

HOUSE BILL REPORT

HB 1488

As Reported by House Committee On:
Natural Resources, Ecology & Parks
Appropriations

Title: An act relating to brominated flame retardants.

Brief Description: Prohibiting the sale of products that contain polybrominated diphenyl ethers.

Sponsors: Representatives Hunter, Priest, Dickerson, Tom, Upthegrove, Jarrett, Springer, McCoy, B. Sullivan, Conway, Simpson, Flannigan, McIntire, Moeller, Chase, Williams, Kenney, Sells, Murray, Fromhold, Pettigrew, Darneille, Lantz, Clibborn, Kagi, Hasegawa, Morrell, McDermott, Hunt, Blake, Campbell, Cody, Hudgins, Ericks, O'Brien and Nixon.

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/17/05, 2/28/05 [DPS];
Appropriations: 3/5/05 [DP2S(w/o sub NREP)].

Brief Summary of Second Substitute Bill

- Bans the manufacture, sale, or distribution of most products containing polybrominated diphenyl ethers (PBDEs) after July 1, 2007.
- Authorizes the Governor to delay the ban on Deca-BDE between July 1, 2007, to July 1, 2008, if alternatives are not available at reasonable cost.
- Exempts transportation vehicles and parts, used products, and recycled products from the PBDE ban, and allows the Department of Ecology (DOE) to grant exemptions for the use of PBDEs under certain circumstances.
- Directs the DOE and the Department of Health to establish a stakeholder process to study certain items exempt from the ban, provide education and assistance for retailers, and examine labeling requirements for brominated flame retardants.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Dickerson, Eickmeyer, Hunt and Williams.

Minority Report: Do not pass. Signed by 5 members: Representatives Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt and Orcutt.

Staff: Jeff Olsen (786-7157).

Background:

Polybrominated diphenyl ethers, or PBDEs, are members of a broader class of brominated chemicals used as flame retardants. They are often added to products such as computers, televisions, furniture, and carpet pads to reduce the risk of fire if a product is exposed to heat or flame. There are three main types of PBDEs used in consumer products; Penta-BDE, Octa-BDE, and Deca-BDE. Polybrominated diphenyl ethers have been measured in blood, fat, and breast milk in people around the world, and there is concern about potential health effects in humans.

On January 28, 2004, Governor Locke signed Executive Order 04-01, directing state agencies to take certain actions regarding persistent toxic chemicals. The Department of Ecology (DOE), in consultation with the Department of Health (DOH), was directed to move forward immediately in developing a chemical action plan that identifies actions the state may take to reduce threats posed by PBDEs, and recommend actions by December 1, 2004.

On December 31, 2004, the DOE and the DOH released the *Washington State Polybrominated Diphenyl Ether (PBDE) Chemical Action Plan: Interim Plan* (Interim Plan). The Interim Plan recommends that the Legislature should prohibit the manufacture, distribution, or sale of new products containing Penta-BDE and Octa BDE by July 2006. The ban may include an exemption for products that contain recycled material for products containing Penta-BDE and Octa-BDE. The DOE and the DOH must develop a proposal for a ban on appropriate products containing Deca-BDE by December 2005. By July 2006 the DOE must establish appropriate disposal and recycling practices for products containing PBDEs. The Interim Plan also included restrictions for the state's purchase of PBDE products, the development of educational materials, and direction for the Department of Labor and Industries to develop ways for employers and employees to minimize exposure to PBDEs. The Legislature provided \$83,000 in the 2004 Supplemental Operating budget (Chapter 276, Laws of 2004, Section 301 (18)) for the DOE to develop a chemical action plan for PBDEs.

Summary of Substitute Bill:

After July 1, 2006, no person may manufacture, knowingly sell, or distribute for sale any products containing PBDEs. There are exceptions to the ban for new and used transportation vehicles and parts, maintenance or modification of transportation equipment, the sale of used products, the sale of new products containing recycled or used materials containing Deca-BDE, and military and space applications. The ban does not restrict the ability of a manufacturer, importer, or distributor from transporting products containing PBDEs through the state or storing products for later distribution outside the state.

In addition, a manufacturer or user of a product containing Deca-BDE may apply in writing to the DOE for an exemption. The DOE may issue an exemption for up to three years if an alternative is not available at reasonable cost or the potential harm of the alternative is greater than using Deca-BDE. Manufacturers of safety systems required by the Federal Aviation Administration may also apply for an exemption for a specific use of Penta-BDE or Octa-BDE. The exemption may be granted for up to 18 months and may be renewed.

The Governor may delay the ban on the use of Deca-BDE by executive order to July 1, 2008, if the Governor finds an alternative is not available at reasonable cost or the potential harm of the alternative is greater than using Deca-BDE.

The DOE and the DOH must conduct two stakeholder processes to develop a proposal to ban Deca-BDE used in transportation vehicles, examine problems related to reuse and recycling of products containing Deca-BDE, examine approaches to assist retailers, and examine issues and a potential time line for labeling brominated flame retardants sold in Washington. Subject to available funding, the report and recommendations for the education and assistance for retailers are due December 15, 2005, the report on the ban or management of used and recycled products is due to the Legislature by June 30, 2006, and the report on labeling is due by December 15, 2006.

The Department of General Administration (GA) must give preference to the purchase of equipment, supplies, and other products that do not contain PBDEs, and to make available for purchase and use by all state agencies products that do not contain PBDEs. The GA must revise its policies and rules to implement these measures by July 1, 2006.

A civil penalty not to exceed \$1,000 is established for each violation of the new PBDE requirements. Repeat violators are subject to penalties not to exceed \$5,000 for each offense. Proceeds from penalties are deposited in the State Toxics Control Account.

Substitute Bill Compared to Original Bill:

The substitute expands exemptions to the ban on PBDEs to include used transportation vehicles and parts with PBDEs, the use of Deca-BDE in the maintenance of transportation equipment, or military and space applications that use PBDEs. The substitute directs the DOE to conduct two stakeholder processes, and adjusts reporting requirements. The substitute authorizes the Governor to delay the ban on Deca-BDE between July 1, 2006, to July 1, 2008, if alternatives are not available at reasonable cost. The substitute allows manufacturers of safety systems required by the Federal Aviation Administration to apply for an exemption for a specific use of Penta-BDE or Octa-BDE. The exemption may be granted for up to 18 months and may be renewed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support of original bill) Flame retardants are used in a wide variety of products including furniture and televisions. The release of certain PBDEs is a concern for children and infants. The first step in addressing the problem is to turn off the supply and stop putting these chemicals into our products. In 2001, 49 million pounds of PBDEs were used in products, and this amount is growing every year. Recent studies show that Deca-BDE, which was thought to be stable, breaks down into forms that are toxic. PBDEs build up in fatty tissues, and can be found in breast milk. This approach is sensible, and provides for exemptions in cases where alternatives are not available. PBDEs are not bonded in products, which allows it to release over time. A recent national study of PBDE levels in breast milk demonstrated that the average mother in the United States has PBDE levels 75 times higher than other countries. Studies have shown that PBDEs impact thyroid and endocrine factors. All PBDEs should be banned because there are alternatives available. Phasing out PBDEs builds on earlier support for banning mercury. Firefighters support the elimination of PBDEs. PBDEs have been found in fish, and the commercial fishing industry's job is to bring fish, a healthy food and public resource, to the public. A mother who wants to breast-feed her infant can't choose to not have PBDEs in her breast milk. We can't use human studies, and we shouldn't wait for more problems before taking action. Recyclers are exposed to these harmful chemicals and it is hazardous for worker safety.

(Neutral on original bill) The Departments of Ecology and Health conducted a stakeholder group to develop an Interim Chemical Action Plan. Recent information shows that Deca-BDE breaks down into chemicals that can be picked up by humans. Not all of the information is available regarding which products contain Deca-BDE, and what steps need to be taken. Exposure pathways are not fully understood. There is a concern about developing fetuses, where exposure inhibits childhood learning. The Interim Plan calls for more time to study Deca-BDE.

(With concerns on original bill) There is a problem with autofluff and sewage sludge, and we need to figure out how to properly dispose of those products. The auto industry is caught in the middle of the PBDE loop, and this bill goes too far too fast.

Testimony Against: There are three PBDE products; Penta, Octa, and Deca. It is not necessary to ban Octa or Penta since these chemicals are being phased out and taken off of the market. Deca-BDE is a safe and an effective flame retardant product. Flame retardants delay the spread of fires, allow people to escape, and reduces the potential for fire. In 2003, there were 1.5 million fires and 4,000 people died, resulting in substantial property loss. There are not alternatives available, and these products have not been tested and may cause other problems. A ban on Deca-BDE is not scientifically defensible, Deca-BDE is not classified as toxic or bioaccumulative, and Deca-BDE is not banned in any area of the world. Retailers are concerned about costs to implement the bill and being forced to pay to dispose of products.

Persons Testifying: (In support of original bill) Dr. Kim Hooper, California Toxicology Lab; Erika Schreder, Washington Toxics; Mo McBroom, Washington Public Interest Research

Group; Dr. Charles Welms, Physicians for Social Responsibility; Cliff Traisman, World Energy Council/Washington Conservation Voters; Jeremy Brown, Washington Trollers Association; Kate Davies, Antioch University; Pam Johnson; Ruth Shearer, Ph.D.; Karen McDonell; Bre Holt; Craig Lorch, Total Reclaim; Pam Tazioli, Breast Cancer Fund; and William Giddings.

(Neutral on original bill) Greg Sorlie, Department of Ecology; and Rob Duff, Department of Health.

(With concerns on original bill) Randy Ray, Pacific Seafood Processor.

(Opposed to original bill) Brad Tower, Susan Landry, Dave Sanders, and Ray Dawson, Bromine Science and Environmental Forum; Montie Barringer and Mark Johnson, Washington Retail Association; Grant Nelson, Association of Washington Business; Jim King, Independent Business Association; and Don Phelps, Auto Recyclers of Washington.

Persons Signed In To Testify But Not Testifying: (With concerns on original bill) Nancee Wildermuth, Alliance of Automobile Manufacturers; Jim Zimmerman, Fish Farms; and Ed Owens, Washington Salmon.

(Opposed to original bill) Nancy Atwood, American Electronic Association

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Natural Resources, Ecology & Parks. Signed by 16 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Bailey, Cody, Conway, Darneille, Dunshee, Haigh, Hunter, Kagi, Kenney, Linville, McDermott, Miloscia, Priest and Schual-Berke.

Minority Report: Do not pass. Signed by 12 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Buri, Clements, Grant, Hinkle, Kessler, Pearson, Talcott and Walsh.

Staff: Charlie Gavigan (786-7340).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Natural Resources, Ecology & Parks:

The second substitute bill delays the ban on the manufacture, sale, and distribution of polybrominated diphenyl ethers, or PBDEs, from July 1, 2006, until July 1, 2007. The second substitute bill exempts new transportation parts from the ban.

Appropriation: None.

Fiscal Note: Available on substitute bill.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Banning these chemicals is an important public health policy, and it can be funded with existing state toxics funding. The substitute bill contains amendments to address concerns from retailers and industry. There is an exemption provision in the bill, in addition to the ability of the Governor to delay the ban of Deca-BDE up to two years if reasonable alternatives are not available.

Testimony Against: Retailers don't know which products contain PBDEs, and it would be difficult for retailers to comply with requirements in the bill. Since Washington would be the only state not allowing certain products containing Deca-BDE, consumers may purchase products online. No where else is there a ban on Deca-BDE, it is not toxic, and it is not considered a persistent bioaccumulative toxin. Flame retardants save lives. General Administration must supply products without PBDEs, and it may be expensive for the state to comply with the ban.

Persons Testifying: (In support) Nick Federici, Washington Toxics Coalition; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; and Mo McBroom, Washington Public Interest Research Group.

(Concerns) Mark Johnson, Washington Retail Association.

(Opposed) Brad Tower, Bromine Science and Environmental Forum.

(Comments) Ted Sturdevant, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.