

SENATE BILL REPORT

SSB 6557

As Amended by House, March 4, 2010

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: Environment, Water & Energy: 1/22/10, 2/03/10 [DPS, DNP].

Ways & Means: 2/08/10, 2/09/10 [DPS(EWE), DNP, w/oRec].

Passed Senate: 2/12/10, 39-8.

Passed House: 3/04/10, 86-12.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 6557 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Marr, Oemig, Ranker and Sheldon.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Morton.

Staff: Sam Thompson (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6557 as recommended by Committee on Environment, Water & Energy be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Brandland, Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Carrell, Honeyford and Schoesler.

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: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Hewitt, Parlette and Pflug.

Staff: Maria Hovde (786-7710)

Background: Motor vehicle brakes contain 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 pads generates dust containing these substances. Brake pad dust has been identified as a significant source of copper in the environment. High copper levels are toxic to aquatic life, including salmon.

Summary of Substitute Bill: Sale of brake pads (pads) in Washington containing certain substances is banned on a phased-in basis. Requirements generally apply to all pads, except:

- pads in brakes designed to hold vehicles stationary and not while vehicles are in motion;
- pads manufactured as part of an original equipment service contract for vehicles manufactured prior to 2021 (but the exemption expires in 2031); and
- pads used in motorcycles, vehicles not subject to vehicle licensing requirements, vehicles using certain brakes normally emitting no debris or fluid, and military combat vehicles.

Bans. Beginning in:

- 2014, sale of pads containing more than trace amounts of asbestos, cadmium, chromium, lead, and mercury is banned.
- 2021, sale of pads containing more than five percent copper is banned. Pads certified to have been manufactured prior to 2021 are exempt (but the exemption expires in 2031).

Requiring Acceptable Low-Copper Pads. Beginning as early as 2025, sale of pads containing more 0.5 percent copper is banned, if the Department of Ecology (Ecology) finds that acceptable low-copper pads (acceptable pads) are available.

Acceptable pads:

- do not contain more than 0.5 percent copper, material banned in 2014 (see above), and other material determined by Ecology to be harmful to human health or the environment;
- enable brakes to meet safety standards;
- are available at a cost and quantity to not cause significant financial hardship to manufacturers; and
- enable manufacturers to produce viable products meeting certain consumer expectations.

Prior to finding that acceptable pads are available, Ecology must determine that acceptable pads may be available. Ecology must then convene an advisory committee (committee) that includes representatives of Ecology, the State Patrol, a motor vehicle safety organization, the national highway traffic safety administration, and an environmental organization. The committee must assess availability of acceptable pads and recommend whether acceptable pads are available or unavailable. If, after considering the recommendation, Ecology finds

that acceptable pads are available, it must report the finding to the Legislature by December 1 of the year in which it makes the finding. Beginning five years after the report submittal date, but no earlier than 2025, sale of pads containing more than 0.5 percent copper is banned.

However, if Ecology finds that acceptable pads are not available after the committee assessment process, it must periodically evaluate the finding. If Ecology later determines that acceptable pads may be available, the committee assessment process, agency finding, report submittal, and potential ban may occur, as described above.

Ecology Review. By 2013 and thereafter, manufacturers of pads sold in Washington must provide Ecology with data enabling the agency to determine concentrations of antimony, copper, nickel, and zinc in the pads. Using that and other data, Ecology must establish baseline concentration levels by July 1, 2012. Ecology must ensure that levels do not increase by 50 percent over baseline levels and also track progress toward reducing use of copper. If concentration levels increase by more than 50 percent over baseline levels, Ecology must determine potential impact on human health and the environment. If studies demonstrate the need for controlling use of antimony, copper, nickel, and zinc in pads, Ecology may consider recommending limits.

Certification. Manufacturers of pads offered for sale in Washington must certify compliance and mark proof of certification on pads. Ecology must, after consulting interested parties, develop compliance criteria by December 1, 2012. Compliance criteria includes self-certification by manufacturers using accredited laboratories and marking proof of certification on pads. Beginning in 2021, manufacturers of new vehicles offered for sale in Washington must ensure that vehicles are equipped with pads certified to be compliant.

Enforcement. Ecology must enforce requirements. Enforcement must rely on notification and information exchange. Ecology must issue one warning letter to manufacturers, distributors, or retailers selling pads violating requirements and offer assistance. If compliance is not achieved, Ecology may assess a \$10,000 civil penalty for each violation upon manufacturers, distributors, or retailers violating requirements. Collected penalties must be deposited in the state toxics control account. Manufacturers, distributors, or retailers that knowingly violate requirements must recall pads and reimburse purchase and return shipping and handling costs.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Environment, Water & Energy):
PRO: Dissolved copper from brake pads is a major contaminant, posing significant environmental risks. This proactive approach is necessary to limit the amount of dissolved copper entering Puget Sound. Longstanding research confirms the negative effect of

dissolved copper from brake pads on salmon. Close to seven metric tons of dissolved copper enters Puget Sound every year, half from brake pads.

OTHER: With work, this bill could become a national model. The bill should only apply to new cars. Most brake pads will be compliant before 2021. While the Association of Washington Business supports the intent of this bill, and is involved in discussions, it cannot support the bill in its current form. Safety standards are important, as is product viability. Applicability should be narrowed.

Persons Testifying (Environment, Water & Energy): PRO: David Dicks, Puget Sound Partnership; Rob Duff, Department of Ecology; Bruce Wishart, People for Puget Sound.

OTHER: Curt Augustine, Alliance of Automobile Manufacturers; Grant Nelson, Association of Washington Business.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):

PRO: This is joint request legislation from the Department of Ecology and the Puget Sound Partnership. This is a collaborative and cooperative approach to reducing copper in our watersheds, the costs of which are currently borne by local governments and the Department of Transportation due to regulatory requirements under the federal Clean Water Act. Copper inhibits the ability for fish to avoid prey and find their way back to spawning beds. Reducing toxics in stormwater runoff is a high priority on the Puget Sound Partnership's Action Agenda. The state is investing a lot of money into cleaning up Puget Sound and stopping the flow of toxics before they enter the watershed makes good sense.

Persons Testifying (Ways & Means): PRO: Michael Grayum, Puget Sound Partnership; Robert Duff, Department of Ecology; Bruce Wishart, People for Puget Sound

House Amendment(s):

- Clarifies that bans on sale of brake pads containing copper and other toxic substances will apply to manufacturers, wholesalers, retailers, and distributors.
- Adds exemptions for race cars, dual-sport vehicles, track day vehicles, vehicles over 30 years old, and sale of used cars.
- Clarifies the process for determining whether brake pads with less than 0.5 percent copper are available.
- Changes the process for providing notice of an eventual ban on sale of brake pads with more than 0.5 percent copper.
- Extends an eventual ban on sale of brake pads with more than 0.5 percent copper from five years after notice to eight years after notice. (The ban will still take effect no earlier than 2025.)
- Clarifies and limits Ecology's authority to grant additional exemptions to bans.
- Changes requirements regarding Ecology's setting of baseline levels for analysis.
- Clarifies confidentiality of data provided to Ecology by manufacturers.
- Revises brake pad certification marking requirements.
- Clarifies requirements regarding warning letters sent by Ecology to violators.
- Clarifies violation of act regarding sale of noncompliant brake pads.

- Clarifies and changes manufacturer duties and penalties regarding recall of noncompliant brake pads.
- Requires Ecology to distribute information to parties subject to bans on sale of brake pads.
- Adds optional Ecology rulemaking authority.