

SENATE BILL REPORT

SB 5369

As of January 20, 2023

Title: An act relating to reassessing standards for polychlorinated biphenyls in consumer products.

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 History:

Committee Activity: Environment, Energy & Technology: 1/25/23.

Brief Summary of Bill

- Directs the Department of Ecology (Ecology) to petition the United States Environmental Protection Agency to reassess its regulations on allowable inadvertent polychlorinated biphenyls (PCBs) in product manufacturing processes for the purpose of eliminating or reducing the presence of PCBs in consumer products.
- Requires Ecology to establish a restriction or prohibition on PCB-containing paints and printing inks by June 1, 2025.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

Background: Polychlorinated Biphenyls. Polychlorinated biphenyls (PCBs) are a class of chemical compounds that were produced for commercial uses, such as heat transfer fluids in electrical transformers and capacitors, and as plasticizers, wax and pesticide extenders, and lubricants. According to the United States Environmental Protection Agency (EPA), PCBs

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are probable human carcinogens and may have serious and potential effects on the immune system, reproductive system, nervous system and endocrine system.

In 1979, the United States banned the production of PCBs under the Toxic Substance Control Act (TSCA) for most uses and restricted PCB concentrations to low levels. EPA's regulations implementing TSCA for PCBs allow some inadvertent generation of PCBs to occur in excluded manufacturing processes.

Safer Products for Washington. In 2019, the Legislature 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 substances (PFAS), PCBs, phthalates, organohalogen flame retardants and other flame retardants identified under the Children's Safe Products Act, and phenolic compounds. Ecology is also authorized to designate additional chemicals as priority chemicals every five years if they meet qualifying criteria, consistent with a schedule established in the 2019 law.

Every five years, according to a specified schedule, Ecology must also:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria; and
- determine regulatory actions for the priority chemicals in 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.

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.

In its 2022 report, Ecology determined reporting requirements or restrictions for the use of the following priority chemicals in priority consumer products:

- PFAS in aftermarket stain- and water-resistance treatments, carpets and rugs, and leather and textile furnishings;
- ortho-phthalates in personal care products—fragrances—and vinyl flooring;
- flame retardants in electric and electronic products and recreational polyurethane foam; and
- phenolic compounds in laundry detergent, food and drink can linings, and thermal paper.

Summary of Bill: Ecology must petition EPA to reassess its regulations on allowable inadvertent PCBs in product manufacturing processes for the purpose of eliminating or reducing the presence of PCBs in consumer products.

In petitioning EPA, Ecology must include legislative findings and information on:

- health effects of PCBs;
- release and exposure of PCBs, including but not limited to concentrations of PCBs measured in consumer products and in state waters, soils, and fish tissue; and
- safer alternatives for consumer products that contain PCBs, including the availability and feasibility of alternatives.

To the extent practicable, Ecology must seek completion of the petition review by January 1, 2025.

Paints and printing inks are confirmed as priority consumer products for PCB chemicals under Safer Products for Washington.

Paints and printing inks may include, but are not limited to, building paint for indoor or outdoor use, spray paint, children's paint, road paint, and printing inks used in paper and packaging.

Ecology must:

- establish a restriction or prohibition on PCB-containing paints and printing inks by June 1, 2025; and
- adopt rules to implement the restriction or prohibition by December 1, 2026.

Ecology may not administer or enforce any restriction or prohibition on PCB-containing paints and printing inks if:

- a court of competent jurisdiction determines that federal regulations preempt the restriction or prohibition; or
- the restriction or prohibition does not align with any new regulation established by EPA.

If any restriction or prohibition on PCB-containing paints and printing inks is determined to be preempted, Ecology must:

- establish a reporting requirement for priority chemicals or processes that generate priority chemicals within 180 days from the determination of preemption; and
- adopt rules to implement the reporting requirement within 18 months from the date the reporting requirement is established.

Appropriation: None.

Fiscal Note: Requested on January 12, 2023.

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

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