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## Environment Committee

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### HB 1472

**Brief Description:** Concerning use of chemical action plans to require safer chemicals in Washington.

**Sponsors:** Representatives Fitzgibbon, Peterson, Goodman, McBride, Springer, Fey, Farrell, Hudgins, Kagi, Walkinshaw, Gregerson, S. Hunt, Jinkins, Tharinger and Pollet; by request of Governor Inslee.

#### Brief Summary of Bill

- Directs the Department of Ecology (Department) to create a list by January 1, 2018 of up to 150 priority chemicals that harm humans, plants, or wildlife and that studies have found to be present in humans, the human environment, or the natural environment.
- Requires the state to preferentially purchase products and products in packaging that contain no priority chemicals or that contain lower amounts of priority chemicals than comparable products.
- Directs the Department to select up to 20 of the priority chemicals by January 1, 2018 for potential chemical action plan (CAP) development and to begin CAPs on four of those 20 chemicals every two years.
- Authorizes the Department to require manufacturers to assess alternatives to using a priority chemical and directs the Department to restrict the use of the priority chemical if the assessment identifies a safer alternative to the priority chemical.

**Hearing Date:** 2/2/15

**Staff:** Jacob Lipson (786-7196).

**Background:**

Restrictions on Toxic Materials in Consumer Products

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*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.*

Several federal policies restrict the use of certain substances with toxic properties in consumer products or manufacturing processes.

- The Consumer Product Safety Commission administers several laws regulating the inclusion of toxic compounds in consumer products.
- The U.S. Food and Drug Administration's (FDA) regulatory responsibilities include the safety of biological products, such as vaccines, and prescription and nonprescription drugs.
- The Environmental Protection Agency administers the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which regulates the sale, distribution, use, and labeling of pesticides, as well as the Toxic Substances Control Act (TSCA), which includes notification and testing requirements for many chemicals in commercial use and restricts the use of certain chemicals.

State law restricts the use of several substances in various consumer products, including Bisphenol-A in sports bottles, lead in vehicle wheel weights, and copper in boat paint. In addition, the Children's Safe Products Act (CSPA) directs the Department of Ecology (Department), working with the Department of Health, to use fetal and childhood exposure potential to identify high-priority chemicals of concern to children. Under the CSPA, the Department identifies high-priority chemicals based on credible scientific evidence that the chemical:

- harms fetal or childhood development;
- causes cancer, genetic damage, or reproductive harm;
- disrupts the endocrine system, which is responsible for the regulation of hormone production;
- damages the nervous system, immune system, organs, or causes other systemic toxicity; or
- is persistent, bioaccumulative, and toxic, or is both very persistent and very bioaccumulative.

#### Persistent, Bioaccumulative, Toxic Substances.

In 2006 the Department adopted a rule outlining the processes it follows for efforts to reduce and phase out the uses, releases, and exposures to persistent, bioaccumulative, and toxic substances (PBTs). The PBTs are substances with toxic or harmful effects on people or animals that have a lengthy decomposition time in the environment and accumulate up the food chain in the bodies of organisms, including people.

The PBT rule authorizes the Department to develop a list of PBT substances, which can include all types of PBT chemicals or metals, except fertilizers and pesticides regulated under the FIFRA. This PBT list is used to inform various Department activities, including monitoring, voluntary PBT phase-out and use-reduction efforts, and PBT public awareness activities.

The Department also uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). In developing a CAP, the Department works with an external advisory committee to evaluate the chemical's uses, releases, impacts, and management. The CAP process concludes with the issuance of a report with recommendations for how to reduce or manage certain uses of the PBT and encourage safer alternatives to the PBT.

#### Alternatives Assessments.

The Interstate Chemicals Clearinghouse, which is an association focused on safe chemical use and of which Washington is a member, published an alternatives assessment guide in January 2014. This alternatives assessment guide provides evaluative tools and processes for manufacturers, governments, and others to compare performance, hazard, cost, availability, exposure, and other relevant characteristics of chemicals used in processes or products. In January of 2015, the Department published a state-specific alternatives assessment guide for small and medium-sized businesses based on the Interstate Chemicals Clearinghouse guide. Other organizations, including the National Academy of Sciences, have published alternative assessment methodologies for evaluating chemical uses and comparing functionality, cost, health, and other characteristics.

#### Other Program Context.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the Department and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

The State Toxics Control Account (STCA) receives funds from the tax of 0.7 percent of the value of hazardous substances and from other sources. Money in the STCA is used to fund various state toxics reduction activities including hazardous waste planning and management, hazardous waste clean-up, oil spill prevention, and air quality programs.

The Department of Enterprise Services (DES) is responsible for providing products and services to support state agencies, and sets policies and procedures for the state's purchases.

The U.S. Federal Aviation Administration (FAA) is responsible for a variety of safety regulations related to flight operations, including the certification of aircraft, aircraft propellers, and engines.

#### **Summary of Bill:**

##### Designation of Priority Washington Chemicals and Chemical Action Plan Lists.

The Department is directed to adopt a rule that lists up to 150 Priority Washington Chemicals (PWCs) by January 1, 2018.

- The PWCs must have harmful developmental, carcinogenic, reproductive, or systemic health or exposure effects on humans, plants, or wildlife of the type that would qualify the PWC as a chemical of high concern under the CSPA.
- The PWCs must either have been found by studies to be present in human fluids or tissues, the home environment, consumer products used in homes, or elements of the natural environment.
- The Department and Department of Health may conduct monitoring order to increase chemical knowledge and support PWC determinations.

By January 1, 2018, the Department must select 20 of the PWCs for potential CAP development.

##### Chemical Action Plans.

Beginning July 1, 2018, the Department must select four PWCs every two years for CAP development. In developing a CAP, the Department must convene an external stakeholder advisory committee. The Department can demand, by order, information necessary for CAP

development from manufacturers of products that contain PWCs. Manufacturers or a business organization may collaborate to submit this information.

In the CAP the Department must identify actions needed to reduce human health or environmental threats of the PWC. These recommended actions may include requiring manufacturers to evaluate potential safer alternatives (alternatives assessment) to using the PWC or to restrict certain PWC uses.

#### Alternatives Assessments.

The Department may order a manufacturer of a PWC-containing product to conduct an alternatives assessment, if such action is identified as part of a CAP completed under the PBT rule or the PWC-CAP process. Multiple manufacturers or business organizations may collaborate on an alternatives assessment. This alternatives assessment must follow the guidelines of the Interstate Chemical Clearinghouse, the National Academy of Sciences, or an equivalent methodology, and must include an evaluation of hazard, exposure, performance, cost, and availability.

Manufacturers must complete an alternatives assessment within one year of an order from the Department.

- If an alternatives assessment is deemed incomplete by the Department, it may require a manufacturer to revise assessments within three months.
- If the Department determines that the revised alternatives assessment is inadequate, the Department may arrange for an independent assessment and recover the costs of the independent assessment from the submitting manufacturers.

At the conclusion of an alternatives assessment for a PWC, the Department and Department of Health must submit a summary report to the Legislature that includes a determination of whether a safer alternative chemical, material, or design substitute exists, as well as the identification of any alternatives identified as no safer than the PWC. The Department may also rely on existing information equivalent to alternatives assessment results to conclude that a safer alternative exists. If a safer alternative is not identified, the Department may not reassess safer alternative availability for the PWC for five years.

Adversely affected manufacturers may appeal safer alternative determinations to the PCHB within 30 days.

#### Restrictions on the Use, Sale, or Distribution of Chemicals.

If the Department determines that a safer alternative to a PWC exists, the Department must prohibit specific uses of the PWC or the sale of products containing the chemical.

- The Department's prohibition timelines must be reasonable, and may take effect no sooner than one year after the adoption of a prohibition rule.
- A manufacturer may not replace a restricted PWC with another chemical that is no safer than the restricted chemical, as determined by the Department through the alternatives assessment.
- Manufacturers of products that have featured a prohibited PWC must, upon request, submit a certificate to the Department that provides information about the replacement of the prohibited PWC.

### Scope of Information Order, Alternatives Assessments, and Use Restrictions.

Certain types of products are exempt from the Department's information submission orders to support CAP development, from alternatives assessment performance requirements, and from the restrictions on use of PWCs. These exempt products include food and beverages, drugs and biological products regulated by FDA, finished products regulated by the FAA, and chemicals used for agricultural commodities.

The same requirements placed on manufacturers also apply to importers and domestic distributors of covered products. Small businesses with fifty or fewer employees are exempt from information submission, alternatives assessment, use restrictions, and other requirements placed on manufacturers.

### Purchasing and Procurement Restrictions on Priority Washington Chemicals.

The DES must establish a purchasing and procurement policy for products and products in packaging that do not contain a PWC. State agencies may not knowingly purchase products or products in packaging containing a PWC, except where not cost-effective or technically feasible. If all available products contain a PWC, preference must be given to products with lower concentrations of the PWC.

State agencies are not required to breach existing contracts, dispose of existing or already-ordered stock, or to test every procured product. State agencies or the DES may request that suppliers provide testing data on the PWC levels in their products.

### Administration, Rulemaking, and Enforcement.

If a manufacturer violates a rule, requirement, or order related to PWCs, CAPs, or alternatives assessments, it is subject to a \$5,000 fine for each violation if it is the manufacturer's first offense, or \$10,000 if it is a repeat offense. Penalties go into the STCA. Penalties and orders are appealable to the PCHB.

Manufacturers that submit information to the Department may request that the information be treated as confidential. The Department must keep the submitted information confidential if it deems that maintaining the confidentiality of the information is not detrimental to the public interest.

The Department is given rulemaking authority.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2015.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 18 relating to appeals of restrictions, orders, and penalties to the PCHB, which takes effect June 30, 2019.