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**SENATE BILL 5762**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Hunt, Short, and Sheldon

AN ACT Relating to financing of the mercury-containing light stewardship program; and amending RCW 70.275.050, 70.275.040, 70.275.130, and 43.131.422.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 70.275.050 and 2014 c 119 s 5 are each amended to read as follows:

(1) Each stewardship organization must recommend to the department an environmental handling charge to be added to the price of each mercury-containing light sold in or into the state of Washington for sale at retail. The environmental handling charge must be designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization, including the department's annual fee required by subsection (5) of this section, and a prudent reserve. The stewardship organization must consult with collectors, retailers, recyclers, and each of its participating producers in developing its recommended environmental handling charge. The environmental handling charge may, but is not required to, vary by the type of mercury-containing light. In developing its recommended environmental handling charge, the stewardship organization must take into consideration and report to the department:

(a) The anticipated number of mercury-containing lights that will be sold to covered entities in the state at retail during the relevant period;

(b) The number of unwanted mercury-containing lights delivered from covered entities expected to be recycled during the relevant period;

(c) The operational costs of the stewardship organization as described in RCW 70.275.030(2);

(d) The administrative costs of the stewardship organization including the department's annual fee, described in subsection (5) of this section; and

(e) The cost of other stewardship program elements including public outreach.

(2) The department must review, adjust if necessary, and approve the stewardship organization's recommended environmental handling charge within sixty days of submittal. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, collectors, recyclers, and other entities.

(3) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington retailers for sale at retail, and each Washington retailer shall add the charge to the purchase price of all mercury-containing lights sold at retail in this state, and the producer shall remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in this state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(4) At any time, a stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department's review, adjustment, if necessary, and approval under subsection (2) of this section to ensure that there is sufficient revenue to fund the cost of the program, current deficits, or projected needed reserves for the next year. The department must review the stewardship organization's recommended environmental handling charge and must adjust or approve the recommended charge within thirty days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in subsection (1) of this section.

(5) Beginning March 1, 2015, and each year thereafter, each stewardship organization shall pay to the department an annual fee equivalent to ((~~five~~)) two thousand five hundred dollars for each participating producer to cover the department's administrative and enforcement costs. The amount paid under this section must be deposited into the product stewardship programs account created in RCW 70.275.130.

**Sec.**  RCW 70.275.040 and 2014 c 119 s 4 are each amended to read as follows:

(1) On June 1st of the year prior to implementation, each producer must ensure that a stewardship organization submits a proposed product stewardship plan on the producer's behalf to the department for approval. Plans approved by the department must be implemented by January 1st of the following calendar year.

(2) The department shall establish rules for plan content. Plans must include but are not limited to:

(a) All necessary information to inform the department about the plan operator and participating producers and their brands;

(b) The management and organization of the product stewardship program that will oversee the collection, transportation, and processing services;

(c) The identity of collection, transportation, and processing service providers, including a description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as an appropriate collection mechanism;

(d) How the product stewardship program will seek to use businesses within the state, including transportation services, retailers, collection sites and services, existing curbside collection services, existing mail-back services, and processing facilities;

(e) A description of how the public will be informed about the product stewardship program, including how consumers will be provided with information describing collection opportunities for unwanted mercury-containing lights from covered entities and safe handling of mercury-containing lights, waste prevention, and recycling. The description must also include information to make consumers aware that an environmental handling charge has been added to the purchase price of mercury-containing lights sold at retail to fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be described as a department recycling fee or charge at the point of retail sale;

(f) A description of the financing system required under RCW 70.275.050;

(g) How mercury and other hazardous substances will be handled for collection through final disposition;

(h) A public review and comment process; and

(i) Any other information deemed necessary by the department to ensure an effective mercury light product stewardship program that is in compliance with all applicable laws and rules.

(3) All plans submitted to the department must be made available for public review on the department's web site and at the department's headquarters.

(4) At least two years from the start of the product stewardship program and once every four years thereafter, each stewardship organization operating a product stewardship program must update its product stewardship plan and submit the updated plan to the department for review and approval according to rules adopted by the department.

(5) By June 1, 2016, and each June 1st thereafter, each stewardship organization must submit an annual report to the department describing the results of implementing the stewardship organization's plan for the prior calendar year, including an independent financial audit once every three years. The department may adopt rules for reporting requirements. Financial information included in the annual report must include but is not limited to:

(a) The amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

(b) Identification of confidential information pursuant to RCW 43.21A.160 submitted in the annual report; and

(c) The cost of the mercury-containing lights product stewardship program, including line item costs for:

(i) Program operations;

(ii) Communications, including media, printing and fulfillment, public relations, and other education and outreach projects;

(iii) Administration, including administrative personnel costs, travel, compliance and auditing, legal services, banking services, insurance, and other administrative services and supplies, and stewardship organization corporate expenses; and

(iv) Amount of unallocated reserve funds.

(6) Beginning in 2023 every stewardship organization must include in its annual report an analysis of the percent of total sales of lights sold at retail to covered entities in Washington that mercury-containing lights constitute, the estimated number of mercury-containing lights in use by covered entities in the state, and the projected number of unwanted mercury-containing lights to be recycled in future years.

(7) All plans and reports submitted to the department must be made available for public review, excluding sections determined to be confidential pursuant to RCW 43.21A.160, on the department's web site and at the department's headquarters.

**Sec.**  RCW 70.275.130 and 2010 c 130 s 13 are each amended to read as follows:

The product stewardship programs account is created in the custody of the state treasurer. All funds received from producers under this chapter and penalties collected under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. The department shall not retain fees in excess of the estimated amount necessary to cover the agency's administrative costs related to the mercury light stewardship program under this chapter. The department shall refund any fees collected in excess of those administrative costs to any approved stewardship organization under this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec.**  RCW 43.131.422 and 2014 c 119 s 8 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2026:

(1) RCW 70.275.010 (Findings—Purpose) and 2010 c 130 s 1;

(2) RCW 70.275.020 (Definitions) and 2014 c 119 s 2 & 2010 c 130 s 2;

(3) RCW 70.275.030 (Product stewardship program) and 2014 c 119 s 3 & 2010 c 130 s 3;

(4) RCW 70.275.040 (Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report) and 2017 c . . . s 2 (section 2 of this act), 2014 c 119 s 4, & 2010 c 130 s 4;

(5) RCW 70.275.050 (Financing the mercury-containing light recycling program) and 2017 c . . . s 1 (section 1 of this act), 2014 c 119 s 5, & 2010 c 130 s 5;

(6) RCW 70.275.060 (Collection and management of mercury) and 2010 c 130 s 6;

(7) RCW 70.275.070 (Collectors of unwanted mercury-containing lights—Duties) and 2010 c 130 s 7;

(8) RCW 70.275.090 (Producers must participate in an approved product stewardship program) and 2010 c 130 s 9;

(9) RCW 70.275.100 (Written warning—Penalty—Appeal) and 2010 c 130 s 10;

(10) RCW 70.275.110 (Department's web site to list producers participating in product stewardship plan—Required participation in a product stewardship plan—Written warning—Penalty—Rules—Exemptions) and 2010 c 130 s 11;

(11) RCW 70.275.130 (Product stewardship programs account) and 2017 c . . . s 3 (section 3 of this act) & 2010 c 130 s 13;

(12) RCW 70.275.140 (Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging) and 2010 c 130 s 14;

(13) RCW 70.275.150 (Application of chapter to the Washington utilities and transportation commission) and 2010 c 130 s 15;

(14) RCW 70.275.160 (Application of chapter to entities regulated under chapter 70.105 RCW) and 2010 c 130 s 16;

(15) RCW 70.275.900 (Chapter liberally construed) and 2010 c 130 s 17;

(16) RCW 70.275.901 (Severability—2010 c 130) and 2010 c 130 s 21; and

(17) RCW 70.275.170 and 2014 c 119 s 6.

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