HOUSE BILL REPORT
ESHB 2658

As Passed House:
February 12, 2018

Title: An act relating to the use of perfluorinated chemicals in food packaging.

Brief Description: Concerning the use of perfluorinated chemicals in food packaging.

Sponsors: House Committee on Environment (originally sponsored by Representatives McBride, Kagi, Peterson, Fitzgibbon, Doglio, Gregerson, Appleton, Jinkins, Ortiz-Self, Macri, Ryu, Pollet, Kloba, Goodman, Frame and Stanford).

Brief History:
Committee Activity:
Environment: 1/23/18, 2/1/18 [DPS].
Floor Activity:
Passed House: 2/13/18, 56-41.

Brief Summary of Engrossed Substitute Bill

- Conditionally restricts the inclusion of perfluoroalkyl and polyfluoroalkyl chemicals in specific applications of food packaging beginning as early as 2022, pending the outcome of an alternatives assessment to be completed by the Department of Ecology by January 1, 2020.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Fey, Kagi and McBride.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys and Dye.

Staff: Jacob Lipson (786-7196).

Background:

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.

Prohibited Substances in Packaging.
Since 1991 state law has restricted the intentional use of lead, cadmium, mercury, and hexavalent chromium in packaging or packaging components. Packaging includes containers used to market, protect, or handle a product, including shipping containers and unsealed receptacles like cups, crates, wrappers, bags, and tubs.

Manufacturers must develop certificates of compliance for packaging or packaging components certifying that the packaging does not include restricted substances in prohibited amounts, and noting the basis for any claimed exemption from those restrictions. Certificates of compliance must be kept on file by a manufacturer while packaging or packaging components are in use, and for three years after the last date of sale or distribution. When a manufacturer reformulates or develops a new package or packaging component, the manufacturer must update the certificate of compliance.

The Department of Ecology (ECY) may prohibit the sale of packages by a manufacturer if the manufacturer does not provide a certificate of compliance within 60 days of an ECY request.

Perfluoroalkyl and Polyfluoroalkyl Chemicals.
According to the ECY, perfluoroalkyl and polyfluoroalkyl chemicals (PFAS) are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. The ECY has also identified PFAS as persistent, bioaccumulative, and toxic (PBT) substances. In 2016 under the ECY's PBT substances rule, the ECY began developing a chemical action plan (CAP) in conjunction with the Department of Health for PFAS to evaluate the chemical's uses, releases, impacts, and management. As of January 14, 2018, the ECY has published and solicited public feedback on a draft CAP, but has not yet published a final CAP.

Alternatives Assessments.
The Interstate Chemicals Clearinghouse (ICC), which is an association focused on safe chemical use and of which Washington is a member, published an alternatives assessment guide in January 2014, and an updated guide in January, 2017. 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 original ICC guide.

Federal Food Contact Product Approvals.
The United States Food and Drug Administration (U.S. FDA) oversees the safety of food, drugs, and cosmetics under the federal Food, Drugs, and Cosmetic Act. Among the U.S. FDA's responsibilities is to regulate components of materials, including packaging, that act as indirect food additives or food contact materials. Food manufacturers must submit to the U.S. FDA a food contact notification containing certain information about a new substance in order to receive U.S. FDA approval to use the new substances as a food contact substance.

Summary of Engrossed Substitute Bill:

Contingent upon the outcome of an alternatives assessment, manufacturers that apply a package to a product are restricted from selling, offering for sale, or distributing food packaging to which PFAS have been intentionally added. Food packaging is defined as paper, paperboard, or fiber-based materials that are intended for direct food contact.

The restrictions on PFAS in specific applications of food packaging are effective no earlier than January 1, 2022, and take effect only after the ECY identifies safer alternatives during an alternatives assessment as part of the PFAS Chemical Action Plan. The alternatives assessment must:

- evaluate less toxic chemicals and nonchemical alternatives;
- follow the ICC alternatives assessment guidelines;
- evaluate chemical hazard, performance, cost, and availability, at minimum; and
- result in the publication of findings in the Washington State Register and a report to the Legislature by January 1, 2020. The report to the Legislature must be accompanied by the feedback reviewed by the ECY from an external peer received of its alternatives assessment.

A safer alternative must have improved hazard and exposure considerations and be able to be practicably and economically substituted for the original chemical in a specific food packaging application. Safer alternatives must be available in sufficient availability and at comparable cost, and must perform at least as well as PFAS. Chemical alternatives must have received U.S. FDA Food Contact Approval. A safer alternative determination must be supported by feedback from an external peer review.

If the January 1, 2020 findings do not identify safer alternatives for specific applications of food packaging, then the ECY must continue to review the availability of safer alternatives to PFAS in food packaging applications annually by January 1 until safer alternatives are identified, after which the restrictions will take effect two years later.

Manufacturers must develop a compliance certificate by the time the prohibition on PFAS in a specific food packaging application becomes effective, and must provide that certificate to the ECY within 60 days of a request.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The PFAS are persistent, bioaccumulative, and toxic chemicals that impact liver function, reproductive health, and developmental processes, and that increase cancer risks and cholesterol levels. Replacement short-chain PFAS pose similar hazard concerns to the older generation of phased-out long chain PFAS. Peer-reviewed science has demonstrated the potential disruptions from PFAS to the endocrine system, affecting hormone levels. Tests have found that PFAS are pervasive in the environment and are in most human bodies. Per-

pound, children are subject to comparatively higher doses of PFAS because they absorb more from their environments through food, water, and dust. Any PFAS migrate out of food packaging when heated. Companies already are making grease-resistant food container products that do not contain PFAS. The alternatives to PFAS can be manufactured using multiple approaches, including non-paper products, uncoated papers, or paper that is treated with non-PFAS coatings. In Denmark, where PFAS have been restricted, manufacturers found ways to quickly meet the market demand for PFAS-free food packaging. The PFAS in food packaging can contaminate compost and drinking water. Recent studies indicated that for commercially manufactured compost, food packaging is a major source of PFAS, and PFAS in compost is sufficiently concentrated that plants would uptake it from the soil.

(Opposed) It is premature to develop PFAS standards before the conclusion of the CAP process and the development of CAP recommendations. The bill should more clearly define food packaging importers. The bill is overly broad because it covers the entire class of PFAS, which vary in chemical structure, application, and function. The PFAS are vital chemicals used in a variety of applications, such as semiconductors and medical devices, as well as to prevent paperboard packaging from leaking. Nonfluorinated alternatives are more expensive and less effective. Food packaging is not the source of PFAS contamination of water bodies in Washington. The PFAS are not carcinogenic or persistent, bioaccumulative, toxic chemicals. The use of PFAS in food packaging is already thoroughly federally regulated. People in the food industry are concerned about the availability of alternatives; even if safer alternatives exist, there is a question of whether they are sufficiently available. More than one safer alternative should exist before a ban takes effect. A national policy would be easier for food product retailers to comply with because of the complexities of product supply chains. Because many grocers are interstate companies and grocers' names are on food packaging boxes, they might be responsible for compliance under this bill even though they do not manufacture the packaging themselves.

(Other) Packaging orders are usually filled at least a year in advance, and so businesses that rely on food packaging would prefer to have an extra year to comply with the restrictions. The bill should clarify who is responsible for ensuring compliance with the PFAS packaging restrictions. Funding to implement this bill is not in the Governor's budget, but the approach in the bill is consistent with the policy direction and initial recommendations in the PFAS CAP. Washington communities are impacted by contaminated drinking water from PFAS. Newer PFASappear to be less toxic, but are highly persistent, water-soluble, and mobile. The persistence of PFAS is the greatest reason for concern because these chemicals will be in the environment forever, and it will be very difficult to remedy in the future if negative health effects are discovered. The alternatives assessment in the bill is an appropriate step prior to banning chemicals. The United States Food and Drug Administration's processes for evaluating PFAS do not consider all of the potentially relevant public exposure pathways, such when PFAS in food packaging leaches into compost.

Persons Testifying: (In support) Representative McBride, prime sponsor; Erika Schreder, Toxic-Free Future; Cheri Peele, Clean Production Action; Elizabeth Friedman, Pediatric Environmental Health Specialty Unit, University of Washington; Heather Trim, Zero Waste Washington; Katherine Pelch, The Endochrine Disruption Exchange; and Shirlee Tan, Toxicologist, Public Health Seattle and King County.

(Opposed) Jessica Bowman, FluoroCouncil; Mary Catherine McAleer, Association of Washington Business; Carolyn Logue, Washington Food Industry Association; and Holly Chisa, Northwest Grocery Association.

(Other) Samantha Louderback, Washington Hospitality Association; Darin Rice, Department of Ecology; and Barbara Morrissey, Department of Health.

Persons Signed In To Testify But Not Testifying: None.