

# SENATE BILL REPORT

## ESSB 5323

---

As Amended by House, March 7, 2020

**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 & Technology: 1/24/19, 1/31/19 [DPS-WM, DNP].

Ways & Means: 2/12/19, 2/25/19 [DPS (ENET), DNP].

**Floor Activity:**

Passed Senate: 3/05/19, 31-14; 1/15/20, 30-19.

Passed House: 3/07/20, 67-29.

**Brief Summary of Engrossed First Substitute Bill**

- Prohibits a retailer from providing a customer a single use plastic bag, a paper or reusable plastic bag that does not meet recycled content requirements.
- Requires a retailer to collect a pass-through charge of \$0.08 for each recycled content large paper or plastic carryout bag provided.
- Preempts local carryout bag ordinances, except for ordinances establishing a \$0.10 pass-through charge in effect as of January 1, 2019.
- Specifies recycled content requirements for paper and plastic bags.

---

**SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY**

**Majority Report:** That Substitute Senate Bill No. 5323 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

---

*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.*

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Hobbs, Liias, McCoy, Nguyen and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Brown and Short.

**Staff:** Jan Odano (786-7486)

---

## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

**Minority Report:** Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Rivers, Schoesler, Wagoner, Warnick and Wilson, L..

**Staff:** Jed Herman (786-7346)

**Background:** The plastic shopping bag was first developed in Sweden in 1965. It quickly replaced cloth and paper bags in Europe and became commonplace in the United States after 1982.

Many countries around the world have banned single-use plastic carryout bags. Several Washington State municipalities have adopted ordinances addressing single-use plastic carryout bags. Some of these ordinances require retailers to charge customers for providing paper bags and specify bag performance.

ASTM International (ASTM) is a non-profit organization that develops voluntary consensus standards for materials, products, systems, and services. ASTM standards are used by individual, companies and other institutions.

The federal government implements programs to assist low-income individuals and families. The U.S. Department of Agriculture administers Women, Infants, & Children (WIC) and Supplemental Nutrition Assistance Program (SNAP) to assist with access to food. The Department of Health and Human Services provides block grants to states to run the Temporary Assistance for Needy Families (TANF), to assist families with children to provide basic needs. Additionally, under the State Food Assistance Program (FAP), Washington state provides assistance to legal immigrants who are not eligible for SNAP.

The Pollution Control Hearings Board (PCHB) hears 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 Engrossed First Substitute Bill:** A retail establishment is prohibited from providing a customer, or at an event, a single-use plastic carryout bag, or a paper or reusable plastic carryout bag that does not meet recycled content requirements. A retail establishment, in areas without local ordinances restricting plastic carryout bags, may provide single-use plastic bags from existing inventory until one year after the effective date of the act. Food banks and food assistance programs are not considered retail establishments.

A retail establishment must collect an \$0.08 pass-through charge for each carryout paper bag that is at least 882 cubic inches or reusable plastic film bag provided. The pass-through charge is a taxable retail sale and must be shown as such on receipts provided to customers. A retail establishment is prohibited from reimbursing the customer any portion of the pass-through charge, however a retailer may not collect the pass-through charge from a person using a voucher or electronic benefits card issued under WIC, SNAP, TANF, or FAP.

Any compostable film bags provided by retail establishments must meet the ASTM composting standard, be labeled as compostable, and be tinted either green or brown. Retail establishments, food banks and other food assistance programs may not provide polyethylene or other non-compostable carryout bags that are tinted green or brown or be labeled in any way to imply the plastic bag will biodegrade or decompose.

A recycled content paper carryout bag must:

- contain minimum of 40 percent postconsumer recycled materials;
- be capable of meeting ASTM composting requirements; and
- display the minimum percentage of the recycled content in print on the exterior of the bag.

A reusable carryout bag must:

- have the capacity to carry at least 22 pounds, over a distance of 175 feet, for at least a minimum of 125 uses;
- be durable so that it can be washed and disinfected; and
- if made from plastic, be made from a minimum of 40 percent postconsumer recycled material, be at least 2.25 mils thick, and display that the bag is reusable.

Local government carryout bag ordinances are preempted. Local carryout bag ordinances in effect as of January 1, 2019, are not preempted until January 1, 2020. A local government ordinance in effect as of January 1, 2019, that established a \$0.10 pass-through charge for providing recycled content paper or plastic film bags is not preempted.

Enforcement must be primarily based on complaints filed with the Department of Ecology (Ecology). Ecology must establish a forum to receive complaints alleging violations. The forum may include a complaint form on its website, a telephone hotline, or electronic social media. A violation of the carryout bag requirements are subject to a penalty of \$250. The penalty is appealable to the Pollution Control Hearings Board.

Ecology must provide education and outreach activities to inform retail establishments, consumers, and other interested individuals about the restrictions on single-use plastic carryout bag. Ecology may work with retail establishments, union, and retail associations to create educational elements regarding the benefits of reusable bags.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**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.

**Staff Summary of Public Testimony on Proposed Substitute (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill is consistent with our mission of zero waste and stands to greatly improve the effectiveness of our recycling process. Plastic bags are one of the largest problems at our recycling facility and create time intensive maintenance to remove clogged stretch plastic from material sorters and conveyor belts. Plastic bags are the number one problem for compost facilities. Recognizing plastic bags regardless of what type of store is important. The fee is very important because paper bags cost more. A set fee levels the playing field between small and large stores. We support the concept of eliminating plastic bags. But, we would like to see 3 mil recyclable plastic bags because 4 mil plastic bags are not readily available. There are over 700 species that are affected by these plastics including our orcas and our salmon ranging from animals small to large. Plastic bags break down to micro plastics that also contain toxics, which are a concern for our animals health as well as ours. Plastic bags comprise a huge amount of the waste stream going to landfills recycling facilities and they are problem whether you are at a recycling facility or whether they are blowing out of vehicles along the highways and becoming litter. Much of the plastic bag waste does end up in our marine environment. Many countries internationally have already banned the sale and use of plastic bags. It is important to find ways to keep all plastic litter including single use plastic bags from finding their way into the state's waterways. We believe the literature does strongly suggest that plastic bags fragments and into smaller and more numerous particles without substantial chemical degradation and that allows them to be adjusted by marine life and that bio magnifies up the food web and a recent study that we just recently reviewed found that micro plastics are accumulating in juvenile Chinook salmon in British Columbia therefore we believe reducing the amount of plastic in the environment will help begin to reduce the impacts to marine life including salmon and orcas. We have to do much more to solve this problem moving beyond single use plastics is something we can do right now. We will see a difference in cleaner beaches and parks and will know that we are making a difference to the wildlife and our rivers, lakes, and oceans

CON: The 10 cent minimum bag charge is a mandate. There are no reasons for grocer to be able to get off the hook for what other businesses have to pay. When local taxes are applied there is a drop in use and that impacts jobs in our communities. Single use bags are waterproof and versatile. Paper bags are not sustainable. Recycling is not suitable for bags because they can not do it right. The bag fee is not capped and it could easily go higher.

OTHER: The life cycle costs to produce reusable bags show do not offset the costs. that amount of energy and water needed to produce reusable bags. It is not clear how to accommodate customers buying odd sized items. There needs to be exemptions for odd sized

bags. The 10 cent pass through charge will help defer costs that our members will incur. There is a lot of plastic coming from Asia that should also be addressed.

**Persons Testifying (Environment, Energy & Technology):** PRO: Holly Chisa, Northwest Grocery Association; Jan Gee, Washington Food Industry Association; Jeni Woock, City Councilmember, City of Gig Harbor; Kevin Kelly, Recology; Susan Thoman, Compost Manufacturing Alliance; Karen Povey, Point Defiance Zoo & Aquarium; Enjoli Shaw, Teen Advocate Oceans; Heather Trim, Zero Waste Washington; Joanna Grist, PCC Community Markets; Samantha Louderback, citizen; Blain Reeves, Department of Natural Resources; Bruce Speight, Environment Washington.

CON: M.C. Halvorsen; Bill Stauffacher, American Forest and Paper Association.

OTHER: Mark Johnson, Washington Retail Association; Vicki Christophersen, Washington Refuse and Recycling Association; Todd Myers, Washington Policy Center; Laurie Davies, Department of Ecology.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: This bill is needed as there is too much plastic getting into our environment and too much impact to recycling centers in which plastic bags hinder processing machinery; support getting one ordinance in place of 27 ordinances. The bill will help reduce the overhead cost of providing bags. Support the bill because there is too much plastic in the natural environment.

CON: There will be an 85 percent drop in bag use, that will negatively affect the paper industry and family wage jobs.

**Persons Testifying (Ways & Means):** PRO: Senator Mona Das, Prime Sponsor; Jan Gee, President & CEO, Washington Food Industry Association; Bruce Wishart, Zero Waste Washington, Puget Soundkeeper; Holly Chisa, NW Grocery Association.

CON: Bill Stauffacher, American Forest and Paper Association.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Removes outdated language regarding compostability requirements.
- Beginning January 1, 2026:
  - requires reusable carryout film plastic bags to be at least 4 mils thick; and
  - increases the pass-through charge to \$0.12 for reusable carryout film plastic.
- Requires reusable film plastic carryout bags to display in print on the exterior of the bag the mil thickness.
- Adds mailing pouches and sealed envelopes as exempt items.

- Requires reusable film plastic carryout bags be made from a minimum of 20 percent postconsumer recycled content until July 1, 2022, and thereafter a minimum of 40 percent postconsumer recycled content.
- Requires Ecology to prioritize expedited processing of applications for permit to expand or reconfigure pulp and paper mills manufacturing paper bags or materials for paper bags.
- Allows complaints may be filed with local governments.
- Allows local governments and any person to file complaints on Ecology's forum.
- Allows local governments to review complaints filed on Ecology's forum for the purposes of carrying out education and outreach to retail establishments.
- Requires local governments, in collaboration with Ecology, to provide education and outreach activities.
- Requires employee training by October 1, 2020.
- Preempts local ordinances that were enacted as of April 1, 2020.
- Provides that local ordinances enacted as of April 1, 2020 with an established \$0.10 pass-through charge are not preempted until January 1, 2026 and all others are preempted as of January 1, 2021.
- Provides a business and occupation tax deduction for the pass-through charges for reusable carryout bags and recycled content paper carryout bags provided by retail establishments.
- Exempts the business and occupation tax deduction for pass-through charges from tax preference performance statement requirements and expiration dates.
- Requires the Department of Commerce to submit a report to the Legislature by December 1, 2024, addressing the effectiveness of the pass-through charge, the pricing and availability of bags, and the cost of authorized bags to retail establishments relative to the pass-through charge, and making recommendations for revisions to carryout bag restrictions.
- Declares an intention for the 2025 Legislature to consider changes to the amount of the pass-through charge, mil thickness requirements for reusable film plastic bags, and other carryout bag provisions, taking into consideration the Department of Commerce's 2024 report.