

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 83

(Delegate Hubbard)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Brominated Flame Retardants - Pentabrominated and Octabrominated Diphenyl Ether - Prohibition

This bill prohibits, beginning October 1, 2008, a person from manufacturing, processing, selling, or distributing in the State a new product or a flame-retardant part of a new product that contains more than one-tenth of 1% of pentabrominated diphenyl ether (pentaBDE) or octabrominated diphenyl ether (octaBDE). The prohibition would not apply to the processing of specified recyclables or to specified parts and products. The bill authorizes the Maryland Department of the Environment (MDE) to enforce the prohibition and establishes civil and criminal penalty provisions for violations. The bill also establishes a reporting requirement for MDE. MDE is authorized to adopt regulations to implement the bill.

Fiscal Summary

State Effect: General fund expenditures would increase by \$68,100 in FY 2006 to begin implementing the prohibition. Future year estimates are annualized and reflect ongoing operating costs. The bill’s civil and criminal penalty provisions are not anticipated to significantly affect State revenues.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	68,100	82,100	65,700	69,500	75,700
Net Effect	(\$68,100)	(\$82,100)	(\$65,700)	(\$69,500)	(\$75,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not expected to significantly affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Any person who violates the bill is liable to the State for a civil penalty of up to \$1,000 per violation up to a total of \$10,000 for any civil action. For subsequent willful violations, a person is guilty of a misdemeanor and on conviction is subject to a fine of up to \$20,000.

By January 1, 2007, MDE must report to specified committees of the General Assembly on the use of decabrominated diphenyl ether (decaBDE) in products sold in the State, any data available on the human body burden or environmental occurrence of decaBDE, any recommendations regarding the use, sale, and disposal of products containing decaBDE, and any other recommendations needed to protect public health and the environment from decaBDE.

Current Law: The use of pentaBDE or octaBDE is not prohibited by the State or the federal government.

Background: Polybrominated diphenyl ethers, or PBDEs, are a subcategory of brominated flame retardants (BFRs). PentaBDE, octaBDE, and decaDBE are three PBDE compounds commonly used in flame retardants. PBDEs have been routinely used in the plastic housing of computers and circuit boards and in the foam and textiles used in furniture. Concerns about the effects of PBDEs on human health and the environment are mounting. PBDEs persist in the environment and are building up rapidly in humans and fish. PBDEs have the potential to disrupt thyroid hormone balance and contribute to a variety of developmental deficits. PBDEs may also have the potential to cause cancer.

Because of the potentially harmful effects of PBDEs, efforts to eliminate them from products have been made throughout the world. The European Union voted in December 2002 to ban the use of PBDEs in electrical and electronic equipment sold in member countries. In 2003, California enacted legislation to phase out the use of pentaBDE and octaBDE by 2008. PentaBDE and octaBDE bans in Hawaii, Maine, and New York will take effect in 2006. An executive order in Washington directs the state to phase out pentaBDE, octaBDE, and decaBDE. Legislation addressing the use of certain BFRs has been introduced in other states and in the U.S. Congress. As introduced, this bill was based on the version of the legislation introduced in Maine.

According to the U.S. Environmental Protection Agency (EPA), in November 2003 the sole U.S. manufacturer of pentaBDE and octaBDE announced that it would voluntarily cease production of the chemicals by the end of 2004. In December 2003 EPA kicked off

the Furniture Flame Retardancy Partnership, a joint venture between the furniture industry, chemical manufacturers, environmental groups, and EPA to better understand fire safety options for the furniture industry. The long-term goals of the partnership include identifying environmentally preferable approaches for designing furniture and developing toxicological information on flame retardant chemicals. MDE advises that it is currently building a literature file on the environmental occurrence and toxicity potential of BFRs.

State Revenues: The bill's civil and criminal penalty provisions are not anticipated to significantly affect State revenues.

State Expenditures: General fund expenditures could increase by an estimated \$68,081 in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring one administrator to research and develop regulations, conduct outreach and education to affected industries, report to the legislature, and, in future years, conduct compliance activities. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- a significant effort to identify and educate affected entities – the number of regulated entities is anticipated to be large, diverse, and poorly identified;
- contractual services for outreach services; and
- travel for routine meetings and training.

Salary and Fringe Benefits	\$43,897
Contractual Services	20,000
Equipment/Operating Expenses	<u>4,184</u>
Total FY 2006 State Expenditures	\$68,081

Future year expenditures are annualized and reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) replacement equipment (computer) in fiscal 2010.

Small Business Effect: According to MDE, BFRs are currently the largest market group of flame retardants due to their low cost and high performance efficiency. MDE advises that more than 75 different BFRs are recognized commercially, and that the Americas consume about 29% of the global market for BFRs.

Neither MDE nor the Department of Business and Economic Development was able to identify the number of Maryland businesses that could be affected. However, the bill

could affect a variety of businesses (those involved with the manufacture, process, sale, distribution, or use of pentaBDE and octaBDE and products containing those chemicals) spanning several industries (chemical manufacturing, electronics manufacturing, and furniture manufacturing, among others). Legislative Services notes that, in areas where these chemicals have been banned, alternative products already exist. Because the extent to which pentaBDE and octaBDE will still be used when the bill's prohibition takes effect is unknown, the impact on Maryland businesses cannot be reliably estimated.

Additional Information

Prior Introductions: Similar legislation was introduced as HB 26 of 2004. The bill received an unfavorable report by the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Business and Economic Development, U.S. Environmental Protection Agency, Department of Legislative Services

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