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## Environmental Health Committee

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### ESSB 5543

**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 Summary of Engrossed Substitute Bill

- 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.

**Hearing Date:** 2/17/10

**Staff:** Pam Madson (786-7111).

#### 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 Bill:

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*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.*

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 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 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:** Requested on February 15, 2010.

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