



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	HB0560	Title:	Phase out the use of polybrominated diphenyl ethers
Primary Sponsor:	McAlpin, Dave	Status:	As Introduced

- | | | |
|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
Expenditures:				
General Fund	\$141,997	\$147,188	\$150,868	\$154,639
Revenue:				
General Fund	\$0	\$0	\$5,000	\$5,000
Net Impact-General Fund Balance	<u>(\$141,997)</u>	<u>(\$147,188)</u>	<u>(\$145,868)</u>	<u>(\$149,639)</u>

Description of Fiscal Impact:

This bill prohibits the sale of certain products containing polybrominated diphenyl ethers and decabromodiphenyl ether. It requires the Department of Environmental Quality (DEQ) and the Department of Public Health and Human Services (DPHHS) to research and analyze options, to educate retailers and manufacturers both in-state and out-of -state, to write rules, and to enforce a ban on these chemicals in a variety of products.

FISCAL ANALYSIS

Assumptions:

Department of Environmental Quality (DEQ)

1. Effective January 1, 2008, a person may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use certain products containing polybrominated diphenyl ethers (PBDEs). PBDEs are added to products as flame retardants. The types of products that could contain PBDEs include plastics used in computers and other electronic cases, appliances, foam cushions and carpet padding, upholstery fabrics, and other materials. These products are widespread and available at many retail establishments throughout the state.

2. Effective January 1, 2008, a person may not manufacture, knowingly sell, offer for sale, distribute for sale, or distribute for use a mattress containing decabromodiphenyl ether.
3. There are exceptions to the ban on the sale of products with these chemicals until such time as the DEQ and Department of Public Health and Human Services (DPHHS) determine that a safer and technically feasible alternative to PBDEs exist.
4. The DEQ, in conjunction with the DPHHS, shall annually review risk assessments, peer-reviewed scientific studies, and other relevant findings regarding alternatives to the use of commercial decabromodiphenyl ether in residential upholstered furniture, televisions, and computers.
5. The DEQ shall assist in-state retailers in identifying potential products containing polybrominated diphenyl ethers. These products are extensive in the marketplace and are sold at many types of retail outlets
6. The DEQ shall prepare and distribute information to in-state manufacturers and out-of-state manufacturers to the maximum extent practicable to assist them in identifying products prohibited for manufacture, sale or distribution.
7. The DEQ Planning, Prevention, & Assistance Division must assist other state agencies in making purchases of products that do not contain PBDEs
8. It will require 2.00 FTE to determine which products contain the chemicals and which will no longer be able to be sold in Montana, to review materials and annually research current trends and new products, to determine when additional products will need to be banned, to prepare and distribute materials, and to assist other state agencies as provided in assumptions 1-7. The positions will include 1.00 FTE environmental specialist, 0.50 FTE public information specialist, and 0.50 FTE administrative support.
9. The total cost for these 2.00 FTE for salaries and benefits will be \$93,918 in FY 2008 and FY 2009 and operating costs will be \$48,079 in FY 2008 and \$36,466 in FY 2009.
10. If the DEQ, in conjunction with DPHHS, determines safer and technically feasible alternatives exist it shall consult with the fire prevention and investigation advisory council to determine if the safer and technically feasible alternatives meet applicable fire safety standards.
11. The DEQ shall initiate rulemaking when a safe and technically feasible alternative exists to decabromodiphenyl ether. This rulemaking is expected to be complex because of the number of products that could be affected and the number of interested persons that could be affected. This rulemaking is not likely to take place prior to FY 2010.
12. Assuming that rulemaking takes place in FY 2010, this work would be done with existing DEQ staff.
13. The DEQ Enforcement Division must enforce the law through civil penalties. It is assumed that no penalties will be issued until FY 2009. At that time, an estimated two cases per year will have a penalty of \$2,500 each case or \$5,000 per year. This will take an equivalent of 0.10 FTE environmental specialist and 0.05 FTE attorney. The total cost for these 0.15 FTE for salaries and benefits will be \$8,726 in FY 2009 and operating costs will be \$8,078 in FY 2009.
14. A 2.5% inflation factor has been applied to FY 2010 and FY 2011.

	<u>FY 2008</u> <u>Difference</u>	<u>FY 2009</u> <u>Difference</u>	<u>FY 2010</u> <u>Difference</u>	<u>FY 2011</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
Department of Environmental Quality				
FTE	2.00	2.15	2.15	2.15
<u>Expenditures:</u>				
Personal Services	\$93,918	\$102,644	\$105,210	\$107,840
Operating Expenses	\$48,079	\$44,544	\$45,658	\$46,799
TOTAL Expenditures	<u>\$141,997</u>	<u>\$147,188</u>	<u>\$150,868</u>	<u>\$154,639</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$141,997	\$147,188	\$150,868	\$154,639
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$5,000	\$5,000
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$141,997)	(\$147,188)	(\$145,868)	(\$149,639)

Technical Notes:

1. Use of the term "knowingly" in section 4(1)(a) may be unnecessary and may create an unintended consequence. Use of the term appears to allow the knowing sale of certain televisions and computers containing polybrominated diphenyl ethers but by implication not allow the unknowing sale of those same televisions and computers.
2. It appears to be a violation of the bill to unknowingly offer banned products for sale but not to unknowingly sell them. Sections 3(1), 3(2), and 4(1)(b) appear to prohibit only the knowing sale of certain products containing polybrominated diphenyl ethers. Section 7(1) is consistent in that it provides that a retailer who unknowingly sells these products is not liable under the bill. However, under sections 3(1), 3(2), and 4(1)(b) a person (including a retailer) who offers for sale the products containing polybrominated diphenyl ethers appears to be in violation of and liable under the bill, whether the person knows of the chemicals or not.

Sponsor's Initials

Date

Budget Director's Initials

Date