

HOUSE BILL REPORT

ESSB 5323

As Reported by House Committee On: Environment & Energy

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: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Das, Carlyle, Kuderer, Palumbo, Hunt, Rolfes, Frockt, Keiser, Pedersen and Saldaña).

Brief History:

Committee Activity:

Environment & Energy: 3/18/19, 3/26/19 [DP].

Brief Summary of Engrossed 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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

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

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.

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 is an international organization that adopts technical standards applicable to a variety of consumer products.

The United States Department of Agriculture oversees a variety of state-administered food distribution and nutrition programs, including the Supplemental Nutrition Assistance Program (SNAP) and the Women, Infants, and Children Nutrition Program. The Food Assistance Program 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 SNAP. The Temporary Assistance for Needy Families 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.

Summary of 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 2.25 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 8 cents for each:

- paper carryout bag with a manufacturer's stated capacity of at least one-eighth barrel or 882 cubic inches; 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 Nutrition Program, the Temporary Assistance for Needy Families program, Supplemental Nutrition Assistance Program or the Food Assistance Program.

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. Noncompostable 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. Local government ordinances in effect as of January 1, 2019, that establish a pass-through charge of 10 cents are not preempted.

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 must establish a forum to receive complaints, which may include a telephone hotline, electronic social media strategy, or form on the ECY's website. 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.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: 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) This bill creates a single statewide standard for carryout bags and eliminates a patchwork of local ordinances with inconsistent requirements. This bill does not allow retail establishments to profit from the bag fee, but instead allows them to recover their costs to purchase the bags. Certain categories of bags are exempt from the bill's restrictions or fees. Retail establishments can easily move away from stocking single-use plastic bags. The thicker plastic bags allowed by the bill cause environmental and waste processing problems. Allowing thicker plastic bags is an important provision to retain in the bill so as to provide options to customers. This bill will not be a comprehensive solution to the problem of plastic pollution, but is an important step that will make a significant difference in plastic pollution levels. Large and small grocers, unions, and environmentalists all support this bill. Small grocers were disappointed that the 10-cent fee was reduced to 8 cents, but are still supportive of the bill. This bill is a priority for the environmental community.

(Opposed) Paper bags are made at mills that provide high wage union jobs. When you ban plastic bags, one might logically conclude that paper bag use would increase, but because of the fee applied to paper bags under this policy, experience has shown that customers use fewer paper bags. This policy creates a profit center for retail establishments, rather than

acting primarily as an environmental disincentive. The bill does not eliminate plastic bags entirely, but allows thicker plastic bags to which a fee is applied.

(Other) Restricting single-use plastic bags will help reduce plastic bag contamination of recycling streams and plastic pollution in the environment. The majority of plastic bag pollution in the marine environment comes from other countries. Plastic bags are only a small segment of overall plastic pollution, and banning plastic bags in Washington will do little to reduce plastic pollution. There are water quality and other environmental tradeoffs associated with reusable bags made of cotton or other materials. Reusable bags would need to be used many times before they break even in a lifecycle environmental impact analysis.

Persons Testifying: (In support) Senator Das, prime sponsor; Bruce Wishart, Zero Waste Washington and Puget Soundkeeper; Jan Gee, Washington Food Industry Association; Rick Hughes, San Juan County Council; and Holly Chisa, Northwest Grocery Association.

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

(Other) Laurie Davies, Department of Ecology; and Todd Myers, Washington Policy Center.

Persons Signed In To Testify But Not Testifying: None.