

HOUSE BILL REPORT

ESHB 1694

As Amended by the Senate

Title: An act relating to logistical processes for the regulation of priority chemicals in consumer products.

Brief Description: Concerning logistical processes for the regulation of priority chemicals in consumer products.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Berry, Fitzgibbon, Ramel, Bateman, Duerr, Callan, Macri, Harris-Talley, Hackney and Frame).

Brief History:

Committee Activity:

Environment & Energy: 1/14/22, 1/27/22 [DPS];

Appropriations: 2/4/22, 2/5/22 [DPS(ENVI)].

Floor Activity:

Passed House: 2/13/22, 62-36.

Senate Amended.

Passed Senate: 3/4/22, 46-2.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 3/9/22, 46-3.

Brief Summary of Engrossed Substitute Bill

- Designates firefighting personal protective equipment as a priority consumer product for Per- and Poly-fluoroalkyl (PFAS) chemicals under the 2019 law that directs the Department of Ecology (Ecology) to regulate priority chemicals in priority consumer products (Safer Products for Washington).
- Designates products identified in the PFAS chemical action plan as

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

priority consumer products for PFAS under Safer Products for Washington.

- Requires Ecology to designate priority chemicals and priority consumer products, and to determine regulatory actions and adopt rules for those regulatory determinations, at least every five years with deadlines of September 1 of a year in which an agency action is required, rather than precisely every five years with deadlines of June 1 of a year in which an agency action required.
- Eliminates the requirement that Ecology submit a report to the Legislature after designating a priority chemical or product and after making regulatory determinations, and instead provides for Ecology to notify the Legislature of such actions in conjunction with a publication of notice of the action in the Washington State Register.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Environment & Energy be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Harris, Hoff, Jacobsen, Rude, Schmick and Steele.

Staff: Dan Jones (786-7118).

Background:

Safer Products for Washington.

In 2019, legislation was enacted (Safer Products for Washington) that established an administrative process for the regulation by the Department of Ecology (Ecology) of priority chemicals in priority consumer products. Under this process, certain chemicals were defined as priority chemicals, including perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, polychlorinated biphenyls (PCBs), phthalates, organohalogen flame retardants (OFRs) and other flame retardants identified under the Children's Safe Products Act (CSPA), and phenolic compounds. Ecology is also authorized to designate additional chemicals as priority chemicals every five years, beginning June 1 2024, if the chemicals meet qualifying criteria, consistent with a schedule established in the 2019 law.

Under the schedule for Ecology's regulatory activities to implement Safer Products for Washington, Ecology must also:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria, by June 1 of the year following the designation of priority chemicals;
- determine regulatory actions for the priority chemicals in priority consumer products, by the June 1 two years after the designation of priority consumer products. Regulatory actions may include a determination that no action is needed, may require manufacturers to provide notice of the use of a chemical, or may restrict or prohibit the manufacture, distribution, sale, or use of a priority chemical in a consumer product; and
- adopt rules to implement regulatory determinations, by the June 1, the year following a determination of regulatory actions.

Ecology is required to make regulatory determinations for the initial round of statutorily designated priority chemicals and their associated priority consumer products by June 1, 2022, and must adopt rules to implement those regulatory determinations by June 1, 2023. As of November 2021, Ecology has issued for public comment a draft report on regulatory determinations in which the following 11 combinations of priority chemicals in priority consumer products are proposed for regulatory determinations:

- flame retardants in electric and electronic enclosures;
- flame retardants in polyurethane foam;
- PFAS chemicals in aftermarket stain- and water-resistance treatments;
- PFAS chemicals in carpets and rugs;
- PFAS chemicals in leather and textile furnishings;
- PCBs in paints and printing inks;
- phenolic compounds in laundry detergent;
- phenolic compounds in thermal paper;
- phenolic compounds in food and drink can linings;
- phthalates in personal care and beauty products and fragrances; and
- phthalates in vinyl flooring.

Ecology must submit a report to the appropriate committees of the Legislature when identifying priority chemicals, identifying priority consumer products, or determining regulatory actions. Identification of priority chemicals, identification of priority consumer products, and regulatory determinations by Ecology do not take effect until the adjournment of the regular legislative session immediately following the Ecology action. Ecology may begin to evaluate priority consumer products before the designation of priority chemicals take effect, may consider regulatory determinations before the designation of priority products take effect, and may initiate rulemaking before regulatory determinations take effect.

When identifying priority chemicals and priority consumer products, Ecology must notify the public, including via the Washington State Register, of the selection and publish a draft schedule for making determinations.

Regulation of PFAS Chemicals in Firefighting Personal Protective Equipment.

According to Ecology, PFAS chemicals are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. Since 2018, state law has required manufacturers, importers, distributors, and other persons selling firefighting personal protective equipment (PPE) to provide written notice at the time of sale to purchasers of firefighting PPE that it contains PFAS chemicals, and the reasons that the PFAS chemicals are added to the firefighting PPE. The firefighting PPE subject to these disclosure requirements is clothing designed or intended to be worn by firefighting personnel, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

Persistent, Bioaccumulative Toxins.

In 2006, Ecology adopted a rule under state hazardous waste laws outlining the processes it follows for efforts to reduce and phase out the uses, releases, and exposures to persistent, bioaccumulative toxins (PBTs). The PBTs are substances with toxic or harmful effects on people or animals that have a lengthy decomposition time in the environment and accumulate up the food chain in the bodies of organisms, including people. Among other purposes, Ecology uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). In developing a CAP, Ecology works with an external advisory committee to evaluate the chemical's uses, releases, impacts, and management. The CAP process concludes with the issuance of a report with recommendations for how to reduce or manage certain uses of the PBT and encourage safer alternatives to the PBT. Ecology completed a CAP for PFAS chemicals in November 2021, in which it identified a number of products as sources of or uses of PFAS chemicals, including:

- water-resistant clothing and gear;
- nonstick cookware and kitchen supplies;
- personal care products (including cosmetics and dental floss);
- cleaning agents;

- automotive products;
- floor waxes and sealants;
- ski waxes; and
- car waxes.

Summary of Engrossed Substitute Bill:

PFAS in Priority Consumer Products.

Firefighting personal protective equipment (PPE) subject to disclosure requirements related to the use of PFAS chemicals is considered a priority consumer product for PFAS chemicals for purposes of the Department of Ecology's (Ecology's) Safer Products Washington regulatory process.

Ecology may consider any product identified as a source or use of PFAS in its PFAS chemical action plan (CAP) published in November 2021 to be a priority consumer product for purposes of its Safer Products Washington regulatory process. Ecology may determine regulatory actions and adopt rules to implement those regulatory determinations, without first taking regulatory steps under Safer Products Washington to designate products identified as sources or uses of PFAS in the PFAS CAP as priority consumer products.

Ecology must determine an initial set of regulatory actions for PFAS in firefighting PPE and PFAS in CAP-identified products by June 1, 2024, and must adopt rules to implement these determinations by December 1, 2025.

Other Safer Products Washington Regulatory Process Changes.

At least every five years, Ecology must designate priority chemicals and priority consumer products, and must determine regulatory actions and adopt rules for those regulatory determinations, rather than requiring Ecology to take such actions precisely every five years according to the statutorily specified schedule. Ecology must complete a required action by September 1 of each year in which an action is scheduled, rather than by June 1.

In order to designate a priority chemical or priority consumer product, or make a regulatory determination for a priority chemical in a priority consumer product, Ecology must publish a notice in the Washington State Register and submit a notice to the appropriate committees of the Legislature, rather than submit a report to the Legislature.

EFFECT OF SENATE AMENDMENT(S):

The senate amendment:

- restores current-law provisions that require the Department of Ecology (Ecology) to submit a report to the Legislature upon the designation of a priority chemical or a priority consumer product or upon making regulatory determinations, rather than requiring publication of a notice in the Washington state register and the submission of a notice to the Legislature;

- restores current-law provisions requiring Ecology to follow a precise schedule of designating priority chemicals and priority consumer products and making regulatory determinations and adopting rules implementing regulatory determinations exactly every five years, rather than taking such actions at least every five years meeting the minimum deadlines of that schedule; and
- restores the current-law timing of actions taken by Ecology under Safer Products for Washington, establishing annual deadlines of June 1 rather than September 1 for chemical and product designations and for regulatory determinations and rule adoptions.

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 (Environment & Energy):

(In support) Per- and Polyfluoroalkyl (PFAS) chemicals are toxic and pervasive in everyday life. Washington state has been a leader in restricting PFAS. Adding new PFAS products to the Safer Products for Washington regulatory process will speed up action on limiting PFAS, since without this bill the Department of Ecology (Ecology) would not be able to finalize additional regulatory actions on PFAS until 2030. Ecology and the Department of Health should not have to wait for a new five-year cycle to begin taking additional action on high-priority PFAS products. The Safer Products for Washington is working as designed, but this bill reflects the urgency of addressing PFAS given new information about the health and environmental risks of the chemical. The protective equipment that firefighters wear contains PFAS, which may release in high temperatures and contribute to firefighters' high rates of cancer. It is time to start looking for safer alternatives to PFAS in firefighting gear. The market for waterproof clothing has shifted, and prominent manufacturers are using PFAS-free methods.

(Opposed) The Safer Products for Washington deliberative and scientific process should not be changed to specially address a specific subset of products. Ecology has not yet finalized rulemaking for its first batch of products under Safer Products for Washington, but the potential scope of product regulations is already quite extensive. There are some generalized changes that the Safer Products for Washington process would benefit from, including extending the time after the adjournment of a legislative session when actions would take effect, and adding specificity on the types and uses of chemicals and products that are the subject of regulatory actions. There are many types of PFAS chemicals, and regulatory evaluations need to consider the different risks and uses of the different PFAS chemicals and products.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill would make firefighting gear a priority product under the Safer Products for Washington law. Many scientific studies have proven PFAS chemicals cause cancer in firefighters. The costs are not associated with the State General Fund and are small in comparison to the costs of cancer treatment. Many communities have experienced their drinking water being poisoned by PFAS chemicals. Allowing additional chemical reviews at least every five years, instead of exactly every five years, would allow additional actions to be taken when needed. The Department of Ecology (Ecology) plans to only modestly increase the number of chemical reviews they would perform.

(Opposed) The underlying statute could be improved, and there is room for additional efficiencies and improvements. A better balance could be struck between Ecology's regulatory authority and the business community.

Persons Testifying (Environment & Energy): (In support) Representative Liz Berry, prime sponsor; Erika Schreder, Toxic-Free Future; AJ Johnson, Washington State Council of Fire Fighters; Cheri Peele, Clean Production Action; Shirlee Tan, Public Health—Seattle and King County; Maddie Smith, Earth Ministry and Washington Interfaith Power and Light; Holly Davies, Department of Health; and Katrina Lassiter, Marissa Smith, and Kimberly Goetz, Department of Ecology.

(Opposed) Christopher Finarelli, The Household and Commercial Products Association; Peter Godlewski; and Tim Shestek, American Chemistry Council.

Persons Testifying (Appropriations): (In support) Nick Federici, Toxic Free Future; and A.J. Johnson, Washington State Council of Fire Fighters.

(Opposed) Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.