

SENATE BILL REPORT

ESSB 5788

As Passed Senate, March 14, 2005

Title: An act relating to ensuring the lawful transport and handling of recyclable materials.

Brief Description: Improving recycling.

Sponsors: Senate Committee on Water, Energy & Environment (originally sponsored by Senators Doumit, Kastama, Mulliken, Haugen, Morton, Poulsen, Pridemore and Berkey).

Brief History:

Committee Activity: Water, Energy & Environment: 2/16/05, 3/2/05 [DPS-WM].
Passed Senate: 3/14/05, 43-6.

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5788 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Mulliken, Pridemore and Regala.

Staff: Sam Thompson (786-7413)

Background: With certain exceptions, solid waste collection and hauling companies--including those that collect and haul recyclable materials--must have a permit from the Washington Utilities and Transportation Commission.

Most facilities handling solid waste, including recyclable materials, must have a solid waste handling permit issued by a local health department in consultation with the Department of Ecology. Facilities that present little or no environmental risk or that satisfy environmental performance requirements established for similar facilities are exempt from this requirement. Similarly, a local health department may defer permitting requirements for certain facilities that have obtained other environmental permits.

Concern has been raised that some unauthorized businesses have illegally collected and disposed of recyclable materials. It is suggested that more stringent regulation is necessary to prevent this unauthorized practice.

Summary of Bill: Generally. Transporters of recyclables from commercial or industrial generators over public highways for compensation who are required to possess a Washington Utilities and Transportation Commission (WUTC) operating permit must register with the Department of Ecology (DOE) prior to transporting recyclables. A transporter may not deliver recyclables for disposal to a transfer station or landfill.

Recycling facilities not currently required to obtain solid waste handling permit must notify DOE and local health departments within 30 days prior to operation, or 90 days from the bill's effective date for existing operations, of their intent to conduct recycling. Facilities handling

mixed solid wastes that have not been processed to segregate recyclables are subject to solid waste handling permitting requirements.

Transporters must maintain records concerning recyclable generators and selling, delivery or other marketing of recyclables. Recycling facilities must file annual reports to DOE and local health departments detailing recycling activities.

Exemptions. Exemptions to the transporter registration requirement are specified for:

- Carriers of commercial recyclables owned, bought or sold by carriers, in their own vehicles, in activity incidental to their primary business.
- Persons hauling their own or purchased recyclables and transported in their own vehicles.
- City solid waste departments and solid waste contractors.
- WUTC-regulated common carriers whose primary business is not transportation of recyclables.
- Nonprofit or charitable organizations.

Exemptions from the recycler registration requirement are specified for facilities with solid waste handling permits and scrap metal recycling facilities.

Penalties. Civil penalties of up to \$1,000 per violation are provided for:

- transporters that do not register or fail to keep required records, or that deliver recyclables for disposal to a transfer station or landfill.
- facilities recycling solid waste that do not obtain a solid waste handling permit or fail to notify DOE and local health departments of their intent to conduct recycling; product take-back centers are exempted.

Any person damaged by violations may bring a civil action seeking injunctive relief or damages; the prevailing party is entitled to reasonable costs and attorneys' fees.

Financial Assurance. DOE may adopt regulations establishing financial assurance requirements for recycling facilities, except scrap metal recycling facilities, that are not already subject to financial assurance requirements.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: Illegal hauling and dumping of recyclable materials by growing numbers of "sham recyclers" must be prevented. "Sham recyclers" are businesses claiming to be legitimate, but rather than properly depositing recyclable materials at recycling facilities, they often drop materials at landfills or illegal dump sites, where it is not recycled. Local governments must spend great sums to remediate illegal dumpsites, including one in a Pierce

County wetland area that will cost \$6 million to clean up. "Sham recyclers" infringe upon the business of legitimate haulers and recyclers; further, they do not pay required state and local taxes.

Testimony Against: This legislation would benefit large haulers and force many small haulers and recyclers out of business. The \$1,000 fee and financial assurance requirements are onerous. The Utilities & Transportation Commission, which already prohibits unauthorized waste hauling, should prosecute the small number of violators causing problems. Filings by regulated recyclers with the Department of Ecology would become accessible under the Public Disclosure Act, and confidential matters could be discovered by competitors. This bill would deter recycling; much recycled material is collected by non-business "ordinary people", who would now be subject to onerous, discouraging regulatory requirements and misdemeanor penalties. Regulatory fees will be passed on to consumers, raising prices of consumer goods. Construction and demolition material, which constitutes 30 percent of commercial waste, should be exempted.

Who Testified: PRO: Senator Doumit, prime sponsor; Vicki Austin and Jim Sells, Washington Refuse & Recycling Association; Edward Westmoreland, Waste Connections; Jerry Smedes, Basin Disposal and Emerald Services; Mike Hibbler, Department of Ecology. OTHER: Stephen Wamback, Pierce County; Bill Smith, City of Tacoma; Dave Whitley, Nuprecon.

CON: Michael Armstrong, Second Use Building Materials, Inc.; Terry Gillis, Recovery 1, Inc.; John Yeasting, Marathon Wood Recovery; Jeff Gage, Swanson Bark & Wood Products, Inc.; Malcolm McClaskey, South Sound Steel & Recycling; Craig Lorch, Total Reclaim; Jacob van de Rhoer, Arrow Metals Corp.; Stephen Fitzgerald, business owner.

Signed in, Unable to Testify & Submitted Written Testimony: CON: David Bader, Environmental Health Services.

House Amendment(s): The requirement that recyclers report to local health departments, in addition to the Department of Ecology, concerning their recycling activities is deleted. A provision exempting scrap metal recycling facilities from the recycler registration requirement is deleted.

Passed House: 95-1.