

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 772

(Senator Conway)

Education, Health, and Environmental Affairs

Environmental Matters

Mercury-Added Products - Prohibition of Sale of Thermostats and Report

This bill prohibits a “marketer” from selling or providing a thermostat containing mercury to a consumer. The bill also requires the Maryland Department of the Environment (MDE), by October 1, 2007, to study and report to the Governor and specified committees of the General Assembly regarding the statewide collection, reclamation, and recycling of all products that contain mercury. The bill specifies items that must be included in the report. In preparing the report and recommendations, the Secretary of the Environment must convene and consult with an advisory group of interested stakeholders.

The study and reporting provisions take effect October 1, 2006; the bill’s other provisions take effect October 1, 2007.

Fiscal Summary

State Effect: General fund expenditure increase of \$5,000 annually beginning in FY 2008 to provide outreach to affected entities. This estimate assumes that MDE would not be required to conduct inspections to enforce the bill, as discussed below. Revenues would not be materially affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	5,000	5,000	5,000	5,000
Net Effect	\$0	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)

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

Local Effect: The bill would not materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill modifies the definition of “marketer” to include a person who manufactures, assembles, sells, distributes, affixes a brand name or private label to, or licenses the use of a brand name on a thermostat containing mercury. The bill also modifies the definition of “mercury-added product” to provide that it does not include thermostats.

Current Law: Chapter 494 of 2004 establishes prohibitions and requirements relating to the sale and reclamation or destination of “mercury-added products.” In general, beginning April 1, 2006, unless a mercury-added product is labeled, 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. 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.

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. “Marketer” means a person who manufactures, assembles, sells, distributes, affixes a brand name or private label to, or licenses the use of a brand name on a fever thermometer containing mercury.

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.

A person who violates any provision of Title 6, Subtitle 9 – Mercury, of the Environment Article is guilty of a misdemeanor and on conviction is subject to a fine of up to \$100 for each violation.

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.

Federal and state agencies across the nation are exploring efforts to curtail the use of mercury in order to focus on prevention opportunities. Efforts are also being made to encourage recycling of mercury-containing products.

According to information from the Northeast Waste Management Officials' Association (NEWMOA), there are more than 50 million mercury-switch thermostats in homes across the United States. NEWMOA advises that, for residential heating and cooling, accurate and reliable alternatives to mercury-switch thermostats include electronic thermostats (with digital displays) and snap-switch thermostats (open- or sealed-contact magnetic switch, sealed type also called sealed-in-glass switch, or bi-metal switch). According to NEWMOA, these alternatives are readily available at hardware and home improvement stores. For heating and cooling in large buildings, additional alternatives to the mercury-switch thermostat include reed switch, vapor-filled diaphragm thermostats, and air-controlled heating and cooling.

State Expenditures: MDE advises that costs would increase by at least \$69,268 in fiscal 2008 to hire at least one environmental compliance specialist to develop enforcement actions, conduct inspections, and track activities. MDE's out-year estimates average \$66,258 annually from fiscal 2009 through 2011.

Legislative Services notes that MDE does not have any full-time employees dedicated to the enforcement of the existing mercury law; mercury-related activities are currently handled on a part-time basis by two permanent staff within MDE's Recycling and Operations Program. In addition, Legislative Services observes that the fiscal note for HB 136 of 2004 (Chapter 494) estimated the need for a full-time employee to implement the new regulatory program within MDE. MDE did not receive any additional positions to implement that law, however.

While MDE's existing mercury program may well be understaffed, because this bill merely modifies that program, this bill *alone* should not create the need for additional staff. Assuming MDE would not be required to conduct inspections to enforce the bill's prohibition, therefore, any increase in costs for MDE would be limited to providing outreach to affected entities (estimated at \$5,000 annually beginning in fiscal 2008). If

MDE is expected to conduct inspections or take other enforcement actions, however, the need for additional staff would be justified.

MDE could handle the bill's reporting requirements with existing budgeted resources.

Small Business Effect: The number of Maryland businesses that would be considered "marketers" of thermostats containing mercury is unknown; however, given that the definition of marketer includes, among other things, a person who sells and distributes a thermostat containing mercury, it would likely be significant. Marketers would be prohibited from selling thermostats containing mercury in the State beginning October 1, 2007. (It should be noted that, under current law, beginning April 1, 2006, unless properly labeled, thermostats containing mercury may not be sold in the State.) A reliable estimate of any impact on marketers or other small businesses cannot be made at this time.

Additional Information

Prior Introductions: None.

Cross File: HB 1041 (Delegate Hubbard, *et al.*) – Environmental Matters.

Information Source(s): Maryland Department of the Environment, The Northeast Waste Management Officials' Association, Department of Legislative Services

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