

SENATE BILL REPORT

ESHB 1024

As Reported By Senate Committee On:
Water, Energy & Telecommunications, March 21, 2007

Title: An act relating to phasing out the use of polybrominated diphenyl ethers.

Brief Description: Phasing out the use of polybrominated diphenyl ethers.

Sponsors: House Committee on Select Committee on Environmental Health (originally sponsored by Representatives Hunter, Priest, Kessler, B. Sullivan, Dickerson, Jarrett, Hasegawa, Campbell, Rodne, Rolfes, McDermott, McIntire, Chase, Green, Hudgins, Uptegrove, Quall, Conway, Clibborn, Sommers, Morrell, Sells, Kenney, Haigh, Cody, Hunt, Lantz, McCoy, Appleton, Pettigrew, Schual-Berke, Roberts, Fromhold, Takko, Simpson, P. Sullivan, Lovick, Flannigan, Moeller, Miloscia, Williams, Blake, O'Brien, Linville, Wood, Goodman, Seaquist, Springer, Ericks, Kagi, Darneille, Dunshee, Strow, Pedersen, Eickmeyer, McCune and Ormsby; by request of Department of Ecology).

Brief History: Passed House: 2/16/07, 71-24.

Committee Activity: Water, Energy & Telecommunications: 3/20/07, 3/21/07 [DP, DNP].

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Marr, Oemig, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist and Morton.

Staff: Jan Odano (786-7486)

Background: Polybrominated diphenyl ethers (PBDEs) are a class of flame retardants. The various commercial grades of PBDEs have been used in a wide variety of products, including carpet pads, mattresses, furniture, and plastic casings for televisions and computers. PBDEs are a source of concern because of their potential for adverse public health and environmental effects.

In January 2004, then Governor Gary Locke directed the Department of Ecology (DOE), in consultation with the Department of Health (DOH), to investigate and recommend options to reduce the threat of PBDEs to public health and the environment.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In January 2006, the agencies issued a PBDE Chemical Action Plan recommending that the Legislature ban two forms of PBDEs known as pentabromo diphenyl ether (penta) and octabromo diphenyl ether (octa). U.S. manufacturers of penta and octa voluntarily ceased producing the chemicals in December 2004, and the production of penta and octa has ended in most international markets as well. DOE and DOH further recommended banning decabromo diphenyl ether (deca), provided that safer, effective alternatives are identified. Deca is used in textile coatings and plastic casings for televisions, computers, stereos, and other electronics.

Summary of Engrossed Substitute Bill: After January 1, 2008, no person may manufacture, knowingly sell, distribute for sale, or use in Washington noncombustible products containing PBDEs. This prohibition does not apply to:

- products containing deca except for mattresses (effective January 1, 2008) and residential upholstered furniture, and televisions or computers with electronic enclosures containing commercial deca (effective January 1, 2011, if a safer and technically feasible alternative is available);
- federal Aviation Administration fire worthiness requirements and recommendations;
- used or new vehicle parts manufactured before January 1, 2008, containing PBDEs;
- new and used equipment containing PBDEs used primarily for military or federally funded space program applications;
- medical devices;
- new products containing recycled or used materials containing deca; and
- new carpet cushion made from recycled foam containing less than one-tenth of 1 percent penta.

DOE and DOH must review risk assessments, scientific studies, and other relevant findings regarding alternatives to the use of deca in residential upholstered furniture, televisions, and computers. DOE and DOH must also review risk assessments, scientific studies, and other findings regarding alternatives to the use of commercial deca in products not addressed in the bill and the potential effects of PBDEs in the waste stream.

If the departments find safer and technically feasible alternatives, DOE must convene a fire safety committee to determine if the alternatives meet applicable fire safety standards. The fire safety committee must report their findings to the state fire marshal, who must determine if an alternative identified by the fire safety committee meets applicable fire safety standards. The state fire marshal must report the determination to DOE. DOE must seek public input on the findings it, DOH, the fire safety committee and the state fire marshal make. DOE must publish the findings in the Washington State Register and report to the Legislature by December 31, 2008.

The manufacture, sale, and distribution of residential upholstered furniture, televisions, or computers containing deca is prohibited January 1, 2011, if DOE, DOH, the fire safety committee, and the state fire marshal find that a safer and technically feasible alternative is available that meets fire safety standards. There is no prohibition if a safer alternative is not found. Beginning in 2009, DOE must review and report on alternatives and, if a safer alternative is found, a prohibition takes effect two years after the report is submitted to the Legislature.

The Fire Safety Committee is created for the exclusive purpose of determining if an alternative meets applicable fire safety standards. The committee consists of five members appointed by the Governor, which is chaired by an ex officio nonvoting member representative from DOE. Other committee members include a representative from the Office of the State Fire Marshal and from a recognized council affiliated with an international association of firefighters. The remaining membership includes the following statewide associations: fire chiefs; fire commissioners; and volunteer firefighters.

Manufacturers must notify persons selling these products, recall products, and reimburse retailers or other purchasers. Manufacturers, importers, or distributors are not prohibited from transporting products containing PBDEs through Washington or storing them for later distribution outside the state.

Retailers who unknowingly sell banned products with PBDEs are not liable under this chapter. Retailers who have products with PBDEs on the date the restrictions become effective may exhaust their existing supply through sales to the public.

DOE must assist in-state retailers in identifying potential products containing PBDEs. In addition, DOE must assist state agencies to give priority and preference to products that do not contain PBDEs. DOE may request a certificate of compliance from a manufacturer that attests that their products meet the requirements of this chapter.

Manufacturers violating prohibitions are subject to civil penalties of up to \$1,000 for the first offense and up to \$5,000 for subsequent offenses. Prior to imposing penalties against manufacturers, DOE must offer information to assist manufacturers in identifying prohibited products and complying with this chapter, request certificates of compliance, and issue warning letters.

Appropriation: None.

Fiscal Note: Available on original bill.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: PBDEs are a poison sinking into the soil, water, and, most importantly, our kids. This bill does not present a trade off between toxicity of our children and safety. It is about costs, and PBDEs can be phased out without risk. The bill is not banning flame retardants but a highly toxic chemical only if a safer alternative is found. PBDEs cause specific and repeatable outcomes. Low doses have been shown to cause repeatable adverse health outcomes. This bill provides enough safeguards to protect the state's economy. The science is there to support the toxicity of deca and the ban. Prevention is the key to public health.

CON: This bill is not based on science to ban deca. It is premature to ban deca without knowing safer alternatives. European Union, Consumer Product Safety Commission, and the California Senate Office of Research studies came to the opposite conclusions than Washington State Department of Ecology. It is not a good idea to replace a product (deca) that has been studied extensively. The alternatives are new products that have been less

studied. The alternatives need to be studied, reviewed, and have risk assessments performed. The flammability standards have not been introduced into law; all are voluntary except the California Technical Bulletin 117. "Safer and technically feasible" needs to be defined. There needs to be a rulemaking (collaborative) process with clear timelines and communication about the decision to use new flame retardants. There needs to be a minimum standard or safety requirement for fire safety.

OTHER: The studies have been misinterpreted and don't support DOE's concerns.

Persons Testifying: PRO: Representative Hunter, prime sponsor; Karen Bowman, Washington State Nurses Association; Ruth W. Shearer, Ph.D., Senior Lobby; Mike Brown, Washington Association of Fire Chiefs; Barry Lawson, MD, American Academy of Pediatrics; Clifford Traisman, Washington Environmental Council, Washington Conservation Voters; Ted Sturdevant, Department of Ecology; Rob Duff, Department of Health; Nick Federici, Washington Toxics Coalition.

CON: Brad Tower, Dave Sanders, Tom Brace, Bromine Science and Environmental Forum; Grant Nelson, Association of Washington Business.

OTHER: Todd Myers, Washington Policy Center.