

Office of Policy and Legal Analysis

Date: May 12, 2021

To: Joint Standing Committee on Environment and Natural Resources

From: Dan Tartakoff, Legislative Analyst

Re: LD 1503, An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution
(Gramlich)

Summary of bill

This bill requires manufacturers of products with intentionally added PFAS to report the presence of those substances in those products to the DEP beginning in 2023. This bill also prohibits the sale of residential carpets or rugs, as well as the sale of fabric treatments, that contain intentionally added PFAS beginning in 2023. Additional product categories containing intentionally added PFAS may also be identified by the department and prohibited from sale.

Effective in 2030, products containing intentionally added PFAS may not be sold unless the use of PFAS in a product is specifically designated as a currently unavoidable use by the department. The department is required to create a PFAS source reduction program that provides information, education and, to the extent funds are available, grants to publicly owned treatment works and municipalities to reduce PFAS entering air, water or land.

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

Proponents – Representative Gramlich, Speaker Fecteau, American Academy of Pediatrics-Maine Chapter, Clean Production Action, Conservation Law Foundation, Defend Our Health, Department of Environmental Protection, Environmental Priorities Coalition, Episcopal Diocese of Maine, Institute for Agriculture and Trade Policy, Maine Council of Churches, Maine Medical Association, Maine Municipal Association, Maine Organic Gardeners and Farmers Association, Maine Public Health Association, Maine Rural Water Association, Maine Water Environment Association, Planned Parenthood of Northern New England, Seventh Generation, additional members of the public.

Opponents – Alliance for Automotive Innovation, American Chemistry Council, Daikin America, Household and Commercial Products Association, Retail Association of Maine, Twin Rivers Paper Company.

Neither for nor against – Maine Dairy Industry Association, Maine Forest Products Council.

Notes, issues and proposed amendments

1. *LD 960 overlap* – note that LD 960, a DEP bill, contains similar provisions regarding products containing intentionally-added PFAS. As suggested by DEP the committee may want to consider passing only one piece of legislation on this matter to avoid any potential conflicts or confusion.

2. *DEP concerns, source reduction program* – noted concerns regarding the expectations of and additional resources required at DEP for the PFAS source reduction program under new 1612(9), which would duplicate some of the work already being done by manufacturers and duplicate work that the DEP is already doing with wastewater treatment facilities on pretreatment for PFAS.
3. *Overly broad scope* – multiple bill opponents argued that regulating the entire class of PFAS in the bill, which contains over 9,000 different substances (note – there was a bit of a discrepancy among testifiers as to how many PFAS there are; >9,000 was a figure that came up a couple times) used in a wide range of consumer and industrial applications, is overly broad and lacks a scientific basis. This could undermine effective product design in variety of industries and in some cases, overall product safety.

Although it was acknowledged that the bill contains a waiver provision for notification and a process for a DEP determination of unavoidable use for an otherwise prohibited product containing PFAS, it was suggested by these bill opponents that due to the overbroad scope, DEP may be inundated with thousands of waiver and exemption requests.

4. *Date for rule-based prohibitions* – Twin Rivers Paper Company expressed concern that the provision in new 1612(5)(C), which allows DEP to prohibit by rule the sale of products containing intentionally-added PFAS, does not contain a starting date for that authority, raising concerns that a prohibition under that provision may occur at any time after enactment.

In response to member questions, Twin Rivers noted that the FDA has required a phase-out of PFAS in food packaging by the end of 2023 and suggested that its concerns would be addressed by aligning the DEP's rulemaking authority under 1612(5)(C) with that phase-out time frame (i.e., beginning 1/1/2024, additional prohibitions may be adopted by rule).

5. *Stakeholder consultation; PFAS source reduction program* – Maine Dairy Industry Association recommended that further details be provided in new 1612(9) regarding the stakeholders to be consulted with by DEP in the development of the PFAS source reduction program.

Fiscal information

Not yet available from OFPR.