

SENATE BILL REPORT

E2SHB 2301

As Passed Senate - Amended, March 1, 2024

Title: An act relating to improving the outcomes associated with waste material management systems, including products affecting organic material management systems.

Brief Description: Improving the outcomes associated with waste material management systems, including products affecting organic material management systems.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Doglio, Fitzgibbon, Duerr, Berry, Ramel, Ormsby, Peterson, Pollet, Macri, Cortes, Shavers, Leavitt and Kloba).

Brief History: Passed House: 2/12/24, 58-39.

Committee Activity: Environment, Energy & Technology: 2/20/24 [DPA-WM, DNP].
Ways & Means: 2/24/24, 2/26/24 [DPA, DNP, w/oRec].

Floor Activity: Passed Senate - Amended: 3/1/24, 30-19.

Brief Summary of Bill (As Amended by Senate)

- Creates new, and modifies existing, grant programs related to food waste reduction, policy implementation, and compost products.
- Amends organic material collection requirements in certain jurisdictions and for certain businesses.
- Requires Ecology to, in consultation with the Washington State Department of Agriculture, conduct a produce sticker technology study and submit a report to the Legislature by September 1, 2025.
- Modifies requirements for products to be labeled as compostable and entered into Washington commerce.
- Directs the Center for Sustainable Food Management to convene a work group to study food donations, recovery systems, and infrastructure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; Lovick, Trudeau and Wellman.

Minority Report: Do not pass.
Signed by Senators MacEwen, Ranking Member; Boehnke and Short.

Staff: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Rivers, Assistant Ranking Member, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Pedersen, Randall, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Minority Report: Do not pass.
Signed by Senators Schoesler, Ranking Member, Capital; Boehnke.

Minority Report: That it be referred without recommendation.
Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Braun and Muzzall.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Solid Waste, Organic Materials, and Food Waste Management. Under Washington's solid waste management laws, local governments are the primary government entity responsible for implementing solid waste management requirements. The Department of Ecology (Ecology) also has certain roles in overseeing the administration of solid waste management laws, including responsibility for working cooperatively with local governments as they develop their local solid waste management plans; evaluating, analyzing, and monitoring the state's solid waste stream; and developing a statewide solid waste plan that, in part, addresses organic material wastes.

In 2019 Washington established a goal to reduce the annual generation of food waste by 50 percent by 2030 which included a sub-goal of reducing edible food waste by 50 percent. Ecology, working with other agencies, adopted the Use Food Well Washington plan (plan) in December 2021. The plan contained 30 federal and state policy recommendations.

In 2022 the Legislature enacted HB 1799, which established several new requirements related to organic material management. Organic materials include manure, yard debris,

food and food processing waste, wood waste, and garden waste, but do not include chemically or biologically contaminated materials that would render a finished product of an organic material management process, such as composting or anaerobic digestion, unsuitable for general public or agricultural use. HB 1799 established goals for organic material management, including a goal for the landfill disposal of organic materials at a level in 2030 that is 75 percent less than in 2015, and a goal that at least 20 percent of the volume of edible food disposed of as of 2015 be recovered for human consumption by 2025. These goals are in addition to the food waste reduction goals.

Washington Center for Sustainable Food Management. HB 1799 created the Washington Center for Sustainable Food Management (Center) within Ecology. The Center's purpose is to help coordinate statewide food waste reduction by performing certain activities, including, among others:

- coordinating the implementation of the plan;
- drafting plan updates and measuring progress;
- providing staff support to multi-state food waste reduction initiatives;
- facilitating and coordinating partnerships focused on food waste reduction;
- collecting and maintaining data on food waste, wasted food, and food donations;
- developing and maintaining statewide food waste and contamination reduction campaigns with other agencies and stakeholders;
- distributing and monitoring grants dedicated to food waste prevention, rescue, and recovery; and
- researching and providing support to local governments related to adopting certain solid waste ordinances or policies.

Organic Materials Management in Certain Jurisdictions. Beginning January 1, 2027, each county or city implementing a local solid waste management plan must provide source-separated organic solid waste collection services either bi-weekly or 26 weeks annually to all residents and to businesses generating at least 0.25 cubic yards of organic materials per week, and must provide for organic materials management of collected organic materials. Counties and cities may charge and collect fees or rates for these services, consistent with the jurisdiction's authority to impose fees and rates for solid waste collection services. The organic materials collection and management requirements do not apply:

- in counties and cities implementing a solid waste plan that disposed of less than 5,000 tons of solid waste in the previous year;
- in counties and cities implementing a solid waste plan that have less than 25,000 people;
- in counties and cities implementing a solid waste plan that have between 25,000-50,000 people where curbside organic solid waste collection services are not offered anywhere in the jurisdiction, as of July 1, 2022;
- in census tracts that have a population density of less than 75 people per square mile that are serviced by the jurisdiction and located in unincorporated portions of a county planning under the Growth Management Act (GMA);
- outside of urban growth areas in unincorporated portions of a county planning under

the GMA; and

- in counties or cities with a waiver granted by Ecology, based on certain factors, including the distance to organic materials management facilities, the facilities' ability to manage the organic materials, and certain transportation restrictions of organic materials.

Beginning January 1, 2030, and only if Ecology determines the organic material management goals have not or will not be achieved, Ecology may adopt a rule requiring certain jurisdictions otherwise exempted based on population density, outside of urban growth areas, or under a waiver, to comply with the organics material collection and management provisions. Any city that newly begins implementing an independent solid waste plan after July 1, 2022, must meet organic material collection requirements. When developing, updating, or amending a comprehensive solid waste management plan after July 1, 2024, the plan must consider the transition to providing organic materials collection services to certain residents and businesses beginning in 2027.

Organic Materials Management Requirements for Certain Businesses. Each July 1st, Ecology must determine which counties and cities preparing solid waste plans provide for businesses to be serviced by providers that collect food and other organic waste for delivery to solid waste facilities using composting, anaerobic digestion, vermiculture, black soldier fly, or other similar technologies to manage the collected organic wastes (organic materials management). Unless a county or city does not have available businesses that collect and deliver organic materials to solid waste facilities providing for organic materials management or the solid waste facilities where businesses collect and deliver organic materials do not have available capacity, Ecology must determine and designate that the organic materials management requirements apply to businesses in the county or city. Requirements for organic materials management and collection by certain businesses are phased-in as follows:

- January 1, 2024—businesses generating at least eight cubic yards of organic material waste per week must arrange for organic materials management services;
- January 1, 2025—businesses generating at least four cubic yards of organic material waste per week must arrange for organic materials management services; and
- January 1, 2026—businesses generating at least four cubic yards of solid waste per week must arrange for organic materials management services.

Ecology may modify these volumetric thresholds under certain conditions.

Compost Reimbursement and Procurement. *Compost Reimbursement Program.* HB 1799 directed the Washington State Department of Agriculture (WSDA) to establish a compost reimbursement program to reimburse, beginning July 1, 2023, certain farming operations for the purchase and use of compost products not generated by the farming operation. Eligible uses include transportation, spreading equipment and associated maintenance costs, labor, and fuel. A farming operation must complete an eligibility review with Ecology prior to transporting or applying compost products for which reimbursement is sought. Farming

operations may not seek reimbursement for purchase or labor costs for its own compost products, compost products transferred to another individual or entity, or compost products not purchased from a facility with a solid waste handling permit. Farming operations are eligible to receive reimbursement for up to 50 percent of their costs incurred each fiscal year, up to \$10,000. WSDA must submit an annual report to the Legislature with specified information on compost reimbursement.

Compost Procurement. Each city or county with over 25,000 residents or that provides organic material collection services must adopt a compost procurement ordinance to implement the 2020 requirement for local governments to consider the use of compost products in projects and to use compost products in a project except when availability, health, quality, safety, or price-competitive criteria are not met. In developing a compost procurement ordinance, each city or county must plan to use compost products in landscaping projects; construction and post-construction soil amendments; projects preventing erosion, filtering stormwater runoff, promoting vegetative growth, or improving roadways; and low-impact development and green infrastructure to filter pollutants or keep water on site. By December 2024, and every two years, each city or county must submit a report covering the previous year's compost procurement activities to Ecology, which must include information on the total tonnage of organic materials diverted, the volume and cost of purchased compost, and the source of the compost.

Product Degradability Requirements. State law contains several requirements related to how the degradability of plastic or non-plastic products is communicated by labels, tinting, and coloring. Products labeled as compostable that are sold, offered for sale, or distributed for use in Washington by a manufacturer or supplier must use green, brown, or beige labeling, color striping, or other marks that help differentiate between compostable items and non-compostable materials. Manufacturers or suppliers of food service products and film products, other than film bags, that meet the American Society for Testing and Materials (ASTM) composting standards for plastics or plastic-coated substrates must ensure that items are readily- and easily-identifiable. Readily- and easily-identifiable film wrap and food service products must be labeled with a logo indicating the product meets ASTM standards, and labeled with the word "compostable," where possible. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks. Other characteristics, such as color and graphic elements, are encouraged for compostable film wrap and food packaging and service ware.

Food service products and film products, including film bags, not meeting ASTM composting standards are prohibited from using tinting, labeling, and terms required of products meeting ASTM standards, and are discouraged from using coloring, labeling, images, and terms that confuse customers into mistakenly identifying non-compostable products as compostable.

The entity responsible for compliance is: (1) The manufacturer of the product, if the product

is sold under the manufacturer's own brand or does not identify the brand; (2) the licensee of the brand or trademark, if the product is manufactured by a person other than the brand owner; or (3) the person who imports or distributes the product in or into Washington, if the state cannot exercise jurisdiction over the product manufacturer or licensee.

Ecology and local jurisdictions share enforcement authority over these requirements, which must be enforced primarily based on received complaints. Violators may be assessed a civil penalty, which may be appealed to the Pollution Control Hearings Board. As of January 1, 2024, producers of compostable products, including bags, film products, and food service products must submit a declaration to Ecology: for a product that is or will be sold or distributed into Washington; prior to the sale or distribution of a new product sold or distributed into Washington; and if a product's method of compliance materially changed from the last declaration.

Summary of Amended Bill: Center for Sustainable Food Management. Work Group.

The Center must convene a work group to address mechanisms to improve the rescue of edible food waste from commercial generators, including food service, retail establishments, and processors that generate excess supply of edible food. The work group must consider logistics to phase-in edible food donation programs, including incentives; food recovery network systems necessary to support increased donation of edible food by commercial generators; asset gaps and food infrastructure development needs; and actions taken, costs incurred, and lessons learned by other jurisdictions. Ecology must select work group members from a list of entities, including local governments, nonprofits, state agencies, trade organizations, and others. Ecology must submit a report to the Legislature by September 1, 2025, with recommendations of the work group.

The Center's duties are expanded to include providing staff support to the work group, and to distribute and monitor new grant programs.

Grant Programs, Awards, and Funding. Center for Sustainable Food Management Grants.

Ecology, through the Center, must develop and administer grant programs to support activities that reduce emissions from landfills and waste-to-energy facilities through the diversion of organic materials and food waste prevention, rescue, and recovery. Grant program priorities include maximizing greenhouse gas emission reductions, eliminating barriers to the rescue and consumption of edible food that would otherwise be wasted, and using certain management options.

Subject to appropriation, grants may be awarded to categories of activities, including:

- projects to prevent the surplus of unsold, uneaten food from food businesses or to standardize and improve the operating procedures associated with food donations;
- projects to improve and reduce the transportation of donated foods and management of cold chains across the donated food supply chain, which may not include the purchase or lease of equipment or vehicles using a fuel source other than electricity;

- grant programs to support establishing and expanding wasted food reduction programs to benefit vulnerable communities, which must be developed in consultation with the Department of Health and food policy stakeholders; and
- food waste tracking and analytics pilot project grants.

The categories of grants listed above include eligible applicants, eligible uses of grant funds, and other specified criteria. Ecology may establish additional eligibility criteria or application procedures and must prioritize grant applications that benefit overburdened communities.

Ecology, through the Center, must develop and administer grant programs to support the implementation of the bill and HB 1799. Eligible grant recipients include businesses that must comply with organic material management requirements, local governments, federally-recognized tribes and tribal government entities, nonprofits, and organic material management facilities. Eligible expenses include education, outreach, technical assistance, indoor and outdoor and transporting and processing infrastructure, and enforcement costs. Ecology may not require a local government to provide matching funds to receive a grant and must provide assistance to each local government demonstrating eligibility for grant assistance.

Washington Commodities Donation Grant Program. WSDA must implement a Washington Commodities Donation Grant Program (donation grant program) to procure Washington-grown produce, grains, and protein otherwise at risk of ending up as food waste for distribution to hunger relief organizations for use in the state. The donation grant program must rely on existing infrastructure and similar grant programs, give priority to recipient organizations having at least five years of experience coordinating the collection and transportation of donated agricultural products to food donation organizations, and provide for equitable benefits experienced from the program by food producers of varying sizes and types. WSDA must issue grants to one or more nonprofit organizations to acquire food directly from Washington food producers. A grant recipient must report the results of the grant-funded project.

Waste Not Washington Awards. Beginning in 2026, the maximum amount of a Waste Not Washington award in addition to the minimum amount of an award presented to a school having the best recycling program and a school having the best waste reduction program are increased to \$10,000.

Organic Materials Collection Requirements in Certain Jurisdictions. Beginning April 1, 2027, source-separated organic solid waste collection services must be provided year-round to single-family residents and nonresidential customers that generate more than 0.25 cubic yards per week of organic materials for management. Ecology may, by waiver, reduce the collection frequency requirements for dehydrated food waste or to address food waste managed through other circumstances or technologies that will reduce the volume or odor, or both, of collected food waste.

Beginning April 1, 2030, each jurisdiction's organic solid waste collection services must be provided to customers on a non-elective basis, unless exempted by the jurisdiction, and accept food waste year-round. The jurisdiction may choose to collect food waste that is source-separated or commingled with other organic materials. A person must only use source-separated organic solid waste collection services to discard unwanted organic materials. By January 1, 2027, Ecology must develop guidance under which a local jurisdiction may exempt a person from this requirement if organic materials will be managed through an alternative mechanism providing equal or better environmental outcomes. The term "person" does not include multi-family residences. An individual or resident may not be assessed a penalty for the improper disposal of organic materials in a non-commercial or residential setting.

Jurisdictions and areas exempted from the organics management collection requirements are amended as follows:

- jurisdictions with a total population between 25,000 and 50,000 people where curbside organic solid waste collection services are not offered in any area within the jurisdiction, as of July 1, 2022, are no longer explicitly exempted;
- census tracts in certain jurisdictions with a population density of greater than 75 people per square mile meeting other specified requirements are exempted;
- areas inside of unincorporated urban growth areas for jurisdictions planning under the GMA and meeting other specified requirements are exempted; and
- areas in unincorporated urban growth areas in counties with an unincorporated population of less than 25,000 people are exempted.

WSDA's authority related to pest and noxious weed control and quarantine measures are not affected.

Organic Materials Management Requirements for Certain Businesses. When determining which counties and cities preparing independent solid waste management plans are serviced by solid waste facilities providing for organic materials management of certain wastes, Ecology must consider whether the facility has year-round capacity to process and is willing to accept increased volumes of organic materials deliveries. Cities and counties must provide a written request and supporting evidence to Ecology when seeking a determination that the businesses in the jurisdiction are exempted from arranging organic materials management services. Ecology must confirm the determination.

The requirement for businesses generating at least four cubic yards of solid waste per week to arrange for organic materials management services beginning January 1, 2026, is amended to instead, apply to businesses generating 96 gallons of organic material waste per week, unless Ecology establishes a different threshold. Wastes generated because of a food safety event, such as a product recall, that is due to foreign material or adverse biological activity that requires landfill destruction rather than organic material management is not counted when determining business waste volumes. A business is not prohibited from

disposing of non-food organic materials that are not commingled with food waste by using the services of an organic materials management facility not accepting food waste.

Plastic Produce Sticker Study and Product Degradability Requirements. Ecology, in consultation with WSDA, must carry out a study and submit a brief summary report to the Legislature by September 1, 2025, addressing the status of produce sticker technologies, including produce sticker options that do not contain plastic stickers or adhesives that otherwise meet compostability standards. The study must compare and consider the following features of produce stickers and adhesives:

- compostability, including toxic or hazardous substance content;
- performance;
- printability; and
- cost.

Input and information must be solicited from produce producers and packers, sticker and adhesive producers, other jurisdictions with plastic produce sticker standards, and other technical experts.

A product may be labeled as compostable and enter into Washington commerce if it:

- meets ASTM standard specification D6400, D6868, or D8410;
- meets ISO standard specification 17088;
- meets EN standard specification 13432;
- meets a standard specification that is substantially similar to those listed above, as determined by Ecology; or
- is comprised only of wood, including renewable wood, or a fiber-based substrate that contains:
 1. greater than 98 percent fiber by dry weight; and
 2. no plastic, plastic polymer or wax additives, or plastic or wax coatings.

The prohibition against a producer of plastic film bags sold, offered for sale, or distributed for use in Washington not meeting the applicable ASTM standard specifications using color schemes required of ASTM-compliant products does not prevent the use of green, brown, or beige stripes that are smaller than one-quarter inch wide and used as visual aids; and green, brown, or beige lettering or logos used solely for brand identity purposes. The prohibition does prevent the use of botanical motifs on plastic film bags.

A producer may only label a product as being home compostable if: the product has been tested and meets ASTM standards for industrial composting settings; the information is verified by a third-party and supported by scientific evidence; and the product is appropriately labeled.

A city or county that chooses to enforce the plastic product degradability requirements must notify Ecology with a letter of intent stating certain information regarding enforcement in the jurisdiction.

Compost Reimbursement and Procurement. *Compost Reimbursement Program.* Eligible costs for reimbursement under the Compost Reimbursement Program are no longer limited to purchasing and using compost from facilities with solid waste handling permits and may include purchasing and using compost from permit-exempt facilities. To be eligible for reimbursement, compost must comply with certain Ecology requirements. Ecology must prioritize applicants who purchase and use compost containing food waste feedstocks, where it is practicable for the applicant to do so. In addition, Ecology must attempt to fairly distribute reimbursement funding across different farm size categories, based on determined acreage categories. Maximum reimbursement funding for the largest farm size category must not exceed \$20,000 per fiscal year. A farming operation is not eligible to receive reimbursement for compost products that were not purchased from a facility with a solid waste handling permit or a permit-exempt facility.

Compost Procurement. Each city or county adopting a compost procurement ordinance must submit a report to Ecology regarding the previous year's activities by March 31, 2025, and each March 31st. The report must include the facility or facilities used for processing organic material diverted throughout the year.

Other. Ecology must adopt new rules or amend existing rules establishing permit requirements for organic materials management facilities requiring a solid waste handling permit addressing contamination associated with incoming food waste feedstocks and finished products, for environmental benefit.

Legislative intent language, a null and void clause, and a severability clause are included.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Environment, Energy & Technology): No public hearing was held.

Persons Testifying (Environment, Energy & Technology): N/A

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): N/A

Staff Summary of Public Testimony on Bill as Amended by Environment, Energy & Technology (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We enthusiastically support this bill because of the donation components, which is also called Pick and Pack. This is funded in the House budget, and we encourage your support of that budget item. We are glad that mandates on our businesses were removed and are encouraged about the grant programs in the bill. This bill is about getting food waste out of the landfill and diverted to hungry people or to composting. The scope of the bill has been reduced to address stakeholder concerns. The grant program would cover the ability to get new bins. Every day, 600 charitable organizations across the state must figure out how to feed almost 2 million Washingtonians facing food insecurity. There is not enough food in the system, and that is why we are excited about this bill. The benefit here is tens of millions of pounds of donated food to feed those facing food insecurity. Our food shortage is not caused by a shortage of food, but rather because we can't rescue the food before it goes to waste. We see more people coming into food banks because of reduced government support and increased grocery prices. Your support will help millions of people in our state. This bill, in part, directs Ecology to study compostable produce stickers. We are enthusiastic about this work. Regulation drives innovation and we look forward to working to remove one of the most problematic contaminants for composting. This bill seeks to alleviate the impact of food waste and food insecurity. One out of every eleven people in Washington go hungry. Enough food is produced to feed those in need, and then some. A lot of food waste comes from K-12 education. This bill will help fight climate change and food insecurity. Methane is a key contributor to climate change as food waste breaks down in landfills. This bill recognizes these environmental problems and offers tangible solutions. I see this bill as offering wholistic improvements to food waste reduction, to fight climate change, and to preserve the evergreen state.

OTHER: We wholeheartedly support the portions of the bill that get edible food to people. However, there are several provisions of this bill that are very costly and could increase the amount of contamination we see in our system. It costs \$250 million to replace all bins statewide. Our businesses can't use the same amount of recycled plastic in green and blue bins as compared to black bins. Multifamily processes are also complicated, and that's where we see the most recycling contamination in our system. We love the idea of reducing wasted food in the bins at the curb. The colors of the bins do not matter as much as community outreach in reducing contamination. Waste management supports the intent behind the legislation, but we urge caution. We are concerned that expanding collection services could lead to unintended consequences and costs. Acquiring new collection trucks can take up to three years. We think it is important that the folks responsible for operating the system have a say in how this is implemented in the way that makes the most sense.

Persons Testifying (Ways & Means): PRO: Michael Moran, Second Harvest of the Inland Northwest; Katie Beeson, Washington Food Industry Association (WFIA); Jay Kang, Thurston County Food Bank; Heather Trim, Zero Waste Washington; Aaron Czyzewski, Food Lifeline; Brian Pontious, Ingevity; Ashar Ahmad; Thejas Rao; Jerry Won; Brice Liu.

OTHER: Vicki Christophersen, Washington Refuse and Recycling Association; Rick Vahl, Waste Connections; Chris Reigelsperger, Waste Management; Peter Godlewski , Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.