

SB 5762 - H COMM AMD
By Committee on Environment

ADOPTED 04/10/2017

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.275.050 and 2014 c 119 s 5 are each amended to
4 read as follows:

5 (1) Each stewardship organization must recommend to the
6 department an environmental handling charge to be added to the price
7 of each mercury-containing light sold in or into the state of
8 Washington for sale at retail. The environmental handling charge must
9 be designed to provide revenue necessary and sufficient to cover all
10 administrative and operational costs associated with the stewardship
11 program described in the department-approved product stewardship plan
12 for that organization, including the department's annual fee required
13 by subsection (5) of this section, and a prudent reserve. The
14 stewardship organization must consult with collectors, retailers,
15 recyclers, and each of its participating producers in developing its
16 recommended environmental handling charge. The environmental handling
17 charge may, but is not required to, vary by the type of mercury-
18 containing light. In developing its recommended environmental
19 handling charge, the stewardship organization must take into
20 consideration and report to the department:

21 (a) The anticipated number of mercury-containing lights that will
22 be sold to covered entities in the state at retail during the
23 relevant period;

24 (b) The number of unwanted mercury-containing lights delivered
25 from covered entities expected to be recycled during the relevant
26 period;

27 (c) The operational costs of the stewardship organization as
28 described in RCW 70.275.030(2);

29 (d) The administrative costs of the stewardship organization
30 including the department's annual fee, described in subsection (5) of
31 this section; and

1 (e) The cost of other stewardship program elements including
2 public outreach.

3 (2) The department must review, adjust if necessary, and approve
4 the stewardship organization's recommended environmental handling
5 charge within sixty days of submittal. In making its determination,
6 the department shall review the product stewardship plan and may
7 consult with the producers, the stewardship organization, retailers,
8 collectors, recyclers, and other entities.

9 (3) No sooner than January 1, 2015:

10 (a) The mercury-containing light environmental handling charge
11 must be added to the purchase price of all mercury-containing lights
12 sold to Washington retailers for sale at retail, and each Washington
13 retailer shall add the charge to the purchase price of all mercury-
14 containing lights sold at retail in this state, and the producer
15 shall remit the environmental handling charge to the stewardship
16 organization in the manner provided for in the stewardship plan; or

17 (b) Each Washington retailer must add the mercury-containing
18 light environmental handling charge to the purchase price of all
19 mercury-containing lights sold at retail in this state, where the
20 retailer, by voluntary binding agreement with the producer, arranges
21 to remit the environmental handling charge to the stewardship
22 organization on behalf of the producer in the manner provided for in
23 the stewardship plan. Producers may not require retailers to opt for
24 this provision via contract, marketing practice, or any other means.
25 The stewardship organization must allow retailers to retain a portion
26 of the environmental handling charge as reimbursement for any costs
27 associated with the collection and remittance of the charge.

28 (4) At any time, a stewardship organization may submit to the
29 department a recommendation for an adjusted environmental handling
30 charge for the department's review, adjustment, if necessary, and
31 approval under subsection (2) of this section to ensure that there is
32 sufficient revenue to fund the cost of the program, current deficits,
33 or projected needed reserves for the next year. The department must
34 review the stewardship organization's recommended environmental
35 handling charge and must adjust or approve the recommended charge
36 within thirty days of submittal if the department determines that the
37 charge is reasonably designed to meet the criteria described in
38 subsection (1) of this section.

39 (5) Beginning March 1, 2015, and each year thereafter, each
40 stewardship organization shall pay to the department an annual fee

1 equivalent to (~~five~~) three thousand dollars for each participating
2 producer to cover the department's administrative and enforcement
3 costs. The amount paid under this section must be deposited into the
4 product stewardship programs account created in RCW 70.275.130.

5 **Sec. 2.** RCW 70.275.040 and 2014 c 119 s 4 are each amended to
6 read as follows:

7 (1) On June 1st of the year prior to implementation, each
8 producer must ensure that a stewardship organization submits a
9 proposed product stewardship plan on the producer's behalf to the
10 department for approval. Plans approved by the department must be
11 implemented by January 1st of the following calendar year.

12 (2) The department shall establish rules for plan content. Plans
13 must include but are not limited to:

14 (a) All necessary information to inform the department about the
15 plan operator and participating producers and their brands;

16 (b) The management and organization of the product stewardship
17 program that will oversee the collection, transportation, and
18 processing services;

19 (c) The identity of collection, transportation, and processing
20 service providers, including a description of the consideration given
21 to existing residential curbside collection infrastructure and mail-
22 back systems as an appropriate collection mechanism;

23 (d) How the product stewardship program will seek to use
24 businesses within the state, including transportation services,
25 retailers, collection sites and services, existing curbside
26 collection services, existing mail-back services, and processing
27 facilities;

28 (e) A description of how the public will be informed about the
29 product stewardship program, including how consumers will be provided
30 with information describing collection opportunities for unwanted
31 mercury-containing lights from covered entities and safe handling of
32 mercury-containing lights, waste prevention, and recycling. The
33 description must also include information to make consumers aware
34 that an environmental handling charge has been added to the purchase
35 price of mercury-containing lights sold at retail to fund the
36 mercury-containing light stewardship programs in the state. The
37 environmental handling charge may not be described as a department
38 recycling fee or charge at the point of retail sale;

1 (f) A description of the financing system required under RCW
2 70.275.050;

3 (g) How mercury and other hazardous substances will be handled
4 for collection through final disposition;

5 (h) A public review and comment process; and

6 (i) Any other information deemed necessary by the department to
7 ensure an effective mercury light product stewardship program that is
8 in compliance with all applicable laws and rules.

9 (3) All plans submitted to the department must be made available
10 for public review on the department's web site and at the
11 department's headquarters.

12 (4) At least two years from the start of the product stewardship
13 program and once every four years thereafter, each stewardship
14 organization operating a product stewardship program must update its
15 product stewardship plan and submit the updated plan to the
16 department for review and approval according to rules adopted by the
17 department.

18 (5) By June 1, 2016, and each June 1st thereafter, each
19 stewardship organization must submit an annual report to the
20 department describing the results of implementing the stewardship
21 organization's plan for the prior calendar year, including an
22 independent financial audit once every two years. The department may
23 adopt rules for reporting requirements. Financial information
24 included in the annual report must include but is not limited to:

25 (a) The amount of the environmental handling charge assessed on
26 mercury-containing lights and the revenue generated;

27 (b) Identification of confidential information pursuant to RCW
28 43.21A.160 submitted in the annual report; and

29 (c) The cost of the mercury-containing lights product stewardship
30 program, including line item costs for:

31 (i) Program operations;

32 (ii) Communications, including media, printing and fulfillment,
33 public relations, and other education and outreach projects;

34 (iii) Administration, including administrative personnel costs,
35 travel, compliance and auditing, legal services, banking services,
36 insurance, and other administrative services and supplies, and
37 stewardship organization corporate expenses; and

38 (iv) Amount of unallocated reserve funds.

39 (6) Beginning in 2023 every stewardship organization must include
40 in its annual report an analysis of the percent of total sales of

1 lights sold at retail to covered entities in Washington that mercury-
2 containing lights constitute, the estimated number of mercury-
3 containing lights in use by covered entities in the state, and the
4 projected number of unwanted mercury-containing lights to be recycled
5 in future years.

6 (7) All plans and reports submitted to the department must be
7 made available for public review, excluding sections determined to be
8 confidential pursuant to RCW 43.21A.160, on the department's web site
9 and at the department's headquarters.

10 **Sec. 3.** RCW 70.275.130 and 2010 c 130 s 13 are each amended to
11 read as follows:

12 The product stewardship programs account is created in the
13 custody of the state treasurer. All funds received from producers
14 under this chapter and penalties collected under this chapter must be
15 deposited in the account. Expenditures from the account may be used
16 only for administering this chapter. The department may not retain
17 fees in excess of the estimated amount necessary to cover the
18 agency's administrative costs over the coming year related to the
19 mercury light stewardship program under this chapter. Beginning with
20 the state fiscal year 2018, by October 1st after the closing of each
21 state fiscal year, the department shall refund any fees collected in
22 excess of its estimated administrative costs to any approved
23 stewardship organization under this chapter. Only the director of the
24 department or the director's designee may authorize expenditures from
25 the account. The account is subject to the allotment procedures under
26 chapter 43.88 RCW, but an appropriation is not required for
27 expenditures.

28 **Sec. 4.** RCW 43.131.422 and 2014 c 119 s 8 are each amended to
29 read as follows:

30 The following acts or parts of acts, as now existing or hereafter
31 amended, are each repealed, effective July 1, 2026:

32 (1) RCW 70.275.010 (Findings—Purpose) and 2010 c 130 s 1;

33 (2) RCW 70.275.020 (Definitions) and 2014 c 119 s 2 & 2010 c 130
34 s 2;

35 (3) RCW 70.275.030 (Product stewardship program) and 2014 c 119 s
36 3 & 2010 c 130 s 3;

37 (4) RCW 70.275.040 (Submission of proposed product stewardship
38 plans—Department to establish rules—Public review—Plan update—

1 Annual report) and 2017 c . . . s 2 (section 2 of this act), 2014 c
2 119 s 4, & 2010 c 130 s 4;

3 (5) RCW 70.275.050 (Financing the mercury-containing light
4 recycling program) and 2017 c . . . s 1 (section 1 of this act), 2014
5 c 119 s 5, & 2010 c 130 s 5;

6 (6) RCW 70.275.060 (Collection and management of mercury) and
7 2010 c 130 s 6;

8 (7) RCW 70.275.070 (Collectors of unwanted mercury-containing
9 lights—Duties) and 2010 c 130 s 7;

10 (8) RCW 70.275.090 (Producers must participate in an approved
11 product stewardship program) and 2010 c 130 s 9;

12 (9) RCW 70.275.100 (Written warning—Penalty—Appeal) and 2010 c
13 130 s 10;

14 (10) RCW 70.275.110 (Department's web site to list producers
15 participating in product stewardship plan—Required participation in a
16 product stewardship plan—Written warning—Penalty—Rules—Exemptions)
17 and 2010 c 130 s 11;

18 (11) RCW 70.275.130 (Product stewardship programs account) and
19 2017 c . . . s 3 (section 3 of this act) & 2010 c 130 s 13;

20 (12) RCW 70.275.140 (Adoption of rules—Report to the legislature
21 —Invitation to entities to comment on issues—Estimate of statewide
22 recycling rate for mercury-containing lights—Mercury vapor barrier
23 packaging) and 2010 c 130 s 14;

24 (13) RCW 70.275.150 (Application of chapter to the Washington
25 utilities and transportation commission) and 2010 c 130 s 15;

26 (14) RCW 70.275.160 (Application of chapter to entities regulated
27 under chapter 70.105 RCW) and 2010 c 130 s 16;

28 (15) RCW 70.275.900 (Chapter liberally construed) and 2010 c 130
29 s 17;

30 (16) RCW 70.275.901 (Severability—2010 c 130) and 2010 c 130 s
31 21; and

32 (17) RCW 70.275.170 and 2014 c 119 s 6."

33 Correct the title.

EFFECT: Increases the annual administrative fee paid to the department of ecology by the mercury-containing lights stewardship organization from \$2,500 per light producer to \$3,000 per light producer. Increases the frequency with which the stewardship organization must undergo an independent financial audit to once every two years. Specifies that the department of ecology must refund any excess administrative fees to the stewardship organization within

the first three months after each fiscal year ends, beginning after fiscal year 2018.

--- END ---