

HOUSE BILL REPORT

HB 2800

As Reported by House Committee On:
Environmental Health, Select

Title: An act relating to managing the use and disposal of mercury-added products.

Brief Description: Regarding the use and disposal of mercury-added products.

Sponsors: Representatives Chase, Hunt, Eickmeyer, Wood and Goodman.

Brief History:

Committee Activity:

Select Committee on Environmental Health: 1/30/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Requires the recycling of fluorescent lamps by January 1, 2010, for all state-funded public agency facilities and by January 1, 2011, for all commercial, industrial, and retail facilities and office buildings.
- Prohibits the sale or purchase of bulk mercury, beginning June 30, 2009.
- Regulates the manufacture, sale and disposal of mercury-added products.
- Requires the Department of Ecology to report findings and recommendations for implementing and financing a recycling program for fluorescent lamps to the Legislature by December 1, 2008.

HOUSE SELECT COMMITTEE ON ENVIRONMENTAL HEALTH

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Campbell, Chair; Hudgins, Vice Chair; Chase, Hunt, Morrell and Wood.

Minority Report: Do not pass. Signed by 2 members: Representatives Sump, Ranking Minority Member; and Newhouse.

Staff: Ashley Pedersen (786-7303).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Mercury is a persistent, bioaccumulative toxin that can damage the central nervous and cardiovascular systems in humans. Mercury-added products, when broken or improperly disposed of, can release mercury into the environment. Mercury pollution also comes from land-filling, incinerating, or flushing down the drain a variety of consumer products; mining; coal-powered plant emissions; refineries; municipal sewage plants; and other sources. Mercury discharged to land, air, or water can eventually find its way to lakes, rivers, and the ocean, where it settles into sediments. By focusing on better waste disposal, management, and recycling, mercury pollution can be greatly reduced.

The 2000 Legislature directed the Department of Ecology (DOE) to develop a proposed long-term strategy to address persistent, bioaccumulative and toxic (PBT) chemicals 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 DOE and the Environmental Protection Agency have identified mercury as the number one PBT priority.

During the 2002 session, the Legislature earmarked the \$800,000 for the DOE to develop a chemical action plan for mercury. The Mercury Chemical Action Plan was published in February 2003. The plan describes elements of a campaign to virtually eliminate the use and release of human-caused mercury in Washington.

Washington started implementing a mercury reduction chemical action plan in 2003. Also in 2003, the Legislature passed the Mercury Education Reduction Act, which mandates the reduced use of mercury in consumer products and in some cases the elimination of mercury-containing products.

Mercury-added lamps in particular have been identified as a major source of mercury, which can be released during improper disposal. While the harmful effects of mercury have been identified, the state has not taken steps to prevent mercury-added products, including mercury-added lamps, from being disposed of in landfills. Many Washington counties, however, have recognized the harmful effects of disposal of mercury-added lamps in waste facilities and have put lamp disposal bans or limitations in place. The rate of recycling of mercury-added lamps has been low in recent years, only about 20 percent of all fluorescent lamps are recycled each year in Washington, while the remaining 80 percent continue to be disposed of in solid waste facilities.

Summary of Substitute Bill:**Recycling Fluorescent Lamps**

Beginning July 1, 2010, all state-funded public agency facilities, including educational institutions, must recycle their fluorescent lamps.

Beginning January 1, 2011, all commercial, industrial, and retail facilities and office buildings must recycle their fluorescent lamps.

Bulk Mercury

Beginning June 30, 2009, the sale, purchase, or delivery of bulk mercury, including sales through the internet or sales by private parties, is prohibited. This prohibition does not apply to sales to research facilities or industrial facilities that provide products or services.

The research facilities or industrial facilities must submit an annual inventory of their purchase and use of bulk mercury to the DOE.

Mercury-Added Products

Beginning January 1, 2012, a person may not dispose of mercury-added products in a manner other than by recycling or disposal as dangerous waste or universal waste as determined appropriate by rule by the DOE or in accordance with a memo of understanding executed with the DOE. This does not apply to individuals involved in the business of collecting, transporting or disposing of solid waste.

Beginning January 1, 2012, a person may not discharge mercury into water, wastewater treatment, or wastewater disposal systems. This subsection applies to reagents, medications, amalgam, and other mixtures that contain mercury.

Solid waste management facilities must post signs at the facility providing notice of the prohibition of the disposal and incineration of mercury-added products. Written notification must be provided to facility's customers regarding the prohibition on the disposal and incineration of mercury-added products. The DOE will determine how often this notification must be provided.

Dental offices that are in compliance with the memorandum of understanding of the DOE regarding amalgam waste are exempt from the requirement regarding mercury-added products.

Cosmetics

Cosmetics and pharmaceutical products that are subject to the regulatory requirements relating to mercury of the federal Food and Drug Administration (FDA) are exempt from the requirements and prohibitions in this bill. Also exempt are devices regulated by the federal FDA.

Penalty

A violation of these above listed prohibitions is punishable by a civil penalty not to exceed \$1,000 for the first violation and \$5,000 for subsequent offenses. Households are exempt from the penalties under this section.

Department of Ecology

The DOE must make every effort to educate all persons regarding the requirements of this chapter. The DOE must consult with the solid waste advisory committee and stakeholders to conduct research and develop recommendations for implementing and financing a convenient and effective statewide fluorescent lamp recycling program.

The DOE must identify and evaluate existing lamp recycling programs particularly those programs that exist in counties that prohibit the disposal of fluorescent lamps in solid waste facilities. It must also examine existing infrastructure for reuse and recycling of fluorescent lamps. It must develop a description of what could be accomplished voluntarily and what would require regulation or legislation to implement the recommended statewide recycling program. The DOE must include recommendations regarding how to finance a statewide recycling program for fluorescent lamps.

The DOE must report its findings and recommendations for implementing and financing a recycling program for fluorescent lamps to the appropriate committees of the Legislature by December 1, 2008.

The DOE must also study the feasibility of the development of a national repository for mercury. Its recommendations must be provided to the appropriate committees of the Legislature by December 1, 2009.

Substitute Bill Compared to Original Bill:

The substitute bill:

- adds the brand owner to the list of people that are manufacturers;
- adds a definition of "mercury-added general purpose lights;"
- changes the effective date that all state-funded public agency facilities must recycle their fluorescent lamps from January 1, 2010, to July 1, 2010;
- changes "learning institutions" to "educational institutions;"
- adds that effective June 30, 2009, the delivery of bulk mercury is prohibited;
- deletes the requirement that by January 1, 2009, the manufacture, wholesale or retail of any mercury added product is prohibited if a safer and environmentally benign alternative exists;
- changes the requirement that mercury-added products not be disposed in a manner other than by recycling or a hazardous waste to recycling or "disposal as dangerous waste or universal waste as determined appropriate by rule by the DOE or in accordance with a memo of understanding executed with the DOE;"
- adds an exemption for those entities or individuals involved in the business of: (1) collecting, transporting or disposing of solid waste; (2) devices regulated by the federal FDA; and (3) for dental offices that are in compliance with the memorandum of understanding of the DOE regarding dental amalgam waste;
- deleted the requirement that owners and operators of solid waste management facilities take certain steps "at a minimum;"
- deleted the requirement that owners and operators of solid waste management facilities implement procedures approved by the DOE for periodically monitoring incoming wastes to detect the presence of mercury-added products at the facility;

- adds the requirement that the DOE shall make every effort to educate all persons regarding the requirements of this chapter, "especially the necessity to reduce use of mercury and properly recycle mercury products;"
- revises and limits the scope of the DOE's research and recommendation requirements in section 7 of the bill; and
- adds a new section requiring the DOE to study the feasibility of the development of a national repository for mercury.

Appropriation: None.

Fiscal Note: Requested on substitute bill on February 5, 2008.

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

Staff Summary of Public Testimony:

(In support) Mercury is a potent neurotoxin and an environmental contaminant. Only about 2 percent of Washington residents recycle fluorescent lamps. This bill is timely because of the increased use of fluorescent lamps during energy crisis. The portion of the bill that requires DOE to develop recommendations regarding a recycling program is very important. The definition of manufacturers needs to be expanded to ensure that all manufacturers are included. There are plenty of pilot projects that have explored how to implement a recycling program and there is no need to delay implementation. However, hospitals should be exempt from the prohibitions regarding banning mercury-added products. When looking at environmental benign alternatives to mercury-added products, the entire life-cycle of the alternative should be considered.

(Neutral) While the Mercury Education Reduction Act accomplished much in regulating mercury, this bill fills one of the main remaining gaps - fluorescent lamps. Right now there are about 16 million fluorescent lamps that are used and generated in Washington each year. That represents about 500 pounds of mercury. Right now the recycling rate of fluorescent lamps is 20 percent. Recycling will have to be mandatory and part of a comprehensive program. This bill requires DOE to prepare a study by December 2008, describing what the infrastructure for a recycling program would look like and who should pay for it. Another gap that this bill addresses is bulk mercury, which has even been offered for sale on the internet. A remaining issue that is not addressed in the bill is whether there should be a national repository to hold mercury over time.

(With concerns) The dental industry has entered into a memorandum of understanding with the DOE regarding voluntary compliance with best management practices to reduce mercury contained in dental materials from being put in wastewater. That program has been successful and dental offices in compliance with the memorandum of understanding should have an exemption. The ban on the sale of bulk mercury would negatively impact the mercury recyclers who would be required to hold on the mercury. The bill should address the issue of

establishing a national repository to hold mercury. It will likely take longer than one year for the DOE to examine and address the issues of financing and storing of mercury, thus the report due date should be extended. Auto-switches should be allowed to continue to be disposed of as universal waste. Also, mercury auto-switches must be made available for older cars for repair purposes. The requirement that environmentally benign alternatives be used in place of mercury-added products is vague and too broad.

(Opposed) None.

Persons Testifying: (In support) Representative Chase, prime sponsor.

(Neutral) Darin Rice, Department of Ecology.

(With concerns) David Hemian, Washington State Dental Association; Robb Menaul, Washington Hospital Association; Carrie Dolwick, Northwest Energy Coalition; Nancee Wildermuth, Alliance of Automobile Manufacturers; Suellen Mele, Washington Citizens for Resource Conservation; Gary Smith, Independent Business Association; and Craig Lorch, EcoLights, Northwest; and Charlie Brown, National Electrical Manufacturers Association.

Persons Signed In To Testify But Not Testifying: None.