

FINAL BILL REPORT

ESHB 1694

PARTIAL VETO

C 264 L 22

Synopsis as Enacted

Brief Description: Concerning logistical processes for the regulation of priority chemicals in consumer products.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Berry, Fitzgibbon, Ramel, Bateman, Duerr, Callan, Macri, Harris-Talley, Hackney and Frame).

House Committee on Environment & Energy

House Committee on Appropriations

Senate Committee on Environment, Energy & Technology

Senate Committee on Ways & Means

Background:

Safer Products for Washington.

In 2019, the Safer Products for Washington program was established. Safer Products for Washington authorizes the Department of Ecology (Ecology) to regulate priority chemicals in priority consumer products through an administrative process that culminates in a rulemaking. Under this program, certain chemicals were defined as priority chemicals, including perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, polychlorinated biphenyls (PCBs), phthalates, organohalogen flame retardants (OFRs) and other flame retardants identified under the Children's Safe Products Act (CSPA), and phenolic compounds. Ecology is also authorized to designate additional chemicals as priority chemicals every five years, beginning June 1, 2024, if the chemicals meet qualifying criteria.

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;

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- determine regulatory actions for the priority chemicals in priority consumer products, by the June 1 two years after the designation of priority consumer products. Regulatory actions may include a determination that no action is needed, may require manufacturers to provide notice of the use of a chemical, or may restrict or prohibit the manufacture, distribution, sale, or use of a priority chemical in a consumer product; and
- adopt rules to implement regulatory determinations, by June 1 of the year following a determination of regulatory actions.

Ecology is 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. As of November 2021, Ecology has issued for public comment a draft report on regulatory determinations in which the following 11 combinations of priority chemicals in priority consumer products are proposed for regulatory determinations:

- flame retardants in electric and electronic enclosures;
- flame retardants in polyurethane foam;
- PFAS chemicals in aftermarket stain- and water-resistance treatments;
- PFAS chemicals in carpets and rugs;
- PFAS chemicals in leather and textile furnishings;
- PCBs in paints and printing inks;
- phenolic compounds in laundry detergent;
- phenolic compounds in thermal paper;
- phenolic compounds in food and drink can linings;
- phthalates in personal care and beauty products and fragrances; and
- phthalates in vinyl flooring.

Ecology must submit a report to the appropriate committees of the Legislature when identifying priority chemicals, identifying priority consumer products, or determining regulatory actions. Actions taken by Ecology to identify priority chemicals, identify priority consumer products, and make regulatory determinations do not take effect until the adjournment of the regular legislative session immediately following the Ecology action.

Regulation of PFAS Chemicals in Firefighting Personal Protective Equipment.

According to Ecology, PFAS chemicals are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. Since 2018, manufacturers, importers, distributors, and other persons selling firefighting personal protective equipment (PPE) have been required to provide written notice at the time of sale to purchasers of firefighting PPE that it contains PFAS chemicals, and the reasons that the PFAS chemicals are added to the firefighting PPE. The firefighting PPE subject to these disclosure requirements is clothing designed or intended to be worn by firefighting personnel, including jackets, pants, shoes, gloves, helmets, and respiratory equipment.

Persistent, Bioaccumulative Toxins.

In 2006, Ecology adopted a rule under hazardous waste laws outlining the processes it follows for efforts to reduce and phase out the uses, releases, and exposures to persistent, bioaccumulative toxins (PBTs). The PBTs are substances with toxic or harmful effects on people or animals that have a lengthy decomposition time in the environment and accumulate up the food chain in the bodies of organisms, including people. Among other purposes, Ecology uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). In developing a CAP, Ecology works with an external advisory committee to evaluate the chemical's uses, releases, impacts, and management. The CAP process concludes with the issuance of a report with recommendations for how to reduce or manage certain uses of the PBT and encourage safer alternatives to the PBT. Ecology completed a CAP for PFAS chemicals in November of 2021, in which it identified a number of products as sources of or uses of PFAS chemicals, including:

- water-resistant clothing and gear;
- nonstick cookware and kitchen supplies;
- personal care products (including cosmetics and dental floss);
- cleaning agents;
- automotive products;
- floor waxes and sealants;
- ski waxes; and
- car waxes.

Summary:

Firefighting personal protective equipment (PPE) subject to disclosure requirements related to the use of per- and poly-fluoroalkyl (PFAS) chemicals is considered a priority consumer product for PFAS chemicals for purposes of the Department of Ecology's (Ecology's) Safer Products Washington regulatory process.

Ecology may consider any product identified as a source or use of PFAS in its PFAS chemical action plan (CAP) published in November of 2021 to be a priority consumer product for purposes of its Safer Products Washington regulatory process. Ecology may determine regulatory actions and adopt rules to implement those regulatory determinations, without first taking regulatory steps under Safer Products Washington to designate products identified as sources or uses of PFAS in the PFAS CAP as priority consumer products.

Ecology must determine an initial set of regulatory actions for PFAS in firefighting PPE and PFAS in CAP-identified products by June 1, 2024, and must adopt rules to implement these determinations by December 1, 2025.

Votes on Final Passage:

House	62	36	
Senate	46	2	(Senate amended)

(House refused to concur/asked Senate to recede)
Senate 46 3 (Senate receded/amended)
House 83 14 (House concurred)

Effective: June 9, 2022

Partial Veto Summary: The Governor vetoed provisions of the bill that did not make any changes to the underlying laws being amended. The veto is technical in nature, and does not change the effect of the enacted law.