

# SENATE BILL REPORT

## E2SHB 1472

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As of April 6, 2015

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

**Brief Description:** Concerning using chemical action plans to require safer chemicals in Washington.

**Sponsors:** House Committee on Appropriations (originally sponsored by 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:** Passed House: 3/11/15, 63-35.

**Committee Activity:** Energy, Environment & Telecommunications: 3/24/15, 3/25/15, 3/31/15 [DPA-WM, DNP, w/oRec].

Ways & Means:

### Brief Summary of Engrossed Second Substitute Bill

- Directs the Department of Ecology (Ecology) to conduct two chemical action plans (CAPs) every two years on chemicals regulated by Ecology under its proposed rules for human health criteria or chemicals that are persistent, bioaccumulative toxins impacting waters of the state.
- Authorizes Ecology to require that manufacturers provide certain chemical use information to support CAP development, and to require manufacturers to assess alternatives to using chemicals, if authorized by enacted legislation.
- Requires the state to preferentially purchase products and products in packaging that contain no persistent, bioaccumulative, and toxic chemicals, and other chemicals as recommended by Ecology in a CAP, or products that contain lower amounts of targeted chemicals than comparable products.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.  
Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Braun, Brown and Honeyford.

**Minority Report:** Do not pass.

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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 Cleveland, Habib and Ranker.

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

Signed by Senator McCoy, Ranking Minority Member.

**Staff:** Jan Odano (786-7486)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Sherry McNamara (786-7402)

**Background:** Under the Children's Safe Products Act (CSPA) Ecology, in consultation with the Department of Health (DOH), must identify chemicals of high concern for children (CHCCs). A high-priority chemical is defined as a chemical that is identified to do one or more of the following:

- harm the normal development of a fetus or child, or cause other developmental toxicity;
- cause cancer, genetic damage, or reproductive harm;
- disrupt the endocrine system;
- damage the nervous system, immune system, or organs, or cause other systemic toxicity;
- be persistent, bioaccumulative, and toxic; or
- be very persistent and very bioaccumulative.

Under the federal Clean Water Act, Section 304(a), the United States Environmental Protection Agency (EPA) develops ambient water quality criteria for the protection of aquatic life and human health. EPA updated its water quality criteria for human health last year. According to EPA, the revision to 94 chemical pollutants of the human health criteria reflects the latest scientific information, exposure factors, bioaccumulation, and toxicity factors. The human health criteria establishes values that limit the amount of chemicals present in the water. These values are the highest concentration of a pollutant in water that is not expected to pose a significant risk to human health. EPA human health ambient water quality criteria are used by individual states to set water quality standards. These state-specific standards must be approved by EPA.

Ecology identifies, reviews, evaluates, and makes recommendations on the use and management of persistent, bioaccumulative, and toxic (PBT) chemicals. These chemicals remain in the environment for long periods of time, accumulate in the food chain, and are toxic to humans and wildlife. Ecology has adopted rules for PBT CAPs that establish criteria used to identify PBTs, procedures to develop and periodically update a list of PBTs, and the scope and content of a CAP. The purpose of a CAP is to provide general information about a PBT, its uses, its impacts to the environment and human health, and to determine policy options and recommendations.

The Interstate Chemicals Clearinghouse, an association focused on safe chemical use, 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 2015, Ecology 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.

**Summary of Bill (Recommended Amendments):** Chemical Action Plans. Beginning January 1, 2016, and every two years after, Ecology, in consultation with DOH, must select up to two chemicals for development of a CAP. The chemicals must be selected from Ecology's rules regulating water quality criteria for human health that impact waters of the state; or be a PBT impacting the water quality. At least two of the first four chemicals must be chosen from the EPA list for water quality criteria. The following must be considered when selecting a chemical for developing a CAP:

1. opportunities for reducing or phasing out uses, production, or releases of a chemical;
2. current scientific evidence of:
  - a. combined effects of exposure to the chemical and other substances commonly present in the environment; and
  - b. susceptibility of sensitive groups and environmental media from exposure, as well as cumulative effects of multiple exposures;
3. relative ranking assigned by Ecology based on chemical characteristics, uses of the chemical releases of the chemical and levels present in people and the environment;
4. if the chemical has been determined to impact the waters of the state; and
5. existing plans or regulatory requirements to phase out or reduce the use and releases of the chemical.

Ecology may conduct environmental monitoring or request DOH to verify chemicals in the environment or people through biomonitoring, subject to funds specifically appropriated for this purpose. The environmental monitoring and biomonitoring must be of minimum scope to adequately inform a CAP.

Ecology may request manufacturers provide, within 12 months, certain information about chemicals and also may order manufacturers to provide information relevant to development of a CAP. However, Ecology must first consult with an external advisory group, if created, to evaluate the chemical subject to the request. Ecology's requests for information must be reasonable and limited in scope and frequency focused on the most common and prevalent uses of the chemicals or products containing the chemicals; areas about a chemical with an identified gap in departmental or public knowledge; and chemical uses or products likely responsible or associated with significant releases into the environment or public health exposures. Manufacturers may provide estimates based on national data for chemical amounts as well as collaborate with other businesses for a chemical in similar products.

CAPs must include the following:

- information about chemical properties, uses, manufacturers; production, unintentional production, uses and disposal; known or potential and proven impacts on human health and the environment; and regulatory and nonregulatory approaches that influence production, uses, releases, and management of the chemical;

- recommendations based on opportunities for environmental and human health benefits; economic and social impacts; feasibility; availability and effectiveness of safer substitutes for uses of the chemical; and consistency with existing federal and state regulatory requirements;
- sources of information relied upon to complete the CAP, including peer-reviewed science; and
- a summary of any external advisory group members' dissenting views of the CAP recommendations.

Ecology must convene an external stakeholder group to provide stakeholder input and expertise. Membership is specified and state agencies and technical experts may be requested to participate. All advisory committee meetings must be open to the public.

Alternatives Assessments. Ecology must prepare agency request legislation to authorize an alternatives assessment, if the CAP contains a recommendation for an alternatives assessment for a specific chemical. Ecology may order a manufacturer to conduct an alternatives assessment only when authorized by enacted Legislation providing the authority for a specific chemical in a specific product. Manufacturers must submit alternatives assessments to Ecology within two years of receiving an order. Ecology may grant an extension if necessary to complete an alternatives assessment or to substantially improve the quality. A manufacturer that has been requested to conduct an alternatives assessment may instead submit a peer-reviewed alternatives assessment completed by an authoritative entity; or a certificate of compliance when it has stopped using the chemical or can demonstrate plans to phase out the use of the chemical within a reasonable timeframe.

The scope of the alternatives assessments is limited to a single use of the chemical in a specific manufacturing process or the inclusion of a chemical in a specific type of product. Ecology may not require an alternatives assessment for a greater breadth of uses or products or by a greater number of manufacturers than what is necessary to address significant sources of environmental or public health exposures to the chemical.

Ecology may contract with an independent scientific organization to conduct an independent alternatives assessment when a manufacturer is unwilling or cannot complete an alternatives assessment. An independent contractor must involve interested parties in the alternatives assessment process. Ecology must ensure that any alternatives assessment completed by a third party is peer reviewed and meets the objectives and definitions of alternatives assessment.

Ecology may rely on existing information indicating a safer alternative exists for a chemical if that information is equivalent to an alternatives assessment. If Ecology determines a safer alternative does not exist, then it may not reevaluate information on availability of safer alternatives more than once every five years.

Summary Report. Ecology and DOH must prepare a report of all reviewed alternatives assessments. The summary report must include a determination of whether a safer alternative exists and identify unsuitable alternatives. Ecology must evaluate if alternatives assessments followed guidelines issued by the Interstate Chemicals Clearinghouse, National Academy of Sciences, or an equivalent methodology. Upon determination of a safer

alternative, Ecology must submit draft legislation to the appropriate Legislative committees recommending prohibiting specific uses of the chemical.

Enforcement. Manufacturers violating provisions or an order issued by Ecology under this chapter are subject to a civil penalty up to \$5,000 for the first offense of each violation. For subsequent violations, a manufacturer may be subject to a penalty of up to \$10,000 for each repeat offense. Penalties and orders may be appealed to the Pollution Control Hearings Board.

Confidentiality. Manufacturers that submit information to Ecology may request that the information be treated as confidential. The manufacturer must demonstrate how the information relates to unique processes or how public disclosure may adversely affect its competitive position. Ecology must respond to the request within 14 days with a determination of whether the information should be confidential and reasons for its determinations. Ecology must keep the submitted information confidential if it deems that maintaining the confidentiality of the information is not detrimental to the public interest. Ecology must keep confidential any submitted information relating to proprietary manufacturing processes or chemical formulations.

Purchasing and Procurement Restrictions on Priority Washington Chemicals. The Department of Enterprise Services (DES) must establish purchasing and procurement policies for products and products in packaging that do not contain a PBT; and when there is a CAP recommendation that the state should adopt such a policy for a chemical evaluation. State agencies may not knowingly purchase products or products in packaging containing a PBT or other chemical as recommended by a CAP, except where not cost effective or technically feasible. If all available products contain a chemical subject to the policy, preference must be given to products with lower concentrations of the chemical. 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 DES may request that suppliers provide testing data on the chemical levels in their products.

Other. Ecology must review and evaluate the CAP process while considering certain factors. A report is due to the Legislature as to whether continuation of developing CAPs should be continued.

Flame Retardants. Beginning July 1, 2016, the manufacture, sale, and distribution of residential upholstered furniture and children's products of which any component contains more than 1000 parts per million of the chemicals TDCPP, TCEP, DecaBde, HBCD, or the additive form of TBBPA are prohibited. Nonprofit organizations and private parties making sales or purchases of used products are exempt from the prohibitions on chemicals restricted under CSPA. After January 1, 2015, within two years of adopting a rule listing a flame retardant as a CHCC, Ecology must complete and publish a CAP for the identified flame retardant.

A severability and null and void clause is included

**EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TELECOMMUNICATIONS COMMITTEE (Recommended Amendments):**

1. Revises Ecology's authority to order manufacturers to conduct alternatives assessments to when enacted legislation provides the authority for a specific chemical. Provides that affected manufacturers must conduct the alternatives assessments in cooperation with Ecology.
2. Allows a peer-reviewed alternatives assessment completed by an independent third party in lieu of conducting a new alternatives assessment.
3. Authorizes Ecology to contract with an independent third party to conduct an alternatives assessment if a manufacturer is unwilling to do so or if there is no manufacturer.
4. Requires Ecology to ensure alternatives assessments completed by a third party are peer reviewed and meet the objectives and definitions as provided in the act.
5. Revises timeframe for submitting an alternatives assessment from one year to 24 months.
6. Provides that Ecology may not adopt rules to require a manufacturer to conduct an alternatives assessment unless there is express authority from the Legislature.
7. Revises CAP requirements for clarity and specifically to:
8. require Ecology to prepare agency request legislation to authorize alternatives assessments;
  - a. address current and legacy uses;
  - b. include information on proven impacts; and
  - c. remove identification of threats to human health and the environment, but include primary sources of risk in the state.
9. Requires Ecology to review and evaluate criteria for the CAP process and consider certain factors. Ecology must provide a report to the Legislature as to whether the developing CAPs should be continued.
10. Adds requirements for confidentiality of information submitted to Ecology:
  - a. requiring manufacturers to demonstrate how production processes are unique and how public disclosure would adversely affect competitive positions; and
  - b. requiring Ecology to respond to a manufacturer's request for confidentiality within 14 days informing the manufacturer of its determination.
11. Expires all sections relating to CAP and alternatives assessments as of June 30, 2025
12. Revises number of chemicals to be selected for CAP from four to two.
13. Revises the types of chemicals to be selected for a CAP to include PBT chemicals affecting waters of the state and removes CHCCs and high priority chemicals in the environment.
14. Requires all chemicals chosen for a CAP to have scientifically supported pathways linked to uses causing impairment of Washington waters.
15. Revises the timeframe for a manufacturer to submit information for a CAP to Ecology from six months to 12 months.
16. Adds prohibition on the sale, manufacture, and distribution of children's products and residential upholstered furniture containing certain flame retardants in amounts greater than 1000 ppm.
17. Requires Ecology to conduct a CAP within two years of adopting a rule identifying a flame retardant as a CHCC.
18. Removes sunset provisions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Energy, Environment & Telecommunications):** PRO: Tackling pollution at the source better protects our water, and better protects the health of our kids. Most of our pollution is not coming from permitted discharges – isn't coming from big pipes. Many toxics come from everyday sources. We now face diffuse toxics all across our state, and it matters that we are able reduce these toxic chemicals. We need to make progress at getting at the source of exposure, and I believe this bill offers government and industry a sensible workable approach to work toward that goal. There are thousands of products that provide really amazing advancement and also unfortunately sometimes these products have harmful effects upon our populace. We want to spur industry to look for safer alternatives, we know that when we do this that it has a real effect. We have solid evidence that in our past the things we have done to this effect have worked. We support this bill because it proposes a systematic and scientific approach to identify and act upon toxics. We think CAPs are a robust and sensible process to identify practical opportunities for reducing problem chemicals in our state. Local governments find themselves responsible for the toxics that come from wastewater and stormwater. We have a responsibility to have clean water coming out of the end of the pipe, and that is really difficult to manage. A balanced approach incorporates more than end-of-line pipe regulations. Increasingly the cost of compliance in regard to waste and stormwater has begun to weigh a burden. Green chemistry is an economic opportunity for doing the right thing. It won't happen until someone takes the first step. A child's environment contributes to disease factors. Preventing exposures is very important. We are exposed to toxic chemicals without our knowledge or consent. We need new regulatory tools to address toxic chemicals at their source. If we can lead as a state, maybe EPA will follow. The current process is crisis driven. Alternatives assessments (AAs) are critical. If manufacturers are doing these then they shouldn't have a problem.

CON: Ecology would be authorized to approve or disapprove AAs. We are opposed to this delegation of authority. We believe that Ecology lacks the expertise and knowledge that is critical to accurately determining whether or not an alternatives assessment is needed. We also believe that industry is already self-regulating these issues. This really is a shift in the burden of proof. It is contrary to current practice. We don't mind the AAs. AAs are a burden to industry. There need to be sideboards on the definitions. We need creative solutions to address water quality problems. There needs to be an exemption for food and beverage packaging as this is governed by the Food and Drug Administration and the U.S. Department of Agriculture.

OTHER: AAs are something industry formulators do continuously and constantly, as they are a key part of all of our innovation and continuous improvement programs.

**Persons Testifying (Energy, Environment & Telecommunications):** PRO: Carl Schroeder, Assn. of WA Cities; Laura Merrill, WA State Assn. of Counties; Sharman Herrin, King County Waste Water Treatment Division; Gerry O'Keefe, WA Public Ports Assn.; Kathy

Lofy, DOH State Health Officer; Catherine Karr, University of WA Associate Professor; John Stark, WA State University; Diana Stadden, The Arc of WA State; Maia Bellon, Ecology; John Wiesman, DOH; Nick Demerice, WA Dept. of Commerce; Rob Duff, Governor's Policy Office; Ryan Skinner, Carbon Cycle Crush; Mark Cheirrett, President, EcoChemical; Mickey Blake, Floral Soil Solutions, CEO.

CON: Grant Nelson, Toy Industry Assn.; Charlie Brown, Consumer Electronics Assn., Fred Meyer Stores.

OTHER: Dr. Jack Linard, Unilever.

**Persons Signed in to Testify But Not Testifying:** PRO: Karen Bowman, WA State Nurses Assn.; Scott Redman, Puget Sound Partnership, Science and Evaluation Program Director; Laurie Valeriano, WA Toxics Coalition; Noah Seidel, Self Advocates in Leadership.

CON: Joanie Deutsch, WA Retail Assn.; Dan Coyne, NW Food Processors Assn.; Mark Greenberg, American Chemistry Council; Brandon Houskeeper, Assn. of WA Business.