

HOUSE BILL REPORT

HB 1469

As Reported by House Committee On:
Environmental Health
General Government Appropriations

Title: An act relating to establishing product stewardship recycling programs for mercury-containing lights.

Brief Description: Establishing the product stewardship recycling act for mercury-containing lights.

Sponsors: Representatives Hunt, Campbell, Dickerson, Anderson, Chase, Carlyle, Hudgins, Kagi, Darneille, Sells, Van De Wege, Appleton, Dunshee, Upthegrove, Rolfes, Nelson, Morrell, Wood, Lias, O'Brien, Goodman, Hasegawa, White, Conway, Kenney and Pedersen.

Brief History:

Committee Activity:

Environmental Health: 2/4/09, 2/19/09 [DPS];

General Government Appropriations: 2/25/09 [DP2S(w/o sub ENVH)].

Brief Summary of Second Substitute Bill

- Establishes a producer-designed product stewardship program for the collection, recycle, and disposal of mercury-containing lights.
- Requires that producers of mercury-containing lights participate in and fully implement a product stewardship program by January 1, 2011.
- Requires that mercury-containing lights be recycled by business and government users by January 1, 2012.

HOUSE COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Campbell, Chair; Chase, Vice Chair; Dickerson, Dunshee, Finn, Hudgins and Rolfes.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Kretz.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Pam Madson (786-7111)

Background:

Mercury is a persistent, bioaccumulative toxin that can damage human central nervous and cardiovascular systems and cause environmental harm.

In 2003 the Legislature passed laws that prohibit mercury components in a number of consumer products. The law requires labeling of fluorescent lamps to indicate the presence of mercury and to inform purchasers on the proper disposal of the product.

The Department of Ecology's (DOE) Chemical Action Plan for mercury identified that a significant amount of mercury released into the environment comes from the disposal of products including fluorescent light tubes if they are improperly discarded.

Summary of Substitute Bill:

Producers of mercury-containing lights sold in or into Washington must participate in a product stewardship program that is fully implemented by January 1, 2011.

Product stewardship requires a producer to manage and reduce the adverse safety, health, and environmental impact of their products. It includes financing and developing a plan to collect, transport, reuse, recycle, possess, and finally dispose of the product. Producers of mercury-containing lights may operate a product stewardship program individually, jointly with other producers, or contract with a stewardship organization to operate one on their behalf.

Product Stewardship Program. A program must collect unwanted lights free of charge from residents and small school districts and from businesses delivering 15 or fewer lights to a collection site. All material from the lights collected must be recycled and the mercury retorted from the materials.

By January 1, 2012, all government, commercial, and retail facilities must recycle their mercury-containing lights.

All administrative and operational costs of a product stewardship program must be paid by the producer. A program may not use federal or state prison labor for processing unwanted products.

Prohibition. Beginning January 1, 2011, no producer, wholesaler, retailer, or other person may sell mercury-containing lights in Washington unless the producer of the product is participating in a product stewardship program whose plan has been approved by the DOE.

Product Stewardship Plan. Each product stewardship program must develop a product stewardship plan. The plan must contain the following elements:

- information about participants;

- recovery goals for unwanted mercury-containing lights;
- a description of the collection system used, including collection site locations, use of existing curbside waste collection, and an explanation of state-wide coverage of collection sites and their convenience to consumers;
- a process for disposing of the products collected including provision for a third party audit of processing and disposal facilities used under the plan;
- use of businesses in the state to provide plan elements (curbside recycling);
- an explanation of the financing system to be used; and
- education and outreach efforts to make the program known and encourage its use.

Sixty days prior to submitting its plan, a product stewardship program must give public notice of the plan it intends to submit. Producers must consult with stakeholders during development of the plan and include concerns raised and how the plan addresses concerns with its initial submittal to the DOE.

A plan must be submitted to the DOE one year prior to the date on which plans must be implemented. The plan must be updated at least once every four years. Changes to the plan must be pre-approved, with some exceptions.

Annual Report. Once a program is in operation, it must submit an annual report by April 1 of each year. Elements of the report include:

1. the amount of product recovered and whether the program met the plan recovery goals; and
2. the amount of product processed or disposed of using disposal facilities and the results of any third party audits of the processing and disposal facilities and any penalties or violations they received.

Producers that meet a 90 percent recovery rate or an 80 percent recycling rate are excused from certain reporting requirements.

In the fourth year of the program and for subsequent years, the recovery goals are based on the experience of the first three years of the program. If the plan fails to meet its recovery rate, the DOE must issue a warning and after 60 days may assess a penalty of \$10,000 for each violation.

Enforcement - Producers. Enforcement with respect to producers begins with written warnings prior to imposing any monetary penalty. Penalties include:

- *Failure to participate in a product stewardship program.* After a warning, the DOE must impose a penalty of \$1,000 per product sold.
- *Failure to implement its plan.* A producer who fails to implement its approved plan must receive a penalty, after a warning, of \$5,000. If the plan is not implemented in 30 days, the producer receives a penalty of \$10,000. Each subsequent 30-day period of non-compliance is another violation.
- *Additional violations.* Failure to submit a plan, update or change a plan when required, or submit an annual report, after a warning, will result in a \$10,000 penalty per day of violation.

Penalties are reduced by 50 percent if the producer complies within 30 days of the second violation notice. Producers may appeal penalties to the Pollution Control Hearings Board.

Enforcement - Retailers. Product retailers who sell products from producers who are not participating in a product stewardship program are subject to violations and penalties after a warning. Sales of used products are not subject to penalties under certain circumstances. In-state retailers may use inventory that is on hand by January 1, 2011.

Annual Fee. Producers must pay \$10,000 to the DOE annually as a producer of mercury-containing lights sold in Washington. Retailers who may be considered producers must pay only \$1,000 to the DOE annually. These funds are deposited into the Product Stewardship Programs Account and are used to administer the program.

Rule-making and Agency Reporting. The DOE may adopt rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2011, the DOE must evaluate the impact of the program on the availability of energy efficient lighting and on the availability of non mercury-containing energy efficient lighting. The DOE must report to appropriate committees of the Legislature on the status of the programs and any recommendations for change to the laws governing product stewardship programs each year by December 31.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes: (1) removes the requirement that all mercury-containing lights used by residents and other users be recycled by January 1, 2013; (2) allows retailers to use shipping or billing documents as additional verification of producer participation; (3) requires the DOE to solicit interested stakeholders and make the list available to producers to meet requirements for stakeholder input in the development of their stewardship programs; (4) adds additional specificity to the process used when a plan is rejected by the DOE; (5) removes the authority of the DOE to unilaterally amend, suspend, or cancel a plan; (6) changes the penalty for failing to meet recovery rates from an amount twice the cost of collecting, transporting, and processing the product to an amount up to \$10,000 per violation; (7) changes the penalty and the penalty process for retailers who sell products made by producers who are not in compliance with the stewardship law; and (8) allows retailers who may also be considered producers to pay \$1,000 annually to the DOE rather than \$10,000.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect July 1, 2009.

Staff Summary of Public Testimony:

(In support) The mercury law of 2003 started mercury cleanup and has been a success for many mercury containing products. One area that is still a problem is mercury-containing lights. Many interested parties are participating in a national dialogue on this issue. For energy conservation, use of these energy efficient light bulbs should be encouraged. Product stewardship is the right approach. Product stewardship puts the responsibility to manage a product throughout its life cycle with those who most benefit from the product, and that is the producer and the user. Encouraging people to use these lights includes a safe, convenient method of recycling them. Producer funded disposal is the most sustainable and appropriate mechanism to ensure a strong energy efficient lighting industry. Federal standards will phase out incandescent light bulbs in 2012 so the timing is right. Recycling of mercury-containing lighting is about 20 percent overall and only about 2 percent for residents and small business. This means a lot of this lighting is going into the trash and ending up in landfills. This bill addresses convenient and free recycling for residents and small businesses and school districts. It will drive the recycling of mercury-containing lights, decrease what goes into landfills, and reduce consumer and disposal worker's exposure to the harmful effects of this product. Voluntary programs currently operating may not be sustainable without a funded program. Consumers want to recycle. Recycling should be as easy to use as buying the product in the first place. Mercury has serious health effects. It needs to be managed in the environment. The more mercury there is, the greater the harm. It accumulates in the environment and can concentrate as it moves up the food chain.

(With concerns) This bill is modeled on the product stewardship approach used for electronic products that just began implementation. Parties with concerns will continue to work with proponents to make this bill more appropriate for this product.

(Neutral) The mercury law that passed in 2003 has been relatively successful in taking mercury products out of the environment and the waste stream. There is limited opportunity for residents and small businesses to recycle mercury containing lights. Lamps are one of the largest sources of mercury waste in the state.

(Opposed) This bill puts manufacturers in the business of recycling when there are businesses already doing this. It increases the cost of a product that consumers should be using. The most cost effective method is the one we have in place. This bill seeks to set up a whole new system that will not work for this industry. Producers were not included in the development of this bill until very late in the process. Producers work with those who developed the earlier bill on mercury and believe that process is better. The goal can be achieved. The bill will have a negative impact on the cost of fluorescent lamps.

Persons Testifying: (In support) Representative Hunt, prime sponsor; Carrie Dolwick, Northwest Energy Coalition; Dr. Steven Gilbert, Institute of Neurotoxicology and Neurological Disorders; Suellen Mele, Washington Citizens for Research Conservation; Lauren Cole, King County Solid Waste Division; Steve McGonigal, Washington State Recycling Association; Dick Lilly, Seattle Public Utilities; Margaret Shield, Local Hazardous Waste Management Program in King County; and Gary Smith, Independent Business Association.

(With concerns) Mark Johnson, Washington Retail Association; and Craig Lerch, Ecolights Northwest.

(Neutral) Jay Shepard, Department of Ecology.

(Opposed) Charlie Brown, National Electrical Manufacturers Association; and Brad Tower, Northwest Grocery Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environmental Health. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong and Short.

Staff: Owen Rowe (786-7391)

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Environmental Health:

The second substitute bill clarifies that it does not apply to mercury-containing lights used outdoors, such as automobile headlights, that are not used in stationary light fixtures.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect July 1, 2009.

Staff Summary of Public Testimony:

(In support) The most energy-efficient and least toxic lamps should be used and are key to reducing energy consumption and protecting the environment. Users of energy-efficient lighting need places to dispose of these products. Producer-funded programs are more sustainable and robust than government-funded programs. Only 2 percent of mercury lighting is recycled currently; the rest are leaking mercury from households to the landfill. Producer-funded programs allow the private sector flexibility in running as cost effectively as possible. This program will be budget-neutral to the state.

(Opposed) The \$10,000 annual fee to mercury-containing light producers to be paid to the Department of Ecology will discourage the sale in Washington of the most energy-efficient light bulbs. There is concern that school districts could be negatively affected by the requirements in this bill.

Persons Testifying: (In support) Carrie Dolwick, Northwest Energy Coalition; and Margaret Shield, Local Hazardous Waste Management Program of King County.

(Opposed) Mitch Denning, Alliance of Education Associations; and Charlie Brown, National Electrical Manufacturers Association.

Persons Signed In To Testify But Not Testifying: None.