

SENATE BILL REPORT

SB 5056

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, February 18, 2015
Ways & Means, February 26, 2015

Title: An act relating to the use of chemical action plans for recommendations of safer chemicals.

Brief Description: Concerning the use of chemical action plans for recommendations of safer chemicals. [**Revised for 1st Substitute:** Concerning the use of chemical action plans.]

Sponsors: Senators Ericksen and Chase.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/22/15, 2/18/15 [DPS-WM, DNP].

Ways & Means: 2/24/15, 2/26/15 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5056 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown, Honeyford and Ranker.

Minority Report: Do not pass.

Signed by Senators McCoy, Ranking Minority Member; Cleveland and Habib.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5056 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hatfield, Hewitt, O'Ban, Padden, Parlette, Schoesler and Warnick.

Minority Report: Do not pass.

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.

Signed by Senator Hasegawa.

Minority Report: That it be referred without recommendation.

Signed by Senators Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Conway, Fraser, Kohl-Welles and Rolfes.

Staff: Sherry McNamara (786-7402)

Background: Flame-retardant chemicals are added to many consumer products to delay combustion and to meet fire safety standards. The flame retardants polybrominated diphenyl ether (PBDE) were added to a wide variety of household products; however, because of concerns for human health and the environment, the Legislature banned the use of certain PBDEs for use in residential upholstered furniture.

Other flame retardants such as the chemicals tris(1,3-dichloro-2-propyl)phosphate (TDCPP) and tris(2-chloroethyl)phosphate, (TCEP), known collectively as TRIS, hexabromocyclododecane (HBCD), and decabromodiphenyl ether (DecaBDE) are also used as flame retardants. As with PBDEs, these flame retardants are added to plastics, foams, and textiles. Concerns have been raised about these flame retardants because of their widespread use, human exposure, and potential health risks.

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

The flame retardants TDCPP, TCEP, HBCD, and DecaBDE are included on CHCC list.

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 chemical action plans (CAP) that establish criteria used to identify PBTs, procedures to develop a list of PBTs and periodically update that list, and the scope and content of a CAP. The purpose of a CAP is to provide general information about a PBT, its uses, impacts to the environment and human health, and to determine policy options and recommendations.

Summary of Bill (Recommended Second Substitute): Beginning July 1, 2016, the manufacture, sale, and distribution of residential upholstered furniture and children's products of which any component contains more than 1000 parts per million of TDCPP, TCEP, DecaBde, HBCD, or the additive form of TBBPA are prohibited. Nonprofit organizations and private parties making sales or purchases of used products are exempt from the prohibitions on chemicals restricted under CSPA.

Beginning January 1, 2016, Ecology must select two substances from the EPA ambient water quality criteria for human health for the development of a CAP. Every two years, Ecology and DOH must complete and publish a CAP for a selected substance. Ecology must seek technical expertise from DOH on human health impacts and provide recommendations to the Legislature on policy options for reducing exposure, designating and developing safer substitutes, and restricting or prohibiting the use of chemicals in consumer products. This does not apply to agricultural fertilizers and pesticides.

After January 1, 2015, within two years of adopting a rule listing a flame retardant as a CHCC, Ecology must complete and publish a CAP for the identified flame retardant.

Elements of Ecology's rules establishing criteria for CAPs are codified. The CAPs must include information such as chemical information including properties, uses, and manufacturer name; an analysis of available information on the production, inadvertent production, uses, and disposal; potential impacts on human health and the environment; an evaluation of regulatory and nonregulatory approaches that influence production, uses, releases and management of a substance; recommendations regarding the managing, reducing, and phasing out of the uses and releases of the chemical, minimizing exposure, reducing risk of harm to human health and the environment, and development of safer alternatives; and recommendations on evaluations of environmental and human health risks and benefits, economic and social impacts and benefits, technical feasibility, availability and effectiveness of alternatives that reduce risk and exposure, and consistency with other states and federal laws.

Ecology must convene an external advisory committee for each CAP to provide stakeholder input. The external advisory group must include the largest statewide business association, large and small business sectors; community, environmental, and public health advocacy groups; local governments; and affected and interested businesses.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute): Removes the \$1 million MTCA appropriation. Makes the requirements of the bill contingent upon funding.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended First Substitute): Revises the amount of flame retardants permitted from 100 ppm to 1000 ppm; requires Ecology to conduct a CAP within two years of a flame retardant being added to the CHCC list; and clarifies the chemical action plan process.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Energy, Environment & Telecommunications): OTHER: CAPs are useful tools for the Legislature. They should be based on environmental risk and include technical feasibility. Human health and environmental quality are the most effective ways to address the issues. The Clean Water Act is insensitive to costs and human health benefits. The state needs a program, but there are concerns with giving Ecology the authority to ban chemicals. Flame retardants are toxic to human health. The bill should consider other flame retardants. Flame retardants are an increasing problem. As the use of PBDEs declines, we need to make sure other flame retardants aren't being used. Safer alternatives have been identified. Ecology needs the authority to ban. This is a good start. Three percent of developmental disabilities are the results of exposure to toxic chemicals. The Legislature seems to agree that these chemicals shouldn't be in the house. The challenge is getting through the legislative process. There are concerns with Ecology having the authority to ban but sometimes the Legislature can't get to the final decision. We need to consider the authority to ban for flame retardants only.

Persons Testifying (Energy, Environment & Telecommunications): OTHER: Mark Greenberg, American Chemistry Council; Dave Mastin, Erika Schreder, WA Toxic Coalition; Robert Duff, Governor's Office; Holly Davies, Ecology; Barbara Morrissey, DOH; Karen Bowman, WA State Nurses Assn.; Lelach Rave, WA Chapter of American Academy of Pediatrics; Diana Stadden, Arc of WA; Brandon Houskeeler, Assn. of WA Business; Gerry O'Keefe, WA Public Ports Assn.; Michael White, John Rosenberg, WA State Council of Fire Fighters.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: This bill builds upon legislative action from last year on flame retardants. The legislation provides a needed pathway for appropriate review. Funding for the bill is provided from the Model Toxic Control Accounts which we believe is an appropriate funding source for these activities to reduce pollutants in the environment.

OTHER: We like the focus on chemical action plans, but we have some concerns. We are concerned about the restriction of the chemicals on the clean water act list. This list won't necessarily provide all the right chemicals to make sure that we are really getting at the things that make the difference. We want to make sure that there are tools to actually do something from the chemical action plans. So we are after a method to implement these

plans as well. In section 4 of the legislation a complete chemical action plan is required to be completed and published. We suggest a flame retardant examination first, as a complete chemical action plan is much more expansive.

Persons Testifying (Ways & Means): PRO: Amber Carter, Assn. of WA Business.

OTHER: Dave Mastin, WA Toxics Coalition; Robert Duff, Governor's Office.