

House Bill 2186

Sponsored by Representative WILDE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes requirements for product stewardship program for solar photovoltaic energy systems.

Establishes Solar Photovoltaic Energy System Stewardship Fund.

Becomes operative January 1, 2023.

Imposes penalty for violation by manufacturer or stewardship organization of program provisions not to exceed \$10,000 per day for each day of violation.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to solar photovoltaic energy systems; creating new provisions; amending ORS 459.995; and
3 prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 6 SOLAR PHOTOVOLTAIC ENERGY SYSTEM 7 STEWARDSHIP PROGRAM 8

9 **SECTION 1. As used in sections 1 to 11 of this 2021 Act:**

10 (1) **"Brand" means a name, symbols, words or marks that identify a solar photovoltaic**
11 **energy system and attribute the solar photovoltaic energy system to the manufacturer of the**
12 **solar photovoltaic energy system.**

13 (2) **"Consumer electronic device" means any device containing an electronic circuit board**
14 **that is intended for everyday use by individuals.**

15 (3) **"Environmentally sound management" includes the following management practices,**
16 **implemented in a manner that is designed to protect public health, safety and the environ-**
17 **ment:**

18 (a) **Adequate record keeping;**

19 (b) **Detailed documentation of the methods used to:**

20 (A) **Manage end-of-life solar photovoltaic energy systems collected as part of a solar**
21 **photovoltaic energy system stewardship program; and**

22 (B) **Track and document the fate of end-of-life solar photovoltaic energy systems from**
23 **collection through final disposition within this state and outside this state;**

24 (c) **Performance audits and inspections of recyclers, haulers and other parties as deter-**
25 **mined by a stewardship organization;**

26 (d) **Compliance with worker health and safety requirements; and**

27 (e) **Maintenance of adequate liability insurance for a stewardship organization and con-**
28 **tractors working for the stewardship organization.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (4) “Manufacturer” means any person that:
- 2 (a) Manufactures solar photovoltaic energy systems under a brand that it owns or is li-
- 3 censed to use for sale in this state;
- 4 (b) Assembles a solar photovoltaic energy system that uses parts manufactured by others
- 5 for sale in this state under the assembler’s brand name;
- 6 (c) Resells in this state under its own brand name a solar photovoltaic energy system
- 7 produced by others;
- 8 (d) Manufactures a cobranded solar photovoltaic energy system for sale in this state that
- 9 carries the name of both the manufacturer and a retailer;
- 10 (e) Imports a solar photovoltaic energy system into the United States that is sold in this
- 11 state;
- 12 (f) Sells at retail a solar photovoltaic energy system acquired from an importer that is
- 13 the manufacturer and elects to register as the manufacturer for those products; or
- 14 (g) Elects to assume the responsibility and register in lieu of a manufacturer as defined
- 15 under paragraphs (a) to (f) of this subsection.
- 16 (5) “Market share” means a manufacturer’s percentage of all solar photovoltaic energy
- 17 systems sold in this state during a specified time period, as calculated in accordance with
- 18 methods established by the Environmental Quality Commission by rule.
- 19 (6) “Person” has the meaning given that term in ORS 468.005.
- 20 (7) “Rare-earth element” means lanthanum, cerium, praseodymium, neodymium,
- 21 promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium,
- 22 thulium, ytterbium, lutetium, yttrium or scandium.
- 23 (8) “Retailer” means a person that offers solar photovoltaic energy systems for sale at
- 24 retail through any means, including but not limited to remote offerings such as sales outlets,
- 25 catalogs or the Internet.
- 26 (9) “Reuse” means any operation by which a solar photovoltaic energy system or a com-
- 27 ponent of a solar photovoltaic energy system changes ownership and is used for the same
- 28 purpose for which it was originally purchased.
- 29 (10)(a) “Solar photovoltaic energy system” means equipment and devices that have the
- 30 primary purpose of collecting solar energy and generating electricity by photovoltaic effect.
- 31 (b) “Solar photovoltaic energy system” does not include a photovoltaic cell that is part
- 32 of a consumer electronic device for which it provides electricity needed to make the con-
- 33 sumer electronic device function.
- 34 (11) “Solar photovoltaic energy system stewardship program” means a statewide program
- 35 for the collection and environmentally sound management of solar photovoltaic energy sys-
- 36 tems that is funded and operated by a stewardship organization pursuant to a plan approved
- 37 by the Department of Environmental Quality under section 4 of this 2021 Act.
- 38 (12) “Stewardship organization” means a corporation, nonprofit organization, or other
- 39 legal entity designated by a manufacturer or a group of manufacturers to implement a solar
- 40 photovoltaic energy system stewardship program.
- 41 **SECTION 2.** (1) A manufacturer or retailer may not sell or offer for sale a solar
- 42 photovoltaic energy system in this state unless the solar photovoltaic energy system is la-
- 43 beled with a brand that is included in a plan for a solar photovoltaic energy system
- 44 stewardship program that is approved by the Department of Environmental Quality under
- 45 section 4 of this 2021 Act.

1 (2) A retailer is in compliance with subsection (1) of this section if, on the date the solar
 2 photovoltaic energy system is ordered from the manufacturer or its agent, the website
 3 maintained by the manufacturer’s stewardship organization lists the manufacturer, along
 4 with the manufacturer’s brand associated with the solar photovoltaic energy system, as a
 5 participant in an approved solar photovoltaic energy system stewardship program.

6 **SECTION 3.** (1) Each stewardship organization must prepare and submit to the Depart-
 7 ment of Environmental Quality a plan for the development and implementation of solar
 8 photovoltaic energy system stewardship program.

9 (2) A solar photovoltaic energy system stewardship program plan must describe how the
 10 stewardship organization will:

11 (a) Manage and conduct a solar photovoltaic energy system stewardship program;

12 (b) Fund the program, including how the stewardship organization will fund all the costs
 13 incurred for the collection and environmentally sound management of solar photovoltaic
 14 energy systems covered by the program with a funding mechanism that ensures that solar
 15 photovoltaic energy systems can be collected without cost to the last owner or holder;

16 (c) Maximize the recovery of solar photovoltaic energy system components, including
 17 rare-earth elements and commercially valuable materials;

18 (d) Provide for the collection of solar photovoltaic energy systems at locations that are
 19 within the region of this state in which the solar photovoltaic energy systems were used and
 20 are as convenient as reasonably practicable, and if no such location within the region of this
 21 state exists, include an explanation for the lack of such location;

22 (e) Provide information to relevant stakeholders to enable stakeholders to properly dis-
 23 mantle, transport and treat end-of-life solar photovoltaic energy systems in a manner con-
 24 sistent with environmentally sound management practices and paragraph (c) of this
 25 subsection;

26 (f) Establish performance goals, including a solar photovoltaic energy system reuse and
 27 recovery rate of no less than 85 percent; and

28 (g) Establish and maintain a website that provides information about collection sites
 29 under the program and lists manufacturers participating in the stewardship organization
 30 under the program plan and the brands of solar photovoltaic energy systems that are sold
 31 or offered for sale in this state by participating manufacturers.

32 (3) A stewardship organization may periodically amend a program plan by submitting an
 33 amendment to the department in the form and manner prescribed by the department. The
 34 department shall approve or reject a program plan amendment in the same manner as a
 35 program plan under section 4 of this 2021 Act.

36 **SECTION 4.** (1) The Department of Environmental Quality shall approve a plan submitted
 37 under section 3 of this 2021 Act if the stewardship organization submits a completed plan,
 38 the proposed plan meets the requirements of section 3 (2) of this 2021 Act and the
 39 stewardship organization pays the fee established by the Department of Environmental
 40 Quality under section 6 (1)(a) of this 2021 Act.

41 (2)(a) Not later than 60 days after receiving a plan under section 3 of this 2021 Act, the
 42 department shall approve or reject the plan. If the department rejects the plan, the depart-
 43 ment shall inform the stewardship organization of the reason or reasons for the rejection.

44 (b) Not later than 60 days after the department rejects a plan under paragraph (a) of this
 45 subsection, a stewardship organization must submit to the department a revised plan. Not

1 later than 90 days after receiving a revised plan under this paragraph, the department shall
 2 approve or reject the revised plan.

3 (3) A stewardship organization must implement a stewardship plan approved under this
 4 section within 90 days of the date on which the department approves the plan.

5 **SECTION 5.** (1) By April 1 of each year, or by a later date as determined by the Depart-
 6 ment of Environmental Quality, a stewardship organization shall provide a report for review
 7 by the department that details how the plan approved by the department under section 4 of
 8 this 2021 Act was implemented during the previous calendar year.

9 (2) A report under this section must include:

10 (a) Information about the services that were provided and the materials collected during
 11 the previous calendar year; and

12 (b) An evaluation of the stewardship organization's success in meeting the performance
 13 goals established under section 3 (2)(f) of this 2021 Act.

14 **SECTION 6.** (1) The Department of Environmental Quality shall establish and collect the
 15 following fees from a stewardship organization:

16 (a) A fixed, one-time fee reasonably calculated to cover the costs of reviewing a solar
 17 photovoltaic energy system stewardship program plan submitted under section 3 of this 2021
 18 Act.

19 (b) An annual fee charged to each stewardship organization reasonably calculated to
 20 cover the costs of administering, implementing and enforcing sections 1 to 11 of this 2021
 21 Act.

22 (2) The fee calculated for each stewardship organization under subsection (1)(b) of this
 23 section must be proportionate to the market share of all solar photovoltaic energy systems
 24 sold in this state by the manufacturers registered with the stewardship program. The de-
 25 partment may make a reasonable estimate of the market share of a manufacturer for any
 26 year for which market share information for that manufacturer has not been provided to the
 27 department.

28 (3) Fees collected by the department under this section shall be deposited in the State
 29 Treasury to the credit of the Solar Photovoltaic Energy System Stewardship Fund estab-
 30 lished under section 8 of this 2021 Act.

31 **SECTION 7.** (1) In accordance with the applicable provisions of ORS chapter 183 relating
 32 to contested case proceedings, the Department of Environmental Quality may issue an order
 33 requiring compliance with the provisions of sections 1 to 11 of this 2021 Act.

34 (2) The department may bring an action against any person that is in violation of the
 35 provisions of sections 1 to 11 of this 2021 Act.

36 **SECTION 8.** The Solar Photovoltaic Energy System Stewardship Fund is established,
 37 separate and distinct from the General Fund. Interest earned by the Solar Photovoltaic
 38 Energy System Stewardship Fund shall be credited to the fund. Moneys in the fund are
 39 continuously appropriated to the Department of Environmental Quality and may be used only
 40 to pay the costs of administering, implementing and enforcing sections 1 to 11 of this 2021
 41 Act.

42 **SECTION 9.** The Legislative Assembly declares that the collaboration of manufacturers
 43 and stewardship organizations to develop and implement solar photovoltaic energy system
 44 stewardship programs is in the best interests of the public. Therefore, the Legislative As-
 45 sembly declares its intent that the development, implementation and operation of solar

1 **photovoltaic energy system stewardship programs as required by sections 1 to 11 of this 2021**
 2 **Act shall be exempt from state antitrust laws. The Legislative Assembly further declares its**
 3 **intent to provide immunity for the development, implementation and operation of solar**
 4 **photovoltaic energy system stewardship programs as required by sections 1 to 11 of this 2021**
 5 **Act from federal antitrust laws. This section does not authorize any person to engage in**
 6 **activities or to conspire to engage in activities that constitute per se violations of state or**
 7 **federal antitrust laws that are not authorized under sections 1 to 11 of this 2021 Act.**

8 **SECTION 10. (1) The Department of Environmental Quality shall evaluate any federal law**
 9 **that establishes a national program for the collection and recycling of solar photovoltaic**
 10 **energy systems.**

11 **(2) If the department determines that the federal law substantially meets or exceeds the**
 12 **requirements and intent of sections 1 to 11 of this 2021 Act, the department shall include**
 13 **information on the federal law in a report to the appropriate interim committees of the**
 14 **Legislative Assembly in the manner provided under ORS 192.245 no later than September 15**
 15 **of the even numbered year next following.**

16 **SECTION 11. The Environmental Quality Commission may adopt rules as necessary to**
 17 **implement sections 1 to 11 of this 2021 Act.**

18 **SECTION 12. ORS 459.995 is amended to read:**

19 459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty
 20 provided by law:

21 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790,
 22 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order
 23 of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or
 24 recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal,
 25 storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining
 26 to the sale of novelty items that contain encapsulated liquid mercury, incurs a civil penalty not to
 27 exceed \$25,000 per day for each day of the violation.

28 (b) Any person who violates the provisions of ORS 459.420 to 459.426 incurs a civil penalty not
 29 to exceed \$500 for each violation. Each battery that is disposed of improperly is a separate violation.
 30 Each day an establishment fails to post the notice required under ORS 459.426 is a separate vio-
 31 lation.

32 (c) For each day a city, county or metropolitan service district fails to provide the opportunity
 33 to recycle as required under ORS 459A.005, the city, county or metropolitan service district incurs
 34 a civil penalty not to exceed \$500 for each violation.

35 (d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a civil penalty not to
 36 exceed \$500 for each violation. Each covered electronic device that is disposed of improperly is a
 37 separate violation.

38 (e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b) **or section 2 of this**
 39 **2021 Act** incurs a civil penalty not to exceed \$100 per day for each day of the violation.

40 (f) Any producer that violates the provisions of ORS 459A.825 (1) incurs a civil penalty not to
 41 exceed \$1,000 per day for each day of the violation.

42 (g) Any stewardship organization that violates the provisions of ORS 459A.825 (2)(a), 459A.827,
 43 459A.830 to 459A.837 or 459A.842 incurs a civil penalty not to exceed \$1,000 per day for each day
 44 of the violation.

45 **(h) Any manufacturer or stewardship organization that violates sections 1 to 11 of this**

1 **2021 Act or any rule adopted under sections 1 to 11 of this 2021 Act incurs a civil penalty not**
2 **to exceed \$10,000 per day for each day of the violation.**

3 (2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665
4 or any rule adopted under ORS 459A.650 to 459A.665 incurs a civil penalty not to exceed \$1,000 per
5 day for each day of the violation. A violation of ORS 459A.650 to 459A.665 is not subject to addi-
6 tional penalties under subsection (1) of this section.

7 (3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the
8 manner provided by ORS 468.135.

9
10 **MISCELLANEOUS**

11
12 **SECTION 13. (1) Sections 1 to 11 of this 2021 Act and the amendments to ORS 459.995**
13 **by section 12 of this 2021 Act become operative on January 1, 2023.**

14 (2) The Environmental Quality Commission and the Department of Environmental Qual-
15 ity may take any action before the operative date specified in subsection (1) of this section
16 that is necessary for the commission and the department to exercise, on and after the op-
17 erative date specified in subsection (1) of this section, all of the duties, functions and powers
18 conferred on the commission and the department by sections 1 to 11 of this 2021 Act and the
19 amendments to ORS 459.995 by section 12 of this 2021 Act.

20 **SECTION 14. Initial plans for solar photovoltaic energy system stewardship programs**
21 **under section 3 of this 2021 Act must be submitted to the Director of the Department of**
22 **Environmental Quality no later than April 1, 2023.**

23
24 **CAPTIONS**

25
26 **SECTION 15. The unit captions used in this 2021 Act are provided only for the conven-**
27 **ience of the reader and do not become part of the statutory law of this state or express any**
28 **legislative intent in the enactment of this 2021 Act.**

29
30 **EFFECTIVE DATE**

31
32 **SECTION 16. This 2021 Act takes effect on the 91st day after the date on which the 2021**
33 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**