

SENATE BILL REPORT

SB 6131

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, June 26, 2015

Title: An act relating to requiring safer chemicals in Washington.

Brief Description: Requiring safer chemicals in Washington.

Sponsors: Senator Ericksen.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 6/26/15 [DPS, DNP].

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6131 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

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

Staff: Jan Odano (786-7486)

Background: The Department of Ecology (DOE) identifies, 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. DOE has adopted rules for PBT chemical action plans (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 on the environment and human health, and to determine policy options and recommendations.

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. 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

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ambient water quality criteria are used by individual states to set water quality standards. These state-specific standards must be approved by EPA.

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.

In the 2014 Supplemental Operating Budget the Legislature directed DOE to test for the presence of flame retardants in children's products and furniture and to analyze TBBPA and antimony compounds used as flame retardants. In January 2015 DOE submitted a report to the Legislature that recommended the restriction of 10 flame retardants in children's products and furniture, including TCEP, TDCPP, HBCD, and TBBPA.

Summary of Bill (Recommended Substitute): Chemical Action Plans. Beginning January 1, 2016, and every two years thereafter, the DOE, in consultation with the Department of Health (DOH), must select up to two chemicals for development of a CAP. The chemicals must be selected from DOE's rules regulating water quality criteria for human health that impact waters of the state; a PBT impacting water quality; or an emerging chemical that is a chemical of high concern for children or found in the environment. The first five chemicals must be chosen from DOE's rules regulating water quality for human health or a PBT impacting water quality. The following must be considered when selecting a chemical for developing a CAP:

1. opportunities for reducing or phasing out uses, production, or releases of a chemical;
2. current scientific evidence of combined effects of exposure to the chemical;
3. relative ranking assigned by DOE based on chemical characteristics, uses of the chemical and levels present in humans and the environment;
4. whether a chemical has been determined to impact the waters of the state;
5. existing plans or regulatory requirements to phase out or reduce the use of the chemical; and
6. potential for an emerging chemical to impair water quality.

DOE may conduct environmental monitoring or request DOH to verify chemicals in the environment or in humans through biomonitoring. When developing a CAP, DOE 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.

DOE may request that manufacturers provide information about chemicals and also may order manufacturers to provide information relevant to the development of a CAP. DOE's requests for information must be reasonable and limited in scope and frequency focused on:

the most common and prevalent uses of the chemicals; areas where there is an identified gap in departmental or public knowledge about the chemical; and chemical uses or products likely responsible with significant releases into the environment or public health exposures. Manufacturers must provide descriptions of the products containing the chemical and the functions of the chemical.

CAPs must include the following:

- the chemical name and information about chemical properties, uses, and products that use the chemical;
- an analysis of the available information on production, unintentional production, uses and disposal of the chemical;
- known or potential and proven impacts on human health and the environment with the use and release of the chemical;
- regulatory and nonregulatory approaches that influence production, uses, and releases of the chemical;
- identification of actions to eliminate, reduce, or manage exposures to the chemical;
- prioritization of sources of exposure and releases of the chemical based on impacts to human health and the environment; and
- a determination of whether an alternatives assessment is recommended.

CAPs must also include:

- recommendations based on opportunities for environmental and human health benefits; economic and social impacts; feasibility; availability and effectiveness of safer substitutes; 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 all external advisory group members' views of the CAP recommendations.

Alternatives Assessments. DOE is authorized to require manufacturers to conduct two alternatives assessments consistent with recommendations from chemical action plans. However, DOE may not require manufacturers to conduct more than one alternatives assessment on a PBT impacting water quality. An alternatives assessment for a chemical from DOE's proposed rule for water quality criteria or a PBT impacting water quality may not be for a greater breadth of uses, products or manufacturers than necessary to address sources of environmental or human exposure. An alternatives assessment for a chemical that is an emerging chemical must be for a single type of use of the chemical or a single type of product in which the chemical is found. In addition to the two authorized alternatives assessments, DOE may require manufacturers to conduct an alternatives assessment for polychlorinated biphenyls in pigments and dyes.

An alternatives assessment must follow guidelines from the Interstate Chemicals Clearinghouse, the National Academy of Sciences or equivalent methodology. It must meet the objective of assessing less toxic chemicals and nonchemical alternatives to replace the use of a chemical. If a safer alternative is not identified, an alternatives assessment must assess the reduction of exposure from products. An alternatives assessment must include an

evaluation of chemical hazard, exposure, performance, consumer acceptance, cost, and identification of alternatives and unsuitable alternatives.

Manufacturers must submit alternatives assessments to DOE within eighteen months of receiving an order. DOE may grant an extension if necessary to complete or to substantially improve the quality of an alternatives assessment. A manufacturer may collaborate with other manufacturers of similar products or business associations to conduct an alternatives assessment.

A manufacturer is not required to submit an alternatives assessment when it provides within thirty days of the order a certificate of compliance to DOE. The certificate of compliance must include:

- documentation demonstrating that the manufacturer no longer uses the chemical or has committed resources to phasing out the use of the chemical; and
- information on how the manufacturer is using a safer alternative to meet the function of the chemical subject to an alternatives assessment.

DOE may contract with an independent qualified third party to conduct an alternatives assessment when a manufacturer is not required to conduct an alternatives assessment or when DOE determines that an alternatives assessment does not meet the definition or objectives of an alternatives assessment. DOE must ensure that any alternatives assessment completed by a third party is peer reviewed and meets the objectives and definitions of alternatives assessment. DOE may request manufacturers to provide information that is relevant for a department-conducted alternatives assessment.

Enforcement. Manufacturers violating provisions or an order issued by DOE 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 DOE may request that the information be treated as confidential. The manufacturer must demonstrate how the information relates to unique processes or how public disclosure may adversely affect its competitive position. DOE must keep the submitted information confidential if it deems that maintaining the confidentiality of the information is not detrimental to the public interest. DOE 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. DOE must review and evaluate the CAP process and submit a report to the Legislature with recommendations by June 30, 2024.

Flame Retardants. 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 the chemicals 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 Children's Safe Products Act.

A severability and null and void clause is included and provisions relating to developing chemical action plans and conducting alternative assessments expire June 30, 2025.

EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Substitute): The substitute bill limits the DOE to conduct one alternatives assessment on a PBT. The alternatives assessment allowed for a PBT is modified from a single type of use of a chemical or a single type of product or product component in which the chemical is found to an alternatives assessment that is limited to the uses, products, or manufacturers necessary to address sources of environmental or human exposure to the chemical. The substitute bill also makes clarifying and technical changes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for Section 11 takes effect June 30, 2019.

Staff Summary of Public Testimony: No public hearing was held.

Persons Testifying: N/A.