

HOUSE BILL REPORT

ESHB 2265

As Passed House:
February 16, 2020

Title: An act relating to eliminating exemptions from restrictions on the use of perfluoroalkyl and polyfluoroalkyl substances in firefighting foam.

Brief Description: Eliminating exemptions from restrictions on the use of perfluoroalkyl and polyfluoroalkyl substances in firefighting foam.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Doglio, Leavitt, Shewmake, Duerr, Fey, Peterson and Pollet).

Brief History:

Committee Activity:

Environment & Energy: 1/13/20, 1/30/20 [DPS].

Floor Activity:

Passed House: 2/16/20, 92-4.

Brief Summary of Engrossed Substitute Bill

- Eliminates exceptions from restrictions on the manufacture, sale, or distribution of firefighting foam containing intentionally added per- and polyfluoroalkyl (PFAS) chemicals for use in chemical plants and oil refineries and terminals, beginning January 1, 2024.
- Authorizes the Department of Ecology to issue time-limited waivers from PFAS foam restrictions to chemical plants, oil refineries, and terminals, upon the submission of specified information.
- Eliminates exceptions from restrictions on the manufacture, sale, or distribution of PFAS foam where required by federal law, effective no earlier than two years after federal law changes so as to allow the use of PFAS-free foam.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt,

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.

Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

Staff: Jacob Lipson (786-7196).

Background:

According to the Department of Ecology (Ecology), 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. Ecology has also identified PFAS chemicals as persistent bioaccumulative toxins (PBTs).

In 2018 the Legislature enacted restrictions on firefighting foam, designed for flammable liquid fires, that contains intentionally added PFAS chemicals (PFAS foam). Starting July 1, 2018, PFAS foam may not be used or discharged for training purposes. In addition, beginning July 1, 2020, manufacturers, importers, and distributors may not manufacture, sell, or distribute PFAS foam. The 2020 restriction on manufacture, sale, and distribution of PFAS foam does not apply:

- to the manufacture, sale, and distribution of firefighting foam to persons operating oil terminals, oil refineries, or certain chemical plants that use or produce flammable liquids, for the use of PFAS foam by those persons at those facilities; or
- where the inclusion of PFAS chemicals in firefighting foam for liquid flammable fires is required by federal law, including where required under Federal Aviation Administration rules (FAA). In the event that the FAA rule or other federal rules change after January 1, 2018, Ecology 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. In October 2018, as part of the FAA Reauthorization Act of 2018, the United States Congress directed the FAA to revise its rules by 2021 to no longer require the use of fluorinated chemicals to meet performance standards for firefighting foam at airports.

Violations of these 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.

Summary of Engrossed Substitute Bill:

Beginning January 1, 2024, the exceptions are terminated that apply to the manufacture, sale, and distribution of PFAS foam for use in chemical plants, oil refineries, and oil terminals. Restrictions on the manufacture, sale, or distribution of PFAS foam to persons that operate oil refineries or terminals do not prohibit a refinery or terminal from providing mutual aid to another refinery or terminal in the event of a fire.

Chemical plants, oil refineries, and oil terminals may apply to the Department of Ecology (Ecology) for a waiver from PFAS foam restrictions. Ecology may issue up to two two-year waivers to an applicant that provides:

- clear and convincing evidence that there is not a commercially available substitute to PFAS foam that is capable of suppressing a large atmospheric tank fire;

- information on the amount of PFAS foam annually stored, used, or released on-site;
- a report on facility-specific progress to phase out the use of PFAS foam; and
- an explanation of how firefighting foam releases will be contained on-site and not released to the environment.

Restrictions on the manufacture, sale, and distribution of PFAS foam for uses subject to Federal Aviation Authority (FAA) regulation, or where otherwise required by federal law, take effect two years after Ecology publishes findings in the Washington State Register relating to how federal regulations have changed so as to no longer require the use of PFAS foam. The Washington State Register publication must be specific with respect to the involved federal agency, PFAS foam use, and, if identified by the federal agency, the alternative firefighting agent authorized under the federal law or regulation. Eighteen months after Ecology's publication in the Washington State Register, FAA-certified airports must report to Ecology regarding their status with respect to obtaining PFAS-free firefighting agents and infrastructure. If any FAA-certified airport is unable to obtain PFAS-free firefighting agents or infrastructure because they are not commercially available, the restrictions on PFAS foam sales and distribution for use at airports do not take effect for an additional year beyond the initial two-year delay.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Washington was the first state to restrict PFAS foam. The majority of PFAS foams that are used in Washington are used by persons who are exempt from existing restrictions on PFAS foam, including airports and refineries. Perfluoroalkyl and polyfluoroalkyl foam poses a grave threat to drinking water and is a cancer risk for firefighters. Switching to PFAS-free foam reduces liability and is a cost savings. Alternatives to PFAS foam are demonstrated to be safer and equally effective at fighting fires. New screening tools and environmental certifications are being developed to help facilities choose safer firefighting foams. Industrial facilities and airports internationally have already moved away from PFAS foam. Both the Federal Aviation Administration (FAA) and the Department of Defense have committed to phasing out PFAS foam. The Port of Seattle is confident that the FAA will authorize a PFAS-free foam before the deadline in 2021 set by the United States Congress. Airports want to transition to PFAS-free foams.

(Opposed) Airports, refineries, and chemical plants need to have tools to fight catastrophic fires. Fuel-in-depth fires can quickly get out of control. Oil terminals and refineries continue to store PFAS foam for use in emergency situations. Alternatives to PFAS foam are not sufficient to meet firefighting needs in every type of fire scenario and may not work as quickly or effectively as PFAS foam. A total ban on PFAS foam would be premature. Waivers should be available to facilities that continue to need to use PFAS foam. The transition to PFAS-free foam will require new firefighting equipment. If the FAA is not able

to finalize its approval of PFAS-free foams before 2022, which they have been directed to do, Washington airports will be stuck between complying with federal law and state law.

(Other) Federal Aviation Administration regulations require the use of PFAS foam at airports. If airports do not meet federal requirements, commercial flights will no longer be allowed in state airports. The legislation should be amended to restrict the use of PFAS foam only after the federal regulations no longer require the use of PFAS foam.

Persons Testifying: (In support) Representative Doglio, prime sponsor; Erika Schreder, Toxic-Free Future; Cheri Peele, Clean Production Action; AJ Johnson, Washington State Council of Firefighters; Eric Ffitch, Port of Seattle; and Gerry O'Keefe, Washington Public Ports Association.

(Opposed) Robert Peterson, Washington Airport Management Association; Mitch Hubert, Fire Fighting Foam Coalition; Jessica Spiegel, Western States Petroleum Association; and Peter Godlewski, Association of Washington Business.

(Other) Celia Jackson, King County.

Persons Signed In To Testify But Not Testifying: None.