

ESSB 5323 - H COMM AMD

By Committee on Environment & Energy

NOT ADOPTED 03/07/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) State policy has long placed waste
4 reduction as the highest priority in the collection, handling, and
5 management of solid waste. Reducing plastic bag waste holds
6 particular importance among state waste reduction efforts for a
7 number of reasons:

8 (a) Single-use plastic carryout bags are made of nonrenewable
9 resources and never biodegrade; instead, over time, they break down
10 into tiny particles. Single-use plastic carryout bags, and the
11 particles they break into, are carried into rivers, lakes, Puget
12 Sound, and the world's oceans, posing a threat to animal life and the
13 food chain;

14 (b) Plastic bags are one of the most commonly found items that
15 litter state roads, beaches, and other public spaces; and

16 (c) Even when plastic bags avoid the common fate of becoming
17 litter, they are a drain on public resources and a burden on
18 environment and resource conservation goals. For example, if plastic
19 bags are disposed of in commingled recycling systems rather than as
20 garbage or in retailer drop-off programs, they clog processing and
21 sorting machinery, resulting in missorted materials and costly
22 inefficiencies that are ultimately borne by utility ratepayers.
23 Likewise, when green or brown-tinted plastic bags confuse consumers
24 into attempting to dispose of them as compost, the resultant plastic
25 contamination undercuts the ability to use the compost in gardens,
26 farms, landscaping, and surface water and transportation projects.

27 (2) Alternatives to single-use plastic carryout bags are
28 convenient, functional, widely available, and measure as superior
29 across most environmental performance metrics. Alternatives to
30 single-use plastic carryout bags feature especially superior
31 environmental performance with respect to litter and marine debris,
32 since plastic bags do not biodegrade.

1 (3) As of 2020, many local governments in Washington have shown
2 leadership in regulating the use of single-use plastic carryout bags.
3 This local leadership has shown the value of establishing state
4 standards that will streamline regulatory inconsistency and reduce
5 burdens on covered retailers caused by a patchwork of inconsistent
6 local requirements across the state.

7 (4) Data provided from grocery retailers has shown that requests
8 for paper bags have skyrocketed where plastic bag bans have been
9 implemented. To accommodate the anticipated consequences of a
10 statewide plastic bag ban, it is rational to expect additional
11 capacity will be needed in Washington state for manufacturing paper
12 bags. The legislature intends to provide that capacity by
13 prioritizing and expediting siting and permitting of expansions or
14 reconfiguring for paper manufacturing.

15 (5) Therefore, in order to reduce waste, litter, and marine
16 pollution, conserve resources, and protect fish and wildlife, it is
17 the intent of the legislature to:

18 (a) Prohibit the use of single-use plastic carryout bags;

19 (b) Require a pass-through charge on recycled content paper
20 carryout bags and reusable carryout bags made of film plastic, to
21 encourage shoppers to bring their own reusable carryout bags;

22 (c) Require bags provided by a retail establishment contain
23 recycled content; and

24 (d) Encourage the provision of reusable and recycled content
25 paper carryout bags by retail establishments.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) "Carryout bag" means any bag that is provided by a retail
30 establishment at home delivery, the check stand, cash register, point
31 of sale, or other point of departure to a customer for use to
32 transport or carry away purchases.

33 (2) "Department" means the department of ecology.

34 (3) "Pass-through charge" means a charge to be collected and
35 retained by retailers from their customers when providing recycled
36 content paper carryout bags and reusable carryout bags made of film
37 plastic.

1 (4) "Recycled content paper carryout bag" means a paper carryout
2 bag provided by a store to a customer at the point of sale that meets
3 the requirements in section 3(6)(a) of this act.

4 (5) "Retail establishment" means any person, corporation,
5 partnership, business, facility, vendor, organization, or individual
6 that sells or provides food, merchandise, goods, or materials
7 directly to a customer including home delivery, temporary stores, or
8 vendors at farmers markets, street fairs, and festivals.

9 (6) "Reusable carryout bag" means a bag made of cloth or other
10 durable material with handles that is specifically designed and
11 manufactured for long-term multiple reuse and meets the requirements
12 of section 3(6)(b) of this act.

13 (7) "Single-use plastic carryout bag" means any bag that is made
14 from plastic that is designed and suitable only to be used once and
15 disposed.

16 NEW SECTION. **Sec. 3.** (1) Beginning January 1, 2021, except as
17 provided in this section and section 4 of this act, a retail
18 establishment may not provide to a customer or a person at an event:

19 (a) A single-use plastic carryout bag; or

20 (b) A paper carryout bag or reusable carryout bag made of film
21 plastic that does not meet recycled content requirements.

22 (2)(a) A retail establishment may provide a reusable carryout bag
23 or a recycled content paper carryout bag of any size to a customer at
24 the point of sale.

25 (b) A retail establishment must collect a pass-through charge of
26 eight cents for every recycled content paper carryout bag with a
27 manufacturer's stated capacity of one-eighth barrel (eight hundred
28 eighty-two cubic inches) or greater or reusable carryout bag made of
29 film plastic it provides, except as provided in subsection (5) of
30 this section and section 4 of this act. A retail establishment may
31 make reusable carryout bags available to customers through sale.

32 (c) A retail establishment must keep all revenue from pass-
33 through charges. The pass-through charge is a taxable retail sale. A
34 retail establishment must show all pass-through charges on a receipt
35 provided to the customer.

36 (3) Carryout bags provided by a retail establishment do not
37 include:

38 (a) Bags used by consumers inside stores to:

- 1 (i) Package bulk items, such as fruit, vegetables, nuts, grains,
2 candy, greeting cards, or small hardware items such as nails, bolts,
3 or screws;
- 4 (ii) Contain or wrap items where dampness or sanitation might be
5 a problem including, but not limited to:
- 6 (A) Frozen foods;
7 (B) Meat;
8 (C) Fish;
9 (D) Flowers; and
10 (E) Potted plants;
- 11 (iii) Contain unwrapped prepared foods or bakery goods;
12 (iv) Contain prescription drugs; or
13 (v) Protect a purchased item from damaging or contaminating other
14 purchased items when placed in a recycled content paper carryout bag
15 or reusable carryout bag; or
- 16 (b) Newspaper bags, mailing pouches, sealed envelopes, door
17 hanger bags, laundry/dry cleaning bags, or bags sold in packages
18 containing multiple bags for uses such as food storage, garbage, or
19 pet waste.
- 20 (4) (a) Any compostable film bag that a retail establishment
21 provides to customers for products, including for products bagged in
22 stores prior to checkout, must meet the requirements for compostable
23 products and film bags in chapter 70.360 RCW.
- 24 (b) A retail establishment may not use or provide polyethylene or
25 other noncompostable plastic bags for bagging of customer products in
26 stores, as carryout bags, or for home delivery that do not meet the
27 requirements for noncompostable products and film bags in chapter
28 70.360 RCW.
- 29 (5) Except as provided by local regulations enacted as of April
30 1, 2020, a retail establishment may provide a bag restricted under
31 subsection (1) of this section from existing inventory until one year
32 after the effective date of this section. The retail establishment,
33 upon request by the department, must provide purchase invoices,
34 distribution receipts, or other information documenting that the bag
35 was acquired prior to the effective date of this section.
- 36 (6) For the purposes of this section:
- 37 (a) A recycled content paper carryout bag must:
- 38 (i) Contain a minimum of forty percent postconsumer recycled
39 materials;

1 (ii) Be capable of composting, consistent with the timeline and
2 specifications of the entire American society of testing materials
3 D6868 and associated test methods that must be met, as it existed as
4 of January 1, 2020; and

5 (iii) Display the minimum percentage of postconsumer content in
6 print on the exterior of the paper bag.

7 (b) A reusable carryout bag must:

8 (i) Have a minimum lifetime of one hundred twenty-five uses,
9 which for purposes of this subsection means the capacity to carry a
10 minimum of twenty-two pounds one hundred twenty-five times over a
11 distance of at least one hundred seventy-five feet;

12 (ii) Be machine washable or made from a durable material that may
13 be cleaned or disinfected; and

14 (iii) If made of film plastic:

15 (A) Be made from a minimum of twenty percent postconsumer
16 recycled content until July 1, 2022, and thereafter must be made from
17 a minimum of forty percent postconsumer recycled material;

18 (B) Display the minimum percentage of postconsumer content and
19 the mil thickness in print on the exterior of the plastic bag;

20 (C) Have a minimum thickness of no less than 2.25 mils; and

21 (D) Display wording that the bag is reusable.

22 (c) Except for the purposes of subsection (4) of this section,
23 food banks and other food assistance programs are not retail
24 establishments, but are encouraged to take actions to reduce the use
25 of single-use plastic carryout bags.

26 NEW SECTION. **Sec. 4.** It is a violation of section 3 of this act
27 for any retail establishment to pay or otherwise reimburse a customer
28 for any portion of the pass-through charge; provided that retail
29 establishments may not collect a pass-through charge from anyone
30 using a voucher or electronic benefits card issued under the women,
31 infants, and children (WIC) or temporary assistance for needy
32 families (TANF) support programs, or the federal supplemental
33 nutrition assistance program (SNAP, also known as basic food), or the
34 Washington state food assistance program (FAP).

35 NEW SECTION. **Sec. 5.** (1) Until June 1, 2025, the department
36 shall prioritize the expedited processing of applications for permits
37 related to the expansion or reconfiguring of an existing pulp and

1 paper mill for the purpose of manufacturing paper bags or raw
2 materials used to manufacture paper bags.

3 (2) The department may adopt rules as necessary for the purpose
4 of implementing, administering, and enforcing this chapter.

5 (3) The enforcement of this chapter must be based primarily on
6 complaints filed with the department and local jurisdictions. The
7 department must establish a forum for the filing of complaints. Local
8 jurisdictions and other persons may file complaints with the
9 department using the forum and local jurisdictions may review
10 complaints filed with the department via the forum for purposes of
11 the local jurisdiction carrying out education and outreach to retail
12 establishments. A forum established by the department may include a
13 complaint form on the department's web site, a telephone hotline, or
14 a public outreach strategy relying upon electronic social media to
15 receive complaints that allege violations. The department, in
16 collaboration with the local jurisdictions, must provide education
17 and outreach activities to inform retail establishments, consumers,
18 and other interested individuals about the requirements of this
19 chapter.

20 (4) The department or local jurisdiction shall work with retail
21 establishments, retail associations, unions, and other organizations
22 to create educational elements regarding the ban and the benefits of
23 reusable bags. Educational elements may include signage at store
24 locations, informational literature, and employee training by October
25 1, 2020.

26 (5) Retail establishments are encouraged to educate their staff
27 to promote reusable bags as the best option for carry-out bags and to
28 post signs encouraging customers to use reusable bags.

29 (6) A violation of this chapter is subject to a civil penalty of
30 up to two hundred fifty dollars. Each calendar day of operation or
31 activity in violation of this chapter comprises a new violation.
32 Penalties issued under this section are appealable to the pollution
33 control hearings board established in chapter 43.21B RCW.

34 (7) If specific funding for the purposes of this act, referencing
35 this act by bill or chapter number, is not provided by July 1, 2020,
36 from the waste reduction, recycling, and litter control account for
37 purposes of implementing the education and outreach activities
38 required under this section, then this act is null and void.

1 NEW SECTION. **Sec. 6.** (1) Except as provided in subsection (2)
2 of this section, a city, town, county, or municipal corporation may
3 not implement a local carryout bag ordinance. Except as provided in
4 subsection (2) of this section, any carryout bag ordinance that was
5 enacted as of April 1, 2020, is preempted by this chapter.

6 (2)(a) A city, town, county, or municipal corporation ordinance
7 enacted as of April 1, 2020, that has established a pass-through
8 charge of ten cents is not preempted with respect to the amount of
9 the pass-through charge.

10 (b) A city, town, county, or municipal corporation ordinance not
11 specified in (a) of this subsection and enacted as of April 1 2020,
12 is not preempted until January 1, 2021.

13 NEW SECTION. **Sec. 7.** (1) By October 31, 2023, the department
14 must submit a report to the appropriate committees of the
15 legislature. The report required under this section must include:

16 (a) An assessment of the effectiveness of the pass-through charge
17 for reducing the total volume of bags purchased and encouraging the
18 use of reusable bags;

19 (b) An assessment of the cost of the authorized bags to retail
20 establishments versus the pass-through charge allowed under chapter
21 70.--- RCW (the new chapter created in section 11 of this act);

22 (c) An assessment of 2.25 mil plastic reusable bags, including
23 their overall contribution to the reduction of the volume of plastic
24 use; and

25 (d) Recommendations for revisions for this act, if needed.

26 (2) This section expires July 1, 2025.

27 **Sec. 8.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and
28 2019 c 290 s 12 are each reenacted and amended to read as follows:

29 (1) The hearings board shall only have jurisdiction to hear and
30 decide appeals from the following decisions of the department, the
31 director, local conservation districts, the air pollution control
32 boards or authorities as established pursuant to chapter 70.94 RCW,
33 local health departments, the department of natural resources, the
34 department of fish and wildlife, the parks and recreation commission,
35 and authorized public entities described in chapter 79.100 RCW:

36 (a) Civil penalties imposed pursuant to RCW 18.104.155,
37 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 70.365.070,

1 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,
2 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

3 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
4 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
5 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

6 (c) A final decision by the department or director made under
7 chapter 183, Laws of 2009.

8 (d) Except as provided in RCW 90.03.210(2), the issuance,
9 modification, or termination of any permit, certificate, or license
10 by the department or any air authority in the exercise of its
11 jurisdiction, including the issuance or termination of a waste
12 disposal permit, the denial of an application for a waste disposal
13 permit, the modification of the conditions or the terms of a waste
14 disposal permit, or a decision to approve or deny an application for
15 a solid waste permit exemption under RCW 70.95.300.

16 (e) Decisions of local health departments regarding the grant or
17 denial of solid waste permits pursuant to chapter 70.95 RCW.

18 (f) Decisions of local health departments regarding the issuance
19 and enforcement of permits to use or dispose of biosolids under RCW
20 70.95J.080.

21 (g) Decisions of the department regarding waste-derived
22 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
23 decisions of the department regarding waste-derived soil amendments
24 under RCW 70.95.205.

25 (h) Decisions of local conservation districts related to the
26 denial of approval or denial of certification of a dairy nutrient
27 management plan; conditions contained in a plan; application of any
28 dairy nutrient management practices, standards, methods, and
29 technologies to a particular dairy farm; and failure to adhere to the
30 plan review and approval timelines in RCW 90.64.026.

31 (i) Any other decision by the department or an air authority
32 which pursuant to law must be decided as an adjudicative proceeding
33 under chapter 34.05 RCW.

34 (j) Decisions of the department of natural resources, the
35 department of fish and wildlife, and the department that are
36 reviewable under chapter 76.09 RCW, and the department of natural
37 resources' appeals of county, city, or town objections under RCW
38 76.09.050(7).

39 (k) Forest health hazard orders issued by the commissioner of
40 public lands under RCW 76.06.180.

1 (l) Decisions of the department of fish and wildlife to issue,
2 deny, condition, or modify a hydraulic project approval permit under
3 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
4 comply, to issue a civil penalty, or to issue a notice of intent to
5 disapprove applications.

6 (m) Decisions of the department of natural resources that are
7 reviewable under RCW 78.44.270.

8 (n) Decisions of an authorized public entity under RCW 79.100.010
9 to take temporary possession or custody of a vessel or to contest the
10 amount of reimbursement owed that are reviewable by the hearings
11 board under RCW 79.100.120.

12 (2) The following hearings shall not be conducted by the hearings
13 board:

14 (a) Hearings required by law to be conducted by the shorelines
15 hearings board pursuant to chapter 90.58 RCW.

16 (b) Hearings conducted by the department pursuant to RCW
17 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
18 90.44.180.

19 (c) Appeals of decisions by the department under RCW 90.03.110
20 and 90.44.220.

21 (d) Hearings conducted by the department to adopt, modify, or
22 repeal rules.

23 (3) Review of rules and regulations adopted by the hearings board
24 shall be subject to review in accordance with the provisions of the
25 administrative procedure act, chapter 34.05 RCW.

26 **Sec. 9.** RCW 43.21B.110 and 2019 c 344 s 16, 2019 c 292 s 10, and
27 2019 c 290 s 12 are each reenacted and amended to read as follows:

28 (1) The hearings board shall only have jurisdiction to hear and
29 decide appeals from the following decisions of the department, the
30 director, local conservation districts, the air pollution control
31 boards or authorities as established pursuant to chapter 70.94 RCW,
32 local health departments, the department of natural resources, the
33 department of fish and wildlife, the parks and recreation commission,
34 and authorized public entities described in chapter 79.100 RCW:

35 (a) Civil penalties imposed pursuant to RCW 18.104.155,
36 70.94.431, 70.105.080, 70.107.050, section 5 of this act, 70.365.070,
37 70.375.060, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600,
38 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 70.365.070, 86.16.020,
3 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,
5 modification, or termination of any permit, certificate, or license
6 by the department or any air authority in the exercise of its
7 jurisdiction, including the issuance or termination of a waste
8 disposal permit, the denial of an application for a waste disposal
9 permit, the modification of the conditions or the terms of a waste
10 disposal permit, or a decision to approve or deny an application for
11 a solid waste permit exemption under RCW 70.95.300.

12 (d) Decisions of local health departments regarding the grant or
13 denial of solid waste permits pursuant to chapter 70.95 RCW.

14 (e) Decisions of local health departments regarding the issuance
15 and enforcement of permits to use or dispose of biosolids under RCW
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived
18 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
19 decisions of the department regarding waste-derived soil amendments
20 under RCW 70.95.205.

21 (g) Decisions of local conservation districts related to the
22 denial of approval or denial of certification of a dairy nutrient
23 management plan; conditions contained in a plan; application of any
24 dairy nutrient management practices, standards, methods, and
25 technologies to a particular dairy farm; and failure to adhere to the
26 plan review and approval timelines in RCW 90.64.026.

27 (h) Any other decision by the department or an air authority
28 which pursuant to law must be decided as an adjudicative proceeding
29 under chapter 34.05 RCW.

30 (i) Decisions of the department of natural resources, the
31 department of fish and wildlife, and the department that are
32 reviewable under chapter 76.09 RCW, and the department of natural
33 resources' appeals of county, city, or town objections under RCW
34 76.09.050(7).

35 (j) Forest health hazard orders issued by the commissioner of
36 public lands under RCW 76.06.180.

37 (k) Decisions of the department of fish and wildlife to issue,
38 deny, condition, or modify a hydraulic project approval permit under
39 chapter 77.55 RCW, to issue a stop work order, to issue a notice to

1 comply, to issue a civil penalty, or to issue a notice of intent to
2 disapprove applications.

3 (l) Decisions of the department of natural resources that are
4 reviewable under RCW 78.44.270.

5 (m) Decisions of an authorized public entity under RCW 79.100.010
6 to take temporary possession or custody of a vessel or to contest the
7 amount of reimbursement owed that are reviewable by the hearings
8 board under RCW 79.100.120.

9 (2) The following hearings shall not be conducted by the hearings
10 board:

11 (a) Hearings required by law to be conducted by the shorelines
12 hearings board pursuant to chapter 90.58 RCW.

13 (b) Hearings conducted by the department pursuant to RCW
14 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
15 90.44.180.

16 (c) Appeals of decisions by the department under RCW 90.03.110
17 and 90.44.220.

18 (d) Hearings conducted by the department to adopt, modify, or
19 repeal rules.

20 (3) Review of rules and regulations adopted by the hearings board
21 shall be subject to review in accordance with the provisions of the
22 administrative procedure act, chapter 34.05 RCW.

23 NEW SECTION. **Sec. 10.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 11.** Sections 1 through 7 of this act
28 constitute a new chapter in Title 70 RCW.

29 NEW SECTION. **Sec. 12.** Section 8 of this act expires June 30,
30 2021.

31 NEW SECTION. **Sec. 13.** Section 9 of this act takes effect June
32 30, 2021."

33 Correct the title.

EFFECT: Makes the following changes to the Engrossed Substitute Senate Bill:

Requires bags used at retail establishments to comply with labeling requirements for compostable and noncompostable bags and products established in state law in 2019, rather than creating a second set of standards for the labeling of compostable bags;

Exempts mailing pouches and sealed envelopes from requirements on carryout bags provided to customers by retail establishments;

Modifies the recycled content requirements for reusable film plastic bags to require a minimum of 20% recycled content until July 1, 2022, and a minimum of 40% thereafter;

Requires reusable film plastic bags to display the mil thickness in print on the exterior of the bag, in addition to the postconsumer recycled content;

Provides that enforcement of bag restrictions must be based on complaints filed with the Department of Ecology (Department) or with local jurisdictions, and provides for the Department to establish a forum where local governments may file complaints for enforcement purposes by the Department or where local governments may review complaints filed with the Department for purposes of conducting education and outreach;

Authorizes educational elements regarding carryout bag restrictions and the benefits of reusable bags to be created by local governments, and requires Department or local government training of employees as part of the educational element to occur no later than October 1, 2020;

Amends the preemption provisions to provide that (1) carryout bag ordinances not enacted as of April 1, 2020, are preempted; (2) carryout bag ordinances enacted as of April 1, 2020, are preempted effective January 1, 2021; and (3) local governments that have established a pass-through charge of ten cents are not preempted with respect to the amount of the pass-through charge; and

Requires the Department to submit a report to the Legislature by October 1, 2023, addressing the effectiveness of the pass-through charge and the cost of authorized bags to retail establishments relative to the pass-through charge, evaluating the 2.25 mil reusable plastic bags, and making recommendations for revisions to the Act.

Requires the Department of Ecology to prioritize, until June 1, 2025, the expedited processing of permit applications related to the expansion or reconfiguring of pulp and paper mills to manufacture paper bags or raw materials to manufacture paper bags. Adds language to the intent section regarding the increased demand for paper bags caused by restrictions on single-use plastic bags.

--- END ---