

SENATE BILL REPORT

SB 5543

As of February 6, 2010

Title: An act relating to establishing product stewardship recycling programs for mercury-containing lights.

Brief Description: Establishing the product stewardship recycling act for mercury-containing lights.

Sponsors: Senators Pridemore, Oemig, Rockefeller, Fairley, Murray, Kline, Keiser, Shin, Regala, Franklin, McAuliffe, Fraser, Ranker and Kohl-Welles.

Brief History:

Committee Activity: Environment, Water & Energy: 1/28/09, 2/02/10, 2/05/10 [DPS-WM, DNP].

Ways & Means:

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5543 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Pridemore, Vice Chair; Fraser, Marr, Oemig and Ranker.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Morton.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Maria Hovde (786-7710)

Background: Mercury is a persistent, bioaccumulative toxin that can damage the human central nervous and cardiovascular systems and cause environmental harm.

In 2003 the Legislature prohibited mercury components in a number of consumer products. The law requires labeling of fluorescent lamps to indicate the presence of mercury and to inform purchasers on the proper disposal of the product.

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.

The Department of Ecology's (DOE) Chemical Action Plan for mercury identified that a significant amount of mercury released into the environment comes from the disposal of products including fluorescent light tubes that are improperly discarded.

Summary of Bill (Recommended Substitute): Producers of mercury-containing lights (lamps, bulbs, tubes, or other devices containing mercury and providing illumination) sold in or into Washington must participate in product stewardship programs that are fully implemented by 2013. The producer or product stewardship organization must pay all administrative and operational costs of the product stewardship program. A program may not use prison labor for processing unwanted products. A producer, wholesaler, retailer, or other person may not offer for sale mercury-containing lights unless the producer is participating in an approved product stewardship program.

A product stewardship program must submit a proposed plan to DOE by January 1, 2012. DOE must establish rules for plan content. The plan must contain the following elements:

- information about participants;
- a description of the collection system used, including collection site locations, use of existing curbside waste collection, and an explanation of statewide coverage of collection sites and their convenience to consumers;
- use of businesses in the state to provide plan elements (including curbside recycling);
- an explanation of the financing system; and
- education and outreach efforts.

All plans must be made available for public review on DOE's website.

A product stewardship program must update its plan within two years from the start of the program and every four years thereafter. The program must submit its updated plan to DOE for review and approval in accordance with department rules. Each program must provide an annual report to the department with the results of their plan for the prior year.

Each product stewardship plan will assess a fee to participating producers to cover the cost of implementing the plan. The fee may not be more than \$10,000 or less than \$1,000 for the first year of the program operation. DOE must adopt rules for the product stewardship organization to adjust the fee.

By 2013 all persons, government, commercial, office buildings, and retail facilities must recycle their mercury-containing lights. By 2013 all residents and other generators must recycle mercury-containing lights.

Enforcement for producers begins with written warnings. Penalties include:

- Failure to participate in a program. DOE must send a written warning to a non-participating producer. After 60 days of receiving the warning, DOE must impose a penalty of \$1,000 per product sold.
- Failure to implement a plan. A producer that fails to implement its approved plan receives a penalty of up to \$5,000 for the first violation. If the plan is not

implemented in 30 days, the producer receives a penalty of up to \$10,000. Each subsequent 30 day period of non-compliance is another violation.

- Additional violations. Failure to submit a plan, update, or change a plan when required, or to submit an annual report, after a warning, will result in a \$10,000 penalty per day of violation.

Penalties are reduced by 50 percent if the producer complies within 30 days of the second violation notice. Producers may appeal penalties to the Pollution Control Hearings Board.

Collectors of unwanted mercury-containing lights must register with DOE. Until DOE establishes rules, collectors must: maintain a spill and release response plan; have a worker safety plan; use packaging and shipping materials that minimize the release of mercury into the environment; provide (1) information regarding the owner and operator of the collection location and (2) the address and phone number of the collection location and of the person operating the collection location.

Product retailers who sell products from producers not participating in a program are subject to violations and penalties after a warning. Sales of used product are not subject to penalties, under certain circumstances. In-state retailers possessing mercury-containing lights may exhaust existing stock through sales to the public.

Producers must pay an annual fee to DOE to cover the cost of administering and enforcing the program. For the first two years, producers with a market share of 1 percent or greater must pay \$5,000 and producers with a market share less than 1 percent pay \$1,000. DOE must adopt rules to establish fees to cover costs for the third and subsequent years. Funds will be deposited into the Product Stewardship Programs Account and used to administer the act.

DOE may adopt administrative rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2013, DOE must evaluate the impact of the program on availability of energy efficient lighting and non mercury-containing energy efficient lighting. DOE must report to the Legislature concerning the status of the program and recommendations for changes to the act by December 31, 2013.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute):

- The product stewardship program implementation date is changed from 2012 to 2013.
- As of January 1, 2013, all persons, residents, government, commercial, industrial, retail facilities, and office buildings must recycle their end-of-life mercury containing lights.
- DOE must establish rules for product stewardship program plan content. The detailed plan elements are removed from the bill.
- All producers that sell mercury containing lights are responsible for financing the product stewardship program. Participating producers will pay a fee to cover the cost of the product stewardship program plan. The fee can not exceed \$10,000 or to be less than \$1,000 for the first year of operation. DOE must establish rules on how the stewardship organization can adjust fees above or below these limits.

- Producers with a market share of 1 percent or more must pay an annual fee of \$5,000 and those with a market share of less than 1 percent must pay \$1,000 to DOE to cover the cost to administer the first two years of the program. DOE must adopt rules to establish fees to fully recover the costs to implement the program.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2009.

Staff Summary of Public Testimony (Environment, Water & Energy): PRO: Current recycling programs for CFLs and other mercury-containing lights are inadequate; only 2 percent are properly handled. Use and later disposal of these lights are greatly increasing, creating environmental and public health problems. The proposed substitute bill is the product of considerable negotiation among stakeholders. The bill is budget neutral to the state. Recycling will be mandated in all 39 counties in Washington. Cost of lights will not greatly increase. Currently, local government disposal costs are burdensome. An interim study by DOE indicates that a flexible product stewardship program is appropriate. The program could incorporate existing curbside and mail-in recycling services. A proposed mercury vapor packaging limit has technical difficulties. A proposed bulk mercury ban is appropriate.

CON: A proposal requiring producers to pay flat fees, funding grants to existing local government solid waste collection systems, should be considered. Manufacturers are not equipped to facilitate the mandates in this legislation.

OTHER: While DOE is officially neutral regarding this legislation because of the fiscal impact to the agency, it supports the concept of product stewardship for mercury-containing lights.

Persons Testifying (Environment, Water & Energy): PRO: Margaret Shield, Local Hazardous Waste Program in King County; Suellen Mele, Washington Citizens for Resource Conservation; Carrie Dolwick, Northwest Energy Coalition; Jeff Clark, Seattle City Light; Art Starry, Thurston County; David Michener, Waste Management; Steve McGonigal, Washington State Recycling Association; Craig Lorch, Total Reclaim.

CON: Charlie Brown, National Electrical Manufacturers Association; Grant Nelson, Association of Washington Business.

OTHER: Jay Shepard, DOE.