

HOUSE BILL REPORT

ESSB 5788

As Passed House - Amended:

April 13, 2005

Title: An act relating to ensuring the lawful transport and handling of recyclable materials.

Brief Description: Improving recycling.

Sponsors: By Senate Committee on Water, Energy & Environment (originally sponsored by Senators Doumit, Kastama, Mulliken, Haugen, Morton, Poulsen, Pridemore and Berkey).

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 3/24/05, 3/31/05 [DPA].

Floor Activity:

Passed House - Amended: 4/13/05, 95-1.

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

- Requires the transporters of recyclable materials to register with the state or face a civil violation.
- Requires certain recycling facilities to notify the state before commencing operations.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: Do pass as amended. Signed by 10 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt, Dickerson, Eickmeyer, Hunt and Williams.

Minority Report: Do not pass. Signed by 1 member: Representative Orcutt.

Staff: Jason Callahan (786-7117).

Background:

The Waste Not Washington Act of 1989 established a policy framework for waste reduction, reuse, and recycling that included setting a goal for the state to recycle 50 percent by 2007. In part, the purpose of the legislation is to encourage the development and operation of waste recycling facilities and to promote consistent requirements for the facilities.

Most facilities that handle solid waste, including recyclable materials, must maintain a solid waste handling permit from the health department with jurisdiction over the area, which can issue a permit only after consulting with the Department of Ecology (Department). Some solid waste handling facilities are exempt from this requirement. These include facilities that present little or no environmental risk, or that satisfies environmental performance requirements established for similar facilities. Similarly, a local health department may defer permitting requirements for certain facilities that have obtained other permits that regulate air, water, or the environment.

Summary of Amended Bill:

Recycling transporter requirements:

Definition of "transporter"

The term "transporter" is defined to mean a person who transports recyclable materials for compensation from commercial or industrial generators over the public highways of the state. To be considered a transporter, the person must also be required to possess a permit from the Utilities and Transportation Commission. The term "transporter" also includes the commercial recycling operators of certified solid waste collection companies.

Regardless of their practices, certain persons are categorically exempt from the term "transporter." These include:

- persons that buy and sell recyclable materials, and transport those materials in their own car as an incidental activity to their business;
- persons hauling their own recyclables;
- non-profit organizations;
- city solid waste departments and city contractors; and
- common carriers who are not primarily in the business of transporting recyclable materials.

Registration requirements

Prior to transporting recyclable materials, a transporter must register with the Department, on forms provided by the Department. Failure to register with the Department is punishable by a civil penalty of up to \$1,000.

Transporter destinations

If a transporter delivers recyclable materials to a landfill or a transfer station, he or she is subject to a civil penalty of up to \$1,000. In addition, all transporters must keep records for two years of the locations where recyclable materials were delivered and the quantities delivered. The records must be made available for inspection by the Department, and include information such as the name of the generator, the service date, and where the materials were ultimately marketed.

Recycling facilities:

Notification and reporting requirements

All facilities that recycle solid waste are required to provide written notification to the Department 30 days prior to commencing operations, or 90 days after the effective date of the act. The notification is required to include a general description of the recycling activity at the facility, including an explanation of the recycling process and methods.

Facilities required to provide notification are also required to submit annual reports to the Department. The reports are required to detail all recycling activities of the previous year, including the quantities and types of wastes received, recycled, and disposed of by the reporting facility.

A facility, except for product take-back centers, that fails to notify the Department prior to recycling solid waste, can be subjected to a civil penalty of up to \$1,000.

Facilities that are required to have a solid waste handling permit are not required to provide the notification or reports required of other facilities.

Financial assurance requirements

All recycling facilities are required to obtain financial assurances for their operations. The amount of assurance is set by the Department, and must take into account the amounts and types of materials accepted, and the potential costs that could be associated with a closure of the facility.

Causes of action

Any violation of the requirements on transporters or recycling facilities can serve as a civil cause of action. The plaintiff in such a cause of action may request that a court grant injunctive relief against the transporter or facility, or award damages. The prevailing party in any court case brought under this cause of action is entitled to costs and attorneys' fees.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Solid waste management is a long-standing issue facing the state, and it has been shown that it is easier to manage an issue before it actually becomes a problem. Currently the problem is that there is not enough oversight of the recycling industry. The bill's approach does not impact legitimate recyclers, and does not create new regulations. It is a principal of the state's solid waste system that recyclable materials that are not recycled are indeed solid waste, and these materials should be regulated as such.

Companies holding themselves out as recyclers should be prohibited from throwing the product into the garbage stream. Illegitimate, or sham, recyclers do exist and they are a big problem. Sham recycling misleads consumers, causes environmental harm, and erodes the safeguards built into the solid waste management system. Sham recyclers have been encroaching on legitimate operators since trucking was deregulated in the 1990's.

The private right of action in the bill is designed to discourage frivolous use and will not be used in that manner.

This bill has been worked with many stakeholders and is designed to eliminate the loss of tax dollars that occurs when sham recyclers are allowed to operate.

Testimony Against: This bill solves limited problems, but in the process creates whole new problems. The bill does not improve recycling, and will instead move it backwards by ignoring the advantages of industry ingenuity and innovations. The current system is market driven with is fueled by competition. Decreasing competition and increasing regulation runs counter to the reasons why the system works. The result will be less competition because there will be fewer in the business.

Under this legislation, the Department will be unable to exempt companies posing no environmental threats from the solid waste laws of the state. This will discourage recycling. The bill was not vetted with all stakeholders and does not have the support of many in the recycling community. It punishes those acting responsibly and does nothing to get to the problems claimed to be the bill's intent.

Recyclable materials should not be treated like waste. They are economic commodities, and are not waste until deposited into a landfill. The bill is about the unlawful disposal of solid waste, and not recycling.

The private right of action is very heavy-handed and vague. The right of action will be abused by solid waste haulers who want to take business away from those in the recycling business. There are already many unfounded complaints in the current system, and this would give those complaints teeth. In addition, invoices should not be required to be disclosed. These are private business matters.

Persons Testifying: (In support) Vicki Austin, Washington Refuse and Recycling Association; Jerry Smedes, Emerald Services and Basin Disposal; Larry Meary, Lemay Recycling; and Ted Sturdevant, Department of Ecology.

(Opposed) Preston Horne-Brine, Marathon Wood and Film Recovery; Shawn Doherty, Construction Waste Management; Luis Young, Skagit River Steel Dreg and Pacific Northwest Institute of Scrap Recycling Industries; Michael Armstrong, Second Use Building Materials; Jay Sternoff, Pacific Iron and Metal; and Jeff Gage, Swanson Bark and Wood Incorporated.

Persons Signed In To Testify But Not Testifying: None.