

HOUSE BILL REPORT

ESSB 5543

As Passed House - Amended:
March 2, 2010

Title: An act relating to mercury reduction.

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

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senators Pridemore, Oemig, Rockefeller, Fairley, Murray, Kline, Keiser, Shin, Regala, Franklin, McAuliffe, Fraser, Ranker and Kohl-Welles).

Brief History:

Committee Activity:

Environmental Health: 2/17/10 [DPA];

General Government Appropriations: 2/25/10 [DPA(ENVH)].

Floor Activity:

Passed House: 3/2/10, 71-27.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Establishes a producer-financed 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, 2013.
- Prohibits the sale of bulk mercury by June 30, 2012.

HOUSE COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: Do pass as amended. Signed by 9 members: Representatives Campbell, Chair; Chase, Vice Chair; Shea, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Dickerson, Dunshee, Finn, Hudgins and Rolfes.

Staff: Pam Madson (786-7111).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

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.

Majority Report: Do pass as amended by Committee on Environmental Health. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Blake, Dunshee, Hudgins, Kenney, Klippert, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Owen Rowe (786-7391).

Background:

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 Amended Bill:

Effective January 1, 2013, all users 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.

All producers of mercury-containing lights sold in or into Washington for residential use must participate in a product stewardship program by January 1, 2013.

The DOE must contract with a product stewardship organization to operate a mercury-containing lights recycling program. Producers must participate in the program or may participate in an independent program approved by the DOE.

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.

Producers must finance the implementation of a product stewardship program and agency costs for administering and enforcing the law. The amount producers must pay to the DOE is \$15,000, \$10,000 of which is used to cover the cost of the product stewardship program and \$5,000 to pay the DOE's costs to administer and enforce the product stewardship law. Producers solely involved in the retail sales of mercury-containing lights are not considered producers and are not subject to the responsibilities of producers. These funds are deposited into the Product Stewardship Programs Account.

Product stewardship programs must collect mercury-containing lights from residential households or persons who deliver 15 or fewer lights to a registered collector or a registered mail-back program but may not charge consumers a fee at the collection point.

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 programs must provide collection services to all counties and to all cities with a population greater than 10,000. Producer participants must recover their fair share of unwanted mercury-containing lights as determined by the DOE.

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.

Product stewardship plans for mercury-containing lights from producers not participating in the state-contracted program must be submitted to the DOE by January 1, 2012, and approved by the DOE for implementation by January 1, 2013. The elements of the plan are determined by rule adopted by the DOE. The following elements are required:

- general information about the plan participants and the management of the product stewardship organization;
- 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; and
- education and outreach activities to encourage and evaluate the use of the program.

Plans must be updated at least two years after the start of the product stewardship program and every four years subsequently. Plans must be reviewed and approved by the DOE.

Product stewardship programs must report annually on implementation of the product stewardship program. Reports will be available to the public.

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 may impose a penalty of up to \$10,000 per day of light sales.
- 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 wholesalers, distributors, and 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.

The DOE may adopt rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2014, 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 beginning October 31, 2013. The DOE may also evaluate mercury vapor barrier packaging and restrict its use if necessary. The DOE must report to the 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, beginning in 2010 and continuing through 2014.

By June 30, 2012, the sale or purchase of bulk mercury is prohibited. This prohibition does not apply to dangerous waste recycling facilities or treatment, storage, and disposal facilities approved by the DOE.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environmental Health):

(In support) This bill will get a statewide recycling program for compact fluorescent lights and florescent tubes available in our state. Tens of millions of these lamps are being sold, creating hundreds of pounds of mercury. Getting a program started now is important. The producer responsibility approach will create a cost-effective system for recycling this product. It provides that no-cost recycling will be available statewide. There are strong environmental and health standards and the DOE will get feedback on satisfaction with the program from users. Much work has been done on this issue.

(In support with amendments) All stakeholders worked on this bill and the striking amendment. The proposal strikes a good balance between a producer-funded program and using those services are currently available and having the DOE contract with an

organization to run the program using the funding mechanism that is provided. This may not be perfect but it is a good start and should move forward.

(With concerns) The striking amendment contains a requirement to recycle all lamps by a certain date. There is concern about mercury vapor barrier packaging as a type of packaging offered by a certain company. An alternative is to use performance standards or refer to effectively containing mercury in transit.

(Neutral) There is some concern that the funding mechanism will not produce enough revenue to cover the cost of the program; however, there is an opportunity for the DOE to report to the Legislature annually through the first year of operation of the program. This will show how the bill is being implemented and if resources are available.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) This issue has been worked on for many years with stakeholders. Tens of millions of fluorescent lamps are sold in this state every year, totaling hundreds and hundreds of pounds of mercury. Creating the recycling program now is important. This legislation represents an agreement with the Electrical Manufacturers Association as well as the waste handlers in the state. The amount that producers will contribute to the recycling program has been determined through negotiations and there is an agreed upon amount that is in this bill. The lighting producers now want to change the arrangement and reduce the amount available to the mercury recycling program. Get this program started with the level of financing specified in this bill. The bill has reporting requirements with plenty of opportunities to assess the financing and adequacy of the program. This is the most cost effective and efficient model of a producer funded program and is budget neutral to the state.

(With concerns) The manufacturers worked with the sponsors to draft the bill. The original legislation was the same bill that came before you last year and was something that manufacturers could not support. The fact that the bill in its current form shows that the manufacturers have been more than willing to sit down with the Department of Ecology (DOE) and the other stakeholders to work on this issue. The one concern with the current structure of the bill is with the \$15,000 fee that each producer pays for the program. It is the smaller producers that have a problem with the current fee structure in the bill. One solution would be to modify the fee structure so that all manufacturers pay the \$5,000 fee to the DOE for the administration and enforcement of the program. Under this solution, the \$10,000 fee that is contemplated for the recycling plan would be implemented on a sliding scale fee based on market share, so that the smaller manufacturers are not paying the same amount of money as the larger manufacturers.

(Opposed) None.

Persons Testifying (Environmental Health): (In support) Margaret Shield, Local Hazardous Waste Management Program in King County; and Brad Boswell, Waste Management.

(In support with amendments) Charlie Brown, National Electrical Manufacturers Association.

(With concerns) Craig Lorch, Ecolights Northwest.

(Neutral) Jay Shepard, Department of Ecology.

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

(With concerns) Charlie Brown, National Electrical Manufacturers Association.

Persons Signed In To Testify But Not Testifying (Environmental Health): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations): None.