

# HOUSE BILL REPORT

## HB 1143

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**As Reported by House Committee On:**  
Environment & Energy

**Title:** An act relating to requiring notification of the discharge or use of firefighting foam containing certain chemicals.

**Brief Description:** Requiring notification of the discharge or use of firefighting foam containing certain chemicals.

**Sponsors:** Representatives Reeves, Gregerson, Appleton, Fitzgibbon, Ormsby and Stanford.

**Brief History:**

**Committee Activity:**

Environment & Energy: 1/24/19, 2/12/19 [DPS].

**Brief Summary of Substitute Bill**

- Requires notification of the Department of Ecology and the emergency management division of the state Military Department regarding the use or discharge of firefighting foam containing intentionally-added perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

**Minority Report:** Without recommendation. Signed by 1 member: Representative DeBolt.

**Staff:** Jacob Lipson (786-7196).

**Background:**

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*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.*

### Perfluoroalkyl and Polyfluoroalkyl Chemicals in Firefighting Foam.

According to the Department of Ecology (ECY), perfluoroalkyl and polyfluoroalkyl (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 toxins (PBTs).

In 2018 the Legislature enacted restrictions on firefighting foam designed for flammable liquid fires that contains intentionally-added PFAS chemicals (PFAS foam). Starting July 1, 2018, PFAS foam may not be used or discharged for training purposes. Beginning July 1, 2020, manufacturers, importers, and distributors may not manufacture, sell, or distribute PFAS foam. The 2020 restriction on manufacture, sale, and distribution of PFAS foam does not apply:

- to the manufacture, sale, and distribution of firefighting foam to persons operating oil terminals, refineries, or certain chemical plants that use or produce flammable liquids, for the use of foam by those persons at those facilities; or
- where the inclusion of PFAS chemicals in firefighting foam for liquid flammable fires is required by federal law, including where required under Federal Aviation Administration rules (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. In October 2018, as part of the FAA Reauthorization Act of 2018, the United States Congress directed the FAA to revise its rules by 2021 to no longer require the use of fluorinated chemicals to meet performance standards for firefighting foam at airports.

Violations of these manufacture, sale, distribution, and use restrictions are subject to civil penalties of up to \$5,000 per violation for initial offenses, and up to \$10,000 for repeat offenses.

### Oil and Hazardous Substance Spill Reporting.

Under the state's oil and hazardous substances spill prevention and response laws, persons that discharge oil or hazardous substances to state waters are required to immediately notify the United States Coast Guard (Coast Guard) and the emergency management division (EMD) of the State Military Department. The notice to the EMD must be made to the EMD's 24-hour toll-free emergency reporting hotline. The types or characteristics of hazardous substances whose discharge which must be reported to the EMD and Coast Guard are not specified or defined.

### Clean Water Act Enforcement Provisions.

The ECY administers the WPCA. As part of its duty to administer the Act, the ECY issues state waste discharge permits, water quality permits, assesses fees and penalties, and issues notices of violation.

Violations of the state Water Pollution Control Act (WPCA) and oil and hazardous substance spill requirements are subject to civil penalties of up to \$10,000 per day per violation, plus additional criminal penalties for willful violations. The ECY may also, with the assistance of the Attorney General, bring actions for injunctive relief to carry out state WPCA Act requirements.

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### **Summary of Substitute Bill:**

Persons that discharge or use firefighting foam designed for flammable liquid fires that contains intentionally-added PFAS chemicals (PFAS foam) must notify both the Department of Ecology (ECY) and the emergency management division of the State Military Department (EMD). Notice to the EMD must immediately be made to the EMD's 24-hour toll-free emergency hotline. Notice to the ECY must be made within 24 hours and include the time, date, location, and estimated amount of PFAS foam discharged.

Any persons not subject to discharge notification requirements are nevertheless encouraged to notify the ECY of PFAS foam use or discharge.

Failure to report the discharge or use of PFAS is subject to one of the following types of penalties:

- civil penalties under the Water Pollution Control Act, for discharges of PFAS foam to state waters or where a rain event would lead to discharges to state waters; or
- penalties for violations of the restrictions on the use, manufacture, distribution, or sale of PFAS foam, for other uses and discharges of PFAS foam.

Agents or employees of government entities are not personally liable for penalties arising from the performance of their official duties, so long as they would not be otherwise liable. An affirmative defense to these penalties is also provided for persons that establish by a preponderance of the evidence that the person had no knowledge that the firefighting foam contained intentionally-added PFAS chemicals.

The ECY may also bring an injunctive relief action against a person that it has reasonable suspicion to believe is in recurrent or ongoing violation PFAS foam water discharge notification requirements. Injunctive relief may include requiring a person to comply with restrictions on the manufacture, distribution, or sale of PFAS foam, or to cease use of PFAS foam.

A severability clause is included.

### **Substitute Bill Compared to Original Bill:**

As compared to the original bill, the substitute bill:

- specifies that officers, agents, and employees of government entities are not personally liable for penalties arising from the performance of official duties for failing to report a discharge or use of firefighting foam containing perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals (PFAS foam), so long as they are not otherwise liable;
- establishes an affirmative defense against firefighting foam discharge notification penalties for persons that establish by a preponderance of the evidence that the person had no knowledge that the firefighting foam contained intentionally-added PFAS chemicals;

- authorizes the Department of Ecology (ECY) to bring injunctive relief under the state Water Pollution Control Act (WPCA) against an entity that fails to provide notification of the discharge of PFAS foam, in addition to penalties under WPCA;
  - provides that the ECY may bring injunctive relief when it has reasonable suspicion to believe a person is in recurrent or ongoing violation of discharge notification requirements, and that the injunctive relief brought by the ECY may include requiring a person to comply with restrictions on the manufacture, sale, or use of PFAS foam; and
  - eliminates the emergency clause.
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**Appropriation:** None.

**Fiscal Note:** Available.

**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) If you are exempt from the restrictions on perfluoroalkyl and polyfluoroalkyl (PFAS)-containing firefighting foam that were enacted last year, you should still have to report to the state when you use the foam. The Department of Ecology will be able to create a tracking system to inform future cleanup activities. Several military installations in Washington have identified the presence of PFAS-containing chemicals from use in military applications, and are being proactive about tracking and addressing water contamination issues.

(Opposed) None.

**Persons Testifying:** Representative Reeves, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.