

HOUSE BILL REPORT

ESHB 2246

As Passed Legislature

Title: An act relating to financing for stewardship of mercury-containing lights.

Brief Description: Regarding financing for stewardship of mercury-containing lights.

Sponsors: House Committee on Environment (originally sponsored by Representatives S. Hunt, Fitzgibbon, Hudgins, Morris, Ryu, Roberts, Bergquist, Goodman and Pollet).

Brief History:

Committee Activity:

Environment: 1/21/14, 1/31/14 [DPS].

Floor Activity:

Passed House: 2/13/14, 56-41.

Passed Senate: 3/7/14, 31-18.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Replaces the current \$15,000 per-producer financing mechanism for the mercury-containing lights product stewardship program (stewardship program) with an environmental handling charge applied to the retail sales of mercury-containing lights.
- Postpones the implementation deadline for the stewardship program from January 1, 2013 until January 1, 2015, and initiates a sunset review of the program, effective January 1, 2025.
- Grants limited immunity from federal and state antitrust laws to producers or an organization operating the stewardship program.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Senn, Vice Chair; Farrell, Fey, Kagi, Morris, Ortiz-Self and Tharinger.

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.

Minority Report: Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Harris, Nealey and Overstreet.

Staff: Jacob Lipson (786-7196).

Background:

In 2010 the Legislature passed a law requiring producers of mercury-containing lights to create a stewardship program responsible for the collection, recycling, and disposal of mercury-containing lights, including compact fluorescent lights. The program must operate pursuant to either an independent plan or plans developed by producers, or a state-developed plan that contracts with a stewardship organization. Since January 1, 2013, mercury-containing light producers who do not participate in a stewardship plan approved by the Department of Ecology (DOE) have been prohibited from selling mercury-containing lights. The DOE is responsible for reviewing and approving producer-submitted plans, and, after a stewardship program is operational, for ensuring the program's compliance with the producer-submitted plan.

Components of Mercury-Containing Lights Product Stewardship Programs.

Under Mercury-Containing Lights Product Stewardship Programs (stewardship programs), collection sites must be registered with the DOE and must be located in every city with a population greater than 10,000, with at least one location per county, regardless of a county's population. Manufacturers of mercury-containing lights identified by the DOE as out of compliance with plan participation or program operation requirements will be prohibited from making sales in Washington. Likewise, retailers are forbidden to purchase and stock the products of noncompliant manufacturers.

As of January 1, 2013, users of mercury-containing lights may not dispose of mercury-containing lights through traditional waste collection systems.

Program Funding.

If producers elect to develop their own stewardship plan, the DOE's administrative costs must be covered by an annual \$5,000 registration fee. Producer-developed stewardship plans must include a mechanism for fully allocating the program's operational costs among producers.

Producers that do not develop a DOE-approved plan must participate in a state-contracted plan. Under this scenario, the DOE charges producers a fee of \$15,000, of which \$5,000 is retained to cover administrative costs, and the remainder contracted for a program operated by a product stewardship organization. Under both the producer-developed plan scenario and the state-contracted plan scenario, anyone may dispose of up to 15 lights every 90 days for free through the stewardship program.

Program Implementation Status.

On November 16, 2012, the DOE issued a final rule governing the implementation of the stewardship program. This rule included a requirement that mercury-containing light producers, collectively, fully-finance the operations of the stewardship program. Prior to the 2010 law's January 1, 2013, stewardship program implementation deadline, the DOE

contracted with a stewardship organization to develop and set up a mercury-containing lights stewardship program.

In May 2013 a state superior court judge ruled that the part of the DOE's 2012 rule that requires mercury-containing light producers to fully finance a stewardship program was inconsistent with the mercury-lights law passed by the Legislature. Instead, the judge found that the mercury-lights statute capped the fees charged to light producers at \$15,000 per light producer. The judge's decision is currently under appeal by the DOE. The stewardship program is currently on hold, and no mercury-containing light stewardship program is operating pursuant to the law.

Summary of Engrossed Substitute Bill:

Program Funding.

The option for manufacturers to choose to participate in either an independently-operated stewardship program or a DOE-contracted stewardship program is eliminated. Instead, a stewardship organization that meets program requirements must submit a plan for approval by the DOE.

The existing program funding mechanism, where light manufacturers must either contribute \$15,000 or fully finance the stewardship program, is eliminated. Instead, an environmental handling charge is applied to each mercury-containing light sold in the state. The handling charge:

- must cover the stewardship program's operational and administrative costs, plus a reserve;
- must be added to the price of mercury-containing lights sold at retail;
- may, but is not required to, vary by the type of mercury-containing light; and
- must be added to the price of mercury-light sales from producers to retailers, who must add the handling charge to the cost of the products they sell at retail.

Producers must remit the environmental handling charge to the stewardship organization, unless a light retailer purchasing the producer's lights has voluntarily agreed to directly remit the environmental handling charge to the stewardship organization on behalf of the producer. Retailers who voluntarily agree to remit the handling charge to the stewardship organization may retain a portion of the handling charge as compensation for the costs associated with collecting and remitting the handling charge.

The stewardship organization, using funds from the environmental handling charge, must pay \$5,000 per participating producer to the DOE to cover their administration and enforcement costs.

Environmental Handling Charge Determination.

The stewardship organization, in consultation with collectors, retailers, recyclers, and participating producers, must recommend to the DOE an amount for the environmental handling charge. In determining the amount of the environmental handling charge, the stewardship organization must consider the following:

- the anticipated number of mercury-containing lights sold at retail;
- the expected number of mercury-containing lights to be collected for recycling;

- the costs of picking-up, transporting, and recycling mercury-containing lights generated by households and retail purchasers of lights;
- the costs of the fee to be paid to the DOE; and
- other program costs, including public outreach.

A stewardship program is not required to pay for the receipt, accumulation, and storage costs of light collection locations, or for the collection costs of curbside or mail-in collection programs. However, a stewardship program must pay for packaging and shipping materials used by collection sites, and for transportation and processing costs associated with the lights collected at collection locations.

If a stewardship organization's recommended environmental handling charge is sufficient to cover the stewardship program operations and the DOE administrative costs, the DOE must approve the charge within 60 days of receipt of the recommendation. The DOE may adjust the amount of the handling charge recommended by the stewardship organization, if necessary. Procedures are also established for the periodic adjustment of the amount of the environmental handling charge.

Program Operations.

Collection locations may include household hazardous waste facilities, charities, retailers, or government recycling sites. There is no requirement for specific sites or types of sites to serve as light collection locations. Stewardship organizations are allowed to offer incentives or payments to mercury light collectors.

A stewardship program must accept up to 10 lights per day from household generators or others who make retail purchases of lights.

Plan Submission and Reporting Requirements.

Prospective program operators must submit an operation plan by June 1 the year before implementation, rather than the previous requirement that the plan be submitted by the January 1 preceding implementation. The program implementation deadline is changed from January 1, 2013, to January 1, 2015.

When a stewardship organization submits an operational plan to the DOE, it must describe how the environmental handling charge will be determined, as well as the mechanism established to collect and remit the charge to the stewardship organization. The plan must also include a description of how the program will inform consumers about:

- the environmental handling charge added to the purchase price of mercury-lights;
- mercury-light collection opportunities; and
- the promotion of recycling and waste reduction.

A program must submit an annual report to the DOE that includes an independent financial audit and other information on program finances, outreach activities, and an analysis of the percent of overall light sales that are mercury-containing lights. The DOE may adopt rules for program reporting requirements, and must make annual reports available for public review, with the exemption of any confidential portions of the reports.

Other Provisions.

After July 1, 2025, the mercury lights stewardship law and program will undergo a sunset review by the Joint Legislative Audit and Review Committee (JLARC). Without legislative action to extend the program, the law will be repealed effective July 1, 2026. In the event that the stewardship program is repealed, state law would retain the requirement to recycle mercury-containing lights. State law would also retain the prohibition on mercury-containing light disposal via incineration, waste-to-energy, or via landfills.

An intention is declared to exempt mercury-containing light producers, stewardship organizations, distributors, and retailers from state and federal antitrust laws for the purposes of the stewardship program. The DOE is directed to actively supervise the conduct of the producers and stewardship organization.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 10, relating to recodifying mercury light disposal requirements, which conditionally takes effect July 1, 2026.

Staff Summary of Public Testimony:

(In support) The development of this bill has been a long road and hard work with extensive stakeholder engagement, and we are close to an agreement. It is important to establish a recycling program with some permanency, and put a close to this issue. This bill allows the DOE to implement a sustainably-funded mercury lights recycling program. This bill should work for retailers, producers, and for the state. This bill will comply with federal anti-trust laws. The bill will require a handling charge to be added to the price of all light bulbs. Light producers have already paid sufficiently in the development and beginning stages of implementing the program. There will be state-wide collection sites, and will increase the amount of mercury-light recycling in the state. The program will include outreach to light consumers, and will reduce unhealthy exposures to mercury. Mercury-light use is declining and this program may not need to be around forever as new technologies come on line, which is why a sunset provision is appropriate. If the sunset review recommends that the stewardship program continue, the National Electric Manufacturers Association has given its word to come back and advocate for an extension to the stewardship program. This program has worked in Canada with low costs to consumers. The DOE is in support of this bill, even though it doesn't represent a true producer-responsibility approach.

(In support with concerns) This bill does not put the responsibility for funding the program on the producer of the light bulbs, but instead puts a burden on the consumer. The bill also limits the amount of collection costs that the stewardship program must pay, compared to current program requirements. Retailers are also forced to temporarily eat the costs of the handling charge until they sell the light bulbs that they buy at wholesale. We support the fact that the bill makes retailers' collection of light bulbs voluntary. Voluntary collection is already taking in many mercury-containing lights, and the money to be spent on the stewardship program should perhaps instead go to increasing education and outreach for existing recycling options instead. We need an effective recycling program, and current

recycling efforts for lights are not collecting enough, nor are collection efforts sustainably financed. These are long-lasting bulbs, and we will be collecting them far into the future. Everyone has made compromises in this bill, and we appreciate that, but there are still some remaining differences. We are concerned that the stewardship program will sunset too early, although the review by the JLARC is not a bad idea. We want to see a passage of a law, but we want to get to the point of being able to fully support it.

(Opposed) None.

Persons Testifying: (In support) Representative S. Hunt, prime sponsor; Charlie Brown, National Electrical Manufacturers Association; and Laurie Davies, Department of Ecology.

(In support with concerns) Margaret Shield, Local Hazardous Waste Management of King County; Mark Johnson, Washington Retail Association; and Suellen Mele, Zero Waste.

Persons Signed In To Testify But Not Testifying: None.