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2026-1278h  
08/09

Floor Amendment to HB 1602-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 New Subdivision; Safe Battery Collection and Recycling Stewardship. Amend RSA 149-M by  
4 inserting after section 64 the following new subdivision:

5 Safe Battery Collection and Recycling Stewardship

6 149-M:65 Definitions; Stewardship Program Established.

7 I. In this subdivision:

8 (a) "Battery-containing product" means a product that contains or is packaged with a  
9 rechargeable or primary battery that qualifies as a covered battery.

10 (b) "Battery material refining" means refining end-of-life batteries or battery materials  
11 back to usable battery materials suitable for reintroduction into the battery supply chain or for other  
12 beneficial manufacturing applications.

13 (c) "Battery recycler" means an entity or facility that abides by all applicable federal,  
14 state, local, and jurisdictional laws and performs either or both materials recovery and battery  
15 material refining.

16 (d) "Battery stewardship organization" means a producer that directly implements a  
17 battery stewardship plan required under this subdivision, or one or more third-party entities  
18 designated by a group of producers to implement such plan.

19 (e) "Collection rate" means the percentage, by weight, of covered batteries collected by a  
20 battery stewardship organization, calculated by dividing the total weight of primary and  
21 rechargeable batteries collected during the previous calendar year by the average annual weight of  
22 such batteries estimated to have been sold in New Hampshire by all producers participating in the  
23 approved plan during the prior 3 calendar years.

24 (f) "Covered battery" means a portable battery or a medium format battery. This does  
25 not include:

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1 (1) Batteries contained in a medical device, as defined in 21 U.S.C. section 321(h), as  
2 it existed as of the effective date of this section, not designed and marketed for sale or resale  
3 principally to consumers for personal use;

4 (2) Batteries that contain an electrolyte as a free liquid;

5 (3) Lead-acid batteries weighing more than 11 pounds;

6 (4) Batteries in a battery-containing product that are not intended or designed to be  
7 easily removable from the battery-containing product;

8 (5) Batteries that are being recalled for safety reasons; and

9 (6) Batteries designed to power a motor vehicle, part of a motor vehicle, or a  
10 component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer,  
11 including replacement parts for use in a motor vehicle.

12 (g) "Damaged and defective batteries" means batteries identified by the producer as  
13 defective for safety reasons, or that pose a risk of heat, fire, or short circuit, as described in 49 C.F.R.  
14 section 173.185(f) as of January 1, 2023, or as updated by department rule to align with federal  
15 standards.

16 (h) "Department" means the New Hampshire department of environmental services.

17 (i) "Easily removable" means designed by the manufacturer to be removed by the user  
18 with commonly available household tools.

19 (j) "Environmentally sound management practices" means practices that:

20 (1) Comply with all applicable laws and rules protecting workers, public health, and  
21 the environment;

22 (2) Provide for adequate recordkeeping, tracking, and documenting of material  
23 disposition; and

24 (3) Include comprehensive liability coverage for a battery stewardship organization,  
25 including environmental liability coverage that is commercially practicable.

26 (k) "Material recovery" means extracts and separates materials from end-of-life batteries  
27 into metals, compounds, intermediate fractions, and other components, and sending those materials,  
28 when appropriate, for further processing, refining, or use in batteries or other industry supply  
29 chains.

30 (l) "Medium format battery" means:

31 (1) A rechargeable battery weighing more than 11 pounds or rated above 300 watt-  
32 hours or both, but not exceeding 25 pounds or 2,000 watt-hours; or

33 (2) A primary battery weighing more than 4.4 pounds but not more than 25 pounds.

34 (m) "Motor vehicle" means a self-propelled mechanical device with a vehicle identification  
35 number (VIN) manufactured primarily for transporting people or property primarily on public roads,  
36 streets, and highways excluding rail-bound or airborne devices.

37 (n) "Portable battery" means:

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1                   (1) A rechargeable battery weighing no more than 11 pounds and rated at no more  
2 than 300 watt-hours; or

3                   (2) A primary battery weighing no more than 4.4 pounds.

4                   (o) "Primary battery" means a battery that is not capable of being recharged.

5                   (p) "Producer" means the person responsible for compliance with requirements under  
6 this subdivision for a covered battery or battery-containing product sold, offered for sale, or  
7 distributed in or into New Hampshire, as follows:

8                   (1) For covered batteries:

9                   (A) If sold under the brand of battery manufacturer, the producer is the  
10 manufacturer.

11                   (B) If sold under a retail or third-party brand, the producer is the brand owner.

12                   (C) If no person is identified in subparagraphs I(p)(1)(A) or (B), the producer is  
13 the licensee of a brand or trademark under which the battery is used in a commercial enterprise,  
14 sold, offered for sale, or distributed in or into New Hampshire, whether or not the trademark is  
15 registered in New Hampshire.

16                   (D) If no person is identified in subparagraphs I(p)(1)(A) through (C) within the  
17 United States, the producer is the importer of record for the battery into the United States for use in  
18 a commercial enterprise that sells, offers for sale, or distributes the battery in New Hampshire.

19                   (E) If no person is identified in subparagraphs I(p)(1)(A) through (D) with a  
20 commercial presence in New Hampshire, the producer is the person who first sells, offers for sale, or  
21 distributes the battery in or into New Hampshire.

22                   (2) For battery-containing products:

23                   (A) If the product is sold under the brand of the product manufacturer, the  
24 producer is the manufacturer of the product.

25                   (B) If the product is sold under a retail or third-party brand, the producer is the  
26 brand owner.

27                   (C) If no person is identified in subparagraphs I(p)(2)(A) or (B), the producer is  
28 the licensee of a brand or trademark under which the product is used in a commercial enterprise,  
29 sold, offered for sale, or distributed in or into New Hampshire, whether or not the trademark is  
30 registered in New Hampshire.

31                   (D) If no person is identified in subparagraphs I(p)(2)(A) through (C) located  
32 within the United States, the producer is the importer of record for the product into the United  
33 States for use in a commercial enterprise that sells, offers for sale, or distributes the product in New  
34 Hampshire.

35                   (E) If no person is identified in subparagraphs I(p)(2)(A) through (D) with a  
36 commercial presence in New Hampshire, the producer is the person who first sells, offers for sale, or  
37 distributes the product in or into New Hampshire.

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1 (F) A person shall not be considered a producer if they only manufacture, sell,  
2 offer for sale, distribute, or import a battery-containing product into New Hampshire, and the  
3 batteries used in that product are supplied by a producer that is a member of a registered battery  
4 stewardship organization under this subdivision. The battery producer must provide written  
5 certification of such membership to both the product manufacturer and the battery stewardship  
6 organization of which the battery producer is a member.

7 (q) "Program" means a program implemented by a battery stewardship organization  
8 under an approved battery stewardship plan.

9 (r) "Rechargeable battery" means a battery containing one or more voltaic or galvanic  
10 cells, electrically connected to produce energy, and designed to be recharged.

11 (s) "Recycling" has the same meaning as in RSA 149-M:4, XX.

12 (t) "Recycling efficiency rate" means the ratio of the weight of covered battery  
13 components and materials recycled by a program operator to the weight of covered batteries  
14 collected.

15 (u) "Retailer" means a person who sells or offers for sale covered batteries or battery-  
16 containing products in or into New Hampshire, including to other businesses.

17 II. Requirement that Producers Implement a Stewardship Plan. Beginning July 1, 2028, a  
18 producer that sells, offers for sale, or distributes covered batteries or battery-containing products in  
19 or into New Hampshire shall participate in an approved New Hampshire state battery stewardship  
20 plan through participation in and appropriate funding of a battery stewardship organization. A  
21 producer that does not participate in such an organization and plan shall not sell, offer for sale, or  
22 distribute covered batteries or battery-containing products in or into the state.

23 149-M:66 Role of Retailers.

24 I. Beginning July 1, 2028, a retailer shall not sell, offer for sale, or distribute a covered  
25 battery or battery-containing product unless the producer of the covered battery or battery-  
26 containing product has certified participation in a battery stewardship organization operating under  
27 a plan approved by the department.

28 II. A retailer shall be deemed in compliance with paragraph I if the department's publicly  
29 accessible website, as required by RSA 149-M:72, II(c), as of the date the product is made available  
30 for retail sale, lists the producer or brand as participating in an approved stewardship plan.

31 III. Retailers of covered batteries or battery-containing products are not required to serve as  
32 collection sites for a battery stewardship program. However, a retailer that elects to do so shall  
33 participate in an approved battery stewardship plan and comply with all applicable collection site  
34 requirements established under this subdivision.

35 IV. A retailer selling or offering covered batteries or battery-containing products for sale in  
36 New Hampshire may provide consumers with information, supplied by a battery stewardship  
37 organization, regarding end-of-life management options for covered batteries collected by a battery

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1 stewardship organization. Such information may include in-store signage, printed materials, and  
2 other promotional content.

3 V. No retailer, producer, or battery stewardship organization shall charge a point-of-sale fee  
4 to consumers to cover the administrative or operational costs of a battery stewardship program.

5 149-M:67 Stewardship Plan Components.

6 I. Each battery stewardship organization shall submit a stewardship plan to the department  
7 for approval by January 1, 2028, for covered batteries. The department may extend the submission  
8 deadline for good cause shown. A battery stewardship organization may submit a revised plan to  
9 update an approved plan. Each plan shall include the following elements:

10 (a) A list of participating producers, battery brands, and battery-containing product  
11 brands, including contact information;

12 (b) A description of the covered batteries and battery-containing products included in the  
13 plan;

14 (c) A description of how covered batteries and battery-containing products will be  
15 managed using environmentally sound management practices, including criteria for collection sites,  
16 safety training procedures, and a list of proposed sorters, transporters, processors, and battery  
17 recyclers used for recycling;

18 (d) Education and outreach efforts to inform retailers of their obligations under RSA  
19 149-M:66 and to promote participation by consumers, retailers, and other stakeholders;

20 (e) A description of the funding mechanism for the program;

21 (f) Performance goals for each of the next 3 calendar years, consistent with RSA 149-  
22 M:68; and

23 (g) A description of how the program will provide free, continuous, convenient, visible,  
24 and accessible collection of all covered battery chemistries and brands, including goals for the  
25 number and distribution of collection sites.

26 II. The department shall approve or deny a submitted plan in accordance with RSA 149-  
27 M:72, II(a), within 120 days of receipt and shall notify the submitting organization in writing. If the  
28 department denies a battery stewardship plan, it shall provide the reasons for denial in writing. A  
29 denial does not preclude the organization from submitting a revised battery stewardship plan. A  
30 producer shall not be in compliance with this section unless covered by an approved plan.

31 III. A battery stewardship organization shall submit a new plan to the department if there  
32 are significant changes to the methods of collection, transport, or end-of-life management not  
33 addressed in the approved plan. A battery stewardship organization shall submit a new updated  
34 battery stewardship plan at least once every 5 years.

35 IV. A battery stewardship organization shall notify the department on a quarterly basis of  
36 any changes in producer participation of the battery stewardship organization, including an updated  
37 list of participating producers and brands, if applicable.

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1           149-M:68 Battery Stewardship Program Components and Performance Goals.

2           I. Each battery stewardship plan shall include annual performance goals to measure the  
3 effectiveness of the program, including:

4                   (a) The weight, by chemistry, of covered batteries collected;

5                   (b) The weight of materials recovered from covered batteries collected, in total and by  
6 battery recycling method;

7                   (c) The public convenience and accessibility of the collection system; and

8                   (d) Targeted recycling efficiency rates for covered batteries by recycling method.

9           II. A battery stewardship organization shall not reduce or discontinue collection, education  
10 and outreach, or other program activities based solely on the achievement of performance goals.

11           149-M:69 Funding by Battery Stewardship Organization.

12           I. Each battery stewardship organization shall ensure adequate funding is available to fully  
13 implement its approved battery stewardship plan, including:

14                   (a) The collection, transportation, and processing of covered batteries;

15                   (b) Education and outreach activities;

16                   (c) Program evaluation; and

17                   (d) Reimbursement of administrative costs to the department pursuant to RSA 149-  
18 M:72.

19           II. A battery stewardship organization implementing a plan on behalf of producers shall:

20                   (a) Develop a system to collect charges from participating producers to cover the full cost  
21 of plan implementation;

22                   (b) Be responsible for all costs associated with collection, transportation, processing,  
23 education, administration, department reimbursement, recycling, and end-of-life management, in  
24 accordance with this subdivision and environmentally sound management practice; and

25                   (c) Equitably reimburse local governments and solid waste or recyclables handling  
26 facilities for demonstrable and reasonable costs incurred as a result of serving as a collection site,  
27 including labor, storage, and other costs necessary to meet accessibility and collection site standards.

28           III. At a minimum, a battery stewardship organization shall provide each collection site  
29 with appropriate containers for covered batteries, training, signage, safety guidance, and educational  
30 materials, at no cost to the collection site.

31           149-M:70 Collection and Management Requirements.

32           I. Each battery stewardship organization implementing a battery stewardship plan shall  
33 provide for the collection of all covered batteries, including all chemistries and brands, on a free,  
34 continuous, convenient, visible, and accessible basis to any person, business, government entity, or  
35 organization. Except as provided in subparagraph II(d), each stewardship plan shall allow any  
36 person or entity to deliver any chemistry and brand of covered battery to any collection site that  
37 counts toward meeting the plan's collection site criteria.

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1           II. Each battery stewardship organization shall:

2           (a) Provide suitable collection containers at each collection site, segregated from other  
3 solid waste, or make mutually agreeable alternative arrangements for battery collection;

4           (b) Ensure that each collection site complies with applicable federal, state, and local  
5 regulations and adheres to the operations manual and safety guidance provided to the collection site  
6 by a battery stewardship plan by the organization;

7           (c) Have the authority to issue warnings, suspend, or terminate collection sites or  
8 services that fail to meet site criteria in the approved battery stewardship plan or pose immediate  
9 health or safety risks;

10          (d) Ensure medium format, recalled, and damaged or defective batteries are collected in  
11 compliance with all applicable regulatory requirements;

12          (e) Ensure statewide collection opportunities, with sites reasonably distributed based on  
13 geographic and population data;

14          (f) Coordinate with other program operators and electronic waste recyclers to deliver  
15 services efficiently;

16          (g) Utilize existing public and private waste collection services and facilities, where cost-  
17 effective and practicable; and

18          (h) Accept as collection sites any retailer, wholesaler, municipality, solid waste facility,  
19 household hazardous waste facility, or other entity that meets the battery stewardship plan's  
20 criteria.

21           III. Battery stewardship programs shall:

22           (a) Provide for the collection of loose covered batteries;

23           (b) Not be required to collect battery-containing products;

24           (c) Not be required to collect batteries that are not easily removable by the user or that  
25 remain in a product at the time of delivery; and

26           (d) Not be required to collect batteries or battery-containing products subject to a safety  
27 recall. A battery stewardship organization may seek reimbursement from the producer of a recalled  
28 battery or battery-containing product for costs incurred in collection, transport, and processing such  
29 batteries or battery-containing products.

30           IV. No battery stewardship organization shall charge a fee at the point of collection for the  
31 management of unwanted covered batteries.

32           149-M:71 Reporting Requirements.

33           I. Each battery stewardship organization shall submit an annual report to the department  
34 detailing the implementation of its approved battery stewardship plan for the preceding calendar  
35 year. The report shall include all information required by the plan and any additional details as  
36 determined by the department by rule.

1           II. The first annual report shall be submitted no later than 120 days after the completion of  
2 the first year of program implementation, and in no case later than 18 months from the date the  
3 plan was approved. Thereafter, annual reports shall be submitted within 120 days following the end  
4 of each calendar year.

5           III. A producer or battery stewardship organization submitting information or records to the  
6 department under this subdivision may request that such information be treated as confidential.  
7 The department shall consider the request and, if confidentiality is not contrary to the public  
8 interest and is otherwise permissible under the New Hampshire right-to-know law, RSA 91-A, shall  
9 grant the request.

10           149-M:72 Administrative Cost Reimbursement and Department Responsibilities.

11           I. Each battery stewardship organization submitting a battery stewardship plan, revision, or  
12 amendment shall reimburse the department for administrative costs incurred in implementing,  
13 administering, and enforcing this chapter. Each person collecting batteries independent of a battery  
14 stewardship organization pursuant to RSA 149-M:74 shall reimburse the department for  
15 administrative costs incurred in implementing, administering, and enforcing this chapter. The  
16 reimbursement shall be sufficient to cover the department's full costs, including costs associated  
17 with rulemaking and other startup activities necessary prior to the initial plan submissions. The  
18 department shall calculate the reimbursement amount to be paid by battery stewardship  
19 organizations and independent collectors on a proportional basis relative to its costs. No later than  
20 90 days before a plan is due, and every 2 years thereafter, the department shall identify its incurred  
21 costs and determine the reimbursement amount necessary to fully recover those costs. The total  
22 reimbursement collected shall not exceed the amount necessary to administer this chapter. The  
23 timing and method of payment shall be determined in consultation with the department.

24           II. The responsibilities of the department in implementing, administering, and enforcing  
25 under this chapter include, but are not limited to:

26                 (a) Reviewing submitted battery stewardship plans and amendments to the battery  
27 stewardship plans and determining whether to approve them;

28                 (b) Reviewing annual reports for compliance;

29                 (c) Maintaining a publicly accessible website that lists producers and brands  
30 participating in approved stewardship plans and makes available each plan, amendment, and  
31 annual report received under this chapter;

32                 (d) Upon approval of the first plan, posting on its website a list of producers and brands  
33 covered by approved plans and updating the list as needed based on information provided by  
34 stewardship organizations; and

35                 (e) Providing technical assistance to producers and retailers regarding compliance with  
36 this chapter.

37           149-M:73 Liability.

1           I. A battery stewardship organization implementing an approved plan may bring a civil  
2 action to recover costs, damages, and fees, as specified in this paragraph, from a producer that sells  
3 or otherwise makes available in New Hampshire covered batteries or battery-containing products  
4 not included in an approved plan, in violation of this subdivision. Such an action may be brought  
5 against one or more defendants, but only if the stewardship organization incurs costs in New  
6 Hampshire, including reasonable incremental administrative and promotional costs, in excess of  
7 \$1,000 to collect, transport, recycle, or otherwise manage the non-compliant products.

8           II. A battery stewardship organization may bring a civil action against a producer of a  
9 recalled battery to recover costs associated with the collection, transport, and handling of the  
10 recalled battery.

11           III. A battery stewardship organization implementing an approved plan may bring a civil  
12 action against another battery stewardship organization that fails to meet its collection obligations  
13 under this subdivision by failing to collect and provide for the end-of-life management of batteries,  
14 resulting in the plaintiff organization incurring costs to manage batteries that would otherwise have  
15 been the responsibility of the defendant. Recoverable costs may include the value of services  
16 rendered, legal fees, and other related expenses.

17           IV. A producer, or a battery stewardship organization acting on behalf of producers, that  
18 creates, participates in, or implements a battery stewardship plan shall be exempt from RSA 356  
19 and all other state laws concerning antitrust, restraint of trade, unfair trade practices, or other  
20 anticompetitive conduct, to the extent such conduct is undertaken in accordance with an approved  
21 battery stewardship plan.

22           149-M:74 Collection of Batteries Independent of a Battery Stewardship Program.

23           I. A person may operate a fee-based collection and recycling program for covered batteries  
24 independent of a battery stewardship organization, with up to 10 sites that are not fee-based for  
25 political subdivision sites, if the following conditions are met:

26                   (a) The person's services and facilities shall comply with all applicable federal, state, and  
27 local laws and regulations, including United States Department of Transportation requirements and  
28 all applicable provisions of the department;

29                   (b) The person accepts all covered batteries;

30                   (c) The person receives no compensation from a battery stewardship organization with  
31 respect to the covered batteries, unless the battery stewardship organization has an agreement with  
32 the person;

33                   (d) The person provides the following information to the department annually:

34                           (1) The weight, by chemistry, of covered batteries collected;

35                           (2) The weight of materials recovered from covered batteries collected, in total and  
36 by battery recycling method;

37                           (3) The recycling efficiency rate for covered batteries by recycling method;

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1                   (4) A description of how each facility used for the disposition of covered batteries,  
2 whether recycled or otherwise, managed the batteries and battery components; and

3                   (5) The weight and chemistry of covered batteries sent to each facility that is used  
4 for disposition of the batteries; and

5                   (e) If a battery stewardship organization's performance goals would be impacted by the  
6 independent collection information provided under this section, the department shall:

7                   (1) Consider the information when calculating the collection and recycling efficiency  
8 rate of the battery stewardship organization; and

9                   (2) Provide the information to the battery stewardship organization.

10                  II. Battery-containing products regulated pursuant to any statutorily created product  
11 stewardship program for electronic device collection and recycling shall not be subject to duplicative  
12 obligations under this chapter.

13                  149-M:75 Rulemaking; Severability.

14                  I. The department may adopt rules under RSA 541-A to implement this subdivision.

15                  II. If any provision of this act or its application to any person or circumstance is held invalid,  
16 the remainder of the act or the application of the provision to other persons or circumstances is not  
17 affected.

18                  2 Effective Date. This act shall take effect upon its passage.