

HOUSE BILL REPORT

HB 1472

As Reported by House Committee On:
Environment

Title: An act relating to using chemical action plans to require safer chemicals in Washington.

Brief Description: Concerning use of chemical action plans to require safer chemicals in Washington.

Sponsors: Representatives Fitzgibbon, Peterson, Goodman, McBride, Springer, Fey, Farrell, Hudgins, Kagi, Walkinshaw, Gregerson, S. Hunt, Jinkins, Tharinger and Pollet; by request of Governor Inslee.

Brief History:

Committee Activity:

Environment: 2/2/15, 2/17/15 [DPS].

Brief Summary of Substitute Bill

- Directs the Department of Ecology (ECY) to begin conducting up to four chemical action plans (CAP) every two years on chemicals that harm humans, plants, or wildlife and that studies have found to be present in humans, the human environment, or the natural environment, or that are listed as criteria water pollutants that affect human health under the federal Clean Water Act.
- Establishes a Chemical Safety Committee (CSC) within the Office of the Governor that is charged with consulting on information requests submitted by the ECY to manufacturers of chemicals for which a CAP is being conducted, recommending that the ECY direct manufacturers to perform alternative assessments, and recommending that the ECY restrict the uses of certain chemicals.
- Authorizes the ECY, upon CSC recommendation, to require manufacturers to assess alternatives to using a priority chemical and to restrict the use of the priority chemical if alternatives assessments identify a safer alternative to the priority chemical.
- Requires the state to preferentially purchase products and products in packaging that contain no priority chemicals or that contain lower amounts of persistent, bioaccumulative, and toxic chemicals than comparable products.

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.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Short, Assistant Ranking Minority Member; Farrell, Fey, Goodman and McBride.

Minority Report: Do not pass. Signed by 4 members: Representatives Shea, Ranking Minority Member; Harris, Pike and Taylor.

Staff: Jacob Lipson (786-7196).

Background:

Restrictions on Toxic Materials in Consumer Products.

Several federal policies restrict the use of certain substances with toxic properties in consumer products or manufacturing processes.

- The Consumer Product Safety Commission administers several laws regulating the inclusion of toxic compounds in consumer products.
- The United States Food and Drug Administration's (FDA) regulatory responsibilities include the safety of biological products, such as vaccines, and prescription and nonprescription drugs.
- The Environmental Protection Agency administers the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which regulates the sale, distribution, use, and labeling of pesticides, as well as the Toxic Substances Control Act (TSCA), which includes notification and testing requirements for many chemicals in commercial use and restricts the use of certain chemicals.

State law restricts the use of several substances in various consumer products, including Bisphenol-A in sports bottles, lead in vehicle wheel weights, and copper in boat paint. In addition, the Children's Safe Products Act (CSPA) directs the Department of Ecology (ECY), working with the Department of Health, to use fetal and childhood exposure potential to identify high-priority chemicals of concern to children. Under the CSPA, the ECY identifies high-priority chemicals based on credible scientific evidence that the chemical:

- harms fetal or childhood development;
- causes cancer, genetic damage, or reproductive harm;
- disrupts the endocrine system, which is responsible for the regulation of hormone production;
- damages the nervous system, immune system, organs, or causes other systemic toxicity; or
- is persistent, bioaccumulative, and toxic, or is both very persistent and very biomaccumulative.

Persistent, Bioaccumulative, Toxic Substances.

In 2006 the ECY adopted a rule outlining the processes it follows for efforts to reduce and phase out the uses, releases, and exposures to persistent, bioaccumulative, and toxic substances (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.

The PBT rule authorizes the ECY to develop a list of PBT substances, which can include all types of PBT chemicals or metals, except fertilizers and pesticides regulated under the FIFRA. This PBT list is used to inform various ECY activities, including monitoring, voluntary PBT phase-out and use-reduction efforts, and PBT public awareness activities. There are currently 18 individual chemicals and eight groups of chemicals on the ECY's PBT list, creating a total list of 74 PBT chemicals.

The ECY also uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). In developing a CAP, the ECY 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.

Clean Water Act Criteria Pollutants.

Under the federal Clean Water Act, the United States Environmental Protection Agency (EPA) develops water quality criteria for specific pollutants to protect aquatic life and human health. The EPA approves state-specific allowable levels of these criteria water pollutants in the environment. Water bodies that exceed standards for these criteria pollutants are identified as impaired and allowable levels of criteria water pollutants may be established as a part of permits issued to facilities and other point source dischargers into state waters.

There are currently 85 water quality criteria pollutants, including groups of pollutants, regulated by Washington on the basis of their human health effects. Twenty four of the pollutants for which there are human health criteria under the Clean Water Act are also currently identified on the ECY's PBT list.

Alternatives Assessments.

The Interstate Chemicals Clearinghouse, which is an association focused on safe chemical use and of which Washington is a member, published an alternatives assessment guide in January 2014. This alternatives assessment guide provides evaluative tools and processes for manufacturers, governments, and others to compare performance, hazard, cost, availability, exposure, and other relevant characteristics of chemicals used in processes or products. In January of 2015, the ECY published a state-specific alternatives assessment guide for small and medium-sized businesses based on the Interstate Chemicals Clearinghouse guide. Other organizations, including the National Academy of Sciences, have published alternative assessment methodologies for evaluating chemical uses and comparing functionality, cost, health, and other characteristics.

Other Program Context.

At the direction of the Legislature, the staff of Joint Legislative Audit and Review Committee (JLARC) conducts sunset reviews of the need for the continued existence of a program or policy. A JLARC sunset review examines whether the evaluated program has complied with legislative intent, is operating efficiently and economically, is meeting performance goals, and is duplicative of other entities or private sector activities. The program or authority subject to a JLARC sunset review is repealed from law in the year following the sunset review unless the Legislature takes action to continue the program.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the ECY and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

The State Toxics Control Account (STCA) receives funds from the tax of 0.7 percent of the value of hazardous substances and from other sources. Money in the STCA is used to fund various state toxics reduction activities including hazardous waste planning and management, hazardous waste clean-up, oil spill prevention, and air quality programs.

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.

The U.S. Federal Aviation Administration (FAA) is responsible for a variety of safety regulations related to flight operations, including the certification of aircraft, aircraft propellers, and engines.

Summary of Substitute Bill:

Chemical Safety Committee.

A 13-member permanent Chemical Safety Committee (CSC) is established in the Office of the Governor. The CSC is charged with evaluating the CAPs and the ECY's information requests to manufacturers. It is also responsible for approving alternatives assessments demands of manufacturers and restrictions on certain uses of chemicals.

The CSC is chaired by the Director of the ECY or the Director's designee, who acts as a non-voting member. The CSC features four appointees by the legislative branch and nine gubernatorial appointees that meet certain specified criteria, including representatives of business, local government, toxicology organizations, the Department of Health, and four academics from specified fields. The CSC members may not have a financial interest in the business being considered by the CSC. The CSC members serve four-year terms and must meet as a committee at least once per year and up to three additional times per year as needed. The CSC must adopt bylaws and is to be facilitated by the William D. Ruckelshaus Center or another facilitator.

Chemical Action Plans.

Beginning January 1, 2016, the ECY must select up to four chemicals every two years for the CAP development. Chemicals subject to a CAP must either be:

- chemicals that would qualify the chemical as a chemical of high concern under the CSPA due to their potential systemic health or exposure effects in humans, plants, or wildlife, and which have been found by studies to be present in humans or the home or natural environments; or
- chemicals identified as human health criteria pollutants under the federal Clean Water Act.

The ECY and Department of Health may conduct monitoring in order to increase chemical knowledge and support knowledge about chemicals in the human and natural environment.

The ECY must convene an external advisory committee for each CAP comprised of representatives of businesses, advocacy groups, local governments, and others. In the CAP the ECY must identify available information on chemical production, uses, and disposal, human health and environmental impacts, and chemical management and regulation. The CAP must include recommendations for eliminating or reducing threats from the chemical, and may include recommendations that alternatives assessments be performed. Completed CAPs must be reported to the CSC by the ECY.

Information Demands to Manufacturers.

The ECY can require, by order, manufacturers of products that contain chemicals being evaluated in a CAP to submit information necessary for CAP development. The information demanded by the ECY must be reasonable in scope and frequency and must focus on prevalent uses, significant exposure sources, and identified knowledge gaps. Prior to demanding information, the ECY must consult with the CSC and, if formed yet, the CAP external advisory committee. Manufacturers or a business organization may collaborate to submit information required by ECY. Manufacturers may also extrapolate amounts and estimates from national data.

Alternatives Assessments.

If eight of the 13 CSC members vote in favor of it, the ECY may order product manufacturers to conduct an alternatives assessment, if such action is identified as part of a CAP, including a CAP completed under the PBT rule. The scope of alternatives assessments must be a single type of chemical use in a specific type of product. Alternatives assessments recommended by the CSC must be necessary to address significant sources of environmental or public health exposures.

Multiple manufacturers or business organizations may collaborate on an alternatives assessment. This alternatives assessment must follow the guidelines of the Interstate Chemical Clearinghouse, the National Academy of Sciences, or an equivalent methodology, and must include an evaluation of hazard, exposure, performance, cost, and availability.

Manufacturers must complete an alternatives assessment within one year of an order from the ECY. A manufacturer that provides evidence of a plan to phase out a chemical within two years is not required to complete an alternatives assessment. If the CSC determines that an alternatives assessment is inadequate, it may arrange for an independent contractor to complete an alternative assessment.

At the conclusion of an alternatives assessment for a chemical, the ECY and the Department of Health must compile a summary report that includes a determination of whether a safer alternative chemical, material, or design substitute exists, as well as the identification of any alternatives identified as no safer than the chemical. The CSC may also rely on existing information equivalent to alternatives assessment results to conclude that a safer alternative exists. If a safer alternative is not identified, the ECY may not reassess safer alternative availability for the chemical for five years.

Restrictions on the Use, Sale, or Distribution of Chemicals.

If the CSC determines, by a vote of nine of the 13 members, that a safer alternative to a chemical exists, the ECY may prohibit specific uses of the chemical or the sale of products containing the chemical. In making a determination, the CSC may consult with the ECY and the Department of Health, and may contract out independent analysis of submitted alternatives assessments.

The ECY's prohibition timelines must be reasonable and may take effect no sooner than one year after the adoption of a prohibition rule. A manufacturer may not replace a restricted chemical with another chemical that is no safer than the restricted chemical, as determined by the ECY through the alternatives assessment. Manufacturers of products that have featured a prohibited chemical must, upon request, submit a certificate to the ECY within 90 days that provides information about the replacement of the prohibited chemical.

Scope of Chemicals subject to Information Orders, Alternatives Assessments, and Use Restrictions.

Certain types of products are exempt from the ECY's chemical information orders, from alternatives assessment performance requirements, and from chemical use restrictions imposed by the ECY. These exempt products include food and beverages, drugs and biological products regulated by the FDA, finished products regulated by the FAA, and chemicals used for agricultural commodities.

The same requirements placed on manufacturers also apply to importers and domestic distributors of covered products. Small businesses with 50 or fewer employees are exempt from information submission, alternatives assessment, use restrictions, and other requirements placed on manufacturers.

Purchasing and Procurement Restrictions on Priority Washington Chemicals.

The DES must establish a purchasing and procurement policy for products and products in packaging that do not contain a PBT. State agencies may not knowingly purchase products or products in packaging containing a PBT, except where not cost-effective or technically feasible. If all available products contain a PBT, preference must be given to products with lower concentrations of the PBT.

State agencies are not required to breach existing contracts, dispose of existing or already-ordered stock, or to test every procured product. State agencies or the DES may request that suppliers provide testing data on the PBT levels in their products.

Administration, Rulemaking, and Enforcement.

If a manufacturer violates a rule, requirement, or order related to restricted chemicals, CAPs, or alternatives assessments, it is subject to a \$5,000 fine for each violation if it is the manufacturer's first offense, or \$10,000 if it is a repeat offense. Penalties go into the STCA. Penalties and orders are appealable to the PCHB.

Manufacturers that submit information to the ECY may request that the information be treated as confidential. The ECY must keep the submitted information confidential if it deems that maintaining the confidentiality of the information is not detrimental to the public interest. The ECY must keep confidential any submitted information relating to proprietary manufacturing processes or chemical formulations.

Beginning in 2024, ECY authorities to demand manufacturer information, require alternatives assessments, or restrict chemicals, as well as the role of the CSC, will undergo a sunset review by the JLARC. Without legislative action to extend the program, the program will be terminated in June 2025, and the act will be repealed effective June 30, 2026.

The ECY is given rulemaking authority.

A severability clause is included.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- includes chemicals identified as human health criteria pollutants that impact state waters among the chemicals potentially subject to chemical action plans, alternative assessments, and chemical use restrictions;
- eliminates the requirement that the ECY create a list of 150 priority chemicals selected on the basis of their harm to humans, plants, or wildlife and that studies have found to be present in humans, the human environment, or the natural environment;
- establishes in the Office of the Governor a 13-member Chemical Safety Committee made up of four legislative appointees and nine gubernatorial appointees based on specified criteria;
- makes the ECY's authority to require manufacturers to perform alternatives assessments contingent upon approval by the eight of 13 CSC members;
- makes the ECY's authority to restrict uses of chemicals after identifying a safer alternative contingent upon approval by the nine of 13 CSC members;
- requires information requests made of manufacturers by the ECY to be reasonable in scope and frequency, focused on knowledge gaps and significant sources of exposures, and requires consultation with the CSC prior to issuing the information request;
- limits the scope of alternatives assessments that the ECY may require manufacturers to complete, which may only be made when necessary to address significant exposure sources;
- eliminates alternative assessment requirements for manufacturers that demonstrate plans to phase out use of the chemical within two years;
- specifies the composition of chemical action plan external advisory committees, and the information and recommendations that are to be included in a chemical action plan;
- requires the ECY to keep proprietary information confidential, while allowing submitted information to be shared with the CSC;
- extends to 90 days the timeframe for manufacturers to submit certificates of compliance;
- changes the scope of chemicals subject to the state purchasing and procurement preference from to the list of PBT chemicals established by the ECY by rule as of January 1, 2015; and
- establishes, beginning in 2024, a sunset review by the JLARC and repeal of the CSC and the authority granted to the ECY to require manufacturers to provide information

about chemical uses in support of CAPs, to require manufacturers to perform alternative assessments, and to ban chemicals if a safer alternative is identified.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 17, 2015.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 15 relating to appeals of restrictions, orders, and penalties to the Pollution Control Hearings Board, which takes effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) This bill, in conjunction with funding items in the Governor's budget, will address pollution problems at their source. The toxics bill is a more cost-effective, tailored approach to addressing the issue of toxic pollutant's released into the environment. The gains from reducing discharges under the Clean Water Act are comparatively incremental next to the gains that can be realized from eliminating toxics from ordinary but diffuse and unregulated consumer products and sources. Cities support this approach because addressing nonpoint sources provides better public health benefits than a discharger-focused approach that would place heavy burdens on municipal wastewater treatment plants. Some of the products used in commerce are harmful to child development or cause cancer. Children with autism are especially susceptible to toxic chemical exposures because they tend to put things in their mouths. This bill presents a systematic approach that will make real progress towards minimizing the exposure of children to toxic chemicals. Exposure to toxic chemicals is widespread and studies have identified a wide variety of toxic chemicals in the bodies of regular people. There are real and direct links between childhood exposure to toxics and developmental and health issues. Developmental and other public health disorders caused by exposures to toxic chemicals impose real and measurable social costs, and failure to pass this bill will continue to impose these costs of inaction. The burden of navigating what products to buy and what chemicals to avoid cannot fall entirely to public consumers, who are not necessarily equipped to navigate a complicated and fragmented landscape of information about toxics in consumer products. The public wants to know about the toxic contents of their products, but industry does not make a priority of making this information accessible, and it is hard to obtain. This bill will encourage businesses to develop better products and will help the state's green chemistry industry grow. Consumers are demanding safer products, and businesses in Washington are responding to that consumer demand by consciously making toxic-free products. Public health and a healthy environment are an important part of the high quality of life that attracts businesses to locate in Washington. There should be additional incentives in place to encourage businesses that proactively address toxic chemicals. The CAPs, alternatives assessments, increased monitoring, and restriction authorities granted to the ECY will all help the goal of removing pollutants from the environment. People concerned with public exposure to toxics should not have to return to the Legislature year after year to advocate for action when there is good scientific evidence that some chemicals cause real problems.

(With concerns) The broad delegation of authority to the ECY is concerning. There is not a zero-cost option for resolving the Clean Water Act toxics conundrum, and this bill might provide a better cost-benefit ratio than further ratcheting down the allowable toxic levels in point-source discharges. Ports are concerned about the future costs of complying with storm water discharge regulations. The Clean Water Act fish consumption rule is dependent on the passage of this bill. Ports support this approach because addressing nonpoint sources provides better public health benefits than a discharger-focused approach.

(Opposed) There is broad business opposition to this bill, particularly among manufacturers of consumer products. The delegation of authority to the ECY to demand alternatives assessments, to make determinations about safer chemicals, and to ban the use of chemicals gives them too much power and discretion; these determinations should be made by the Legislature. The broad definition of manufacturer in the bill would require many grocery stores and other retailers to act like manufacturers and perform alternatives assessments, even though the stores simply sell the products, and don't have the expertise about the manufacturing processes or chemical uses. The 30-day timeframe for businesses to certify their compliance with chemical restrictions is too short for retailers who would need to communicate with supplying manufacturers to obtain that information. The business community has successfully worked within the CAP process, but this bill exacerbates the worst process issues with the current CAP process. The creation of specific lists of bad chemicals is not always a science-based or risk-based endeavor, and there is a lot of stigma associated with a business being connected to the list that may be unjustified. Businesses are willing to spend any amount of money to protect the safety of children, but safety regulations should be based in facts, sound data, and science. Regulation of toxics in consumer products would be best accomplished at the federal level. There is not a direct nexus between the passage of the bill and the U.S. EPA's approval of the ECY's fish consumption rule.

Persons Testifying: (In support) Representative Fitzgibbon, prime sponsor; Maia Bellon, Department of Ecology; Rob Duff, Office of the Governor; John Wiesman and Kathy Lofly, Department of Health; Brian Bonlender, Department of Commerce; Sheela Sathyararayana, University of Washington \Department of Pediatrics; Joseph David, Point 32; Mickey Blake, Floral Soil Solutions; Ryan Clark, Liberty Bottleworks; Carl Shroeder, Association of Washington Cities; Ben Bucholz, City of Bellingham; Sandra Kilroy, King County; Karen Bowman, Washington State Nurses Association; Stella Daniels; Jessie Dye, Earth Ministry; Diana Stadden, The Arc of Washington State; Lorelei Walker; Laurie Valeriano; Scott Redman, Puget Sound Partnership; Larry Garcia, Seattle City Light; and Ed Thorpe, Coalition for Clean Water.

(With concerns) Gerry O'Keefe, Washington Public Ports Association.

(Opposed) Brandon Housekeeper, Association of Washington Business; Mark Greenberg, American Chemistry Council; Holly Chisa, Northwest Grocery Association; and Grant Nelson, Toy Industry Association.

Persons Signed In To Testify But Not Testifying: None.