

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 639

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DATE	D-PG	OFFICIAL STATUS
02/21/2013	351	Introduction and first reading Referred to Environment and Energy
03/06/2013	616a	Comm report: To pass as amended and re-refer to Judiciary
03/13/2013	933a	Comm report: Amended Comm report: No recommendation, re-referred to Commerce
03/18/2013	1055a	Comm report: To pass as amended and re-refer to Finance

1.1 A bill for an act
 1.2 relating to environment; providing for product stewardship programs; requiring
 1.3 a report; amending Minnesota Statutes 2012, section 13.7411, subdivision 4;
 1.4 proposing coding for new law in Minnesota Statutes, chapter 115A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 13.7411, subdivision 4, is amended to read:

1.7 Subd. 4. **Waste management.** (a) Product stewardship programs. Trade secret
 1.8 information submitted to the Pollution Control Agency under product stewardship
 1.9 programs are classified under sections 115A.141 to 115A.142.

1.10 (b) Transfer station data. Data received by a county or district from a transfer
 1.11 station under section 115A.84, subdivision 5, are classified under that section.

1.12 ~~(b)~~ (c) Solid waste records. Records of solid waste facilities received, inspected,
 1.13 or copied by a county pursuant to section 115A.882 are classified pursuant to section
 1.14 115A.882, subdivision 3.

1.15 ~~(e)~~ (d) Customer lists. Customer lists provided to counties or cities by solid waste
 1.16 collectors are classified under section 115A.93, subdivision 5.

1.17 Sec. 2. [115A.1415] ARCHITECTURAL PAINT; PRODUCT STEWARDSHIP
 1.18 PROGRAM; STEWARDSHIP PLAN.

1.19 Subdivision 1. Definitions. For purposes of this section, the following terms have
 1.20 the meanings given:

1.21 (1) "architectural paint" means interior and exterior architectural coatings sold in
 1.22 containers of five gallons or less. Architectural paint does not include industrial coatings,
 1.23 original equipment coatings, or specialty coatings;

2.1 (2) "brand" means a name, symbol, word, or mark that identifies architectural paint,
2.2 rather than its components, and attributes the paint to the owner or licensee of the brand as
2.3 the producer;

2.4 (3) "discarded paint" means architectural paint that is no longer used for its
2.5 manufactured purpose;

2.6 (4) "producer" means a person that:

2.7 (i) has legal ownership of the brand, brand name, or cobrand of architectural paint
2.8 sold in the state;

2.9 (ii) imports architectural paint branded by a producer that meets item (i) when the
2.10 producer has no physical presence in the United States;

2.11 (iii) if items (i) and (ii) do not apply, makes unbranded architectural paint that is
2.12 sold in the state; or

2.13 (iv) sells architectural paint at wholesale or retail, does not have legal ownership of
2.14 the brand, and elects to fulfill the responsibilities of the producer for the architectural paint
2.15 by certifying that election in writing to the commissioner;

2.16 (5) "recycling" means the process of collecting and preparing recyclable materials and
2.17 reusing the materials in their original form or using them in manufacturing processes that
2.18 do not cause the destruction of recyclable materials in a manner that precludes further use;

2.19 (6) "retailer" means any person who offers architectural paint for sale at retail in
2.20 the state;

2.21 (7) "reuse" means donating or selling collected architectural paint back into the
2.22 market for its original intended use, when the architectural paint retains its original
2.23 purpose and performance characteristics;

2.24 (8) "sale" or "sell" means transfer of title of architectural paint for consideration,
2.25 including a remote sale conducted through a sales outlet, catalog, Web site, or similar
2.26 electronic means. Sale or sell includes a lease through which architectural paint is
2.27 provided to a consumer by a producer, wholesaler, or retailer;

2.28 (9) "stewardship assessment" means the amount added to the purchase price of
2.29 architectural paint sold in the state that is necessary to cover the cost of collecting,
2.30 transporting, and processing postconsumer architectural paint by the producer or
2.31 stewardship organization pursuant to a product stewardship program;

2.32 (10) "stewardship organization" means an organization appointed by one or more
2.33 producers to act as an agent on behalf of the producer to design, submit, and administer a
2.34 product stewardship program under this section; and

2.35 (11) "stewardship plan" means a detailed plan describing the manner in which a
2.36 product stewardship program under subdivision 2 will be implemented.

3.1 Subd. 2. **Product stewardship program.** For architectural paint sold in the state,
3.2 producers must, individually or through a stewardship organization, implement and
3.3 finance a statewide product stewardship program that manages the architectural paint by
3.4 reducing the paint's waste generation, promoting its reuse and recycling, and providing for
3.5 negotiation and execution of agreements to collect, transport, and process the architectural
3.6 paint for end-of-life recycling and reuse.

3.7 Subd. 3. **Requirement for sale.** (a) On and after July 1, 2014, or three months after
3.8 program plan approval, whichever is sooner, no producer, wholesaler, or retailer may sell
3.9 or offer for sale in the state architectural paint unless the paint's producer participates in an
3.10 approved stewardship plan, either individually or through a stewardship organization.

3.11 (b) Each producer must operate a product stewardship program approved by the
3.12 agency or enter into an agreement with a stewardship organization to operate, on the
3.13 producer's behalf, a product stewardship program approved by the agency.

3.14 Subd. 4. **Requirement to submit plan.** (a) On or before March 1, 2014, and before
3.15 offering architectural paint for sale in the state, a producer must submit a stewardship
3.16 plan to the agency and receive approval of the plan or must submit documentation to the
3.17 agency that demonstrates the producer has entered into an agreement with a stewardship
3.18 organization to be an active participant in an approved product stewardship program as
3.19 described in subdivision 2. A stewardship plan must include all elements required under
3.20 subdivision 5.

3.21 (b) An amendment to the plan, if determined necessary by the commissioner, must
3.22 be submitted every five years.

3.23 (c) It is the responsibility of the entities responsible for each stewardship plan to
3.24 notify the agency within 30 days of any significant changes or modifications to the plan or
3.25 its implementation. Within 30 days of the notification, a written plan revision must be
3.26 submitted to the agency for review and approval.

3.27 Subd. 5. **Stewardship plan content.** A stewardship plan must contain:

3.28 (1) certification that the product stewardship program will accept all discarded
3.29 paint regardless of which producer produced the architectural paint and its individual
3.30 components;

3.31 (2) contact information for the individual and the entity submitting the plan, a list of
3.32 all producers participating in the product stewardship program, and the brands covered by
3.33 the product stewardship program;

3.34 (3) a description of the methods by which the discarded paint will be collected in all
3.35 areas in the state without relying on end-of-life fees, including an explanation of how the
3.36 collection system will be convenient and adequate to serve the needs of small businesses

4.1 and residents in both urban and rural areas on an ongoing basis and a discussion of how
4.2 the existing household hazardous waste infrastructure will be considered when selecting
4.3 collection sites;

4.4 (4) a description of how the adequacy of the collection program will be monitored
4.5 and maintained;

4.6 (5) the names and locations of collectors, transporters, and recyclers that will
4.7 manage discarded paint;

4.8 (6) a description of how the discarded paint and the paint's components will be
4.9 safely and securely transported, tracked, and handled from collection through final
4.10 recycling and processing;

4.11 (7) a description of the method that will be used to reuse, deconstruct, or recycle
4.12 the discarded paint to ensure that the paint's components, to the extent feasible, are
4.13 transformed or remanufactured into finished products for use;

4.14 (8) a description of the promotion and outreach activities that will be used to
4.15 encourage participation in the collection and recycling programs and how the activities'
4.16 effectiveness will be evaluated and the program modified, if necessary;

4.17 (9) the proposed stewardship assessment. The producer or stewardship organization
4.18 shall propose a uniform stewardship assessment for any architectural paint sold in the
4.19 state. The proposed stewardship assessment shall be reviewed by an independent auditor
4.20 to ensure that the assessment does not exceed the costs of the product stewardship program
4.21 and the independent auditor shall recommend an amount for the stewardship assessment.
4.22 The agency must approve the stewardship assessment;

4.23 (10) evidence of adequate insurance and financial assurance that may be required for
4.24 collection, handling, and disposal operations;

4.25 (11) five-year performance goals, including an estimate of the percentage of
4.26 discarded paint that will be collected, reused, and recycled during each of the first five
4.27 years of the stewardship plan. The performance goals must include a specific goal for the
4.28 amount of discarded paint that will be collected and recycled and reused during each year
4.29 of the plan. The performance goals must be based on:

4.30 (i) the most recent collection data available for the state;

4.31 (ii) the estimated amount of architectural paint disposed of annually;

4.32 (iii) the weight of the architectural paint that is expected to be available for collection
4.33 annually; and

4.34 (iv) actual collection data from other existing stewardship programs.

4.35 The stewardship plan must state the methodology used to determine these goals; and

5.1 (12) a discussion of the status of end markets for collected architectural paint and
5.2 what, if any, additional end markets are needed to improve the functioning of the program.

5.3 Subd. 6. **Consultation required.** Each stewardship organization or individual
5.4 producer submitting a stewardship plan must consult with stakeholders including
5.5 retailers, contractors, collectors, recyclers, local government, and customers during the
5.6 development of the plan.

5.7 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
5.8 stewardship plan, the agency shall determine whether the plan complies with subdivision
5.9 4. If the agency approves a plan, the agency shall notify the applicant of the plan approval
5.10 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of
5.11 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
5.12 submit a revised plan to the agency within 60 days after receiving notice of rejection.

5.13 (b) Any proposed changes to a stewardship plan must be approved by the agency
5.14 in writing.

5.15 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
5.16 placed on the agency's Web site for at least 30 days and made available at the agency's
5.17 headquarters for public review and comment.

5.18 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
5.19 organizes collection, transport, and processing of architectural paint under this section
5.20 is immune from liability for the conduct under state laws relating to antitrust, restraint
5.21 of trade, unfair trade practices, and other regulation of trade or commerce only to the
5.22 extent that the conduct is necessary to plan and implement the producer's or organization's
5.23 chosen organized collection or recycling system.

5.24 Subd. 10. **Responsibility of producers.** (a) On and after the date of implementation
5.25 of a product stewardship program according to this section, a producer of architectural
5.26 paint must add the stewardship assessment, as established under subdivision 5, clause (9),
5.27 to the cost of architectural paint sold to retailers and distributors in the state by the producer.

5.28 (b) Producers of architectural paint or the stewardship organization shall provide
5.29 consumers with educational materials regarding the stewardship assessment and product
5.30 stewardship program. The materials must include, but are not limited to, information
5.31 regarding available end-of-life management options for architectural paint offered through
5.32 the product stewardship program and information that notifies consumers that a charge
5.33 for the operation of the product stewardship program is included in the purchase price of
5.34 architectural paint sold in the state.

6.1 Subd. 11. **Responsibility of retailers.** (a) On and after July 1, 2014, or three months
6.2 after program plan approval, whichever is sooner, no architectural paint may be sold in the
6.3 state unless the paint's producer is participating in an approved stewardship plan.

6.4 (b) On and after the implementation date of a product stewardship program according
6.5 to this section, each retailer or distributor, as applicable, must ensure that the full amount
6.6 of the stewardship assessment added to the cost of architectural paint by producers under
6.7 subdivision 10 is included in the purchase price of all architectural paint sold in the state.

6.8 (c) Any retailer may participate, on a voluntary basis, as a designated collection
6.9 point pursuant to a product stewardship program under this section and in accordance
6.10 with applicable law.

6.11 (d) No retailer or distributor shall be found to be in violation of this subdivision if,
6.12 on the date the architectural paint was ordered from the producer or its agent, the producer
6.13 was listed as compliant on the agency's Web site according to subdivision 14.

6.14 Subd. 12. **Stewardship reports.** Beginning October 1, 2015, producers of
6.15 architectural paint sold in the state must individually or through a stewardship organization
6.16 submit an annual report to the agency describing the product stewardship program. At a
6.17 minimum, the report must contain:

6.18 (1) a description of the methods used to collect, transport, and process architectural
6.19 paint in all regions of the state;

6.20 (2) the weight of all architectural paint collected in all regions of the state and a
6.21 comparison to the performance goals and recycling rates established in the stewardship
6.22 plan;

6.23 (3) the amount of unwanted architectural paint collected in the state by method of
6.24 disposition, including reuse, recycling, and other methods of processing;

6.25 (4) samples of educational materials provided to consumers and an evaluation of the
6.26 effectiveness of the materials and the methods used to disseminate the materials; and

6.27 (5) an independent financial audit.

6.28 Subd. 13. **Data classification.** Trade secret information, as defined under section
6.29 13.37, submitted to the agency under this section is nonpublic data under section 13.37,
6.30 subdivision 2.

6.31 Subd. 14. **Agency responsibilities.** The agency shall provide, on its Web site, a
6.32 list of all compliant producers and brands participating in stewardship plans that the
6.33 agency has approved and a list of all producers and brands the agency has identified as
6.34 noncompliant with this section.

6.35 Subd. 15. **Local government responsibilities.** (a) A city, county, or other public
6.36 agency may choose to participate voluntarily in a product stewardship program.

7.1 (b) Cities, counties, and other public agencies are encouraged to work with producers
7.2 and stewardship organizations to assist in meeting product stewardship program reuse and
7.3 recycling obligations, by providing education and outreach or using other strategies.

7.4 (c) A city, county, or other public agency that participates in a product stewardship
7.5 program must report for the first year of the program to the agency using the reporting
7.6 form provided by the agency on the cost savings as a result of participation and describe
7.7 how the savings were used.

7.8 Subd. 16. **Administrative fee.** (a) The stewardship organization or individual
7.9 producer submitting a stewardship plan shall pay the agency an annual administrative fee.
7.10 The agency shall set the fee at an amount that, when paid by every stewardship organization
7.11 or individual producer that submits a stewardship plan, is adequate to cover the agency's
7.12 full costs of administering and enforcing this section. The agency may establish a variable
7.13 fee based on relevant factors, including, but not limited to, the portion of architectural
7.14 paint sold in the state by members of the organization compared to the total amount of
7.15 architectural paint sold in the state by all organizations submitting a stewardship plan.

7.16 (b) The total amount of annual fees collected under this subdivision must not exceed
7.17 the amount necessary to recover costs incurred by the agency in connection with the
7.18 administration and enforcement of this section.

7.19 (c) The agency shall identify the direct program development or regulatory costs
7.20 it incurs under this section before stewardship plans are submitted and shall establish a
7.21 fee in an amount adequate to cover those costs, which shall be paid by a stewardship
7.22 organization or individual producer that submits a stewardship plan. The commissioner
7.23 must make the proposed fee available for public review and comment for at least 30 days.

7.24 (d) A stewardship organization or individual producer subject to this section must
7.25 pay to the commissioner the agency's administrative fee under paragraph (a) on or before
7.26 July 1, 2014, and annually thereafter and the agency's onetime development fee under
7.27 paragraph (c) on or before July 1 the year following submission of a stewardship plan.
7.28 Each year after the initial payment, the annual administrative fee may not exceed five
7.29 percent of the aggregate stewardship assessment collected for the preceding calendar year.

7.30 (e) The commissioner must deposit the fees collected under this section in the
7.31 state treasury and credit the fee to the miscellaneous special revenue account in the
7.32 environmental fund. Fees in the account may be used by the commissioner to implement
7.33 and enforce this section.

7.34 Sec. 3. **[115A.142] PRIMARY BATTERIES; PRODUCT STEWARDSHIP**
7.35 **PROGRAM; STEWARDSHIP PLAN.**

8.1 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
8.2 the meaning given:

8.3 (1) "brand" means a name, symbol, word, or mark that identifies a primary battery,
8.4 rather than its components, and attributes the battery to the owner or licensee of the brand
8.5 as the producer;

8.6 (2) "discarded battery" means a primary battery that is no longer used for its
8.7 manufactured purpose;

8.8 (3) "primary battery" means an electric cell that generates an electromotive force by
8.9 the direct and usually irreversible conversion of chemical energy into electrical energy.
8.10 It cannot be recharged efficiently by an electric current;

8.11 (4) "producer" means a person that:

8.12 (i) has legal ownership of the brand, brand name, or cobrand of a primary battery
8.13 sold in the state;

8.14 (ii) imports a primary battery branded by a producer that meets item (i) when the
8.15 producer has no physical presence in the United States;

8.16 (iii) if items (i) and (ii) do not apply, makes an unbranded primary battery that is
8.17 sold in the state; or

8.18 (iv) sells a primary battery at wholesale or retail, does not have legal ownership
8.19 of the brand, and elects to fulfill the responsibilities of the producer for the battery by
8.20 certifying that election in writing to the commissioner;

8.21 (5) "recycling" means the process of collecting and preparing recyclable materials and
8.22 reusing the materials in their original form or using them in manufacturing processes that
8.23 do not cause the destruction of recyclable materials in a manner that precludes further use;

8.24 (6) "retailer" means any person who offers primary batteries for sale at retail in
8.25 the state;

8.26 (7) "sale" or "sell" means transfer of title of a primary battery for consideration,
8.27 including a remote sale conducted through a sales outlet, catalog, Web site, or similar
8.28 electronic means. Sale or sell includes a lease through which a primary battery is provided
8.29 to a consumer by a producer, wholesaler, or retailer;

8.30 (8) "stewardship organization" means an organization appointed by one or more
8.31 producers to act as an agent on behalf of the producer to design, submit, and administer a
8.32 product stewardship program under this section; and

8.33 (9) "stewardship plan" means a detailed plan describing the manner in which a
8.34 product stewardship program under subdivision 2 will be implemented.

8.35 Subd. 2. **Product stewardship program.** For each primary battery sold in the
8.36 state, producers must, individually or through a stewardship organization, implement

9.1 and finance a statewide product stewardship program that manages primary batteries by
9.2 reducing primary battery waste generation, promoting primary battery recycling, and
9.3 providing for negotiation and execution of agreements to collect, transport, and process
9.4 primary batteries for end-of-life recycling.

9.5 Subd. 3. **Requirement for sale.** (a) On and after December 1, 2014, or three months
9.6 after program plan approval, whichever is sooner, no producer, wholesaler, or retailer may
9.7 sell or offer for sale in the state a primary battery unless the battery's producer participates
9.8 in an approved stewardship plan, either individually or through a stewardship organization.

9.9 (b) Each producer must operate a product stewardship program approved by the
9.10 agency or enter into an agreement with a stewardship organization to operate, on the
9.11 producer's behalf, a product stewardship program approved by the agency.

9.12 Subd. 4. **Requirement to submit plan.** (a) On or before August 1, 2014, and before
9.13 offering a primary battery for sale in the state, a producer must submit a stewardship
9.14 plan to the agency and receive approval of the plan or must submit documentation to the
9.15 agency that demonstrates the producer has entered into an agreement with a stewardship
9.16 organization to be an active participant in an approved product stewardship program as
9.17 described in subdivision 2. A stewardship plan must include all elements required under
9.18 subdivision 5.

9.19 (b) An amendment to the plan, if determined necessary by the commissioner, must
9.20 be submitted every five years.

9.21 (c) It is the responsibility of the entities responsible for each stewardship plan to
9.22 notify the agency within 30 days of any significant changes or modifications to the plan or
9.23 its implementation. Within 30 days of the notification, a written plan revision must be
9.24 submitted to the agency for review and approval.

9.25 Subd. 5. **Stewardship plan content.** A stewardship plan must contain:

9.26 (1) certification that the product stewardship program will accept discarded primary
9.27 batteries regardless of which producer produced the batteries and their individual
9.28 components;

9.29 (2) contact information for the individual and the entity submitting the plan, a list of
9.30 all producers participating in the product stewardship program, and the brands covered by
9.31 the product stewardship program;

9.32 (3) a description of the methods by which the discarded primary batteries will
9.33 be collected in all areas in the state without relying on end-of-life fees, including an
9.34 explanation of how the collection system will be convenient and adequate to serve the
9.35 needs of small businesses and residents in both urban and rural areas on an ongoing basis;

10.1 (4) a description of how the adequacy of the collection program will be monitored
 10.2 and maintained;

10.3 (5) the names and locations of collectors, transporters, and recyclers that will
 10.4 manage discarded batteries;

10.5 (6) a description of how the discarded batteries and the batteries' components will
 10.6 be safely and securely transported, tracked, and handled from collection through final
 10.7 recycling and processing;

10.8 (7) a description of the method that will be used to recycle the discarded primary
 10.9 batteries to ensure that the batteries' components, to the extent feasible, are transformed or
 10.10 remanufactured into finished batteries for use;

10.11 (8) a description of the promotion and outreach activities that will be used to
 10.12 encourage participation in the collection and recycling programs and how the activities'
 10.13 effectiveness will be evaluated and the program modified, if necessary;

10.14 (9) evidence of adequate insurance and financial assurance that may be required for
 10.15 collection, handling, and disposal operations;

10.16 (10) five-year performance goals, including an estimate of the percentage of
 10.17 discarded batteries that will be collected, reused, and recycled during each of the first five
 10.18 years of the stewardship plan. The performance goals must include a specific escalating
 10.19 goal for the amount of discarded batteries that will be collected and recycled during each
 10.20 year of the plan. The performance goals must be based on:

10.21 (i) the most recent collection data available for the state;

10.22 (ii) the estimated amount of primary batteries disposed of annually;

10.23 (iii) the weight of primary batteries that is expected to be available for collection
 10.24 annually;

10.25 (iv) actual collection data from other existing stewardship programs; and

10.26 (v) the market share of the producers participating in the plan.

10.27 The stewardship plan must state the methodology used to determine these goals; and

10.28 (11) a discussion of the status of end markets for discarded batteries and what, if any,
 10.29 additional end markets are needed to improve the functioning of the program.

10.30 Subd. 6. **Consultation required.** Each stewardship organization or individual
 10.31 producer submitting a stewardship plan must consult with stakeholders including retailers,
 10.32 collectors, recyclers, local government, and customers during the development of the plan.

10.33 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
 10.34 stewardship plan, the agency shall determine whether the plan complies with subdivision
 10.35 5. If the agency approves a plan, the agency shall notify the applicant of the plan approval
 10.36 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of

11.1 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
11.2 submit a revised plan to the agency within 60 days after receiving notice of rejection.

11.3 (b) Any proposed changes to a stewardship plan must be approved by the agency
11.4 in writing.

11.5 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
11.6 placed on the agency's Web site for at least 30 days and made available at the agency's
11.7 headquarters for public review and comment.

11.8 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
11.9 organizes collection, transport, and processing of primary batteries under this section
11.10 is immune from liability for the conduct under state laws relating to antitrust, restraint
11.11 of trade, unfair trade practices, and other regulation of trade or commerce only to the
11.12 extent that the conduct is necessary to plan and implement the producer's or organization's
11.13 chosen organized collection or recycling system.

11.14 Subd. 10. **Responsibility of retailers.** (a) On and after December 1, 2014, or three
11.15 months after program plan approval, whichever is sooner, no primary battery may be sold
11.16 in the state unless the battery's producer is participating in an approved stewardship plan.

11.17 (b) Any retailer may participate, on a voluntary basis, as a designated collection
11.18 point pursuant to a product stewardship program under this section and in accordance
11.19 with applicable law.

11.20 (c) No retailer or distributor shall be found to be in violation of this subdivision if,
11.21 on the date the primary battery was ordered from the producer or its agent, the producer
11.22 was listed as compliant on the agency's Web site according to subdivision 13.

11.23 Subd. 11. **Stewardship reports.** Beginning March 1, 2016, producers of primary
11.24 batteries sold in the state must individually or through a stewardship organization
11.25 submit an annual report to the agency describing the product stewardship program. At a
11.26 minimum, the report must contain:

11.27 (1) a description of the methods used to collect, transport, and process primary
11.28 batteries in all regions of the state;

11.29 (2) the weight of all primary batteries collected in all regions of the state and a
11.30 comparison to the performance goals and recycling rates established in the stewardship
11.31 plan;

11.32 (3) the amount of discarded primary batteries collected in the state by method of
11.33 disposition, including recycling and other methods of processing;

11.34 (4) samples of educational materials provided to consumers and an evaluation of the
11.35 effectiveness of the materials and the methods used to disseminate the materials; and

11.36 (5) an independent financial audit of the stewardship organization.

12.1 Subd. 12. **Data classification.** Trade secret information, as defined under section
12.2 13.37, submitted to the agency under this section is nonpublic data under section 13.37,
12.3 subdivision 2.

12.4 Subd. 13. **Agency responsibilities.** The agency shall provide, on its Web site, a
12.5 list of all compliant producers and brands participating in stewardship plans that the
12.6 agency has approved and a list of all producers and brands the agency has identified as
12.7 noncompliant with this section.

12.8 Subd. 14. **Local government responsibilities.** (a) A city, county, or other public
12.9 agency may choose to participate voluntarily in a product stewardship program.

12.10 (b) Cities, counties, and other public agencies are encouraged to work with producers
12.11 and stewardship organizations to assist in meeting product stewardship program recycling
12.12 obligations, by providing education and outreach or using other strategies.

12.13 (c) A city, county, or other public agency that participates in a product stewardship
12.14 program must report for the first year of the program to the agency using the reporting
12.15 form provided by the agency on the cost savings as a result of participation and describe
12.16 how the savings were used.

12.17 Subd. 15. **Private enforcement.** (a) The operator of a statewide product stewardship
12.18 program established under subdivision 2 that incurs costs exceeding \$5,000 to collect,
12.19 handle, recycle, or properly dispose of discarded primary batteries sold or offered for sale
12.20 in Minnesota by a producer who does not implement its own program or participate in a
12.21 program implemented by a stewardship organization, may bring a civil action or actions
12.22 to recover costs and fees as specified in paragraph (b) from each nonimplementing or
12.23 nonparticipating producer who can reasonably be identified from a brand or marking on a
12.24 used consumer battery or from other information.

12.25 (b) An action under paragraph (a) may be brought against one or more primary
12.26 battery producers, provided that no such action may be commenced:

12.27 (1) prior to 60 days after written notice of the operator's intention to file suit has been
12.28 provided to the agency and the defendant or defendants; or

12.29 (2) if the agency has commenced enforcement actions under subdivision 10 and is
12.30 diligently pursuing such actions.

12.31 (c) In any action under paragraph (b), the plaintiff operator may recover from
12.32 a defendant nonimplementing or nonparticipating primary battery producer costs the
12.33 plaintiff incurred to collect, handle, recycle, or properly dispose of primary batteries
12.34 reasonably identified as having originated from the defendant, plus the plaintiff's attorneys'
12.35 fees and litigation costs.

13.1 Subd. 16. **Administrative fee.** (a) The stewardship organization or individual
13.2 producer submitting a stewardship plan shall pay the agency an annual administrative fee.
13.3 The agency shall set the fee at an amount that, when paid by every stewardship organization
13.4 or individual producer that submits a stewardship plan, is adequate to cover the agency's
13.5 full costs of administering and enforcing this section. The agency may establish a variable
13.6 fee based on relevant factors, including, but not limited to, the portion of primary batteries
13.7 sold in the state by members of the organization compared to the total amount of primary
13.8 batteries sold in the state by all organizations submitting a stewardship plan.

13.9 (b) The total amount of annual fees collected under this section must not exceed
13.10 the amount necessary to recover costs incurred by the agency in connection with the
13.11 administration and enforcement of this section.

13.12 (c) The agency shall identify the direct program development or regulatory costs
13.13 it incurs under this section before stewardship plans are submitted and shall establish a
13.14 fee in an amount adequate to cover those costs, which shall be paid by a stewardship
13.15 organization or individual producer that submits a stewardship plan. The commissioner
13.16 must make the proposed fee available for public review and comment for at least 30 days.

13.17 (d) A stewardship organization or individual producer subject to this section must
13.18 pay to the commissioner the agency's administrative fee under paragraph (a) on or before
13.19 July 1, 2015, and annually thereafter and the agency's onetime development fee under
13.20 paragraph (c) on or before July 1 the year following submission of a stewardship plan.

13.21 (e) The commissioner must deposit the fees collected under this section in the
13.22 state treasury and credit the fee to the miscellaneous special revenue account in the
13.23 environmental fund. Fees in the account may be used by the commissioner to implement
13.24 and enforce this section.

13.25 Subd. 17. **Exemption; medical device.** The requirements of this section do not
13.26 apply to a medical device as defined in the Food, Drug, and Cosmetic Act, United States
13.27 Code, title 21, section 321, paragraph (h).

13.28 **Sec. 4. [115A.1425] REPORT TO LEGISLATURE AND GOVERNOR.**

13.29 As part of the report required under section 115A.121, the commissioner of the
13.30 Pollution Control Agency shall provide a report to the governor and the legislature on the
13.31 implementation of sections 115A.141, 115A.1415, and 115A.142.

13.32 **Sec. 5. EFFECTIVE DATE.**

13.33 Sections 1 to 4 are effective July 1, 2013.