from a person that is
416 privileged or confidential. The total weight of batteries collected under
417 an approved primary battery stewardship plan shall not be deemed to
418 be confidential business information.

419 Sec. 13. (NEW) (*Effective from passage*) The Commissioner of Energy
420 and Environmental Protection may adopt regulations, in accordance
421 with the provisions of chapter 54 of the general statutes, to implement
422 the provisions of sections 2 to 15, inclusive, of this act.

423 Sec. 14. (NEW) (*Effective from passage*) Not later than three years after
424 the approval of a primary battery stewardship plan pursuant to section
425 4 of this act, the Commissioner of Energy and Environmental
426 Protection shall submit a report, in accordance with section 11-4a of the
427 general statutes, to the joint standing committee of the General
428 Assembly having cognizance of matters relating to the environment.
429 Such report shall provide an evaluation of the subject primary battery
430 stewardship program, including, but not limited to, information
431 concerning: (1) The amount, by weight, of primary batteries collected
432 under such approved primary battery stewardship plan; (2) the
433 percentage of collected batteries not covered by or attributable to a
434 primary battery producer implementing an approved primary battery
435 stewardship plan or participating in an approved primary battery
436 stewardship organization; and (3) recommendations for any legislation
437 concerning primary battery stewardship programs, including whether
438 additional producers of batteries or battery containing products should
439 be required to implement battery stewardship programs.

440 Sec. 15. (NEW) (*Effective from passage*) (a) The Commissioner of

441 Energy and Environmental Protection may seek civil enforcement of
442 the provisions of sections 2 to 13, inclusive, of this act pursuant to
443 chapter 439 of the general statutes.

444 (b) Whenever, in the judgment of the commissioner, any person has
445 engaged in or is about to engage in any act, practice or omission that
446 constitutes, or will constitute, a violation of any provision of sections 2
447 to 13, inclusive, of this act, the Attorney General may, at the request of
448 the commissioner, bring an action in the superior court for the judicial
449 district of New Britain for an order enjoining such act, practice or
450 omission. Such order may require remedial measures and direct
451 compliance with the provisions of sections 2 to 13, inclusive, of this act.
452 Upon a showing by the commissioner that such person has engaged in
453 or is about to engage in any such act, practice or omission, the court
454 may issue a permanent or temporary injunction, restraining order or
455 other order, as appropriate.

456 (c) Any action brought by the Attorney General pursuant to this
457 section shall have precedence in the order of trial, as provided in
458 section 52-191 of the general statutes.

459 Sec. 16. (NEW) (*Effective from passage*) (a) No person shall place a
460 discarded primary battery, as defined in section 1 of this act, in mixed
461 municipal solid waste or discard or otherwise dispose of such a
462 discarded primary battery except by discarding such primary battery
463 as part of a primary battery stewardship program authorized pursuant
464 to sections 2 to 4, inclusive, of this act.

465 (b) Any person who violates the provisions of subsection (a) of this
466 section shall be fined not more than five hundred dollars. Each
467 primary battery disposed of in violation of this section shall constitute
468 a separate offense.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>from passage</i>	New section
Sec. 10	<i>from passage</i>	New section
Sec. 11	<i>from passage</i>	New section
Sec. 12	<i>from passage</i>	New section
Sec. 13	<i>from passage</i>	New section
Sec. 14	<i>from passage</i>	New section
Sec. 15	<i>from passage</i>	New section
Sec. 16	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In section 11, "council" was changed to "organization" for consistency.

ENV *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Department of Energy and Environmental Protection; Resources of the General Fund	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 16 \$	FY 17 \$
Various Municipalities	Potential Savings	See Below	See Below

Explanation

The bill establishes a battery recycling stewardship program and requires battery stewardship organizations to file a registration form along with a \$15,000 fee with the Department of Energy and Environmental Protection (DEEP). Any revenue gain associated with the registration fee depends on the number of organizations that register and remit the fee with DEEP.

Also, the bill prohibits disposal of batteries in municipal solid waste (MSW). This may reduce the tonnage of MSW that is subject to tipping fees,¹ which may result in savings to various municipalities.

Lastly, the bill creates a new civil penalty of not more than \$500 for violations of the bill's provisions. The extent to which DEEP enforces the prohibition of battery disposal is uncertain; however, it may result in a revenue gain to the general fund.

¹ MSW is subject to tipping fees at an average rate of approximately \$57-74/ton.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the tonnage of batteries removed through MSW and the number of penalties imposed.

OLR Bill Analysis**sHB 6957*****AN ACT ESTABLISHING A HOUSEHOLD BATTERY RECYCLING STEWARDSHIP PROGRAM.*****SUMMARY:**

This bill establishes a framework for a statewide system to manage certain discarded batteries (“primary batteries”), including their collection, transport, recycling, and disposal.

The bill requires these batteries to be discarded only as part of a primary battery stewardship program. Violators are subject to a fine of up to \$500, with each improperly disposed of battery constituting a separate offense.

The bill generally prohibits, beginning in 2017, primary battery producers and retailers from selling batteries that are not included in primary battery stewardship programs. It exempts producers who annually sell, offer for sale, distribute, or import batteries of up to a total retail value of \$2,000.

The bill establishes a process for developing the stewardship programs under Department of Energy and Environmental Protection (DEEP)-approved primary battery stewardship plans, which must provide for, among other things, battery collection at no cost to consumers. Producers may submit the required plans individually or as a participant in a primary battery stewardship organization. The bill requires these organizations to annually register with DEEP and pay a \$15,000 registration fee.

The bill entitles producers and stewardship organizations to be reimbursed for the costs of managing batteries not covered by their respective stewardship plans. It sets a procedure for reimbursement

from these batteries' producers or the stewardship organizations in which they participate.

Under the bill, the organizations must have their programs audited to determine their effectiveness. The bill also allows the DEEP commissioner to civilly enforce the program's requirements, establishes reporting requirements, prohibits the disclosure of certain business information, and provides immunity to producers and stewardship organizations from claims of antitrust or unfair trade practice under certain conditions.

Lastly, the bill allows the DEEP commissioner to adopt regulations to implement its provisions.

EFFECTIVE DATE: Upon passage

PRIMARY BATTERIES AND PRODUCERS

The bill addresses collecting discarded primary batteries, which are certain small rechargeable batteries of less than five kilograms and nonrechargeable batteries up to two kilograms. It includes alkaline, carbon-zinc, and lithium metal batteries no longer used for their manufactured purpose. It excludes batteries (1) intended for industrial, business-to-business, warranty or maintenance service, or nonpersonal use; (2) sold in a computer, its monitor or peripheral parts; printer; television; or other device with a cathode ray tube; (3) sold or used in a medical device; or (4) difficult to remove or not intended to be removed, without using tools or with common household tools, from a consumer product.

The bill defines a small rechargeable battery as one with at least one voltaic or galvanic cell, electrically connected to produce electric energy that (1) is designed to be recharged and (2) provides less than 40 volts direct current. But the bill excludes rechargeable batteries that (1) are difficult to remove or not intended to be removed from a product by someone other than the manufacturer; (2) have no liquid electrolyte; or (3) use lead-acid technology, unless the battery or battery pack is sealed, has no liquid electrolyte, and are intended to

power a hand-held device or give uninterrupted backup electrical power for stationary consumer or office equipment.

A “primary battery producer” is anyone who, for a battery sold or offered for sale in Connecticut, (1) manufactures and sells or offers for sale a primary battery under its name or brand, (2) owns or licenses a trademark or brand under which a battery is sold or offered for sale, or (3) imports a primary battery for sale. A “brand” is a name, symbol, word, or mark that identifies a battery and attributes it to the brand’s owner or licensee.

PROHIBITED BATTERY SALES

Battery Producers

In order for primary battery producers to sell, offer for sale, or deliver to retailers their batteries, starting January 1, 2017, the producers or the primary battery stewardship organization they participate in must be registered and have paid the required fee under an approved and implemented primary battery stewardship plan (see below and COMMENT). The producer’s name and brand must also be listed on DEEP’s website as covered by an approved plan.

Beginning on this date, producers who have not previously sold batteries in the state and want to sell or offer them for sale or offer them for promotional purposes (“new producers”) must notify the DEEP commissioner before selling a battery not covered by an approved plan.

The commissioner must list these new producers on DEEP’s website. The bill gives new producers 90 days from the notice to (1) join an existing stewardship organization or (2) submit a stewardship plan for DEEP’s approval, as described below.

Retailers

The bill generally requires retailers, starting January 1, 2017, to sell or offer for sale primary batteries from producers who (1) have an approved stewardship plan; (2) belong to a stewardship organization with an approved plan; or (3) are on DEEP’s list of exempt producers.

But it allows retailers to sell, by January 1, 2018, batteries they purchase before January 1, 2017 and batteries from producers with expired or revoked plans if the retailer took possession of the in-store inventory of batteries before the plan's expiration or revocation.

Producers who supply retailers with batteries must also provide them with, or have their stewardship organization provide, educational materials describing battery collection opportunities. Retailers must make the materials available to consumers.

Under the bill, a "retailer" is anyone who offers a primary battery for retail sale in Connecticut, including through remote offerings such as sales outlets, catalogues, or websites.

PRIMARY BATTERY STEWARDSHIP PROGRAM

The bill requires each producer who sells, offers for sale, distributes, or offers for promotional purposes a primary battery in Connecticut to submit, by February 1, 2016, a primary battery stewardship plan to the DEEP commissioner. A producer may do this (1) individually or (2) as part of an organization that serves as the producer's agent to design, submit, implement, and administer a plan (a "primary battery stewardship organization").

Stewardship Organization

The bill specifies that to participate in a primary battery stewardship organization, the producer must appoint the organization to act on its behalf and the organization must accept the appointment. It requires the organization to:

1. assume the responsibilities, obligations, and liabilities of participating producers;
2. create no unreasonable barriers for producers to participate in the organization; and
3. maintain a public website listing the producers and brands covered by the organization's approved stewardship plan.

Beginning March 1, 2016, each stewardship organization must annually register with the DEEP commissioner and pay a \$15,000 registration fee. When registering, the organization must:

1. list its participating producers;
2. provide the name, address, and contact information for someone (a) responsible for ensuring a producer's compliance with the program and (b) nonmember producers can contact to learn how to participate in the organization; and
3. describe how it will meet the program's requirements.

The bill allows an organization to renew its registrations, if there are no changes, on a DEEP prescribed form.

Stewardship Plan

General Components. The bill requires primary battery stewardship plans to include, at least:

1. a list of (a) participating producers and their contact information and (b) covered brands;
2. how the batteries, including those covered by other plans, will be collected from consumers at no cost;
3. how retailers that meet the plan's requirements and all municipalities and solid waste management facilities in the state may serve as collection sites;
4. agreements with municipalities and collectors who collect curbside or backyard recycling to use the collection and its related containers to collect the batteries at no added consumer cost;
5. at least seven collection sites in each county for year-round battery collection;
6. a provision to (a) accept up to 50 batteries per week from

consumers who recycle them through curbside or backyard recycling collection and (b) allow for other collection facilities to agree to accept more than 50 batteries per visit from a consumer;

7. a detailed method to manage discarded batteries to ensure their components are recycled, if economically and technically feasible;
8. a list of the key participants in the battery collection chain;
9. an education and outreach program;
10. procedures to reimburse other battery producers or stewardship organizations (see below);
11. a primary battery collection rate performance goal that includes the estimated total weight of batteries offered for sale in the state by the producer or producers participating in the plan; and
12. how the program will be implemented with retailers, municipalities, collectors, and solid waste management facilities acting as collection facilities.

Under the bill, the “collection rate” is a percentage, by weight, of batteries a producer or stewardship organization collects by a set date. It is calculated by dividing the total weight of collected batteries during a calendar year by the average annual weight of batteries estimated to have been sold in the state by participating producers during the prior three years, when the estimate is based on a reasonable pro rata national sales calculation.

Key Participants. The list of key participants in the plan must include the:

1. number and name of the collection facilities, retailers, municipalities, and collectors accepting batteries under the plan, including their addresses and contact information;

2. name and contact information for transporters or contractors who collect batteries from the above participants; and
3. name, address, and contact information for the recycling facilities that process the collected batteries.

Education and Outreach. Under the bill, a plan's education and outreach must, at least, include mass media advertising using radio, television, general circulation newsprint, retail displays, and trade or other journals and publications. It must describe the efforts to be used to notify consumers, municipalities, solid waste management facilities, retailers, wholesalers, and collectors about the program.

The bill requires the education and outreach efforts to at least inform the public of the (1) free primary battery collection program and (2) ways batteries are collected, including the collection points and availability of curbside or backyard collection.

Program Implementation Provision. The bill requires a plan's implementation provisions to assure that the retailers, municipalities, collectors, and solid waste management facilities acting as collection facilities or points (1) incur no transportation or recycling costs and (2) receive the needed products or equipment to serve as a collection facility or point. The plan must also assure that primary batteries collected from these entities are responsibly managed.

Plan Approval Process. The bill requires the DEEP commissioner to determine, within 90 days of receiving a proposed stewardship plan, if the plan complies with the above requirements. If it does, he must notify the producer or organization in writing of the plan's approval. If he rejects a plan, the commissioner must notify the producer or organization in writing of the reasons why. A plan not acted on by the commissioner in this 90-day period is deemed approved.

The bill requires a producer or organization with a rejected plan to submit a revised plan to the commissioner within 45 days after receiving the rejection notice.

Under the bill, the commissioner must approve, in writing, changes to a proposed plan. The bill allows the commissioner to require amendments to an approved plan.

The bill requires posting all proposed plans and proposed amendments to approved plans, in accordance with the Freedom on Information Act, on DEEP's website for 30 days after the commissioner finds that a plan or amendment is complete. The commissioner must establish a process to receive public comments during this 30-day period.

The bill also requires the commissioner to keep on DEEP's website (1) all approved plans, (2) the names of producers with approved plans, (3) lists of the brands covered by an approved plan, and (4) the exempt producers. He must update the information within 10 days of receiving notice of a change.

Plan Duration. Under the bill, an approved plan is valid for up to five years, as long as the producer or organization complies with the bill and the plan. The bill does not specify what happens after a plan expires.

PROGRAM AUDIT

The bill requires a producer or stewardship organization to have its battery stewardship program audited five years after implementing the approved stewardship plan. It must hire the independent third-party auditor the DEEP commissioner selects.

The auditor must:

1. examine the program's effectiveness at collecting and recycling batteries,
2. examine the program's cost-effectiveness and compare it to other states' primary battery collection programs, and
3. submit the audit's results to the commissioner and relevant producer or stewardship organization.

REIMBURSEMENT PROCEDURE***Request for Reimbursement***

The bill entitles producers and stewardship organizations that operate under approved plans to reimbursement when they collect batteries that are not included under the plan. The producers of the collected batteries, or their stewardship organizations, must pay the collection costs, but only if requested by the collecting producer or organization after it has achieved its collection rate performance goal.

Reimbursable costs include (1) costs of collection, transport, recycling, and other methods of disposal identified in the approved plan and (2) reasonable educational, promotional, and administrative costs. The bill limits reimbursement to only the costs that are the subject of the reimbursement request.

Independent Audit

A producer or organization may ask for an independent audit of a reimbursement request. The audit request must be made within 30 days after receiving the reimbursement request and before making the reimbursement.

The independent auditor must verify the reasonableness of the reimbursement request. If the auditor confirms its reasonableness, the producer or organization that requested the audit must pay the cost of the audit and the requested reimbursement amount. If the auditor finds the request is not reasonable, the producer or organization that requested the reimbursement must pay for the audit and only receive the amount the auditor finds reasonable.

Civil Action for Reimbursement

The bill allows a producer or stewardship organization operating under an approved plan to bring a civil action for damages against another producer or stewardship organization. They may do so when they:

1. incur over \$1,000 in actual reimbursable costs, collecting,

handling (presumably transporting), recycling, or properly disposing of batteries sold or offered for sale in the state by the defendant producer;

2. involve a defendant producer who (a) is identifiable from a brand or marking on the discarded batteries or from other available information and (b) does not comply with the bill's stewardship plan requirements; or
3. submit a reimbursement request to another producer or stewardship organization under the above procedure and fail to receive payment within (a) 90 days of the request, if there was no audit or (b) 60 days after an audit finding that reimbursement is owed.

The bill requires an action against a producer who is in a primary battery stewardship program that covers multiple producers to be brought against the stewardship organization, not the individual producer.

DEEP Involvement

Under the bill, DEEP has no obligation to help or participate in a reimbursement request or audit. The bill prohibits DEEP from being a party to, or required to help or participate in, a civil reimbursement action.

CIVIL PENALTIES

The bill authorizes the DEEP commissioner to enforce the program's requirements under his existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in the New Britain Judicial District if he believes that a person has engaged in, or is about to engage in, any act, practice, or omission that violates the program's requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including taking remedial measures or directing compliance.

The bill gives such actions by the attorney general precedence over other actions in the order of trial, similar to other actions brought on behalf of the state.

REPORTS

Producer or Organization Annual Reports

The bill requires each producer or stewardship organization to begin annually reporting to the DEEP commissioner by March 1, 2018. The report must include:

1. the weight of batteries collected under the program during the previous calendar year;
2. the percentage of the batteries collected in that year that are from producers not participating in an approved program, based on periodic sorting by the reporting producer or organization;
3. the collection rate achieved under the program in the previous year, including the estimated total sales, by weight, of batteries sold in Connecticut in the previous three years;
4. contact information for and the location of the producers' collection facilities;
5. examples and descriptions of educational materials used to increase collection;
6. the ways the batteries were managed and recycled;
7. any material changes to the stewardship plan the DEEP commissioner approved; and
8. the cost of implementing the program, including the collection, recycling, education, and outreach costs.

Program Evaluation by DEEP

Within three years after the plan's approval, the commissioner

must submit a report to the Environment Committee that evaluates the program. The report must include at least:

1. the weight of batteries collected under approved battery stewardship plans;
2. the percentage of batteries collected not covered by or attributed to a producer implementing a plan or participating in a stewardship organization; and
3. recommendations for legislation on primary battery stewardship programs, including whether other battery or battery containing product producers should implement programs.

DISCLOSURE OF INFORMATION

Under the bill, the information DEEP receives as part of the program is generally subject to disclosure under the Freedom of Information Act. It exempts information that the DEEP commissioner believes contains or relates to confidential or privileged trade secrets or commercial or financial information. The bill specifies that the total weight of batteries collected under an approved plan is not confidential business information.

LIABILITY PROTECTION

Under the bill, to the extent a producer or an organization is exercising authority under the bill's provisions, it is immune from liability for any antitrust or unfair trade practice claim based on a violation of antitrust law.

COMMENT

Registration Fee

The bill contains conflicting provisions regarding the payment of the annual registration fee. Under the bill, battery producers or their stewardship organizations must register and pay the registration fee in order to sell batteries in the state beginning in 2017. But the bill only requires the organizations to register and pay the fee.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 21 Nay 8 (03/20/2015)