

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 184 (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, 2010, 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, specified original equipment manufacturer replacement service parts and products, or specified vehicles and vehicle parts.

The bill takes effect January 1, 2010.

Fiscal Summary

State Effect: General fund expenditures increase by \$40,900 in FY 2010 and by about \$74,400 in FY 2011 to implement the bill. 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	40,900	74,400	77,500	81,700	85,600
Net Effect	(\$40,900)	(\$74,400)	(\$77,500)	(\$81,700)	(\$85,600)

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 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 original equipment manufacturer parts and products.

MDE is authorized to enforce the prohibition by notifying a person that there are grounds for suspecting 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 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. MDE now advises 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. New research continues to focus on determining whether decaBDE breaks down into more toxic substances, such as pentaBDE and octaBDE.

MDE advises that many states and countries have considered restricting the use of decaBDE. Maine and Washington 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.

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.

In 2008, the European Court of Justice reversed a 2006 ruling by the European Commission that exempted decaBDE from hazardous substance restrictions for electronic equipment. This court decision was based on a finding of procedural irregularities in the establishment of the exemption, and noted that many electronics producers had already begun to voluntarily phase out the use of decaBDE due to the availability of safe alternatives.

State Expenditures: General fund expenditures increase by \$40,931 in fiscal 2010. This estimate reflects the cost of hiring one environmental compliance specialist to assist in developing any regulations, conduct outreach to affected entities, and enforce the prohibition. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The additional position is needed to minimally enforce the bill by handling complaints, coordinating enforcement actions, and maintaining awareness of ongoing developments within affected industries.

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 2010</u>	<u>FY 2011</u>
Position	1	
Salary and Fringe Benefits	\$35,619	\$72,461
Start-up Costs and Operating Expenses	5,312	1,973
Total State Expenditures	\$40,931	\$74,434

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

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.

Legislative Services also advises that, if the use of decaBDE is eventually phased out altogether, 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 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). On the other hand, businesses involved with the manufacture, process, sale, distribution, and use of alternative products may benefit.

Additional Information

Prior Introductions: A similar bill, HB 1 of 2008, passed the House with amendments and was heard by the Senate Education Health and Environmental Affairs Committee. No further action was taken, however.

Cross File: HB 14 (Delegate Hubbard) - Environmental Matters.

Information Source(s): Maryland Department of the Environment, Department of Legislative Services

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