

# SENATE BILL REPORT

## SB 5219

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As of January 28, 2021

**Title:** An act relating to the management of plastic packaging materials.

**Brief Description:** Concerning the management of plastic packaging materials.

**Sponsors:** Senators Stanford, Liias, Conway, Hunt, Keiser, Kuderer, Nguyen and Wilson, C..

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/28/21.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Establishes minimum recycled content requirements for plastic packaging.</li></ul>
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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Gregory Vogel (786-7413)

**Background:** 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, required to be produced by October 31, 2020, was required to assess the:

- amount of plastic packaging produced or coming into the state;
- full cost of managing plastic packaging waste;
- final disposition of all plastic packaging sold into the state;
- costs and savings to all stakeholders in product stewardship programs implemented in other cities and solid waste companies;
- needed infrastructure to manage plastic packaging;
- contamination and sorting issues for the plastic packaging recycling stream; and
- existing stewardship organizations and databases useful to develop a program in Washington State.

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*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.*

The report was also required 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 post-consumer recycled content in packaging by January 1, 2025; and
- reduce plastic packaging when possible, optimizing the use to meet the need.

The report was further required to include options to meet plastic packaging reduction goals capable of being established and implemented by January 1, 2022.

Published in December 2020, the report includes ten policy recommendations, organized into four categories:

- three primary recommendations that require legislative action:
  1. extended producer responsibility policy framework for all consumer packaging and paper;
  2. deposit return system for all beverage containers;
  3. recycled content requirements for all plastic packaging;
- two legislative interim policy options that are supplemental to the primary recommendations:
  1. producer registry and packaging reporting;
  2. recycled content requirements for plastic beverage containers;
- three legislative policy actions that advance the goals in ways that complement the primary recommendations:
  1. recycled content requirements for trash bags;
  2. ban on problematic and unnecessary plastic packaging;
  3. the standard for customer opt-in for food service packaging and accessories; and
- two recommended agency activities that do not require legislative action:
  1. strengthen data collection on final destinations of materials sent for reprocessing;
  2. support development and adoption of reusable packaging systems.

**Summary of Bill:** Each year, a producer of plastic packaging must meet the following minimum postconsumer recycled content on average for the total amount of plastic packaging sold, offered for sale, or distributed in Washington effective:

- July 1, 2023, through December 31, 2026—no less than 15 percent postconsumer recycled plastic;
- January 1, 2027, through December 31, 2030—no less than 25 percent postconsumer recycled plastic; and
- on and after January 1, 2031—no less than 50 percent postconsumer recycled plastic.

"Plastic packaging" means packaging made from plastic, whether alone or in combination

with another material, including packaging that bonds plastic with other materials together, such as metal lids bonded to plastic bottles, blister packs combining plastic and paperboard, plastic-coated paper packaging, and aseptic containers, and is:

- used to protect, contain, or transport a commodity or product at any point from manufacture to its place of use by a consumer; or
- attached to a commodity or product or its container for the purpose of marketing or communicating information about the commodity or product, and which is capable of being removed and discarded when the product is put in use without adverse effect on the quality or performance of the product.

It includes packaging that is filled or unfilled and packaging that is intended to be sold as a product to customers.

"Producer" means a person that:

- has legal ownership of the brand, brand name, or cobrand of a product to which plastic packaging is applied, that is sold in, into, or distributed for use in Washington State; or
- is the importer of a product into Washington State, to which plastic packaging has been applied, for sale in, into, or distribution for use in Washington State.

Ecology must exempt:

- plastic packaging and food serviceware provided for serving prepared food via a drive-through; in a packaged form for takeout or takeaway; or from food trucks, stands, delis, or kiosks that may or may not provide shelter or seating for consumers; and
- plastic bags subject to postconsumer recycled content requirements.

A city, town, county, or municipal corporation may not implement local recycled content requirements for plastic packaging that are inconsistent with minimum postconsumer recycled content as required under the act. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements, may not be enacted and are preempted.

Beginning in 2021, and every other year thereafter, or at the petition of the plastic packaging industry but not more than annually, Ecology must consider whether the minimum postconsumer recycled content requirements should be reduced.

If Ecology determines that a minimum content requirement should be adjusted, the adjusted rate must be in effect until a new determination is made or upon the expiration of the content requirement's effective period, whichever occurs first.

Ecology may not adjust the minimum content requirements above the applicable minimum percentage for the applicable compliance period. For the 25 percent and 50 percent

compliance periods, Ecology may not adjust the minimum content rate below 15 percent.

In making a determination, Ecology must at least consider the following:

- changes in market conditions, including supply and demand for postconsumer recycled plastics, collection rates, and bale availability;
- recycling rates;
- the availability of recycled plastic suitable to meet the minimum content requirements;
- the capacity of recycling or processing infrastructure;
- the progress made by plastics packaging manufacturers in meeting the minimum content requirements; and
- the carbon footprint of the transportation of the recycled resin.

Beginning June 30, 2021, until June 30, 2022, 4 percent of expenditures from the Waste Reduction, Recycling, and Litter Control account must be used to implement and enforce the act.

Until June 30, 2024, \$1 million from fees on plastic packaging producers unable to meet the minimum content requirements are deposited in the account to recoup the 4 percent allocation.

By March 1, 2022, and annually thereafter, a plastic packaging producer, under penalty of perjury must report to Ecology, in pounds and by resin type, the amount of virgin plastic and postconsumer recycled plastic used for plastic packaging sold, offered for sale, or distributed in Washington State in the previous calendar year.

Ecology must keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment that Ecology gathers or becomes aware of through the course of conducting compliance audits or investigations.

Beginning July 1, 2023, a plastic packaging producer that does not meet the minimum content requirements, based upon the amount in pounds and in the aggregate, is subject to an annual fee.

Ecology must adopt rules to implement a fee that will not exceed \$200 per ton. Ecology may structure fees to lower fees for producers that achieve partial compliance. The fee must be structured as follows:

- from July 1, 2023, through December 31, 2026, the fee structure implemented must be estimated to raise no less than \$40 million per biennium and no more than \$60 million per biennium;
- from January 1, 2027, through December 31, 2030, the fee structure implemented must be estimated to raise no less than \$30 million per biennium and no more than \$50 million per biennium; and
- on and after January 1, 2031, the fee structure implemented must be estimated to raise

no less than \$20 million per biennium and no more than \$40 million per biennium.

Ecology must publish an annual report containing an annual estimate of the revenue to be raised by the fee, the amounts and quantities of plastic packaging subject to the fee, and the number of producers currently and expected to be in compliance with the act.

Fees may be appealed to the Pollution Control Hearings Board.

Twenty-five percent must be used for grants to owners or operators of material recovery facilities that process municipal solid wastes.

Seventy-five percent must be distributed to cities and counties for developing and implementing:

- actions or investments to improve recycling infrastructure and the recyclability of plastic packaging through curbside recycling programs;
- depots or collection points for plastics not effectively collected or processed through curbside programs; and
- solid waste planning, management, regulation, enforcement, technical assistance, and public education.

Ecology must develop rules governing distribution of funds in conjunction with an advisory committee that includes five members appointed by the Washington Association of County Solid Waste Managers and five members appointed by the Washington State Association of Local Public Health Officials.

Ecology must establish a stakeholder advisory committee to recommend exemptions, exceptions, or alternative compliance requirements to the minimum recycled content requirements that include but are not limited to plastic packaging:

- that is subject to federal requirements;
- that is determined by Ecology to exhibit environmentally superior performance when it does not contain postconsumer recycled content or contains smaller amounts of postconsumer recycled content than established by the requirements;
- from producers with an annual sale or distribution of less than one ton of plastic packaging in Washington;
- associated with a single point of retail sale in Washington; or
- from women or minority-owned plastic packaging producers, if Ecology determines such an exemption is in the public interest.

The committee must include representatives from Ecology, Commerce, the Utilities and Transportation Commission (UTC), cities, counties, public and private sector recycling and solid waste industries, a UTC-regulated collection company, a material recovery facility operator, a company that provides curbside recycling service under a municipal contract, a trade association that represents the private sector solid waste industry, recycled plastic feedstock users, and environmental organizations.

**Appropriation:** None.

**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.