SENATE BILL REPORT
E2SHB 1472

As of March 24, 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: Passed House: 3/11/15, 63-35.
Committee Activity: Energy, Environment & Telecommunications: 3/24/15, 3/25/15.

Brief Summary of Engrossed Second Substitute Bill

- Directs the Department of Ecology (Ecology) to begin conducting up to four chemical action plans (CAPs) 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 Ecology to require that 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 Ecology in a CAP, or products that contain lower amounts of targeted chemicals than comparable products.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

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Background: Under the Children's Safe Products Act (CSPA) Ecology, in consultation with the Department of Health (DOH), must identify chemicals of high concern for children

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(CHCCs). A high-priority chemical is defined as a chemical that is identified to do one or more of the following:

- harm the normal development of a fetus or child, or cause other developmental toxicity;
- cause cancer, genetic damage, or reproductive harm;
- disrupt the endocrine system;
- damage the nervous system, immune system, or organs, or cause other systemic toxicity;
- be persistent, bioaccumulative, and toxic; or
- be very persistent and very bioaccumulative.

Under the federal Clean Water Act, Section 304(a), the United States Environmental Protection Agency (EPA) develops ambient water quality criteria for the protection of aquatic life and human health. EPA updated its water quality criteria for human health last year. According to EPA, the revision to 94 chemical pollutants of the human health criteria reflects the latest scientific information, exposure factors, bioaccumulation, and toxicity factors. The human health criteria establishes values that limit the amount of chemicals present in the water. These values are the highest concentration of a pollutant in water that is not expected to pose a significant risk to human health. EPA human health ambient water quality criteria are used by individual states to set water quality standards. These state-specific standards must be approved by EPA.

Ecology identifies, reviews, evaluates, and makes recommendations on the use and management of persistent, bioaccumulative, and toxic (PBT) chemicals. These chemicals remain in the environment for long periods of time, accumulate in the food chain, and are toxic to humans and wildlife. Ecology has adopted rules for PBT CAPs that establish criteria used to identify PBTs, procedures to develop and periodically update a list of PBTs, and the scope and content of a CAP. The purpose of a CAP is to provide general information about a PBT, its uses, its impacts to the environment and human health, and to determine policy options and recommendations.

The Interstate Chemicals Clearinghouse, an association focused on safe chemical use, 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 2015, Ecology 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.

Summary of Bill: Chemical Action Plans. Beginning January 1, 2016, and every two years after, Ecology, in consultation with DOH, must select up to four chemicals for development of a CAP. The chemicals must be selected from the EPA ambient water quality criteria for human health that impact waters of the state; or a chemical identified under the CSPA as a high-priority CHCC that is present in the environment or that is added to consumer products; or a high priority chemical shown to be in fish, wildlife, air, water, or soil through

environmental monitoring. At least two of the first four chemicals must be chosen from the EPA list for water quality criteria. Ecology must consider the following when considering chemicals for a CAP:

1. opportunities for reducing or phasing out uses, production, or releases of a chemical;
2. scientific evidence of:
    a. combined effects of exposure to the chemical and other substances commonly present in the environment;
    b. susceptibility of sensitive groups and environmental media from exposure, as well as cumulative effects of multiple exposures; and
3. existing plans or regulatory requirements to phase out or reduce the use and releases of the chemical.

Ecology may conduct environmental monitoring or request DOH to verify chemicals in the environment or people through biomonitoring, subject to funds specifically appropriated for this purpose. The environmental monitoring and biomonitoring must be of minimum scope to adequately inform a CAP.

Ecology may request manufacturers provide, within six months, certain information about chemicals and also may order manufacturers to provide information relevant to development of a CAP. However, Ecology must first consult with an external advisory group, if created, to evaluate the chemical subject to the request. Ecology's requests for information must be reasonable and limited in scope and frequency focused on the most common and prevalent uses of the chemicals or products containing the chemicals; areas about a chemical with an identified gap in departmental or public knowledge; and chemical uses or products likely responsible or associated with significant releases into the environment or public health exposures. Manufacturers may provide estimates based on national data for chemical amounts as well as collaborate with other businesses for a chemical in similar products.

CAPs must include the following:

- information about chemical properties, uses, manufacturers; production, unintentional production, uses and disposal; known or potential impacts on human health and the environment; and regulatory and nonregulatory approaches that influence production, uses, releases, and management of the chemical;
- recommendations based on environmental and human health benefits; economic and social impacts; feasibility; availability and effectiveness of safer substitutes for uses of the chemical; and consistency with existing federal and state regulatory requirements;
- sources of information relied upon to complete the CAP, including peer-reviewed science; and
- a summary of any external advisory group members' dissenting views of the CAP recommendations.

Ecology must convene an external stakeholder group to provide stakeholder input and expertise. Membership is specified and state agencies and technical experts may be requested to participate. All advisory committee meetings must be open to the public.

Alternatives Assessments. Ecology may require manufacturers, by order, to conduct alternatives assessments consistent with CAP recommendations. Manufacturers must submit

alternatives assessments to Ecology within one year of receiving an order. Ecology may grant an extension if necessary to complete an alternatives assessment or to substantially improve the quality. A manufacturer that has been requested to conduct an alternatives assessment may instead submit a certificate of compliance when it has stopped using the chemical or can demonstrate plans to phase out the use of the chemical within a reasonable timeframe.

The scope of the alternatives assessments is limited to a single use of the chemical in a specific manufacturing process or the inclusion of a chemical in a specific type of product. Ecology may not require an alternatives assessment for a greater breadth of uses or products or by a greater number of manufacturers than what is necessary to address significant sources of environmental or public health exposures to the chemical.

Ecology may contract with an independent scientific organization to conduct an independent alternatives assessment when a manufacturer cannot be identified or a submitted alternatives assessment does not meet the definition or objective of an alternatives assessment. An independent contractor must involve interested parties in the alternatives assessment process.

Ecology may rely on existing information indicating a safer alternative exists for a chemical if that information is equivalent to an alternatives assessment. If Ecology determines a safer alternative does not exist, then it may not reevaluate information on availability of safer alternatives more than once every five years.

Summary Report. Ecology and DOH must prepare a report of all reviewed alternatives assessments. The summary report must include a determination of whether a safer alternative exists and identify unsuitable alternatives. Ecology must evaluate if alternatives assessments followed guidelines issued by the Interstate Chemicals Clearinghouse, National Academy of Sciences, or equivalent methodology. Upon determination of a safer alternative, Ecology must submit a draft legislation to the appropriate Legislative committees recommending prohibiting specific uses of the chemical.

Enforcement. Manufacturers violating provisions or an order issued by Ecology under this chapter are subject to a civil penalty up to $5,000 for the first offense of each violation. For subsequent violations, a manufacturer may be subject to a penalty of up to $10,000 for each repeat offense. Penalties and orders may be appealed to the Pollution Control Hearings Board.

Confidentiality. Manufacturers that submit information to Ecology may request that the information be treated as confidential. Ecology must keep the submitted information confidential if it deems that maintaining the confidentiality of the information is not detrimental to the public interest. Ecology must keep confidential any submitted information relating to proprietary manufacturing processes or chemical formulations.

Purchasing and Procurement Restrictions on Priority Washington Chemicals. The Department of Enterprise Services (DES) must establish purchasing and procurement policies for products and products in packaging that do not contain a PBT; and when there is a CAP recommendation that the state should adopt such a policy for a chemical evaluation. 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 DES may request that suppliers provide testing data on the chemical levels in their products.

Other. Beginning in 2024, Ecology's authorities to demand manufacturer information, require alternatives assessments, or restrict chemicals, will undergo a sunset review by the Joint Legislative Audit and Review Committee. 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.

Ecology is given rulemaking authority.

A severability and null and void clause are included.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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