

HOUSE BILL REPORT

ESSB 6413

As Passed House - Amended:

February 27, 2018

Title: An act relating to reducing the use of certain toxic chemicals in firefighting activities.

Brief Description: Reducing the use of certain toxic chemicals in firefighting activities.

Sponsors: Senate Committee on Energy, Environment & Technology (originally sponsored by Senators Van De Wege, Wellman, Palumbo, Billig, Hunt, Kuderer, Saldaña and Chase).

Brief History:

Committee Activity:

Environment: 2/15/18, 2/20/18 [DPA].

Floor Activity:

Passed House - Amended: 2/27/18, 72-26.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Requires the presence of perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals in firefighting personal protective equipment (firefighting PPE) to be disclosed at the time of sale, beginning July 1, 2018.
- Restricts the manufacture, distribution, and sale of foam designed for flammable liquid fires that contains PFAS chemicals, beginning July 1, 2020.
- Directs the Department of Ecology to help other state agencies and local governments to avoid the purchase of firefighting foam that contain PFAS chemicals and to give priority and preference to the purchase of firefighting PPE that does not contain PFAS chemicals.
- Prohibits the use, for training purposes, of firefighting foam containing PFAS chemicals, beginning July 1, 2018.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass as amended. Signed by 5 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Fey, Kagi and McBride.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys and Dye.

Staff: Jacob Lipson (786-7196).

Background:

Perfluoroalkyl and Polyfluoroalkyl Chemical Action Plan.

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, and toxic (PBT) substances. In 2016 under the ECY's PBT substances rule, the ECY began developing a chemical action plan (CAP) in conjunction with the Department of Health for PFAS chemicals to evaluate the chemical's uses, releases, impacts, and management. As of January 14, 2018, the ECY has published and solicited public feedback on a draft CAP, but has not yet published a final CAP.

Federal Firefighting Foam Requirements.

The United States Federal Aviation Administration (FAA) is responsible for a variety of safety regulations related to flight operations, including operations of aircraft and airports. Among the regulations applicable to airport operations that have been adopted by the FAA are requirements for airport operators to maintain on-site firefighting equipment and agents, including firefighting foams. Under this FAA rule, the type and amount of required firefighting agents and equipment depend on the size and frequency of aircraft departures from the airport.

Summary of Amended Bill:

Firefighting Personal Protective Equipment.

Beginning July 1, 2018, manufacturers, importers, distributors, and other persons selling firefighting personal protective equipment (firefighting PPE) must provide written notice at the time of sale to purchasers of firefighting PPE that it contains PFAS chemicals, and the reasons that PFAS chemicals are added to the firefighting PPE. Firefighting PPE is clothing designed or intended to be worn by firefighting personnel, including jackets, pants, shoes, gloves, helmets, and respiratory equipment. Purchasers, manufacturers, and other persons selling PFAS-containing firefighting PPE must retain this written notice for three years, and furnish it to the ECY upon request.

Firefighting Foam.

Beginning July 1, 2018, firefighting foam to which PFAS chemicals have been intentionally added may not be used or discharged for training purposes.

Beginning July 1, 2020, manufacturers, importers, and distributors may not manufacture, sell, or distribute firefighting foams designed for liquid flammable fires to which PFAS chemicals have been intentionally added. This restriction does not apply to the manufacture, sale, and distribution of firefighting foam to persons operating certain chemical plants that use or produce flammable liquids, oil terminals, or refineries, for the use of foam by those persons at those facilities. This restriction also does not apply where the inclusion of PFAS

chemicals in firefighting foam for liquid flammable fires is required by federal law, including where currently required by the 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.

Manufacturers, importers, and distributors of firefighting foam that contains PFAS chemicals must notify persons that sell their product in Washington by July 1, 2019. Persons that manufacture, sell, or distribute restricted firefighting foam that contains PFAS chemicals must recall the product and reimburse the purchaser of the product.

Administrative Provisions Related to Firefighting Foam and Personal Protective Equipment.

The ECY may require certificates of compliance from manufacturers, importers, or distributors of firefighting PPE and firefighting foam designed for liquid flammable fires.

Beginning July 1, 2018, the ECY must help other state agencies, fire districts, and local governments to avoid purchasing firefighting foam that contains PFAS chemicals, and to give preference to the purchase of firefighting PPE that does not contain PFAS chemicals.

Violations of firefighting PPE PFAS disclosure requirements and firefighting foam PFAS chemical 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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) By putting in place a timeline to stop the sale of PFAS-containing foams and providing technical assistance to local governments, the bill will help reduce drinking water contamination and firefighter exposure to dangerous chemicals. Establishing best practices for managing the foam is not sufficient to prevent firefighter exposure or groundwater contamination. The PFAS-containing firefighting foams designate as dangerous waste, yet even when they are used as intended, toxic chemicals are dispersing into the environment and firefighters are being exposed. Large volumes of foam are used during flammable liquid fire emergencies, and a single event can cause the release of dangerous chemicals in the foam. The PFAS-free foams are effective at fighting flammable liquid fires, those foams are widely available in commerce, and fire departments are beginning to abandon PFAS-containing foams. Firefighters face unique cancer risks, in part because during emergency situations, exposure minimization protocols can not always be followed precisely. The PFAS chemicals are persistent and present risks to children, developmentally disabled persons, and other susceptible populations with weaker immune systems. The PFAS chemical contamination problems are not solely associated with the use of foams on military installations. There are

potentially large costs statewide for water supply testing and remediation by local governments and water suppliers facing PFAS chemical contamination.

(Opposed) There are circumstances in which the use of PFAS-containing foam is necessary and appropriate, such as during fires involving deep pools of flammable liquid. Real-world experience demonstrates that PFAS-containing foams are sometimes the only effective tools at fighting certain types of fires. Washington is poised to be the first state to act to restrict PFAS in firefighting foam, and other states will follow Washington's lead, so it is important that Washington's law not take an important firefighting tool out of the toolbox where it is needed. While it might be appropriate to limit the municipal use of PFAS-containing foams, the foams are still necessary to fight fires in certain conditions, such as at refineries. After a foam discharge, it is possible to collect the leachate from industrial facilities with impervious surfaces, such as airports and refineries. Before a ban on PFAS-containing foams proceeds, there should be an alternatives assessment to make sure that the most effective foams for fighting fires are not being eliminated. Long-chain PFAS chemicals should be addressed more aggressively in the bill than short-chain PFAS, since they pose a greater public health and environmental risk. Rather than banning the chemicals entirely, state effort and funding would be better spent on providing assistance to local governments to transition away from PFAS foam and to eliminate existing stockpiles, on the development of best management practices, and on the mapping of groundwater contamination. Firefighters should not conduct training exercises using PFAS-containing foams, and it is appropriate for the bill to include restrictions on training activities using PFAS-containing foams.

Persons Testifying: (In support) Laurie Valeriano and Erika Schreder, Toxic-Free Future; Michael White, Washington State Council of Fire Fighters; and Diana Stadden, The Arc of Washington.

(Opposed) Grant Nelson, American Chemistry Council; Mitch Hubert, Solberg Foam; Frank Bateman, ICL Performance Products; and Mary Catherine McAleer, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.