



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4406 (Substitute H-2 as passed by the House)
Sponsor: Representative Chris Kolb
House Committee: Land Use and Environment
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 12-6-04

CONTENT

The bill would amend the Natural Resources and Environmental Protection Act to prohibit a person from manufacturing, processing, or distributing a product or material containing more than 0.1% of penta-BDE, beginning June 1, 2006. A violation would be a misdemeanor punishable by a fine of at least \$2,500 but not more than \$25,000. Each day that a violation continued would be considered a separate violation.

The prohibition would not apply to the processing of recyclables containing penta-BDE in compliance with applicable Federal, State, and local law.

The bill would amend Part 147 of the Act, which currently is titled, "PCB Compounds". The bill would rename it, "Chemical Substances".

The bill is tie-barred to Senate Bill 1458. Senate Bill 1458 (S-2), as passed by the Senate, would prohibit a person from manufacturing, processing, or distributing a product or material containing more than 0.1% of octa-BDE, beginning June 1, 2006; allow the Department of Environmental Quality (DEQ) to establish a PBDE advisory committee to assist the DEQ in determining the risk posed by the release of PBDEs, other than penta- or octa-BDE, to human health and the environment; require the advisory committee to inform the DEQ if new scientific evidence indicated a significant risk to human health and the environment in the State; and require the DEQ, if it concurred, to inform the Legislature.

The Senate bill would define "PBDE" as pentabromodiphenyl ether. "Penta-BDE" would mean pentabromodiphenyl ether, and "octa-BDE" would mean octabromodiphenyl ether.

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.

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. 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.

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 proposed misdemeanor could result in an indeterminate amount of additional penal fine revenue. The revenue would benefit public libraries.

Fiscal Analyst: Bethany Wicksall

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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.