HOUSE BILL REPORT
E2SHB 1472

As Passed House:
March 11, 2015

Title: An act relating to using chemical action plans to require safer chemicals in Washington.

Brief Description: Concerning using chemical action plans to require safer chemicals in Washington.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Peterson, Goodman, McBride, Springer, Fey, Farrell, Hudgins, Kagi, Walkinshaw, Gregerson, S. Hunt, Jinkins, Tharinger and Pollet; by request of Governor Inslee).

Brief History:
Committee Activity:
Environment: 2/2/15, 2/17/15 [DPS];
Appropriations: 2/26/15, 2/27/15 [DP2S(w/o sub ENVI)].
Floor Activity:
Passed House: 3/11/15, 63-35.

Brief Summary of Engrossed Second Substitute Bill

- Directs the Department of Ecology (ECY) to begin conducting up to four chemical action plans (CAP) every two years on chemicals that harm humans, plants, or wildlife and that studies have found to be present in humans, the human environment, or the natural environment, or that are listed as criteria water pollutants that affect human health under the federal Clean Water Act.
- Authorizes the ECY-to require manufacturers provide certain chemical use information to support CAP development, and to require manufacturers to assess alternatives to using chemicals, if recommended in a CAP.
- Requires the state to preferentially purchase products and products in packaging that contain no persistent, bioaccumulative, and toxic chemicals, and other chemicals as recommended by the ECY in a chemical action plan, or products that contain lower amounts of targeted chemicals than comparable products.

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.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Short, Assistant Ranking Minority Member; Farrell, Fey, Goodman and McBride.

Minority Report: Do not pass. Signed by 4 members: Representatives Shea, Ranking Minority Member; Harris, Pike and Taylor.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Sawyer, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dent, Haler, G. Hunt, MacEwen, Magendanz, Schmick, Stokesbary, Taylor and Van Werven.

Minority Report: Without recommendation. Signed by 3 members: Representatives Parker, Assistant Ranking Minority Member; Condotta and Fagan.

Staff: Dan Jones (786-7118).

Background:

Restrictions on Toxic Materials in Consumer Products.
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 United States 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 (ECY),

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 ECY 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 biomaccumulative.

Persistent, Bioaccumulative, Toxic Substances.
In 2006 the ECY 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 ECY 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 ECY activities, including monitoring, voluntary PBT phase-out and use-reduction efforts, and PBT public awareness activities. There are currently 18 individual chemicals and eight groups of chemicals on the ECY's PBT list, creating a total list of 74 PBT chemicals.

The ECY also uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). In developing a CAP, the ECY 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.

Clean Water Act Criteria Pollutants.
Under the federal Clean Water Act, the United States Environmental Protection Agency (EPA) develops water quality criteria for specific pollutants to protect aquatic life and human health. The EPA approves state-specific allowable levels of these criteria water pollutants in the environment. Water bodies that exceed standards for these criteria pollutants are identified as impaired and allowable levels of criteria water pollutants may be established as a part of permits issued to facilities and other point source dischargers into state waters.

There are currently 85 water quality criteria pollutants, including groups of pollutants, regulated by Washington on the basis of their human health effects. Twenty four of the pollutants for which there are human health criteria under the Clean Water Act are also currently identified on the ECY's PBT list.

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 ECY 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.
At the direction of the Legislature, the staff of Joint Legislative Audit and Review Committee (JLARC) conducts sunset reviews of the need for the continued existence of a program or policy. A JLARC sunset review examines whether the evaluated program has complied with legislative intent, is operating efficiently and economically, is meeting performance goals, and is duplicative of other entities or private sector activities. The program or authority subject to a JLARC sunset review is repealed from law in the year following the sunset review unless the Legislature takes action to continue the program.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the ECY 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 Engrossed Second Substitute Bill:

Chemical Action Plans.
Beginning January 1, 2016, the ECY must select up to four chemicals every two years for the CAP development. Chemicals subject to a CAP must either be:

- chemicals that would qualify the chemical as a chemical of high concern under the CSPA due to their potential systemic health or exposure effects in humans, plants, or wildlife, and which have been found by studies to be present in humans or the home or natural environments; or
- chemicals identified as human health criteria pollutants under the federal Clean Water Act that impact impaired state waters.

Two of the first four chemicals selected for chemical action plans must be chemicals regulated under the Clean Water Act that impact impaired state waters. When selecting chemicals for CAP development, the ECY must consider scientific evidence of exposure

effects, human and environmental susceptibility to chemical exposure, existing chemical regulation and management, and reduction and phase-out opportunities. The ECY must also cite the sources of information that it relied upon in identifying chemicals for CAP development.

The ECY and Department of Health may conduct monitoring in order to increase chemical knowledge and support knowledge about chemicals in the human and natural environment, but only to the extent necessary to adequately inform CAP development.

The ECY must convene an external advisory committee for each CAP comprised of representatives of businesses, advocacy groups, local governments, and others. In the CAP the ECY must identify available information on chemical production, uses, and disposal, human health and environmental impacts, and chemical management and regulation. The CAP must include recommendations for eliminating or reducing threats from the chemical, and may include recommendations that alternatives assessments be performed. The CAP must cite the sources of information that were relied upon, and must summarize any dissenting views of external advisory committee members regarding CAP recommendations.

Information Demands to Manufacturers.
The ECY can require, by order, manufacturers of products that contain chemicals being evaluated in a CAP to submit information necessary for CAP development. The information demanded by the ECY must be reasonable in scope and frequency and must focus on prevalent uses, significant exposure sources, and identified knowledge gaps. Prior to demanding information, the ECY must consult with the CAP external advisory committee, if informed yet. Manufacturers or a business organization may collaborate to submit information required by ECY. Manufacturers may also extrapolate amounts and estimates from national data.

Alternatives Assessments.
The ECY may order a manufacturer of a product to conduct an alternatives assessment, if such action is identified as part of a CAP, including a CAP completed under the PBT rule. The scope of alternatives assessments must be a single type of chemical use in a specific type of product. Alternatives assessments must be necessary to address significant sources of environmental or public health exposures.

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 ECY. A manufacturer that provides evidence of a plan to phase out a chemical within a reasonable time, as determined based on the product's manufacturing process and use, is not required to complete an alternatives assessment. If the ECY determines that an alternatives assessment is inadequate, it may arrange for an independent contractor to complete an alternatives assessment. In addition, if the ECY does not identify an eligible manufacturer that may be required to perform an alternatives assessment, the ECY may conduct its own alternatives assessment.

At the conclusion of an alternatives assessment for a chemical, the ECY and the Department of Health must compile a summary report 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 chemical. The ECY 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 ECY may not reassess safer alternative availability for the chemical for five years.

If the ECY determines that a safer alternative exists, it must recommend restrictions on the use of the chemical to the Legislature, in the form of draft legislation.

Scope of Chemicals subject to Information Orders and Alternatives Assessments.
Certain types of products are exempt from the ECY's chemical information orders and from alternatives assessment performance requirements. These exempt products include food and beverages, drugs and biological products regulated by the FDA, finished products regulated by the FAA, and chemical products used for agricultural commodities.

The same requirements placed on manufacturers also apply to importers and domestic distributors of covered products. Small businesses with 50 or fewer employees are exempt from information submission, alternatives assessment 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 PBT. If a CAP recommends that a chemical be subject to the DES purchasing and procurement policy, that chemical must also be covered by the same DES purchasing and procurement policy. State agencies may not knowingly purchase products or products in packaging containing a PBT or other chemical as recommended by a CAP, except where not cost-effective or technically feasible. If all available products contain a chemical subject to the policy, preference must be given to products with lower concentrations of the chemical.

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 chemical levels in their products.

Administration, Rulemaking, and Enforcement.
If a manufacturer violates a rule, requirement, or order related to restricted chemicals, 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 ECY may request that the information be treated as confidential. The ECY must keep the submitted information confidential if it deems that maintaining the confidentiality of the information is not detrimental to the public interest. The ECY must keep confidential any submitted information relating to proprietary manufacturing processes or chemical formulations.

Beginning in 2024, ECY authorities to demand manufacturer information, require alternatives assessments, or restrict chemicals, as well as the role of the CSC, will undergo a sunset review by the JLARC. Without legislative action to extend the program, the program will be terminated in June 2025, and the act will be repealed effective June 30, 2026.

The ECY is given rulemaking authority.

A severability and null and void clause are included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 12 relating, to appeals of restrictions, orders, and penalties to the Pollution Control Hearings Board, which takes effect June 30, 2019. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Environment):

(In support) This bill, in conjunction with funding items in the Governor's budget, will address pollution problems at their source. The toxics bill is a more cost-effective, tailored approach to addressing the issue of toxic pollutant's released into the environment. The gains from reducing discharges under the Clean Water Act are comparatively incremental next to the gains that can be realized from eliminating toxics from ordinary but diffuse and unregulated consumer products and sources. Cities support this approach because addressing nonpoint sources provides better public health benefits than a discharger-focused approach that would place heavy burdens on municipal wastewater treatment plants. Some of the products used in commerce are harmful to child development or cause cancer. Children with autism are especially susceptible to toxic chemical exposures because they tend to put things in their mouths. This bill presents a systematic approach that will make real progress towards minimizing the exposure of children to toxic chemicals. Exposure to toxic chemicals is widespread and studies have identified a wide variety of toxic chemicals in the bodies of regular people. There are real and direct links between childhood exposure to toxics and developmental and health issues. Developmental and other public health disorders caused by exposures to toxic chemicals impose real and measurable social costs, and failure to pass this bill will continue to impose these costs of inaction. The burden of navigating what products to buy and what chemicals to avoid cannot fall entirely to public consumers, who are not necessarily equipped to navigate a complicated and fragmented landscape of information about toxics in consumer products. The public wants to know about the toxic contents of their products, but industry does not make a priority of making this information accessible, and it is hard to obtain. This bill will encourage businesses to develop better products and will help the state's green chemistry industry grow. Consumers are demanding safer products, and businesses in Washington are responding to that consumer demand by consciously making toxic-free products. Public health and a healthy environment are an important part of the high quality of life that attracts businesses to locate in Washington. There should be additional incentives in place to encourage businesses that proactively

address toxic chemicals. The CAPs, alternatives assessments, increased monitoring, and restriction authorities granted to the ECY will all help the goal of removing pollutants from the environment. People concerned with public exposure to toxics should not have to return to the Legislature year after year to advocate for action when there is good scientific evidence that some chemicals cause real problems.

(With concerns) The broad delegation of authority to the ECY is concerning. There is not a zero-cost option for resolving the Clean Water Act toxics conundrum, and this bill might provide a better cost-benefit ratio than further ratcheting down the allowable toxic levels in point-source discharges. Ports are concerned about the future costs of complying with storm water discharge regulations. The Clean Water Act fish consumption rule is dependent on the passage of this bill. Ports support this approach because addressing nonpoint sources provides better public health benefits than a discharger-focused approach.

(Opposed) There is broad business opposition to this bill, particularly among manufacturers of consumer products. The delegation of authority to the ECY to demand alternatives assessments, to make determinations about safer chemicals, and to ban the use of chemicals gives them too much power and discretion; these determinations should be made by the Legislature. The broad definition of manufacturer in the bill would require many grocery stores and other retailers to act like manufacturers and perform alternatives assessments, even though the stores simply sell the products, and don't have the expertise about the manufacturing processes or chemical uses. The 30-day timeframe for businesses to certify their compliance with chemical restrictions is too short for retailers who would need to communicate with supplying manufacturers to obtain that information. The business community has successfully worked within the CAP process, but this bill exacerbates the worst process issues with the current CAP process. The creation of specific lists of bad chemicals is not always a science-based or risk-based endeavor, and there is a lot of stigma associated with a business being connected to the list that may be unjustified. Businesses are willing to spend any amount of money to protect the safety of children, but safety regulations should be based in facts, sound data, and science. Regulation of toxics in consumer products would be best accomplished at the federal level. There is not a direct nexus between the passage of the bill and the U.S. EPA's approval of the ECY's fish consumption rule.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is an attempt to deal with chemicals of concern to humans in a more effective way than the end-of-pipe solution that has been used for the past couple of decades. Dealing with chemicals of concern in the manufacturing phase rather than putting the entire burden of compliance on dischargers will be better for the economy and for human health. The substitute bill removed the requirement that the ECY develop a new list of 150 priority chemicals, and is expected to reduce the workload and costs for the ECY. Chemical action plans are a collaborative process which help us learn where the biggest bang for our buck will be in terms of reducing toxics. The more prevention that is done the less cleanup there will be down the road.

Toxic cleanup sites, such as the Duwamish Superfund site, can be very expensive, and this bill would protect those investments and prevent sites from becoming re-contaminated. There have been concerns about having an open process and some restrictions on Ecology's

authority, which is why the Chemical Safety Committee was added to the bill. Body burden studies show that toxic chemicals are in our bodies and cause a host of diseases. This bill uses upstream thinking and preventative measures to protect our health.

(Opposed) This bill goes a little too far in its delegation of authority to the ECY to demand alternatives assessments. The broad definition of "manufacturer" in the bill would require grocery stores and other retailers to act like manufacturers and perform alternatives assessments. The 30-day timeframe for compliance is too short for retailers.

Persons Testifying (Environment): (In support) Representative Fitzgibbon, prime sponsor; Maia Bellon, Department of Ecology; Rob Duff, Office of the Governor; John Wiesman and Kathy Lofly, Department of Health; Brian Bonlender, Department of Commerce; Sheela Sathyararayana, University of Washington \Department of Pediatrics; Joseph David, Point 32; Mickey Blake, Floral Soil Solutions; Ryan Clark, Liberty Bottleworks; Carl Shroeder, Association of Washington Cities; Ben Bucholz, City of Bellingham; Sandra Kilroy, King County; Karen Bowman, Washington State Nurses Association; Stella Daniels; Jessie Dye, Earth Ministry; Diana Stadden, The Arc of Washington State; Lorelei Walker; Laurie Valeriano; Scott Redman, Puget Sound Partnership; Larry Garcia, Seattle City Light; and Ed Thorpe, Coalition for Clean Water.

(With concerns) Gerry O'Keefe, Washington Public Ports Association.

(Opposed) Brandon Housekeeper, Association of Washington Business; Mark Greenberg, American Chemistry Council; Holly Chisa, Northwest Grocery Association; and Grant Nelson, Toy Industry Association.

Persons Testifying (Appropriations): (In support) Representative Fitzgibbon, prime sponsor; Robert Duff, Office of the Governor; Nick Federici, Washington Toxics Coalition; and Alex Hur, Washington State Nurses Association.

(Opposed) Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying (Environment): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.