SENATE BILL REPORT
SB 5577

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 12, 2015

Title: An act relating to pharmaceutical waste.

Brief Description: Concerning pharmaceutical waste.

Sponsors: Senators Braun and Cleveland.

Brief History:
Committee Activity: Energy, Environment & Telecommunications: 2/11/15, 2/12/15 [DP, DNP, w/oRec].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass.
Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown, Cleveland, Habib and Honeyford.

Minority Report: Do not pass.
Signed by Senator McCoy, Ranking Minority Member.

Minority Report: That it be referred without recommendation.
Signed by Senator Ranker.

Staff: Jan Odano (786-7486)

Background: The Federal Resource Conservation and Recovery Act (RCRA) directs the U.S. Environmental Protection Agency (EPA) to manage hazardous waste from point of generation, transport, and treatment, to storage and disposal. RCRA sets regulations for hazardous waste generators, transporters, and treatment, storage, and disposal of hazardous waste. Treatment, storage, and disposal facilities managing hazardous wastes under RCRA must be permitted in order to operate. Businesses generating dangerous wastes are responsible for proper management, labeling, packaging, and disposal of the wastes. RCRA allows states to implement stricter requirements as needed.

EPA defines hazardous waste as a liquid, solid, contained gas, or sludge wastes that are dangerous or potentially harmful to public health or the environment. Hazardous wastes are divided into several categories, with the major categories being characteristic wastes and

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listed wastes. Characteristic hazardous wastes possess one or more of the following traits: flammability, reactivity, corrosivity, and toxicity. Listed hazardous wastes are those that EPA has identified as a hazardous waste from certain common industrial or manufacturing processes; waste stream; or commercial grade formulations of certain unused chemicals. Pharmaceuticals that are designated as hazardous waste under the criteria set in RCRA must be disposed as dangerous waste. State-only hazardous waste are designated as meeting certain state criteria for toxicity and persistence.

EPA delegated the primary responsibility for the hazardous waste program to the Department of Ecology (Ecology), which is implemented under the Dangerous Waste Regulations.

Ecology's dangerous wastes rules contain a conditional exclusion for certain state-only dangerous wastes. The conditional exclusion allows waste pharmaceuticals that are not a RCRA hazardous waste but a dangerous waste under the state's criteria for toxicity and persistence to be excluded from the rest of the Dangerous Waste Regulations. The designated state-only pharmaceutical waste must be incinerated at a facility permitted to incinerate municipal solid waste or at a controlled combustion unit under specified heat and temperature requirements.

Ecology developed interim enforcement policy for managing pharmaceutical waste from patient care facilities and retail pharmacies. The policy sets forth notice, labeling, disposal, staff training, waste management, recordkeeping, and transporter requirements.

The Administrative Procedure Act (APA) details procedures that state agencies must follow when adopting rules. It includes requirements for public participation, petition for adoption, amendment, and repeal of a rule. There are several types of rulemaking including negotiated and pilot; emergency; expedited; and significant legislative rules.

In negotiated rulemaking, the agency and people affected by an agency's rules try to reach consensus on the content of the rule and agree on the process for developing the rule.

Summary of Bill: By September 1, 2015, Ecology must initiate negotiated rulemaking with the state's qualified pharmaceutical waste handling facilities, the Washington Hospital Association, and other interested parties to develop an alternative to Ecology's interim enforcement policy for pharmaceutical waste.

September 1, 2016, Ecology must provide a status report on the rulemaking to the Legislature.

Until the pharmaceutical waste rules become effective, the documentation characterizing waste prepared by pharmaceutical waste generators for pharmaceutical waste handling facilities must be presumed correct for purposes of hazardous waste management.

The conditional exclusion applies to any waste received by a qualified pharmaceutical waste handling facility from a pharmaceutical waste generator.

Definition of terms are specified.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This will provide a process to set rules that businesses can follow and know what to expect. The current rules are problematic for properly managing wastes. It would be good to look at the rules again in a collaborative way to have all of the issues, from cradle to grave, addressed. Negotiated rulemaking is critical to address everyone's concerns. It will ensure an open forum without possibility of penalty.

CON: Presuming compliance with the rules could compromise delegated authority from EPA. We need to ensure that state-only waste and RCRA waste are going to the appropriate disposal facilities. Medical waste – infectious waste that is mixed with dangerous waste, poses risks for exposure to the employees who must handle this waste.

OTHER: There are concerns with groundwater recharge because wastewater treatment facilities do not treat for pharmaceutical wastes. This is a significant issue. The bacteria in a wastewater treatment facility becomes antibiotic resistant. Antibiotic resistant bacteria have been found in Puget Sound and Lake Huron.

Persons Testifying: PRO: Lisa Thatcher, Selin Hoboy, Stericycle.

CON: Kay Seiler, Ecology.

OTHER: Dennis Burke, Professional Engineer.