FINAL BILL REPORT
ESSB 5543

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Synopsis as Enacted

Brief Description: Reducing the release of mercury into the environment.

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senators Pridemore, Oemig, Rockefeller, Fairley, Murray, Kline, Keiser, Shin, Regala, Franklin, McAuliffe, Fraser, Ranker and Kohl-Welles).

Senate Committee on Environment, Water & Energy
Senate Committee on Ways & Means
House Committee on Environmental Health
House Committee on General Government Appropriations

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.

The Department of Ecology's (department) 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: Effective January 1, 2013, all users must recycle mercury-containing lights. Mercury-containing lights may not be disposed of in waste incinerators or landfills. Mercury-containing lights may be recycled under certain circumstances. Solid waste facilities or collectors are not subject to violations if mercury-containing lights are recycled or disposed of as solid waste under this prohibition.

Every producer of mercury-containing lights (lamps, bulbs, tubes, or other devices containing mercury and providing illumination) sold in or into Washington for residential use must fully finance and participate in a product stewardship program; financing includes the department's costs for administering and enforcing the program. A producer, wholesaler, retailer, distributor or other person may not offer for sale or distribute mercury-containing lights unless the producer is participating in an approved product stewardship program. Product stewardship programs must be fully implemented by January 1, 2013. All product stewardship programs must be approved and contracted by the department but the product

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stewardship program is operated by a product stewardship organization. Producers may participate in department-approved independent plans that are individually or jointly financed and operated with other producers.

A product stewardship program must submit a proposed plan to the department by January 1 of the year prior to implementation. 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 the department 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. All plans must be made available for public review on the department's website.

The department must establish rules for plan content. The plan must include at least 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;
- education and outreach efforts; and
- public review and comment process.

All producers must pay $15,000 to the department to contract with a product stewardship program operated by a product stewardship organization. The department retains $5,000 for administrative and enforcement costs. Producers participating in an independent plan must pay an annual fee of $5,000 to the department for administrative and enforcement. In addition, producers participating in an independent plan finance the full cost to implement the plan. The department may prioritize its work if fees do not adequately cover the costs to implement the product stewardship program.

Enforcement for producers begins with written warnings. Penalties include:

- <u>Failure to participate in a program.</u> The department must send a written warning to a nonparticipating producer. After 60 days of receiving the warning, the department must assess a penalty of up to $1,000 per violation, which is one day of sales.
- <u>Failure to implement a plan.</u> 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 noncompliance is another violation.
- <u>Additional violations.</u> Failure to submit a plan, update, or change a plan when required, or to submit an annual report after a warning, results 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 the department. Until the department establishes rules, collectors must provide to the department the address and phone number of the collection location and of the person operating the collection location. Collectors must have a spill and release response plan, worker safety plan, and use packaging and shipping materials that minimize the release of mercury into the environment.

The department must list all producers participating in a product stewardship plan on its website. Product wholesalers, distributors, retailers, and electric utilities must check the website to determine that the products are in a product stewardship program. Any person who distributes or sells products from producers not participating in a program are subject to violations and penalties after a warning. Sales of used products are not subject to penalties, under certain circumstances. In-state retailers possessing mercury-containing lights may exhaust existing stock through sales to the public.

The department may adopt administrative rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2014, the department must evaluate the impact of the program on availability of energy efficient lighting and nonmercury-containing energy efficient lighting. The department must report to the Legislature concerning the status of the program and recommendations for changes to the act by December 31, 2014.

By June 30, 2012, the sale or purchase of bulk mercury is prohibited. This prohibition does not apply to dangerous waste recycling facilities or treatment, storage, and disposal facilities approved by the department.

Votes on Final Passage:

Senate	37	9	
House	71	27	(House amended)
Senate	36	12	(Senate concurred)

Effective: June 10, 2010