

HOUSE BILL REPORT

HB 2686

As Reported by House Committee On:
Agriculture & Ecology

Title: An act relating to mercury reduction and education.

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

Sponsors: Representatives Hunt, Rockefeller, Linville, Dunshee, Kirby, Sullivan, Upthegrove, Chase, Campbell, Romero, Lantz, Wood, Simpson and Kagi.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/29/02, 2/8/02 [DPS].

Brief Summary of Substitute Bill

- Requires the manufactures of mercury-added thermometers and thermostats to provide for effective collection, transport, and disposal systems
- Prohibits the knowing collection of used mercury-added products except for limited circumstances.
- Requires the manufactures of mercury-added products to notify the Department of Ecology. (DOE)
- Prohibits the sale of various mercury-added products.
- Requires the Department of General Administration to give purchasing preference to items not containing mercury.
- Requires the (DOE) to develop a chemical action plan for mercury.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Linville, Chair; Hunt, Vice Chair; Cooper, Dunshee, Grant, Kirby and Quall.

Minority Report: Do not pass. Signed by 6 members: Representatives Schoesler, Ranking Minority Member; Chandler, Delvin, Holmquist, Roach and Sump.

Staff: Jason Callahan (786-7117).

Background:

Mercury has been identified by the United States Environmental Protection Agency (EPA) as being included in a group of chemicals known as persistent bioaccumulative toxins (PBT's). Individuals within this family of toxins are known to break down very slowly when released into the environment and increase in concentration as they move up the food chain.

The 2000 Legislature directed the Department of Ecology (department) to develop a proposed long-term strategy to address PBT's in Washington, which was presented to the Legislature in 2001. The 2001 Legislature directly appropriated \$800,000 from the state toxics control account specifically for the implementation of the strategy. Both the department and the EPA has identified mercury as the number one PBT priority.

Mercury is used in a variety of consumer products including automobiles, thermometers, thermostats, switches, fluorescent light tubes, high intensity lamps, dairy manometers, barometers, blood pressure measuring devices, and in numerous toys and novelty items. At least eight states have passed legislation relating to mercury or mercury-added consumer products. This list includes California, Oregon, and various east coast and midwest states.

Summary of Substitute Bill:

Collection Systems:

Within one year, the manufacturers of mercury-added thermometers and non-industrial thermostats may not be sold in Washington unless the manufacturer ensures that they will be properly collected, transported or disposed of as hazardous waste. This requirement can be met by either establishing and funding a used product collection system, or identifying and funding existing collection systems.

Approved collection systems must include certain elements, including a public education program, a targeted capture rate, a plan for financing, a description of performance measures, and a description of alternate options that may be pursued should the performance measures not be met.

Labeling:

All mercury-added products, and their packaging, must be properly labeled prior to sale. The label must be clearly visible prior to sale and contain sufficient detail so that any mercury-containing components can be readily located and removed. The labels must be constructed so that they remain durable through the useful life of the product. It is the responsibility of the product manufacturer to label the packages and products, unless the wholesaler or retailer accepts responsibility. For imported products, the labeling is the responsibility of the importer.

Alternate labeling requirements may be approved by the department if the alternative method is at least as effective as the prescribed method, or strict compliance with the prescribed method is not feasible. Any alternative labeling methods approved by the department may not be allowed for more than two years. In reviewing alternative methods, the department must consult with neighboring governing bodies to ensure consistent labeling requirements throughout the region.

Certain alternative methods, and labeling exceptions, are statutorily approved. These include the labeling of white goods, fever and laboratory thermometers, commercial aircraft and aerospace complements, button cell batteries, and certain electronics that incorporate mercury-added lamps. New automobiles must have a doorpost label applied by the manufacturer that lists any mercury-added components.

In issuing rules for labeling, the department is instructed to make efforts to ensure consistency with the labeling requirements of other states.

Disposal Systems:

No person may knowingly dispose of a mercury-added product in any way other than recycling or disposing the product as hazardous waste, or send a mercury-containing item to a scrap processor without first removing the mercury components. A scrap processor may only accept an item containing mercury if he or she is willing to take responsibility for proper disposal.

Solid waste handling professionals may not accept waste containing mercury products if they know, or reasonably should have known that the mercury was present. The solid waste handler will not be deemed to have knowledge of the presence of mercury if he or she has provided notification to the customers that improper disposal of mercury is illegal, and there are no obvious mercury-added products in the accepted containers. Solid waste facilities will not be deemed to have knowledge if the facility has posted signs and provided written notification regarding the prohibition against improper mercury disposal.

Motor vehicle recyclers and dismantlers are permitted to accept motor vehicles with mercury components. The department is required to assemble an advisory committee of concerned stakeholders and report recommendations to the Legislature regarding how

motor vehicle-based mercury components can be removed.

Sales

Prior to selling a mercury-added product in Washington, the manufacturer must notify the department of its intent to sell the product in the state. The written notification must include a description of the product, the amount and purpose of the mercury in the product, the total amount of mercury in all items produced by the manufacturer, and the contact information for the manufacturer.

The sales of various products are prohibited in Washington. These products include mercury-added novelties, certain thermometers, certain thermostats, and motor vehicles after January 1, 2006, that contain switches with mercury.

Miscellaneous

The department must work with the Washington Hospital Association and other stakeholders to develop a mercury phase-out plan to reduce or eliminate the purchase or mercury-containing products at certain health care facilities. Also, the department must develop a plan and proposed budget for a comprehensive public outreach, education, and assistance program. The department must also develop an awards program to recognize facilities that exceed the requirements for mercury set by law. The Department of General Administration must give priority to products that do not contain mercury, unless there is no cost-effective alternative, and schools may no longer purchase bulk or elemental mercury.

Violations of this act are punishable by a civil penalty not to exceed \$1,000 for each violation. Repeat violators are subject to a fine not to exceed \$5,000. Penalties collected by these fines are deposited into the state toxics control account.

The department must review the effectiveness of this act and report to the Governor and Legislature, and is authorized to participate in a regional clearinghouse to assist with the implantation of the act. Also, the department must develop a chemical action plan for mercury that will serve as the model for similar plans for other chemicals by January 1, 2003. The plan must be developed along set timelines and with the assistance of a stakeholder-comprised advisory committee.

Exceptions

This act does not apply to regulated prescription drugs, to biological products, or to over-the-counter medications.

Substitute Bill Compared to Original Bill:

There are a number of technical and policy differences between the original bill and the substitute bill. The differences in the substitute bill include:(1) exempting pharmaceutical and biological products; (2) limiting the requirement to maintain a collection system to the producers or mercury thermometers and thermostats; (3) clarifying the labeling requirements for consistency with other states and to remove ambiguity; (4) providing a definition for "solid waste collectors"; (5) defining when an individual is acting with knowledge; (6) exempting car dismantlers from the collection provisions; (7) requiring the Department of Ecology to produce a chemical action plan; and (8) specifying that dental amalgam does not have to be removed from dentist offices.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains several effective dates. Please refer to the bill.

Testimony For: Mercury belongs to the class of chemicals known as persistent bioaccumulative toxins (PBTs) that have significant, negative health consequences. PBTs do not degrade very slowly in the environment and increase in concentration as they move up the food chain. As a result, most exposure to PBTs and mercury occurs from eating fish and shellfish. In fact, health standards in seafood are consistently violated as a result, especially in Puget Sound. The toxicity that builds up in the tissue of prey has negative health effects on all consumers, including Orcas and humans. One in 10 pregnant women have measurable mercury in their blood streams. Mercury is invisible in the bloodstream, until it reaches levels where it can do harm. By that time, it is too late to correct the problem.

State action to address mercury is more logical than local action, since the effects of mercury are felt statewide. Residents have proven very willing to comply with mercury regulation once they are aware of the chemical's negative effects.

Reliable substitutes to mercury are available. Mercury car switches are cheap, and easy to replace.

Forty-one states nationally have had to issue fish advisories due to mercury, and eight states passed bills in 2001 that addressed the concerns that mercury raises. This bill takes a common sense approach and allows the (DOE) to focus on other issues.

Testimony Against: (With concerns) This bill is too broad and unworkable. Many products that should be exempted are not.

Health concerns should be taken seriously, but regulation should be based on sound

science. The state is already doing this by taking a legislative and regulatory approach to PBTs. The (DOE) is currently developing a mercury action plan on its own initiative, and the business community has been invited to participate. This process is far more appropriate than a legislative act. In addition, the federal government is addressing mercury, and state duplication would be costly and confusing. If more needs to be done, it should originate from the federal level.

Many industries have already begun voluntarily reducing mercury. In some instances, mercury offers performance standards that are unmatched by other substances.

Testified: (In support) Representative Sam Hunt prime sponsor; Gregg Small, Washington Toxics Coalition; Ivy Sager, Washington Public Interest Research Group; Rich McConaghy, Washington Solid Waste; Bobbie Morgan, private citizen; Ann Clifton, Mercury Awareness Team; Maurice Lawty, Mercury Awareness Team; Bruce Wishart, People for Puget Sound; Zena Hartung, South Sound Green Party; Sherry Appleton, League of Women Voters; Jan Gee, Washington Food Industry; Jennifer Tebaldi, Washington Department of Health; Amy Brackenbary, Washington Food Industry; Kim Clauson, Washington Restaurant Association; Shane Erickson, Safeway; and Rick Abbett, Trout Unlimited.

(With concerns) Toni Potter, League of Women Voters of Washington; Jerry Smedes, Basin Disposal, and Washington Refuse and Recycling Association; Randy Ray, American Chemistry Council; and Jennifer Tebaldi, Washington Department of Health.

(Neutral) John Dohrmann, Puget Sound Water Quality Action Team; Bill Backous, Department of Ecology; and Marianne Seifert, Washington State Board of Health.