

# HOUSE BILL REPORT

## HB 1205

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### As Reported by House Committee On:

Environment & Energy

Finance

**Title:** An act relating to reducing pollution from plastic bags by establishing minimum state standards for the use of bags at retail establishments.

**Brief Description:** Reducing pollution from plastic bags by establishing minimum state standards for the use of bags at retail establishments.

**Sponsors:** Representatives Peterson, Orwall, Doglio, Senn, Mead, Gregerson, Fitzgibbon, Dolan, Ortiz-Self, Lovick, Frame, Slatter, Walen, Macri, Goodman and Tarleton.

### Brief History:

#### Committee Activity:

Environment & Energy: 1/21/19, 2/12/19 [DPS];

Finance: 2/25/19, 2/26/19 [DP2S(w/o sub ENVI)].

#### Brief Summary of Second Substitute Bill

- Restricts the provision of single-use plastic carryout bags by retail establishments.
- Authorizes retail establishments to provide recycled content paper carryout bags and reusable bags made of film plastic that meet minimum performance and technical specifications, and establishes a per bag charge to be collected and retained by the retail establishment for those bags.
- Establishes restrictions related to the labeling of bags as "compostable."
- Preempts local governments from establishing local carryout bag ordinances.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

**Minority Report:** Without recommendation. Signed by 1 member: Representative DeBolt.

**Staff:** Jacob Lipson (786-7196).

**Background:**

A number of municipalities in Washington have adopted ordinances addressing single-use plastic bags and other types of carryout bags. In addition to restricting single-use plastic bags, some local ordinances establish bag performance specifications and require a charge to be levied by grocers and other retail establishments for the provision of single-use paper or other carryout bags.

The American Society of Testing and Materials (ASTM) is an international organization that adopts technical standards applicable to a variety consumer products.

The Unites States Department of Agriculture (USDA) oversees a variety of state-administered food distribution and nutrition programs, including the Supplemental Nutrition Assistance Program (SNAP) and the Women, Infants, and Children (WIC) Nutrition Program. The Food Assistance Program (FAP) for legal immigrants is a state-funded program through the Washington State Department of Agriculture that provides food assistance to legal immigrants who are ineligible for federal SNAP benefits solely because of their alien status. Applicants must otherwise meet all the eligibility requirements of the SNAP. The Temporary Assistance for Needy Families (TANF) program provides federal block grants to states in order to support temporary cash assistance, subsidized childcare, and work programs for families.

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

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**Summary of Substitute Bill:**

Restrictions on Carryout Bags.

Retail establishments may not provide single-use plastic bags designed to be used once and disposed. Retail establishments are defined to include entities that sell or provide food, merchandise, goods, or materials directly to a customer, including home delivery and vendors operating at events. Food banks and food assistance programs are not retail establishments, but are encouraged to reduce the use of single-use plastic bags.

Retail establishments may provide the following types of carryout bags to customers:

- recycled content paper carryout bags, which must contain at least 40 percent post-consumer recycled content materials, be capable of composting consistent with

existing American Society of Testing and Materials (ASTM) standards for the labeling of items with paper substrates and plastic or polymer coatings, and display the post-consumer recycled content on the bag's exterior; and

- reusable carryout bags, which must have a minimum lifetime of 125 uses and be machine washable or made of a durable material that can be cleaned or disinfected.

Reusable carryout bags include reusable carryout bags made of film plastic, which must have a minimum thickness of 3 mils, be made from at least 40 percent postconsumer recycled content material, and display wording on the bag's exterior that shows the bag is reusable as well as the percentage of its recycled content.

Carryout bags do not include bags used inside stores by customers to:

- package bulk items;
- contain or wrap items where dampness or sanitation may be a problem;
- contain unwrapped prepared foods or bakery items;
- contain prescription drugs; or
- protect an item from damaging other items when placed inside a carryout bag.

#### Pass-through Charges on Carryout Bags.

Retail establishments must collect and retain from customers a pass-through charge of at least 10 cents for each paper carryout bag and reusable carryout bag made of film plastic. This charge is a taxable retail sale and must be shown on customer receipts. Retail establishments may not collect a pass-through charge from persons using vouchers or electronic benefit cards issued under the Women, Infants, and Children (WIC) Nutrition Program, the Temporary Assistance for Needy Families (TANF) program, Supplemental Nutrition Assistance Program (SNAP) or the Food Assistance Program (FAP) .

#### Restrictions Regarding the Identification of Bags as Compostable.

Compostable film bags provided to customers by retail establishments, food banks, and food assistance programs for products must be tinted brown or green. Non-compostable plastic bags provided by retail establishments, food banks, and food assistance programs may not be tinted brown or green or labeled as "biodegradable," "compostable," or similar terms.

To qualify as a compostable film bag, a bag must meet ASTM standards for the labeling of plastics designed to be aerobically composted in municipal or industrial facilities and be labeled as "compostable" consistent with guides published by the United States Federal Trade Commission.

#### Other Provisions.

Local governments are preempted from implementing local carryout bag ordinances, taking effect January 1, 2020, for existing ordinances and as of the effective date of the act for new ordinances, except that the amount of the 10 cent minimum pass-through charge may be raised by local ordinance.

Restricted carryout or compostable bags may be provided from existing inventory until one year after the effective date of the act, except as provided by local ordinances. Upon request by the Department of Ecology (ECY), retail establishments must provide documentation that the acquisition of restricted bags preceded the effective date of the restrictions.

The ECY may adopt rules to implement, administer, and enforce the restrictions on carryout and in-store bags. Enforcement of bag restrictions must be largely on a complaint basis, and the ECY may establish a telephone hotline or form on the ECY's website to receive complaints. The civil penalties of up to \$250 per violation of bag restrictions are appealable to the Pollution Control Hearings Board.

The ECY must provide education and outreach activities to inform retail establishments, consumers, and others; the act is null and void if funding is not provided from the Waste Reduction, Litter Control, and Recycling Account by July 1, 2019, for purposes of implementing the ECY's education and outreach activities. The ECY may work with retail establishments, retail associations, unions, and others to create educational elements about the benefits of reusable bags, including signage and training. Retail establishments are encouraged to educate their staff to promote reusable bags and to post signs encouraging reusable bag use.

A severability clause is included.

### **Substitute Bill Compared to Original Bill:**

As compared to the original bill, the substitute bill:

- extends the deadline for retail establishments to provide restricted bags from existing inventory from January 1, 2020, until one year after the bill's effective date;
- establishes a minimum thickness for reusable film plastic carryout bags of 3 mils, rather than 4 mils;
- clarifies that the 10 cent pass-through charge may not be collected from persons using electronic benefits cards or vouchers under state and federal food assistance programs, rather than persons with such benefits cards or vouchers;
- clarifies that food banks and food assistance programs are restricted from using compostable bags that are not tinted green or brown or labeled as compostable, and from using non-compostable bags that are tinted green or brown or labeled as compostable or similar terms;
- specifies that recycled content paper carryout bags must contain a minimum of 40 percent postconsumer recycled content paper, rather than an average of 40 percent of such paper;
- specifies that the local carryout bag ordinances not in effect as January 1, 2019, are preempted as of the act's effective date, but that carryout bag ordinances in effect as of January 1, 2019, are not preempted until January 1, 2020;
- eliminates the requirement that the Department of Ecology (ECY) establish a website, telephone hotline, or social media forum to receive complaints of alleged violations of bag restrictions, and instead authorizes the ECY to include a form on its website or establish a telephone hotline for such purposes;
- establishes civil penalties of up to \$250 per day that are appealable to the Pollution Control Hearings Board for violations of bag requirements, rather than categorizing violations as class 1 civil infractions; and
- authorizes the ECY to work with retail establishments, retail associations, unions, and others to create educational elements about the benefits of reusable bags, including

signage and training. Retail establishments are encouraged to educate their staff to promote reusable bags and post signs encouraging reusable bag use.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However the bill is null and void unless the Department of Ecology's education and outreach activities specified in section 5 of the bill is funded in the budget.

**Staff Summary of Public Testimony:**

(In support) Grocers and local governments would prefer to have one set of state standards for the use of plastic and other carryout bags, rather than face a multitude of variable local ordinances. The bill should not preempt local ordinances and should allow stronger local standards and local exemptions. Changing behavior may take some time, but customers have quickly adjusted when local governments in Washington have banned single-use plastic bags. Jurisdictions that have banned single-use plastic bags have experienced a significant reduction in overall disposable bag use. There are reusable alternatives to single-use plastic bags. Plastic bags frequently end up as litter, and break down into harmful microplastics when they degrade in the environment. Plastic bags contaminate commercial organic material compost products, the marine environment, beaches, and other public places. Plastic bags cause unnecessary costs for material recovery facilities that process recyclable materials, by reducing the efficiency and effectiveness of plastic sorting and processing machinery. The fee charged for paper and thick plastic bags is essential for grocers to recover their costs, since paper bags are more expensive than single-use plastic bags. The fee encourages customers to bring their own reusable bags when shopping. Thicker plastic bags must be allowed as an option under the legislation. It is important to exempt restaurants from bag restrictions in instances where the sanitation of ready-to-eat food must be a consideration.

(Opposed) Charges on paper carryout bags should be removed from the bill. Retail establishments already have the option to charge for bags. Forests are an important carbon-sequestering resource. People will use fewer paper bags because of this legislation.

(Other) The pass-through charge should be explicitly printed on customer receipts. The exemption from the pass-through charge for persons in food assistance programs should not be a blanket exemption, but should only apply when a person is using their food assistance program benefits. Larger and odd-shaped single-use plastic bags should be allowed. A statewide standard is an improvement over a patchwork of local laws. Plastic bags are a big problem in the solid waste stream, and end up in the marine environment. Many countries have banned the use of single-use plastic bags. The bill has a fiscal impact to the Department of Ecology.

**Persons Testifying:** (In support) Representative Peterson, prime sponsor; Kevin Kelly, Recology; Brenda Fincher, City of Kent; Susan Thoman, Compost Manufacturing Alliance; Annie Crawley, Kalil Alobaidi, and Claire Vossler, Annie Crawley's Dive Team; Jan Gee, Washington Food Industry Association; Holly Chisa, Northwest Grocery Association; Samantha Louderback, Washington Hospitality Association; Rick Hughes, San Juan County; Michal Rechner; Tom Agnew, City of Bothell; Gus Gates, Surfrider Foundation; Shay Steeves, Teen Advocates; Heather Trim, Zero Waste Washington; Karen Povey, Point Defiance Zoo and Aquarium; Callie Luebke; and Olivia Schroeder.

(Opposed) Bill Stauffacher, American Forest and Paper Association.

(Other) Mark Johnson, Washington Retail Association; and Laurie Davies, Department of Ecology.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Environment & Energy. Signed by 8 members: Representatives Tarleton, Chair; Walen, Vice Chair; Frame, Macri, Morris, Orwall, Springer and Wylie.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Stokesbary and Vick.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Chapman.

**Staff:** Richelle Geiger (786-7139).

### **Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Environment & Energy:**

The bill contains language to clarify that penalties issued to retail establishments for violations of bag restrictions are appealable to the Pollution Control Hearings Board.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However the bill is null and void unless the Department of Ecology's education and outreach activities specified in section 5 of the bill is funded in the budget.

**Staff Summary of Public Testimony:**

(In support) Currently, 28 local governments in our state have adopted ordinances to discourage the use of single-use plastic bags, ranging from charging a fee for them to outright banning them. A large portion of the population is accustomed to this effort. It is time to make this a statewide policy. The differences in policy between cities makes it challenging for retailers to know the rules for all of their locations.

This policy makes economic and environmental sense. The pass-through charge keeps retailers whole. The costs of a bag for a retailer is anywhere from 8 to 10 cents. The charge is important to small, independent grocers and keeps an equal playing field between the small and large grocers, restaurants, and retailers. Studies have shown that 10 cents is enough to change consumer behavior and incentivize them to remember to bring reusable bags.

This bill will help reduce the amount of waste which is polluting our oceans and grinding our recycling system to a halt.

(Opposed) None.

**Persons Testifying:** Representative Peterson, prime sponsor; Holly Chisa, Northwest Grocery Association; Carolyn Logue, Washington Food Industry Association; and Bruce Wishart, Zero Waste Washington and Puget Soundkeeper Alliance.

**Persons Signed In To Testify But Not Testifying:** None.