

HOUSE BILL REPORT

ESB 5710

As Reported by House Committee On:
Natural Resources, Ecology & Parks
Appropriations

Title: An act relating to the removal of mercury-added components in motor vehicles.

Brief Description: Concerning the removal of mercury-added components in motor vehicles.

Sponsors: Senators Poulsen, Swecker, Brown, Rockefeller, Regala, Pridemore, Kline, Rasmussen and Kohl-Welles.

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 3/24/05, 3/31/05 [DP];

Appropriations: 4/2/05 [DP].

Brief Summary of Engrossed Bill

- Requires motor vehicle manufacturers to submit, and have approved by the state, a plan for the recovery of mercury-added components from motor vehicles.
- Makes unlawful the shredding or crushing of a vehicle that contains mercury-added components.
- Makes unlawful the false representation that the mercury-added components have been removed from a motor vehicle.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: Do pass. Signed by 7 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Blake, Dickerson, Eickmeyer, Hunt and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; DeBolt and Orcutt.

Staff: Jason Callahan (786-7117).

Background:

Certain products with mercury-added components are now, or will be soon, prohibited from sale within the state. These include florescent lamps, novelties, thermostats, and certain types

of medical equipment. New motor vehicles with an automotive mercury switch will be prohibited from sale in Washington on January 1, 2006.

Summary of Bill:

Prohibitions

It is unlawful for a vehicle to be shredded or crushed if all mercury-added components that can be removed have not been removed. Automobile crushers and shredders may rely on reasonable evidence provided by motor vehicle recyclers that all mercury-added products have been removed. Vehicles imported from out-of-state may only be shredded if the recycler can ensure that the out-of-state supplier has removed all mercury-added components.

It is also unlawful for a person to falsely represent that mercury-added components have been removed from a vehicle.

Role of manufacturers in the recovery of mercury-added components

Every vehicle manufacturer is responsible for ensuring the recovery of at least 90 percent of the mercury-added components from cars that are at the end of their useful life. To accomplish this, each manufacturer is required to develop and implement a plan for the removal, collection, and recovery of mercury-added components from vehicles within 90 days of the legislation's effective date.

There are certain minimum elements that are required in the recovery plan. These include:

- education and financing details;
- information about which models and years contain mercury;
- descriptions of performance measures and processes to document success;
- a system to mark vehicles that are to be shredded or crushed; and
- a plan to properly dispose of removed components.

In addition to the plan, the manufacturer must submit annual reports to the Department of Ecology (Department). These reports must contain documentation of the capture rate for the mercury-added components, how the mercury was managed, and how the capture rate will be approved.

Manufacturers are responsible for the costs of recovering mercury-added components, including labor, shipping, training, and costs to the state for administration. In addition, manufacturers must hold harmless the recyclers for any liability that arises from the release of mercury from components that have been returned for recovery.

Role of the state in the recovery of mercury-added components

The Director of the Department is required to review and approve all plans submitted from motor vehicle manufacturers. Upon the receipt of a plan, the Director has 60 days to review the plan for compliance with all requirements. If the plan meets these requirements, then its implementation must begin within 90 days of the Director's approval. If the plan is rejected by the Director, then the manufacturer must submit a new plan within 30 days of notification. If a manufacturer is not able to submit an approved plan within 240 days of the effective date of the legislation, then the Director must consider the manufacturer to be in violation of the law. This violation would trigger the enforcement provisions established in the legislation.

All approved plans must be reviewed every three years.

Enforcement

Violations of this legislation are punishable by a civil penalty up to \$1,000 per violation per day. Money collected is directed towards the state toxics control 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: This bill is consistent with a long-standing state policy of holding those doing environmental damage to the state financially responsible. The negative effects of mercury are well known, the only question is who should be responsible for cleaning up pollution. A sense of urgency is needed, because many late model vehicles with mercury are reaching the end of their lives. The bill is both a consumer protection bill, and an environmental bill. It is a specific bill for a specific circumstance, and does not set a precedent for other circumstances.

Scrap steel purchasers work hard to ensure that the supply they receive for processing is clean of contaminants. The federal government requires less mercury emissions from steel plants, which means the raw product must be clean of mercury. Once the steel is at the mill, it is very expensive to remove. The scrap industry has worked with the auto manufacturers, but to no avail.

Currently it is the automobile wrecker industry that bears the expense of removing mercury switches from cars. This is a cost that the industry can not support. The added expense drives up the cost of used parts, making the parts less attractive to consumers. As a result, the auto wrecker industry is shrinking. If it disappears, the state will have to find a way to dispose of the end-of-life cars. The wrecking industry only wants to be reimbursed for the cost of the switch removal.

Other states have already taken the leadership role in this issue. This approach engages the private sector in a positive way and allows the auto industry to deal with the challenge in the most efficient way.

The state has negotiated with the auto industry for a voluntary process, but the efforts have failed because of disagreement over a funding source. The financing mechanism in the bill is necessary to assure funding for the program. The voluntary process also is inefficient, because the automobile wreckers only see about half of the end-of-life vehicles.

Testimony Against: This bill attempts to address a problem that will go away on its own since auto manufacturers no longer use mercury switches in their cars. Other uses of mercury in cars are justified because the minimal environmental risk is offset by the safety improvements.

The auto industry cannot fulfill the duties assigned in the bill because they do not know how many cars have mercury switches, and where they are all located. The auto industry has no control over the salvage yards where compliance would have to occur. Voluntary programs would work better and result in a better rate of mercury recovery.

It is bad policy to set a manufacturer's take back precedent. Solid waste management has not historically followed that model. The take back model does not take into account market innovations and simply will not work in the real world.

Persons Testifying: (In support) Senator Poulsen, prime sponsor; Ken Armstrong, Local Hazardous Waste Management Program; Don Phelps, AROW; Bart Kale, Nucor; Darin Rice, Department of Ecology; Suellen Mele, Washington Citizens for Resource Conservation; Brad Tower, Schnitzer Steel; Gary Smith, Industry Business Association; Mo McBroom, Washington Public Interest Research Group; and Preston Horne-Brine, Washington State Recycling Association.

(Opposed) Grant Nelson, Association of Washington Business; and Nancee Wildermuth, Alliance of Automobile Mfg.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 17 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia and Schual-Berke.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Hinkle, Pearson, Priest, Talcott and Walsh.

Staff: Alicia Paatsch (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Natural Resources, Ecology & Parks:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill has broad support from steel manufactures, the auto recycling industry and others, and that was reflected in the bipartisan support the bill had in the Senate. The question is who pays to remove mercury components from automobiles. The cost to remove mercury switches is \$3 to \$5 dollars, which we think is the responsibility of the manufacturers. This same policy is in other states and is working in those states.

Testimony Against: We strongly oppose the bill as it is not a pro-business bill. This policy has businesses that are currently involved in voluntary recycling program scared to death because now those programs are in jeopardy. This bill creates a new precedent to require manufactures to take back mercury switches in vehicles. Now, whatever is put in the waste stream is the manufacturer's responsibility. The bill may not be legally enforceable, because manufacturers will be required to recover 90 percent of the mercury when there are cars that are disposed of from other states. The bill may have a \$10 million impact on manufacturers.

Persons Testifying: (In support) Mo McBroom, Washington Public Interest Research Group; and Gary Smith, Independent Business Association.

(Opposed) Nancy Wildermuth, Alliance of Automobile Manufacturers.

Persons Signed In To Testify But Not Testifying: None.