

POLYBROMINATED DIPHENYL ETHERS (PBDEs)

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House Bill 4406 (Substitute H-2)

Sponsor: Rep. Chris Kolb

House Committee: Land Use and Environment

Senate Bill 1458 (Substitute S-2)

Sponsor: Sen. Patricia L. Birkholtz

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Land Use and Environment

Complete to 11-29-04

A SUMMARY OF HOUSE BILL 4406 AND SENATE BILL 1458 AS REPORTED FROM HOUSE COMMITTEE

The bills would prohibit the manufacture or distribution of products containing more than 0.1 percent octa- or penta-BDE after June 1, 2006. House Bill 4406 would set penalties for violations of the limit, and Senate Bill 1458 would allow the Department of Environmental Quality to establish a PBDE advisory committee to monitor risk and report it to the legislature. The bills are tie-barred to each other so that neither could become law unless both were enacted. A more detailed explanation of the bills and some background information about PBDEs follow.

House Bill 4406 (H-2) would amend the Natural Resources and Environmental Protection Act (MCL 324.14701) to prohibit the manufacture, processing, or distribution of a product that contained more than 0.1 percent of penta-BDE after June 1, 2006. However, the bill would make an exception for the processing of recyclables containing penta-BDE that were in compliance with applicable federal, state, and local laws.

The bill also provides that a violation would be a misdemeanor punishable by a fine of not less than \$2,500 or more than \$25,000. Under the bill, each day a violation continued would be considered a separate violation.

Senate Bill 1458 would amend the Natural Resources and Environmental Protection Act (MCL 324.14701) to prohibit a person from manufacturing, processing, or distributing a product or material containing more than 0.1 percent of octa-BDE, beginning June 1, 2006. However, under the bill an exception to the prohibition would be made for the processing of recyclables containing octa-BDE in compliance with applicable federal, state, and local laws.

The bill also authorizes the Department of Environmental Quality (DEQ) to establish a PBDE advisory committee to assist officials at the department in determining the risk posed by the release of PBDEs, other than penta-BDE or octa-BDE, to human health and the environment. The DEQ could use existing programs to monitor the presence of

PBDEs in the state's environment to determine exposure and risk. If new scientific information gathered by the advisory committee indicated a significant risk to human health and the environment in the state, the advisory committee would be required to inform the department of the risk, and if the DEQ concurred, then the DEQ would advise the legislature of that risk.

The bill would not preclude the DEQ from issuing recommendations to the legislature independent of any actions of the advisory committee.

The bills would define "PBDE" as polybrominated diphenyl ether. "Penta-BDE" would mean pentabromodiphenyl ether. "Octa-BDE" would mean octabromodiphenyl ether.

HOUSE COMMITTEE ACTION:

The House Committee on Land Use and Environment reported out the Senate-passed version of Senate Bill 1458 (S-2) without amendments. The committee adopted a substitute (H-2) for House Bill 4406, tie-barring it to Senate Bill 1458.

BACKGROUND:

Polybrominated diphenyl ethers are the most commonly used class of brominated fire retardants, which are used primarily in plastics and textile coatings. There are three main classes of PBDEs, penta, octa, and deca, distinguished by the number of bromine atoms attached to the molecule—five, eight, and 10, respectively. Deca-BDEs comprise over 80 percent of the PBDE market.

Commercial octa-BDE is used mainly to produce a material that is used in the manufacture of computer and business equipment housings. Commercial octa-BDE also is used in adhesives and coatings. About 95 percent of commercial penta-BDE is used in the manufacture of flexible polyurethane foam used in furniture and upholstery, automobiles, and foam-based packaging.

In early 2003, the European Union adopted a directive that bans the marketing and use of penta- and octa-BDE in all consumer products beginning August 15, 2004. In August 2003, California enacted legislation to prohibit a person from manufacturing, processing, or distributing in commerce a product or flame-retarded part of a product containing more than 0.1 percent of penta-BDE or octa-BDE, by mass, beginning January 1, 2008.

In 2004, according to the National Caucus of Environmental Legislators, Hawaii enacted a ban on the use of all PCBs; Maine enacted a law banning the use of penta- and octa-BDE beginning in 2006 and deca-BDE beginning in 2008; the governor of the state of Washington issued an executive order directing the Department of Ecology to phase out the use of PBDEs and the legislature approved funding for the phase-out; and New York's Assembly and Senate passed legislation to ban penta- and octa-BDE and create a task force to study deca-BDE.

The primary manufacturer of penta- and octa-BDE in the United States, Great Lakes Chemical, has agreed to cease production of these formulations by the end of 2004.

(Except as indicated, the primary source of this information is "Polybrominated Diphenyl Ethers (PBDSs): Background Paper", Toxics Steering Group PDBE Subcommittee, DEQ, January 2004.)

FISCAL IMPACT:

With regard to House Bill 4406, 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.