

HOUSE BILL REPORT

HB 2914

As Reported by House Committee On:
Environmental Health
Ways & Means

Title: An act relating to mercury reduction.

Brief Description: Reducing the release of mercury into the environment.

Sponsors: Representatives Hunt, Campbell, Chase, Wood and Rolfes.

Brief History:

Committee Activity:

Environmental Health: 1/20/10, 2/2/10 [DPS];
Ways & Means: 2/6/10, 2/8/10 [DPS(ENVH)].

Brief Summary of 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, 2012.
- Requires that mercury-containing lights be recycled by all users by January 1, 2013.

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.

Staff: Pam Madson (786-7111).

Background:

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.

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

In 2003 the Legislature prohibited 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 that are improperly discarded.

Summary of Substitute Bill:

Effective January 1, 2013, residents; government; commercial, industrial, and retail facilities; and office buildings must recycle mercury-containing lights. Mercury-containing lights may not be disposed of in waste incinerators or landfills. Mercury-containing lights may be recycled under certain circumstances. Solid waste facilities or collectors are not subject to violations if mercury-containing lights are recycled or disposed of as solid waste under this prohibition.

Collectors of mercury-containing lights participating in a product stewardship program must:

- register with the DOE and provide certain information about collection activities;
- maintain a spill and release response plan at the collection location (except mail-back);
- maintain a worker safety plan at the collection location (except mail-back); and
- use packaging and shipping material that minimizes breakage and release of mercury into the environment. Shipping through the U.S. Postal Service or a common carrier will require mercury vapor barrier packaging.

All producers of mercury-containing lights sold in or into Washington must participate in a product stewardship program by January 1, 2012:

- Producers must pay all costs of administration and operation of a product stewardship program except for curbside collection programs and mail-back programs. Producers must pay for the transportation to and processing of mercury-containing lights but not the collection activity for curbside and mail-back programs.
- Product stewardship programs must collect, free of charge, mercury-containing lights from residential households or person who deliver 15 or fewer lights to a registered collector or a registered mail-back program.

Mercury-containing lights may not be sold or offered for sale unless the producer of the lights participates in a product stewardship program.

Product stewardship plans for mercury-containing lights must be submitted to the DOE by January 1, 2011, and approved by the DOE for implementation by January 1, 2012. The plan must contain the following elements:

- general information about the plan participants and recovery goals of the plan;

- a collection system including consideration given to existing residential curbside programs and mail-back programs;
- a disposal system including information about the status of facilities and the handling of hazardous substances;
- how existing businesses in the state will be used to implement the plan;
- a financing system used by the product stewardship program;
- education and outreach activities to encourage and evaluate the use of the program; and
- how stakeholders were included in developing the plan.

Plans must be updated at least two years after the start of the product stewardship program and every four years subsequently. Plans must be approved in a timely manner and changes to the plans must be approved in advance.

Product stewardship programs must report annually by April 1 each year on implementation of the product stewardship program, status of participants, recovery goals, and any penalties or violations received by participating processing and disposal facilities. Reports will be available to the public.

Recovery rates for the product stewardship program must be established in the fourth year based on the experience of the first three years of operation. Failure to meet recovery goals subjects the producers to a fine of up to \$10,000 for each plan violator.

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 light 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.

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 when restrictions on sale go into effect.

Producers must pay a fee to the DOE to cover the costs of administering the law. The fee schedule is determined by the DOE and must be based on a sliding scale. Producers solely involved in the retail sales of mercury-containing lights are exempt from paying this fee. These funds are deposited into the Product Stewardship Programs Account and are used to administer the product stewardship program.

The DOE may adopt rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2012, the DOE must evaluate the impact of the product stewardship program on the availability of energy efficient lighting and on the availability of non mercury-containing energy efficient lighting. The DOE must also calculate an annual recycling rate and what portion of the rate is attributable to the product stewardship programs. The DOE may also evaluate mercury vapor barrier packaging and restrict its use if necessary. The DOE must report to appropriate committees of the Legislature on the status of the product stewardship 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 to the original bill:

- clarifies that this act applies only to mercury-containing lights and removes the collection from small business and small school districts from the product stewardship program funded by mercury-containing light producers;
- applies the requirement that all mercury-containing lights be recycled by January 1, 2013, to all users including residential households;
- by January 1, 2013, prohibits the disposal of mercury-containing lights in waste incinerators, landfills, or mixed recyclable containers without a specific compartment for the lights. No solid waste facility owners or collectors may be found in violation of the prohibition on disposal;
- requires that persons involved in collection and mail-back programs must be registered with the DOE and meet certain standards for collection and packaging;
- requires producers to pay all costs of a product stewardship program except for the collection costs for residential curbside recycling or mail-back programs;
- requires that the financing element of a product stewardship plan must describe how operators of residential curbside programs and mail-back programs will be compensated for the cost of transportation and processing of mercury-containing lights;
- changes the specified fee amount of \$10,000 to an amount set by the DOE based on a sliding scale;
- directs the DOE to calculate an annual statewide recycling rate and what portion of the rate is attributable to the product stewardship programs;
- authorizes the DOE to evaluate mercury vapor barrier packaging and restrict its use if necessary; and
- removes the ban on the sale of bulk mercury; reinstates current definitions of "Automotive mercury switch" and "mercury-added product;" removes a new definition of "bulk mercury," "switch," and "wholesaler;" and reinstates the exemption from laws on mercury for crematories.

Appropriation: None.

Fiscal Note: Available on original bill. Fiscal note requested on substitute bill on February 3, 2010.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Discussion on reducing mercury in the environment has been going on for a long time. Some products have been addressed but one remaining is mercury-containing lights. Mercury is a toxic substance and it must be handled in a safe and proper manner to prevent the release of mercury into the environment. Broken bulbs pose a risk to people, workers, and the environment. The cost per bulb is minimal for a producer-funded program and should not affect consumer buying habits because of any increase in the cost of the bulbs. Consumer concern over the risks of collecting and disposing of mercury-containing lights could reduce their use and the energy efficiency gained from using them. The time is now to adopt this legislation. Local government now bears the burden of the collection and disposal of household hazardous waste. A system where manufacturers produce a product and make a profit and local government pays for disposal is not sustainable. A product stewardship model is more appropriate. This is a successful template and is used by the state's electronic recycling program. This type of program provides sustainable funding, a program in all counties, diverse collection options, and government oversight. It will increase the current low residential recycle rates. This bill is revenue neutral. Mercury is different from most recyclable material because of its hazardous properties. One safe way to collect bulbs is to use a bag that prevents the escape of mercury or a special compartment on a recycling vehicle. Curbside recycling and mail-back programs are a shared responsibility between consumers and producers. Mercury-containing lights are increasing in sales. These are long-lived bulbs and there will be a need to collect and recycle them into the future. A solution is needed now.

(With concerns) There is some confusion over application to residences and small businesses. There needs to be more effort on the collection of residential lamps. The bill needs clarification on the retorting of mercury and how the mercury is disposed of if a national mercury repository is in place. Mercury from residences would have to be handled differently from mercury coming from commercial sources. It will take a while to educate consumers that they need to recycle a mercury bulb at the time it is no longer usable.

(Neutral with concerns) The DOE issued a report that recommended: (1) funding through a cost internalization or producer responsibility approach; (2) flexible collection options; and (3) selection of services that are best for particular area. Once a program is in place a disposal ban is appropriate. Product stewardship has those who produce the products pay for end-of-life management taking that burden off of local government.

(Opposed) The \$10,000 annual fee per product can be as much as \$270,000 for a producer who manufactures multiple product categories. The penalties on retailers and producers make Washington a difficult place to do business. The program in Maine has not been implemented yet. There is litigation in New York over this type of program. The report issued by the DOE recommended an option different from that of a stakeholder group that

met during the summer. There was a preference in that group for a rate-based program that allows local governments to put together options for their areas and use the rate-base system currently in place. The industry has sufficient incentive to find an alternative bulb that does not use mercury. Cost recovery for this product is very different from electronic waste. The cost per bulb could be \$.50 to \$1.00. A penalty system puts retailers in the position of policing the system by ensuring that they do not sell bulbs of nonparticipating producers. Any option that has these products coming back to the grocery store would be a problem.

Persons Testifying: (In support) Representative Hunt, prime sponsor; Carrie Dolwick, Northwest Energy Coalition; Terri Thomas, Thurston County Solid Waste; Suellen Mele, Washington Citizens for Resource Conservation; Dick Lilly, Seattle Public Utilities; Margaret Shield, Local Hazardous Waste Management Program in King County; and David Michener, Waste Management.

(With concerns) Craig Lorch, Ecolights Northwest.

(Neutral with concerns) Jay Shepard, Department of Ecology.

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

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The substitute bill by Committee on Environmental Health be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Seaquist.

Minority Report: Do not pass. Signed by 8 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest, Ross and Schmick.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Environmental Health:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The substitute bill provides financing for a statewide program to recycle mercury-containing lights. The program would be operated within the private sector. It would use existing infrastructure and services would be expanded where they may not currently exist. The state government's role is to ensure the service levels are met and environmental standards are achieved. These costs are recovered by a fee paid by mercury light producers making this bill budget neutral. Much work has gone into this bill and discussions are continuing to find a solution. Mercury is a highly toxic substance and not enough of these lights are being recycled. We need to move forward this year and find a solution.

(Opposed) These lights are energy efficient and are distributed by energy utilities to reduce the use of electricity. The fee setting by the Department of Ecology (DOE) is open ended in the substitute bill. The striking amendment sets one fee amount. It puts local governments who are in the business of waste collection and recycling in charge. Though the substitute bill is modeled on the E-Waste law, one size does not fit all. Some retailers have store brand items that are included in this bill. The striking amendment uses waste systems already in place and reduces the DOE's oversight. Parties will continue to work to reach a solution.

Persons Testifying: (In support) Representative Hunt, prime sponsor; and Margaret Shield, Local Hazardous Task Management Program in King County.

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

Persons Signed In To Testify But Not Testifying: None.