

JAN 22 2016

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 BEHIND-THE-METER BATTERY RECYCLING

6 § -1 Definitions. As used in this chapter:

7 "Behind-the-meter renewable energy system" means a system
8 that produces electricity using renewable energy and is located
9 at a single dwelling unit, a multiple dwelling unit, an office
10 building or commercial facility, primarily for use at such
11 single dwelling unit, multiple dwelling unit, office building or
12 commercial facility, but which may also be exported to the
13 utility grid. A behind-the-meter renewable energy system
14 generally consists of a renewable energy generator, a BTM
15 battery or other energy storage system, and a control system.

16 "Brand" means a symbol, word, or mark that identifies a BTM
17 battery as that term is defined herein.



1 "BTM battery" means a battery contained in a behind-the-
2 meter renewable energy system whether the battery is removable
3 from the behind-the-meter renewable energy system or is an
4 integrated component of the behind-the-meter renewable energy
5 system.

6 "BTM battery manufacturer" means a person:

- 7 (1) Who manufactures or manufactured BTM batteries under a
8 brand that it owns or owned or is or was licensed to
9 use;
- 10 (2) Who sells or sold BTM batteries manufactured by others
11 under a brand that the seller owns or owned or is or
12 was licensed to use;
- 13 (3) Who manufactures or manufactured BTM batteries without
14 affixing a brand;
- 15 (4) Who manufactures or manufactured BTM batteries to
16 which the person affixes or affixed a brand that the
17 person neither owns or owned nor is or was licensed to
18 use; or
- 19 (5) On whose account BTM batteries manufactured outside
20 the United States are imported into the United States;
21 provided that if at the time those BTM batteries are



1 imported into the United States, another person has
2 registered as the manufacturer of the brand of the BTM
3 batteries, this paragraph shall not apply.

4 "Covered BTM battery" means a BTM battery subject to this
5 chapter.

6 "Department" means the department of health.

7 "New BTM battery" means a BTM battery that is manufactured
8 after July 1, 2016.

9 "Person" means any individual, business, partnership,
10 limited liability company, corporation, not-for-profit
11 organization, association, government entity, public benefit
12 corporation, or public authority.

13 "Program year" means a full calendar year beginning on or
14 after January 1, 2017, and each calendar year thereafter
15 beginning on January 1.

16 "Recover" means to reuse or recycle.

17 "Recycling" means processing (including disassembling,
18 dismantling, or shredding) BTM batteries or their components to
19 recover a useable product; provided that "recycling" does not
20 include any process defined as incineration under applicable
21 laws and rules.



1 "Recycling program" means a program meeting the
2 requirements of section -4(c) approved by the department
3 pursuant to section 4(d) of this chapter.

4 "Renewable energy" shall have the same meaning as in
5 section 269-91.

6 "Retailer" means any person who offers BTM batteries for
7 sale, other than for resale by the purchaser, through any means,
8 including sales outlets, catalogs, or the Internet.

9 "Sell" or "sale" means any transfer for consideration of
10 title, including transactions conducted through sales outlets,
11 catalogs, or the Internet, but excluding leases.

12 § -2 Scope of products. The collection, transportation,
13 and recycling provisions of this chapter shall apply only to BTM
14 batteries used and discarded in this State.

15 § -3 Sales prohibition. (a) Beginning January 1, 2017,
16 no BTM battery manufacturer or retailer shall sell or offer for
17 sale any new BTM battery for delivery in this State unless:

- 18 (1) The covered BTM battery is labeled with a brand, and
19 the label is permanently affixed and readily visible;



1 (2) The brand is included in a registration that is filed
2 with the department and is effective pursuant to
3 section -4(b); and

4 (3) The department has approved the manufacturer's
5 recycling program plan.

6 (b) Beginning , the department shall maintain a
7 list of each registered BTM battery manufacturer, the brands
8 reported in each BTM battery manufacturer's registration, and a
9 list of brands for which no BTM battery manufacturer has
10 registered. The lists shall be posted on the department's
11 website and shall be updated by the first day of each month.
12 Every retailer who sells or offers for sale any new BTM battery
13 for delivery in this State shall review these lists prior to
14 selling the BTM battery. A retailer is considered to have
15 complied with subsection (a) if, on the date a new BTM battery
16 was ordered by the retailer, the brand was included on the
17 department's list of brands reported in a BTM battery
18 manufacturer's registration.

19 § -4 BTM battery manufacturer responsibility. (a)
20 Beginning , each BTM battery manufacturer shall label
21 all new BTM batteries to be offered for sale for delivery in



1 this State with a brand, which label shall be permanently
2 affixed and readily visible.

3 (b) By July 1, 2016, each BTM battery manufacturer of new
4 BTM batteries offered for sale for delivery in this State shall
5 register with the department and pay to the department an
6 initial registration fee of \$2,500. Thereafter, if a BTM
7 battery manufacturer has not previously registered, the BTM
8 battery manufacturer shall register with the department prior to
9 any offer for sale or delivery of the BTM battery manufacturer's
10 new BTM batteries in this State.

11 Each BTM battery manufacturer who is registered shall
12 submit an annual renewal of its registration with the payment of
13 a registration fee of \$5,000 by January 1, 2017, and January 1
14 of each program year thereafter.

15 The initial registration and each renewal shall include a
16 list of all of the BTM battery manufacturer's brands of covered
17 BTM batteries and shall be effective on the second day of the
18 succeeding month after receipt by the department of the
19 registration or renewal.

20 (c) No earlier than October 1, 2016, and annually
21 thereafter, each BTM battery manufacturer shall submit a plan to



1 the department to establish, conduct, and manage a recycling
2 program for the collection, transportation, and recycling of its
3 BTM batteries sold in the State, which shall be subject to the
4 following conditions:

5 (1) The recycling program shall not permit the charging of
6 a fee at the point of recycling if the BTM battery is
7 brought by the BTM battery owner to a central location
8 for recycling; provided that the plan may include a
9 reasonable transportation fee if the BTM battery
10 manufacturer or BTM battery manufacturer's agent
11 removes the BTM battery from the owner's premises at
12 the owner's request and if the removal is not in
13 conjunction with delivery of a BTM battery to the
14 owner; and

15 (2) Each BTM battery manufacturer may develop its own
16 recycling program or may collaborate with other BTM
17 battery manufacturers; provided that the program is
18 implemented and fully operational no later than
19 January 1, 2017.

20 (d) The department shall review each BTM battery
21 manufacturer's recycling program plan and, within sixty days of



1 receipt of the plan, shall determine whether the plan complies
2 with this chapter. If the plan is approved, the department
3 shall notify the BTM battery manufacturer or group of BTM
4 battery manufacturers. If the plan is rejected, the department
5 shall notify the BTM battery manufacturer or group of BTM
6 battery manufacturers and provide the reasons for the plan's
7 rejection. Within thirty days after receipt of the department's
8 rejection, the BTM battery manufacturer or group of BTM battery
9 manufacturers shall revise and resubmit the plan to the
10 department for approval.

11 (e) The obligations under this chapter for a BTM battery
12 manufacturer who manufactures or manufactured BTM batteries, or
13 who sells or sold BTM batteries manufactured by others, under a
14 brand that was previously used by a different person in the
15 manufacture of BTM batteries, shall extend to all BTM batteries
16 bearing that brand.

17 (f) Nothing in this chapter is intended to exempt any
18 person from liability that the person would otherwise have under
19 applicable law.

20 § -5 Retailer responsibility. Beginning January 1,
21 2017, retailers shall make available to their customers



1 information on collection services in the State, including the
2 department's website and toll-free telephone number. Internet
3 retailers may include this information in a visible location on
4 their website to fulfill this requirement.

5 § -6 Department responsibility. (a) Beginning
6 January 1, 2017, the department shall maintain and update a
7 website and a toll-free number with current information on where
8 covered entities can return covered electronic devices for
9 recycling.

10 (b) The department shall develop a consumer education
11 program about the covered BTM battery recycling program.

12 § -7 Regulatory authority. The department may adopt
13 rules, pursuant to chapter 91, necessary to implement this
14 chapter.

15 § -8 Manufacturer and agent responsibilities; regulatory
16 compliance. Each BTM battery manufacturer shall be responsible
17 for ensuring that the manufacturer and its agents follow all
18 federal, state, and county laws when collecting, transporting,
19 and recycling BTM batteries, and shall adopt environmentally
20 sound recycling practices for the covered BTM batteries.



1 § -9 Enforcement. (a) The department may conduct
2 audits and inspections to determine compliance under this
3 chapter. Except as provided in subsection (c), the department
4 and attorney general shall be empowered to enforce this chapter
5 and take necessary action against any BTM battery manufacturer
6 or retailer for failure to comply with this chapter or rules
7 adopted thereunder.

8 (b) The attorney general may file suit in the name of the
9 State to enjoin any activity related to the sale of covered BTM
10 batteries in violation of this chapter.

11 (c) The department shall issue a warning notice to a
12 person for the person's first violation of this chapter. The
13 person shall remedy the violation within sixty days of the date
14 the warning notice was issued or be subject to the penalties
15 provided by law, including but not limited to the penalties set
16 forth in subsections (d) through (f). A retailer that receives
17 a warning notice from the department for a violation of section

18 -3(a) shall submit proof to the department, within sixty days
19 from the date the warning notice was issued, that its inventory
20 of covered BTM batteries is in compliance with this chapter.



1 (d) Any retailer who sells or offers for sale an unlabeled
2 BTM battery in violation of section -3, or any BTM battery
3 manufacturer that fails to comply with any provision of section
4 -4 may be assessed an administrative penalty of up to \$10,000
5 for the first violation and up to \$25,000 for the second and
6 each subsequent violation, in addition to any other penalties
7 required or imposed pursuant to this chapter.

8 (e) Except as provided in subsection (d), any person who
9 violates any requirement of this chapter may be assessed an
10 administrative penalty of up to \$1,000 for the first violation
11 and up to \$2,000 for the second and each subsequent violation,
12 in addition to any other penalties required or imposed pursuant
13 to this chapter.

14 (f) The department shall determine additional penalties
15 based on adverse impact to the environment, unfair competitive
16 advantage, and other considerations that the department deems
17 appropriate; provided that any additional penalties shall be
18 established pursuant to rules adopted pursuant to chapter 91.

19 § -10 Administrative penalties; fees. In addition to
20 any other administrative remedy provided by this chapter or by
21 rules adopted under this chapter for a violation thereof, the



1 department is authorized to impose by order administrative
2 penalties and is further authorized to set, charge, and collect
3 administrative fines and to recover administrative fees and
4 costs, including attorney's fees and costs, or bring legal
5 action to recover administrative fines and fees and costs,
6 including attorney's fees and costs.

7 § -11 Behind-the-meter renewable energy battery
8 recycling fund. (a) There is established in the state treasury
9 the behind-the-meter renewable energy battery recycling fund
10 into which shall be deposited all fees, payments, and penalties
11 collected by the department pursuant to this chapter.

12 (b) The recycling fund shall be administered by the
13 department. Moneys in the fund shall be expended by the
14 director of health solely for the purpose of implementing and
15 enforcing this chapter.

16 § -12 Financial and proprietary information; report.
17 (a) Notwithstanding any law to the contrary, financial or
18 proprietary information, including trade secrets, commercial
19 information, and business plans, submitted to the department
20 under this chapter is confidential and shall be exempt from
21 public disclosure to the extent permitted by chapter 92F.



1 (b) The department shall compile the information submitted
2 by BTM battery manufacturers and issue a report to the
3 legislature no later than April 1, 2018, and annually each year
4 thereafter.

5 § -13 Federal preemption. This chapter shall be deemed
6 repealed if a federal law or a combination of federal laws takes
7 effect that establishes a national program for the collection
8 and recycling of covered BTM batteries that substantially meets
9 the intent of this chapter, including the creation of a
10 financing mechanism for collection, transportation, and
11 recycling of all covered BTM batteries from covered entities in
12 the United States.

13 § -14 Environmental management. (a) All covered BTM
14 batteries recovered pursuant to this chapter shall be recycled
15 in a manner that complies with all applicable federal, state,
16 and county laws and requirements.

17 (b) The Institute of Scrap Recycling Industries, Inc.'s
18 Electronics Recycling Operating Practices and similar industry
19 best practices shall serve as guidelines for managing BTM
20 batteries in an environmentally sound manner."
21



1 SECTION 2. This Act shall take effect on July 1, 2016.

2

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S.B. NO. 2533

Report Title:

Energy; Behind-the-Meter Battery Recycling

Description:

Enacts a new chapter to regulate behind-the-meter battery recycling under the department of health.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

