

SENATE BILL REPORT

ESB 5710

As Passed Senate, March 14, 2005

Title: An act relating to the removal of mercury-added components in motor vehicles.

Brief Description: Concerning the removal of mercury-added components in motor vehicles.

Sponsors: Senators Poulsen, Swecker, Brown, Rockefeller, Regala, Pridemore, Kline, Rasmussen and Kohl-Welles.

Brief History:

Committee Activity: Water, Energy & Environment: 2/24/05, 3/2/05 [DP, w/oRec].
Passed Senate: 3/14/05, 35-13.

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: Do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

Minority Report: That it be referred without recommendation.

Signed by Senators Morton, Ranking Minority Member; and Mulliken.

Staff: Sam Thompson (786-7413)

Background: In response to public health concerns, certain products with mercury-containing components are now, or will soon be, prohibited from sale within the state. These products include florescent lamps, novelty items, thermostats, and certain types of medical equipment. Commencing January 1, 2006, new motor vehicles with automotive mercury switches will be prohibited from sale in Washington. Additional restrictions are suggested.

Summary of Bill: Prohibitions. Shredding or crushing of vehicles that have not had mercury-added components (mercury-containing light switches and antilock brake system sensors) removed is prohibited, except when components are inaccessible because of significant vehicle damage. Vehicle crushers and shredders may rely on reasonable evidence from recyclers that mercury-added components have been removed. Crushed vehicle hulks imported from out of state may only be shredded if recyclers can reasonably ensure that out-of-state suppliers have removed mercury-added components.

It is illegal to falsely represent that mercury-added components have been removed from a vehicle conveyed for recycling.

Manufacturer Obligations. Vehicle manufacturers are responsible for ensuring that at least 90 percent of mercury-added components can be recovered from vehicles at the end of their useful life. To accomplish this, within 90 days of the legislation's effective date manufacturers must develop and implement plans to facilitate removal, collection, and recovery of mercury-added components from vehicles. These plans must contain:

- stakeholder education and implementing and financing details;
- information identifying makes, models, and years of vehicles containing mercury-added components;
- descriptions of performance measures used to demonstrate and document program effectiveness;
- a system to mark vehicles that are to be shredded or crushed to indicate the presence of mercury-added components; and
- a plan to properly remove and dispose of mercury-added components.

In addition to the initial plan, manufacturers must annually submit reports to the Department of Ecology (DOE) documenting the capture rate for mercury-added components, how and where the mercury was recycled or otherwise appropriately managed, and how the capture rate will be improved, if necessary.

Manufacturers will bear the costs of recovering mercury-added components, including labor, training, shipping, disposal, public education, state administrative costs, and any additional documentation costs incurred by recyclers. Manufacturers must indemnify recyclers for any liability arising from release of mercury from mercury-added components that have been transferred to manufacturers for recovery.

Vehicle Owner Liability. Vehicle title holders will be held harmless for liability arising from release of mercury from vehicles delivered to recyclers or transferred to the manufacturer.

DOE Review of Plans. DOE must review plans submitted by manufacturers within 60 days of their receipt for compliance with requirements. If a plan meets requirements, manufacturer implementation must begin within 90 days of its receipt of DOE approval. If DOE rejects a plan, the manufacturer must submit a new plan within 30 days of its receipt of DOE disapproval.

If a manufacturer does not have an approved plan in place with 240 days of the effective date of the legislation, DOE must consider the manufacturer to be in violation, triggering enforcement provisions.

DOE must review approved plans every three years, and may require plan modifications, which must be submitted within 90 days of manufacturers' receipt of DOE notice.

DOE must make required reports publicly available.

Enforcement. Violations are punishable by a civil penalty of up to \$1,000 per violation per day. Penalties will be deposited in the state toxics control account.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: Mercury-added components should be removed from vehicles before recycling by steel companies. This legislation appropriately requires manufacturers to devise

plans to facilitate removal of mercury-added components from vehicles and to bear associated costs. Costs to recyclers for removing parts from vehicles make recycled parts almost as expensive as new parts, and higher costs have pushed many Washington recyclers out of business. This legislation promotes "product stewardship," a concept requiring manufacturers to address problems caused by their products. Maine has enacted similar legislation and other states are also considering this approach. Manufacturers of thermostats, carpets, and rechargeable batteries currently have product stewardship programs. There are 4,000 pounds of mercury in vehicles in the state, and cleanup must be addressed in the next 10 to 15 years. The state shouldn't fund this program; funding of mercury cleanup is in effect a subsidy to manufacturers.

Testimony Against: This legislation imposes many onerous requirements. Manufacturers do not have complete records of models containing mercury added components, and the mercury "recapture rate" is too difficult to gauge because the total amount of mercury in currently-used vehicles is not known. This legislation unfairly obligates manufacturers to devise plans and document the willingness of all parties to comply, including parties over which they have no control. Maine's law has not worked well; other states have adopted more realistic voluntary programs. Steel companies can use "scrubbers" to clean up mercury when vehicles are sent to them for recycling. This legislation creates a dangerous precedent; newspapers are not required to dispose of newspapers, and bottle manufacturers are not required to dispose of bottles. There is no imminent danger to human health and the legislation provides no great benefit. DOE is currently budgeted to address the problem.

Who Testified: PRO: Bart Kale, Nucor Steel Seattle, Inc.; Hal Covey, Covey Auto Parts; Dennis Bowhay, Department of Ecology; Jim Jakubiak, Schnitzer Steel; Alexandra Thompson, King County Solid Waste Division; Bill Smith, City of Tacoma; Suellen Mele, Washington Citizens for Resource Conservation.

CON: Nancee Wildermuth, Alliance of Automobile Manufacturers; Grant Nelson, Association of Washington Business.