

HOUSE BILL REPORT

SSB 6557

As Reported by House Committee On:
Environmental Health
General Government Appropriations

Title: An act relating to limiting the use of certain substances in brake friction material.

Brief Description: Limiting the use of certain substances in brake friction material.

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senators Ranker, Swecker, Rockefeller, Brandland, Brown, Kohl-Welles, Shin, Fraser and Kline; by request of Department of Ecology and Puget Sound Partnership).

Brief History:

Committee Activity:

Environmental Health: 2/17/10, 2/23/10 [DPA];

General Government Appropriations: 2/25/10 [DPA(APPG w/o ENVH)].

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

- Restricts the use of brake friction material that exceeds certain specified quantities of designated metals beginning January 1, 2014.
- Prohibits the use of brake friction material that exceeds 5 percent copper by weight beginning January 1, 2021.
- Provides a process for assessing the availability of brake friction material that does not exceed 0.5 percent copper by weight and prohibiting brake friction material that exceeds that limit eight years after alternative brake friction material is found to be available.

HOUSE COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: Do pass as amended. Signed by 9 members: Representatives Campbell, Chair; Chase, Vice Chair; Shea, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Dickerson, Finn, Hudgins, Kretz and Rolfes.

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: Without recommendation. Signed by 1 member: Representative Dunshee.

Staff: Pam Madson (786-7111).

Background:

Motor vehicle brakes contain friction material (brake pads) designed to retard or stop movement of a motor vehicle through friction against a rotor. Brake pads may include several substances, including copper and other metals. Operation of brake systems can generate debris containing these substances.

Copper is a highly toxic substance in the aquatic environment and is of particular concern in Washington to the health of salmon. Research suggests that vehicle brake pads containing copper are a significant source of copper from surface water runoff that reaches rivers and marine environments.

Summary of Amended Bill:

Beginning January 1, 2014, brake friction material containing the following constituents exceeding specified quantities may not be sold in the state:

- asbestiform fibers;
- cadmium;
- chromium VI;
- lead; and
- mercury.

Brake friction material that is part of a brake friction material manufacturer's, distributor's, or retailer's inventory and was manufactured prior to January 1, 2015, may be sold or distributed until January 1, 2025. Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, are exempt from this requirement.

Beginning January 1, 2021, brake friction material exceeding 5 percent copper by weight may not be sold in the state. Brake friction material that is part of a brake friction material manufacturer, distributor, or retailer's inventory and was manufactured prior to January 1, 2021, may be sold or distributed until January 1, 2031. Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021 are exempt from this requirement.

By December 1, 2015, the Department of Ecology (DOE) must determine the availability of alternative brake friction material containing 0.5 percent of copper or less. If such material is available, the DOE must convene a Brake Friction Advisory Committee (Committee) to confirm the availability of alternative brake friction material. The Committee must include: a representative of the DOE; the Washington State Patrol; brake friction material manufacturers; motor vehicle manufacturers; the National Highway Traffic Safety

Administration; and a nongovernmental organization concerned with the environment. The Committee must separately assess the availability of alternative brake friction material for passenger vehicles, light-duty vehicles, and heavy-duty vehicles.

If, based on the committee recommendation and other available evidence, the DOE finds that alternative brake friction material of 0.5 percent or less of copper is available, it must publish its finding in the Washington State Register by December 31 of the year in which the finding is made. Beginning eight years after the finding is published, no brake friction material that exceeds that standard may be sold in the state. If alternative brake material is not available, the DOE will continue to periodically evaluate that finding.

Manufacturers of brake friction material may apply for an exemption for brake friction material intended for specific motor vehicle models or special classes of motor vehicles based on special needs or characteristics of the vehicle. The manufacturer must demonstrate that compliance with the required standard is not feasible, compromises safety standards, or causes a significant hardship. Small volume motor vehicle manufacturers are exempt from the chapter as long as they qualify as small volume manufacturers by having annual sales under 1,000 vehicles. Small volume vehicle manufacturers must report annual sales to the DOE.

A process is established to monitor the use of antimony, copper, nickel, and zinc in brake friction material. Manufacturers must provide data to the DOE on materials used in brake friction materials beginning on January 1, 2013, and every three years thereafter. By July 1, 2013, the DOE must establish a baseline for the use of these metals. If these metals increase over 50 percent of the baseline, the DOE must review available data and studies to determine the need for future regulation limiting the concentration of these metals.

Brake friction material manufacturers must certify and show the certification of compliance on the brake friction materials and on packaging by January 1, 2015. Brake friction material manufactured and packaged prior to January 1, 2015, is exempt from the certification requirement. By December 1, 2012, the DOE must develop certification criteria after consultation with interested parties that includes self-certification and marking of product including the manufacturing date.

Beginning in 2021, motor vehicle manufacturers must ensure that new vehicles use brake friction material that is certified as compliant with the law governing brake friction material.

The DOE may issue penalties for violations of this law. Prior to imposing a civil penalty, the DOE must issue a warning letter and offer other assistance to achieve compliance. Penalties are designated for violations by brake friction material manufacturers, distributors, and retailers, and for violations by motor vehicle manufacturers, distributors, and retailers. Penalties include a fine of up to \$10,000 for each violation. A knowing violation of laws on brake friction materials by a brake friction material manufacturer will result in the recall of the material and reimbursement of costs to the retailer or other purchaser. A violation by a motor vehicle manufacturer requires the manufacturer to notify the registered owner of the vehicle and replace the non-compliant brake friction material at no cost to the vehicle owner. Failure to comply with this notice and replacement requirement may result in a fine up to \$100,000. Penalties are deposited in the state Model Toxics Control Account.

Motor vehicles are those that are self-propelled and require a license to operate on a public highway. Certain motor vehicles are exempt from these requirements:

- motorcycles;
- collector vehicles;
- military combat vehicles;
- race cars, dual-sport vehicles, or track day vehicles; and
- vehicles with brake systems that emit no debris or fluid under normal circumstances.

Amended Bill Compared to Substitute Bill:

The amended bill: adds specificity to various provisions; adds race cars, dual-sport vehicles, and track day vehicles to those vehicles not considered motor vehicles under the act; provides for a limited exemption for brake friction material manufactured prior to a certain date; provides an exemption for brake friction material manufactured as part of an original equipment service contract; prohibits the use of brake friction material with more than 0.5 percent copper eight years (rather than five years) after a finding is published that brake friction material meeting this standard is available; exempts vehicles manufactured by small volume vehicle manufacturers and requires that they report annual to the DOE on sales to verify that they qualify for the exemption; directs the DOE to establish a baseline for the use of antimony, copper, nickel, and zinc by January 1, 2013, rather than January 1, 2012; and clarifies violations of the act.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Much effort has gone into this bill working with stakeholders and the industry to address concerns. Copper has a significant impact to the marine environment through storm water that pollutes Puget Sound. Research supports the impact of copper on salmon and other aquatic species. Research from California also support that copper comes from brake pads. There are about six tons of copper entering Puget Sound and about 50 percent comes from the copper in brake pads. Phased reduction of copper and vehicle brake pads over an extended and reasonable time frame will help reduce the impact on salmon and other aquatic species. It requires these products only after it has been certified that they are available and creates incentive for the development of environmentally preferable products. The enforcement process is a reasonable approach that requires notice before penalties apply. There is general agreement that industry can meet the 5 percent standard but less agreement on reducing it further to 0.5 percent. For this lower standard to apply, the DOE would have to bring people together who know about the products and industry to determine that alternatives are available. Heavy vehicle brake friction material manufacturers believe they

can meet the 5 percent standard but have concern about the 0.5 percent standard and the impact on meeting a new federal motor vehicle safety standard for stopping distance. It is more efficient to go after the source of pollution than to focus on clean-up efforts. California has similar legislation. There is a national discussion on this issue. The work in Washington is important to this national discussion. This process has been very collaborative and issues are understood by the parties involved. This bill needs to continue to move forward.

(With concerns) Parties have been working very hard to reach agreement. Auto dealers have three issues with this bill. There must be a supply of vehicles that qualify so dealers have vehicles to sell. Dealers want to continue to install equipment that the vehicles were originally tested with and that comply with warranty requirements. The difficult remaining issue is how to treat used cars that are resold. An innocent seller of a vehicle that does not have actual knowledge that the vehicle is not in compliance should not be subject to penalties as high as \$10,000. There is also an issue with the marking of product and inventory.

(Opposed) None.

Persons Testifying: (In support) Senator Ranker, prime sponsor; Margaret Shield, Local Hazardous Waste Management Program in King County; Sandi Swarhout, Alliance of Automobile Manufacturers; David Dicks, Puget Sound Partnership; Ann Wilson, Motor Equipment Manufacturers Association; Rob Duff, Department of Ecology; and Bruce Wishart, People for Puget Sound.

(With concerns) Scott Hazelgrove, Washington State Auto Dealers Association; Steve Buckner, Association of International Automobile Manufacturers; and Grant Nelson, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: Do pass as amended by Committee on General Government Appropriations and without amendment by Committee on Environmental Health. Signed by 12 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Klippert, Pedersen, Sells, Short, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives McCune, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Environmental Health:

The striking amendment clarifies that the exclusion of banned materials for race cars pertains to those vehicles, or track day vehicles that are permitted for use on public highways under a trip permit that is issued for unlicensed vehicles. The exemption for small volume motor vehicle manufacturers is changed to require the manufacturers to apply for an exemption

rather than be granted an exemption with a reporting requirement that verifies their qualification as a small volume motor vehicle manufacturer. The standard of knowledge is changed for brake friction material distributors, retailers, and automobile distributors or retailers that subjects them to a penalty that is changed from actual knowledge of a violation to one of being aware of a violation under the act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 24, 2010.

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

Staff Summary of Public Testimony:

(In support) This is Puget Sound Partnership and Department of Ecology request legislation. Every time you brake in a motor vehicle, copper from brake pads has a significant impact on the environment. If the state is going to spend millions on environmental cleanups then this bill is smart fiscal policy. There is no fiscal impact to the state this biennium. There is broad support for this bill from business, the public sector, and the environmental community. Copper is known to harm aquatic organisms and copper from brake pads is the largest source of copper contamination in aquatic ecosystems. The environmental impact of this pollution is being born by local governments and the Department of Transportation. This is the direction that the entire automobile industry should be moving. There has been stakeholder involvement in the policy behind implementing this ban, and it sets a direction for the entire nation. Local governments are spending millions on improving storm water management, please move this bill forward.

(In support with concerns) The Motor Vehicle Equipment Manufacturers Association has been involved in the development of this legislation and would like to see it pass. There is one issue that could be changed to make this a better bill. There is a differentiation in the bill between original equipment sold by automobile manufacturers and the exemption for aftermarket equipment manufacturers. Give equal treatment to aftermarket and original equipment manufacturers.

(Opposed) None.

Persons Testifying: (In support) Michael Grayam, Puget Sound Partnership; Rob Duff, Department of Ecology; Dave Williams, Association of Washington Cities; Sandi Swarouth, Alliance of Automobile Manufacturers; Bruce Wishart, People for Puget Sound; and Grant Nelson, Association of Washington Business.

(In support with concerns) Mike Groesch, Motor and Equipment Manufacturing Association.

Persons Signed In To Testify But Not Testifying: None.