

SENATE BILL REPORT

ESSB 6413

As Amended by House, February 27, 2018

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: Senate Committee on Energy, Environment & Technology (originally sponsored by Senators Van De Wege, Wellman, Palumbo, Billig, Hunt, Kuderer, Saldaña and Chase).

Brief History:

Committee Activity: Energy, Environment & Technology: 1/25/18, 1/31/18 [DPS-WM, w/oRec].

Ways & Means: 2/05/18, 2/06/18 [DPS(EENT), w/oRec].

Floor Activity:

Passed Senate: 2/10/18, 39-8.

Passed House: 2/27/18, 72-26.

Brief Summary of Engrossed First Substitute Bill

- Prohibits the sale, manufacture, and distribution of firefighting foam that has perfluoroalkyl and polyfluoroalkyl chemicals (PFAS) intentionally added.
- Requires sellers of firefighting personal protective equipment (PPE) containing PFAS, to notify purchasers of the equipment.
- Makes a violation of the act subject to a civil penalty not to exceed \$5000 for each first offense and up to \$10,000 civil penalty for subsequent violations.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 6413 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Brown, Hawkins, Hobbs, McCoy, Ranker, Sheldon and Wellman.

Minority Report: That it be referred without recommendation.

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 Ericksen, Ranking Member.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6413 as recommended by Committee on Energy, Environment & Technology be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Braun, Ranking Member; Billig, Brown, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Bailey and Becker.

Staff: Jed Herman (786-7346)

Background: PFAS are a class of man-made chemicals that are not found naturally in the environment. Molecules in all PFAS chemicals contain carbon and fluorine atoms and some also include oxygen, hydrogen, sulfur or nitrogen atoms. PFAS chemical molecules are differentiated from each other by chain length, or the number of carbon atoms, in the molecule.

PFAS chemicals have been widely used to make products stain-resistant, waterproof and nonstick. PFAS chemicals have been used in products that:

- keep food from sticking to cookware;
- make upholstered furniture, carpets, and clothing resistant to soil, stains, and water;
- make shoes, clothes and mattresses more waterproof;
- keep food packaging from sticking to food; and
- help fight fires at airfields and other places where petroleum-product-based fires are a risk.

According the U.S. Environmental Protection Agency, PFAS chemicals are very persistent in the environment and in the human body.

The Department of Ecology (Ecology) states that the toxicity of PFAS compounds varies. Studies in animals show that exposure to some PFAS can affect liver function, reproductive hormones, development of offspring, and mortality. However, PFAS toxicity in humans is less understood and exposure may be linked to high cholesterol, ulcerative colitis, thyroid disease, testicular cancer, kidney cancer, and pregnancy-induced hypertension.

PFAS-based class B firefighting foams have been used since the 1970s for vapor suppression, firefighting, and firefighting training at airports, refineries, bulk storage terminals and other facilities handling large volumes of flammable liquid petroleum or natural gas. PFAS chemicals are used in fire foam products because of their ability to produce a fast spreading foam. Potential sources of PFAS contamination related to fire-fighting foam use are found in Washington State airports, military sites, fire training centers, where foam has been used to extinguish petroleum fires.

Summary of Engrossed First Substitute Bill: The manufacture, sale and distribution of Class B firefighting foam that has PFAS chemical intentionally added is prohibited beginning July 1, 2020. The prohibition does not apply to the sale or use of Class B firefighting foam required by federal law for aircraft rescue and firefighting, as the law existed on January 1, 2018. Ecology may adopt rules for the sale and use of firefighting foam, if the federal regulations are revised to allow the use of alternative firefighting agents that do not contain PFAS chemicals.

By July 1, 2018, a person or manufacturer selling firefighting personal protective equipment (PPE) that contains PFAS chemicals, must notify purchasers that the equipment contains PFAS chemicals and the reasons for the chemicals. The person or manufacturer selling firefighting PPE and the purchaser must keep the notice on file for at least three years. The notice must be provided to Ecology upon request.

A manufacturer of Class B firefighting foam must provide written notice to persons selling the manufacturer's products no less than one year prior to the prohibition. A manufacturer of Class B firefighting foam must recall and reimburse the retailer or any purchaser for the product.

Ecology may request a certificate of compliance from a manufacturer of Class B firefighting foam or firefighting PPE. Through the certificate of compliance, the manufacturer attests that the products meet the requirements of this act. Ecology must assist the Department of Enterprise Services, other state agencies, fire protection districts, and other local governments to avoid purchasing or using firefighting agents containing PFAS chemicals as well as give priority and preference to purchasing firefighting PPE that does not contain PFAS chemicals.

A manufacturer in violation of this act is subject to a civil penalty not to exceed \$5,000 for each first offense. Manufacturers are subject to a \$10,000 civil penalty for subsequent violations.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill (Energy, Environment & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: Since 2015, PFAS contamination of water systems is greater than what was widely known. Some have had to find a new water source, which comes at a high cost, from providing drinking water and to clean up. This bill will protect health and save money. PFAS are highly persistent and mobile and move into drinking water easily. There are safer alternatives, which we should be able to use and work with others to identify safer alternatives, recognizing the limited circumstances where these chemicals may be used. These chemicals have been detected in areas where firefighting training has occurred. There

are concerns about exposures to pregnant women and young children as this is a time of high endocrine activity. These chemicals may impact proper fetal development as they share many similarities to other chemicals that disrupt endocrine systems.

CON: The bill needs to clarify the chemicals that would be affected. There is no evidence that suggests the short chain PFAS cause a problem. These are the best chemicals to fight liquid petroleum fires. An outright ban is unnecessary until the CAP is completed. We should be working with the federal government, since all of the releases are on federal lands.

OTHER: There are five areas in state affected by drinking water contamination over the federal limit. It is very expensive to clean up aquifers. Once a persistent, mobile, water soluble chemical gets into water system its impossible to get out. Testing is ongoing in other areas and we are looking for ways to prevent this from happening.

Persons Testifying (Energy, Environment & Technology): PRO: Erika Schreder, Toxic-Free Future; Michael White, Washington State Council of Fire Fighters; Katherine Pelch, The Endocrine Disruption Exchange.

CON: Grant Nelson, American Chemistry Council, FluoroCouncil; Mary Catherine McAleer, Association of Washington Business.

OTHER: Barbara Morrissey, Washington State Department of Health; Darin Rice, Washington State Department of Ecology.

Persons Signed In To Testify But Not Testifying (Energy, Environment & Technology):
No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This bill is needed to help get legacy chemicals out of foams. The bill pertains to class B foams, not class A. This bill is a preventive measure, and is much needed. We need to get these chemicals out of our drinking water supply. Firefighters need this chemical out of the products they use every day. The cancer rate for firefighters is very high. Developmentally disabled people are more susceptible to toxicity, we need this out of our products.

CON: This bill is premature due to the fact that there is already a group working together on a chemical action plan (CAP).

OTHER: Ecology supports the policy intent of the bill, the chemical is the focus of a current CAP.

Persons Testifying (Ways & Means): PRO: Senator Kevin Van De Wege, Prime Sponsor; Laurie Valeriano, Toxic-Free Future; Michael White, Washington State Council of Fire Fighters; Diana Stadden, The Arc of Washington.

CON: Mary Catherine McAleer, Association of Washington Business.

OTHER: Kimberly Goetz, Department of Ecology.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Exempts the manufacture, sale, distribution, and use of class B firefighting foam containing PFAS chemicals for use at an oil refinery or terminal.
- Prohibits the discharge or use for training purposes class B firefighting foam containing intentionally added PFAS.
- Specifies a date for when Ecology must assist state agencies and local governments with avoiding purchasing or using firefighting agents containing PFAS chemicals.