
Environment & Energy Committee

SB 5369

Brief Description: Reassessing standards for polychlorinated biphenyls in consumer products.

Sponsors: Senators Billig, Padden, Short, Shewmake, Schoesler, Lovelett, Conway, Boehnke, Salomon, Nguyen, Van De Wege, Wagoner, Dhingra, Dozier, Hasegawa, Hunt, Keiser, Randall, Torres and Valdez.

Brief Summary of Bill

- Directs the Department of Ecology (Ecology) to adopt a rule under Safer Products for Washington to restrict or prohibit polychlorinated biphenyls (PCBs) in paints and printing inks by December 1, 2026.
- Directs Ecology to petition the United States Environmental Protection Agency to reassess its regulations on certain manufacturing processes excluded from PCB restrictions under the federal Toxic Substances Control Act.

Hearing Date: 3/13/23

Staff: Jacob Lipson (786-7196).

Background:

Polychlorinated Biphenyls and the Toxic Substances Control Act.

Polychlorinated biphenyls (PCBs) are synthetic organic chemicals that were commercially manufactured and used in a variety of products, including electrical insulating and transformer oils, hydraulic equipment, paints, plastics, rubber products, pigments, and dyes. The federal Toxic Substance Control Act (TSCA) enacted in the 1970s banned the commercial manufacture and use of PCBs, and delegated authority to the Environmental Protection Agency (EPA) to implement and enforce PCB handling, cleanup, and disposal regulations. Environmental

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.

Protection Agency rules adopted to implement the TSCA establish, for certain manufactured products, an allowable threshold of up to 50 parts per million of PCBs. The TSCA also contains a preemption provision related to state regulation chemicals regulated under the TSCA, which states that may not establish requirements on chemicals unless those requirements are identical to the EPA requirements, adopted under a separate federal law, or would prohibit the use of a substance in a state.

Safer Products for Washington.

In 2019 legislation creating Safer Products for Washington was enacted, establishing an administrative process for the regulation by the Department of Ecology (Ecology) of priority chemicals in priority consumer products, in consultation with the Department of Health. Under the Safer Products for Washington regulatory process, certain chemicals were defined as priority chemicals in statute, including perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, PCBs, phenolic compounds, phthalates, and organohalogen flame retardants (OFRs) and other flame retardants identified under the Children's Safe Products Act. 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 June 1 two years following the designation of priority consumer products, such as:
 - a determination that no action is needed;
 - requiring manufacturers to provide notice of the use of a chemical; or
 - restricting or prohibiting 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 of the year following a determination of regulatory actions.

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 was 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. In June, 2022, Ecology submitted a regulatory determination report to the Legislature.

PCBs under Safer Products for Washington.

Polychlorinated biphenyls are one of the five statutorily-defined priority chemicals to which Ecology was required to apply the Safer Products for Washington process. Paints and printing inks were identified by Ecology as priority products for PCBs, due to the presence of PCBs as an inadvertent contaminant in paints and inks. Ecology-identified paints and inks that avoid or reduce the inadvertent generation of PCBs as a safer alternative that is less hazardous and that are feasible and available, and determined that paints and inks are a significant source of PCBs in the environment and a potential source of exposure for people and wildlife. However, in its June 2022 regulatory determinations report to the Legislature, Ecology also concluded that because Ecology believes that Ecology is preempted by TSCA regulations, Ecology made a regulatory determination on PCBs in paints and printing inks to take no action on PCBs under Safer Products for Washington.

Summary of Bill:

The Department of Ecology (Ecology) must petition the United States Environmental Protection Agency (EPA) to reassess the federal Toxic Substance Control Act polychlorinated biphenyl (PCB) regulations related to manufacturing processes excluded from PCB limits for the purpose of eliminating or reducing PCBs in consumer products. Ecology must include specified information in its petition and may consult with the Department of Health and other state agencies, but is not required to generate new data for the petition. Ecology must seek completion of the petition review by January 1, 2025, if practicable.

Paints and printing inks are confirmed as priority consumer products for PCB chemicals, and may include building paint for indoor and outdoor use, spray paint, children's paint, road paint, printing inks used in paper and packaging, and other paints and printing inks.

Ecology must establish a restriction or prohibition by June 1, 2025 to address PCBs in paints and printing inks by June 1, 2025. Ecology must then adopt rules to implement those restrictions or prohibitions by December 1, 2026. Ecology is prohibited from enforcing or administering these PCB rules for paints and printing inks if either:

- the EPA adopts new regulations that do not align with these Ecology PCB rules for paints and printing inks; or
- a court of competent jurisdiction determines the Ecology rules to be preempted.

If a PCB restriction or prohibition is determined to be preempted by a court, Ecology must establish a reporting requirement for priority chemicals or processes that generate priority chemicals within 180s of a preemption determination. Within 18 months of the date that it establishes a reporting requirement for PCBs, Ecology must adopt rules to implement that reporting requirement.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

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