SENATE BILL REPORT
ESHB 2265

As of February 25, 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: Passed House: 2/16/20, 92-4.
Committee Activity: Environment, Energy & Technology: 2/20/20.

Brief Summary of Bill

- Removes exceptions to the restrictions on the manufacture, sale, and distribution of PFAS firefighting foam for use in chemical plants, oil refineries, and oil terminals.
- Authorizes the Department of Ecology to issue a waiver from PFAS foam restrictions to chemical plants, oil refineries and terminals upon receipt of specified information.
- Removes 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.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Jan Odano (786-7486)

Background: PFAS are a class of man-made chemicals not found naturally in the environment. PFAS chemicals have been widely used to make products stain-resistant, waterproof, and nonstick as well as to help fight fires at airfields and other places where petroleum-product-based fires are a risk.

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.

According to the U.S. Environmental Protection Agency, PFAS chemicals are very persistent in the environment and in the human body. The Department of Ecology (Ecology) states the toxicity of PFAS compounds varies with animal studies indicating that exposure to some PFAS can affect liver function, reproductive hormones, development of offspring, and mortality. PFAS toxicity in humans is less understood and exposure may be linked to high cholesterol, ulcerative colitis, thyroid disease, testicular cancer, kidney cancer, and pregnancy-induced hypertension.

PFAS-based class B firefighting foams have been used since the 1970s for vapor suppression, firefighting, and firefighting training at airports, refineries, bulk storage terminals, and other facilities handling large volumes of flammable liquid petroleum or natural gas. PFAS chemicals are used in fire foam products because of their ability to produce a fast spreading foam. Potential sources of PFAS contamination related to fire-fighting foam use are found in Washington State airports, military sites, fire training centers, and where foam has been used to extinguish petroleum fires.

In 2018, the Legislature enacted restrictions on firefighting foam, designed for flammable liquid fires, that contains intentionally added PFAS chemicals. 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 Federal Aviation Authority (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.

Summary of Bill: Beginning January 1, 2024, the exceptions that apply to the manufacture, sale, and distribution of PFAS firefight foam for use in chemical plants, oil refineries, and oil terminals are removed. 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 Ecology for a waiver from PFAS firefighting 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 firefighting foam annually stored, used, or released on-site;
- a report on facility-specific progress to phase out the use of PFAS firefighting 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 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 notice published in the Washington State Register publication must be specific with respect to the involved federal agency, PFAS firefighting 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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: PFAS substances are forever a chemical that contaminates drinking water. We are spending lots of money to clean up PFAS contamination. This is to close those exemptions been working with small airports and their concerns with availability of the foam. Oil refineries and chemical comp that are not sure if there will be foam available to address big tank fires. Purity of water supply is essential, and it is what makes this state economy viable. We always want to minimize exposure to fire fighters and the community. If a tank fire were to start, the foam is the only effective tool. This strengthens the 2018 law. The timeline and waiver allows for research. Preventing future contaminations will protect public health and costly cleanup.

OTHER: We are concerned about the limits for chemical and oil refineries and airports. This may need to be an extension if no alternative is identified. We must work with others and meet customer and passenger needs. We do not know what the FAA will support, but we will be competing with many other airports for the products and infrastructure.

CON: We are opposed to any law that would be us at odds with federal regulations. For airports, we are required to use these foams. Even though the FAA is moving towards this, it

is not appropriate to put a finite timeline on the prohibition when there is not a substitute available. The provisions should not include airports at this time.

Persons Testifying: PRO: Representative Beth Doglio, Prime Sponsor; Martin Gibbins, League of Women Voters; Jessica Spiegel, WSPA; Cory Campbell, BP/Battalion Chief; Holly Davies, Washington Department of Health; Kimberly Goetz, Department of Ecology; Nick Federici, Toxic Free Future; AJ Johnson, Washington State Council Of Firefighters; Eric ffitch, Port of Seattle; Gerry O'Keefe, Washington Public Ports Association.

CON: Tony Dean, Pullman-Moscow Airport; Kelly Fukai, Spokane International Airport; Susie Tracy, Washington Airport Management Association.

OTHER: Bruce Beckett, Port of Moses Lake; Peter Godlewski, Association of Washington Business; Grant Nelson, American Chemistry Council.

Persons Signed In To Testify But Not Testifying: No one.