
Environment & Energy Committee

HB 1799

Brief Description: Concerning organic materials management.

Sponsors: Representatives Fitzgibbon, Berry, Duerr, Riccelli and Harris-Talley.

Brief Summary of Bill

- Establishes state goals related to organic materials management, and requires local governments' solid waste plans to identify a volumetric capacity for managing organic materials in a manner consistent with state goals.
- Requires certain local governments to provide source-separated organic materials collection services, and requires certain businesses to arrange for organic materials management services.
- Amends civil and criminal liability standards applicable to the donation of food.
- Creates the Washington Center for Sustainable Food Management within the Department of Ecology.
- Establishes or expands funding programs applicable to organic materials management.
- Requires county and city development regulations to allow for the siting of organic materials management facilities consistent with local solid waste plans and to the extent necessary to achieve state organic materials management goals.
- Requires local governments to plan for procurement of finished compost materials.
- Amends standards related to the labeling of plastic and compostable products, and prohibits the sale or distribution of plastic produce stickers

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

that do not meet certain composting technical standards.

Hearing Date: 1/20/22

Staff: Jacob Lipson (786-7196).

Background:

Solid Waste, Organic Materials, and Food Waste Management.

Under the state's solid waste management laws, local governments are the primary government entity responsible for implementing state solid waste management requirements. The Department of Ecology (Ecology) also has certain roles in overseeing the administration of solid waste management laws. Ecology is responsible for working cooperatively with local governments as they develop their local solid waste management plans. Ecology also evaluates, analyzes, and monitors the state's solid waste stream, and develops a statewide solid waste plan that, in part, addresses organic material wastes.

County and city solid waste management plans are required to contain certain elements, including a waste reduction and recycling element. This element must include waste reduction strategies, recycling strategies, and source separation strategies.

Since 2019, Washington has had an established goal to reduce the annual generation of food waste by 50 percent by 2030. A subset of the goal includes a prevention goal related to edible food waste. In order to achieve the 2030 food waste reduction goal, Ecology, working with other state agencies, adopted the Use Food Well Washington plan in December 2021. The Use Food Well Washington plan contains 30 federal and state policy recommendations, including recommendations:

- to create a Washington Center for Sustainable Food Management with certain duties;
- related to the liability protections for persons that donate food;
- for funding or financial incentives for certain activities supportive of food waste reduction goals; and
- for changes to data management, public outreach, coordination, and new programmatic activities to be implemented by a variety of public entities.

Washington's Good Samaritan Food Donation Act.

Under Washington's Good Samaritan Food Donation Act, persons are not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product donated in good faith to a nonprofit organization for distribution to needy individuals. This exception from civil or criminal liability does not apply to injury or death of a user or recipient of a donation resulting from gross negligence or intentional misconduct of the donor. If some or all of donated food and grocery products do not meet all quality and labeling standards imposed by federal, state, or local laws and regulations,

the donator of food is not subject to civil or criminal liability only if the nonprofit organization that receives the donated food or grocery products is informed by the donor of the condition of the donated food or grocery products, agrees to recondition the food to comply with quality and labeling standards, and is knowledgeable of the standards to properly recondition the donated food or grocery product.

Local Government Development Regulations.

The Growth Management Act (GMA) is the comprehensive land-use planning framework for counties and cities in Washington. The GMA establishes land-use designation and environmental protection requirements for all Washington counties and cities, and establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA (planning jurisdictions) to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements prescribed in the GMA.

Cities and counties that are not subject to the GMA may adopt comprehensive plans, zoning ordinances, and other official controls under the state's optional planning enabling statutes.

Compost Procurement Requirements.

Since 2020, state agencies and local governments have been required to consider whether compost products can be used in government-funded projects when planning or soliciting and reviewing bids for government-funded projects. If compost products can be utilized in the project, the agency or local government must do so, except if:

- compost products are not available within a reasonable amount of time;
- compost products that are available do not meet existing purchasing standards or federal or state health and safety standards; or
- compost purchase prices are not reasonable or competitive.

In 2020, the Legislature directed the Department of Agriculture (Agriculture) to create a 3-year compost reimbursement program for certain farming operations' expenses related to purchasing and using compost products. This three-year reimbursement program was vetoed by Governor Inslee.

Generally, purchases of or contracts for goods and services must be based on a competitive solicitation process, unless a specific exemption applies. When local governments are required to make purchases from the lowest bidder or from the supplier offering the lowest price, they may take into consideration tax revenue they would receive from purchasing supplies, materials, or equipment from a supplier located within their jurisdiction. Local governments may, however, allow for preferential purchase of products made from recycled materials or products that may be recycled or reused.

Product Degradability Labeling Requirements.

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 (FTC) 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 must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks.

Manufacturers or suppliers of film bags that meet ASTM composting standards for plastics and that are distributed or sold by retailers must ensure that the bag is readily and easily identifiable in a manner consistent with the FTC green guides. Readily and easily identifiable film bags must be of a uniform green or brown color or meet certain other specified requirements regarding the size, location and color of the word "compostable" on the bag. Film bags that meet ASTM composting standards may not display recycling symbols, such as the "chasing arrow" symbol. To the extent that film bag labeling requirements conflict with the FTC guides, manufacturers or suppliers are not required to comply.

Manufacturers or suppliers of food service products and film products, other than film bags, that meet ASTM composting standards for plastics or plastic-coated substrates must ensure that the items are readily and easily identifiable. Readily and easily identifiable film wrap and food service products must be labeled with a logo indicating the product has met ASTM standards, and labeled with the word "compostable," where possible. Compostable products must be considered compliant if they have green or brown labeling, are labeled as compostable, and use other distinguishing colors or marks. Specified additional characteristics, such as color and graphic elements, are encouraged for compostable film wrap and food packaging and food service ware. To the extent that these product labeling requirements conflict with the FTC guides, manufacturers or suppliers are not required to comply.

Food service products and film products, including film bags, that do not meet ASTM standards are:

- prohibited from using tinting, labeling and terms that are required of products that meet ASTM standards;
- discouraged from using coloration, labeling, images, and terms that confuse customers into mistakenly identifying noncompostable products as compostable; and
- encouraged to use identifying features that indicate whether a product is recyclable or must be disposed of as waste.

Manufacturers and suppliers, upon request by a person, must provide non-confidential business information demonstrating their compliance with labeling and marketing requirements.

The suppliers subject to product degradability labeling requirements do not include entities that sell products to end users as a retailer.

The Attorney General, cities, and counties have concurrent authority to enforce labeling and marketing requirements. Violations occur upon the sale of a noncompliant product by stockkeeping number or unique item number, but repeated sales of the same product constitute a single violation. Prior to assessing a violation, a city, county, or the state, on behalf of the Attorney General, must send written notice to a manufacturer or supplier of an alleged violation, providing 90 days to come into compliance. Civil penalties of up to \$1,000 are authorized for an initial violation, followed by \$5,000 for a second violation, and \$10,000 for a third violation. Second, third, and subsequent penalties may be imposed for each month of noncompliance. Penalty amounts are reduced by the amount of any penalty paid for the same violation to a different enforcing government entity. Penalties collected by local governments are retained by the local government office that brought the action, while state collected penalties are deposited into a revolving account that is created for use by the Attorney General in bringing enforcement actions. Penalties collected by local governments are retained by the local government office that brought the action, while state collected penalties are deposited into the Compostable Products Revolving Account used by the Attorney General in bringing enforcement actions.

Other.

In 2020, the Washington State Conservation Commission (Commission) was directed to develop a Sustainable Farms and Fields Grant Program in consultation with other specified government entities. The Commission is required to develop and approve a prioritization metric to guide the distribution of funds appropriated by the Legislature for this purpose, with the goal of producing cost-effective carbon dioxide equivalent impact benefits. Allowable uses of grant funds from the Sustainable Farms and Fields Grant Program include down payments on equipment, purchases of equipment, and services to landowners.

The Public Works Board may make low-interest loans or grants from the Public Works Assistance Account (PWAA) to finance the acquisition, construction, repair, replacement, or improvement of certain local public works projects, which include bridges, streets, and roads; water systems; storm and sanitary sewage systems; and solid waste facilities, including recycling facilities. Up to 10 percent of the PWAA capital budget appropriation may be provided for grants. Local governments and special purpose districts, except port and school districts, are eligible to apply for loans from the PWAA.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the

checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS).

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review. Penalties appealable to the PCHB must generally be imposed following standard general protocols, including that the penalty must be accompanied by a notice in writing describing the violation, and specifying when the penalty must be appealed or else becomes due and payable. With some exceptions, penalties that are appealable to the PCHB are credited to the state general fund.

Agriculture is required to maintain an information and referral service for persons and organizations that want to participate in food donation programs.

Summary of Bill:

State Organic Materials Management Goals.

Goals are established for organic material management (state organics goals), including a goal for the landfill disposal of organic materials at a level in 2030 that is 75 percent less than in 2015, and a goal that at least 20 percent of the volume of edible food disposed of as of 2015 be recovered for human consumption by 2025. The state organics goals are in addition to the food waste reduction goals established in 2019.

Organic materials are specified to include manure, yard waste, food waste, food processing wastes, wood wastes, and garden waste.

Organic Materials Management Requirements for Businesses.

Beginning July 1, 2025, the Department of Ecology (Ecology) must determine which counties and cities preparing solid waste plans provide for businesses to be serviced by providers that collect food waste and organic waste for delivery to solid waste facilities that provide for composting, anaerobic digestion, vermiculture, black soldier fly, or similar technologies to manage those collected organic wastes (organic materials management). Ecology must determine that organics material collection service requirements apply to certain businesses within a local jurisdiction unless Ecology determines that businesses in some or all portions of the county have no available organic materials collection services that deliver organic materials for organic materials management, or there is no available capacity at solid waste facilities to which organic materials could feasibly and economically be delivered.

In jurisdictions or portions of jurisdictions subject to these organic material collection and management requirements, the requirements apply:

- beginning January 1, 2024, to businesses that generate at least eight cubic yards of organic

- waste per week;
- beginning January 1, 2025, to businesses that generate at least four cubic yards of organic waste per week; and
- beginning January 1, 2026, to businesses that generate at least four cubic yards of solid waste per week. However, Ecology may determine by rule that additional reductions in the landfilling of organic materials would be more effectively achieved at reasonable cost to businesses by establishing a different volumetric threshold than four cubic yards per week of solid waste.

Waste volumes are measured by counting only wastes that are not managed on-site by a business. Businesses may satisfy the organic materials management requirements by source-separating organic waste from other waste and subscribing to an organic materials collection and management service, or managing organic waste on-site or self-hauling organic waste for organic materials management. Businesses subject to these requirements that arrange for gardening or landscaping services must require through contracts or work agreements that wastes generated by those services receive qualifying types of organics materials management.

Local Government Organic Material Collection and Management Requirements.

Beginning January 1, 2027, each county or city that implements a local solid waste plan must provide organic solid waste collection services to all residents and businesses that generate at least half of a cubic yard of organic materials, and must provide for organic materials management of collected organic materials. Cities and counties may charge and collect fees or rates for these services, consistent with existing authority to impose fees and rates for solid waste collection services. The organic material collection service and management requirements do not apply:

- in counties and cities implementing a solid waste plan that have a population of less than 25,000;
- in counties and cities implementing a solid waste plan that disposed of less than 5,000 tons of solid waste in the most recent year such data were available;
- in portions of a city or county implementing a solid waste plan that have a population density of less than 75 people per square mile and are located in an unincorporated portion of a county; or
- in counties and cities implementing a solid waste plan that receive a waiver from Ecology applicable to all or part of a jurisdiction. Waivers may be issued for up to five years and based on consideration of the distance to organic materials management facilities, the capacity at local organic materials management facilities to manage additional materials, and pest control restrictions established by the Department of Agriculture (Agriculture). Ecology may adopt rules to establish the waiver process and criteria.

Ecology may adopt a rule beginning January 1, 2030, that applies organic materials collection service and management requirements to jurisdictions exempted from requirements on the basis of population density or an Ecology-issued waiver, but only if Ecology determines that the state organics goals for the disposal of organic material in landfills for 2030 have not or will not be achieved. When newly developing, updating, or amending local solid waste management plans

after July 1, 2022, each local solid waste plan must consider the transition to providing organic materials collection services to certain residents and businesses in 2027. The local solid waste plan must identify:

- priority areas within the jurisdiction for the establishment of organic materials management facilities. Priority areas must be in industrial zones and may not be located in overburdened communities identified by the Department of Health under state environmental justice laws enacted in 2021; and
- the organic materials management volumetric capacity required to manage the jurisdiction's organic materials in a manner consistent with state organics goals.

When newly developing, updating, or amending local solid waste management plans after January 1, 2027, local solid waste plans must be consistent with the requirement to provide organic materials collection services to certain residents and businesses.

Local Development Regulations and Organic Materials Management Facility Siting.

For cities and counties planning under either the Growth Management Act or planning enabling statutes, development regulations to implement comprehensive plans that are newly developed, updated, or amended after January 1, 2023, must allow for the siting of organic materials management facilities in the areas designated in local solid waste plans to the extent necessary to provide for the establishment of the organic materials management volumetric capacity identified as part of the local solid waste plan.

Local Government Compost Procurement Requirements, Plans, and Ordinances.

By January 1, 2023, local governments must develop a compost procurement plan and adopt a compost procurement ordinance to implement the 2020 requirement for local governments to consider the use of compost products in projects and to use compost products in a project except when availability, health, quality, safety, or price-competitive criteria are not met. Local governments must give priority to purchasing compost products that produce compost locally, are certified by a nationally recognized organization, that produce products derived from municipal solid waste compost programs, and that meet quality standards. Local governments may enter into collective purchasing agreements if cost-effective or efficient to do so. Contracts by governmental units must require the use of compost products to the maximum extent economically feasible to meet local government compost use requirements.

Local governments may allow for the preferential purchase of compost in order to meet the requirements for local governments to use compost products where products are available, reasonably priced, and meet purchasing and safety standards.

Civil and Criminal Liability Standards for Food Donations.

The civil and criminal liability protections that apply to food donated to nonprofit organizations are expanded and amended:

- to apply to food donated directly to end recipients for consumption by a person required to have a food establishment permit under Department of Health rules (including grocery stores and restaurants);

- to apply to the donation of perishable food that is fit for human consumption but that has exceeded the labeled shelf-life date recommended by the manufacturer, if the person donating the food makes a good faith evaluation that the food is wholesome;
- to apply to donated food and grocery products that meet safety and safety-related labeling standards, rather than all quality and labeling standards. Safety and safety-related labeling standards are defined to include markings that communicate information to a customer about a product's safety, but which does not include pull dates required under state law or similar phrases intended to communicate information to a customer regarding the freshness or quality of a product; and
- to include donated food that is sold at a reduced price that is not greater than the cost of handling, administering, and distributing the product.

Washington Center for Sustainable Food Management.

The Washington Center for Sustainable Food Management (center) is established in Ecology with the purpose of helping coordinate statewide food waste reduction. The center is authorized to perform 12 specified categories of activities, including:

- measuring progress towards statewide organic materials management and food waste reduction goals;
- coordinating implementation of food waste reduction plans;
- maintaining a website with food waste reduction guidance;
- coordinating public-private and nonprofit partnerships, and collaborating with federal, state, and local government partners;
- developing maps or lists of locations of food systems in Washington;
- collecting and maintaining data on food waste and wasted food;
- distributing and monitoring grants related to food waste prevention, rescue, and recovery; and
- developing food waste reduction and food waste contamination reduction campaigns and promotional materials for destruction.

Ecology may enter into interagency agreements with other state agencies to fulfill the center's responsibilities. Ecology may adopt rules pertaining to the center. In order to obtain data to support the center's goals, Ecology may establish a voluntary reporting protocol for the receipt of information regarding food donations. Ecology may request that a donating business or food recipient provide information regarding the volume, types, and timing of food managed by the donating facility. Ecology must seek to obtain this information in a manner that is compatible with any similar information reported to Agriculture, and Agriculture must coordinate with Ecology to ensure that the food donation information receipt practices it implements are consistent with the center's practices.

By January 1, 2025, the center must research and adopt model ordinances for optional use by cities and counties. The optional model ordinances must provide model mechanisms for commercial solid waste collection and disposal that are designed to establish a financial disincentive or other disincentives for the generation of organic waste and the disposal of organic materials in landfills. Ecology must review the model ordinances under the State Environmental

Policy Act (SEPA); a county or city that then adopts a model ordinance created and reviewed under SEPA by the center is not required to do its own SEPA review of the ordinance.

Funding Programs for Organic Materials Management.

Composting and organic materials management facilities are explicitly included among the solid waste facilities that may be funded as public works projects by the public works board from the public works assistance account.

The allowable uses of grant funds under the Sustainable Farms and Fields Grant Program are expanded to include the purchase of compost spreading equipment, or financial assistance to farmers to purchase compost spreading equipment, for the annual use for at least three years of volumes of compost determined to be significant by the Washington State Conservation Commission, from materials composted at a site not owned or operated by the farmer.

Agriculture must establish a three-year compost reimbursement pilot program (pilot program) for farming operations in Washington for the purchase and use of compost products that were not generated by the farming operation. Costs covered by the pilot program must include transportation, equipment, spreading, and labor costs. Grant reimbursements under the pilot program begin July 1, 2023, and conclude June 30, 2026. Prior to carrying out activities for which pilot program reimbursement is sought, farming operations must complete an eligibility review with Agriculture. Agriculture must review proposed transport and application of compost materials for compliance with state pest control rules. Soil sampling by Agriculture must be allowed by pilot program participants. Pilot program applicants may not seek reimbursement for purchase or labor costs for its own compost products, from compost products transferred to another individual or entity, or from compost products that were not purchased from a facility with a solid waste handling permit. Farming operations are eligible to receive reimbursement for up to 50 percent of their costs incurred each fiscal year, in an amount up to \$10,000 per fiscal year. Actions taken by Agriculture to implement the pilot program are exempt from the state administrative procedures act. Agriculture must submit an annual report to the Legislature each year of the pilot program.

Product Degradability Labeling Requirements.

Product degradability labeling standards are amended to:

- require compostable products that meet American Society of Testing and Materials (ASTM) standards to use green, brown, or beige labeling, color striping, or other marks that help differentiate compostable items from non-compostable materials;
- allow film bags to be tinted beige, in addition to green or brown;
- require compostable food service products and film products to be tinted or colored green, beige, or brown; and
- prohibit film products and food service products that do not meet ASTM specifications from using color schemes that are required of compostable products or from using brown, beige, or green coloration, labeling, images, or terms that may be reasonably anticipated, in Ecology's judgment, to confuse customers into believing non-compostable bags or food service products are compostable.

The suppliers subject to product degradability labeling requirements are re-defined to newly include entities that sell products to end users as a retailer. Responsibility under the law as a supplier is assigned to the manufacturer, to the product brand or trademark licensee, or, if there is not a product manufacturer or brand or trademark licensee over whom the state can exercise jurisdiction, to the importer or distributor of the product in or into Washington.

State enforcement responsibility for product degradability labeling requirements is transferred from the Office of the Attorney General to Ecology. Ecology may adopt rules pertaining to product degradability labeling requirements, and must begin enforcing requirements by January 1, 2024. Enforcement by Ecology and cities and counties must be based primarily on complaints, and Ecology must establish a forum to receive complaints. Ecology, in collaboration with cities and counties, must provide education and outreach to retail establishments, consumers, and suppliers, about product degradability labeling requirements.

Ecology-issued penalties are appealable to the Pollution Control Hearings Board (PCHB), and Ecology-issued penalties must be imposed consistent with standard protocols for penalties that are appealable to the PCHB. The compostable products revolving account is repealed, and state penalty recoveries are credited to the state general fund.

Produce Stickers.

Beginning January 1, 2024, a person may not sell or distribute in or into Washington plastic produce stickers or products with plastic produce stickers unless the products meet ASTM standard D6400 or D6868, as those standards existed as of January 1, 2022. These restrictions do not apply to produce labels made of wood or fiber-based substrate. Ecology must, upon request, provide technical assistance and guidance to manufacturers, importers, or distributors of plastic produce stickers. Violations of these requirements are subject to the same administration, enforcement, and penalty provisions applicable to violations of product degradability labeling requirements. Compostable produce stickers are not required to be labeled consistent with product degradability labeling standards.

Other.

An intent section is included.

A severability clause is included.

Appropriation: None.

Fiscal Note: Requested on January 12, 2022.

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