

FINAL BILL REPORT

ESSB 5323

C 138 L 20
Synopsis as Enacted

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).

Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means
House Committee on Environment & Energy
House Committee on Finance
House Committee on Appropriations

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 individuals, 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.

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.

The Pollution Control Hearings Board (PCHB) hears appeals of certain decisions, orders, and penalties issued by the Department of Ecology (Ecology) and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Summary: Beginning January 1, 2021, a retail establishment is prohibited from providing a customer, or to a person 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 but are encouraged to take actions to reduce single-use plastic carryout bags. A retail establishment is defined as any person, corporation, partnership, business, facility, vendor or organization that sells or provides food, merchandise, or materials directly to a customer.

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.

Until December 31, 2025, retail establishments must collect an \$0.08 pass-through charge when providing a reusable plastic film bag or carryout paper bag that is at least 882 cubic inches provided. Beginning January 1, 2026, the pass-through charge for reusable carryout plastic film bags is \$0.12. A retail establishment is prohibited from reimbursing a customer any portion of the pass-through charge. Retail establishments may not collect a pass-through charge from a person using a voucher or electronic benefits card issued under WIC, SNAP, TANF, or FAP. The pass-through charge is a taxable retail sale and must be shown as such on a receipt provided to customers. 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.

Compostable film bags provided to customers by retail establishments must meet statutory requirements for compostable products and film bags. Retail establishments, food banks, and other food assistance programs may not use or provide polyethylene or other non-compostable carryout bags that do not meet statutory requirements for non-compostable products and film bags.

A recycled content paper carryout bag must:

- contain a 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 a minimum of 125 uses;
- be durable so it can be washed and disinfected; and

- if made from film plastic, contain a minimum of 20 percent postconsumer recycled material until July 1, 2022, and thereafter a minimum of 40 percent postconsumer recycled material;
 - the film plastic bags must be at least 2.25 mils thick until December 31, 2025, and thereafter 4 mils thick;
 - the minimum postconsumer recycled content and the thickness of the bag, as well as that the bag is reusable, must be displayed in print on the outside of the bag.

Enforcement of carryout bag requirements must be based primarily on complaints filed with Ecology and local governments. Ecology must establish a forum for filing complaints. The forum may include a complaint form on its website, a telephone hotline, or electronic social media. Local governments and any person may file a complaint on Ecology's forum. Local governments may review complaints for purposes of carrying out education and outreach to retail establishments.

Ecology, in collaboration with local governments, must provide education and outreach activities to inform retail establishments, consumers and other interested individuals about the restrictions on single-use plastic carryout bags. Ecology or local governments must work with retail establishments, retail associations, unions, and other organizations to create educational elements regarding the benefits of reusable bags. Retail establishments are encouraged to educate their staff to promote reusable bags as the best option for carryout bags and to post signs encouraging customer to use reusable carryout bags.

A violation of the carryout bag requirements is subject to a \$250 penalty. The penalty is appealable to the Pollution Control Hearings Board.

Local governments may not implement local carryout bag ordinances. Local government carryout bag ordinances enacted as of April 1, 2020 are preempted as of January 1, 2021. If a local ordinance has established a pass-through charge of \$0.10, the pass-through charge is not preempted until January 1, 2026.

Until June 1, 2025, Ecology must prioritize expedited processing of applications for permits to expand or reconfigure existing pulp and paper mills for the purpose of manufacturing paper bags or materials to manufacture paper bags.

The Department of Commerce, in consultation with Ecology, must submit a report to the Legislature by December 31, 2024. The report must address 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. The report must also include recommendations for revisions to carryout bag requirements.

An intention is declared for the 2025 Legislature, taking into consideration the report, 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.

A severability clause is included.

Votes on Final Passage:

2019 Regular Session

Senate 31 14

2020 Regular Session

Senate 30 19

House 67 29 (House amended)

Senate 33 15 (Senate concurred)

Effective: June 11, 2020

June 30, 2021 (Section 11)