

Office of Policy and Legal Analysis

Date: March 24, 2021
To: Joint Standing Committee on Environment and Natural Resources
From: Dan Tartakoff, Legislative Analyst
Re: LD 226, An Act To Limit the Use of Hydrofluorocarbons To Fight Climate Change (DEP)

Summary of bill and additional background

As introduced by Representative Tucker at the public hearing, he has proposed an amendment that replaces the bill and builds off of the committee amendment to LD 2112 (An Act To Limit the Use of Hydrofluorocarbons To Fight Climate Change), the predecessor bill to LD 226 that was voted during but ultimately not enacted by the 129th Legislature prior to its final adjournment.

Representative Tucker's amendment provides that, in accordance with rules adopted by the Department of Environmental Protection, a person may not sell, lease, rent, install or enter into commerce in the State a product or equipment that uses or will use certain specified substances that are hydrofluorocarbons with high global warming potential for certain specified air conditioning, refrigeration, foam or aerosol propellant end uses. Those specified substances and specified end uses that are prohibited under the amendment, as well as specified exemptions to those prohibitions, are identical or substantially similar to those provided for in the bill.

Note that, unless otherwise indicated, this analysis will refer to Representative Tucker's proposed amendment to LD 226 rather than the original, printed version of LD 226.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Rep. Tucker, Acadia Center, American Chemistry Council, Defend Our Health, Department of Environmental Protection, DuPont Performance Building Solutions, Governor's Office of Policy Innovation and the Future, Honeywell, Household and Commercial Products Association, Maine Conservation Voters, Maine Forest Products Council, Maine Public Health Association, Natural Resources Council of Maine, Natural Resources Defense Council, Nature Conservancy, Sierra Club Maine, additional members of the public.

Opponents – Foodservice Packaging Institute, Maine Association of Realtors.

Neither for nor against – Air-Conditioning, Heating and Refrigeration Institute; Brodis Blueberries; Chemours Company; EPS Industry Alliance; Hunter Panels; Maine Grocers and Food Producers Association; Maine Marine Trades Association; Owens Corning Insulation; Polyisocyanurate Insulation Manufacturers Association; SOPREMA Inc.; Wild Blueberry Commission of Maine.

Notes, issues and proposed amendments

1. *Other state action* – in response to member questions at the hearing regarding other state action on this matter, multiple entities provided information in response. From that information, it appears that at least 12 other states (CA, CO, DE, MD, MA, NJ, NY, PA, RI, VA, VT and WA) have either enacted similar legislation to LD 226 and/or have adopted or

are in the process of adopting similar or related regulations. 2 states (HI and OR) considered but did not enact similar legislation in 2020.

2. *Air-Conditioning, Heating and Refrigeration Institute, proposed amendment* – proposes adding language to clarify that building codes cannot prohibit the use of refrigerants that have been approved by EPA as long as the equipment is listed and installed in accordance with relevant safety standards (see written testimony for specific proposed language).
3. *American Chemistry Council, proposed amendments* – proposes: (1) for clarity/accuracy, amend the definitions for “flexible polyurethane,” “foam,” “rigid polyurethane and polyisocyanurate laminated boardstock,” “rigid polyurethane appliance foam” and “rigid polyurethane marine flotation foam” and add new definitions for “polyurethane” and “foam blowing agent” (see written testimony for specific proposed language); and (2) remove the recordkeeping requirements in subsection 4 and instead require the use of product-specific disclosure statements (see written testimony for specific proposed language).
4. *Defend Our Health; Natural Resources Defense Council, proposed amendment* – propose amending DEP’s rulemaking authority to consider additional risk factors to human health and the environment rather than just global warming potential (see written testimonies for specific proposed language, which appears identical in each).

Note that this amendment was supported, at least conceptually, by multiple other entities, including Acadia Center, Maine Conservation Voters and Natural Resources Council of Maine.

Also note that Defend Our Health proposed in its testimony also adding a definition for “substitute” (see written testimony for specific proposed language).

5. *Foodservice Packaging Institute, proposed amendment* – proposes excluding foodservice packaging made from “foam polystyrene” from regulation under the proposal.
6. *Honeywell, proposed amendments* – proposes: (1) remove from the proposal the waiver process of subsection 3(C); and (2) remove from the proposal the EPA conformity language in subsection 6(D).

Note that these two same amendments were also proposed by the following entities: SOPREMA, Inc.; Polyisocyanurate Insulation Manufacturers Association; EPS Industry Alliance; Owens Corning Insulation and Chemours Company.

Note that the removal of the subsection 3(C) waiver process was also proposed by the Natural Resources Defense Council.

7. *Household and Commercial Products Association, proposed amendments* – proposes: (1) amend the recordkeeping requirement in subsection 4 to reduce the recordkeeping period from 5 years to 3 years to align with related EPA recordkeeping requirements; and (2) amend the exemption in subsection 3(E)(1) to add to the end of that exemption the phrase “or electronics.”

Note that HCPA's written testimony describes two additional amendments appear to be have been addressed in the proposed amendment (change to definition of "propellant" and removal of disclosures requirement).

8. *Hunter Panels, proposed amendment* – proposes prohibiting the granting of a waiver or any other allowance for use past the January 1, 2022 prohibition date for extruded polystyrene foam board insulation products.

Note that this proposal may be related to the proposal under #11 below (PIMA proposal).

9. *Maine Association of Realtors, proposed amendment* – proposes amending definition of "use" (subsection 1(TT)) and elsewhere as necessary to clarify that "residential use" means a use on a residential property (i.e., ensure that exclusion covers residential property sales, leases and rentals).
10. *Maine Marine Trades Association, proposed amendment(?)* – requests sufficient time be provided to allow for the availability of substitute, compliant product options for structural components commonly used in boat building, including rigid closed-cell foam sheets and buoyancy foams (unclear if proposing exemption, delay of effective date of prohibitions or other change).

Note additional comments provided to the Committee by the Maine Marine Trades Association subsequent to the public hearing as well as comments from Honeywell, suggesting that the federal AIM Act of 2020 preempts the category of marine foams from state HFC regulations for a 5-year period (with the potential for a 5-year extension after).

11. *Polyisocyanurate Insulation Manufacturers Association, proposed amendment* – proposes establishing, without waiver or exemption, a uniform prohibition date of January 1, 2022 for HFCs and HFC blends for the entire foam insulation sector (polyisocyanurate, spray foam, extruded polystyrene and expanded polystyrene).
12. *Wild Blueberry Commission of Maine, proposed amendments* – proposes: (1) amend definition of "new" (subsection 1(R)(2)) to either remove reference to modifications or clarify that the term does not apply to maintenance of existing units; (2) include an incentive program or funding pool to help regulated entities cover the costs of coming into compliance with this law; and (3) delay the effective date of prohibitions under the bill to no earlier than January 1, 2023 (see subsection 2(A), which provides for a number of use prohibitions beginning January 1, 2022; all other prohibitions begin no earlier than January 1, 2023).

Note that parts of these proposed amendments were supported, at least conceptually, or generally discussed by multiple other entities including Brodis Blueberries and Maine Grocers and Food Producers Association.

Fiscal information

Not yet available, however, the fiscal note to LD 2112, which Rep. Tucker's amendment is based on, did not require any appropriations or allocations and stated "Any additional costs to the [DEP] as a result of the implementation of a program to regulate the sale and use of hydrofluorocarbons in the State are anticipated to be minor and can be absorbed within existing budgeted resources."