

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

Revised

House Bill 1

(Delegates Hubbard and Montgomery)

Environmental Matters

Education, Health, and Environmental Affairs

**Environment - Brominated Flame Retardants - Decabrominated Diphenyl Ether
 - Prohibition**

This bill prohibits, beginning January 1, 2010, a person from manufacturing, processing, selling, or distributing in the State a new product or flame-retardant part of a new product that contains more than one-tenth of 1% of decabrominated diphenyl ether (decaBDE). The prohibition does not apply to the processing of specified recyclables, to specified parts and products, or to specified vehicles and vehicle parts.

The bill takes effect January 1, 2010.

Fiscal Summary

State Effect: General fund expenditures could increase by \$231,500 in FY 2010 to implement and enforce the prohibition. Future year estimates are annualized and reflect ongoing operating costs. The application of existing civil and criminal penalty provisions to this new prohibition is not anticipated to significantly affect State revenues.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	231,500	311,600	326,300	341,700	363,100
Net Effect	(\$231,500)	(\$311,600)	(\$326,300)	(\$341,700)	(\$363,100)

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

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

Small Business Effect: Potential meaningful.

Analysis

Current Law: Chapter 522 of 2005 prohibits, beginning October 1, 2008, a person from manufacturing, processing, selling, or distributing in the State a new product or 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 does not apply to the processing of specified recyclables or to specified parts and products.

MDE is authorized to enforce the prohibition. Any person who violates the prohibition 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.

Chapter 522 of 2005 required MDE to report to specified committees of the General Assembly, by January 1, 2007, on the use of 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.

Background: Polybrominated diphenyl ethers, or PBDEs, are a subcategory of brominated flame retardants. PentaBDE, octaBDE, and decaBDE 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. According to MDE, manufacturers of pentaBDE and octaBDE agreed to voluntarily discontinue production of these two forms of PBDEs at the end of 2004 due to environmental and health concerns. While pentaBDE and octaBDE are no longer manufactured, MDE advises that decaBDE is still used in a wide range of products.

In its January 2007 report submitted in accordance with Chapter 522, MDE reported that manufacturers maintain that decaBDE has been rigorously tested and found to be safe from both an environmental and human health perspective. Others have identified data gaps suggesting the safety of decaBDE remains an open question. Current data shows that decaBDE is minimally toxic and not a threat to humans, wildlife, and the environment; however, new research is focused on determining if decaBDE breaks down into more toxic forms.

MDE advises that many states and countries have considered restricting the use of decaBDE. Maine and Washington State recently enacted legislation prohibiting the use of decaBDE in certain products. Several other states have introduced legislation in

various forms prohibiting the use, manufacture, sale, or distribution of products containing decaBDE. The European Union (EU) exempted decaBDE from restrictions imposed by EU hazardous substance legislation for electronic equipment, emphasizing that additional studies are needed. In its January 2007 report, MDE noted that some states had concluded that banning decaBDE is premature due to the lack of adequate toxicity information on alternatives. MDE concluded in its report that decaBDE should not be banned unless safer alternatives are identified and/or new toxicological data shows that there is an unacceptable risk to public health and/or the environment. MDE advises that it is not aware of any new information at this time.

State Expenditures: General fund expenditures could increase by an estimated \$231,537 in fiscal 2010, which accounts for the bill’s January 1, 2010 effective date. This estimate reflects the cost of hiring one environmental compliance specialist and one outreach specialist to develop regulations, conduct outreach to affected entities, and enforce the prohibition. It also reflects the cost of hiring one database specialist and one data entry operator to develop and maintain a list of products known to use decaBDE and provide administrative and data entry support. It includes salaries, 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;
- MDE does not currently have any programs that could effectively enforce the bill’s prohibition;
- contractual services for consultant expertise, outreach services, and lab testing and sample analysis; and
- travel for routine meetings, conferences, and training.

Positions	4
Salaries and Fringe Benefits	\$138,486
Contractual Services	51,000
Automobile Purchase/Operations	22,952
Other Equipment/Operating Expenses	<u>19,099</u>
Total FY 2010 State Expenditures	\$231,537

Future year expenditures reflect ● full salaries with 4.4% annual increases and 3% employee turnover; ● 2% annual increases in ongoing operating expenses; ● ongoing

contractual services for lab testing and sample analysis (\$20,000 annually); and

- replacement equipment (computers) in fiscal 2014.

Legislative Services advises that these estimates assume only minimal enforcement (*i.e.*, spot-checking) by MDE. To the extent MDE is required to undertake a comprehensive enforcement program, regulatory costs and staffing needs would increase.

Legislative Services also advises that, if the use of decaBDE is eventually phased out altogether, at some point the regulatory program established as a result of the bill could be abolished.

Small Business Effect: MDE is not able to identify the number of businesses that could be affected. However, the bill could have a negative impact on a variety of businesses (those involved with the manufacture, process, sale, distribution, or use of decaBDE and products containing decaBDE) spanning several industries (such as electronics, textiles, and construction materials, among others). On the other hand, businesses involved with the manufacture, process, sale, distribution, and use of alternative products could benefit.

Additional Information

Prior Introductions: As introduced, the prohibition in HB 83 of 2005 addressed decaBDE, among other things; however, the bill's prohibition was amended to be limited to pentaBDE and octaBDE and enacted as Chapter 522.

Cross File: None.

Information Source(s): Maryland Department of the Environment, U.S. Environmental Protection Agency, California State Senate, Department of Legislative Services

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