

SENATE BILL REPORT

SB 5788

As Reported By Senate Committee On:
Water, Energy & Environment, March 2, 2005

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

Brief Description: Improving recycling.

Sponsors: 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].

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: Solid waste collection companies--including those that collect certain recyclable materials--must have a permit from the Washington Utilities and Transportation Commission (WUTC) if they operate in an unincorporated area or serve a city or town under contract. Cities or towns handling their own solid waste are not subject to WUTC regulation but must comply with other state law.

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

Summary of Substitute Bill: Transporters of recyclables from commercial or industrial generators over public highways for compensation who are required to possess a WUTC operating permit must register with the Department of Ecology (DOE) prior to transporting recyclables. 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. Transporters and recycling facilities must also periodically file information, including annual reports.

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;

and WUTC-regulated common carriers whose primary business is not transportation of recyclables; and nonprofit or charitable organizations.

Civil penalties are provided for unauthorized transporters and recycling facilities. Any person may bring a civil action seeking injunctive relief or damages for violations of requirements, and may recover reasonable costs and attorneys' fees.

A transporter may deliver recyclables only to authorized recycling facilities, and may not deliver recyclables to a transfer station or landfill for disposal.

DOE may adopt regulations establishing financial assurance requirements for recycling facilities that are not already subject to financial assurance requirements under existing law.

Substitute Bill Compared to Original Bill: New provisions:

- Clarify and narrow transporter regulatory requirements. "Transporters" are transporters of recyclables from commercial or industrial generators over public highways for compensation who are required to possess a WUTC operating permit. Exemptions 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; and WUTC-regulated common carriers whose primary business is not transportation of recyclables. The exemption for nonprofit or charitable organizations is retained;
- Change misdemeanor penalties to civil penalties of up to \$1,000 per violation;
- Eliminate the \$1,000 permit fee;
- Delete DOE authority to suspend operating authority of transporters and recycling facilities for violations;
- Require a separate solid waste container to be provided where commercial recyclables are generated. Language is deleted that required transporters to remove residual waste before moving a container from a collection site and place removed material in container provided by a WUTC-certificated hauler or city contractor or department;
- Delete the permitting requirement for recycling facilities. Instead, 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 bill's effective date for existing operations, of intent to conduct recycling; they must also provide information, including annual reports;
- Clarify that a person must be damaged by a violation of act as precondition for bringing suit seeking injunctive relief and damages, and clarify that prevailing party is entitled to reasonable costs and attorneys' fees, including those on appeal; and
- Give DOE the option to set financial assurance requirements for recycling facilities, including a \$10,000 surety bond, rather than requiring DOE to set these 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.