HOUSE BILL REPORT
ESHB 1002

As Passed Legislature

Title: An act relating to mercury reduction and education.

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

Sponsors: By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hunt, Berkey, Cooper, Romero, Linville, Chase, Kagi, Wood, Simpson, Morrell, Rockefeller, Ruderman, Fromhold, Dickerson, Conway, Kessler, Cody, Jarrett, Veloria, O'Brien, Campbell, McDermott, Clibborn, Sullivan, Nixon, McIntire, Lantz, Moeller and Hudgins).

Brief History:

Committee Activity:

Fisheries, Ecology & Parks: 1/17/03, 2/11/03 [DPS].

Floor Activity:

Passed House: 2/26/03, 97-0.
Senate Amended.
Passed Senate: 4/17/03, 47-1.
House Concurred.
Passed House: 4/22/03, 97-0.
Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Requires labeling for fluorescent lamps that contain mercury.
- Prohibits the sale of certain mercury-containing novelties, thermometers, motor vehicles, and thermostats.
- Directs the Department of General Administration as to how mercury-containing products should be prioritized for state purchase.
- Requires the Department of Ecology to petition the Environmental Protection Agency to develop a permanent mercury repository.
- Requires the Department of Health to develop a mercury disposal education plan.

- Requires schools to remove and dispose of existing mercury from science classrooms.

HOUSE COMMITTEE ON FISHERIES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Cooper, Chair; Berkey, Vice Chair; Hatfield, O'Brien and Upthegrove.

Minority Report: Do not pass. Signed by 4 members: Representatives Sump, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Buck and Pearson.

Staff: Jason Callahan (786-7117).

Background:
Mercury has been identified by the Unites States Environmental Protection Agency (EPA) as being included in a group of chemicals known as persistent bioaccumulative toxins (PBTs). Individuals within this family of toxins are known to break down very slowly when released into the environment and increase in concentration as they move up the food chain.

The 2000 Legislature directed the Department of Ecology (Department) to develop a proposed long-term strategy to address PBTs in Washington, which was presented to the Legislature in 2001. The 2001 Legislature directly appropriated $800,000 from the State Toxics Control Account specifically for the implementation of the strategy. Both the Department and the EPA have identified mercury as the number one PBT priority.

During the 2002 session, the Legislature earmarked the $800,000 for the Department to develop a chemical action plan for mercury. In doing, the Legislature provided the Department with specific directions as to how the plan should be developed. These directions were intended to serve as a model for the development of future chemical action plans for other PBTs. The mercury action plan is required to, at a minimum:

- Identify current uses for mercury in Washington;
- Analyze current state and federal regulations and voluntary measures that can be used to reduce mercury;
- Identify mercury reduction and elimination options; and
- Implement actions to reduce or eliminate mercury uses and releases.

The final mercury action plan was scheduled to be completed in December 2002, with implementation set to begin no later than February 1, 2003. The final plan was directed to outline the actions that the Department will take, including the development of any new rules or legislative recommendations.

Summary of Engrossed Substitute Bill:

The substitute bill creates a new chapter is created in the Revised Code of Washington to regulate mercury and mercury-added products. New regulations include requirements for the labeling of certain mercury-added lamps, prohibitions on the sale of certain mercury-added products, and directions to the Department of General Administration (GA) regarding the purchase of mercury-added products.

Labeling

As of January 1, 2004, all fluorescent lamps and lamp packaging manufactured after November 20, 2003 must be specifically labeled if they contain mercury. The label on the lamp must bear the international chemical symbol for mercury, and the packaging label must clearly inform the consumer that the lamp contains mercury, explain that the lamp must be disposed of according to state, local, and federal laws, and provide a toll-free phone number and Internet address where disposal information can be obtained. The primary responsibility for labeling a mercury-added lamp belongs to the manufacturer. If a lamp is labeled in a way that meets the requirements of another state, the manufacturer is exempt from Washington's requirement.

Sale Prohibitions

In addition to improperly labeled lamps, the sale of certain other mercury-containing products is prohibited. As of January 1, 2006 the sale of mercury-added novelties and mercury-containing thermometers and manometers is prohibited. The manufacturers of these products are required to notify all retailers about the prohibition and provide information about the proper disposal of remaining inventory.

Mercury-added novelties are products intended mainly for personal or household enjoyment or adornment. They include figurines, toys, games, cards, ornaments, jewelry, apparel, and other items. The definition expressly excludes games and toys that require certain batteries or liquid crystal display screens.

The prohibition on the sale of thermometers and manometers that include mercury does not apply to certain types of instruments. The exempt items include thermometers with a button-cell battery, thermometers used for food research or food processing, thermometers that are used in an animal agricultural climate control system, veterinary medicine, or an industrial measurement system, thermometers and manometers used for the calibration of other thermometers or equipment, prescription thermometers, and manometers used for blood pressure measuring. In addition, the prohibition on the sale of thermometers and manometers does not extend to hospital-controlled facilities that have adopted a mercury reduction plan.

A prohibition on the sale and installation of certain mercury-containing thermostats and motor vehicles containing an automotive mercury switch takes effect on January 1, 2006. Items that are prohibited from sale are still allowed to be transported through the state or

stored within the state for later distribution elsewhere.

State Agency Directions

By January 1, 2005 the GA must revise its rules and policies to give preference and priority to the purchase of items that do not contain mercury. The GA may only purchase mercury-containing products if there is no economically feasible non-mercury alternative or if the mercury-containing product is engineered to reduce electricity consumption by at least 40 percent. If there is not a substitute to a mercury-containing product available, the GA must give preference to products that contain the least amount of mercury necessary for the required performance.

The Department is authorized to participate in clearinghouses to assist it in implementation of the mercury regulations. These clearinghouses may also be used for examining label requirements, developing public education, and maintaining a list of all mercury-added products. The Department is also directed to petition the EPA for the creation of a permanent mercury repository.

The Department of Health is required to develop an education plan for schools, local governments, businesses, and the public on the proper disposal methods for all bulk elemental mercury compounds. In addition, schools, by 2006, will be prohibited from purchasing elemental mercury and must remove and dispose of any mercury used in science classrooms.

Any fiscal impacts of this bill on the Department must be paid for by funds appropriated from the state toxics control account for the implementation of the Department's PBT strategy.

Penalties

A violation of this act is punishable by a civil penalty not to exceed $1,000 for each violation. Repeat violators may be assessed a fine of up to $5,000. All fees collected are deposited into the state toxics account.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original bill) The dangers of mercury exposure are well known, and include serious damage to both environmental and human health. This was first

documented by mercury spills in Japan, and has since been repeatedly shown with scientific testing. Many national and international organizations and governments have addressed this issue. Even a small spill can be extremely damaging, and it is often the low-level exposure that is the most pronounced. One-twentieth of a teaspoon of mercury can contaminate a 20-acre lake to the point that the resident fish can not be consumed, and 1,000 pounds of mercury are disposed of each year in Washington. Mercury disproportionately affects children, infants, and fetuses, and since they can not speak for themselves, adults must act on their behalf.

Some segments of society depend quite heavily on fish as a major part of their diet. These people are the most at risk. Currently, Washington has only a small percentage of lakes that show unhealthy mercury levels; however, there are 17 states that have statewide fish consumption advisories. Washington should address these problems before it becomes too late. There seems to be consensus on the fundamental goal of the bill, with the question only being how those goals should be obtained. The current bill may not be a total solution to the problem, but it is a good start.

This bill puts Washington in the good company of other states that have started addressing the mercury issue. Many states have banned thermostats, including Oregon, and there are federal efforts underway to find a permanent disposal site for the mercury that will be collected. Many products banned by the bill have cost effective alternatives. When neighboring states ban mercury products, Washington is targeted to absorb the excess amount of consumer products.

Many local governments are down the waste stream from the sources of mercury pollution. These local governments must then deal with the chemical in their public works facilities and landfills. This bill will have a positive fiscal effect on local governments by lowering disposal costs. Once mercury gets into a landfill, it evaporates and escapes into the atmosphere. Prevention is the only way to get mercury out of the waste stream, and voluntary efforts and education has not proved to be effective. Some local governments, such as Seattle and Olympia, have spearheaded thermometer exchanges and have begun to phase out mercury purchases, but there is only so much that a city can do within its boundaries. The cities need the state to help tackle the project.

Vaporizing mercury in burning homes adds to the toxic environment faced by firefighters. Any effort to remove mercury from households is a benefit to firefighters.

The solutions to the mercury problem should occur on the front end, and not once a product has been disposed. The producer take back provision is important because the cost of disposal can be built into the original purchase price of the product and not shifted to taxpayers and local governments. Those that benefit from the mercury consumption should pay mercury disposal costs. The take back provision also encourages the development of alternatives that do not contain mercury. The concept of product

stewardship, which this bill represents, allows for the privatization of waste collection and gives the private sector the tools it needs to utilize its creativity. The details should be left to the private sector, with only the regulation serving as encouragement.

The labeling of lamps is very important. Surveys have shown that very few consumers are aware that fluorescent lamps are a household source of mercury. Vermont has led the country in the labeling effort, and all lamps will be labeled nationally. This bill adds no new burdens. The labeling facilitates the consumer's right to know what is in a product. The lamp recycling infrastructure is already in place, and as long as it is not disturbed, this bill will help efforts to recycle lamps.

This bill is needed for government credibility. The government issues fish consumption advisory warnings, which is good. However, it must back up the warnings by doing something about the problem that led to the advisory being issued.

Testimony Against: (Original bill) The issue of mercury pollution has been historically misrepresented. Some East Coast states do have serious mercury problems, but not Washington. Mercury is a natural element that exists at relatively high levels in Washington's environmental background. Most of Washington's mercury problems are caused by these natural sources, including Lake Whatcom which faces mercury advisories due to the composition of Mount Baker. The mercury that is not natural is mostly caused by atmospheric deposition from mercury released by coal-burning power plants in Asia. This bill is a solution to a problem that does not exist in this state.

There is not a permanent place to store mercury that is collected. The recycling of mercury is also a problem because the product that it is recycled into is often exported to Asia, where it will eventually be incinerated and returned to Washington through the atmosphere.

This bill will accomplish very little benefit, but will discourage new business investment in Washington and cost the state jobs. The bill will also create unreasonable fears in the public about mercury in the environment. Mercury is a very effective and efficient product. It makes lights burn brighter and more efficiently, it allows automobile headlights to shine further, and its inexpensive price allows everyday products to be affordable.

The Legislature spent money to have the Department create a mercury action plan. That plan involved many stakeholders and in the end recommended that incentives and voluntary measures be developed. This bill does the exact opposite. It focuses on regulation. The action plan should be implemented before regulatory legislation is pursued. The bill also creates new responsibilities for the Department at a time when the state is facing severe budget shortfalls and the economy is stalled.

The labeling of lamps addresses nothing that isn't already being done, but gives the

Department the regulatory authority to require steps that will not be uniform with national labeling efforts. Lamp labeling could also lead to increased energy consumption by scaring consumers away from the more energy efficient products.

Instead of implementing an outright ban on mercury thermostats, the state should assist in existing thermostat collection measures. It should also be considered that some people are not physically or mentally able to operate an electronic thermostat. The ban on novelties should also be addressed, since the language bans any game with a button-cell battery and many video games that use mercury as the back light for the screen.

Automobile manufacturers have historically used mercury because it is the perfect electric switch. However, automobile manufacturers have found suitable replacements and are no longer making cars with these switches. There is a concern about how automobile manufacturers will collect switches since most of these business are not also in the business of dismantling cars. Automobile manufacturers are already doing the right thing, and should not be punished for it.

The cost of removing a mercury switch from a car is unknown. The automobile recycling industry is already struggling, and each new environmental regulation reduces the profit margin in which the industry operates. If the automobile recyclers were to go out of business, the state and the taxpayers would have to finance the disposal of 400,000 vehicles each year.

Hospitals need access to some mercury manometers. Manometers with mercury are more accurate than the non-mercury models, and are used to calibrate the non-mercury manometers. Many hospitals are voluntarily removing mercury from their facilities, but some products do not have a suitable non-mercury substitute.

Education efforts are already underway. These are being funded by the EPA and implemented by industry. This bill unnecessarily adds to these programs.

Talk of mercury contamination unfairly labels the seafood industry. It is clear that seafood is not a major source of mercury contamination. This bill should be clear that seafood is safe to eat, and not perpetuate the myth that all seafood is at risk for mercury contamination.

Testified: (In support) Representative Hunt, prime sponsor; Elizabeth Davis, League of Women Voters of Washington; David Stitzhal, Northwest Product Stewardship Council; Lynda Ring Erickson, City of Olympia; Dave Galvin, King County; Suellen Mele, Washington Citizens for Resource Conservation; Ivy Sager-Rosenthal, Washington Public Interest Group; Lin Nelson; Steven Gilbert, Institute of Neurotoxicology & Neurological Disorders; Steve Nicholas, City of Seattle; Rich McConaghy, City of Vancouver; Joe Ryan; Bruce Wishart, People for Puget Sound; Jeanie Sedgely, Washington Physicians for Social Responsibility; Mike Ryherd, Toxics Coalition; Craig Lorch, EcoLights

Northwest; and Kelly Fox, Washington State Association of Fire Chiefs.

(Opposed) Greg Dana, Alliance of Auto Associations; Robb Menaul, Washington State Hospital Association; Keith Deline, Providence Health System; Charlie Brown, National Electrical Manufactures Association; Randy Ray, Pacific Seafood Processors Association; Grant Nelson, Association of Washington Business; Don Phelps, Auto Recyclers of Wahington; and John Prestic, Auto Recycler.