

HOUSE BILL REPORT

ESSB 5323

As Passed House - Amended:
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: 3/18/19, 3/26/19 [DP], 2/20/20, 2/27/20 [DPA];
Finance: 4/2/19, 4/5/19 [DP], 3/2/20, 3/4/20 [DPA(FIN w/o ENVI)].

Floor Activity:

Passed House - Amended: 3/7/20, 67-29.

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

- 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.
- Establishes a per-bag charge to be collected and retained by the retail establishment for paper and reusable film plastic bags.
- Preempts local governments from establishing local carryout bag ordinances.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Ranking Minority Member; Dye, Assistant

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; Boehnke, Doglio, Fey, Goehner, Mead, Robinson and Shewmake.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended by Committee on Finance and without amendment by Committee on Environment & Energy. Signed by 7 members: Representatives Tarleton, Chair; Walen, Vice Chair; Frame, Macri, Orwall, Springer and Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Orcutt, Ranking Minority Member; Young, Assistant Ranking Minority Member; Chapman, Stokesbary and Vick.

Staff: Tracey O'Brien (786-7152).

Background:

Local Carryout Bag Ordinances.

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.

Washington State Tax Policies.

Washington imposes a business and occupation tax (B&O tax) on the gross receipts of business activities conducted within the state. Business and occupation tax revenues are deposited into the State General Fund. There are several categories of B&O tax rates that apply to businesses engaged in different activities; in addition, credits against B&O tax obligations are available to businesses involved in certain types of activities.

A state sales tax is levied on the retail sale of tangible personal property, digital goods, and certain services within the state. If a retail sales tax is not collected on the property or services at the time of sale to the consumer, then a separate tax is imposed on the value of the property or services used within the state.

State law requires that legislation establishing a new tax preference must include a tax preference performance or legislative intent statement. Tax preferences also automatically expire 10 years from the effective date of the preference, unless otherwise specified. The Joint Legislative Audit and Review Committee periodically reviews the performance of tax preferences and determines whether the tax preference's stated public policy objectives are being met.

Other Provisions.

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

enacted in 2019, materials labeled as compostable must meet certain standards, including that they must be comprised of only wood or fiber-based substrate or must meet the ASTM standards for products designed to be composted in municipal facilities.

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.

Beginning January 1, 2021, 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 postconsumer recycled content materials, be capable of composting consistent with existing American Society of Testing and Materials standards for the labeling of items with paper substrates and plastic or polymer coatings, and display the postconsumer 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 until December 31, 2025, and a minimum thickness of 4 mils beginning January 1, 2026. Reusable carryout bags made of film plastic must also be made from at least 20 percent postconsumer recycled content material until 2022 and 40 percent postconsumer recycled content material after 2022, and display wording on the bag's exterior that shows the bag is reusable, as well as the percentage of its recycled content and the bag's thickness in mils.

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, until December 31, 2025. Beginning January 1, 2026, the pass-through charge for reusable film plastic bags increases to 12 cents per bag.

This charge is a taxable retail sale and must be shown on customer receipts. However, retail establishments may deduct from business and occupation taxes the amounts collected from pass-through charges. This tax deduction is not subject to the tax preference performance statement or automatic expiration date. 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, the Supplemental Nutrition Assistance Program, or the Food Assistance Program.

Other Provisions.

Compostable film bags provided to customers by retail establishments must meet the requirements for compostable products and film bags established in state law in 2019.

Carryout bag ordinances not enacted by local jurisdictions as of April 1, 2020, are preempted. Carryout bag ordinances enacted as of April 1, 2020, are preempted effective January 1, 2021. Local governments that have established a pass-through charge of 10 cents are not preempted with respect to the amount of the pass-through charge, until January 1, 2026.

Restricted carryout 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 (Ecology), retail establishments must provide documentation that the acquisition of restricted bags preceded the effective date of the restrictions.

Ecology 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 Ecology must establish a forum to receive complaints, which may include a telephone hotline, electronic social media strategy, or a form on Ecology's website. Local jurisdictions and other persons may file complaints using the forum, and local jurisdictions may review complaints filed with Ecology in order to support education and outreach to retail establishments by the local jurisdictions. The civil penalties of up to \$250 per violation of bag restrictions are appealable to the Pollution Control Hearings Board.

Ecology must prioritize, until June 1, 2025, the expedited processing of permit applications related to the expansion or reconfiguring of pulp and paper mills to manufacture paper bags or raw materials to manufacture paper bags.

Ecology, in collaboration with local jurisdictions, 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, 2020, for purposes of implementing Ecology's education and outreach activities. Ecology may work with retail establishments, retail associations, unions, and others to create educational elements about the benefits of reusable bags, including signage and training, no later than October 1, 2020. Retail establishments are encouraged to educate their staff to promote reusable bags and to post signs encouraging reusable bag use.

By December 31, 2024, the Department of Commerce, in consultation with Ecology, must submit a report to the Legislature addressing the effectiveness of the pass-through charge, the availability and pricing of various types of carryout bags, and the sufficiency of the pass-through charge relative to the cost of authorized bags to retail establishments and making recommendations for revisions to carryout bag requirements. An intention is declared for the 2025 Legislature to reconsider changes to the amount of the pass-through charge, mil thickness requirements for reusable bags made of film plastic, and other carryout bag provisions, taking into consideration the Department of Commerce's 2024 report.

A severability clause is included.

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 (Environment & Energy):

(In support) Many local governments have adopted plastic bag ordinances similar to the state policy being proposed. Because of the patchwork of local ordinances on this topic, grocers have a complex task to ensure that computer programs are updated and employees are trained appropriately in each store. A statewide standard would reduce complications for grocery businesses and bag distributors. Preemption of local government authority to regulate plastic bags is appropriate, so long as the state standard remains sufficiently strong. The pass-through charge in the bill helps businesses avoid losing money from this policy by offsetting the higher costs of paper bags relative to single-use plastic bags. In local jurisdictions where a fee on paper bags has been instituted alongside a ban on single-use plastic bags, paper bag usage has increased dramatically. Residents in jurisdictions with a plastic bag ban have been happy with the outcomes of the policy. Plastic bag bans are popular with the public and are especially important to youth. Plastic bags cause damage to the environment, including contaminating waterways and ending up in the food chain. Studies have shown that chemicals from plastics are measurable in the human bloodstream. Bags frequently become litter in the environment because they are easily dispersed by the wind. Litter from bags is unsightly, difficult to clean up, and likely to biodegrade into smaller pieces and pose a threat to wildlife. Plastic bags cause logistical complications at material recovery facilities and can interfere with the recycling of other materials. This bill continues to allow plastic bags in instances where they protect food for safety reasons or meet other special needs.

(Opposed) Experience in California has shown that when a fee is imposed on paper bags, paper bag use by retail customers declines substantially. Paper bag manufacturers contribute green jobs to local economies. There is not enough scientific study of the damage from plastic in the environment to justify banning plastic bags. Alternatives to plastic bags are not equally suitable for all customer purposes. Many customers reuse single-use plastic bags.

(Other) The pulp and paper industry in Washington has been economically threatened for the past decade, and at least three large paper mills have closed. Pulp and paper workers support the proposal, with the exception of the 8 cent pass-through charge that is in the bill. Pulp and paper jobs are good for the green economy.

Staff Summary of Public Testimony (Finance):

(In support) There are 37 jurisdictions that currently have pass-through charges for carryout bags. The amount of the charge differs from jurisdiction to jurisdiction. This bill would provide consistency throughout the state. Moreover, it would help the stores recoup the cost increase to provide paper bags instead of the plastic bags. These thin plastic bags cause a myriad of environment impacts, including harm to marine animals and gumming up of recycling machines. In jurisdictions that have enacted a local ban and pass-through charge, there has been an increase in demand for recycled paper carryout bags. The Environment and Energy Committee amendment provides for expedited permitting for paper mills to retool and meet the increased demand for the recycled paper bags that this bill will create. It is a carefully crafted compromise of a large group of varied stakeholders.

The bill includes the exemption for person using electronic benefits. In addition, retailers must collect and remit retail sales tax on all carryout bags sold.

(Opposed) Pulp and paper mills are a legacy manufacturer in Washington and employ over 8,000 persons. There is no scientific study that proves that laws banning plastic bags work. The only impartial information that is available is the experience of California, who imposed a 10-cent fee and the recycling agency found that in one year, the sales of paper bags decreased 61 percent. Washington has a more significant paper bag manufacturing presence than California with 85 percent of paper bags used in the Pacific Northwest being manufactured by four Washington paper mills. This bill is only a partial ban on the thin plastic bags and does not include the thicker plastic bags that also create negative environmental impacts.

(Other) There are concerns about the impact on the pulp and paper industry. There is no requirement that renewable paper bags should be made available. The recycle recovery rate on these bags is over 40 percent, as compared with a recycle recovery rate of plastic bags of 10 percent. There is no study that provides evidence that paper bags will be or are used in a greater amount with a plastic bag ban as proposed. The Port Angeles plant has spent millions to retool and manufacture paper bag materials and several other paper mills are considering a similar move.

Persons Testifying (Environment & Energy): (In support) Senator Das, prime sponsor; Bruce Wishart, Zero Waste Washington and Puget Soundkeeper Alliance; Nora Nickum, Seattle Aquarium; Anthony Brocato, Recology; Colton Martin; Riley Gibson; Catherine

Holm, Washington Food Industry Association; Kyle Saar, Saars Markets; Mike Barnhart, Bunzl Distribution; Holly Chisa, Northwest Grocers Association; Brenda Fincher, Kent City Council; Jessica Forsythe, Redmond City Council; Rory Paine-Donovan, Seattle Public Utilities; Laurie Davies, Washington Department of Ecology; Charlie Brown, Fred Meyer and Consumer Technology Association; Rachel Mouer; Mark Bedsaul; Cameron Barnes; Diane Jones, Northwest Progressive Institute; and Martin Gibbins, League of Women Voters.

(Opposed) Bill Stauffacher, American Forest and Paper Association; and M.C. Halvorsen.

(Other) Sean O Sullivan, Association of Western Pulp and Paper Workers.

Persons Testifying (Finance): (In support) Catherine Holm, Washington Food Industry Association; Bruce Wishart, Zero Waste Washington and Puget Soundkeeper; Charlie Brown, Fred Meyer Stores; and Holly Chisa, Northwest Grocery Association.

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

(Other) Sean O Sullivan, Association of Western Pulp and Paper Workers.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Finance): None.