

SENATE BILL REPORT

SB 5543

As of February 1, 2010

Title: An act relating to establishing product stewardship recycling programs for mercury-containing lights.

Brief Description: Establishing the product stewardship recycling act for mercury-containing lights.

Sponsors: 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.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Sam Thompson (786-7413)

Background: Mercury is a persistent, bioaccumulative toxin that can damage human central nervous and cardiovascular systems and cause environmental harm. State legislation enacted in 2003 prohibits mercury components in several consumer products. Certain light bulbs have been identified as a major source of mercury that can be released into the environment if improperly discarded.

Summary of Bill: Producers of mercury-containing lights (lamps, bulbs, tubes, or other devices containing mercury and providing illumination) sold in or into Washington must participate in product stewardship programs that are fully implemented by 2011.

Product stewardship requires producers to manage and reduce adverse safety, health, and environmental impact of their products. It includes financing and developing a plan to collect, transport, reuse, recycle, possess, and finally dispose of the product. Producers of mercury-containing lights may operate a program individually, jointly with other producers, or contract with a stewardship organization to operate a program on their behalf.

Product Stewardship Program. A program must collect unwanted lights free of charge from residents, other persons delivering 15 or fewer lights to a collection site, and school districts with an enrollment of less than 2,000. All material must be recycled and mercury retorted.

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.

By 2012 all government, commercial, and retail facilities must recycle their mercury-containing lights. By 2013 all residents and other generators must recycle mercury-containing lights.

All administrative and operational costs must be paid by producers. A program may not use prison labor for processing unwanted products.

Prohibition. Beginning in 2011 no producer, wholesaler, retailer, or other person may sell mercury-containing lights in Washington unless the producer is participating in a program with a plan approved by the Department of Ecology (DOE).

Product Stewardship Plan. Each program must develop a product stewardship plan. The plan must contain the following elements:

- information about participants;
- recovery goals for unwanted mercury-containing lights;
- 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;
- a process for disposing of the product collected, including provision for a third-party audit of processing and disposal facilities used;
- use of businesses in the state to provide plan elements (including curbside recycling);
- an explanation of the financing system; and
- education and outreach efforts.

Sixty days prior to submitting its plan, a program must provide public notice of the plan it intends to submit. Producers must consult with stakeholders during plan development.

A plan must be submitted to DOE one year prior to the date on which plans must be implemented. The plan must be updated at least once every four years. Changes must be pre-approved, with some exceptions. If DOE determines that there is imminent danger to the public because of operation or provisions of a plan, it may amend, suspend, or cancel approval of the plan.

Annual Report. Once a program is in operation, it must submit an annual report with:

- the amount of product recovered and whether the program met recovery goals; and
- the amount of product processed or disposed using disposal facilities and results of any third-party audits of processing and disposal facilities and any penalties or violations they received.

Producers that meet a 90 percent recovery rate or an 80 percent recycling rate are excused from certain reporting requirements.

In the fourth year of a program and thereafter, recovery goals are based on the experience of the first three years of the program. DOE must collect an amount twice the cost of collecting, transporting, and processing a product for each unit of measure failing to meet its recovery rate.

Enforcement: Producers. Enforcement begins with written warnings. Penalties include:

- *Failure to participate in a program.* DOE must impose a penalty of \$1,000 per product sold.
- *Failure to implement a plan.* A producer that fails to implement its approved plan receives a penalty of up to \$5,000. 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, will result 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.

Enforcement: Retailers. Product retailers who sell 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.

Funding. Producers must pay \$10,000 to DOE annually. Funds will be deposited into the Product Stewardship Programs Account and used to administer the act.

DOE Rulemaking and Evaluation. DOE may adopt administrative rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2011, DOE must evaluate the impact of the program on availability of energy efficient lighting and non mercury-containing energy efficient lighting. DOE must report to the Legislature concerning the status of the program and recommendations for changes to the act by December 31, 2011.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2009.

Staff Summary of Public Testimony (2009): PRO: Improper disposal of energy-saving compact fluorescent lights (CFLs) containing mercury raises significant environmental and public health risks. Manufacturers should bear stewardship responsibilities similar to those required of electronic product manufacturers in the 2006 legislation. Consumers need to have certainty that there will be responsible stewardship of CFLs when they are discarded. Producers can provide stable funding for recycling programs. Metallic mercury evaporates at room temperature and can be ingested by humans. The bill facilitates recycling by small businesses and school districts. Similar programs have been operating in Europe and are planned in British Columbia. The electronic waste stewardship program has been quite successful. This bill is budget-neutral to the state. King County's Take it Back Network facilitates recycling but cannot meet demand. The cost increase per light to fund product

stewardship will be between 3 and 7 percent. Recycling sites should be easily accessible to senior citizens.

CON: One provision, a statewide disposal ban, will not work because recycling is not available in some areas of the state. The electronic waste stewardship program has had implementation difficulties in some areas. The bill would increase costs of mercury-containing lights by 50 percent. Proposed recycling programs would not be effective. The \$10,000 annual cost for manufacturers is burdensome. Manufacturers have tried to encourage recycling, and recycling through established systems should continue to be used, rather than mandating product stewardship.

OTHER: DOE cannot support the bill because of the fiscal impact to the agency. Since 2003 DOE has helped collect and safely dispose of 10,000 pounds of mercury. Over 60 million mercury-containing lights are disposed of each year – containing 500 pounds of mercury. The electronic waste stewardship program has been very successful, and DOE believes in the product stewardship concept. The bill has technical issues relating to product disposal. Recycling is a competitive, low-margin business, and manufacturers should not be involved.

Persons Testifying: PRO: Carrie Dolwick, Northwest Energy Coalition; Steve Whittaker, Seattle-King County Public Health; Suellen Mele, Washington Citizens for Resource Conservation; Lauren Cole, King County Solid Waste Division; Steve McGonigal, Washington State Recycling Association; Ruth Shearer, Washington Senior Citizens Lobby.

CON: Vickie Austin, Washington Refuse and Recycling Association; Charlie Brown, National Electrical Manufacturers Association.

OTHER: Jay Shepard, Department of Ecology; Craig Lorch, EcoLights Northwest.