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BILL ANALYSIS

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Senate Bill 1458 (as introduced 11-3-04)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Resources

Date Completed: 11-3-04

CONTENT

The bill would amend Part 147 of the Natural Resources and Environmental Protection Act to do the following:

- Prohibit a person from manufacturing, processing, or distributing a product or material containing more than 0.1% of penta-BDE or octa-BDE, beginning June 1, 2006.**
- Prescribe a misdemeanor penalty for a violation, and allow the Attorney General to bring a civil action.**
- Allow the Department of Environmental Quality (DEQ) to establish a PBDE advisory committee.**

The bill would define "PBDE" as polybrominated diphenyl ether. "Penta-BDE" would mean pentabromodiphenyl ether. "Octa-BDE" would mean octabromodiphenyl ether. (These compounds are described in **BACKGROUND**, below.)

The prohibition against manufacturing, processing, or distributing a product or material containing more than 0.1% of penta- or octa-BDE would not apply to the processing of recyclables containing penta-BDE or octa-BDE in compliance with applicable Federal, State, and local laws.

The DEQ could establish a PBDE advisory committee to assist 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 would have to 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 DEQ would have to advise the Legislature of the risk.

The Attorney General could bring a civil action for appropriate relief against a person for a violation of the bill. The relief could include a permanent or temporary injunction; damages for the full value of the injuries done to the natural resources of the State; and costs of surveillance and enforcement by the State resulting from the violation. A civil action could be brought in the circuit court for Ingham County or for the county in which the defendant was located, resided, or was doing business.

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

Presently, Part 147 governs PCB Compounds. The bill would divide Part 147 into Subpart 1 (PCB Compounds) and Subpart 2 (PBDE Compounds), and rename Part 147 "Chemical Substances".

MCL 324.14701 et al.

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% 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% 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% 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 (PBDES): Background Paper", Toxics Steering Group PBDE Subcommittee, DEQ, January 2004.)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would require the Department to use existing programs to monitor the presence of PBDEs in the environment. Enforcement costs and damages recovered would depend on the number of violations.

Any additional penal fine revenue raised due to the proposed misdemeanor would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.