

# SENATE BILL REPORT

## SB 5426

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As Reported by Senate Committee On:  
Environment, Energy & Technology, February 7, 2019  
Ways & Means, February 26, 2019

**Title:** An act relating to reducing greenhouse gas emissions from hydrofluorocarbons.

**Brief Description:** Reducing greenhouse gas emissions from hydrofluorocarbons.

**Sponsors:** Senators Mullet, Palumbo, Rivers, Nguyen, Dhingra and Rolfes.

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 2/05/19, 2/07/19 [DPS-WM, DNP].

Ways & Means: 2/18/19, 2/26/19 [DP2S, DNP, w/oRec].

**Brief Summary of Second Substitute Bill**

- Restricts hydrofluorocarbons (HFCs) and other substitutes for ozone-depleting substances (ODS) in products and equipment covered by a court-vacated 2015 United States Environmental Protection Agency regulation, and authorizes the Department of Ecology (DOE) to adopt related rules.
- Directs the Department of Enterprise Services to establish a purchasing and procurement policy for products that do not use or were not manufactured using ODS substitutes or HFCs, or that are associated with HFCs or ODS substitutes with comparatively low global warming potential.
- Directs the State Building Code Council to adopt codes that do not require the use of restricted ODS substitutes.
- Directs DOE to consult with other agencies and submit a study and report to the Legislature by December 2020 addressing certain uses of HFCs.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** That Substitute Senate Bill No. 5426 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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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.*

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Hobbs, Liias, McCoy, Nguyen and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Ericksen, Ranking Member; Brown and Short.

**Staff:** Greg Vogel (786-7413)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5426 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers and Van De Wege.

**Minority Report:** Do not pass.

Signed by Senators Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Schoesler, Wagoner and Wilson, L..

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Warnick.

**Staff:** Jed Herman (786-7346)

**Background:** Hydrofluorocarbons and Greenhouse Gas Emissions. HFCs are a category of gases used primarily as refrigerants in a variety of commercial and industrial applications. HFCs are among the greenhouse gases (GHGs) identified by the United States Environmental Protection Agency (EPA) and DOE as a result of their capacity to trap heat in the earth's atmosphere. According to the EPA, the global warming potential (GWP) of HFCs and other GHGs is measured as a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of GHGs are measured in terms of their equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe (carbon dioxide equivalent or CO<sub>2</sub>e). In rules adopted by DOE for purposes of measuring GHG emissions, the GWP of HFCs ranges from 12 to 14,800.

DOE must report to the Governor and Legislature by December 31st of even-numbered years regarding total GHG emissions and GHG emissions by source sector in Washington. According to the most recent report to the Legislature in December 2018, HFCs and other ODS substitutes accounted for 3.76 million tons of CO<sub>2</sub>e out of the state's total reported GHG emissions of 97.4 million tons of CO<sub>2</sub>e in 2015.

Federal Regulation of Ozone-Depleting Substances. In 1987, the United States and other members of the United Nations committed, in an agreement known as the Montreal Protocol, to phase out the use of certain ODSs. The United States Congress subsequently amended the federal Clean Air Act in 1990 to provide authority to the EPA to restrict the use of ODSs and to require manufacturers to use non-ozone depleting substitutes. In 1994, the EPA

promulgated regulations authorizing the use of certain HFCs as a substitute for ODSs in specified products. However, in 2015, the EPA promulgated new regulations that entirely prohibited certain HFCs and other ODS substitutes or restricted their use to specified circumstances. Products and uses covered by the HFC restrictions in the EPA's 2015 regulations include aerosol propellants, motor vehicle air conditioning systems, retail food refrigeration and vending machines, and foams. In August 2017, the District of Columbia Circuit Court of Appeals vacated the portion of the EPA's 2015 regulations that applied to HFCs on the basis that the EPA exceeded the statutory authority granted to it in 1990 to regulate substitutes of ODSs.

In 2018 the state of California enacted a law to restrict the ODS substitutes covered by the 2015 EPA rule.

State Clean Air Act. DOE and seven local air pollution control authorities (local air authorities) have each received approval from the EPA to administer aspects of the federal Clean Air Act in Washington. The Air Pollution Control Account is used to fund DOE's responsibilities in developing and implementing the state Clean Air Act. Violations of the state Clean Air Act requirements are punishable by a variety of criminal and civil penalties. Civil penalties of up to \$10,000 per violation are authorized by the state Clean Air Act.

State Purchasing and Procurement. The Department of Enterprise Services (DES) is responsible for providing products and services to support state agencies, and sets policies and procedures for the state's purchases. State agencies covered by DES's procurement policies include all executive and judicial branches of state government including offices, divisions, boards, commissions, higher education institutions, and correctional and other institutions. DES may enter into agreements with other state agencies that delegate certain authority to those agencies to purchase their own goods and services.

State law establishes certain preferences for procuring goods or services that meet a variety of criteria, including goods and services through inmate work programs administered by the Department of Corrections, minority and women-owned businesses, goods that contain recycled content, electronic products that meet environmental performance standards, and products that do not contain polychlorinated biphenyls (PCBs).

State Building Codes. The State Building Code Council (Council) is a state agency that adopts and triennially updates the State Building Code (Code). The Code adopted by the Council establishes the minimum building, mechanical, fire, plumbing, and energy code requirements applicable to the construction of buildings.

**Summary of Bill (Second Substitute):** Regulation of Hydrofluorocarbons. HFCs and ODS substitutes specified in the court-vacated 2015 United States EPA regulations are restricted for the products and uses specified in EPA regulations, with the exception of restrictions in EPA regulations on motor vehicle air conditioning. Persons may not sell, install, offer for lease, rent, or otherwise cause restricted equipment or products to enter commerce in Washington. The following effective dates for restrictions applicable to products and equipment are established:

- January 1, 2020, for propellants, foam blowing agents such as polyurethane or spray foam, and supermarket systems, stand-alone systems, remote condensing units, and vending machines;
- January 1, 2021, for refrigerated food processing and dispensing equipment, compact residential consumer refrigeration products, polystyrene extruded boardstock and billet, and rigid polyurethane low-pressure two component spray foam;
- January 1, 2022, for residential consumer refrigeration products, except compact and built-in residential consumer refrigeration products;
- January 1, 2023, for built-in consumer refrigeration products and cold storage warehouses; and
- January 1, 2024, for centrifugal chillers and positive displacement chillers.

For any restricted uses covered in the 2015 EPA regulation, but not covered by the above list, the effective date of the restrictions is the latter of January 1, 2020, or the effective date of the EPA regulation. Products manufactured prior to the effective date of a restriction may be sold, imported, exported, distributed, installed, and used after the effective date of the restriction, and persons that acquired products or equipment, including commercial refrigeration equipment, prior to the effective date are not required to cease use of restricted types of products or equipment.

For restrictions in the EPA regulation on motor vehicle air conditioning, DOE must adopt rules restricting the uses addressed by the EPA regulation within 12 months of another state's enactment or adoption of such restrictions. These restrictions may address the manufacture, sale, lease, or other introduction into commerce by vehicle manufacturers. Restrictions on the use of ODS substitutes in motor vehicle air conditioning may not take effect prior to the effective date of the restrictions of at least one other state.

DOE may, by rule:

- modify the effective date of prohibitions if it determines doing so reduces overall risk to human health and the environment and reflects the earliest date an ODS substitute is available;
- prohibit ODS substitutes if the prohibition reduces overall risk to human health and the environment and lower-risk ODS substitutes are available; and
- add or remove ODS substitutes, use conditions, or use limits on approved substitutes, provided doing so reduces overall risk to human health and the environment.

Manufacturers of products containing or using ODS substitutes must disclose the use of the ODS substitutes in the form of:

- a label on the product or equipment that meets requirements established by DOE by rule—DOE must recognize existing labeling requirements to the extent feasible, and may not require labeling of aircraft or aircraft components;
- submitting information to DOE about the use of ODS substitutes upon request, and reporting certain information annually beginning in December 2019.

DOE may adopt rules, and in doing so must seek to be consistent with or the same as the regulations adopted by the federal government or with other states that have adopted restrictions on HFCs and other ODS substitutes. Prior to adopting a rule, DOE must cite the sources of information that it relied upon, including peer-reviewed science.

Acceptable uses for ODS substitutes for aircraft maintenance under the vacated EPA regulation must be interpreted by DOE to apply to the production, manufacture, or repair of aircraft, aircraft parts, or aerospace vehicles and components. Compounds such as 2-BTP or others being used in aerospace fire extinguishing systems are not considered ODS substitutes subject to state restrictions.

Violations of restrictions on ODS substitutes are subject to criminal and civil penalties under the state Clean Air Act. The Air Pollution Control Account may be used for purposes of developing and implementing the ODS substitute restrictions.

Other Provisions. DES must establish a purchasing procurement policy favoring HFC-free products, or products that use ODS substitutes with comparatively low global warming potential. Every two years beginning December 1, 2020, the DES must submit status reports to the Legislature regarding their implementation of this policy.

The State Building Code Council must adopt rules that permit the use of allowed ODS substitutes and that do not require the use of restricted ODS substitutes.

DOE, in consultation with the Utilities and Transportation Commission and the Department of Commerce, must complete a study on how to increase the use of low global warming potential HFCs in mobile sources, utility equipment, and consumer appliances, and how to reduce the use of other HFCs. DOE must submit a report to the Legislature by December 1, 2020, that includes recommendations for incentivizing or providing grants to eliminate legacy uses of restricted HFCs or uses of unrestricted HFCs.

A severability clause is included.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):** Aligns bill language with the companion HB 1112 by making the following changes:

- Provides equipment that is retrofitted from using one refrigerant to another refrigerant is subject to restrictions on HFCs and other ozone-depleting substances.
- Amends requirements for manufacturers to disclose the use of substitutes in products or equipment by:
  1. providing that DOE rules must consider labels required by state building codes and other safety standards;
  2. eliminating requirements that manufacturers annually notify DOE regarding its products and equipment that contain HFCs; and
  3. requiring manufacturers to notify DOE on each product class using HFCs once in 2019, again within 120 days of applicable restrictions on HFCs taking effect, and within 120 days of a manufacturer newly introducing into Washington a new or modified product or piece of equipment that uses HFCs in a product class where HFC use is restricted.
- Requires DOE to expeditiously propose a rule to conform with any future approval by the EPA of a previously-prohibited HFC blend with a global warming potential of less than 750 for certain foam blowing and spray foam uses.

**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 First Substitute (Environment, Energy & Technology):** PRO: This bill has been heard in the House, and there has been a lot of productive feedback incorporated into the substitute. For businesses, it's good that the restrictions are phased in, and people that already have non-conforming products can keep them as long as they last. Essentially, the restrictions telegraph to manufacturers that the products have to be built the right way. Many companies have already started implementing these requirements to begin with. Widespread alternatives to hydrofluorocarbons are available and ready for adoption.

Hydrofluorocarbons are hundreds of thousands of times more damaging to the climate than carbon dioxide. They account for four million metric tons of greenhouse gas emissions, and there is an expected increase in the coming years. Moving away from these greenhouse gases is a practical and implementable strategy for reducing emissions around the world. The Department of Ecology will work closely with other states to provide uniformity for industry.

CON: There is no disputing the need to transition away from hydrofluorocarbons, but businesses need more time. The Kigali Agreement has yet to be ratified. Industry would like to work through issues such as safety. Some of the substitutes are flammable and will require training to handle. Some of the fluids have different properties and may not be quickly interchangeable with equipment. Businesses are looking at other ways to prevent hydrofluorocarbon harm by looking at leak protection and other measures. The bill should allow three more years for agencies, manufacturers, and governments to work out solutions, while starting the rulemaking process in the mean time.

Growers have doubts about the real world implications of the bill. The restrictions virtually impact every piece of their business model: planting, storing, packing, and moving goods. There is uncertainty on how the substitutes will perform and how much they will actually cost. However, there is certainty that the industry's primary competitor is not considering a hydrofluorocarbon phase-out, and the industry wants to stay competitive.

**Persons Testifying (Environment, Energy & Technology):** PRO: Senator Mark Mullet, Prime Sponsor; Stu Clark, Department of Ecology; Matt Steuerwalt, Honeywell.

CON: Jeff DeVere, Arkema Inc., DowDuPont-Bldg. Performance Solutions, and Mexichem-Fluor; Carolyn Logue, Washington Air Conditioning Contractors Association; Tim Boyd, Washington State Potato Commission.

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

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: The bill addresses the roll-back of federal regulations. HFC amounts are increasing rapidly. The bill allows companies to continue to use their current equipment.

CON: Car manufacturers need more time to adjust the supply line. The 12 month effective date should be shifted to five years. We are looking for a delay in implementation. Products to replace HFCs are two to four times as expensive.

**Persons Testifying (Ways & Means):** PRO: Senator Mark Mullet, Prime Sponsor; Matt Steuerwalt, Honeywell; Noah Martin, Quaker Voice on Washington Public Policy.

CON: Allen Karpman, Director, Government Activities, Fluorochemicals Arkema, Inc.; Carolyn Logue, Washington Air Conditioning Contractors Association; Michael Transue, Association of Global Automakers.

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