E2SHB 1472 - S COMM AMD
By Committee on Energy, Environment & Telecommunications

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alternatives assessment" means a process for identifying and comparing chemical and nonchemical alternatives currently in existence that can be practicably and economically used to replace the use of a chemical or to reduce the amount of or exposure to that chemical.

(2) "Biomonitoring" means assessment of human exposures to chemicals by measuring the chemicals or their metabolites in human tissues or specimens, such as blood, breast milk, and urine.

(3) "Chemical" means a substance, including metals, with a distinct molecular composition or a group of structurally related substances, and includes the breakdown products of the substance or substances that form through decomposition, degradation, or metabolism.

(4) "Chemical action plan" means a report that identifies, characterizes, and evaluates current and legacy uses and releases of a specific chemical or group of chemicals and identifies actions needed to protect human health and the environment.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology or the director's designee.

(7) "Economically viable" means that an alternative chemical or product does not significantly reduce the manufacturer's operating margin.

(8) "Functionally acceptable" means that an alternative chemical or product complies with all applicable legal requirements and performs the function of the original chemical or product sufficiently well that consumers can be reasonably expected to accept the product in the marketplace.

(9) "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a product. "Manufacturer" does not include small businesses as defined in RCW 19.85.020.

(10)(a) "Product" means any item sold for residential or commercial use, including any component or product packaging.

(b) "Product" does not include the following items:

(i) Food or beverage and food or beverage packaging, regulated by the United States food and drug administration or the United States department of agriculture;

(ii) Tobacco products;

(iii) Drug or biological products and packaging regulated by the United States food and drug administration;

(iv) Products and components produced under military specifications;

(v) Products and components regulated by the federal aviation administration;

(vi) Substances regulated under chapter 15.54 or 15.58 RCW; and

(vii) Any previously owned product sold in casual or isolated sales as defined in RCW 82.04.040 or products sold by nonprofit organizations.

(11) "Product component" means a uniquely identifiable material or coating that is included as a part of a finished product.

(12) "Safer alternative" means an alternative, demonstrated by an alternatives assessment, that:

(a) Meets improved hazard and exposure considerations, exhibits lower risk, and can be practicably and economically substituted for the original chemical; or

(b) Allows use of a reduced amount of or reduced exposure to that chemical than the existing chemical or chemical process and is functionally acceptable and economically viable. A safer alternative to a particular chemical may include a chemical substitute or a change in materials or design that eliminates the need for a chemical alternative.

(13) "Summary report" means a report prepared by the department summarizing available alternatives assessments and includes a determination regarding the existence of a safer alternative. The summary report also includes a determination of the completeness of the alternatives assessments reviewed and identifies unsuitable alternatives.

(14) "Unsuitable alternative" means an alternative identified through the alternatives assessment process that does not meet the hazard, exposure, cost, performance, and availability criteria of a safer alternative.

(15) This section expires June 30, 2025.

NEW SECTION. **Sec. 2.** (1) Beginning January 1, 2016, and every two years thereafter, the department, in consultation with the department of health, must select up to two chemicals for the development of chemical action plans, as specified in section 4 of this act, from the following:

(a) Chemicals regulated by the department under human health criteria in the proposed rule filed by the department on January 8, 2015, in the Washington State Register, as WSR 15-03-015; or

(b) Chemicals that are persistent bioaccumulative toxins as defined in chapter 173-333 WAC, as of the effective date of this section, that affect water quality.

(2) The department may conduct environmental monitoring or, subject to the availability of amounts appropriated for this specific purpose, may request the department of health to conduct biomonitoring of a chemical to verify the chemical is present in the state's environment or population or to better understand environmental or human exposure in the state. Environmental monitoring and biomonitoring conducted pursuant to this chapter must be of a minimum scope necessary to adequately inform a chemical action plan.

(3) All chemicals chosen for development of a chemical action plan must have scientifically supported pathways linked to a specific use, uses, or production of the chemical with concentrations in Washington waters that cause or contribute to the impairment of an affected waterbody.

(4)(a) At least two of the first four chemicals selected for a chemical action plan must be chosen from the chemicals identified in subsection (1)(a) of this section.

(b) When selecting chemicals for the development of chemical action plans, the director shall notify the public of the selection, the basis for the selection, and a draft schedule for completing the chemical action plan. The notice must be published in the Washington State Register. The department shall provide the public with an opportunity for review and comment before finalizing the schedule.

(c) When selecting chemicals for the development of chemical action plans, the department must consider:

(i) Opportunities for reducing or phasing out uses, production, or releases of a chemical;

(ii) Current scientific evidence on the combined effects of exposure to the chemical and other substances commonly present in the Washington environment;

(iii) Current scientific evidence on the susceptibility of sensitive population groups and environmental media from exposure to the chemical, as well as cumulative effects of multiple exposures;

(iv) The relative ranking assigned to a chemical by the department based on information applicable to Washington about chemical characteristics, uses of the chemical, releases of the chemical, and levels of the chemical present in the environment and in residents;

(v) Whether the chemical has been determined to impact Washington state waters through identification under section 303(d) of the federal clean water act; and

(vi) Existing plans or regulatory requirements to reduce or phase out the use and releases of the chemical.

(d) The department must identify the sources of information it relied upon in selecting chemicals for the development of chemical action plans under this section, including peer-reviewed science.

(5) This section expires June 30, 2025.

NEW SECTION. **Sec. 3.** (1) The department may request information from manufacturers of products or product components that contain a chemical selected for a chemical action plan under section 2 of this act. Prior to requesting information from a manufacturer under this subsection, the department must consult with a chemical action plan external advisory committee, if one has been formed yet, to evaluate the particular chemical that is the subject of the information request. The department may only make reasonable requests of manufacturers that are limited in their scope and frequency and that are focused on:

(a) The most common and prevalent uses of the chemicals or products containing the chemicals, based on the department's existing knowledge about the chemical;

(b) Areas where there is an identified gap in public or department knowledge about a chemical; and

(c) Chemical uses or products that the department has reason to believe are likely to be responsible for or associated with a significant portion of releases into the environment or public health exposures.

(2) Within twelve months of a request by the department, manufacturers shall report the following:

(a) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;

(b) The name of the chemical used or produced and its chemical abstracts service registry number;

(c) A brief description of the product or product component categories containing the substance;

(d) A description of the function or functions of the chemical in the product;

(e) An estimate of average daily, weekly, or monthly commercial consumption of the chemical by businesses or the public; and

(f) Any other information the manufacturer deems relevant to the appropriate use of the product.

(3) In response to an information request from the department under this section, a manufacturer may extrapolate amounts and estimates from national data. The resulting submission must include the information in subsection (2)(a) of this section for each manufacturer. However, the information required by subsection (2)(b) through (f) of this section is not required to be provided in a manner that identifies individual manufacturers.

(4) The department shall specify the required format for submission of the information required under subsection (2) of this section. The format should be generally consistent with the format specified in other states or federal agencies with substantially similar reporting requirements.

(5) Multiple manufacturers, or a business association, may collaborate and submit a single submission on a chemical found in similar products or product components.

(6) Where information submitted by a manufacturer under chapter 70.240 RCW is the same as the information required to be submitted by the manufacturer in subsection (2) of this section, the manufacturer is not required to submit the same information again.

(7) The department may, by order, require a manufacturer subject to the reporting requirement in subsection (2) of this section to provide additional information that is relevant to the development of

a chemical action plan under section 4 of this act. Prior to an order under this subsection, the department must consult with the external advisory committee formed for the chemical action plan, if one has been formed. An order by the department must also meet the reasonableness criteria of subsection (1) of this section.

(8) A manufacturer may request information submitted under this section be held confidential as provided under section 8 of this act.

(9) This section expires June 30, 2025.

NEW SECTION. **Sec. 4.** (1) When developing a chemical action plan, the department shall convene an external advisory committee to provide stakeholder input, expertise, and additional information. All external advisory committee meetings must be open to the public. The department must invite representatives from, at minimum, the following organizations and entities to serve as external advisory committee members: Large and small business sectors; a representative of a statewide business association with over one thousand total members and that represents multiple business sectors; community, environmental, and public health advocacy groups; local governments; affected and interested businesses; and public health agencies. State agencies and technical experts may be requested to participate.

(2) All chemical action plans must include the following:

(a) Chemical name, properties, uses, and product manufacturers;

(b) An analysis of the available information on the production, unintentional production, current and legacy uses, and disposal of the chemical;

(c) Information on the known or potential and proven impacts on human health and the environment associated with the use and release of the chemical;

(d) An evaluation of the regulatory and nonregulatory approaches that influence production, uses, releases, and management of the chemical;

(e) Identification of actions, if needed, to eliminate, reduce, or manage exposures, and recommendations for managing, reducing, or phasing out the uses and releases of the chemical identified as primary sources of risk in the state of Washington to minimize exposure; and

(f) Recommendations that are based on an evaluation of the following factors:

(i) Opportunity for environmental and human health benefits in the state of Washington;

(ii) Economic and social impacts;

(iii) Feasibility;

(iv) Availability and effectiveness of safer alternatives for uses of the chemical; and

(v) Consistency with existing federal and state regulatory requirements.

(3) If a chemical action plan includes a recommendation for an alternatives assessment to be conducted on a specific chemical, the department must prepare agency request legislation to authorize the department to conduct the alternatives assessment, consistent with the recommendations in the chemical action plan.

(4) The department must include in the chemical action plan a summary of any dissenting views held by external advisory committee members regarding the recommendations contained in the plan.

(5) The department must identify the sources of information it relied upon in completing a chemical action plan under this section, including peer-reviewed science.

(6) This section expires June 30, 2025.

NEW SECTION. **Sec. 5.** (1) The department is authorized to require, by order, manufacturers to conduct alternatives assessments as described in this section, subject to legislation enacted for the specific purpose of authorizing the department to conduct alternatives assessments for a specific chemical in a specific type of product. Unless otherwise provided, alternatives assessments authorized pursuant to legislation must be conducted by affected manufacturers in cooperation with the department.

(a) The department may not require an alternatives assessment for a greater breadth of uses or products, nor require alternatives assessments to be completed by a greater number of manufacturers than is necessary to address demonstrated statistically significant sources of environmental or public health hazard and exposures to the chemical.

(b) The scope of an alternatives assessment must be limited to:

(i) A single type of use of a chemical in a specific type of manufacturing process; or

(ii) The inclusion of a chemical in a specific type of product or product component.

(2)(a) If ordered by the department, a manufacturer of a product or product component that contains a chemical for which a chemical action plan has been completed under section 4 of this act or chapter 173-333 WAC must submit an alternatives assessment to the department for each use of the chemical specified by the department.

(b) A peer-reviewed alternatives assessment completed by an authoritative entity, including the United States environmental protection agency, the federal food and drug administration, or by other nations and states that meet the objectives required under subsection (5)(a) through (c) of this section may be submitted in lieu of conducting a new alternatives assessment.

(c) The manufacturer must submit the alternatives assessment to the department within twenty-four months from the date the alternatives assessment is authorized. However, the department may grant an extension on a case-by-case basis for good cause if the manufacturer shows that additional time is necessary to complete an alternatives assessment or would substantially improve the quality of the alternatives assessment. Multiple manufacturers, or a business association, may collaborate and submit a single alternatives assessment on a chemical found in similar products.

(3)(a) In lieu of an alternatives assessment, a manufacturer may submit a certificate of compliance, as described in (b) of this subsection, if:

(i) The manufacturer has ceased using the chemical or chemical in the product or component for which it would be required to conduct an alternatives assessment; or

(ii) The manufacturer can demonstrate that it plans to phase out the use of the chemical or chemical in the product or component within a time frame that is reasonable based on the manufacturing process used to produce the product and the use of the product.

(b) A certificate of compliance must include the following:

(i) Chemical names and chemical abstracts service registry numbers for all chemicals that currently contribute to the specific function previously served by the prohibited chemical;

(ii) How the manufacturer is meeting the function of the prohibited chemical with a safer alternative; and

(iii) The signature of an authorized official of the manufacturer.

(4)(a) When the department determines that a manufacturer that is required to conduct an alternatives assessment is unwilling or unable

to conduct an alternatives assessment, the department may contract with an independent qualified third party to conduct an alternatives assessment in consultation with the chemical action plan external advisory committee. Any alternatives assessment conducted by the independent contractor must include a process to involve interested parties.

(b) The department must ensure an alternatives assessment completed by a qualified third party is peer-reviewed and meets the requirements under subsection (5)(a) through (c) of this section.

(5) An alternatives assessment must:

(a) Meet the objective of assessing less toxic chemicals or nonchemical alternatives to reduce the amount of or exposure to chemicals in a product and to avoid the unintended consequence of switching to a substitute that presents an equivalent or greater concern;

(b) Follow the guidelines issued by the interstate chemicals clearinghouse, the national academy of sciences, or equivalent methodology; and

(c) Include, at a minimum: (i) An evaluation of chemical hazard, exposure, performance, consumer acceptance, cost, and availability; (ii) information for each alternative considered; and (iii) the identification of alternatives.

(6) This section expires June 30, 2025.

NEW SECTION. **Sec. 6.** (1)(a) The department, in consultation with the department of health and appropriate external advisory committees, shall prepare a summary report of all reviewed alternatives assessments and other relevant information assembled under section 5 of this act. The summary report must include a determination of whether a safer alternative exists and identify unsuitable alternatives.

(b) In making its determination, the department shall evaluate whether the alternatives assessments follow the guidelines on alternatives assessments issued by the interstate chemicals clearinghouse, the national academy of sciences, or equivalent methodology.

(2) If the department determines that a safer alternative exists, the department may submit a recommendation to prohibit specific uses of the chemical, in the form of agency request legislation, to the appropriate committees of the senate and house of representatives.

(3) The department may not reevaluate safer alternatives for chemicals more often than once every five years after a determination is made that a safer alternative does not exist.

(4) This section expires June 30, 2025.

NEW SECTION. **Sec. 7.** (1) A manufacturer violating a requirement of this chapter, a rule adopted under this chapter, or an order issued under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense.

(2) Any penalty provided for in this section, and any order issued by the department under this chapter, may be appealed to the pollution control hearings board.

(3) All penalties collected under this chapter shall be deposited in the state toxics control account created in RCW 70.105D.070.

(4) This section expires June 30, 2025.

NEW SECTION. **Sec. 8.** (1) Manufacturers submitting information or records to the department may request that the information or records be made available only for the confidential use of the director, the department, or the appropriate division of the department.

(2)(a) A manufacturer requesting confidentiality for information submitted under section 3 of this act must demonstrate to the department how the records relate to processes of production unique to the owner or operator or how releasing the records to the public may adversely affect the owner's or operator's competitive position.

(b)(i) The director shall give consideration to the request for confidentiality and if such action would not be detrimental to the public interest and is otherwise within accord with the policies and purposes of chapter 43.21A RCW, the director must grant the request for the information to remain confidential as authorized in RCW 43.21A.160.

(ii) The department must respond to a manufacturer's request within fourteen days of receipt of the request. The department must inform the manufacturer regarding its determination of whether the submitted information should be kept confidential under this section and RCW 43.21A.160 and its reasons for the determination.

(iii) The department must keep confidential any records furnished by a manufacturer under this chapter that relate to proprietary manufacturing processes or chemical formulations used in products or processes.

(3) If the director denies the request of a manufacturer to keep submitted information or records confidential under this section, the manufacturer may appeal the denial to a court of competent jurisdiction. In a review of whether the submitted information or records meet the criteria of RCW 43.21A.160 and this section, a court must examine submitted information or records in camera.

(4) This section expires June 30, 2025.

NEW SECTION. **Sec. 9.** (1) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter, except that rules adopted to implement section 5 of this act may not require a manufacturer to conduct an alternatives assessment without express authority from the legislature.

(2) This section expires June 30, 2025.

NEW SECTION. **Sec. 10.** A new section is added to chapter 39.26 RCW to read as follows:

(1) The department shall establish purchasing and procurement policies that provide a preference for products and products in packaging that do not contain:

(a) Persistent bioaccumulative toxins, as defined in chapter 173-333 WAC as of the effective date of this section; and

(b) Chemicals that have been addressed by a completed chemical action plan that has included a recommendation that the state adopt a purchasing and procurement policy for products and products in packaging that do not contain the chemical.

(2) No agency may knowingly purchase products or products in packaging containing chemicals identified in subsection (1) of this section unless there is no cost-effective and technologically feasible alternative. When all available products contain a chemical identified in subsection (1) of this section, a preference must be given to alternative products that contain lesser amounts of chemicals identified in subsection (1) of this section.

(3) Nothing in this section requires the department or any other state agency to breach an existing contract or dispose of stock that

has been ordered or is in the possession of the department or other state agency as of the effective date of this section.

(4) This section does not require the department or any other agency to test every product procured.

(5) The department or any other agency may request suppliers of products to provide testing data from an accredited laboratory or testing facility documenting levels of a chemical identified in subsection (1) of this section in products or product packaging. Requested or voluntarily received testing data from businesses, manufacturers, organizations, and individuals must be submitted for review to the department of ecology.

Sec. 11. RCW 43.21B.110 and 2013 c 291 s 33 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(o) Decisions regarding a restriction, order, or penalty issued under chapter 70.--- RCW (the new chapter created in section 14 of this act).

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 12. RCW 43.21B.110 and 2013 c 291 s 34 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(n) Decisions regarding a restriction, order, or penalty issued under chapter 70.--- RCW (the new chapter created in section 14 of this act).

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

NEW SECTION. **Sec. 13.** (1) By June 30, 2024, the department must provide a report to the appropriate committees of the legislature to review and evaluate the process for chemical action plans provided in this act. The department must consider, but not be limited to, the following factors in the review as relevant to the development of chemical action plans:

(a) Evidence that the development of the chemical action plans have contributed to the achievement of enhancing water quality within the state;

(b) The extent to which continuation of developing chemical action plans will contribute to ensuring water quality protection and enhancement;

(c) The extent to which developing chemical action plans provide unintended benefits to an individual, organization, or industry other than those the legislature intended;

(d) The feasibility of modifying the chemical action plans processes to better achieve the intended objectives; and

(e) Fiscal impacts of developing chemical action plans, including expected future impacts if it is continued.

(2) The department must provide recommendations to the appropriate committees of the legislature as to whether developing chemical action plans should be continued without modification, modified, scheduled for sunset review at a future date, or terminated immediately. If the department determines that developing chemical action plans does not achieve the ascertainable metrics, the department shall recommend termination of the program.

(3) This section expires June 30, 2025.

NEW SECTION. **Sec. 14.** Sections 1 through 9 and 13 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec. 15.** A new section is added to chapter 70.240 RCW to read as follows:

Beginning July 1, 2016, no manufacturer, wholesaler, or retailer may manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use in this state children's products or residential upholstered furniture, as defined in RCW 70.76.010, containing TDCPP (tris(1,3-dichloro-2-propyl)phosphate), chemical abstracts service number 13674-87-8, as of the effective date of this section, TCEP (tris(2-chloroethyl)phosphate), chemical abstracts service number 115-96-8, as of the effective date of this section, decabromodiphenyl ether, chemical abstracts service number 1163-19-5, as of the effective date of this section, hexabromocyclododecane, chemical abstracts service number 25637-99-4, as of the effective date of this section, or the additive form of TBBPA, chemical abstracts service number 79-94-7, as of the effective date of this section, in amounts greater than one thousand parts per million in any product component.

Sec. 16. RCW 70.240.010 and 2008 c 288 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children's cosmetics" means cosmetics that are made for, marketed for use by, or marketed to children under the age of twelve. "Children's cosmetics" includes cosmetics that meet any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children; or

(c) Sold in any of the following:

(i) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(ii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(2) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children under the age of twelve. "Children's jewelry" includes jewelry that meets any of the following conditions:

(a) Represented in its packaging, display, or advertising as appropriate for use by children under the age of twelve;

(b) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children;

(c) Sized for children and not intended for use by adults; or

(d) Sold in any of the following:

(i) A vending machine;

(ii) Retail store, catalogue, or online web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children; or

(iii) A discrete portion of a retail store, catalogue, or online web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(3)(a) "Children's product" includes any of the following:

(i) Toys;

(ii) Children's cosmetics;

(iii) Children's jewelry;

(iv) A product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children; or

(v) ((~~Child car seats~~)) A portable infant or child safety seat designed to attach to an automobile seat.

(b) "Children's product" does not include the following:

(i) Batteries;

(ii) Slings and catapults;

(iii) Sets of darts with metallic points;

(iv) Toy steam engines;

(v) Bicycles and tricycles;

(vi) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding twenty-four volts;

(vii) Chemistry sets;

(viii) Consumer and children's electronic products, including but not limited to personal computers, audio and video equipment, calculators, wireless phones, game consoles, and handheld devices

incorporating a video screen, used to access interactive software and their associated peripherals;

(ix) Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact disks;

(x) BB guns, pellet guns, and air rifles;

(xi) Snow sporting equipment, including skis, poles, boots, snow boards, sleds, and bindings;

(xii) Sporting equipment, including, but not limited to bats, balls, gloves, sticks, pucks, and pads;

(xiii) Roller skates;

(xiv) Scooters;

(xv) Model rockets;

(xvi) Athletic shoes with cleats or spikes; and

(xvii) Pocket knives and multitools.

(4) "Cosmetics" includes articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of such an article. "Cosmetics" does not include soap, dietary supplements, or food and drugs approved by the United States food and drug administration.

(5) "Department" means the department of ecology.

(6) "High priority chemical" means a chemical identified by a state agency, federal agency, or accredited research university, or other scientific evidence deemed authoritative by the department on the basis of credible scientific evidence as known to do one or more of the following:

(a) Harm the normal development of a fetus or child or cause other developmental toxicity;

(b) Cause cancer, genetic damage, or reproductive harm;

(c) Disrupt the endocrine system;

(d) Damage the nervous system, immune system, or organs or cause other systemic toxicity;

(e) Be persistent, bioaccumulative, and toxic; or

(f) Be very persistent and very bioaccumulative.

(7) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a children's product or an importer or domestic

distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.

(8) "Phthalates" means di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisonoyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

(9) "Toy" means a product designed or intended by the manufacturer to be used by a child at play.

(10) "Trade association" means a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit.

(11) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0.

(12) "Very persistent" means having a half-life greater than or equal to one of the following:

(a) A half-life in soil or sediment of greater than one hundred eighty days;

(b) A half-life greater than or equal to sixty days in water or evidence of long-range transport.

Sec. 17. RCW 70.240.050 and 2008 c 288 s 7 are each amended to read as follows:

(1) A manufacturer of children's products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes ((~~a~~)) children's products prohibited from manufacture, sale, or distribution in this state under this chapter shall recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties

collected under this section must be deposited in the state toxics control account created in RCW 70.l05D.070.

(4) Retailers who unknowingly sell children's products that are restricted from sale under this chapter are not liable under this chapter.

(5) The sale or purchase of any previously owned children's products containing a chemical restricted under this chapter made in casual or isolated sales as defined in RCW 82.04.040, or by a nonprofit organization, is exempt from this chapter.

NEW SECTION. **Sec. 18.** A new section is added to chapter 70.240 RCW to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, the department must complete and publish a chemical action plan as provided in section 4 of this act for any flame retardant identified as a chemical of high concern for children after January 1, 2015, within two years of the adoption of the rule that identifies the flame retardant as a chemical of high concern for children.

NEW SECTION. **Sec. 19.** This act may be known and cited as the toxics reduction act.

NEW SECTION. **Sec. 20.** (1) Section 11 of this act expires June 30, 2019.

(2) Section 12 of this act expires June 30, 2025.

NEW SECTION. **Sec. 21.** Section 12 of this act takes effect June 30, 2019.

NEW SECTION. **Sec. 22.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2015, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec. 23.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

E2SHB 1472 - S COMM AMD
By Committee on Energy, Environment & Telecommunications

On page 1, line 2 of the title, after "Washington;" strike the remainder of the title and insert "amending RCW 43.21B.110, 43.21B.110, 70.240.010, and 70.240.050; adding a new section to chapter 39.26 RCW; adding a new section to chapter 70.240 RCW; adding a new chapter to Title 70 RCW; creating new sections; prescribing penalties; providing an effective date; and providing expiration dates."

EFFECT: Revises requirements for alternatives assessments, including the department of ecology's (DOE) authority to order manufacturers to conduct alternatives assessments by requiring enacted legislation to provide specific authority for a specific chemical.

Restructures definition of alternatives assessments (moves substantive language to the body of the bill).

Requires DOE to prepare agency request legislation to authorize alternatives assessments.

Requires DOE to provide a report to the legislature as to whether developing CAPs should be continued.

Adds requirements for confidentiality of information submitted to DOE.

Removes sunset provisions.

Expires all sections as of June 30, 2025.

Revises requirements for CAPs including the number and types of chemicals to be selected.

Revises definitions of: "Manufacturer" by deleting importer and domestic distributor; and "safer alternative."

Adds exempt products.

Adds prohibition on the sale, manufacture, and distribution of children's products and residential upholstered furniture containing certain flame retardants in amounts greater than 1000 ppm.

Revises the definitions under the Children's Safe Products Act to specify "children's products" with respect to exemption of the sale of used products and penalties.

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