

**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2009**

**Legislative Fiscal Note**

**BILL NUMBER:** House Bill 823 (First Edition)

**SHORT TITLE:** Limit Toxic Flame Retardants Containing PBDEs.

**SPONSOR(S):** Representatives Glazier, England, Harrison, and Burris-Floyd

<b>FISCAL IMPACT</b>					
	<b>Yes (x)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>
<b>REVENUES</b>					
<b>(General Fund)</b>					
<b>Dept. of Enviro. &amp; Natural Resources</b>	<b>*Estimate not available. See Assumptions &amp; Methodology*</b>				
<b>Tax Credit (Sect. 3)</b>	<b>*Estimate not available. See Assumptions &amp; Methodology*</b>				
<b>EXPENDITURES</b>					
<b>(General Fund)</b>					
<b>Dept. of Enviro. &amp; Natural Resources</b>	<b>\$311,444</b>	<b>\$334,867</b>	<b>\$345,623</b>	<b>\$356,249</b>	<b>\$367,111</b>
<b>Dept. of Justice</b>	<b>*No fiscal impact*</b>				
<b>Dept. of Insurance</b>	<b>*No fiscal impact*</b>				
<b>Dept. of Health &amp; Human Services</b>	<b>*No fiscal impact*</b>				
<b>POSITIONS (cumulative):</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>	<b>1.5</b>
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Environment and Natural Resources; Department of Justice; Department of Insurance; State Health Director					
<b>EFFECTIVE DATE:</b> G.S. 130A-453.32(b), as enacted by Section 1 of this act, becomes effective October 1, 2010, and G.S. 130A-453.39, as enacted by Section 1 of this act, becomes effective January 1, 2010. Section 2 and Section 3 of this act are effective for taxable years beginning on or after January 1, 2009. The remainder of Section 1 of this act and the remaining other sections become effective October 1, 2009. The initial report under G.S. 130A-453-38 is due no later than January 15, 2010.					

## **BILL SUMMARY:**

House Bill 823 amends Chapter 130A of the General Statutes by prohibiting the sale or distribution of flame retardants containing polybrominated diphenyl ethers (PBDEs), also known as brominated flame retardants. This bill establishes an interagency committee on fire safety, which shall include: the State Fire Marshal or a designee; the State Health Director or a designee; the Secretary of Environment and Natural Resources (Secretary) or a designee; an expert on the human and ecological effects of brominated flame retardants from Duke University Nicholas School of the Environment selected by the Secretary; and an expert on fire safety design from the Fire & Life Safety Program at North Carolina State University selected by the Secretary. The Secretary may grant exemption to any provision of this Article for a term not to exceed two years; this exemption is renewable upon written application upon meeting the criteria of the bill. A fee for exemptions, not to exceed \$5,000, shall be payable to the Department of Environment, and Natural Resources and revenues gained from this fee shall be used to administer this bill.

The Secretary may establish a product-labeling program for products that meet the safety standards of this bill, and may establish relationships with manufacturers to enhance the market for safe fire retardant products. The Secretary may also develop an awards program in conjunction with the Environmental Stewardship Initiative Program to recognize manufacturers who excel at reducing unsafe fire retardants.

This bill also creates a tax incentive for manufacturers to develop alternative product designs without certain chemical flame retardants for fire safety standards. HB 823 directs the Secretary to develop an educational program for retailers with the option to establish a regional, multi-state clearinghouse to assist in the implementation of this bill.

The Commission shall provide a report no later than January 15<sup>th</sup>, 2010 and every other subsequent year to the Environmental Review Commission and the General Assembly regarding the regulation of brominated flame retardants. The Secretary may request manufacturers to provide certificates of compliance. If manufacturers fail to comply with the requirements of this bill, the Secretary may assess civil penalties and/or request the Attorney General to initiate injunction proceedings. The Secretary may adopt rules to implement this bill.

## **ASSUMPTIONS AND METHODOLOGY:**

### **Department of Environment and Natural Resources**

The Department of Environment and Natural Resources (DENR) will be responsible for administering the majority of this bill. Most likely, the Sleep Products program within the Public Health Pest Management section of the Division of Environmental Health would assume this responsibility. The Public Health Pest Management section already has four PhD-level scientists who deal with highly technical and scientific issues. For the purposes of this fiscal note, it is assumed that the Sleep Products program would assume the labeling and partnership duties under new G.S. 130A-453.35; the education, outreach, and clearinghouse programs under new G.S. 130A-453.37; and under G.S. 130A-453.39, the testing duties which would be required to verify whether or not a manufacturer was in violation.

The bill does not indicate a funding source for the costs associated with this bill, and Fiscal Research has assumed they would be incurred by the General Fund. The existing Sleep Products Program is supported by fees. With a modification to the existing fee structure, DENR feels that the requirements of this bill could potentially be supported with fees, and thus General Fund appropriations might not be needed.

Personnel Costs

To implement the requirements of this bill, DENR estimates that they would need two new, full-time positions – an Environmental Chemist and an Extension Education and Training Specialist III. The Environmental Chemist would be responsible for four main activities: 1.) the testing needed to insure compliance, 2.) reviewing and granting exemptions under new G.S. 130A-453.34, 3.) conducting the labeling program and manufacturing partnerships detailed in G.S. 130A-453.35, and 4.) developing and implementing rules under new G.S. 130A-453.40. It should be noted that G.S. 130A-453.34, G.S. 130A-453.35, G.S. 130A-453.40 are all permissive and not prescriptive. Additionally, the bill does not explicitly prescribe that testing be done. However, new G.S. 130A-453.39 contains the following language: “If the Secretary of Environment and Natural Resources reasonably suspects that a product containing a regulated brominated flame retardant is being manufactured, sold, offered for sale, or distributed for sale...” Fiscal Research assumes that testing of samples would need to be done in order for the Secretary to “reasonably suspect” violation by a manufacturer or retailer. Based on historical workloads in the Sleep Products Program, DENR estimates that this testing, as well as the work of potentially developing a labeling program, would require the work of one FTE. With recognition of the caveat that the bill is permissive and not prescriptive in these areas, Fiscal Research estimates that to conduct a reasonable program and meet the intent of the bill, one FTE would be needed for this work.

The Extension Education and Training Specialist III would be responsible for new G.S. 130A-453.37 which requires that DENR develop a program to inform and educate retailers regarding this law. Using data from the existing Sleep Products program, DENR estimates that 15,000 – 20,000 retailers would need to be reached using posters and other educational materials. New G.S. 130A-453.37 gives DENR permission (but does not make it a requirement) to participate in a regional, multistate clearinghouse related to PBDEs. DENR estimates that one full-time position would be needed for the work under G.S. 130A-453.37. The duties for this position would include developing educational posters and materials and distributing those materials. This position would need to work to educate the public, manufacturers, and retailers. This position might also work on the multistate regional clearinghouse. Fiscal Research estimates that one half-time position could conduct this work sufficiently.

The salaries, benefits, and operating costs for these positions are as follows:

<b>Position Title</b>	<b>Grade</b>	<b>Salary (at midpoint)</b>	<b>Soc. Sec. &amp; Med.</b>	<b>Retire-ment</b>	<b>Health Insurance</b>	<b>Operating</b>	<b>Total</b>
Environmental Chemist	73	\$56,667	\$4,335	\$4,839	\$4,527	\$7,037	\$77,405
Extension Ed. & Training Spec. (.5 FTE)	73	\$28,334	\$2,168	\$2,420	\$2,264	\$3,518	\$38,703

Fiscal Research applied an inflationary factor and adjusted health insurance and retirement rates to the position estimates to arrive at the following annual costs for the next five years. Please note that for FY 2009-10, positions are calculated for a partial year based on the October 1, 2009 effective date.

	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Total Positions Costs	\$89,920	\$122,944	\$129,779	\$136,671	\$143,668

*Educational Materials Cost (New G.S. 130A-453.37)*

Fiscal Research estimates that the production and mailing of the educational posters would be \$1.00 each with distribution to an estimated 15,000 to 20,000 retailers. Using an average figure, Fiscal Research estimates expenses of \$17,500 (today’s dollars) non-recurring in the first year, with an estimate of needing to replace 25% of the posters each year for a recurring cost of \$4,375 (today’s dollars) in materials. (Note that these costs are separate from the operating expenses provided for the two positions.)

Fiscal Research applied an inflationary factor to the material costs to arrive at the following annual costs for the next five years.

	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Educational Materials	\$17,824	\$4,537	\$4,621	\$4,700	\$4,783

*Testing Materials Costs*

In order to carry-out testing, DENR will need to submit samples to an independent laboratory. DENR has provided a very rough estimate indicating that they will need to submit 2,000 samples at a cost of \$100 each for a total of \$200,000 (today’s dollars) annually. Fiscal Research applied an inflationary factor to these costs to arrive at the following annual costs for the next five years.

	<b>FY 2009-10</b>	<b>FY 2010-11</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>
Testing Materials	\$203,700	\$207,387	\$211,224	\$214,878	\$218,660

*Exemptions – Potential Fee Revenue (New G.S. 130A-453.34)*

The bill allows DENR to grant two-year exemptions to manufacturers who meet certain qualifications. These manufacturers must pay a \$5,000 application fee for the exemption. The bill further stipulates that DENR shall use the fee revenue to administer the PBDE program. As this is a new program without historical data, Fiscal Research does not have an estimate as to how many exemptions might be issued under new G.S. 130A-453.34. Therefore, the amount of fee revenue that might potentially be generated cannot be estimated.

*Recognition Program (New G.S. 130A-453.35)*

New G.S. 130A-453.35 states that DENR may recognize manufacturers who exceed the requirements of this bill; this recognition program would be conducted in conjunction with the

existing Environmental Stewardship Initiative. Fiscal Research does not anticipate any increased costs from this recognition program.

Civil Penalties (New G.S. 130A-453.39)

Neither DENR nor Fiscal Research has an estimate as to the number of civil penalties that might be assessed; thus, there is not a civil penalty revenue estimate available at this time.

**Department of Health and Human Services**

The State Health Director, in the Department of Health and Human Services (DHHS), indicated that the only fiscal impact of this bill on their agency would be \$100 annually in order for one staff member to travel to meetings. Otherwise, this bill will have no fiscal impact on the Department of Health and Human Services. Fiscal Research feels that this expense can be absorbed into the Department's existing budget and thus anticipates no fiscal impact for DHHS.

**Department of Insurance**

The Office of the State Fire Marshal, which is housed in the Department of Insurance, indicated that the only fiscal impact of this bill on their agency would be \$100 annually in order for one staff member to travel to meetings. Otherwise, this bill will have no fiscal impact on the Department of Insurance. Fiscal Research feels that this expense can be absorbed into the Department's existing budget and thus anticipates no fiscal impact for the Department of Insurance.

**Department of Justice**

Upon request from Fiscal Research, the Department of Justice (DOJ) prepared a fiscal impact estimate for the proposed bill. In their estimate, DOJ stated that they interpret the phrase "initiate immediate injunction proceedings" to mean seeking a Temporary Restraining Order (TRO) as well as preliminary and permanent injunction in Superior Court. As this is somewhat analogous to seeking "stop work" orders in the Department of Environment and Natural Resources Sedimentation pollution program, DOJ reviewed this bill with legal staff experienced in such cases. DOJ estimates that preparing such cases and obtaining the TRO takes, on average, four to five days of attorney time and two days of paralegal time. On average, such cases take an attorney approximately 100 hours to complete a single case. DOJ anticipates that this bill may require nine to ten such cases per year and would thus require approximately 1,000 hours of attorney time. Any corresponding civil penalties would be processed and litigated separately. DOJ would receive these cases in the form of administrative appeals from the Office of Administrative Hearings, if an appeal is filed. Assuming a similar workload to address the civil challenges, DOJ anticipates that another 1,000 hours per year in attorney time would be required. The paralegal assistance that would provide legal support services for these matters would be addressed by hiring one part-time Paralegal I, the attorney time would require the hiring of one Attorney III. Including start-up and operating costs for these positions, DOJ provided a cost estimate of \$158,368 the first year and \$149,197 for subsequent years.

G.S. 130A-453.39, Subsection (b) of the proposed bill states that the Secretary of the Department of Environment and Natural Resources (DENR) may take enforcement action or may request that the Attorney General initiate proceedings. Thus, it is possible that DOJ will have little or no involvement with this litigation and subsequently may have costs significantly less than the total

amount estimated above. It is unclear to Fiscal Research how DOJ arrived at the estimate of nine to ten cases per year, which DOJ used to calculate the anticipated costs resulting from this bill. The General Assembly's Appropriation Act routinely contains a provision requiring client departments, agencies, and boards to reimburse DOJ for costs directly related to litigation in which DOJ is representing the client department, agency, or board. Therefore, any of the costs assumed in the above analysis would be incurred by DENR, not DOJ.

The bill gives DENR the option to pursue civil penalties or injunctive relief. The Department is allowed to retain the cost of collection for civil penalties, and thus, it seems most likely that DENR would pursue this option rather than the more costly injunctive relief proceedings. Therefore, for the purposes of this note, Fiscal Research assumes that DENR will pursue civil penalties rather than injunctive relief, and thus, there is no cost associated with this section of the bill.

### **Tax Credit for Flame-retardant Research Expenses**

Section 3 of the bill would provide for a tax credit for qualified flame-retardant expenses. The credit would be taken against either the income or franchise tax and would be equal to 3.75% of eligible expenses for small businesses, or businesses located in a development tier one area. For other companies, the percentage would vary between 1.75% and 3.75% depending on the amount of expenditures.

Because the current research being done in the area of flame-retardant technology is predominantly conducted by academic or non-profit institutions, the tax credit would have minimal impact. In the event that private companies begin to conduct research in this area, the credit would have a negative effect on General Fund revenues. Because the research expenditures that will be incurred by private companies in the State in future years are unknown, the impact of the credit cannot be determined.

**SOURCES OF DATA:** Department of Environment and Natural Resources; Department of Justice; Department of Insurance – Office of the State Fire Marshal; Moody's economy.com

### **TECHNICAL CONSIDERATIONS:**

- 1.) New G.S. 130A-453-32(b) states that "a person shall not in North Carolina manufacture, sell, offer for sale, distribute for sale, or use" certain products containing DecaBDE. It is not clear how the provision prohibiting the "use" of such products would be enforceable, given that many of these products are already in use by the general public. Subsection (c) makes an exemption for used products – but only for the sale of used products. Fiscal Research feels that this ambiguity should be clarified.
- 2.) The bill stipulates that G.S. 130A-453.39 is not effective until January 1, 2010. However, new G.S. 130A-453.32(b) which prohibits the sale, distribution, or use of certain products containing DecaBDE is not effective until October 1, 2010. Thus, ambiguity exists as to when DENR would actually begin to assess civil penalties for certain violations.

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**DATE:** May 11, 2009



**Signed Copy Located in the NCGA Principal Clerk's Offices**