

Legislative Analysis



POLYBROMINATED DIPHENYL ETHERS (PBDEs)

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House Bill 4406 as enrolled
Public Act 562 of 2004
Sponsor: Rep. Chris Kolb

Senate Bill 1458 as enrolled
Public Act 526 of 2004
Sponsor: Sen. Patricia L. Birkholz

Senate Committee: Natural Resources and Environmental Affairs
House Committee: Land Use and Environment

Complete to 3-14-05

A SUMMARY OF HOUSE BILL 4406 AND SENATE BILL 1458 AS ENROLLED

The bills would amend the Natural Resources and Environmental Protection Act (MCL 324.14701) to prohibit the manufacture or distribution of products or materials containing more than one-tenth of one percent of octa- or penta-BDE as of June 1, 2006. However, under both bills, two exceptions to the prohibition would be made. The prohibition would not apply 1) to original equipment manufacturer replacement services parts; and 2) the processing of recyclables in compliance with applicable federal, state, and local laws.

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. A more detailed explanation of the bills and some background information about PBDEs follow.

House Bill 4406 would apply to the manufacture, processing, or distribution of a product that contained more than one-tenth of one percent of penta-BDE after June 1, 2006.

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 apply to the manufacture, processing, or distribution of a product or material containing more than one-tenth of one percent of octa-BDE, beginning June 1, 2006.

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.

BACKGROUND INFORMATION:

The information in this section is derived from a summary prepared on Senate Bill 1458 by the Senate Fiscal Agency.

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 constitute over 80 percent of the PBDE market.

Commercial octa-BDE is used mainly to produce a material 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 PCBES; 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 (PBDs): Background Paper", Toxics Steering Group PDBE Subcommittee, DEQ, January 2004.)

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.