

HOUSE BILL REPORT

E2SHB 1185

As Passed House:
February 10, 2024

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

Brief Description: Reducing environmental impacts associated with lighting products.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Hackney, Duerr, Berry, Ramel, Fitzgibbon, Doglio and Pollet).

Brief History:

Committee Activity:

Environment & Energy: 1/23/23, 2/16/23 [DPS], 1/18/24, 1/29/24 [DP2S].

Floor Activity:

Passed House: 2/10/24, 52-45.

Brief Summary of Engrossed Second Substitute Bill

- Phases out the sale of most mercury-containing lights beginning January 1, 2029.
- Extends the existing product stewardship program for mercury-containing lights beyond its scheduled 2025 sunset until 2039 or an earlier date determined based on a benefit-cost analysis performed by the Department of Ecology.
- Limits the environmental handling charge applied to sales of mercury-containing lights at 2024 levels until the 2029 prohibition on sales of mercury-containing lights takes effect, and requires legacy producers to fund the extended post-2029 program based on the market share of mercury-containing lights that were sold into Washington by each producer from 2015 through 2028.
- Makes other changes to the logistical and implementation requirements for mercury-containing light stewardship programs, including changes to

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convenience standards and the number of mercury-containing lights that a person may deliver to collection sites each day.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 9 members: Representatives Doglio, Chair; Mena, Vice Chair; Berry, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

Minority Report: Do not pass. Signed by 2 members: Representatives Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 4 members: Representatives Abbarno, Barnard, Goehner and Sandlin.

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 environmental handling charge added to the purchase price of mercury-containing lights is exempt from state Business and Occupation taxes. 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 Engrossed Second Substitute Bill:

Restrictions on Mercury-Containing Lights.

Beginning January 1, 2029, 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 Funding and Timelines of the Mercury-Containing Light Stewardship Program.

The 2025 sunset of the mercury-containing lights stewardship program is repealed. The requirement that producers of mercury-containing lights fund and implement a stewardship plan ceases to apply January 1, 2039, or upon a determination by Ecology that, under a cost-benefit analysis, the continued expense and environmental cost of implementing the program exceed the benefits. Ecology must complete cost-benefit analyses of the program in calendar years 2032 and 2036, unless Ecology and a stewardship organization agree to an alternative early program cessation date.

Through calendar year 2028, the existing environmental handling charge approved by Ecology may be used to finance current administrative and operational costs of the program. The environmental handling charge in place as of January 1, 2024, may not be increased by the stewardship organization. Additional stewardship organization costs through calendar year 2028 that are not adequately covered by the environmental handling charge must be funded by participant members of the stewardship organization. For program costs from planning and implementation of program requirements that must be implemented in calendar year 2029, stewardship organizations must pay all administrative and operational costs with revenues from participating legacy producers that sold mercury-containing lights in Washington at any point between 2015 and 2029. Program funding by producers must be based on the market share of legacy producers, using reasonable means and based on the best available information. A stewardship organization may require data from legacy producers or use other sources of information in determining legacy producer market share. The lights of legacy producers of mercury-containing lights that do not participate in the stewardship organization may not be sold in or into Washington.

Beginning in 2029 stewardship organizations are responsible for all costs of participating in covered light collection, transportation, processing, education, agency reimbursement, recycling, and end-of-life management.

Charges by stewardship organizations to producers participating in the mercury-containing lights stewardship program, in addition to environmental handling charges received from producers by stewardship organizations, are exempt from state Business and Occupation

taxation.

Plan Submission, Collection Site, and Other Implementation Requirements for the Mercury-Containing Lights Stewardship Program.

The limit on the number of lights that a person may deliver to a collection site is amended to allow, beginning in 2025:

- an unlimited number of compact fluorescent lamps with a screw base;
- 10 pin-based compact or linear fluorescent lamps per day; and
- two high-intensity discharge lamps per day.

Ecology may relieve the stewardship organization of an obligation to operate a collection site or provide a collection opportunity when the stewardship organization demonstrates that it would result in the collection of a de minimis number of mercury-containing lights.

Mercury-containing 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.

Stewardship organizations must submit plans to Ecology for approval by January 1, of the year prior to updated plan implementation. Plans must include a list of all current and proposed collection sites, including the latitude and longitude of each collection site. Plans must be updated at least every five years.

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;
- submit performance goals that measure program achievements; 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.

Administration and Enforcement of Program Requirements.

The \$3,000 per-producer limit on administrative costs paid to Ecology to oversee their implementation costs is eliminated beginning March 1, 2025.

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 2029 and 2035 Ecology must provide the Legislature with an update on the implementation of the mercury-containing light stewardship program.

Existing requirements for Ecology to solicit input from specified stakeholders on the impacts of the mercury-containing 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.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 10, 2024.

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) Fluorescent bulbs containing mercury are hazardous to human health and are a

unique and expensive challenge for recycling systems to address. Mercury is a toxin, and can be harmful when bulbs break and mercury is accidentally inhaled. Extending the existing stewardship program will make it easy and cost-effective for residents in Washington to continue to recycle their bulbs. The stewardship program must include full cost recovery for local governments that operate collection sites, and if the current program lapses it will cause financial hardships for local governments. There are ongoing negotiations among stakeholders regarding how long the mercury-containing light stewardship program should continue to be operated into the future. There should be a logical wind down of the stewardship program after mercury-containing lights are banned, including the need for fewer collection sites as mercury-containing light bulb use becomes less frequent. LED replacements for lights are widely available, cost-effective, and energy-saving. Replacing mercury-containing lights with LEDs can produce substantial energy cost savings.

(Opposed) Implementing stewardship programs on a state-by-state basis creates operational complexities for retailers. A national solution would be preferable.

(Other) The United States Department of Energy is likely to establish an energy efficiency standard that will result in the phaseout of most types of compact fluorescent lights. There will be costs to building owners associated with the change from some mercury-containing fluorescent tube lamps to LED tubes. The cost and longevity of obligations on producers in the current proposed substitute is untenable, but productive negotiations with proponents might lead to a path forward. The policy proposed in the bill is supported by the Department of Ecology, but there are costs to the agency that are not funded in the Governor's budget. An exemption from the sales prohibition should be made for mercury-containing lights used in older vehicles, and for which suitable replacements are not available.

Persons Testifying: (In support) Representative David Hackney, prime sponsor; Alessandra De la Torre, Northwest Energy Coalition; Brian Fadie, Appliance Standards Awareness Project; Pam Clough, Environment Washington; Heather Trim, Zero Waste Washington; Rick Gilbert, Kitsap County Solid Waste Division; Carl Schroeder, Association of Washington Cities; Maggie Yuse, Seattle Public Utilities; Preston Peck, City of Tacoma; and Joanna Grist, Hazardous Waste Management Program of Seattle King County.

(Opposed) Crystal Leatherman, Washington Retail Association.

(Other) Peter Lyon, Department of Ecology; Charlie Brown, National Electrical Manufacturers Association; Curt Augustine, Alliance for Automotive Innovation; and Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.