

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 473 (Delegate Hubbard, *et al.*)
 Environmental Matters

Environment - Products that Contain Mercury - Labeling

This bill establishes prohibitions relating to the sale and disposal of “mercury-added products.” The Maryland Department of the Environment (MDE) must adopt regulations to implement the bill by October 1, 2003.

Fiscal Summary

State Effect: General fund expenditure increase of at least \$38,200 in FY 2003 for MDE to begin implementing the labeling regulation program. Future year estimates are annualized and adjusted for inflation. No effect on revenues.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	38,200	72,900	75,400	78,000	80,800
Net Effect	(\$38,200)	(\$72,900)	(\$75,400)	(\$78,000)	(\$80,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in local expenditures beginning in FY 2004 to purchase mercury-added products or mercury-free alternatives and to ensure that mercury-added products are not disposed of in refuse disposal systems.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Mercury-added product means a product or a product with a component that contains elemental mercury or a mercury compound added to the product for any

reason. Mercury-added products include dyes or pigments, electric switches, fluorescent lamps, and thermostats.

On or after April 1, 2004, unless a mercury-added product is labeled in accordance with the bill and regulations adopted by MDE, a manufacturer or wholesaler may not sell the product at retail in the State, to a retailer in the State, or for use in the State. Unless properly labeled, a retailer also may not knowingly sell a mercury-added product in the State. The manufacturer of a mercury-added product is responsible for affixing the label required under the bill. The label of a mercury-added product must clearly inform the purchaser or consumer that:

- mercury is present in the product; and
- the product may not be disposed of or placed in a waste stream destined for disposal until the mercury is removed and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater.

In the regulations adopted pursuant to the bill, MDE must include standards for the size, location, and typeface of the label.

Beginning October 1, 2004, a person may not dispose of a mercury-added product in a refuse disposal system located in the State except under specified conditions. The prohibition would not apply if the mercury has been removed from the product and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater.

Current Law: Chapter 639 of 2001 prohibits a marketer, with specified exceptions, from selling or providing a fever thermometer containing mercury to a consumer except by prescription beginning October 1, 2002. Beginning October 1, 2003, no primary or secondary school, with specified exceptions, may use elemental or chemical mercury in a primary or secondary classroom. MDE is required to provide outreach assistance to schools and to implement a public education, outreach, and assistance program relating to mercury in the environment. Beginning October 1, 2003, all State agencies must give “preference” to products and equipment that are mercury free or contain the least amount of mercury necessary to meet performance standards.

A person may not sell, distribute, or offer for sale in Maryland a mercuric oxide battery unless: (1) the person is a party to a plan approved by MDE; or (2) a retailer or seller has provided for the collection, recycling, or proper disposal of used mercuric oxide batteries through the sale to a refiner or a refiner’s agent and the retailer or seller has complied with specified requirements. A person may not dispose of a mercuric oxide battery except in a manner that MDE approves under regulations.

In general, a manufacturer or distributor cannot sell or offer for promotional purposes, any package or packaging component to which mercury was intentionally added.

Background: Mercury is a naturally occurring element that is found in air, water, and soil. In small quantities, it can conduct electricity, measure temperature and pressure, and act as a catalyst in industrial processes. However, it does not degrade and is not destroyed by combustion; rather, it is a persistent and toxic pollutant that bioaccumulates in the environment. Accordingly, mercury can reach dangerous levels in fish, even when released in small quantities. Consumption of mercury-contaminated fish poses a significant health threat. According to the U.S. Environmental Protection Agency (EPA), as of July 2000, 40 states and 1 territory had issued fish consumption advisories due to mercury contamination.

Some of the mercury in the environment comes from natural sources such as marine and aquatic environments as well as volcanic and geothermal activity. However, recent studies suggest that anthropogenic sources, such as atmospheric deposition, the combustion of municipal and other solid waste, incineration, manufacturing processes, and accidental spills account for the majority of mercury releases into the environment.

Federal and state agencies across the nation are exploring efforts to curtail the use of mercury in order to focus on prevention opportunities. According to MDE, several states in the northeast region are in the process of enacting or have enacted legislation to restrict or limit certain products containing mercury or mercury compounds. Several states are members of the Northeast Waste Management Officials' Association (NEWMOA), a nonprofit, nonpartisan interstate association established to coordinate interstate hazardous and solid waste, activities, coordinate pollution prevention activities, and support state waste programs.

MDE's regulatory programs govern the management and disposal of wastes containing heavy metals such as mercury as both hazardous waste and non-hazardous solid waste. Other MDE permit programs restrict or limit the release of mercury into the environment through water and atmospheric discharges. Chapter 639 of 2001 expanded MDE's efforts relating to mercury by requiring that MDE provide outreach assistance to schools and implement a public education, outreach, and assistance program relating to mercury in the environment.

State Expenditures: General fund expenditures could increase by an estimated \$38,200 in fiscal 2003, which reflects a January 1, 2003 implementation date. This estimate reflects the cost of hiring one natural resource planner to develop the label regulations and provide public outreach and training to affected entities. It includes a salary, fringe

benefits, one-time start-up costs, and ongoing operating expenses, including public outreach and education activities within all counties and Baltimore City.

Salary and Fringe Benefits	\$22,800
Public Outreach and Education	12,000
Equipment and Operating Expenses	<u>3,400</u>
Total FY 2003 State Expenditures	\$38,200

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses including continued public outreach and education.

Because the number and types of businesses that would be subject to labeling regulation as a result of this bill cannot be determined at this time, Legislative Services advises that total costs for MDE related to public outreach and education could be higher than the estimated amount. In addition, MDE advises that in order to effectively implement the regulatory program established by the bill, it may be necessary to join NEWMOA. According to MDE, the membership fee for NEWMOA is \$10,000 annually.

The State is a user of products affected by the bill. Pursuant to Chapter 639 of 2001, however, beginning October 1, 2003, all State agencies must give preference to products and equipment that are mercury free or contain the least amount of mercury necessary to meet performance standards. Accordingly, it is assumed that any increase in costs for the State to purchase mercury-added products or mercury-free alternatives as a result of the bill would not be significant.

Local Expenditures: Beginning October 1, 2004, a person may not dispose of a mercury-added product in a refuse disposal system located in the State unless the mercury has been removed from the product and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater. As operators of solid waste facilities and wastewater treatment plants, local governments would likely incur increased expenditures to ensure that mercury-added products do not become part of solid waste or wastewater. Although specific costs are unknown, it is likely that local jurisdictions would incur additional costs related to public outreach, education, and enforcement. Because public outreach would need to begin prior to the effective date of the prohibition, local expenditures would likely increase beginning in fiscal 2004.

As a user of products affected by the bill, local governments could incur increased costs beginning in fiscal 2004 to the extent the bill results in an increase in price for mercury-added products or for mercury-free alternatives developed as a result of the bill.

Small Business Effect: By requiring the labeling of mercury-added products beginning April 1, 2004, the bill will result in an increase in costs for manufacturers of mercury-added products. In addition, some manufacturers might respond by developing mercury-free alternatives; in some cases, alternatives could be more expensive than mercury-added products. It is assumed that any increase in costs for manufacturers would be passed on to wholesalers, retailers, and ultimately, consumers of mercury-added products in the form of higher prices. Any small businesses involved with the labeling of mercury-added products could benefit from an increase in the demand for their services.

After October 1, 2004, the bill could also have an impact on small businesses involved with the removal and recycling of mercury from mercury-added products. According to MDE, currently there are no mercury recycling companies in Maryland. If the bill increases the demand for mercury recycling in the State, it is possible that the bill could attract such businesses to the State.

Additional Information

Prior Introductions: HB 75 of 2001, as introduced, would have established prohibitions relating to the sale and disposal of elemental mercury, “mercury-added products,” and “mercury-added novelties.” The bill was amended in the House to limit the prohibition to the sale of fever thermometers and the use of mercury in schools. The bill was signed into law as Chapter 639.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Prince George’s County, U.S. Environmental Protection Agency, Department of Legislative Services

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