

Legislative Analysis



POLYBROMINATED DIPHENYL ETHERS (PBDEs)

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House Bill 4406

Sponsor: Rep. Chris Kolb

Committee: Land Use and Environment

Complete to 11-9-04

A SUMMARY OF HOUSE BILL 4406 AS INTRODUCED 3-19-03

House Bill 4406 would amend the Natural Resources and Environmental Protection Act (MCL 324.14601) to regulate the release of the toxic substances known as polybrominated diphenyl ethers (PBDEs), by the Department of Environmental Quality.

[The bill would define “release” to include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a substance into the environment.]

The bill specifies that the legislature finds and declares all of the following:

- a) that Article IV, Section 52 of the State Constitution of 1963 requires the legislature to provide for the protection of the air, water, and other natural resources of the state from pollution, impairment, and destruction;
- b) that persistent and bio-accumulative compounds pose serious threat to the environmental health of the Great Lakes ecosystem;
- c) that PBDEs are compounds that exhibit characteristics of persistence and bioaccumulation; and,
- d) that discharges and other releases containing PBDEs should be reduced or eliminated to protect the Great Lakes.

Under the bill, a person who introduced any quantity of PBDE into a product or material would be required to annually submit a report to the Department of Environmental Quality that explained the quantity of the PBDE used during the previous calendar year, the types of products or materials in which the PBDE was used, and the amount of PBDE present in each product or material. Further, a person who released any PBDE that had not been reported as part of the toxic releases inventory under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (Title III of Public Law 99-499, 42 USC 11023) would be required to annually report the quantity and the medium in which the release or releases occurred.

The bill specifies that beginning January 1, 2007, a person would be prohibited from releasing any PBDE into the environment, or using any PBDE unless the department had

issued a written determination, following a 90-day public notice and comment period, that PBDEs did not pose an unacceptable risk to human health, safety, or welfare, or to the environment.

Under the bill, the department could establish a PBDE advisory committee to assist in determining the risk posed by releases of PBDEs, and in determining how the use of PBDEs could be reduced or eliminated. The department also could promulgate rules to implement this legislation.

The bill specifies that the attorney general could bring a civil action for appropriate relief against a person who violated this law, including, but not limited to, all of the following: a) a permanent or temporary injunction; b) damages for the full value of the injuries done to the natural resources of the state; c) costs of surveillance, and enforcement by, the state resulting from the violation; and d) a civil fine of not less than \$2,500 or more than \$25,000 per day of violation. In addition to any of these awarded remedies, a court could award reasonable attorney fees and costs to the prevailing party. An action could be brought in Ingham County Circuit Court, or the circuit court for the county in which the defendant was located, resided, or was doing business.

Finally, the bill requires that a person who knowingly released PBDEs into the environment contrary to law, or who intentionally made a false statement or representation on a report required by this law, could not be fined less than \$2,500 or more than \$25,000 for each day during which the unlawful release occurred. In addition to these penalties and at the discretion of the court, a person who was found guilty could be subject to all of the following: a) an additional fine of not more than \$25,000 for each day during which the unlawful release occurred; b) if the conviction was for a violation committed after a first conviction, then a fine of not less than \$25,000 per day and not more than \$50,000 per day of violation would be required; and c) imprisonment for not more than two years or probation. The bill specifies that with the exception of the issuance of criminal complaints, issuance of warrants, and the holding of an arraignment, the circuit court for the county in which the violation occurred would have exclusive jurisdiction for prosecutions. However, a person would not be subject to, if the release of PBDEs was in conformance with, and obedient to a rule, order, or permit of the department.

FISCAL IMPACT:

There would be no budgetary impact on the Department of Environmental Quality. Penalty revenue would accrue to the State, if persons are found liable for violation of regulations set forth in this bill. The actual amount collected would depend on the severity of the infraction and the nature of the violation. There would be no fiscal impact on local governmental units.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.