

CERTIFICATION OF ENROLLMENT

SENATE BILL 5762

Chapter 254, Laws of 2017

65th Legislature
2017 Regular Session

MERCURY-CONTAINING LIGHTS STEWARDSHIP PROGRAMS--FEES--AUDITS

EFFECTIVE DATE: 7/23/2017

Passed by the Senate April 20, 2017
Yeas 49 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House April 10, 2017
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 8, 2017 11:26 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5762** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 8, 2017

**Secretary of State
State of Washington**

SENATE BILL 5762

AS AMENDED BY THE HOUSE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By Senators Hunt, Short, and Sheldon

Read first time 02/08/17. Referred to Committee on Ways & Means.

1 AN ACT Relating to financing of the mercury-containing light
2 stewardship program; and amending RCW 70.275.050, 70.275.040,
3 70.275.130, and 43.131.422.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 70.275.050 and 2014 c 119 s 5 are each amended to
6 read as follows:

7 (1) Each stewardship organization must recommend to the
8 department an environmental handling charge to be added to the price
9 of each mercury-containing light sold in or into the state of
10 Washington for sale at retail. The environmental handling charge must
11 be designed to provide revenue necessary and sufficient to cover all
12 administrative and operational costs associated with the stewardship
13 program described in the department-approved product stewardship plan
14 for that organization, including the department's annual fee required
15 by subsection (5) of this section, and a prudent reserve. The
16 stewardship organization must consult with collectors, retailers,
17 recyclers, and each of its participating producers in developing its
18 recommended environmental handling charge. The environmental handling
19 charge may, but is not required to, vary by the type of mercury-
20 containing light. In developing its recommended environmental

1 handling charge, the stewardship organization must take into
2 consideration and report to the department:

3 (a) The anticipated number of mercury-containing lights that will
4 be sold to covered entities in the state at retail during the
5 relevant period;

6 (b) The number of unwanted mercury-containing lights delivered
7 from covered entities expected to be recycled during the relevant
8 period;

9 (c) The operational costs of the stewardship organization as
10 described in RCW 70.275.030(2);

11 (d) The administrative costs of the stewardship organization
12 including the department's annual fee, described in subsection (5) of
13 this section; and

14 (e) The cost of other stewardship program elements including
15 public outreach.

16 (2) The department must review, adjust if necessary, and approve
17 the stewardship organization's recommended environmental handling
18 charge within sixty days of submittal. In making its determination,
19 the department shall review the product stewardship plan and may
20 consult with the producers, the stewardship organization, retailers,
21 collectors, recyclers, and other entities.

22 (3) No sooner than January 1, 2015:

23 (a) The mercury-containing light environmental handling charge
24 must be added to the purchase price of all mercury-containing lights
25 sold to Washington retailers for sale at retail, and each Washington
26 retailer shall add the charge to the purchase price of all mercury-
27 containing lights sold at retail in this state, and the producer
28 shall remit the environmental handling charge to the stewardship
29 organization in the manner provided for in the stewardship plan; or

30 (b) Each Washington retailer must add the mercury-containing
31 light environmental handling charge to the purchase price of all
32 mercury-containing lights sold at retail in this state, where the
33 retailer, by voluntary binding agreement with the producer, arranges
34 to remit the environmental handling charge to the stewardship
35 organization on behalf of the producer in the manner provided for in
36 the stewardship plan. Producers may not require retailers to opt for
37 this provision via contract, marketing practice, or any other means.
38 The stewardship organization must allow retailers to retain a portion
39 of the environmental handling charge as reimbursement for any costs
40 associated with the collection and remittance of the charge.

1 (4) At any time, a stewardship organization may submit to the
2 department a recommendation for an adjusted environmental handling
3 charge for the department's review, adjustment, if necessary, and
4 approval under subsection (2) of this section to ensure that there is
5 sufficient revenue to fund the cost of the program, current deficits,
6 or projected needed reserves for the next year. The department must
7 review the stewardship organization's recommended environmental
8 handling charge and must adjust or approve the recommended charge
9 within thirty days of submittal if the department determines that the
10 charge is reasonably designed to meet the criteria described in
11 subsection (1) of this section.

12 (5) Beginning March 1, 2015, and each year thereafter, each
13 stewardship organization shall pay to the department an annual fee
14 equivalent to (~~five~~) three thousand dollars for each participating
15 producer to cover the department's administrative and enforcement
16 costs. The amount paid under this section must be deposited into the
17 product stewardship programs account created in RCW 70.275.130.

18 **Sec. 2.** RCW 70.275.040 and 2014 c 119 s 4 are each amended to
19 read as follows:

20 (1) On June 1st of the year prior to implementation, each
21 producer must ensure that a stewardship organization submits a
22 proposed product stewardship plan on the producer's behalf to the
23 department for approval. Plans approved by the department must be
24 implemented by January 1st of the following calendar year.

25 (2) The department shall establish rules for plan content. Plans
26 must include but are not limited to:

27 (a) All necessary information to inform the department about the
28 plan operator and participating producers and their brands;

29 (b) The management and organization of the product stewardship
30 program that will oversee the collection, transportation, and
31 processing services;

32 (c) The identity of collection, transportation, and processing
33 service providers, including a description of the consideration given
34 to existing residential curbside collection infrastructure and mail-
35 back systems as an appropriate collection mechanism;

36 (d) How the product stewardship program will seek to use
37 businesses within the state, including transportation services,
38 retailers, collection sites and services, existing curbside

1 collection services, existing mail-back services, and processing
2 facilities;

3 (e) A description of how the public will be informed about the
4 product stewardship program, including how consumers will be provided
5 with information describing collection opportunities for unwanted
6 mercury-containing lights from covered entities and safe handling of
7 mercury-containing lights, waste prevention, and recycling. The
8 description must also include information to make consumers aware
9 that an environmental handling charge has been added to the purchase
10 price of mercury-containing lights sold at retail to fund the
11 mercury-containing light stewardship programs in the state. The
12 environmental handling charge may not be described as a department
13 recycling fee or charge at the point of retail sale;

14 (f) A description of the financing system required under RCW
15 70.275.050;

16 (g) How mercury and other hazardous substances will be handled
17 for collection through final disposition;

18 (h) A public review and comment process; and

19 (i) Any other information deemed necessary by the department to
20 ensure an effective mercury light product stewardship program that is
21 in compliance with all applicable laws and rules.

22 (3) All plans submitted to the department must be made available
23 for public review on the department's web site and at the
24 department's headquarters.

25 (4) At least two years from the start of the product stewardship
26 program and once every four years thereafter, each stewardship
27 organization operating a product stewardship program must update its
28 product stewardship plan and submit the updated plan to the
29 department for review and approval according to rules adopted by the
30 department.

31 (5) By June 1, 2016, and each June 1st thereafter, each
32 stewardship organization must submit an annual report to the
33 department describing the results of implementing the stewardship
34 organization's plan for the prior calendar year, including an
35 independent financial audit once every two years. The department may
36 adopt rules for reporting requirements. Financial information
37 included in the annual report must include but is not limited to:

38 (a) The amount of the environmental handling charge assessed on
39 mercury-containing lights and the revenue generated;

1 (b) Identification of confidential information pursuant to RCW
2 43.21A.160 submitted in the annual report; and

3 (c) The cost of the mercury-containing lights product stewardship
4 program, including line item costs for:

5 (i) Program operations;

6 (ii) Communications, including media, printing and fulfillment,
7 public relations, and other education and outreach projects;

8 (iii) Administration, including administrative personnel costs,
9 travel, compliance and auditing, legal services, banking services,
10 insurance, and other administrative services and supplies, and
11 stewardship organization corporate expenses; and

12 (iv) Amount of unallocated reserve funds.

13 (6) Beginning in 2023 every stewardship organization must include
14 in its annual report an analysis of the percent of total sales of
15 lights sold at retail to covered entities in Washington that mercury-
16 containing lights constitute, the estimated number of mercury-
17 containing lights in use by covered entities in the state, and the
18 projected number of unwanted mercury-containing lights to be recycled
19 in future years.

20 (7) All plans and reports submitted to the department must be
21 made available for public review, excluding sections determined to be
22 confidential pursuant to RCW 43.21A.160, on the department's web site
23 and at the department's headquarters.

24 **Sec. 3.** RCW 70.275.130 and 2010 c 130 s 13 are each amended to
25 read as follows:

26 The product stewardship programs account is created in the
27 custody of the state treasurer. All funds received from producers
28 under this chapter and penalties collected under this chapter must be
29 deposited in the account. Expenditures from the account may be used
30 only for administering this chapter. The department may not retain
31 fees in excess of the estimated amount necessary to cover the
32 agency's administrative costs over the coming year related to the
33 mercury light stewardship program under this chapter. Beginning with
34 the state fiscal year 2018, by October 1st after the closing of each
35 state fiscal year, the department shall refund any fees collected in
36 excess of its estimated administrative costs to any approved
37 stewardship organization under this chapter. Only the director of the
38 department or the director's designee may authorize expenditures from
39 the account. The account is subject to the allotment procedures under

1 chapter 43.88 RCW, but an appropriation is not required for
2 expenditures.

3 **Sec. 4.** RCW 43.131.422 and 2014 c 119 s 8 are each amended to
4 read as follows:

5 The following acts or parts of acts, as now existing or hereafter
6 amended, are each repealed, effective July 1, 2026:

7 (1) RCW 70.275.010 (Findings—Purpose) and 2010 c 130 s 1;

8 (2) RCW 70.275.020 (Definitions) and 2014 c 119 s 2 & 2010 c 130
9 s 2;

10 (3) RCW 70.275.030 (Product stewardship program) and 2014 c 119 s
11 3 & 2010 c 130 s 3;

12 (4) RCW 70.275.040 (Submission of proposed product stewardship
13 plans—Department to establish rules—Public review—Plan update—
14 Annual report) and 2017 c . . . s 2 (section 2 of this act), 2014 c
15 119 s 4, & 2010 c 130 s 4;

16 (5) RCW 70.275.050 (Financing the mercury-containing light
17 recycling program) and 2017 c . . . s 1 (section 1 of this act), 2014
18 c 119 s 5, & 2010 c 130 s 5;

19 (6) RCW 70.275.060 (Collection and management of mercury) and
20 2010 c 130 s 6;

21 (7) RCW 70.275.070 (Collectors of unwanted mercury-containing
22 lights—Duties) and 2010 c 130 s 7;

23 (8) RCW 70.275.090 (Producers must participate in an approved
24 product stewardship program) and 2010 c 130 s 9;

25 (9) RCW 70.275.100 (Written warning—Penalty—Appeal) and 2010 c
26 130 s 10;

27 (10) RCW 70.275.110 (Department's web site to list producers
28 participating in product stewardship plan—Required participation in a
29 product stewardship plan—Written warning—Penalty—Rules—Exemptions)
30 and 2010 c 130 s 11;

31 (11) RCW 70.275.130 (Product stewardship programs account) and
32 2017 c . . . s 3 (section 3 of this act) & 2010 c 130 s 13;

33 (12) RCW 70.275.140 (Adoption of rules—Report to the legislature
34 —Invitation to entities to comment on issues—Estimate of statewide
35 recycling rate for mercury-containing lights—Mercury vapor barrier
36 packaging) and 2010 c 130 s 14;

37 (13) RCW 70.275.150 (Application of chapter to the Washington
38 utilities and transportation commission) and 2010 c 130 s 15;

1 (14) RCW 70.275.160 (Application of chapter to entities regulated
2 under chapter 70.105 RCW) and 2010 c 130 s 16;
3 (15) RCW 70.275.900 (Chapter liberally construed) and 2010 c 130
4 s 17;
5 (16) RCW 70.275.901 (Severability—2010 c 130) and 2010 c 130 s
6 21; and
7 (17) RCW 70.275.170 and 2014 c 119 s 6.

Passed by the Senate April 20, 2017.
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