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BILL



ANALYSIS

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Senate Bill 516 (as enrolled)
Sponsor: Senator Loren Bennett
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Conservation, Environment, and Great Lakes

PUBLIC ACT 124 of 1995

Date Completed: 8-29-95

RATIONALE

In recent years there has been an increase in efforts to reduce the amount of household solid waste sent to landfills by separating recyclable and potentially hazardous items from the waste stream. For example, Part 171 of the Natural Resources and Environmental Protection Act prohibits a person other than a retailer, distributor, or manufacturer from disposing of a lead acid battery except by delivering it to a retailer, distributor, or manufacturer, who must deliver it either to the manufacturer who is ultimately responsible for recycling it, or to a collection, recycling, or smelting facility approved by the Department of Natural Resources (DNR). In addition, under provisions that had been scheduled to take effect July 1, 1995, the Act permitted customers either to turn in used batteries when purchasing new ones, or to pay a deposit, which could be redeemed when the purchaser returned a used battery to a DNR-approved collection or recycling facility.

Although batteries were once the largest source of mercury contamination entering municipal solid waste, according to the National Electrical Manufacturers Association (NEMA), the battery industry has reduced its consumption of mercury from 29,700 flasks in 1984 (one flask = 76 pounds) to 464 flasks in 1992. Also, according to the Michigan Retailers Association, a 1990 study by Battery Council International found the national lead acid battery recycling rate to be nearly 98%. These findings, some say, indicate that the deposit program that was provided for under Part 171 would not have affected a recycling rate now approaching 100%, and that the costs for those who make and sell lead acid batteries would have been greater than the benefit gained. Thus, it was suggested that the provisions that established the

deposit program be repealed. A similar program to encourage the exchange of nickel cadmium batteries was scheduled to take effect January 1, 1998, and some people believed it, too, should be repealed.

In addition, according to NEMA, prior to 1993 most household batteries (i.e., "alkaline" batteries) also contained amounts of mercury by weight that were considered too high by Environmental Protection Agency (EPA) standards. Since the late 1980s, battery manufacturers have significantly reduced the amount of mercury they use in making household batteries, from amounts ranging between .8% and 1.2% of a battery's total weight to no more than .025%. To ensure that batteries sold to the public contain no more than trace amounts of mercury, however, some believe that Michigan should adopt prohibitions or restrictions on the sale of alkaline manganese, zinc carbon, and mercuric oxide batteries.

CONTENT

The bill amended Part 171 of the Natural Resources and Environmental Protection Act to prohibit or restrict the sale of certain types of batteries, repeal provisions concerning the exchange of used batteries for unused batteries, and adopt by reference the Federal standards for universal waste management that pertain to batteries.

Specifically, the bill prohibits a person from selling, offering for sale, or offering for promotional purposes a zinc carbon battery or an alkaline manganese battery that is manufactured on or after January 1, 1996, and that contains intentionally introduced mercury. ("Zinc carbon battery" means a dry cell battery containing

manganese dioxide and zinc electrodes and an electrolyte consisting of ammonium chloride or a zinc chloride solution, or both. "Alkaline manganese battery" means a dry cell battery containing manganese dioxide and zinc electrodes and an alkaline electrolyte.) This prohibition does not apply to an alkaline manganese button cell battery that has a mercury content of 25 milligrams or less.

Further, the bill specifies that beginning January 1, 1996, a person is prohibited from selling, offering for sale, or offering for promotional purposes a mercuric oxide button cell battery for use in this State, and may sell, offer for sale, or offer for promotional purposes a mercuric oxide battery only if the manufacturer does all of the following:

- Identifies a collection site that has all of the required government approvals, to which a person can send used mercuric oxide batteries for recycling or proper disposal after mercury is recovered from the batteries.
- Informs each of its purchasers of mercuric oxide batteries of the collection site.
- Informs its purchasers of a telephone number that they may call to get information about returning mercuric oxide batteries for recycling or proper disposal.

The bill requires a manufacturer that participates in a voluntary collection program for nickel cadmium batteries in this State to provide to retailers of nickel cadmium batteries that participate in the voluntary collection program a written notice to be displayed on a voluntary basis informing consumers that nickel cadmium batteries, whether sold separately or in rechargeable products, must be recycled or disposed of properly.

Previously, the Act specified that a person, other than a retailer, distributor, or manufacturer, who improperly disposed of lead acid batteries was guilty of a misdemeanor punishable by a maximum fine of \$25, plus court costs. The bill specifies instead that a person, other than a retailer, distributor, or manufacturer, who knowingly disposes of lead acid batteries or mercuric oxide batteries in violation of the Act is guilty of a misdemeanor punishable by a fine of up to \$25, plus court costs.

The bill also repealed provisions that:

- Beginning July 1, 1995, allowed a person who purchased a lead acid battery from a retailer to exchange a used lead acid battery for the purchased one. If the purchaser did not exchange a used battery for a new one, he or she had to pay the retailer a \$6 deposit refundable upon the subsequent return of a used battery.
- Beginning January 1, 1998, allowed a person who purchased a nickel cadmium or mercury battery to exchange a used nickel cadmium or mercury battery for the purchased one. If the purchaser did not exchange a used battery for a new one, he or she had to pay the retailer a \$2 deposit refundable upon the subsequent return of a used battery.
- After January 1, 1993, required a retailer of lead acid batteries to post a written notice in the retail establishment pertaining to the required deposit for lead acid batteries and the availability of refunds.

The Act defined "lead acid battery" as a storage battery in which the electrodes are grids of lead containing lead oxides that change in composition during charging and discharging, and the electrolyte is dilute sulfuric acid. The bill adds to the definition that the battery is used to start an internal combustion engine or as the principal electrical power source for a vehicle.

MCL 324.17101 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Until the late 1980s, household batteries used in toys and flashlights and for similar purposes (e.g., alkaline, mercuric oxide, zinc carbon, and similar batteries) used small, though not insignificant, amounts of mercury. After the EPA and environmental groups began to notice increasing levels of mercury contamination in the environment during the 1980s --for instance, in Great Lakes fish--battery manufacturers were encouraged to redesign their products to incorporate significantly smaller amounts of mercury. Since 1993, all household batteries made include minuscule amounts of mercury or, in some cases, are essentially devoid of it. (Because

mercury exists naturally in many rocks and soils, other metals used to make batteries often contain trace amounts of it.) In addition to these steps taken by industry, numerous states have enacted laws that either ban the sale of most alkaline, zinc carbon, and similar kinds of batteries that contain significant amounts of mercury, or require them to be collected for recycling. Because of the cost and complexity of collection programs, however, most states have opted simply to ban the sale of such batteries. The bill specifically bans the sale of alkaline manganese, zinc carbon, and mercuric oxide button cell batteries. (The ban does not apply to alkaline manganese button cell batteries with a mercury content of 25 milligrams or less, which are used in hearing aids and for other applications.) Some types of mercuric oxide batteries, however, may be made and sold here if the manufacturer informs purchasers about recycling the batteries and specifically about places where the batteries are collected for recycling. Thus, the bill helps ensure that batteries made and sold in Michigan in the future do not contain significant levels of mercury. The resulting reduction of heavy metals in municipal solid waste landfills and incinerators will contribute to the protection of human health, natural resources, and the environment, without imposing burdensome and costly collection requirements on industry.

Supporting Argument

The benefits of a lead acid battery and a nickel cadmium battery recycling program would have been too small to justify the burden and costs it would have imposed on the State's battery industry. Moreover, the programs are not needed. A 1990 study conducted by Battery Council International indicated that lead acid batteries were being recycled at a rate of nearly 98% , and most people agree the rate today is closer to 100%. Also, the battery industry already has formed and funded a corporation to collect and recycle nickel cadmium batteries.

Response: While repeal of the lead acid battery deposit program makes sense considering the high rate at which these batteries are being recycled today and the cost of implementing such a program, repealing the nickel cadmium deposit program requirement will allow manufacturers of these batteries to pull back from current efforts to inform the public about recycling programs. Since the bill both retains provisions requiring notification to consumers of opportunities to recycle lead acid batteries, and adds consumer reporting requirements pertaining to the recycling of

mercuric oxide batteries, it should at least include similar consumer reporting requirements for those who manufacture and sell nickel cadmium batteries.

Opposing Argument

The bill is an unfunded mandate since it requires that the Department of Natural Resources provide additional compliance and enforcement oversight without providing the needed revenues and resources for effective administration. Further, the bill eliminates a funding source for the Environmental Response Fund, which is used to remediate sites of environmental contamination.

Opposing Argument

Regulation of batteries should be pursued at the Federal level. State-specific regulations on products that are manufactured and distributed throughout the country are difficult to implement.

Opposing Argument

The bill is unnecessary since the industry no longer intentionally introduces mercury into its products.

Opposing Argument

The bill adopts by reference the Federal standards for management of batteries that are hazardous waste (universal waste rules). The universal waste rule for batteries should be adopted in Part 111 (which governs hazardous waste management), rather than Part 171, of the Natural Resources and Environmental Protection Act to maintain consistency and avoid confusion.

Opposing Argument

Some people have expressed concerns regarding the bill's mandatory consumer information requirements for manufacturers and retailers of household batteries, and feel that it would be more appropriate if the bill merely specified a voluntary program of educating consumers. Also, since Congress reportedly is considering legislation similar to this bill, it may be prudent to await Federal action on the matter.

Response: Since the bill has support from those who represent battery manufacturers and retailers, its requirements are not overly onerous. And regardless of what Congress may or may not do, Michigan is wise to follow the lead of other states and enact a ban on the sale of mercury batteries.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on the State.

The bill might lead to a minimal increase in enforcement costs by including an additional type of battery and prohibiting the sale of mercuric oxide batteries. The Department of Natural Resources is not presently enforcing the program, however, due to lack of resources.

The repeal of the battery deposit requirements will have an indeterminate fiscal impact on State revenues since retailers were to keep all money except unredeemed deposits, which were to escheat to the Environmental Response Fund. When the State enacted Public Act 20 of 1990, which established the deposit requirements, approximately \$13.5 million was anticipated in deposits from lead acid automobile batteries, but there were no estimates on the percentage return rate for the batteries.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.