

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 136

(Delegate Hubbard, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Products That Contain Mercury - Labeling and Reclamation or Destination

This bill establishes prohibitions and requirements relating to the sale and reclamation or destination of “mercury-added products.” The Maryland Department of the Environment (MDE) must adopt regulations to implement the bill by October 1, 2005. The bill establishes guidelines for MDE to follow in developing those regulations.

Fiscal Summary

State Effect: General fund expenditure increase of an estimated \$61,500 in FY 2005 for MDE to implement the regulatory program. Future year estimates are annualized and adjusted for inflation. Revenues would not be materially affected.

| (in dollars) | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|----------------|------------|------------|------------|------------|------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 61,500 | 80,900 | 84,100 | 87,600 | 91,400 |
| Net Effect | (\$61,500) | (\$80,900) | (\$84,100) | (\$87,600) | (\$91,400) |

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

Local Effect: Potential increase in local expenditures to recycle and dispose of mercury-added fluorescent lamps used by local governments and to purchase mercury-added products or mercury-free alternatives.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Mercury-added product means any of the following products if containing elemental mercury or a mercury compound that has been added to the product for any reason: dyes or pigments, electric switches, fluorescent lamps, and thermostats.

Beginning April 1, 2006, 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 or to a retailer in the State. Unless properly labeled, a retailer may not knowingly sell a new mercury-added product in the State. The manufacturer of a mercury-added product is responsible for affixing the label required under the bill on products manufactured beginning January 1, 2006. The bill establishes specific requirements relating to the label, and provides that a label that conforms to another state's label requirements for mercury-added products satisfies the bill's labeling requirements.

Beginning October 1, 2006, a person who discards at least the minimum weight or number of mercury-added fluorescent lamps in a calendar year (as established in regulation) must arrange for the final reclamation or destination of the lamps at a reclamation facility (recycler) or a destination facility (hazardous waste facility). MDE may delay this requirement under specified conditions.

The bill does not apply to prescription drugs; any substance regulated by the federal Food, Drug, and Cosmetic Act; biological products regulated by the federal Food and Drug Administration under the federal Public Health Service Act; medical equipment not intended for use by nonmedical personnel; or products that contain mercury-added products labeled in accordance with the bill.

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. No primary or secondary school, with specified exceptions, may use elemental or chemical mercury in a classroom. 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 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.

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.

Efforts are also being made to encourage recycling of mercury-containing products. The U.S. Environmental Protection Agency initiated a mercury-containing lamp recycling outreach program in 2002 to promote mercury lamp recycling by commercial and industrial users. The National Electrical Manufacturers Association announced in January 2003 that it was initiating a nationwide program to label lamps that contain mercury in an effort to encourage proper disposal.

A number of states such as Connecticut, Florida, Maine, and Vermont, already have labeling and/or disposal requirements.

MDE's regulatory programs govern the management and disposal of wastes containing heavy metals such as mercury as both hazardous waste and nonhazardous 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 \$61,473 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one natural resource planner to develop regulations, administer the regulatory program, 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 costs for MDE to join NEWMOA so that it can effectively implement the regulatory program established by the bill.

| | |
|---|-----------------|
| Salary and Fringe Benefits | \$35,560 |
| Public Outreach and Education (includes NEWMOA Membership) | 21,000 |
| Equipment and Operating Expenses | 2,663 |
| Travel | <u>2,250</u> |
| Total FY 2005 State Expenditures | \$61,473 |

Future year expenditures are annualized and reflect: (1) the full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The State is a user of products affected by the bill. Pursuant to Chapter 639 of 2001, 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 or to recycle and dispose of mercury-added fluorescent lamps would not be significant.

Local Expenditures: As users of products affected by the bill, local governments could incur increased costs related to the recycling and disposal of mercury-added fluorescent lamps and, 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, for the purchase of those products.

The Department of Legislative Services notes that, while the bill does not impose a requirement on refuse disposal system permit holders to screen for mercury-added fluorescent lamps, MDE and the Northeast Maryland Waste Disposal Authority both advise that it may be difficult to enforce the bill's disposal prohibition without doing so. Accordingly, it is possible that MDE, in its implementing regulations, could place such a requirement on permit holders.

Small Business Effect: By requiring the labeling of mercury-added products beginning April 1, 2006, the bill could result in an increase in costs for manufacturers of such products. Costs will be less to the extent products are already labeled in accordance with another state's labeling requirements. 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.

In addition, the bill could have an impact on small businesses involved with the removal and recycling of mercury from fluorescent lamps. MDE advises that it is aware of at least one mercury recycling company in Maryland. If the bill increases the demand for mercury recycling in the State, it is possible that the bill could attract additional mercury recycling businesses to Maryland. As a user of mercury-added fluorescent lamps, small businesses could incur increased costs related to the recycling and disposal of such lamps to the extent they discard at least the minimum weight or number of such lamps per year.

Additional Information

Prior Introductions: Similar bills were introduced during the 2003 session as HB 62 and during the 2002 session as HB 473. Both bills received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Northeast Maryland Waste Disposal Authority, U.S. Environmental Protection Agency, National Electrical Manufacturers Association, Department of Legislative Services

Fiscal Note History: First Reader - January 26, 2004
ncs/ljm Revised - House Third Reader - March 30, 2004
Revised - Enrolled Bill - May 5, 2004

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