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(Filing No. S-)

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

132ND LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT “ ” to S.P. 214, L.D. 474, “An Act to Improve Maine’s Environment and Protect Natural Resources”

Amend the bill by striking out the title and substituting the following:

'An Act to Establish a Stewardship Program for Primary and Rechargeable Batteries'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 38 MRSA §1604, sub-§2, as enacted by PL 1989, c. 583 and repealed and replaced by c. 878, Pt. A, §116, is amended to read:

2. Lead-acid battery retailers. A Except as provided in subsection 2-A, a person selling or offering for retail sale lead-acid batteries shall:

A. Accept, at the point of transfer, used lead-acid batteries in reasonably clean and unbroken condition from customers in a quantity at least equal to the number of new batteries purchased;

B. If a used lead-acid battery is not exchanged at the time of sale, collect a \$10 deposit on the new battery.

(1) The deposit shall be returned to the customer when the customer delivers a used lead-acid battery within 30 days of the date of sale.

(2) All funds received by a dealer as a deposit on a lead-acid battery shall be held in trust and separately accounted for by the retailer. Any interest on those funds shall inure to the benefit of the retailer. Annually on July 1st, all deposits not returned to customers in exchange for lead-acid batteries during the previous year ending June 30th shall inure to the benefit of the retailer; and

C. Post an 8 1/2" x 11" written notice that includes the display of the universal recycling symbol and the following language.

(1) "State law requires us to accept motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased."

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1 (2) "A deposit of \$10 will be charged for each new lead-acid battery that is not
2 exchanged with an old lead-acid battery."

3 (3) "It is illegal to dump, bury or incinerate a motor vehicle lead-acid battery or
4 other lead-acid battery."

5 (4) "Recycle your used batteries."

6 **Sec. 2. 38 MRSA §1604, sub-§2-A** is enacted to read:

7 **2-A. Relationship to other programs.** A person is exempt from complying with the
8 requirements of subsection 2 with respect to any lead-acid battery sold or offered for sale
9 by that person if:

10 A. The battery is a covered battery, as defined in section 1617, subsection 1, paragraph
11 I; and

12 B. The battery is managed under a covered battery stewardship program established
13 in accordance with section 1617 and the person is participating under the program as a
14 collection site for covered batteries.

15 **Sec. 3. 38 MRSA §1617** is enacted to read:

16 **§1617. Battery stewardship program**

17 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
18 following terms have the following meanings.

19 A. "Battery" means a device consisting of one or more cells in which chemical energy
20 is converted into electricity and used as a source of power or for power storage.

21 B. "Battery stewardship organization" or "stewardship organization" means a
22 corporation, nonprofit organization or other legal entity created or designated by a
23 producer or a group of producers to directly implement and operate a battery
24 stewardship program in accordance with a battery stewardship plan approved by the
25 department.

26 C. "Battery stewardship program" or "stewardship program" means a program
27 financed and implemented by a producer, a group of producers or a battery stewardship
28 organization on behalf of a producer or a group of producers in accordance with a
29 battery stewardship plan approved by the department.

30 D. "Brand" has the same meaning as in section 1771, subsection 1.

31 E. "Collection" means the gathering of waste, including the preliminary sorting and
32 storage of waste, for the purposes of transporting the waste to a recycling
33 establishment.

34 F. "Collection container" means a container used at a collection site under a battery
35 stewardship program that is accessible to and usable by persons bringing covered
36 batteries to the collection site for collection. "Collection container" does not include a
37 container used at a collection site solely to store collected covered batteries that is not
38 accessible to or usable by persons bringing covered batteries to the collection site for
39 collection.

40 G. "Collection rate" means a percentage, by weight, of covered batteries collected by
41 a battery stewardship program in the State, calculated by dividing the total weight of

- 1 covered batteries collected by the program during the prior calendar year by the average
2 annual weight of all covered batteries estimated to have been sold into the State during
3 the prior 3 calendar years, which may be based on reasonable pro rata calculations
4 using national sales data, by all producers participating in the program.
- 5 H. "Collection site" means a location to which a person may bring covered batteries
6 for collection under a battery stewardship program that is approved by the operator of
7 the program pursuant to subsection 7 and that is operated by a retailer, wholesaler,
8 municipality or tribal government, solid waste management facility, household
9 hazardous waste facility or other entity.
- 10 I. "Covered battery" means a portable battery or a medium format battery. "Covered
11 battery" does not include:
- 12 (1) Prior to January 1, 2030, a portable battery or medium format battery that is
13 an embedded battery. Beginning January 1, 2030, "covered battery" includes a
14 portable battery or medium format battery that is an embedded battery;
- 15 (2) A battery contained within a medical device that is not principally designed
16 for or marketed to consumers for personal use;
- 17 (3) A large format battery;
- 18 (4) A battery that contains an electrolyte as a free liquid; or
- 19 (5) A lead-acid battery, as defined in section 1604, weighing greater than 11
20 pounds.
- 21 J. "Covered battery-containing product" means a product that contains or is packaged
22 with a covered battery. "Covered battery-containing product" does not include a
23 product that is a covered electronic device regulated under section 1610.
- 24 K. "Damaged or defective battery" means a battery that has been damaged or identified
25 by the producer as being defective for safety reasons and that has the potential of
26 producing a dangerous evolution of heat, fire or short circuit, as described in 49 Code
27 of Federal Regulations, 173.185(f).
- 28 L. "Easily removable" means, with respect to a battery within a battery-containing
29 product, designed by the producer of the product to be removable by a user of the
30 product using common household tools.
- 31 M. "Embedded battery" means a portable battery or medium format battery that is
32 contained within a battery-containing product and that is not intended or designed to
33 be easily removable from the product.
- 34 N. "Large format battery" means:
- 35 (1) A primary battery that weighs more than 25 pounds; or
- 36 (2) A rechargeable battery that:
- 37 (a) Weighs more than 25 pounds; or
- 38 (b) Has a rating of more than 2,000 watt-hours.
- 39 O. "Medium format battery" means:

1 (1) A primary battery that weighs more than 4.4 pounds but not more than 25
2 pounds; or

3 (2) A rechargeable battery that:

4 (a) Weighs more than 11 pounds but not more than 25 pounds; or

5 (b) Has a rating of more than 300 watt-hours but not more than 2,000 watt-
6 hours.

7 P. "Municipality" means a city, town, county, township, village or plantation; a refuse
8 disposal district under chapter 17; or a regional association, as defined in section
9 1303-C, subsection 24.

10 Q. "Portable battery" means:

11 (1) A primary battery that weighs not more than 4.4 pounds; or

12 (2) A rechargeable battery that:

13 (a) Weighs not more than 11 pounds; and

14 (b) Has a rating of not more than 300 watt-hours.

15 R. "Primary battery" means a battery that is not designed to be and is not capable of
16 being recharged.

17 S. "Producer" means, with respect to a covered battery or covered battery-containing
18 product:

19 (1) If the battery or product is sold, offered for sale or distributed for sale in or into
20 the State under a brand owned by the person that manufactures the battery or
21 product, the person that manufactures the battery or product;

22 (2) If the battery or product is sold, offered for sale or distributed for sale in or into
23 the State under a brand not owned by the person that manufactures the battery or
24 product, the person that owns the brand under which the battery or product is sold,
25 offered for sale or distributed for sale in or into the State;

26 (3) If there is no person to which subparagraph (1) or (2) applies, the person that
27 is a licensee of the brand or trademark under which the battery or product is sold,
28 offered for sale or distributed for sale in or into the State;

29 (4) If there is no person to which subparagraph (1), (2) or (3) applies that is located
30 in the United States, the person that is the importer of record into the United States
31 for the battery or product for the purpose of selling, offering for sale or distributing
32 for sale the battery or product in or into the State; or

33 (5) If there is no person to which subparagraph (1), (2), (3) or (4) applies that has
34 a commercial presence in the State, the person that first sells, offers for sale or
35 distributes for sale the battery or product in or into the State.

36 "Producer" does not include a person that sells, offers for sale or distributes for sale a
37 covered battery-containing product in or into the State if the covered battery contained
38 in or packaged with the product is supplied by a producer participating in a battery
39 stewardship program in the State for that battery, as long as the participating producer
40 provides the person and the operator of the program with a written certification
41 stipulating the producer's participation in the program for that battery.

1 "Producer" does not include a person that would otherwise be considered a producer
2 under this paragraph if the person enters into a signed agreement with another producer
3 that is participating in a battery stewardship program in the State to accept
4 responsibility as producer under this section for the person's covered batteries or
5 covered battery-containing products sold, offered for sale or distributed for sale in or
6 into the State, as long as the other producer provides a copy of that signed agreement
7 to the operator of the program.

8 T. "Proprietary information" has the same meaning as in section 1771, subsection 6-A.

9 U. "Rechargeable battery" means a battery that contains one or more voltaic or
10 galvanic cells that are electrically connected to produce electric energy and that is
11 designed to be recharged.

12 V. "Recycling" has the same meaning as in section 1771, subsection 7.

13 W. "Recycling efficiency rate" means a percentage, by weight, calculated by dividing
14 the weight of components and material recycled by the operator of a battery
15 stewardship program under this section by the weight of covered batteries collected by
16 the operator.

17 X. "Recycling establishment" has the same meaning as in section 2101-A, subsection
18 4.

19 Y. "Retailer" means a person that sells or offers for sale a covered battery or covered
20 battery-containing product in or into the State or that offers, distributes or otherwise
21 makes a covered battery or covered battery-containing product available to an
22 individual or commercial customer for the customer's use in the State.

23 Z. "Tribal government" means the government of a federally recognized Indian tribe
24 in the State.

25 **2. Sales requirements.** This subsection governs requirements for the sale, offer for
26 sale or distribution for sale in or into the State of covered batteries, covered battery-
27 containing products and, prior to January 1, 2030, products containing embedded batteries.

28 A. Beginning 180 days after the date a battery stewardship plan submitted pursuant to
29 subsection 4 is first approved by the department in accordance with subsection 5, a
30 producer may not sell, offer for sale or distribute for sale in or into the State a covered
31 battery or covered battery-containing product unless the producer is participating in a
32 battery stewardship program that is operating in accordance with an approved
33 stewardship plan.

34 B. Beginning March 1, 2027, a producer participating in a battery stewardship program
35 under this section may not sell, offer for sale or distribute for sale in or into the State a
36 battery-containing product that contains an embedded battery unless the producer
37 annually provides to the operator of the battery stewardship program for inclusion in
38 the report required pursuant to subsection 8 the information for that embedded battery
39 and product required pursuant to subsection 8, paragraph C. The operator of the battery
40 stewardship program shall notify the department of any failure by the participating
41 producer to provide to the operator the information for that embedded battery and
42 product required pursuant to subsection 8, paragraph C.

43 This paragraph is repealed January 1, 2030.

1 **3. Marking requirement.** Except as otherwise provided by the department by rule
2 adopted pursuant to this subsection, beginning 2 years after the date a battery stewardship
3 plan submitted pursuant to subsection 4 is first approved by the department in accordance
4 with subsection 5, a producer or retailer may not sell, offer for sale or distribute for sale in
5 or into the State a covered battery or covered battery-containing product if the covered
6 battery or the covered battery contained in or packaged with the product is 1/2 inch or
7 greater in diameter or has a surface with a length that is 1/2 inch or greater, unless that
8 covered battery is marked with information that identifies the producer and chemistry of
9 the battery and that indicates the battery should not be disposed of as household waste.

10 The department may adopt rules establishing marking requirements that differ from this
11 subsection as necessary to maintain consistency with federal laws or federal regulations
12 concerning battery labeling requirements or concerning voluntary standards for battery
13 labeling.

14 **4. Submission of plan; plan requirements.** Not later than 6 months after the effective
15 date of rules initially adopted by the department to implement this section pursuant to
16 subsection 11, a producer, individually, collectively with one or more producers or through
17 a battery stewardship organization, shall submit a proposed battery stewardship plan to the
18 department for review and approval. The plan must cover a term of not more than 5 years
19 and must include, at a minimum, the following information:

20 A. Identification of and contact information for the individual or entity submitting the
21 plan and for each producer that will be participating in the battery stewardship program,
22 as well as information regarding the brands of covered batteries and covered battery-
23 containing products for each participating producer that will be managed under the
24 plan.

25 (1) Pursuant to subsection 1, paragraph S, the plan must include copies of:

26 (a) Any written certification describing a participating producer's
27 responsibility under the program for a covered battery supplied by the producer
28 to a person for sale in or with a covered-battery containing product of that
29 person; and

30 (b) Any signed agreement entered into by a participating producer to accept
31 responsibility under this section for a person's covered batteries or covered
32 battery-containing products.

33 (2) If the plan is submitted by a battery stewardship organization, the plan must
34 also include:

35 (a) A description of the organization, including its organizational structure,
36 administration and management, and the tasks that will be performed by the
37 organization; and

38 (b) A written certification that the organization will assume the
39 responsibilities, obligations and liabilities under this section for all producers
40 that will be participating in the battery stewardship program;

41 B. A description of how the program will provide effective education and outreach to
42 promote program use and ensure that collection options for covered batteries are
43 understood by consumers, retailers and others, which must include, but is not limited
44 to:

1 (1) A description of how the program will develop and maintain a publicly
2 accessible website that provides information regarding the producers participating
3 in the program and the brands of covered batteries and covered battery-containing
4 products managed under the program; and

5 (2) A description of the methods to be used by the program to educate and conduct
6 outreach to retailers regarding the prohibition under subsection 2, paragraph A on
7 the sale of covered batteries and covered battery-containing products of a producer
8 that is not participating in a battery stewardship program under this section;

9 C. A description of how the stewardship program will include a collection system for
10 all covered battery chemistries and brands that is convenient and adequate to serve the
11 needs of persons in both rural and urban areas and that otherwise satisfies the
12 requirements of subsection 6. Information regarding the proposed collection system
13 must include, but is not limited to:

14 (1) A list of collection sites and the street addresses of those sites proposed for use
15 under the program;

16 (2) A description of the criteria that will be used to determine whether an entity
17 will be approved to participate as a collection site for covered batteries under the
18 program;

19 (3) A description of how the program will make available for voluntary use by
20 collection sites signage, written materials and other promotional items that may be
21 used by collection sites to inform consumers regarding end-of-life management
22 options for batteries collected under the program;

23 (4) A description of the safety training procedures related to battery collection
24 activities at collection sites that will be developed for use by collection sites under
25 the program, including a description of the operating protocols that will be used to
26 reduce the risk of spills or fires at collection sites, the response protocols that will
27 be used in the event of spills or fires at collection sites and the protocols that will
28 be used for the safe management of damaged or defective batteries collected at
29 collection sites;

30 (5) Identification of proposed service providers, including sorters, transporters,
31 processors and recycling establishments, that will be used by the program to
32 provide for the final disposition of batteries collected through the program's
33 collection system and a description of the method by which collected batteries will
34 be recorded, tracked and documented from the point of collection to the point of
35 final disposition; and

36 (6) Identification of and explanation for any anticipated delays in the
37 implementation of the collection system for covered batteries that are medium
38 format batteries, including any anticipated delays in the program's ability to collect,
39 package, transport or process medium format batteries pursuant to the requirements
40 of this section.

41 The plan must be designed to ensure that, if the implementation of the collection system
42 for and management of covered batteries that are medium format batteries is delayed,
43 the collection system requirements for and management of medium format batteries in
44 accordance with subsection 6, paragraph A will be satisfied not later than 2 years after

1 the date of commencement of collection of covered batteries under the program's
2 collection system;

3 D. Proposed performance goals for the stewardship program for at least the first 3
4 years of program implementation, which must include, but are not limited to:

5 (1) A description of the promotional activities that will be undertaken and the
6 public awareness goals that will be achieved by the stewardship program and a
7 description of the public education and outreach strategies the program will employ
8 to achieve those goals; and

9 (2) A description of how the stewardship program will be designed to achieve
10 collection rates and recycling efficiency rates for covered batteries that are primary
11 batteries and for covered batteries that are rechargeable batteries;

12 E. A description of the methods by which the producers participating in the battery
13 stewardship program will finance the collection and transportation and the reuse,
14 recycling or disposition of covered batteries under the program; effective education
15 and outreach related to the program; program assessment and reporting; any incentives
16 necessary to achieve program goals, including education and infrastructure investments
17 made under the program; and payment to the department in accordance with subsection
18 11 of reasonable fees for review of the program plan and any proposed amendments
19 and annual fees to cover the department's actual costs for the program for report review,
20 oversight, administration and enforcement.

21 (1) For a program that will be implemented by or on behalf of more than one
22 producer, the plan must include a description of the methods by which each
23 participating producer's cost share will be determined and paid, which must be
24 designed to equitably distribute responsibility for the costs of implementing,
25 administering and operating the program among the participating producers and
26 may not create unreasonable barriers to producer participation in the program.

27 (2) The program must be designed to provide at a minimum a half-time employee
28 or contracted agent whose job duties are dedicated to implementing the program in
29 the State unless the commissioner determines that a lesser staffing requirement is
30 adequate to provide the administrative oversight, training and ongoing technical
31 support for collection sites, education and outreach efforts, program performance
32 assessment and reporting necessary for program implementation; and

33 F. Any other information required by the department.

34 **5. Review and approval of plan; amendments.** The department shall review a
35 proposed battery stewardship plan or amendment to an approved stewardship plan in
36 accordance with the provisions of this subsection.

37 A. Within 120 days after receipt of a proposed battery stewardship plan, the
38 department shall determine whether the stewardship plan complies with the
39 requirements of this section and the rules adopted pursuant to this section. The
40 department shall notify the person that submitted the plan in writing regarding its
41 decision to approve or disapprove the proposed plan. If the department disapproves a
42 proposed stewardship plan, the written notice of disapproval must state the reason or
43 reasons for the disapproval.

1 B. Upon receipt of a written notice of disapproval pursuant to paragraph A, the entity
2 that submitted the proposed battery stewardship plan may submit a revised plan to the
3 department within 60 days of the date of issuance of the written notice or may withdraw
4 the plan. The department shall review and approve or disapprove a revised plan
5 submitted under this paragraph within 90 days of receipt.

6 C. The operator of a battery stewardship program making a substantive change to an
7 approved battery stewardship plan shall submit the proposed change as a plan
8 amendment to the department for review and approval prior to implementation. If the
9 operator determines a change is not substantive, the operator shall inform the
10 department of the change within 30 days of implementation but need not receive
11 department approval unless the department determines that the change is substantive.

12 (1) Examples of changes to an approved battery stewardship plan that are not
13 substantive include, but are not limited to, the addition to or removal from the
14 program of collection sites, participating producers or battery transporters,
15 processors or recycling establishments used by the program.

16 (2) Examples of changes to an approved battery stewardship plan that are
17 substantive include, but are not limited to, changes to the financing method used
18 for funding the program.

19 The department shall review and approve a proposed amendment to an approved
20 stewardship plan using the process described in paragraphs A and B.

21 D. A battery stewardship plan approved by the department under this subsection must
22 be updated as necessary by the operator of the battery stewardship program and
23 submitted for review and reapproval at least once every 5 years. If the department has
24 determined that a program has failed to make adequate progression toward achieving
25 the performance goals established under the approved plan pursuant to subsection 4,
26 paragraph D, the updated plan submitted to the department under this paragraph must
27 propose corrective measures designed to achieve those goals, as directed by the
28 department or as proposed by the operator, which may include, but are not limited to,
29 improvements to the convenience of the collection system, increased program
30 investments in education or infrastructure or other improvements to the program to
31 improve program performance.

32 E. A proposed battery stewardship plan, revised stewardship plan or amendment to an
33 approved stewardship plan that is submitted to the department for review under this
34 subsection must be made available for review on the department's publicly accessible
35 website and the department shall accept public comment on that proposed plan or
36 amendment for at least 30 days.

37 F. Within 30 days of approval by the department of a battery stewardship plan or an
38 amendment to an approved stewardship plan pursuant to this subsection, the
39 department shall make the approved plan available on its publicly accessible website.

40 **6. Collection system requirements.** In accordance with the provisions of this
41 subsection, a battery stewardship program must implement and administer a collection
42 system for covered batteries that is convenient and adequate to serve the needs of persons
43 in both rural and urban areas. Except as otherwise provided in this section, the collection
44 system must be designed to allow any individual, business, government entity, nonprofit

1 organization or other person to bring a covered battery of any chemistry or brand for
2 collection, without charge, to any collection site under the program.

3 A. Except as otherwise provided in this subsection, not later than one year following
4 the commencement of collection of covered batteries under a battery stewardship
5 program's collection system, the program must provide statewide collection
6 opportunities for covered batteries that are portable batteries, medium format batteries
7 and damaged or defective batteries that include a reasonable geographic distribution of
8 collection sites for those batteries throughout the State with:

9 (1) At least one permanent collection site for portable batteries, medium format
10 batteries and damaged or defective batteries within a 15-mile radius for at least
11 95% of the residents of the State;

12 (2) At least one permanent collection site for portable batteries, medium format
13 batteries and damaged or defective batteries in each county; and

14 (3) At least one additional collection site for portable batteries, medium format
15 batteries and damaged or defective batteries for each 30,000 residents in a
16 population center in a location that provides convenient and reasonably equitable
17 access for residents of the population center unless otherwise approved by the
18 department.

19 Unless otherwise approved by the department, any delay in the satisfaction by the
20 program of the requirements of this paragraph for medium format batteries must be
21 consistent with any delay provisions included in the program's approved plan pursuant
22 to subsection 4, paragraph C, subparagraph (6).

23 B. Except as otherwise provided in this subsection, not later than January 1, 2031, or
24 one year following the commencement of collection of covered batteries that are
25 embedded batteries under a battery stewardship program's collection system,
26 whichever is later, the program must provide statewide collection opportunities for
27 covered batteries that are embedded batteries that include a reasonable geographic
28 distribution of collection sites for embedded batteries throughout the State with:

29 (1) At least one permanent collection site for embedded batteries in each county;
30 and

31 (2) At least one additional collection site for embedded batteries for each 30,000
32 residents in a population center in a location that provides convenient and
33 reasonably equitable access for residents of the population center unless otherwise
34 approved by the department.

35 C. Determination of whether a battery stewardship program has satisfied the collection
36 system requirements of this subsection must be based on geographic information
37 modeling data and must account only for permanent collection sites available under the
38 program. A battery stewardship program may offer one-time or recurring but
39 nonpermanent collection events to provide additional collection opportunities for
40 covered batteries, but nonpermanent collection events may not be counted towards the
41 program's satisfaction of the requirements of this subsection.

42 D. The department may waive the requirements of paragraph A or B with respect to
43 collection sites within a county or population center in the State if the department
44 determines that those requirements are not practicable due to geographical constraints

1 or that implementation by the stewardship program of an alternative collection system
2 that does not meet those requirements will result in equivalent and more efficient
3 collection opportunities in the county or population center.

4 As used in this subsection, "population center" means an urbanized area or urban cluster,
5 as defined by the United States Department of Commerce, Bureau of the Census to identify
6 areas of high population density and urban land use with a population of 2,500 or greater.

7 **7. Collection site and collection event requirements and operation.** This subsection
8 governs collection sites and collection events available under a battery stewardship
9 program.

10 A. Within 90 days of receiving a request from a retailer, wholesaler, municipality or
11 tribal government, solid waste management facility, household hazardous waste
12 facility or other entity to participate in a battery stewardship program as a collection
13 site or to hold a collection event for covered batteries, the operator of the program shall
14 approve that participation as long as the proposed site or event satisfies the
15 requirements of the approved battery stewardship plan to serve as a site or event. Once
16 a battery stewardship program has met the collection system requirements of
17 subsection 6, the operator, with prior approval from the department, may decline
18 additional collection site or collection event requests under this paragraph.

19 B. The operator of a battery stewardship program shall provide to each approved
20 collection site or collection event under the program all appropriate collection
21 containers, ancillary materials and staff training necessary for that participation.

22 (1) Collection containers provided to a collection site or collection event must be
23 suitable for the collection of covered batteries and must be segregated from other
24 waste that may be accepted at the site or event or, with the agreement of the entity
25 managing the site or event, the operator may implement an alternative arrangement
26 for covered battery collection consistent with the approved battery stewardship
27 plan.

28 (2) Each collection container used at a collection site or collection event must be
29 located within the view of a responsible person at the site or event and must be
30 accompanied by signage made available to the site or event through the program
31 containing information for consumers regarding end-of-life management options
32 for batteries accepted at the site or event.

33 (3) All reasonable costs associated with the participation of a collection site or
34 collection event in a battery stewardship program must be paid or reimbursed to
35 the entity managing the site or event by the battery stewardship program.

36 C. A collection site or collection event may accept for collection covered batteries that
37 are medium format batteries only if the site or event meets applicable state
38 requirements for the management of household hazardous waste or for the management
39 of medium format batteries.

40 D. A collection site or collection event may accept for collection covered batteries that
41 are damaged or defective batteries only if the site or event is staffed by responsible
42 persons trained to handle and prepare damaged or defective batteries for transportation.
43 The operator of a battery stewardship program shall provide for the collection,
44 overseen by qualified staff persons, of damaged or defective batteries at any permanent

1 collection site under the program that meets applicable state requirements for the
2 management of household hazardous waste or for the management of damaged or
3 defective batteries.

4 E. A collection site or collection event is not required to accept, and a battery
5 stewardship program is not required to provide or support collection opportunities for,
6 batteries that are not covered batteries, including, but not limited to, large format
7 batteries, batteries contained within covered electronic devices regulated under section
8 1610 or, prior to January 1, 2030, embedded batteries.

9 F. A collection site or collection event may not require a person that brings a covered
10 battery for collection to the site or event to pay a fee associated with that collection.

11 G. The operator of a battery stewardship program may issue a warning to, suspend or
12 terminate a collection site or collection event participating in the program if the site or
13 event fails to satisfy the requirements of the approved battery stewardship plan for sites
14 or events or if the operator determines, after consultation with the department, that the
15 site or event poses an immediate risk to public health or safety.

16 **8. Annual reporting requirement; record retention.** In accordance with the
17 requirements of this subsection, by May 1st of the calendar year after the calendar year in
18 which an approved battery stewardship program is implemented, and annually thereafter,
19 the operator of the program shall submit to the department a report on the program for the
20 previous calendar year. The department shall make any report submitted pursuant to this
21 subsection available on its publicly accessible website. A report submitted to the
22 department pursuant to this subsection must include, at a minimum, the following
23 information:

24 A. Contact information for the operator of the battery stewardship program and a list
25 of producers participating in the program. The report must include, if known by the
26 operator of the program, a list of producers not participating in the program that the
27 operator believes are not in compliance with the requirements of this section. The
28 report must include any information known by the operator regarding the covered
29 batteries or covered battery-containing products of a noncompliant producer that have
30 been sold, offered for sale or distributed for sale in or into the State;

31 B. The brands and universal product codes, or UPCs, of the covered batteries and
32 covered battery-containing products of the producers participating in the battery
33 stewardship program;

34 C. Beginning with the report due under this subsection in 2027 and ending with the
35 report due in 2030, for each battery-containing product that contains an embedded
36 battery that is sold, offered for sale or distributed for sale in or into the State by a
37 producer participating in the battery stewardship program:

38 (1) A description of the product and identification of the battery chemistry and
39 battery type of the embedded battery; and

40 (2) The universal product code, or UPC, of the embedded battery.

41 This paragraph is repealed April 1, 2030;

42 D. The total amount, by weight or by volume, of each type of covered battery,
43 including covered batteries contained in covered battery-containing products, that was

1 sold, offered for sale or distributed for sale in or into the State by each producer
2 participating in the battery stewardship program during the prior calendar year. The
3 report must also include information regarding the collection rate and recycling
4 efficiency rate for covered batteries collected under the program during the prior
5 calendar year;

6 E. A complete accounting of payments made to the operator of the battery stewardship
7 program by producers participating in the program and of expenditures made by the
8 operator during the prior calendar year, including information regarding how the
9 amount required to be paid by each participating producer was determined.

10 (1) The report must include an assessment of whether the payments required of
11 producers participating in the program pursuant to subsection 4, paragraph E have
12 been or are designed to incentivize improvements in the recycling efficiency rate
13 or recyclability of covered batteries.

14 (2) The report must include a complete accounting of revenue derived by the
15 operator of the battery stewardship program from the sale of covered batteries
16 collected for recycling under the program during the prior calendar year.

17 (3) The report must include a description of the education and infrastructure
18 investments made by the operator of the battery stewardship program during the
19 prior calendar year and an evaluation of how those investments were designed to
20 increase access to recycling for covered batteries in the State and to encourage
21 proper management of unwanted batteries.

22 (4) The report must include the results of a 3rd-party financial audit of the battery
23 stewardship program paid for by the operator of the program;

24 F. An assessment of the progress made by the battery stewardship program during the
25 prior calendar year in achieving the program's performance goals set forth in the plan
26 pursuant to subsection 4, paragraph D;

27 G. A description of any proposals for changes to the battery stewardship program or
28 new investments in education or infrastructure designed to increase access to recycling
29 for covered batteries, increase the collection rate or the recycling efficiency rate or
30 recyclability of covered batteries, reduce program costs or otherwise increase program
31 efficiency;

32 H. An estimate of the annual greenhouse gas emissions effects in the State associated
33 with the operation of the battery stewardship program, calculated using methods
34 directed by the department by rule; and

35 I. Any other information required by the department.

36 The operator of a battery stewardship program shall retain any record relating to the
37 implementation and administration of the stewardship program for not less than 5 years
38 from the date the record is created and shall make those records available to the department
39 for inspection upon request. As used in this subsection, "universal product code" or "UPC"
40 has the same meaning as in section 2146, subsection 1, paragraph V.

41 **9. Battery stewardship fund required; authorized expenditures.** The operator of
42 a battery stewardship program shall establish a battery stewardship fund as a separate
43 account or separate accounts maintained by the operator into which the operator shall

1 deposit all payments received from participating producers in accordance with subsection
2 4, paragraph E and all other revenue derived by the operator from the management of the
3 program. The operator shall expend money within that fund only for the following
4 authorized purposes:

5 A. To cover the operator's costs of implementing, administering and operating the
6 battery stewardship program, which must be annually verified by a 3rd-party financial
7 audit paid for from the fund as required by subsection 8, paragraph E, subparagraph
8 (4);

9 B. To pay to the department all applicable fees required in accordance with subsection
10 11 for costs incurred by the department in implementing, administering and enforcing
11 the requirements of this section and the rules adopted pursuant to this section;

12 C. To pay for or reimburse costs incurred by retailers, wholesalers, municipalities or
13 tribal governments, solid waste management facilities, household hazardous waste
14 facilities or other entities for their participation in the battery stewardship program as
15 a collection site in accordance with subsection 7; and

16 D. To pay for investments in education or infrastructure made in accordance with
17 subsection 10.

18 **10. Education and infrastructure investments.** In accordance with the provisions
19 of this subsection, the operator of a battery stewardship program shall make investments in
20 education and infrastructure to support or improve the recycling of covered batteries in the
21 State under the program.

22 A. Prior to making any proposed investment in education or infrastructure, the operator
23 shall submit the proposed investment to the department for review and approval. A
24 proposed investment submitted to the department must incorporate any input solicited
25 and received by the operator regarding the proposal from participating producers;
26 municipalities, tribal governments, retailers and other entities participating in the
27 program as collection sites; and recycling establishments, transporters and processors
28 used by the program for the transportation, management and disposition of collected
29 covered batteries. The department shall approve or deny a proposed investment in
30 writing within 90 days of receipt of the proposal.

31 B. The department shall adopt rules setting forth criteria for its review and approval
32 or disapproval of proposed education or infrastructure investments under this
33 subsection. In reviewing and approving proposed education or infrastructure
34 investments under this subsection, the department shall ensure that funding preference
35 is given to proposals that support the solid waste management hierarchy under section
36 2101; promote a circular economy for batteries; increase the recyclability of batteries
37 that are not readily recyclable in the State; increase access to recycling infrastructure
38 in the State for batteries; improve consumer education efforts in the State regarding the
39 recycling and recyclability of batteries; and equitably support battery recycling and
40 education efforts in municipalities participating in the program as collection sites,
41 particularly in those municipalities that have not previously benefited from an
42 investment made pursuant to this subsection.

43 **11. Department administration.** The following provisions govern the administration
44 and enforcement of this section by the department.

1 A. The department shall implement, administer and enforce this section and may adopt
2 rules as necessary for those purposes. Rules adopted pursuant to this paragraph are
3 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4 B. The operator of a battery stewardship program is responsible for payment to the
5 department of:

6 (1) A reasonable fee associated with the department's review of the stewardship
7 program's proposed stewardship plan and any proposed amendments to that plan
8 pursuant to subsection 5. A fee required under this subparagraph must be paid to
9 the department at the time that the proposed stewardship plan or amendment is
10 submitted to the department for review; and

11 (2) A reasonable annual fee to cover the department's actual costs for annual report
12 review, oversight, administration and enforcement for the program. An annual fee
13 required under this subparagraph must be properly documented and provided by
14 the department to the operator prior to or at the time the payment is required.

15 C. Beginning February 15, 2027, and annually thereafter, the department shall submit
16 to the joint standing committee of the Legislature having jurisdiction over environment
17 and natural resources matters a report regarding the status of battery stewardship
18 programs implemented under this section. The report required under this paragraph
19 may be included in the report required pursuant to section 1772, subsection 1.

20 **12. Relationship to other programs.** A producer of a covered battery subject to the
21 requirements of section 2165 and to the requirements of this section may submit a request
22 to the department for a waiver from the requirements of this section with respect to that
23 battery.

24 A. The department shall grant the waiver if it determines that the producer has
25 established and is maintaining a system for the proper collection, transportation and
26 processing of that battery in accordance with all applicable requirements of section
27 2165.

28 B. If the department grants a waiver to a producer under this subsection, the producer
29 is relieved from complying with the requirements of this section with respect to that
30 battery.

31 A producer of a covered battery subject to the requirements of section 2165 and to the
32 requirements of this section that complies with all applicable requirements of this section
33 is exempt from complying with the requirements of section 2165 with respect to that
34 battery.

35 **13. Antitrust exclusions.** A producer or battery stewardship organization, including
36 a producer's or stewardship organization's officers, members, employees and agents, that
37 organizes a battery stewardship program under this section is immune from liability for the
38 producer's or stewardship organization's conduct under state laws relating to antitrust,
39 restraint of trade, unfair trade practices and other regulation of trade or commerce only to
40 the extent necessary to plan and implement the producer's or stewardship organization's
41 battery stewardship program consistent with the requirements of this section.

42 **14. Proprietary information.** Proprietary information submitted to the department
43 pursuant to the requirements of this section or the rules adopted by the department pursuant
44 to this section that is identified by the submitter as proprietary information is confidential

1 and must be handled by the department in the same manner as confidential information is
2 handled under section 1310-B.

3 **Sec. 4. 38 MRSA §2165, sub-§2**, as enacted by PL 1991, c. 808, §2, is amended to
4 read:

5 **2. Disposal ban.** A person employed directly or indirectly by a government agency;
6 or an industrial, communications or medical facility may not knowingly dispose of a dry
7 cell mercuric oxide battery or a rechargeable battery in a manner that is not part of a
8 collection system established under subsection 4 or under section 1617.

9 **Sec. 5. 38 MRSA §2165, sub-§4**, as enacted by PL 1991, c. 808, §2, is amended to
10 read:

11 **4. Manufacturer responsibility.** A Except as provided under section 1617,
12 subsection 12, a manufacturer of dry cell mercuric oxide or rechargeable batteries ~~that are~~
13 ~~subject to subsection 4~~ shall:

14 A. Establish and maintain a system for the proper collection, transportation and
15 processing of waste dry cell mercuric oxide and rechargeable batteries for purchasers
16 in this State;

17 B. Clearly inform each purchaser that intends to use these batteries of the prohibition
18 on disposal of dry cell mercuric oxide and rechargeable batteries and of the available
19 systems for proper collection, transportation and processing of these batteries;

20 C. Identify a collection system through which mercuric oxide and rechargeable
21 batteries must be returned to the manufacturer or to a manufacturer-designated
22 collection site; and

23 D. Include the cost of proper collection, transportation and processing of the waste
24 batteries in the sales transaction or agreement between the manufacturer and any
25 purchaser.'

26 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
27 number to read consecutively.

28 SUMMARY

29 This amendment changes the title of and replaces the bill, which is a concept draft. The
30 amendment requires producers of primary batteries and rechargeable batteries and of
31 products that contain those batteries to individually, collectively or through a battery
32 stewardship organization submit to the Department of Environmental Protection for review
33 and approval a plan for the establishment of a battery stewardship program to manage
34 primary and rechargeable batteries sold by producers in the State. One hundred and eighty
35 days after such a battery stewardship plan is approved by the department, a producer of
36 primary batteries, rechargeable batteries or products that contain those batteries may not
37 sell, offer for sale or distribute for sale in or into the State a primary battery, rechargeable
38 battery or product that contains those batteries unless the producer participates in an
39 approved battery stewardship program, individually, collectively or through a battery
40 stewardship organization.

41 FISCAL NOTE REQUIRED

42 (See attached)