

# HOUSE BILL REPORT

## SHB 1738

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### As Passed Legislature

**Title:** An act relating to continuing to protect water quality by aligning state brake friction material restrictions with the requirements of a similar nationwide agreement.

**Brief Description:** Continuing to protect water quality by aligning state brake friction material restrictions with the requirements of a similar nationwide agreement.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Doglio, Jenkin and Tarleton).

#### Brief History:

##### Committee Activity:

Environment: 1/31/17, 2/7/17 [DPS].

##### Floor Activity:

Passed House: 2/16/17, 57-40.

Passed Senate: 4/12/17, 47-2.

Passed Legislature.

#### Brief Summary of Substitute Bill

- Specifies that restrictions limiting the use of brake friction material containing more than 0.5 percent copper take effect beginning January 1, 2025.
- Eliminates the requirement that the Department of Ecology adopt rules implementing restrictions of copper in brake friction material.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Buys, Fey, Kagi and McBride.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Dye.

**Staff:** Alex Arkfeld (786-7290) and Jacob Lipson (786-7196).

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*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.*

## **Background:**

Motor vehicle brake pads use friction to stop the vehicle's movement. Brake pads contain various friction materials, which may include material that affects the environment such as copper and asbestos. During the normal operation of vehicle brakes, the brake pads deposit small amounts of brake pad materials on the road. Surface water runoff can then carry the deposited materials to rivers and marine environments. According to the Department of Ecology (ECY), copper is toxic to aquatic organisms and is of particular concern to the health of Washington's salmon.

### *Washington's Better Brakes Law.*

Washington's Better Brakes Law requires the ECY to regulate brake friction material. This law requires the ECY to restrict the use in brake pads of asbestos, cadmium, hexavalent chromium, mercury, and lead. Beginning January 1, 2021, the ECY must limit brake friction material to 5 percent copper. Manufacturers, wholesalers, and distributors are given 10 years from the first day of regulation to sell remaining inventory, and existing equipment service contracts are exempt from sales restrictions.

Brake friction material manufactured or packaged after January 1, 2015, must include marked proof certifying that the brake meets state law requirements restricting the use of certain materials in brake pads. Beginning January 1, 2021, motor vehicle manufacturers must ensure that the brake friction material in new vehicles complies with state law requirements.

The ECY is responsible for enforcing the Better Brakes Law and may issue penalties for violations. Prior to imposing a penalty, the ECY must issue a warning letter and offer other assistance to achieve compliance. Most violators are subject to a fine of up to \$10,000 per violation. A manufacturer of brake friction material that knowingly violates brake friction material restrictions must recall the material and reimburse costs to the purchaser. A violation by a motor vehicle manufacturer requires the manufacturer to notify the registered owner of the vehicle and replace the noncompliant brake friction material at no cost to the vehicle owner. Failure by motor vehicle manufacturers to comply with this notice and replacement requirement may result in a fine of up to \$100,000.

The following motor vehicles are exempt from the Better Brakes Law:

- motorcycles;
- collector vehicles;
- military combat vehicles;
- race cars, dual-sport vehicles, or track day vehicles; and
- vehicles with brake systems that emit no debris or fluid under normal circumstances.

Additionally, certain manufacturers of motor vehicles and brake friction material may apply to the ECY for an exemption by demonstrating that compliance with the required standard is not feasible, compromises safety standards, or causes a significant financial hardship.

The ECY may adopt rules necessary to implement the Better Brakes Law.

### *Recent Developments in Washington.*

The Better Brakes Law directed the ECY, with help from a Brake Friction Advisory Committee (Committee), to determine the availability of alternative, less-harmful brake friction material, specifically material containing no more than 0.5 percent copper. The Committee, which the ECY was required to convene, included the following:

- an ECY representative;
- a Washington State Patrol representative;
- a brake friction material manufacturer;
- a motor vehicle manufacturer;
- a National Highway Traffic Safety Administration representative; and
- a representative from a nongovernmental organization concerned with the environment.

If the Committee and the ECY determined that alternative brake friction material was available, it was required to publish its findings in the Washington State Register and adopt rules, to take effect eight years after publication, requiring brake friction material to contain no more than 0.5 percent copper.

The ECY, based on the Committee's recommendations, recently found that alternative brake friction material is available. On January 9, 2017, the ECY published its findings in the Washington State Register. Therefore, the ECY must restrict the sale of brake friction material containing more than 0.5 percent copper beginning January 9, 2025.

#### *National Developments.*

In 2015 the United States Environmental Protection Agency, the Environmental Council of the States, and several stakeholder organizations, including brake manufacturers, signed a memorandum of understanding to phase out copper and other specified materials in brake pads. The understanding is voluntary and is not intended to be legally binding or create any contractual obligations. The parties agreed to limit the amount of copper in brake friction material to no more than 0.5 percent by January 1, 2025.

#### **Summary of Substitute Bill:**

The date in state law on which copper in brake friction material must be limited to no more than 0.5 percent is harmonized with the phase-out timeline set in the national memorandum of understanding. Beginning on January 1, 2025, brake pad manufacturers, wholesalers, retailers, and distributors must limit copper in brake friction material to 0.5 percent or less. Manufacturers, wholesalers, and distributors are given 10 years to sell their then-remaining brake-pad inventory, and equipment service contracts for vehicles manufactured before 2025 are exempt from the restrictions.

The requirement, but not the authority, for the Department of Ecology (ECY) to adopt rules to implement the 2025 restrictions on copper in brake pads is eliminated. The ECY may not adopt rules that exceed the terms explicitly established by the Better Brakes Law.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Brake friction materials often contain copper. Even small amounts of copper impede the ability of salmon to avoid predators and find spawning streams. A committee recently found that alternative, copper-free brake friction materials are available and recommended that the state move forward with a copper phase out by 2025. Manufacturers of brake friction materials have put significant resources into developing new materials, and the average concentration of copper in brakes sold in Washington has decreased from 7 percent to 3.5 percent. While positive strides have been made, this bill helps facilitate the phase out. It makes a modest, noncontroversial change that provides certainty and clarity by aligning state law with the national memorandum of understanding while relieving the Department of Ecology of a rulemaking obligation.

(Opposed) None.

(Other) The better brakes law is the product of a carefully crafted compromise. This bill avoids rulemaking by instituting the change through statute. The Legislature should not change the bill as it moves through the legislative process. The exemption for equipment service contracts will allow consumers to purchase the identical part that was originally sold with their vehicle, regardless of copper content. However, the goal of getting an identical part does not justify an open-ended exemption that allows countless vehicles manufactured before 2025 to continue to deposit copper into rivers and into other marine environments killing inhabitants for decades.

**Persons Testifying:** (In support) Representative Doglio, prime sponsor; and Holly Davies, Department of Ecology.

(Other) Bruce Wishart, Puget Soundkeeper; and Elyette Weinstein, League of Women Voters.

**Persons Signed In To Testify But Not Testifying:** None.