

SENATE BILL REPORT

SB 6533

As Reported By Senate Committee On:
Environment, Energy & Water, February 8, 2002
Ways & Means, February 12, 2002

Title: An act relating to mercury reduction and education.

Brief Description: Reducing the release of mercury into the environment.

Sponsors: Senators Fraser, Eide, McAuliffe, Keiser and Kohl-Welles.

Brief History:

Committee Activity: Environment, Energy & Water: 1/25/02, 2/8/02 [DPS-WM, DNP].
Ways & Means: 2/11/02, 2/12/02 [DP2S, DNP].

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 6533 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Jacobsen and Keiser.

Minority Report: Do not pass.

Signed by Senators Hale, Honeyford, McDonald and Morton.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6533 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Brown, Chair; Regala, Vice Chair; Fairley, Vice Chair; Fraser, Kline, Kohl-Welles, Poulsen, Rasmussen, B. Sheldon, Spanel and Thibaudeau.

Minority Report: Do not pass.

Signed by Senators Hewitt, Honeyford and Rossi.

Staff: Richard Ramsey (786-7412)

Background: Persistent, bioaccumulative toxins (PBTs) are substances that can build up to levels that can be harmful to human and ecological health. These contaminants travel long distances in the atmosphere, can move readily from land to air and water, and do not break down easily. Mercury is one of the PBTs identified by the U.S. Environmental Protection Agency.

There are two main forms of mercury found in the environment: (1) Inorganic mercury (metallic mercury and inorganic mercury compounds) enters the air from burning coal and waste, mining ore deposits, and certain manufacturing processes. It can also be released into the environment from natural deposits, disposal of wastes, and volcanic activity. (2) Methyl mercury is formed in water and soil by bacterial organisms and builds up in animals, such as in fish tissue.

Mercury is widely used in a variety of consumer products including automobiles, thermometers, thermostats, switches, fluorescent light tubes, high intensity lamps, dairy manometers, barometers, blood pressure measuring devices, and in numerous toys and novelty items.

Mercury is a potent neurotoxin and exposure to it can cause severe damage to a developing fetus. Mercury negatively impacts the nervous system and can lead to blindness, deafness, behavioral problems, and death. The Washington State Department of Health issued a statewide fish consumption advisory for certain fish, due to the levels of mercury detected in those fish species.

Mercury has been identified by the EPA as the subject of its first chemical action plan under the EPA's National PBT Strategy. The Washington State Department of Ecology has also placed mercury as its highest PBT priority.

Ten other states have passed legislation that places restrictions on the handling or use of mercury. Nine states are currently considering legislation to address concerns with mercury.

Summary of Second Substitute Bill: The bill does not apply to over-the-counter (OTC) products that have been approved by the Federal Food and Drug Administration or to apply to dental amalgam.

It is unlawful to knowingly dispose of mercury-added products in any manner other than by recycling the product or disposing of the product as hazardous waste.

Solid waste management facilities must adopt notification procedures designed to prohibit mercury-added products from being disposed of at the facility. The facility must post appropriate signs and provide written notification to customers.

The Department of Ecology, in consultation with other interested parties, must develop a mercury phase-out plan to reduce or eliminate the purchase and use of mercury-containing products at licensed health care facilities. Mercury phase-out and reduction plan in medical facilities does not apply to clinics, physicians' offices, dentists' offices, or veterinarians' offices. The medical facility "mercury elimination plan" is limited to mercury thermostats, thermometers, manometers, and other products for which alternatives exist. The "mercury reduction plan" is limited to lab reagents, lights, batteries, and other products for which alternatives are not available. The plan must be fully implemented by December 31, 2005.

The Department of Ecology must develop a plan and proposed budget for a comprehensive public education, outreach, and assistance program. The plan and proposed budget must be submitted to the Governor and the Legislature by January 1, 2003.

The Department of Ecology may develop an awards program to recognize the accomplishments of citizens or entities that excel at reducing or eliminating mercury in air emissions, solid waste, and wastewater discharges.

The Department of General Administration must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components. The Department of General Administration may still give preference to, under certain conditions, energy-saving products such as compact fluorescent light bulbs.

The Department of Ecology is granted the authority to participate in a regional or multi-state clearinghouse regarding mercury.

The department must develop a mercury chemical action plan. The department must involve an advisory committee in developing the plan. A draft plan is due by June 30, 2002, and the plan must be finalized by December 1, 2002.

The Department of Ecology may adopt rules to implement and enforce the bill.

The fiscal impact of the bill is paid from funds appropriated to Ecology in 2001 for the persistent, bioaccumulative toxics strategy.

Second Substitute Bill Compared to Substitute Bill: The following provisions from the substitute bill are eliminated in the second substitute: product bans, required notice to Ecology prior to sale or distribution, labeling requirements, provisions related to schools, manufacturer "take back" requirements for thermometers and thermostats, and penalty provisions. Study provisions are added relating to collection and recycling and of cost effective alternatives to mercury-added products. An advisory committee is used to develop the mercury chemical action plan, instead of a stakeholder process.

Substitute Bill Compared to Original Bill: Exemptions are added to the bill for over-the-counter products, dental amalgam, products passing through the state, commercial aircraft and aerospace components. The manufacturer collection and recycling provisions are limited to two types of products. The labeling section is made more explicit (utilizing the Vermont law). The disposal and solid waste provisions are consolidated and clarified. Motor vehicle recyclers, dismantlers and hulk haulers are exempt from the disposal system and a study of that industry is required. There is no manufacturer liability for improper disposal of thermometers and thermostats if they comply with the notice provisions. The product bans are limited to four products, with a delayed effective date for new motor vehicles. Schools may still use existing mercury in their science classes. The medical facility phase-out and reduction plans are narrowed. The Department of Health is removed from the public education, outreach and assistance plan. The Department of General Administration can purchase compact fluorescent light bulbs. Ecology may participate in a regional clearinghouse on mercury. A new process is established, including stakeholder participation, for Ecology to use in addressing the reduction and elimination of mercury.

Appropriation: None.

Fiscal Note: Requested on January 18, 2002.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Testimony For (Environment, Energy & Water): Mercury is an extremely toxic substance that can harm human health and wildlife even at very low levels. Mercury does not break down in the environment when it is released and builds up in the food chain and our bodies.

The Department of Ecology's plan to phase out and eliminate PBTs, like mercury, is on the right path to protect the people and environment, but is short on details. This bill is a logical next step to addressing PBTs. This bill takes many provisions that other states have adopted and combines them into one comprehensive approach.

Many household products contain mercury. These products contribute a large source of mercury to the solid waste stream. For most of these products, there are viable non-mercury alternatives. Manufacturers who produce mercury-added products should have the primary financial responsibility for collection and recycling or disposal of these products. Children should be protected from the dangers of mercury in school by prohibiting schools from using or purchasing mercury.

Health care facilities should develop and implement a plan to reduce or eliminate the purchase, use, and disposal of mercury-containing products in their facilities.

Testimony Against (Environment, Energy & Water): This bill tries to unnecessarily accomplish too much, too soon. The bill lacks a balance between protecting the environment and imposing costs on manufacturers and ultimately consumers. A broad-based stakeholder process with the necessary policy and technical advisory committees and legislative oversight is the most responsible way to develop the chemical action plan for mercury and other chemical action plans in the future. Mercury may still be the most cost-effective alternative and in some cases may be the only chemical that may work for a product.

Caution should be taken when considering banning any product, as there may be unforeseen consequences of doing so. This bill will impose more costs on business in the form of more labeling requirements, collection systems, recycling costs, and transportation of products to be recycled. Automobile manufacturers may not be able to comply with the deadline to remove mercury switches and lights from new cars by January 1, 2003.

Dental amalgam should not be regulated under this bill. The issue should be considered by another committee. The bill should reference "mercury-added" products instead of "mercury-containing" products. Compact fluorescent light bulbs are an important energy-saving product and should be exempt from this bill.

The industry has already reduced its use of mercury by 90 percent. This bill should focus on cost-effective solutions to high priority items. The bill should not identify fish as a hazardous food, as it is beneficial to consume it. The labeling laws should be consistent with the laws passed in other states.

Testified (Environment, Energy & Water): Linda Hull, Fred Quarnstrom, WA State Dental Association (con amendment); Mary Ann Newell, Ann Clifton, Linda Matson, Christy Diamond, MAT (pro); Steven Gilbert, INND (pro); Ivy Sager-Rosenthal, WashPIRG (pro); Paul Cosgrove, Soap & Detergent Assn (con amendment); Lois Young, Skagit Recycling (pro); Sherry Appleton, LWV of WA (pro w/concern); Rich McConaghy, City of Vancouver

(pro); John Dohrmann, Puget Sound Action Team (neutral); Gregg Small, City of Vancouver; Ric Erdheim, National Electrical Manufacturers Assn. (con); Pam Johnson, People for Puget Sound (pro); Bobbie Morgan (pro); Randy Ray, Amer Chemistry Council (concerns); Glenn Reed, Pacific Seafood Processors Assn. (concerns); Grant Nelson, Assn. of WA Business (con); Greg Dana, Alliance of Auto Mfrs. (con); Craig Lorch, Ecolights NW (pro); Gary Smith, Ind. Bus. Assn. (con); Don Phelps, John Prestek, AROW (con); Jerry Farley, Consumer Health Care Products Assn. (pro w/amendment).

Testimony For (Ways & Means): Mercury is a dangerous chemical. The prohibitions, recycling and labeling provisions are taken from those adopted in other states. The fiscal impact of the bill has been eliminated. Any costs will be covered by the PBT strategy funded in the 2001 session.

Testimony Against (Ways & Means): The bill imposes financial costs on the state and industry. The Vermont bill is proving to have serious problems in implementation. The state should rely upon a mercury chemical action plan within the PBT strategy. Labeling provisions are not consistent with other states. The state's potential liability is not captured in the fiscal notes. This bill will send the message that Washington is "anti-trade." The DOH should be put back in the bill.

Testified (Ways & Means): Senator Karen Fraser (pro); Grant Nelson, Assn. of WA Business (con); Charlie Brown, National Electrical Manufacturers Assn. (con); Mike Ryherd, WA Toxics Coalition (pro); Randy Ray, Puget Sound Steam Ship Operators Assn. and Pacific Seafood Processors Assn. (con); Nancy Wildermuth, Alliance of Automobile Manufacturers (con).