HOUSE BILL REPORT
HB 1185

As Reported by House Committee On:
Environment & Energy

Title: An act relating to reducing environmental impacts associated with lighting products.

Brief Description: Reducing environmental impacts associated with lighting products.

Sponsors: Representatives Hackney, Duerr, Berry, Ramel, Fitzgibbon, Doglio and Pollet.

Brief History:

Committee Activity:

Environment & Energy: 1/23/23, 2/16/23 [DPS].

Brief Summary of Substitute Bill

- Phases out the sale of most mercury-containing lights beginning January 1, 2026.
- Extends the existing product stewardship program for mercury-containing lights beyond its scheduled 2025 sunset and expands the program to include all types of lights beginning in 2026, including lights that do not contain mercury and lights that do not primarily serve an illumination function.
- Eliminates the environmental handling fee that currently applies to the sale at retail of mercury-containing lights, which is used to fund the current stewardship program, and instead requires that producers of lights covered by the stewardship program finance the operations of the program.
- Makes other changes to the logistical and implementation requirements for light stewardship programs.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Doglio, Chair; Mena, Vice Chair; Berry, Duerr, Lekanoff, Ramel, Slatter and Street.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Couture and Goehner.

Minority Report: Without recommendation. Signed by 2 members: Representatives Barnard and Fey.

Staff: Jacob Lipson (786-7196).

Background:

Mercury-Containing Lights Stewardship Program.
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 used for illumination purposes, including compact fluorescent lights.

Mercury-containing light producers who do not participate in a stewardship plan approved by the Department of Ecology (Ecology) are prohibited from selling mercury-containing lights in the State of Washington. Ecology is responsible for reviewing and approving plans for the stewardship program submitted by a stewardship organization on behalf of producers and for ensuring the program's compliance with the submitted plan. The LightRecycle Washington program has been operating since January 1, 2015.

To finance the operations of the stewardship program, 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.

The handling charge applied to sales of mercury-containing lights participating in the LightRecycle Washington program is currently 95 cents per bulb. The stewardship organization must pay Ecology an administrative fee of $3,000 per producer to cover Ecology's administrative and enforcement costs associated with the stewardship program.

Stewardship programs must, at minimum, provide no cost services in all cities with a population of 10,000 or more and in all counties of the state.

Persons, facilities, and office buildings are required to recycle their end-of-life mercury-containing lights. Mercury-containing lights may not be knowingly placed in waste containers for disposal or mixed recycling containers. These requirements are not subject to penalties.

After July 1, 2025, the stewardship law and program will undergo a sunset review by the Joint Legislative Audit and Review Committee. 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.

Other Restrictions on Mercury.
Certain types of mercury-containing lights must be labeled with an internationally recognized mercury symbol and information to purchasers that mercury is present in the item. Federally regulated medical equipment and reagents used in medical or research tests are not subject to these restrictions. Violations of these requirements are subject to a civil penalty of up to $1,000, or $5,000 for repeat violations.

Pollution Control Hearings Board.
The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Summary of Substitute Bill:

Restrictions on Mercury-Containing Lights.
Beginning January 1, 2026, manufacturers, wholesalers, and retailers may not knowingly sell at retail compact fluorescent lamps and linear fluorescent lamps that contain mercury. Exempt from these restrictions on mercury-containing lights are:

- certain mercury-containing lights with a high proportion of ultraviolet light emission, such as sunlamp products, and lamps used to capture and project images;
- medical equipment and reagents used in medical or research tests that are exempt from existing mercury-light labeling requirements; and
- casual and isolated sales of mercury-containing lights.

Violations of these requirements are punishable by a civil penalty of up to $1,000, or $5,000 for repeat violations. The Department of Ecology (Ecology) may adopt rules to implement and enforce these restrictions. Penalties are appealable to the Pollution Control Hearings Board (PCHB).

Changes to the Scope of the Light Stewardship Program.
The 2025 sunset of the mercury-containing lights stewardship program is repealed. The

stewardship program for mercury-containing lights is expanded to include:

- lights that provide functional illumination in homes, businesses, and outdoor stationary fixtures regardless of whether or not the light contains mercury; and
- the mercury-containing lights that are exempt from the restrictions on sales of mercury-containing lights.

Producers of lights not currently covered by the existing mercury-containing lights stewardship program must participate in a light stewardship program under a plan approved by Ecology beginning January 1, 2026. The stewardship organization implementing an approved mercury-containing light plan must continue implementing that plan until December 31, 2025. The stewardship program must continue to collect and manage mercury-containing lights after the January 1, 2026, effective date of restrictions on retail sales of mercury-containing lights. The stewardship program must begin collecting and managing lights other than mercury-containing lights by January 1, 2026.

Stewardship organizations that plan to implement a stewardship plan for 2026 must submit a new or updated plan to Ecology by June 1, 2025, addressing the inclusion of lights other than mercury-containing lights and other required changes to the program.

Light Stewardship Program Financing.
The environmental handling fee used to fund the operations of the mercury-containing lights stewardship program is eliminated and replaced with a requirement that producers of mercury-containing lights fund the implementation of the stewardship program. The funding system must involve the collection of charges from participating producers in an environmentally sound and socially just manner that encourages the use of design attributes that reduce the environmental impacts of lights. The new method of financing the activities of the stewardship organization must be implemented by January 1, 2026. Stewardship organizations are responsible for all costs of participating in covered light collection, transportation, processing, education, agency reimbursement, recycling, and end-of-life management.

Stewardship organizations must reimburse Ecology for demonstrable costs incurred from serving as a collection location. Stewardship organizations must include template service agreements developed with local government input in program plans.

Collection Sites and Other Implementation Requirements.
The minimum number of collection sites operated by the stewardship program is amended to eliminate the requirement that no cost services be provided in all cities with population greater than 10,000 and all counties, and replaced with a requirement that the stewardship program:

- provide statewide collection of unwanted lights in urban and rural areas, including island communities and geographically isolated areas;
- use geographic modeling to ensure that permanent collection sites are established to serve at least 90 percent of Washington residents within a 15 mile radius of a

collection site, and at least one additional permanent site per 30,000 residents of an urban area, unless Ecology approves an alternative proposal; and
- provide a reasonable opportunity for residents to use collection events in areas not within a 15 mile radius of a permanent collection site.

Light stewardship organizations must undertake additional responsibilities with respect to providing public information about the stewardship program, including:
- the placement of public service announcements and graphic advertisements on social media;
- the development of promotional materials about the program and the restrictions on the disposal of mercury-containing lights;
- the distribution of a collection site safety training procedural manual;
- the development and implementation of culturally, conceptually, and linguistically accurate education and outreach materials for the communities served and the state's diverse ethnic populations; and
- the implementation of a periodic public awareness survey.

As part of stewardship plans submitted to Ecology, light stewardship organizations must newly:
- develop mercury spill and release response plans and worker safety plans as part of their plan for handling mercury and other hazardous substances in the collection and disposition of materials;
- describe how materials other than mercury will be prioritized for recycling;
- submit performance goals that measure the annual achievements of the program, including the rate of light collection, the recycling rate of lights, level of convenience and access to residents, and public awareness; and
- submit a contingency plan for how the activities in the plan will continue to be carried out by another entity such as an escrow company in the event that the stewardship organization ceases to implement the plan for specified reasons.

Beginning January 1, 2026, lights must be recycled but may not be disposed of in a solid waste container or mixed recycling container, in the same manner that applies to mercury-containing lights.

<u>Administration and Enforcement of Program Requirements</u>.
The $3,000 per-producer limit on administrative costs paid to Ecology to oversee their implementation costs is eliminated beginning March 1, 2024.

Ecology must review new, updated, and revised plans following a specified process and within 120 days of receipt. After an initial plan submission and rejection by Ecology, if a stewardship organization's second submitted plan does not meet Ecology approval, Ecology may issue penalties or orders or amend the contents of the insufficient plan and require the stewardship organization to implement the plan as amended by Ecology.

Ecology may impose a civil penalty on persons that violate stewardship program requirements, including the failure to achieve performance goals, with penalties increased from up to $1,000 per violation per day to up to $10,000 per person per day for repeated violations. Prior to imposing penalties, Ecology must provide a written warning informing a person of a violation. Ecology may issue corrective action orders requiring compliance, revoke the stewardship organization's authority to implement the program, require a stewardship organization to report additional information, or require the stewardship organization to revise and resubmit its plan. Penalties and orders are appealable to the PCHB.

In 2028 and 2034 Ecology must provide the Legislature with an update on the implementation of the light stewardship program. Ecology must annually estimate the overall statewide recycling rate for lights covered by the stewardship program beginning in 2026. Ecology may require a stewardship organization to submit data as needed for these estimations.

Existing requirements for Ecology to solicit input from specified stakeholders on the impacts of the light stewardship program are eliminated. Ecology is no longer required to solicit information on the availability of alternatives to mercury-containing lights from specified stakeholders.

A severability clause is included.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill:
- defines the types of compact fluorescent lamps and linear fluorescent lamps containing mercury that are subject to sale restrictions beginning in 2026;
- clarifies that a stewardship organization operating an approved mercury light collection program may continue to implement that program as approved until December 31, 2025;
- clarifies that new requirements applicable to the financing and implementation of the stewardship program and the expansion of the program to address lights in addition to mercury-containing lights take effect with a plan that must be implemented by January 1, 2026;
- amends the convenience standard that the light stewardship program must achieve in the distribution of collection sites to reference a newly adopted United States Census Bureau definition of urban area, rather than referencing urban clusters and urbanized areas; and
- prohibits the disposal of lights in most solid waste and recycling containers in the same manner as applies to mercury-containing lights.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2023.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) This bill phases out the sale of lightbulbs that contain mercury by 2026 because the industry is moving towards more efficient light emitting diode (LED) light products that do not require mercury and which are drop-in replacements for mercury-containing lights. Other states have banned sales of mercury-containing lights. Lightbulbs have costs of recycling that should be borne by manufacturers, not consumers. Lightbulbs should not go into the recycling bin because they can break and contaminate other items. Mercury is a powerful toxin whose improper disposal negatively impacts human health and the environment. If the existing mercury light stewardship program is allowed to sunset, it will result in increased costs to local governments to managed unwanted lightbulbs.

(Opposed) Producer responsibility programs should have the costs embedded in the price, rather than as environmental handling fees. A light recycling program should be subject to a single national standard, since state-by-state compliance is challenging for retailers. The mercury lights program is currently scheduled for a sunset review and accompanying report by the Joint Legislative Audit and Review Committee, which should be allowed to be carried out. No other states have established extended producer responsibility requirements for LED lamps.

(Other) The Department of Ecology supports the policy goals, but the fiscal impacts are not in the Governor's budget. The new program would expand the light stewardship program to include all types of lights, and would be the first of its kind in the nation. Producer responsibility programs can reduce taxpayer burdens and this bill would eliminate the consumer fee charged at the time of sales of mercury-containing lights.

Persons Testifying: (In support) Representative David Hackney, prime sponsor; Brian Fadie, Appliance Standards Awareness Project; Heather Trim, Zero Waste Washington; Pam Clough, Environment Washington; Ashley Evans, King County Hazardous Waste Management Program; Logan Harvey, Recology; Amy Wheeless, Northwest Energy Coalition; Joseph Vukovich, Natural Resources Defense Council; and Ann Murphy, League of Women Voters of Washington.

(Opposed) Mark Johnson, Washington Retail Association; Charlie Brown, National Electrical Manufacturers Association; and Peter Godlewski, Association of Washington Business.

(Other) Laurie Davies, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.