

SENATE BILL REPORT

ESSB 5543

As Amended by House, 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: Environment, Water & Energy: 1/28/09, 2/02/10, 2/05/10 [DPS-WM, DNP].

Ways & Means: 2/08/10, 2/09/10 [DPS(EWE), DNP].

Passed Senate: 2/15/10, 37-9.

Passed House: 3/02/10, 71-27.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5543 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Marr, Oemig and Ranker.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Morton.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5543 as recommended by Committee on Environment, Water & Energy be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Hewitt, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Parlette, Pflug, Pridemore, Regala and Rockefeller.

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.

Minority Report: Do not pass.

Signed by Senators Carrell, Honeyford and Schoesler.

Staff: Jan Odano (786-7486)

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 (department) 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 Engrossed Substitute Bill: Every producer of mercury-containing lights (lamps, bulbs, tubes, or other devices containing mercury and providing illumination) sold in or into Washington for residential use must fully finance and participate in a product stewardship program; financing includes the department's costs for administering and enforcing the program. All product stewardship programs must be approved and contracted by the department but the product stewardship program is operated by a product stewardship organization. Producers may participate in department-approved independent plans that are individually or jointly financed and operated with other producers.

The product stewardship programs must be fully implemented by January 1, 2013. A program may not use prison labor for processing unwanted products. A producer, wholesaler, retailer, or other person may not offer for sale mercury-containing lights unless the producer is participating in an approved product stewardship program.

A product stewardship program must submit a proposed plan to the department by January 1 of the year prior to implementation. The department must establish rules for plan content. The plan must include at least the following elements:

- information about participants;
- a description of the collection system used, including collection site locations, use of existing curbside waste collection, and an explanation of statewide coverage of collection sites and their convenience to consumers;
- use of businesses in the state to provide plan elements (including curbside recycling);
- an explanation of the financing system;
- education and outreach efforts; and
- public review and comment process.

All plans must be made available for public review on the department's website.

A product stewardship program must update its plan within two years from the start of the program and every four years thereafter. The program must submit its updated plan to the department for review and approval in accordance with department rules. Each program

must provide an annual report to the department with the results of their plan for the prior year.

All producers must pay \$15,000 to the department to contract with a product stewardship program operated by a product stewardship organization. The department retains \$5,000 for administrative and enforcement costs. Producers participating in an independent plan must pay an annual fee of \$5,000 to the department for administrative and enforcement. In addition, producers participating in an independent plan finance the full cost to implement the plan. The department must adopt rules for the product stewardship organization to adjust the fee if the program costs exceed the available revenue.

Enforcement for producers begins with written warnings. Penalties include:

- Failure to participate in a program. The department must send a written warning to a non-participating producer. After 60 days of receiving the warning, the department must assess a penalty of up to \$1,000 per violation, which is one day of sales.
- Failure to implement a plan. A producer that fails to implement its approved plan receives a penalty of up to \$5,000 for the first violation. If the plan is not implemented in 30 days, the producer receives a penalty of up to \$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 to submit an annual report after a warning results 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.

Collectors of unwanted mercury-containing lights must register with the department. Until the department establishes rules, collectors must: maintain a spill and release response plan; have a worker safety plan; use packaging and shipping materials that minimize the release of mercury into the environment; provide (1) information regarding the owner and operator of the collection location and (2) the address and phone number of the collection location and of the person operating the collection location.

No one may distribute or sell mercury-containing lights from producers who are not participating in a product stewardship program. The department must list all producers participating in a product stewardship plan on its website. Product wholesalers, distributors, retailers, and electric utilities must check the website to determine that the products are in a product stewardship program. Any person who distributes or sells products from producers not participating in a program are subject to violations and penalties after a warning. Sales of used product are not subject to penalties, under certain circumstances. In-state retailers possessing mercury-containing lights may exhaust existing stock through sales to the public.

The department may adopt administrative rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2014, the department must evaluate the impact of the program on availability of energy efficient lighting and nonmercury-containing energy efficient lighting. The department must report to the Legislature concerning the status of the program and recommendations for changes to the act by December 31, 2014.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Environment, Water & Energy):

PRO: Current recycling programs for CFLs and other mercury-containing lights are inadequate; only 2 percent are properly handled. Use and later disposal of these lights are greatly increasing, creating environmental and public health problems. The proposed substitute bill is the product of considerable negotiation among stakeholders. The bill is budget neutral to the state. Recycling will be mandated in all 39 counties in Washington. Cost of lights will not greatly increase. Currently, local government disposal costs are burdensome. An interim study by DOE indicates that a flexible product stewardship program is appropriate. The program could incorporate existing curbside and mail-in recycling services. A proposed mercury vapor packaging limit has technical difficulties. A proposed bulk mercury ban is appropriate.

CON: A proposal requiring producers to pay flat fees, funding grants to existing local government solid waste collection systems, should be considered. Manufacturers are not equipped to facilitate the mandates in this legislation.

OTHER: While DOE is officially neutral regarding this legislation because of the fiscal impact to the agency, it supports the concept of product stewardship for mercury-containing lights.

Persons Testifying (Environment, Water & Energy): PRO: Margaret Shield, Local Hazardous Waste Program in King County; Suellen Mele, Washington Citizens for Resource Conservation; Carrie Dolwick, Northwest Energy Coalition; Jeff Clark, Seattle City Light; Art Starry, Thurston County; David Michener, Waste Management; Steve McGonigal, Washington State Recycling Association; Craig Lorch, Total Reclaim.

CON: Charlie Brown, National Electrical Manufacturers Association; Grant Nelson, Association of Washington Business.

OTHER: Jay Shepard, DOE.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):

PRO: The current recycling of these lights is inadequate; only two percent is actually recycled. This bill will create a comprehensive program, paid for by the manufacturers, for recycling these lights with state oversight. This bill will ensure responsible end-of-life disposal of these products, which will help support a robust lighting market and will result in greater public safety. The lights will be collected in a variety of ways, including drop locations, curbside collection, and mail back. Local governments have been working on this issue for many years and are interested in seeing a solution, this year, to this problem.

OTHER: Entities that are not professional manufacturers of these products, but who market a brand name, will be considered a manufacturer under this program. It would be more efficient from a fiscal standpoint for the state to oversee the professional waste collectors, rather the amateur collectors, and to administer a grant to the local governments for this work.

Persons Testifying (Ways & Means): PRO: Margaret Shield, King County Local Hazardous Waste Management Program; Carrie Dolwick, Northwest Energy Coalition.

OTHER: Brad Tower, Northwest Grocery Association.

House Amendment(s): Beginning January 1, 2013, all persons, residents, government, commercial, industrial, and retail facilities must recycle their end-of-life mercury containing lights. Mercury-containing lights may not be disposed of in waste incinerators or landfills. Solid waste facilities or collectors are not subject to violation if mercury-containing lights are recycled or disposed of as solid waste. The authority is removed for DOE to adopt rules to adjust fees paid by producers to implement product stewardship programs and administer and enforce the law on mercury-containing lights. References are corrected and unnecessary language is removed.