

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

Senate Bill 353 (Senator Lenett, *et al.*)
 Education, Health, and Environmental Affairs

Environment - Brominated Flame Retardants - Decabrominated Diphenyl Ether - Prohibition

This bill prohibits a person, beginning January 1, 2011, from manufacturing, processing, selling, or distributing in the State, a new product or flame-retardant part of a new product that contains more than 0.1% of decabrominated diphenyl ether (decaBDE). The prohibition does not apply to the processing of specified recyclables, specified original equipment manufacturer replacement service parts and products, or specified vehicles and vehicle parts.

The bill takes effect January 1, 2011.

Fiscal Summary

State Effect: General fund expenditures increase by \$20,500 in FY 2011, by \$22,500 in FY 2012, and by \$11,700 in FY 2013 to implement the bill. The FY 2012 and 2013 estimates reflect annualization and ongoing operating costs. The application of existing civil and criminal penalty provisions to this new prohibition is not anticipated to significantly affect State finances.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	20,500	22,500	11,700	0	0
Net Effect	(\$20,500)	(\$22,500)	(\$11,700)	\$0	\$0

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 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 0.1% of pentabrominated diphenyl ether (pentaBDE) or octabrominated diphenyl ether (octaBDE). The prohibition does not apply to the processing of specified recyclables or to specified original equipment manufacturer parts and products.

The Maryland Department of the Environment (MDE) is authorized to enforce the prohibition by notifying a person that there are grounds to suspect that the person may not be in compliance with the law, requesting that the person certify that the part or product in question is compliant, and seeking an injunction if the person fails to make the certification. 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 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 in 2009 decaBDE was still used in a wide range of products.

In its January 2007 report submitted in accordance with Chapter 522, MDE reported that manufacturers maintained that decaBDE had been rigorously tested and found to be safe from both an environmental and human health perspective. At the time, MDE also noted

that some states had concluded that banning decaBDE was 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.

Since the release of that report, MDE has advised that, although decaBDE may be minimally toxic, it bioaccumulates in both wildlife and people and that concentrations in U.S. citizens are generally higher than in other countries. Further, MDE has noted that new research continues to focus on determining whether decaBDE breaks down into more toxic substances, such as pentaBDE and octaBDE.

In addition, several states, including Maine and Washington have since enacted legislation prohibiting the use of decaBDE in certain products, and the U.S. Environmental Protection Agency has said that it has reached agreement with the manufacturers to voluntarily phase out decaBDE from most uses by December 31, 2012, and from all uses by December 31, 2013.

State Expenditures: General fund expenditures increase by \$20,464 in fiscal 2011. This estimate reflects the cost of hiring one half-time contractual environmental compliance specialist to handle complaints, coordinate enforcement actions, and maintain awareness of ongoing developments within affected industries. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

MDE does not currently have any programs that could effectively enforce the bill's prohibition. Previously one comparable specialist handled the prohibition against pentaBDE and octaBDE, which are no longer manufactured.

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
New Contractual Position	0.5		
Salary and Fringe Benefits	\$16,791	\$21,783	\$11,371
Start-up Costs and Operating Expenses	3,673	681	341
Total State Expenditures	\$20,464	\$22,464	\$11,712

Fiscal 2012 and 2013 expenditures reflect a full salary with 4.4% annual increases, 6.8% employee turnover, and 1% annual increases in ongoing operating expenses. Legislative Services advises that, assuming the use of decaBDE is phased out by the end of calendar 2012 for most uses as is currently planned, the contractual position established under the bill will not be needed beyond the first half of fiscal 2013.

Legislative Services advises that this estimate assumes 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 increase substantially.

Small Business Effect: MDE is not able to identify the number of small businesses that may be affected. However, the bill may 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). As the decaBDE manufacturing industry has agreed to voluntarily phase out the use of the chemical, any detrimental effect is likely to be confined to a few years, but may be meaningful if the phase-out is expedited under the bill.

Additional Information

Prior Introductions: HB 14 of 2009 passed the House with amendments but received no further action from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, SB 184, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. A similar bill, HB 1 of 2008, passed the House with amendments and was heard by the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

Cross File: HB 35 (Delegate Hubbard) - Environmental Matters.

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

Fiscal Note History: First Reader - February 8, 2010
ncs/lgc

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510