

HOUSE BILL REPORT

HB 2656

As Reported by House Committee On: Environment & Energy

Title: An act relating to reducing waste associated with single-use food service products.

Brief Description: Reducing waste associated with single-use food service products.

Sponsors: Representatives Gregerson, Dye, Doglio, Peterson, Mead, Fitzgibbon, Thai, Senn, Goodman, Ramos, Pollet and Macri.

Brief History:

Committee Activity:

Environment & Energy: 1/27/20, 2/6/20 [DPS].

Brief Summary of Substitute Bill

- Restricts the sale or provision of plastic food service products beginning January 1, 2022, in certain cities and counties and beginning as late as January 1, 2030, in other cities and counties, while providing for delayed effective dates and waivers for certain categories of restricted plastic food service products.
- Establishes a fee of 1 cent per single-use nonrecyclable or noncompostable food service product, and of up to 1 cent per single-use recyclable food service product.
- Requires customers to request single-use straws, utensils, and plastic condiment packaging in order for a retail establishment to provide those items to a customer.
- Requires local governments to assess in their solid waste management plans the logistical and economic feasibility of developing and using infrastructure that would allow commercial composting of organic materials, including food-service products, by a target deadline of 2030.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt,

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.

Ranking Minority Member; Dye, Assistant Ranking Minority Member; Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

Minority Report: Do not pass. Signed by 1 member: Representative Boehnke.

Staff: Jacob Lipson (786-7196).

Background:

A number of municipalities in Washington have adopted ordinances addressing certain plastic products used in the provision or consumption of food, including plastic utensils, straws, and containers.

Under the state's solid waste management laws, local governments are the primary government entity responsible for implementing state solid waste management requirements. County and city comprehensive solid waste management plans must contain certain elements, including a waste reduction and recycling element, and must consider source separation of recyclable materials and organic materials from other solid wastes. Cities and counties determine which materials may be accepted for curbside recycling in each jurisdiction and whether organic materials are collected separately from other solid wastes. The state, through Department of Ecology (Ecology) grants and loans, makes financial assistance available to local governments to develop and implement solid waste plans and programs.

As a result of legislation enacted in 2019, city and county solid waste plans must begin to contain a contamination reduction and outreach plan. In lieu of creating their own plan, jurisdictions may adopt an Ecology-developed state contamination reduction and outreach plan. In 2019 legislation was also enacted requiring Ecology to submit a plastic packaging report to the Legislature by October 2020, that includes recommendations for meeting plastic packaging reduction goals through industry initiative or product stewardship programs, or both.

Under legislation enacted in 2019, products that are labeled as compostable and sold, offered for sale, or distributed for use in Washington by a manufacturer or supplier, must:

- either be comprised of only wood or fiber-based substrate, or must meet the American Society of Testing and Materials (ASTM) standards for products designed to be composted in municipal or industrial facilities that are made of plastic or that incorporate plastic coatings onto paper or another substrate;
- meet Federal Trade Commission green guide labeling requirements; and
- feature labeling that uses a logo indicating that the product has been third-party certified as meeting ASTM standard specification, displays the word "compostable," and meets industry standards for being distinguishable upon quick inspection.

Compostable products with the above requirements must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks.

As part of the chemical action plan for per- and poly- fluoroalkyl chemicals (PFAS chemicals), Ecology is carrying out an alternatives assessment for specific types of paper-based food packaging. Restrictions on food packaging that contain PFAS chemicals take effect only after Ecology identifies safer alternatives during the alternatives assessment.

Summary of Substitute Bill:

Food service products are defined to include containers, plates, bowls, cups, beverage containers, bottles, lids, meat trays, deli rounds, utensils, sachets, straws, tea bags, condiment packaging, clamshells and other hinged or lidded containers, sandwich wrap, and portion cups. Food service products do not include packaging that protects or preserves food in transit to a retail establishment or when used solely while refrigerated at a retail establishment prior to sale to a customer.

Customer Requests for Single-Use Straws, Utensils, and Plastic Condiment Packaging.

Beginning January 1, 2021, food service businesses:

- that provide opportunity for the on-site consumption of food may provide single-use utensils, straws, and plastic condiment packaging only upon the request of a customer;
- that do not provide opportunity for the on-site consumption of food or that serve customers via a drive-through may only provide single-use utensils, straws, and plastic condiment packaging after asking if a customer would like to obtain the item and receiving an affirmative response;
- may make utensils available to customers using cylinders, bins, or similar containers;
- may not provide single-use utensils that are bundled or packaged in plastic so as to prevent customers from taking only the type of utensil desired without taking other utensils;
- may make condiments available to customers using bulk dispensers or containers that do not package condiments in individual portion sizes; and
- may offer a tippy-cup lid to a customer in lieu of a straw.

Beginning July 1, 2020, cities, towns, counties, and municipal corporations may not enact ordinances to reduce pollution from single-use plastic food service products by requiring a request of plastic food service products by a customer. Local ordinances in effect as of July 1, 2020, are not preempted or repealed.

Single-Use Plastic Food Service Product Restrictions.

Each October 1 between 2021 and 2029, the Department of Ecology (Ecology) must determine which counties and cities preparing independent solid waste plans are serviced by facilities that provide for the composting of compostable food-service products.

Retail establishments may not sell or provide single-use plastic food-service products in jurisdictions that are serviced by facilities that provide for the composting of compostable food service products. These restrictions begin January 1, 2022, for most categories of food service products, except:

- plastic catering tray and product bag restrictions take effect July 1, 2022; and

- Ecology must determine the start date for clear plastic food wrap and shrink wrap, plastic containers for uniquely shaped foods, flexible plastic packaging used to preserve moisture and freshness, and hot-meat-item plastic containers. Ecology may not adopt rules that would have a detrimental impact on safe food handling of hot meat items, such as by restricting hot-meat-item plastic containers prior to alternatives becoming widely commercially available. Ecology must review the availability of compostable alternatives to these products by July 1, 2022. If Ecology determines two suitable and readily available alternatives exist and two vendors make a suitable alternative available, Ecology must establish an effective date of restrictions on plastic versions of the product 485 days later. If there are not a sufficient number of suitable alternatives, Ecology must annually review the availability of alternatives each year until 2030.

Upon application, Ecology may issue renewable waivers from restrictions on categories of plastic food service products of up to one year to specific applicants, statewide, or under specified circumstances. Waivers may only be granted by Ecology when there are not at least two suitable and readily available alternatives, there are not at least two vendors making suitable alternatives readily available, or the enforcement of restrictions would cause undue hardship.

Beginning January 1, 2030, retail establishments may not sell or provide single-use plastic food-service products, regardless of which jurisdiction they are located in. Categories of single-use plastic food service products may still be subject to waivers issued by Ecology.

Retail establishments may sell or provide durable, reusable food-service products, recyclable fiber-based, glass, or metal food-service products, recyclable plastic bottles and other beverage containers made from high-density polyethylene or polyethylene plastic, prepackaged foods in plastic, and compostable products that are free of per- and poly-fluoroalkyl substances. Retail establishments may also provide single-use plastic straws to individuals with a disability that need a plastic straw, upon request.

Compostable products are those that meet the compostable product labeling requirements established in 2019 in state law.

Single-Use Food Service Ware Fees.

Ecology must establish a single-use food-service product fee per item sold by producers to customers for final sale in Washington, beginning January 1, 2022. The fee must be 1 cent per item that is not recyclable or compostable, and up to 1 cent for recyclable or compostable items, based on the average cost of recycling or composting those items. The fee may not be imposed upon a product that is subject to a statewide plastic packaging stewardship program that provides for the collection, transport, and end-of-life management costs of the product. Ecology must annually adjust the amount of the fees for inflation, beginning in 2030. Ecology may adopt rules to implement the fee. Fees must be remitted by producers and deposited in a newly created Plastic Waste Reduction Account (Account). Money in the Account may be used for administering, implementing, and enforcing requirements related to single-use food-service products, and for local government solid waste financial assistance, including for the development of plans and infrastructure to support the statewide provision of composting infrastructure.

Local Government Composting Infrastructure.

When updating solid waste management plans after 2020, counties and cities must include an assessment of the logistical and economic feasibility of the development and use of infrastructure that would allow for the widespread commercial composting of organic materials, including compostable food service products, by a target deadline of 2030. This requirement is null and void if adequate funding that does not require matching funds is not provided to each county to meet these requirements at least one year prior to each county's next required solid waste plan update.

By November 1, 2022, and every two years afterwards, Ecology must submit a report to the Legislature. The report must address the status of composting infrastructure available to serve local jurisdictions in preparation for the 2030 statewide restriction on plastic food service products, based on information in local government solid waste plans. The report must also assess whether it is appropriate to update the definition of products that are considered to be compostable for purposes of food-service product requirements.

Enforcement and Other Provisions.

Retail establishments in violation of food-service product requirements are subject to a fine of up to \$100 dollars per violation if the retail establishment is a small business independently owned and operated with less than 50 employees or up to \$5,000 per violation if the retail establishment is not a small business. Penalties are deposited in the Account.

Ecology may adopt rules for purposes of implementing, administering, and enforcing food service product requirements. Ecology must emphasize education and outreach, rather than enforcement, to achieve compliance with food-service product requirements. Ecology must provide education and carry out outreach activities to inform retail establishments and consumers about food-service product requirements, including education and outreach programs suitable for small business owners and the state's diverse ethnic populations. Ecology must prioritize outreach, including technical assistance with waiver applications, to small businesses and women- and minority-owned businesses. Nothing in the single-use food-service fees or requirements changes or limits the authority of the Utilities and Transportation Commission.

A severability clause is included.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original version of the bill:

- eliminates the 2021 ban specifically applicable to polystyrene foam food-service products;
- clarifies that prepackaged foods in plastic, which are exempt from restrictions on single-use plastics, include utensils or straws that are physically attached to a prepackaged food product;
- specifies that food-service products do not include packaging that protects or preserves food in transit from a food processor or wholesaler to a retailer;

- specifies that food-service products do not include packaging that protects or preserves food while being refrigerated by a retail establishment prior to sale to a customer;
- authorizes food-service businesses to offer tippy-cup lids to customers in lieu of a requested straw;
- prohibits the Department of Ecology (Ecology) from adopting rules that would have a determinantal impact on safe food handling of hot meat items, such as by restricting hot-meat-item plastic containers prior to alternatives becoming available;
- authorizes, rather than requires, retail establishments to provide, upon request, single-use plastic straws to individuals with a need for a plastic straw;
- makes the requirements for local governments to include assessments of the logistical and economic feasibility of the development of composting infrastructure in their local solid waste plan null and void unless adequate funding, that does not require matching funds, is provided to each county at least one year prior to a required local solid waste plan update;
- clarifies that the fee in single-use food-service products is to be collected from producers, not retail establishments;
- eliminates the role of the Department of Revenue in collecting the single-use food-service product fee and makes it the responsibility of Ecology;
- authorizes and requires retail establishments that provide straws of any type to a customer to provide single-use plastic straws to customers with disabilities upon their request;
- delays the effective dates of restrictions on single-use plastic food-service products subject to review by Ecology to 485 days after determining that at least two suitable commercially available alternatives exist; and
- makes technical corrections.

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, except for section 7, relating to addressing restrictions taking effect in 2030 on the sale or provision of plastic food service products by retail establishments, which takes effect July 1, 2030.

Staff Summary of Public Testimony:

(In support) Single-use plastics are a danger to wildlife and humans. Microplastics accumulate up the food chain. In 2050 there will be more plastic in the ocean than fish, according to one estimate. This bill will help reduce plastics in the environment through a number of policies. The public is broadly in favor of reducing plastic pollution. This bill will phase in a long transition to compostable and durable products. Plastic food products are often not recyclable because food is stuck to the items after use, and these contaminated food service products cause problems for recycling by solid waste contractors. China and the European Union have already taken steps to ban single-use plastic food-service products.

Many local jurisdictions have also taken action to reduce the use of plastic food service products. The policy requiring customers to ask for utensils and straws instead of being provided them automatically will significantly reduce waste. The fee on plastics will support recycling and composting infrastructure and is similar to a newly filed initiative in California.

(Opposed) Food service businesses appreciate the policy of allowing customers to ask for products before being given them. The restrictions on single-use plastics in the bill are too complex, broad in scope, and affect many aspects of grocery store operations. The implementation dates in the bill are too aggressive. Before banning products, there need to be assurances that alternatives are better for the environment and public health, do not cost significantly more, and that there is a sufficient supply available. Certain products, like hot chicken containers and plastic wrap, do not currently have acceptable nonplastic alternatives. The styrofoam provisions of the bill should be addressed in other legislation being considered in the Senate. Grocers would like a clearer and broader preemption of local government authority to additionally restrict single-use plastics. Producers of polystyrene would lose their jobs as a result of this bill. Polystyrene is recyclable. This bill is premature in light of legislation enacted in 2019 that requires a report back to the Legislature later this year on how to best address plastic packaging pollution.

(Other) Restaurants want to move away from single-use plastics. The timelines in the bill are too quick. The fee on plastic products should not be levied at the point of sale. The enforcement provisions on the bill should be less focused on penalties and more focused on education and outreach. This bill is premature in light of the legislation passed in 2019 that established a recycling development center and commissioned a study on plastic packaging. Encouraging the use of compostable food service products is not helpful if composting facilities are not able to truly compost the products because of the high temperature and time requirements associated with composting those products. The public is not well versed on what products are compostable.

Persons Testifying: (In support) Representative Gregerson, prime sponsor; Eshaal Fatima; Rebecca Hinckley; Geneva Betnel; Amelie Randall; Sianna Anguelov; Kaileigh Peterson; Megan O'Reilly; Heather Trim, Zero Waste Washington; Neil Beaver, Recology; and Rory Paine-Donovan, Seattle Public Utilities.

(Opposed) Holly Chisa, Northwest Grocery Association; Catherine Holm, Washington Food Industry Association; Tom McBride and Mike Perez, Dart Container; Shaun McGuire, Dolco Packaging; Grant Nelson, American Chemistry Council; Matt Durbin, Agilyx; Dan Coyne, Food Northwest; and Peter Godlewski, Association of Washington Business.

(Other) Samantha Louderback, Washington Hospitality Association; Laurie Davies, Department of Ecology; and Paul Jewell, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.