

HOUSE BILL REPORT

E2SSB 5022

As Passed House - Amended:

April 7, 2021

Title: An act relating to managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and requiring recycled content in plastic beverage containers.

Brief Description: Managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and addressing plastic packaging.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Das, Rolfes, Carlyle, Dhingra, Keiser, Kuderer, Liias, Lovelett, Nobles, Nguyen, Pedersen, Saldaña, Salomon, Stanford, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Environment & Energy: 3/11/21, 3/12/21, 3/23/21 [DPA];

Appropriations: 4/1/21 [DPA(APP w/o ENVI)].

Floor Activity:

Passed House: 4/7/21, 73-24.

Brief Summary of Engrossed Second Substitute Bill (As Amended By House)

- Establishes minimum postconsumer recycled (PCR) content, registration, and reporting requirements for plastic beverage containers, household cleaning and personal care product containers, and plastic trash bags (covered products).
- Establishes penalties for failure to achieve PCR requirements and for producers of covered products that fail to meet registration, reporting, and labeling requirements.
- Preempts certain local PCR requirements.

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.

- Requires the recycling development center in the Department of Ecology to hire a neutral facilitator to convene a stakeholder advisory committee related to PCR requirements for products other than covered products.
- Requires state agencies to purchase plastic trash bags only from plastic trash bag producers that comply with minimum recycled content requirements.
- Restricts the sale of expanded polystyrene cold storage containers and food service products beginning June 1, 2024, and void filling packaging products beginning June 1, 2023.
- Allows food service businesses to provide single-use utensils, straws, condiment packaging, and beverage cup lids to customers only after affirming the customer wants the item.
- Requires the Department of Ecology to administer, implement, and enforce PCR requirements, expanded polystyrene prohibitions, and upon-request food service product requirements.
- Amends labeling requirements for plastic bottles and containers, and establishes labeling requirements for plastic trash bags.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Environment & Energy. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry,

Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chandler, Dye, Hoff, Jacobsen, Schmick and Steele.

Staff: Dan Jones (786-7118).

Background:

Department of Ecology Plastics and Recycling Evaluations.

In 2019 the Legislature directed the Department of Ecology (Ecology) to evaluate and assess the amount and types of plastic packaging sold into the state, as well as its management and disposal. The report was required to assess specified aspects of plastic packaging markets and processing infrastructure, and to include recommendations to meet the following goals of reducing plastic packaging through industry lead or product stewardship:

- achieve 100 percent recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025;
- achieve at least 20 percent postconsumer recycled content in packaging by January 1, 2025; and
- reduce plastic packaging when possible, optimizing the use to meet the need.

In December 2020 Ecology submitted a report to the Legislature that included 10 policy recommendations related to the management of packaging materials.

The Recycling Development Center (Center) within Ecology is responsible for furthering the development of markets and processing for recycled commodities and products. Toward these ends, the Center must provide or facilitate research and development, marketing, and policy analysis and must initially direct its services to businesses that turn waste materials into usable or marketable products.

Plastic Labeling Requirements.

Since 1992 state law has required plastic bottles and rigid plastic containers to be labeled with a code identifying the type of resin used to produce the container. The code identifying the resin type must be placed within three triangulated arrows of a specified design. The types of plastic resin are categorized as:

- 1: PETE (polyethylene terephthalate);
- 2: HDPE (high-density polyethylene);
- 3: V (vinyl);
- 4: LDPE (low-density polyethylene);
- 5: PP (polypropylene);
- 6: PS (polystyrene); and
- 7: Other.

Other.

The Utilities and Transportation Commission (UTC) regulates haulers transporting solid waste, garbage, and recyclables from residential sites. The certificate to transport garbage and recyclables sets the geographic areas in which the company is authorized to collect waste. Cities and towns have the authority to provide their own solid waste services or to contract for solid waste services. Solid waste services provided or contracted by cities and towns are not subject to UTC regulation. Materials collected for recycling are transported to material recovery facilities, which receive, compact, repack, or sort materials for the purposes of recycling.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Summary of Amended Bill:

Plastic Data Registration, Labeling, and Reporting.

Beginning April 1, 2022, producers of beverages sold in plastic containers, plastic trash bags, and household cleaning and personal care products in plastic containers (covered products) selling or distributing in Washington must register with the Department of Ecology (Ecology), either individually or through a third-party representative. Registration information must include a list of producers and brand names.

Beginning April 1, 2024, beverage and trash bag producers must provide an annual report to Ecology including the amounts of virgin and postconsumer recycled (PCR) plastic content by resin type in beverage containers sold or distributed in Washington. These annual reporting requirements begin in 2026 for household cleaning and personal care product containers, and in 2029 for producers of wine in 187 milliliter beverage containers and dairy milk.

Manufacturers may request that information or records submitted to Ecology be kept confidential, under Ecology's processes for protecting confidential business information.

Plastic trash bag producers must begin labeling the packaging of products sold or distributed in Washington with the name of the producer or a uniform resource locator or quick response code, beginning January 1, 2023.

Civil penalties of up to \$1,000 for each day of violation are established for violations of registration, reporting, and labeling requirements. Prior to assessing a penalty, Ecology must issue at least two notices of violation.

Minimum Recycled Content Requirements for Plastic Beverage Containers, Trash Bags,

and Household and Personal Care Product Containers.

Minimum recycled content requirements are established for beverage manufacturers, plastic trash bags, and household and person care product containers, as follows:

- For beverages other than dairy milk and wine in 187 milliliter bottles, the PCR requirements increase from 15 percent beginning in 2023 through 2025, up to 50 percent beginning in 2031.
- For dairy milk and wine in 187 milliliter bottles, the PCR requirements increase from 15 percent beginning in 2028 through 2030, up to 50 percent beginning in 2036.
- For household cleaning and personal care products, the PCR requirements increase from 15 percent beginning in 2025 through 2027, up to 50 percent beginning in 2031.
- For trash bags, the PCR requirements increase from 10 percent beginning in 2023 through 2025, up to 20 percent beginning in 2027.

Beginning in 2025, Ecology may annually adjust, review, and determine whether to adjust minimum PCR requirements for the following year of minimum PCR standards, including for a type of container within a category of covered products, after considering market conditions, recycling rates, and other specified factors. Products for which the state is preempted under federal law from regulating packaging material are not subject to minimum PCR requirements. Ecology must temporarily exclude from minimum PCR requirements any covered products in plastic containers for which a producer annually demonstrates to Ecology that it is not technically feasible to meet minimum PCR requirements in order to comply with health or safety requirements of federal law.

Manufacturers of products that are subject to PCR requirements who do not achieve the PCR requirements are subject to penalties. Penalties are calculated based upon the amounts in pounds in aggregate of virgin plastic, PCR plastic, and other plastic used by manufacturers to produce covered containers, at a rate of 20 cents per pound of plastic below the amount of PCR plastic needed to achieve minimum PCR requirements. Ecology must consider granting penalty reductions based on specified factors.

Stakeholder Advisory Committee.

By July 1, 2021, the Department of Commerce and Ecology must select an independent, third-party facilitator charged with convening a stakeholder advisory committee housed in the Recycling Development Center to make recommendations on the development of PCR requirements for plastic packaging other than covered products. The facilitator must submit a report to the Legislature with the recommendations of the advisory committee by December 1, 2021, including where general consensus has been achieved, and noting dissenting opinions. The facilitator must select at least one member to the advisory committee representing each of over 30 specified types of organizations.

Expanded Polystyrene Prohibitions.

It is prohibited to sell in or into Washington three types of expanded polystyrene products: (1) portable containers designed for cold storage; (2) food service products; and (3) void filling packaging products. These restrictions apply beginning June 1, 2023, for void filling packaging products, and June 1, 2024, for cold storage containers and food service products. Ecology must provide technical assistance and guidance to manufacturers of expanded polystyrene products, as requested. Civil penalties for violations are established, but prior to assessing a penalty Ecology must issue at least two notices of violation.

Food Service Products Upon Request.

Beginning January 1, 2022, food service businesses may only provide single-use utensils, straws, condiment packaging, and beverage cup lids only after affirming that the customer wants the product. Five types of facilities, including senior nutrition programs and health care providers, are exempt from these requirements, and the requirements only apply to the extent operationally feasible and practicable to activities of the Department of Corrections and Department of Children, Youth, and Families. Beverage cup lids may be provided without a request for hot beverages, delivery services or pickup, served via a drive-through, or at certain large music and sports venues. Utensils, straws, condiments, and beverage cup lids may be made available to customers using bins, cylinders, dispensers, or other self-service customer options. Civil penalties of between \$150 and \$2,000 per day are authorized, but Ecology must issue at least two notices of a violation prior to assessing penalties. All food service businesses are encouraged to take actions supportive of a goal of reducing single-use food service product use and waste.

Preemption of Local Authorities.

A city, town, county, or municipal corporation may not implement local PCR requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers that are subject to minimum PCR requirements.

A city, town, county, or municipal corporation may establish local purchasing requirements that include PCR standards that exceed minimum state standards for plastic trash bags and for household cleaning and personal care product containers purchased by the local government or its contractor.

Beginning July 1, 2021, a city, town, county or municipal corporation may not enact an ordinance to reduce pollution from single-use food service products by requiring a request of single-use food service products by a customer of a retail establishment.

Other.

Ecology must annually complete a workload analysis that identifies its costs for implementing PCR requirements applicable to covered products. Ecology must equitably determine payment amounts by product producers within each category of covered product

that are adequate to cover Ecology's costs, at first through a general order issued to producers, and by 2024 through an adopted rule. Ecology may contract for the services required to implement PCR requirements, expanded polystyrene prohibitions, and other new duties.

Ecology may conduct audits and investigations to ensure compliance with PCR requirements. Ecology must annually publish on its website the compliance status of covered products and registered producers. Ecology must post information on its website regarding expanded polystyrene prohibitions and food service upon-request policies. Ecology may develop educational materials and resources for education and outreach. Ecology may adopt rules as necessary for all new duties.

The Pollution Control Hearings Board has jurisdiction to hear appealable Ecology decisions to set or adjust minimum PCR content for plastic packaging and to temporarily exclude covered products from minimum PCR requirements for technical feasibility reasons, penalties for violations of minimum PCR requirements, PCR product registration, reporting, and labeling requirements, and penalties for violations of expanded polystyrene prohibitions and food service product upon-request requirements.

State agencies must purchase plastic trash bags manufactured by plastic trash bag producers that meet minimum PCR requirements, beginning July 1, 2024.

A Recycling Enhancement Account (REA) is created for penalties from PCR requirement violations. Expenditures from the REA must be used by Ecology to provide grants to local governments for supporting local solid waste and financial assistance programs.

A Recycled Content Account (RCA) is created for the payments to Ecology to cover Ecology's costs of implementing, administering, and enforcing PCR requirements.

Subject to appropriations, Ecology must contract with a research university or consultant to study plastic resin markets, including market conditions and opportunities, and data needs and tracking opportunities. If funding is provided for the study, it must be completed by 2029.

The codes for plastics 1 through 7 that must be displayed on plastic bottles and rigid plastic containers are no longer required to be placed within three triangulated arrows. Polyvinyl chloride (PVC) is identified as a type of vinyl plastic number 3.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Environment & Energy):

(In support) The policies in this bill have been well-vetted, and have previously been included in various bills that have passed the House of Representatives or Senate. This bill contains three of the 10 recommendations from the Department of Ecology's recent report to the Legislature. Expanded polystyrene releases toxic substances and nonbiodegradable microplastics into the environment and harms wildlife and water quality. Environmentally preferable alternatives to expanded polystyrene are available to customers. There are few meaningful opportunities to recycled expanded polystyrene. Plastics offer convenience at high environmental cost. The solid waste system generally works well, but currently has a hard time managing low-value plastics. Plastic packaging is a burden on the state's recycling infrastructure and systems, and a financial burden to local governments. Local governments need stable solid waste funding streams, and cannot rely on the fines proposed in the bill as a reliable source of program revenue. Establishing minimum recycled content requirements will drive market demand for collected plastics and ensure the financial stability of the state's recycling system. Many recyclable plastic products are not currently being collected by local governments because there is no market demand for the material. Recycled content requirements are carefully crafted with exemptions and regulatory relief opportunities for different types of products. All of the products covered by minimum postconsumer recycled content requirements are capable of meeting those requirements. Beverage manufacturers support recycled content requirements on their products. A continued stakeholder conversation on ways to improve plastics recycling will be helpful to the creation of policies beyond the new regulatory requirements in this bill. Manufacturers that put plastic into the waste stream should be part of the solution. People should not continue to produce unnecessary waste. The provisions encouraging customers to opt out of receiving extra plastic packaging with their meals is a common sense way to reduce waste.

(Opposed) Expanded polystyrene should be subject to minimum recycled content requirements, rather than entirely prohibited. Expanded polystyrene is a lightweight material that can reduce greenhouse gas emissions from shipping, and is recyclable. Expanded polystyrene can be part of the circular economy. Millions of pounds of expanded polystyrene are recycled each year at hundreds of sites nationwide. Dairy milk should be exempt from recycled content requirements. Wine bottles should not be subject to minimum recycled content requirements. Some household products have unique characteristics that make the inclusion of recycled content technically challenging. Consumer safety should not be sacrificed for environmental goals. Recycled content requirements will increase costs to customers of products. The idea of including household cleaning and personal care product containers in minimum recycled content standards was not well-vetted with stakeholders. The identification of producers responsible for recycled content requirements is problematic. Other key stakeholders were not consulted by the bill's advocates prior to introducing the policy. The fees and penalties for violations of

recycled content requirements could be costly for producers. The registration requirements are logistically onerous. More plastics recycling infrastructure is needed. There is not enough recycled plastic resin available for manufacturers to meet the recycled content requirements. The bill should establish a stakeholder process for continued discussions, but should not include any of the regulatory requirements.

(Other) The stakeholder advisory committee has governance, timing, and other logistical problems. The Department of Ecology will receive input from stakeholders during the required rulemaking processes in the bill. Funding recycling programs through revenues from fines on regulated entities is not a preferred financial model for recycling program funding. The bill should be clear that the persons responsible for compliance with minimum recycled content requirements are the persons in a position to make a choice regarding the type of packaging applied to a product. Additional exceptions and nuances are needed for the minimum recycled content requirements. Including recycled content in cleaning product containers raises technical concerns. The penalties on noncompliant parties are expensive.

Staff Summary of Public Testimony (Appropriations):

(In support) Language changes related to clearly defining "producer" and pre-emption are appreciated. Landfills and marine waters are overflowing with plastics. Low-value plastics lower the value of other materials at recycling facilities. The bill builds on last year's plastic bag ban and would help the recycling industry. The bill would ban products that have a poor record of recyclability and create jobs. Marketable plastics are about 2 percent of the waste stream, but are the most expensive to recycle, and those costs are borne by everyone. The bill creates a market-based solution to plastic content in the waste stream. Polystyrene is one of the worst forms of marine pollution, is difficult to fully remove, and is not accepted at curbside programs. Progress needs to be made in producer responsibility for a better waste stream. The fines in the bill are not expected to bring in much revenue, and therefore will not help much with funding local solid waste at local governments.

(Opposed) There is a lack of consistency in the bill. The bill would be better as a study. The ban on polystyrene will cause significant cost increases to the Department of Corrections and the Department of Social and Health Services. Simply spending Model Toxics Control Act funding to address recycling problems would be preferable. Banning polystyrene products will harm manufacturers and cost jobs. A recycled content requirement for polystyrene would be preferable to a ban. Whether the minimum recycled content requirement deadlines in the bill are achievable is questionable. The availability of postconsumable recyclable content can be an issue. The proprietary nature of packing should be considered.

(Other) There are inconsistencies in the timelines and exceptions for the regulations in the bill. The bill should align more closely with regulations in California in order to cause less market disruption and address more safety concerns. There are no controls for spending at

the Department of Ecology, and a cap on that spending would provide certainty for the small producers paying the fees that fund that work. There will be a cost impact to stores and suppliers from buying more environmentally-friendly products.

Persons Testifying (Environment & Energy): (In support) Senator Das, prime sponsor; Brad Boswell, Washington Beverage Association; Madison DeCrescenzo, Lake Stevens Middle School; Heather Trim, Zero Waste Washington; Pam Clough, Environment Washington; Giovanni Severino, Latino Community Fund of Washington and Progreso: Latino Progress; Preston Peck, City of Tacoma Environmental Services Department; Carl Schroeder, Association of Washington Cities; Paul Jewell, Washington State Association of Counties; Vicki Christopherson, Washington Refuse and Recycling Association; Wendy Weiker, Republic Services; Jody Snyder, Waste Connections; John Chelminiak, Waste Management; Cherish Miller, Revolution; Richard May, Café Caffè; Rodd Pemble, Sanitary Service Company; and Arjun Krishnan, EFS-plastics.

(Opposed) Walter Reiter, EPS Industry Alliance; Amber Carter, Maverik Convenience Stores; Nora Burnes and Christopher Finarelli, Household and Commercial Products Association; Duane Naluai, Darigold; Tommy Moorman, Storopack; Jon Timbers, AmSty; Shannon Crawford, Plastics Industry Association; Tim Shestek, American Chemistry Council; Tom McBride and Jonathan Choi, Dart Container; Melissa Gombosky, Personal Care Products Council; Peter Godlewski, Association of Washington Business; Rowland Thompson, The Wine Institute; Mark Johnson, Washington Retail Association; and Paul Cosgrove, American Cleaning Institute.

(Other) Catherine Holm, Washington Food Industry Association; Andrew Hackman, American Institute for Packaging and the Environment; Laurie Davies, Department of Ecology; Holly Chisa, Northwest Grocery Association; and Brian Young, Department of Commerce.

Persons Testifying (Appropriations): (In support) Paul Jewell, Washington State Association of Counties; Brad Boswell, Washington Beverage Association; Holly Chisa, Northwest Grocery Association; Bruce Wishart, Zero Waste Washington and Puget Soundkeeper Alliance; Vicki Christophersen, Washington Refuse and Recycling Association; Gus Gates, Surfrider Foundation; and Carl Schroeder, Association of Washington Cities.

(Opposed) Amber Carter, Maverik Convenience Stores; Peter Godlewski, Association of Washington Business; Tim Shestek, American Chemistry Council; Jonathan Choi and Tom McBride, Dart Container; and Trent House, American Cleaning Institute.

(Other) Nora Burnes, Household and Commercial Products Association; Catherine Holm, Washington Food Industry Association; Melissa Gombosky, Personal Care Products Council; and Rowland Thompson, The Wine Institute.

Persons Signed In To Testify But Not Testifying (Environment & Energy): Eadaoin

Quinn, EFS-plastics; Anthony Brocato, Recology; Nicholas Darden; Maddie Moore; Arielle Brown, American Cleaning Institute; Alyssa Odegaard, LeadingAge Washington; and Debbie Roberts, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying (Appropriations): None.