

SENATE BILL REPORT

ESHB 1694

As Reported by Senate Committee On:
Environment, Energy & Technology, February 24, 2022
Ways & Means, February 28, 2022

Title: An act relating to logistical processes for the regulation of priority chemicals in consumer products.

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).

Brief History: Passed House: 2/13/22, 62-36.

Committee Activity: Environment, Energy & Technology: 2/22/22, 2/24/22 [DP-WM, DNP].

Ways & Means: 2/26/22, 2/28/22 [DP, DNP, w/oRec].

Brief Summary of Bill

- Designates firefighting personal protective equipment as a priority consumer product for perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals under the Safer Products for Washington program.
- Designates products identified in the PFAS chemical action plan as priority consumer products for PFAS under Safer Products for Washington.
- Requires the Department of Ecology (Ecology) to designate priority chemicals and priority consumer products, and to determine regulatory actions for the chemicals and products at least every five years.
- Eliminates the requirement that Ecology submit a report to the Legislature after designating a priority chemical or product and after

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making regulatory determinations, and provides for Ecology to notify the Legislature of such actions in conjunction with a publication of notice of the action in the Washington State Register.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Lias, Lovick, Nguyen, Sheldon, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Short, Ranking Member; Fortunato and Schoesler.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Billig, Carlyle, Conway, Hasegawa, Hunt, Keiser, Mullet, Pedersen, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Gildon and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Muzzall and Wagoner.

Staff: Jed Herman (786-7346)

Background: Safer Products for Washington. In 2019, legislation was enacted that established an administrative process for the regulation, by the Department of Ecology (Ecology), of priority chemicals in priority consumer products. Under this process, certain chemicals were defined as priority chemicals, including perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals, polychlorinated biphenyls (PCBs), phthalates, organohalogen flame retardants and other flame retardants identified under the Children's Safe Products Act, and phenolic compounds. Ecology is 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:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria, by June 1st of the year following the designation of priority chemicals;
- determine regulatory actions for the priority chemicals in priority consumer products, by the June 1st 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 1st, 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. 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 may begin to evaluate priority consumer products before the designation of priority chemicals take effect, may consider regulatory determinations before the designation of priority products take effect, and may initiate rulemaking before regulatory determinations take effect.

When identifying priority chemicals and priority consumer products, Ecology must notify the public, including via the Washington State Register, of the selection and publish a draft

schedule for making determinations.

Regulation of Perfluoroalkyl and Polyfluoroalkyl Chemicals in Firefighting Personal Protective Equipment. 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, state law has required manufacturers, importers, distributors, and other persons selling firefighting personal protective equipment (PPE) 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 state 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). 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. Ecology uses the PBT list to identify and prioritize candidates for the development of chemical action plans (CAPs). When 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 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 of Bill: Perfluoroalkyl and Polyfluoroalkyl in Priority Consumer Products. Firefighting PPE, including jackets, pants, shoes, gloves, helmets, and respiratory equipment, is considered a priority consumer product for PFAS chemicals for purposes of the Safer Products for Washington regulatory process.

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

Other Safer Products for Washington Changes. At least every five years, Ecology must designate priority chemicals and priority consumer products, and must determine regulatory actions and adopt rules for those regulatory determinations. Ecology must complete a required action by September 1st of each year in which an action is scheduled.

To designate a priority chemical or priority consumer product, or make a regulatory determination for a priority chemical in a priority consumer product, Ecology must publish a notice in the Washington State Register and submit a notice to the appropriate committees of the Legislature.

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 (Environment, Energy & Technology): PRO: Ecology is strongly supportive of the changes that increase flexibility and responsiveness without sacrificing transparency and stakeholder engagement. Communities and businesses can continue to participate in a robust review process.

There is urgency to act on these perfluoralkyl and polyfluoroalkyl (PFAS) products, including the firefighter gear and other products. These harmful chemicals have been in breast milk samples as part of a study conducted with University of Washington, and cleanup of the chemicals is extremely challenging.

Firefighters are exposed to dangerous PFAS chemicals from a number of sources. Gear designed to keep us safe is actually poisoning us. The notification law was a great step forward. We would much prefer getting wet over getting exposed to these harmful chemicals.

CON: We are concerned about changes to the cycle process. Ecology is currently in the early stages of implementing the law. The first round should be completed and impacts fully understood before making changes to the underlying statute.

OTHER: We respectfully disagree that the changes to the five year cycle add efficiency, rather, they add uncertainty. Under the current process, businesses know when the five year

process starts and ends, allowing them to engage on these issues.

Implementation of the law has been successful and the Department of Health has been engaged with communities to learn about product use and to communicate chemical harm. Changes in the bill would speed up action on priority products, allowing us to move quicker when new, safe alternatives are available.

At the law's original passage, everyone agreed a five year process was an appropriate process. We were not engaged in conversations to modify the underlying statute. This language is a lot more loose than what is being portrayed here. Ecology could start a new process every, six months, we don't know.

Persons Testifying (Environment, Energy & Technology): PRO: Laurie Valeriano, Toxic-Free Future; AJ Johnson, Washington State Council of Fire Fighters.

CON: Tim Shestek, American Chemistry Council.

OTHER: Kimberly Goetz, Department of Ecology; Peter Godlewski, Association of Washington Business; Holly Davies, Washington State Dept. of Health; Charlie Brown, Consumer Technology Association.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: The bill would make firefighter bunker gear a priority product to study impacts of PFAS. There are many studies that prove these chemicals cause cancer and other negative health effects. A peer reviewed study found PFAS in breast milk samples of hundred percent of participants. There is a similar bill being worked on to reduce PFAS from cosmetics. The only solution for addressing PFAS is prevention.

OTHER: We don't have concerns with the PFAS product designations, but are concerned about the shift to the at least every five year cycle, which opens up the possibility of multiple processes occurring at one time, increasing costs for the state and businesses. It is premature to be making these changes, since the first cycle has not completed.

Persons Testifying (Ways & Means): PRO: AJ Johnson, Washington State Council of Firefighters; Nick Federici, Toxic Free Future.

OTHER: Peter Godlewski, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.