

HOUSE BILL REPORT

HB 2793

As Reported by House Committee On:
Environment

Title: An act relating to reducing the use of certain toxic chemicals in firefighting activities.

Brief Description: Reducing the use of certain toxic chemicals in firefighting activities.

Sponsors: Representatives Peterson, Doglio, Fitzgibbon, Riccelli, Bergquist, Tharinger, McBride and Pollet.

Brief History:

Committee Activity:

Environment: 1/23/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Requires the presence of perfluorinated and polyfluorinated (PFAS) chemicals in firefighting personal protective equipment (firefighting PPE) to be disclosed at the time of sale, beginning July 1, 2018.
- Restricts the sale of foam designed for flammable liquid fires that contains PFAS chemicals, beginning July 1, 2020.
- Restricts the discharge or use during training activities of foam designed for flammable liquid fires that contains PFAS chemicals, beginning July 1, 2018.
- Directs the Department of Ecology to help other state agencies and local governments to avoid the purchase of firefighting foam that contains PFAS chemicals and to give priority and preference to the purchase of firefighting PPE that does not contain PFAS chemicals.

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.

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.

Staff: Jacob Lipson (786-7196).

Background:

Perfluorinated and Polyfluorinated Chemical Action Plan.

According to the Department of Ecology (ECY), perfluorinated and polyfluorinated (PFAS) chemicals 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 chemicals 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 chemicals 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.

Federal Firefighting Foam Requirements.

The United States Federal Aviation Administration (FAA) is responsible for a variety of safety regulations related to flight operations, including operations of aircraft and airports. Among the regulations applicable to airport operations that have been adopted by the FAA are requirements for airport operators to maintain on-site firefighting equipment and agents, including firefighting foams. Under this FAA rule, the type and amount of required firefighting agents and equipment depend on the size and frequency of aircraft departures from the airport.

Summary of Substitute Bill:

Firefighting Personal Protective Equipment.

Beginning July 1, 2018, manufacturers, importers, distributors, and other persons selling firefighting personal protective equipment (firefighting PPE) must provide written notice at the time of sale to purchasers of firefighting PPE that it contains PFAS chemicals.

Firefighting PPE is clothing designed or intended to be worn by firefighting personnel, including jackets, pants, shoes, gloves, helmets, and respiratory equipment. Purchasers, manufacturers, and other persons selling PFAS-containing firefighting PPE must retain this written notice for three years, and furnish it to the ECY upon request.

Firefighting Foam.

Beginning July 1, 2018, state agencies, local governments, and other persons may not, for purposes of training, discharge or use firefighting foams with intentionally added PFAS chemicals.

Beginning July 1, 2020, manufacturers, importers, and distributors may not manufacture, sell, or distribute firefighting foams designed for liquid flammable fires to which PFAS chemicals have been intentionally added. This restriction does not apply where the inclusion of PFAS chemicals in liquid flammable fire firefighting foam is required by federal law, including where currently required by the FAA. In the event that the FAA rule or other federal rules change after January 1, 2018, the ECY is authorized to adopt rules for the

manufacture, sale, and distribution of PFAS chemicals in firefighting foams for uses that are addressed by the federal rule.

Manufacturers, importers, and distributors of firefighting foam that contains PFAS chemicals must notify persons that sell their product in Washington by July 1, 2019. Persons that manufacture, sell, or distribute restricted firefighting foam that contains PFAS chemicals must recall the product and reimburse the purchaser of the product.

Administrative Provisions Related to Firefighting Foam and Personal Protective Equipment.

The ECY may require certificates of compliance from manufacturers, importers, or distributors of firefighting foam designed for liquid flammable fires and for firefighting PPE.

Beginning July 1, 2018, the ECY must help other state agencies, fire districts, and local governments to avoid purchasing firefighting foam that contain PFAS chemicals, and to give preference to the purchase of firefighting PPE that does not contain PFAS chemicals.

Violations of firefighting PPE PFAS disclosure requirements and firefighting foam PFAS restrictions are subject to civil penalties of up to \$5,000 per violation for initial offenses, and up to \$10,000 for repeat offenses.

Substitute Bill Compared to Original Bill:

Prohibits, beginning July 1, 2018, the discharge or use for training purposes of class B firefighting foam containing intentionally added PFAS chemicals.

Specifies a July 1, 2018, start date for the ECY to begin helping state agencies and local governments avoid the purchase of firefighting foam and firefighting personal protective equipment containing intentionally added PFAS chemicals.

Makes technical corrections, including amending errant cross-references and clarifying that restrictions on the manufacture, sale, and distribution of firefighting foams used for flammable liquid fires apply only to firefighting foams to which PFAS chemicals have been intentionally added.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested February 2, 2018.

Effective Date of Substitute Bill: 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 chemicals have contaminated drinking water systems in places where PFAS-containing foams have been used, such as near military airports. The Board of Health is adopting drinking water standards for PFAS chemicals, but action is needed in order to

address contamination sources. Both historic and replacement PFAS chemicals in firefighting foams are highly soluble and persistent. Carbon-fluorine bonds are indestructible except with extremely high heat, and do not go away with the passage of time. Monitoring data show that PFAS chemicals in drinking water bioaccumulate in humans. Not all people are equally susceptible to bioaccumulations and personal daily habits, such as how much water a person drinks, may have a large effect on exposure risks. Fluorine-free foams are effective, and many fire departments are starting to use these alternatives in an attempt to reduce cancer risks for firefighters. Firefighters handle foams and other contaminants in large volumes and have repeated and more frequent exposures to PFAS chemicals than the general public, and are thus susceptible to high cancer rates.

(Opposed) Banning foams and restricting protective equipment could have the opposite of its intended effect by leaving firefighters without adequate protections, rather than protecting them. Only a small subset of PFAS chemicals are approved for use in firefighting foams, and contamination of drinking water is from types of PFAS chemicals that have been phased out. A better approach would be to focus on best practices to reduce spills of PFAS foams. The federal Environmental Protection Agency reviews foams prior to allowing commercial use. Requiring notification of PFAS chemicals in personal protective equipment implies that there is something wrong the use of those chemicals. It is premature to regulate PFAS chemicals prior to the conclusion of the ECY's chemical action plan. A complete ban on PFAS chemicals in foam is too stringent since even fluorine-free foams may have some contamination. The bill should clarify whether manufacturers or importers of items are responsible for compliance. The exemption in the bill for federally required uses should be expanded to instances, like an oil train fire, where specific firefighting performance is mandated, even if the specific use of PFAS foams are not mandated.

(Other) Funding for this bill is not in the Governor's budget. A number of Washington communities are dealing with the impacts of PFAS chemicals in firefighting foams. Investigating aquifer contamination and treating PFAS chemicals in drinking water is an expensive proposition for public water systems. The bill would be strengthened by including an evaluation of the availability and suitability of firefighting foams that do not contain PFAS chemicals. The performance of non-fluorinated foams on flammable liquid fires is adequate, but may not always be as effective as fluorinated foams, and therefore fluorinated foams are currently required by federal regulations in certain circumstances.

Persons Testifying: (In support) Representative Peterson, prime sponsor; Erika Schreder, Toxic-Free Future; Michael White, Washington State Council of Fire Fighters; and Stephen Swanson.

(Opposed) Jessica Bowman, FluoroCouncil; and Mary Catherine McAleer, Association of Washington Business.

(Other) Barbara Morrissey, Department of Health; and Darin Rice, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.