

HOUSE BILL REPORT

ESSB 5077

As Reported by House Committee On:
Environment & Energy

Title: An act relating to restricting single-use plastic straws at food service establishments.

Brief Description: Restricting single-use plastic straws at food service establishments.

Sponsors: Senate Committee on Environment, Energy & Technology (originally sponsored by Senators Kuderer, Darneille, Palumbo, Hunt and Pedersen).

Brief History:

Committee Activity:

Environment & Energy: 3/14/19, 4/1/19 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Prohibits food service establishments from providing single-use straws except upon customer request.
- Requires food service establishments that provide straws to provide plastic straws upon request to persons with disabilities.
- Preempts new local ordinances that restrict single-use plastic straws, beginning January 1, 2020.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. 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.

Staff: Jacob Lipson (786-7196).

Background:

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.

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.

There are 36 Local Health Jurisdictions (LHJs) in Washington, which include county health departments, multi-county health districts, and city-county health departments. The LHJs have primary responsibility for the health and safety of Washington residents. The LHJs are responsible for environmental health and safety, which includes food safety inspections and permits, onsite sewage, and solid waste facility inspections and permits.

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.

Summary of Amended Bill:

Beginning January 1, 2020, food service establishments may not provide single-use straws to a consumer unless requested by the consumer. Food service establishments may not provide single-use plastic straws in colanders, bins, or through other means of self service. Food service establishments may not offer a straw unless it is requested by the customer. Food service establishments may offer a tippy cup lid in lieu of a straw. "Food service establishments" are defined as establishments that serve food, beverages, or prepared food for consumption, including food to be consumed on-premises, off-premises, via drive through, packaged as take-out, or from stands or kiosks. These requirements do not apply to medical facilities when providing straws to persons that need them for medical purposes.

Food service establishments that provide straws to customers must provide single-use plastic straws upon request to persons with disabilities.

Local Health Jurisdictions (LHJs) must enforce these requirements. The LHJs must provide a notice of violation to a person that operates a food service establishment for the first or second violation. For the third and subsequent violations, a person is subject to a \$250 per day civil penalty, not to exceed penalties of up to \$3,000 per year. The requirements do not create a private right of action against a food service establishment. The LHJs may adopt fees of up to \$25 per year per food service establishment to cover their oversight and enforcement costs.

Beginning January 1, 2020, new local ordinances that restrict plastic straws are preempted. Ordinances in effect as of January 1, 2020, are not preempted, limited, or repealed, except that the requirements of state law regarding the provision of straws also apply in those jurisdictions.

Amended Bill Compared to Engrossed Substitute Bill:

The striking amendment makes the following changes:

1. specifies that a person must specifically request a straw in order to be provided a single-use straw;
2. prohibits food service establishments from offering single-use plastic straws without a customer request or from making single-use plastic straws available in self-service containers;
3. preempts new local ordinances restricting the provision of plastic straws that are applicable to food service establishments, beginning January 1, 2020;
4. declares that restrictions on the provision of plastic straws are not intended to create a conflict with any federal law, including the federal Americans with Disabilities Act, and that a private right of action against food service establishments is not created by the straw provision requirements;
5. authorizes local boards of health to adopt annual fees of up to \$25 per food service establishment to cover their costs in carrying out straw enforcement duties;
6. specifies that a person authorized to operate a food service establishment is the person that must receive notices of violation of straw requirements that is subject to fees or civil penalties;
7. increases the penalties to up to \$250 per day for third or subsequent violations, or up to \$3,000 per year;
8. authorizes food service establishments to offer customers tippy cup lids in lieu of straws;
9. limits the requirement to provide single-use plastic straws upon request to persons with disabilities to only those food service establishments that provide straws of any type to customers; and
10. specifies that the requirement that food service establishments provide single-use straws only upon request does not limit the ability of hospitals and medical facilities to provide plastic straws to persons that need the straws for medical purposes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill has evolved from an outright ban on plastic straws to a policy requiring that straws be provided only upon request. The bill protects the needs of people with disabilities or medical conditions who rely on plastic straws. Washington needs to start taking care of its own trash, rather than exporting it overseas, where it is more likely to end up in the ocean. Straws in marine environments biodegrade into harmful microplastics, or may even end up stuck in a turtle's nose. Changes to consumer behavior encouraged by this

bill will reduce plastic pollution of the environment. Straws can be made of compostable or recyclable materials, instead of plastic.

(Opposed) The reduction of plastic waste is a laudable goal, but the enforcement mechanisms in this bill are problematic. The new plastic straw responsibilities for Local Health Jurisdictions (LHJs) will distract inspectors from their other responsibilities and will not be adequately funded by the state. The penalty provisions in the bill do not align with LHJs' normal methods of imposing infractions.

(Other) There should be a single statewide standard for plastic straws. The preemption provisions of the bill are unclear, and do not establish a single uniform standard. If preemption is not clarified, local governments will adopt additional restrictions on plastic straws.

Persons Testifying: (In support) Senator Kuderer, prime sponsor; Sage Boyd, Sophie Crane, Anna Kruse, and Michael Moran, Lake Washington High School; Aimee Champion, Self Advocates In Leadership; and Heather Trim, Zero Waste Washington.

(Opposed) John Kiess, Kitsap Public Health District.

(Other) Samantha Louderback, Washington Hospitality Association; Holly Chisa, Northwest Grocery Association; and Catherine Holm, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.