SENATE BILL REPORT
E2SHB 1185

As Passed Senate - Amended, March 1, 2024

Title: An act relating to reducing environmental impacts associated with lighting products.

Brief Description: Reducing environmental impacts associated with lighting products.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Hackney, Duerr, Berry, Ramel, Fitzgibbon, Doglio and Pollet).

Brief History: Passed House: 2/10/24, 52-45.
Committee Activity: Environment, Energy & Technology: 2/14/24, 2/20/24 [DPA, DNP, w/oRec].
Floor Activity: Passed Senate - Amended: 3/1/24, 29-20.

Brief Summary of Bill
(As Amended by Senate)

- Prohibits the sale of most mercury-containing lights (MCLs) beginning in 2029, except for certain sales occurring within six months of this date to sell through existing stocks of MCLs.
- Extends the existing MCLs stewardship program (program), as modified, until 2035, or an earlier date determined by the Department of Ecology after completing a specified cost-benefit analysis.
- Restricts the distribution or sale of lights in or into Washington from certain producers that do not participate in the program.
- Increases the daily maximum quantities of MCLs that may be delivered to collection sites.
- Amends the program's funding structure, beginning in 2029, to be producer-funded instead of consumer-funded, with certain exceptions.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended.
Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; Lovick, Trudeau and Wellman.

Minority Report: Do not pass.
Signed by Senators MacEwen, Ranking Member; Short.

Minority Report: That it be referred without recommendation.
Signed by Senator Boehnke.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Types of Light Bulbs. Some common types of light bulbs—or lamps—are fluorescent bulbs, including compact fluorescent light bulbs; high intensity discharge bulbs; and light-emitting diode bulbs. A fluorescent bulb requires a small amount of mercury vapor to operate and emit light, which can be released into the environment if the bulb is broken.

Mercury-Containing Lights Stewardship Program. Since 2010 Washington has required producers of mercury-containing lights (MCLs) to participate in a stewardship program (program) responsible for the collection, recycling, and disposal of MCLs used for illumination purposes.

Producers of MCLs who do not participate in a stewardship plan approved by the Department of Ecology (Ecology) are prohibited from selling MCLs in or into Washington. Ecology is responsible for reviewing and approving plans for the program submitted by a stewardship organization on behalf of producers and for ensuring the program's compliance with the submitted plan. The LightRecycle Washington program has been operating since January 1, 2015.

To finance the operations of the program, an environmental handling charge (EHC) is applied to each MCL sold at retail in or into the state. The EHC:
- must cover the stewardship program's operational and administrative costs, plus a reserve;
- must be added to the price of MCLs sold at retail;
- may vary by the type of MCL; and
- must be added to the price of MCL sales from producers to retailers, who must add the EHC to the cost of the products they sell at retail.

Under the LightRecycle Washington program, the current EHC is $0.95 per bulb. The stewardship organization must pay Ecology an annual administrative fee of $3,000 per producer to cover Ecology's administrative and enforcement costs associated with the stewardship program. In addition to other requirements, stewardship organizations must provide, at a minimum, no cost services in all cities with a population greater than 10,000 and in all counties of the state on an ongoing, year-round basis.

Individuals, government facilities, and businesses must recycle their end-of-life MCLs. MCLs may not knowingly be placed in garbage containers for disposal at incinerators, waste-to-energy facilities, or landfills, and may not be placed in mixed recyclable containers unless there is a separate location for the MCLs in compliance with local government collection requirements. A person may provide up to ten MCLs per day to a collection site.

After July 1, 2025, the program will undergo a sunset review by the Joint Legislative Audit and Review Committee. Without legislative action to extend the program, the law will be repealed on July 1, 2026. If the program is repealed, state law would retain the requirement to recycle MCLs and the prohibition against knowingly placing MCLs in specified disposal containers.

Labeling Mercury-Containing Lights. Certain MCLs must be labeled with an internationally-recognized symbol for the element mercury and contain information on the MCL's packaging regarding the presence of mercury, proper disposal methods, and certain contact information. These requirements do not apply to medical equipment or reagents used in medical or research tests regulated by the federal government. Violations of these requirements are subject to a civil penalty of up to $1,000, or $5,000 for repeat violations.

Pollution Control Hearings Board. The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Business and Occupation Tax. Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deductions for the costs of doing business. There are several categories of B&O tax rates applying to businesses engaged in different activities. A taxpayer may have more than one B&O tax rate, depending on the types of business activities conducted. There is an exemption from the B&O tax for producers, retailers, and stewardship organizations relating to the EHC collected.

Summary of Amended Bill: Prohibited Sales of Certain Mercury-Containing Lights. Beginning January 1, 2029, a manufacturer, wholesaler, or retailer may not knowingly sell a compact fluorescent lamp or linear fluorescent lamp. This requirement does not apply to:
- certain MCLs used for capturing and projecting images, or with a high proportion of ultraviolet light emission;
- medical equipment and reagents used in medical or research tests that are exempt from existing MCL labeling requirements; and
- casual and isolated sales of MCLs.

In-state distributors, wholesalers, and retailers in possession of compact fluorescent lamps or linear fluorescent lamps on the date of the prohibition above may exhaust their existing stock through sales to the public for six months.

Mercury-Containing Lights Stewardship Program. *Changes to the Funding and Timelines of the Mercury-Containing Lights Stewardship Program.* The 2025 sunset of the MCLs stewardship program is repealed. The requirement that producers of MCLs fund and implement a stewardship plan expires on January 1, 2035, or an earlier date determined by Ecology, based on a cost-benefit analysis regarding the diminishing number of MCLs collected by the program. Ecology must conduct a cost-benefit analysis in 2031, unless an earlier program expiration date than 2035 is agreed to by Ecology and the stewardship organization. A stewardship organization implementing an approved plan must continue to do so until December 31, 2028.

Until December 31, 2028:
- the EHC approved by Ecology may be used to finance current administrative and operational costs of the program;
- a stewardship organization may submit to Ecology, a recommended adjustment to the EHC that is designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with its program, and propose to use revenues from the EHCs to cover program expenses through 2029.

For program administrative and operational costs related to the implementation of program requirements in 2029, a stewardship organization may plan to use reserve funds accrued from EHCs assessed until December 31, 2028. For program costs from planning and implementation of requirements beginning in 2030, stewardship organizations must pay all administrative and operational costs with revenues from participating legacy producers that sold MCLs in the state at any point between January 1, 2015, and December 31, 2028. Program funding from legacy producers must be based on the market share of legacy producers, using reasonable means and the best available information. The stewardship organization must determine the market share of legacy producers using a specified process. No one may distribute or sell MCLs from producers, or any lights in or into the state from legacy producers who are not participating in a program or who are out of compliance.

Additional Changes to the Mercury-Containing Lights Stewardship Program Regarding Collection, Plans, and other Requirements. Beginning January 1, 2025, the daily maximum quantities of MCLs that may be provided to collection sites for a program is increased to:
- an unlimited number of compact fluorescent lamps with a screw base;
- 15 pin-based compact or linear fluorescent lamps; and
- two high-intensity discharge lamps.

Ecology may relieve a stewardship organization from its obligation to operate a collection site or to provide a collection opportunity when it is demonstrated by the stewardship organization to:
- result in the annual collection of fewer than 500 MCLs; and

- not remove collection opportunities for people living in a rural county or an overburdened community, as defined in other provisions of state law.

After January 1, 2025, a new or updated stewardship organization plan must include: a contingency plan demonstrating how the activities will be carried out by some other entity under certain circumstances; and performance goals measuring the achievements of the program, considering the rate of MCLs collection for recycling in the state, the level of convenience and access for all residents, and public awareness of the program.

A stewardship organization that seeks to implement a stewardship plan in 2029 must submit a new or updated plan by January 1, 2028, which must address several new requirements, including:
- listing all current and proposed collection sites to be used by the program, including the latitude and longitude of each site;
- maintaining a website;
- distributing press releases, articles, and a collection site safety training manual;
- developing certain promotional materials;
- implementing a public awareness survey at least every five years; and
- developing specified plans for use by collection sites regarding mercury spill and release responses and worker safety.

Stewardship organization plans must be updated by January 1, 2031, and at least every five years after that date.

Administration and Enforcement of Program Requirements. The current $3,000 annual fee paid to Ecology by a stewardship organization is removed. A stewardship organization must pay an annual fee to Ecology to cover its administrative and enforcement costs. If the annual fee paid is greater than Ecology's costs for the current fiscal year, Ecology must apply the remaining funds to the next fiscal year. If the annual fee paid is less than Ecology's costs for the current fiscal year, Ecology must increase the annual fee for the next fiscal year. The annual fees must be deposited into the renamed MCL product stewardship programs account.

Ecology must review new, updated, and revised plans within 120 days of receipt of a complete plan in accordance with a specified process. If Ecology denies an initial plan the stewardship organization must submit a revised or new plan within 60 days. If a new or revised plan does not meet certain requirements, Ecology may issue penalties or orders or amend the insufficient plan and require the stewardship organization to implement the amended plan.

Ecology may impose a civil penalty on individuals violating product stewardship program requirements, including the failure to achieve performance goals, with penalties increased from up to $1,000 per violation per day to up to $10,000 per day for repeated violations or failure to comply with an Ecology order. Before imposing penalties, Ecology must provide a written warning informing a person of a violation. In addition to issuing penalties, Ecology may:

- issue corrective action orders requiring compliance;
- issue orders to a stewardship organization to implement a program in the absence of an approved plan;
- revoke the stewardship organization's plan approval and require it to implement a contingency plan under certain conditions;
- require a stewardship organization to revise or resubmit a plan; or
- require additional reporting.

Penalties and orders may be appealed to the PCHB.

Business and Occupation Tax. A stewardship organization's charges to participating producers under a program are exempted from the B&O tax.

Other. Materials recovered from MCLs and other hazardous materials are added to existing requirements regarding the collection and management of mercury.

By November 1, 2033, Ecology must report to the Legislature with a status update on the program and any recommended changes.

Other existing requirements in the program are removed, including, in part, requiring Ecology to consult with specified stakeholders regarding impacts to the availability or purchase of energy efficient lighting in the state, and for developing alternatives to MCLs.

Legislative intent language and a severability clause are included.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for certain repealers with varying effective dates.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Extended producer responsibility programs are rooted in law and economics. This is a phased-ban, but there will be no light bulb police. This bill creates an opportunity to increase convenience and access to MCLs collection. We do have concern with the viability of an extended producer responsibility program for products that are being phased-out in the state. The current program works well and should continue. We do not expect abuse of the program. The program has a modest cost to remove such a toxic chemical, which is toxic to humans and animals at low levels. Mercury can be carried long distances from where it is released into the environment, it bioaccumulates, and has many adverse health effects. If the Legislature allows the existing program to lapse, many of these lights will end up in our garbage. We hope the bill will pass this year to provide certainty to individuals recycling MCLs. Industry is rapidly shifting to LEDs. We want the program to end in 2039 so that an MCL purchased in December 2028 can be recycled at the end of its potential ten-year life.

CON: We think the JLARC review should continue as planned, which will provide information on the program and it may yet be extended. Many office buildings use these MCLs and some lights would require the replacement of ballasts, which is quite expensive. We are concerned about the bill because it overlooks the full cost of transitioning to another lighting source. This will hit small- and medium-sized businesses hard.

OTHER: Ecology supports product take-back programs for toxic and hard-to-handle products, but the bill has a fiscal impact not included in the Governor's budget. Mercury is a dangerous neurotoxin and these lights are tough to recycle.

Persons Testifying: PRO: Representative David Hackney, Prime Sponsor; Travis Dutton, Washington State Association of Counties; Katie Fellows, Hazardous Waste Management Program, Seattle & King County; Brian Fadie, Appliance Standards Awareness Project (ASAP); Rick Gilbert, Kitsap County Solid Waste Division; Maggie Yuse, Seattle Public Utilities; Heather Trim, Zero Waste Washington.

CON: Charlie Brown, National Electrical Manufacturers Association; Crystal Leatherman, Washington Retail Association; Peter Godlewski, Association of Washington Business.

OTHER: Peter Lyon, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.