

ALASKA STATE LEGISLATURE
SENATE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

February 21, 2011

1:31 p.m.

MEMBERS PRESENT

Senator Bettye Davis, Chair
Senator Dennis Egan
Senator Johnny Ellis
Senator Kevin Meyer
Senator Fred Dyson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 27

"An Act relating to flame retardants and to the manufacture, sale, and distribution of products containing flame retardants; relating to bioaccumulative toxic chemicals; and providing for an effective date."

- HEARD AND HELD

PRESENTATION BY AKEELA INC.

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 27

SHORT TITLE: FLAME RETARDANTS AND TOXIC CHEMICALS

SPONSOR(s): SENATOR(s) WIELECHOWSKI

01/19/11	(S)	PREFILE RELEASED 1/7/11
01/19/11	(S)	READ THE FIRST TIME - REFERRALS
01/19/11	(S)	HSS, FIN
02/21/11	(S)	HSS AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

SENATOR BILL WIELECHOWSKI
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 27

KARLA HART, Staff to Senator Wielechowski
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Presented SB 27 for sponsor.

JEFFERSON WOOD, representing himself
Seward, AK

POSITION STATEMENT: Testified against SB 27.

TED SCHETTLE, MD.
Science Environmental Health Network
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 27.

CHRIS HALL
Arc of Anchorage
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 27.

GREG PATTERSON, representing himself
Retired Volunteer Firefighter
Petersburg, AK

POSITION STATEMENT: Testified in opposition to SB 27.

PETER THARING, Anchorage, representing himself
Anchorage, AK

POSITION STATEMENT: Testified in opposition to SB 27.

DAVID HEIMBACH, MD., Testifying on behalf of the burn injury
community
Seattle, WA

POSITION STATEMENT: Testified against SB 27.

CAITLIN HIGGINS, Executive Director
Alaska Conservation Alliance
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 27.

PAM MILLER, Executive Director
Alaska Community Action on Toxins
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 27.

GERAN TARR
Alaska Community Action on Toxins

Anchorage, AK

POSITION STATEMENT: Testified in support of SB 27.

DR. KRISTIN COX

Naturopathic Doctor

Juneau, AK

POSITION STATEMENT: Testified in support of SB 27.

LAUREN HEIN, PhD., Science Director

Clean Product Action

Juneau, AK

POSITION STATEMENT: Testified in support of SB 27.

ROSALEE NADEAU, Executive Director

Akeela, Inc.

Anchorage, AK

POSITION STATEMENT: Presented report for Akeela Inc.

ACTION NARRATIVE

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CHAIR BETTYE DAVIS called the Senate Health and Social Services Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Dyson, Meyer, Egan, Ellis, and Chair Davis.

SB 27-FLAME RETARDANTS AND TOXIC CHEMICALS

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CHAIR DAVIS announced the first order of business would be SB 27.

SENATOR BILL WIELECHOWSKI, sponsor of SB 27, said the most important role of government is to protect our children and families. He said that SB 27 was an opportunity to do that. It would phase out the use of flame retardants (PBDEs) which are known to cause numerous health problems. These chemicals are found in higher concentrations here in Alaska because they concentrate in the soluble fats of subsistence animals. Also, the problem is particularly bad in Alaska because people spend the winter indoors in unventilated spaces. Most people don't realize that contact with mattresses, children's pajamas, and household dust is exposing them to PBDEs. This is an opportunity to take action to protect the people of the state. Other states have done this.

CHAIR DAVIS noted there is a committee substitute (CS) for the committee to consider.

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SENATOR EGAN moved to adopt CSSB 27(), labeled 27-LS0300\M, as the working document of the committee. Chair Davis objected for discussion purposes.

KARLA HART, staff to Senator Wielechowski, said she would introduce SB 27 by reading a speech delivered to the Commonwealth Club of San Francisco by Environmental Protection Agency (EPA) Administrator Lisa Jackson in September 2009:

A child born in America today will grow up exposed to more chemicals than a child from any other generation in history. A 2005 study found 287 different chemicals in the cord blood of ten newborn babies. They were found in children in their most vulnerable stage. Our kids are getting steady infusions of industrial chemicals before we even give them solid food. As more and more chemicals are found in our bodies and the environment, the public is understandably anxious and confused. Many are turning to government for assurance that chemicals have been assessed using the best available science and that unacceptable risks haven't been ignored. Right now we are failing to get this job done.

Our oversight of the 21st century chemical industry is based on the 1976 Toxic Substances Control Act. It was an important step forward at the time, but over the years it has been proven an inadequate tool for providing a protection against chemical risks that the public rightly expects. Manufacturers of existing chemicals aren't required to develop the data on toxicity and exposure needed to assess potential risks and demonstrate to EPA that chemicals meet risk-based safety standards. On new chemicals, companies have no legal obligation to develop new information, only to supply data that may already exist. As with existing chemicals, the burden of proof falls on EPA. Manufacturers aren't required to show that sufficient data exists to fully assess a chemical's risks.

If EPA has adequate data and wants to protect the public against known risks, the law creates obstacles to quick and effective action. Since 1976, EPA has

issued regulations to control only five existing chemicals determined to present an unreasonable risk; five from a total universe of almost 80,000 existing chemicals. In 1989, after years of study, EPA issued rules phasing out most uses of asbestos, an exhaustively studied substance that has taken an enormous toll on the health of Americans. Yet, a court overturned EPA's rules because it had failed to clear the many hurdles for action under the 1976 Toxic Substances Control Act. Today, advances in toxicology and analytical chemistry are revealing new pathways of exposure. There are subtle and troubling effects of chemicals on hormone systems, human reproduction, intellectual development and cognition. Every few weeks we read about new potential threats. Many states have stepped in to address these threats because they see inaction at the national level.

MS. HART then addressed the changes in the proposed CS. On page 2, line 6, the original version created a loophole by specifically mentioning brominated PBDEs. This change allows the Department of Environmental Conservation (DEC) to look at any fire retardant, not just specific ones. On page 4, line 2, a section was deleted under the high volume challenge program. This was done to allow DEC to use whatever data EPA has. The change on page 5, lines 13 - 15, made the definition of bioaccumulative more scientifically accurate.

CHAIR DAVIS asked for clarification.

MS. HART answered that on page 5, lines 13-15, the original definition for bioaccumulative was not scientifically correct. This new language explains that bioaccumulative means an animal has a toxicity greater than the environment in which it lives. The change on page 5 lines 16 - 17 addresses the definition of persistence to acknowledge that all toxins transform or break down in the environment over time, and that some chemicals degrade into even more toxic forms.

CHAIR DAVIS asked if she would go through the sectional analysis.

MS. HART stated that she would highlight the main points of the sectional analysis provided by legislative legal services. Section 1 bans three types of PBDEs, and provides DEC with the ability to ban other fire retardants if they are deemed dangerous and acceptable alternatives exist. It also provides

exemptions to address specific concerns relating to transportation and industrial concerns. This section also provides enforcement by requiring manufacturers and importers of goods to provide information showing that their products are safe. It directs the state to review risks and possible alternatives to brominated fire retardants, and to develop a list of persistent bioaccumulative toxins that are used in products used by the public.

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MS. HART explained this section also allows the state to participate in an interstate clearinghouse on toxins to pool information and resources. Sections 2 and 5 allow the DEC to begin adopting regulations immediately. Section 3 directs that the first list of toxins be established by February 1, 2014. Section 4 is revisor notes, and section 6 adds an overall effective date of January 1, 2013.

She noted that SB 27 follows model legislation that has been enacted in other states. There is information from the National Conference of State Legislatures (NCSL) in the material distributed to committee members. The science exists to demonstrate the danger of these toxins. Alternatives to these dangerous chemicals do exist. The Washington state fire marshal has approved these alternatives as providing acceptable fire protection. Firefighters' organizations across the country support this legislation because toxic flame retardants present additional risks to them.

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SENATOR DYSON said he believes EPA is phasing out these toxins.

MS. HART said they are taking some action within their ability to take action. The EPA has a draft plan to address PBDEs, but in the best case scenario there might be action in nine months and it is based on voluntary compliance by the manufacturers. Also, it does not address importation of products. Because there is no ability to address imports, the EPA feels it can't protect the public.

JEFFERSON WOOD, Seward, testifying on his own behalf, testified against SB 27. He said that every day we are exposed to chemicals. The beneficial effects of these chemicals are greater than the potential side effects. PBDEs may be damaging, but we don't really have conclusive evidence, so this bill might take action with no basis in fact. Fire has an effect. The bill contains no specifics regarding alternatives. In conclusion, he

feels that SB 27 does not look out for the health and welfare of Alaskans.

SENATOR DYSON noted that all testifiers should disclose if they have any financial interest in SB 27.

MR. WOOD responded that he was not financially invested at all.

DR. TED SCHETTLER, Science Director, Science & Environmental Health Network, Anchorage, testified in support of SB 27. He said he is a physician with a degree in public health and training in toxicology, and has no financial interest in the bill. Dr. Schettler explained that PBDEs are present in food, wildlife, human blood, human milk, placentas, and fat tissue. Deca BDE has ten bromine atoms on the molecule; other flame retardants from the same family have fewer. A number of states have banned these chemicals from commerce because of health concerns. People are exposed to these chemicals through contaminated food, house dust inhalation, and possibly skin absorption. These chemicals have adverse effects on the liver, kidneys, and reproductive systems in animal studies. Deca is classified by the EPA as a possible carcinogen.

Most human concerns focus on the effects of PBDEs on the developing brain, since these effects occur at far lower levels of exposure. Octa, penta and deca BDEs cause persistent hyperactivity after administration of a single, relatively low dose. Normal thyroid hormone levels and function are disrupted. In 2010 the first large study of the impacts of PBDEs on human brain development was published in the scientific literature. The scientists measured PBDE levels in maternal blood and umbilical cord blood of several hundred participants at the time of birth, and followed the neurological development of the children for six years. For every measure of psychomotor skills, attention, learning, and memory, the children who were most highly exposed to PBDEs performed worse than the children who were least exposed. Many of these differences were large enough to achieve strong statistical significance.

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DR. SCHETTLER emphasized it is important that deca PBDEs be removed from commerce as well as penta and octa. He concluded by saying that human exposure to PBDEs has been rapidly increasing. As long as we continue to use them in products, we will add to the environmental burden and insure ongoing exposure in people and wildlife. We now know that these chemicals interfere with

normal human brain development. Safer alternatives are available.

CHRIS HALL, Arc of Anchorage, testified in support of SB 27. He said the Arc serves people with developmental disabilities and mental health issues. Learning and developmental disabilities influence the quality of life for affected children and their families, and impose a heavy financial burden on the state through required special education, increased health care costs, and loss of time at work for parents. Scientific evidence has demonstrated that some chemicals, including deca BDE, can cause learning and developmental disorders. He said we must not expose our children to toxins that we know or suspect can harm their developing brains and bodies. We know safe alternatives exist. Developing children are more susceptible to toxic exposure than adults. He also noted that PBDE residues have been found consistently in tissue samples of mothers and infants, as well as breast milk. This trend has been found to occur around the globe, and the highest levels are in Yupik women from the Yukon-Kuskokwim Delta.

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GREG PATTERSON, retired volunteer firefighter, Petersburg, testified on his own behalf in opposition to SB 27. He said that after reading the Center for Disease Control report, he believes that these studies are inconclusive. There is still no definitive answer on these chemicals. He asked the committee to make sure that what they are doing will not increase the number of burned children. If we ban these chemicals, let's do it correctly and make certain that we have something to replace them with.

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PETER THARING, Anchorage, testifying on his own behalf, testified in opposition to SB 27. From his reading and prepared statements, he feels that studies are inconclusive, but he knows from personal experience that fire retardants work. He urged the committee to be judicious, and to make sure we have solid alternatives.

PETER BRIGHAM, a member of the burn injury community, testified on his own behalf in support of SB 27. He said he has been active for 35 years in the burn injury community, including as a member of various boards. This is a difficult issue because anyone who treats severely burned patients would be inclined to support the use of fire retardant chemicals. He first became aware four or five years ago of the increasing public health and

environmental threat posed by PBDEs. We can't conclude the value of the fire retardant chemicals other than by occasional anecdotes, and we have found many ways to reduce fire death and injury without negative side effects. The major decline in smoking as well as the transition in home cooking from the stove to the microwave has both contributed to lower rates of fire injuries and death; the growing threat of these chemicals is new knowledge. The ability to enact legislation at the federal level is lacking. Hopefully, the state will take action.

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DR. DAVID HEIMBACH, testifying on his own behalf and as a member of the burn injury community, said for 35 years he was the director of the burn injury center at Harborview Hospital in Seattle. As a burn doctor, he said, these chemicals do work. We all want our environment to be clean, but we also want it to be safe. It is appropriate to look for safer retardants, but not to throw away the ones we have. He hopes that especially in children's clothing and mattresses, we would be circumspect.

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SENATOR DYSON asked if Dr. Heimbach was familiar with an organization called Citizens for Fire Safety, and does he know if they are credible.

DR. HEIMBACH said he thinks they are.

CAITLIN HIGGINS, Executive Director, Alaska Conservation Alliance, Anchorage, testified in support of SB 27. She said this is one of their three priorities for the session. The Alaska Conservation Alliance believes this is a smart first step in making our homes safer and our families healthier. It is time for Alaska to phase out the sale of outdated toxic chemicals.

PAMELA MILLER, Executive Director, Alaska Community Action on Toxins, testified in support of SB 27. She said that SB 27 is an important measure to protect public health, especially the health of children and firefighters. PBDEs are similar in structure to PCBs which were banned more than 30 years ago, and have similar harmful effects on the body. PBDEs accumulate, are long-lasting, and interfere with proper thyroid function. They cause problems with brain development and disrupt learning, memory, and behavior. These chemicals leach out of products and we are exposed through indoor air and dust. Levels in wildlife and people are increasing. Levels in human breast milk are doubling every 2-5 years. These chemicals are persistent and can travel long distances. Alaskans are more vulnerable due to our

higher levels of consumption of fish and marine mammals, and homes that are closed in for a greater part of year. New scientific evidence compels urgent action.

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GERAN TARR, Alaska Community Action on Toxins, Anchorage, testified in support of SB 27. She said a growing body of research links PBDEs to many adverse health effects. The adverse effects include more than just health problems, as health problems affect families. The committee should not forget the cost of care associated with these illnesses. SB 27 would be good for our families and our pocketbooks. It strikes the right balance between protecting public health, protecting local businesses, and the interests of Alaskans. We used to think that lead was safe, and then we found ways to make products without lead. We can be innovative when we need to.

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DR. KRISTIN COX, naturopathic doctor, Juneau, testified in support of SB 27. She said that PBDEs are persistent in the environment and in human tissues. These chemicals are currently not regulated with regard to human health. PBDEs are found in household products, furniture, and baby products; the chemicals settle in house dust, which results in exposure to our children. She sees a lot of thyroid problems, as well as infertility problems. PBDEs leach out of landfills into coastal areas and ocean sediments, causing high levels in bivalves. Atmospheric and ocean currents concentrate toxic chemicals in the Polar Regions. Alaska Native women's breast milk is toxic. A nursing pillow and rocking chair can contain up to 10 percent dry weight of these chemicals. We shouldn't have to worry that our household dust is toxic.

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LAUREN Heine, PhD., Science Director, Clean Production Action, testified in support of SB 27. She said that a lot of her work is with businesses who work to produce products that are safe for human health and the environment. A good alternative to PBDEs is one that provides fire safety but does not have the negative human health and environmental effects. The U.S. manufacturers of PBDEs have volunteered to stop manufacturing them in the U.S, and are in the process of phasing them out. They are already making chemical alternatives. The ban will affect imports as well. She emphasized that we need to support the manufacturers of alternative chemicals here in the U.S. EPA has hosted a series of flame retardancy partnerships. This is a multi-stakeholder partnership based on the best available

science. Walmart has recently prohibited PBDEs in its products, and will not be buying any products from its suppliers that contain PBDEs. This shows that companies do want to move to safer alternatives, and they need the states to support them. Mattress manufacturers now use a barrier technology, a flame retardant fabric to cover the mattress. We can use good science to identify safer alternatives.

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SENATOR DYSON asked if other states have done something to ban importation or stop the use of imported materials containing these chemicals.

MS. HEIN said if you ban the sale of products containing flame retardants, it would not matter where the products came from. This is driving a movement for people to know what is in the products they sell.

SENATOR DYSON asked if we would then be putting a burden on retailers or wholesalers.

MS. HEIN said yes, retailers would be responsible. Walmart has already decided to do this. This movement is driven in part by Europe. Any global company has to do this. It is responsible to know what is in the products you are selling.

CHAIR DAVIS closed public testimony on SB 27. She announced that SB 27 would be held in committee.

Presentation by Akeela Inc.

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CHAIR DAVIS announced the next order of business would be a presentation by Rosalie Nadeau, Executive Director of Akeela House [Akeela Inc.].

ROSALIE NADEAU said that Akeela House is now one program of Akeela Inc. Each year what happens with behavioral health is that grants stay about the same, but the cost of living has increased by 65 percent since 1992. Akeela Inc. has grown over the past 20 years. It is now a full service behavioral health organization with both substance abuse and mental health programs. Its budget has grown from \$3.1 million in 2006 to \$7.2 million in 2010. This year they are projecting a budget of \$12.5 million. Akeela Inc. has grown by combining administration of programs in order to make them more efficient and cost effective. They have merged with the Alaska Council on

Prevention Programs and have taken over the programs of the Alaska Women's Resource Center. In 2006 they bought a small, for-profit private company and pulled that into their mix. In 2010 the city of Ketchikan asked Akeela Inc. to look at taking on the programs in Ketchikan.

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MS. NADEAU said those programs constitute a complete behavioral health treatment system. It was a big change for Akeela, as the location is small and hard to reach. But the result is they brought the Ketchikan program under their wing. She further noted that if the legislature makes funding cuts, community programs will be destroyed. She wants to encourage the Division of Behavioral Health and the legislature to look at ways of combining the administration of small programs. There are there some ways that larger organizations can have administrative coordination with these small programs. Akeela Inc knows how funding sources operate, and she believes they can work together with the state to save programs in small communities and still do quality service.

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MS. NADEAU further noted that by 2013, all providers in the state must be using electronic medical record systems. Akeela is in the process of making this change. It is a painful process. Akeela is in 18 communities in this state, and they have to be able to access records. Also, the state has built into new regulations a required national certification or accreditation. Akeela was already accredited. The state has mandated this change, and becoming accredited is extremely expensive. She asked how providers can cover the additional costs of this mandate, when the state is not covering the cost. The division also says it wants to measure outcomes. The state of Washington says that treatment in the community is cost effective far beyond prison. Alaska needs to find better ways of dealing with people. Eighty percent of domestic violence cases have substance use involved. It is a major driver of social ills in the state.

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She explained that outcome measurement is especially difficult with substance abuse cases. We need better studies, and that means spending money. It is important to see if people are really getting better. This can't be done cheaply. Half of Akeela house beds are empty because of lack of funding to fill them. Akeela Inc. also runs prison programs in nine institutions in the state. She feels we need to be looking at getting people out of prison into community programs with monitoring devices.

This would be cheaper than prison beds and the people would be receiving needed treatment. Programs are operating with inadequate resources.

CHAIR DAVIS said Akeela Inc. was impressive, and she noted that DSHS would like to do some of the things that Akeela is already achieving.

MS. NADEAU said in social services we get caught up with our clients, and those are the people we serve. But really, our clients are our funders. We should work to achieve what they want to see. There are many unfunded mandates. Programs need better staff, but there is no money to hire them. Substance abuse treatment came out of 12 step programs. As we learn more about behavioral health, we need staff with more training.

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SENATOR DYSON asked if there was enough money in the governor's budget this year.

MS. NADEAU said there was misunderstanding on the substance abuse side. The DSHS commissioner during the Murkowski administration thought that Medicaid would take care of everything, but most of their clients are not Medicaid eligible. She emphasized that she was not blaming this governor, there is a long history. Everyone involved is looking at ways to do this better and more cheaply.

SENATOR DYSON asked what she wanted from the committee.

MS. NADEAU answered take a look at helping DSHS and the division of behavioral health come up with a better way of looking at this. Don't give providers unfunded mandates, because they are already struggling.

SENATOR DYSON asked if she would recommend a task force or study group on the issue.

MS. NADEAU responded that would be a great idea. Especially with moving into behavioral health, we need a new method of operating these programs.

SENATOR DYSON asked if there are other jurisdictions that have done this well.

MS. NADEAU said she would get back to the committee with that information.

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CHAIR DAVIS adjourned the meeting at 3:03 p.m.