

SENATE BILL REPORT

SB 5022

As of February 19, 2021

Title: An act relating to the management of certain materials to support recycling and waste and litter reduction.

Brief Description: Concerning the management of certain materials to support recycling and waste and litter reduction. [**Revised for 1st Substitute:** Concerning expanded polystyrene prohibitions, optional food serviceware, and recycled content for beverage containers.]

Sponsors: Senators Das, Rolfes, Carlyle, Dhingra, Keiser, Kuderer, Lias, Lovelett, Nobles, Nguyen, Pedersen, Saldaña, Salomon, Stanford, Wellman and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/26/21, 2/03/21 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/16/21.

Brief Summary of First Substitute Bill

- Establishes minimum recycled content requirements for plastic beverage containers.
- Prohibits the sale and distribution of certain expanded polystyrene products.
- Establishes optional single-use food service requirements for food service businesses.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5022 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Lias, Nguyen, Stanford and Wellman.

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.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Brown, Fortunato, Sheldon and Short.

Minority Report: That it be referred without recommendation.

Signed by Senator Hobbs.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jed Herman (786-7346)

Background: Plastic Packaging. In 2019, the Legislature directed the Department of Ecology (Ecology) to evaluate and assess the amount and types of plastic packaging sold into the state, as well as, its management and disposal. The report, required to be produced by October 31, 2020, was required to assess the:

- amount of plastic packaging produced or coming into the state;
- full cost of managing plastic packaging waste;
- final disposition of all plastic packaging sold into the state;
- costs and savings to all stakeholders in product stewardship programs implemented in other cities and solid waste companies;
- needed infrastructure to manage plastic packaging;
- contamination and sorting issues for the plastic packaging recycling stream; and
- existing stewardship organizations and databases useful to develop a program in Washington State.

The report was also required to include recommendations to meet the following goals of reducing plastic packaging through industry lead or product stewardship:

- achieve 100 percent recyclable, reusable, or compostable packaging in all goods sold in Washington by January 1, 2025;
- achieve at least 20 percent post-consumer recycled content in packaging by January 1, 2025; and
- reduce plastic packaging when possible, optimizing the use to meet the need.

The report was further required to include options to meet plastic packaging reduction goals capable of being established and implemented by January 1, 2022.

Published in December 2020, the report includes ten policy recommendations, organized into four categories:

- three primary recommendations that require legislative action:
 1. extended producer responsibility policy framework for all consumer packaging and paper;
 2. deposit return system for all beverage containers;
 3. recycled content requirements for all plastic packaging;

- two legislative interim policy options that are supplemental to the primary recommendations:
 1. producer registry and packaging reporting;
 2. recycled content requirements for plastic beverage containers;
- three legislative policy actions that advance the goals in ways that complement the primary recommendations:
 1. recycled content requirements for trash bags;
 2. ban on problematic and unnecessary plastic packaging;
 3. the standard for customer opt-in for food service packaging and accessories; and
- two recommended agency activities that do not require legislative action:
 1. strengthen data collection on final destinations of materials sent for reprocessing;
 2. support development and adoption of reusable packaging systems.

In 2020, the Legislature established minimum post-consumer recycled content requirements for plastic beverage containers sold, offered for sale, or distributed in Washington, but the bill was vetoed by the Governor due to COVID-19 budgetary concerns.

Other Jurisdictions. On August 30, 2020, California approved legislation establishing minimum recycled content requirements for plastic beverage containers. That legislation requires all plastic bottles covered by the state's container redemption program average at least 15 percent post-consumer resin starting in 2022. The recycled mandate increases to 25 percent in 2025 and 50 percent in 2030.

In 2019, the European Union approved a single-use plastics law banning single-use plastic plates, cutlery, straws, balloon sticks, and cotton swabs by 2021. It sets a 90 percent collection target for plastic bottles by 2029, and mandates that plastic bottles be made of at least 25 percent recycled plastic by 2025, and 30 percent by 2030.

Expanded Polystyrene. Expanded polystyrene (EPS) foam, also known as Styrofoam in the United States and Canada, is a lightweight material often used for single-use food containers and packaging materials.

Throughout the United States, there are a number of states, cities, and counties that have adopted laws and ordinances banning food service ware made from EPS foam, including cities in Washington.

Plastic Food Service Products. 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.

Summary of Bill (First Substitute): Minimum Recycled Content. A beverage manufacturer that sells, offers for sale, or distributes plastic beverage containers in or into

Washington must meet the following annual minimum post-consumer recycled plastic content on average for the total quantity of plastic beverage containers that are sold, offered for sale, or distributed in Washington effective for beverages except dairy milk:

- January 1, 2023, through December 31, 2025—no less than 15 percent post-consumer recycled plastic by weight;
- January 1, 2026, through December 31, 2030—no less than 25 percent post-consumer recycled plastic by weight; and
- on and after January 1, 2031—no less than 50 percent post-consumer recycled plastic by weight.

For dairy milk beverages, the following minimum content requirements apply:

- January 1, 2028, through December 31, 2030--no less than 15 percent post-consumer recycled plastic by weight;
- January 1, 2031, through December 31, 2035--no less than 25 percent post-consumer recycled plastic by weight; and
- on and after January 1, 2036--no less than 50 percent post-consumer recycled content plastic by weight.

"Beverage" includes the following, intended for human or animal consumption, and in a quantity more than or equal to two fluid ounces and less than or equal to one gallon:

- water and flavored water;
- beer or other malt beverages;
- wine;
- distilled spirits;
- mineral water, soda water, and similar carbonated soft drinks; and
- any beverage other than those specified above, except infant formula.

"Plastic beverage container" means a bottle or other rigid container—capable of maintaining its shape when empty—comprised of one or more multiple plastic resins and containing a beverage. Plastic beverage containers do not include:

- refillable beverage containers, for example, containers that are sufficiently durable for multiple rotations of their original or similar purpose and are intended to function in a system of reuse;
- rigid plastic containers or plastic bottles that are medical devices, medical products that are required to be sterile, nonprescription and prescription drugs, dietary supplements, and packaging used for those products; and
- bladders or pouches that contain wine.

A city, town, county, or municipal corporation may not implement local recycled content requirements for plastic beverage containers that are subject to minimum post-consumer recycled content as required under the act.

Beginning January 1, 2025, Ecology may, on an annual basis, review and determine whether to adjust the minimum post-consumer recycled content percentage. Review may

be initiated by Ecology or at the petition of the beverage manufacturing industry. Ecology may not adjust the minimum content requirements above the established minimum rates.

In making a determination, Ecology must consider, at minimum, all of the following factors:

- changes in market conditions, including supply and demand for post-consumer recycled plastics, collection rates, and bale availability;
- recycling rates;
- the availability of recycled plastic suitable to meet the minimum content requirements;
- the capacity of recycling or processing infrastructure; and
- the progress made by beverage manufacturers in achieving the minimum content requirements.

On or before April 1, 2022, and annually thereafter, beverage manufacturers must register with Ecology individually or through a third party representative registering on behalf of a group of manufacturers.

After January 1, 2023, manufacturers not registered individually or through a third party may not sell or supply plastic beverage containers in Washington State.

Ecology must determine an annual payment by beverage manufacturers or their third party representative that is adequate to cover, but not exceed, Ecology's full costs to implement, administer, and enforce minimum recycled content provisions in the next fiscal year, including rulemaking.

Beginning April 1, 2024, beverage manufacturers, individually or through a third party representing a group of manufacturers, must provide an annual report that includes the amount of virgin plastic and the amount of post-consumer recycled content by resin type used for plastic beverage containers sold, offered for sale, or distributed into Washington State, including the total post-consumer recycled resins as a percentage of total weight. The report must be submitted under penalty of perjury and in a format and manner prescribed by Ecology. A manufacturer may submit national data allocated on a per capita basis for Washington to approximate the reporting information if the manufacturer demonstrates to Ecology that state level data is not available or feasible to generate.

A beverage container manufacturer that submits information or records to Ecology may request that the information or records be made available only for the confidential use of Ecology. Ecology must give consideration to the request and if this action is not detrimental to the public interest and is otherwise in accordance with its policies and purposes, Ecology must grant the request for information to remain confidential.

Beginning January 1, 2023, a beverage manufacturer that does not meet the minimum content requirements is subject to an annual administrative fee.

Beginning March 1, 2024, and annually thereafter, Ecology must invoice assessed fees for the previous calendar year based on the minimum content requirement of the previous calendar year. Ecology calculates the fee based upon the amounts in pounds in the aggregate of virgin plastic, post-consumer recycled plastic, and any other plastic used by the beverage manufacturer to produce beverage containers sold or offered for sale in the state.

The fee must equal the product of both of the following:

- the total pounds in plastic used multiplied by the relevant minimum post-consumer recycled plastic target percentage, less the pounds of total plastic multiplied by the percent of post-consumer recycled plastic used; and
- \$0.20.

Ecology must consider granting a reduction of fees based on consideration of the following factors:

- anomalous market conditions;
- disruption in, or lack of supply of, recycled plastics; and
- other factors that have prevented a beverage manufacturer from meeting the requirements.

In lieu of or in addition to assessing a fee, Ecology may require a beverage manufacturer to submit a corrective action plan detailing how the manufacturer plans to come into compliance with the act.

Fees may be appealed to the Pollution Control Hearings Board.

Fee expenditures go towards funding the Recycling Development Center for the purpose of furthering the development of recycling infrastructure in the state.

If funding is provided by appropriation before January 1, 2028, Ecology must contract with a research university or an independent third party consultant to study the polyethylene terephthalate (PET) and high-density polyethylene markets for all of the following:

- analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum recycled plastic content requirements for plastic beverage containers;
- determining the data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry; and
- recommending further policy modifications and measures to achieve the state's recycling targets with the least cost and optimal efficiency.

Expanded Polystyrene Ban. Beginning June 1, 2023, the sale and distribution of the following EPS products in or into the state is prohibited:

- a portable container that is designed or intended to be used for cold storage, except for EPS containers used for drugs, medical devices, and biological materials or

- shipping perishable commodities from a wholesale or retail establishment;
- food service products that include food containers, plates, clam shell-style containers, and hot and cold beverage cups—food service products do not include packaging for raw, uncooked, or butchered meat, fish, poultry, or seafood, vegetables, fruit, or egg cartons; and
- void filling packaging products, which means loose fill packaging material, also referred to as packing peanuts.

A manufacturer of products in violation of the prohibition is subject to a civil penalty for each violation in an amount not to exceed:

- \$250 if it is the manufacturer's first penalty; and
- \$1,000 if the manufacturer has previously been issued a penalty.

Ecology must issue at least two notices of violation prior to assessing a penalty.

Penalties are deposited in the Model Toxics Control Operating Account. Penalties are appealable to the Pollution Control Hearings Board.

Manufacturer includes any person, firm association, partnership, corporation, governmental entity, organization, or joint venture that:

- produces the EPS products subject to the restrictions; or
- is an importer or domestic distributor of an EPS product subject to the restrictions.

A city, town, county, or municipal corporation may not implement a local ordinance restricting EPS products prohibited under the restrictions unless the ordinance was filed by April 1, 2021, and enacted by June 1, 2021.

Single-use Food Service Products. Beginning January 1, 2022:

- a food service business at which the opportunity is provided for the on-site consumption of food or beverages may provide the following types of single-use food service products only upon request:
 1. utensils;
 2. straws;
 3. condiment packaging;
 4. beverage cup lids; and
- the following food service businesses may provide the types of single-use food service products identified above only after affirming the customer wants the single-use products:
 1. a food service business at which no opportunity is provided for the on-site consumption of food or beverages; or
 2. a food service business serving food or beverages to customers via a drive-through.

A food service business may provide beverage cup lids without request for:

- hot beverages;
- beverages provided through delivery service or curbside pickup; and
- beverages served to customers via a drive-through.

A food service business is not prohibited from making utensils, straws, condiments, and beverage cup lids available to customers using cylinders, bins, dispensers, containers, or other means of allowing for single-use utensils, straws, condiments, and beverage cup lids to be obtained at the affirmative volition of the customer.

Utensils provided by a food service business for use by customers may not be bundled or packaged in plastic in such a way that a customer is unable to take only the type of single-use utensil or utensils desired without also taking a different type or types of utensil.

Ecology may issue a civil penalty of no less than \$150 per day and no more than \$2,000 per day to the owner or operator of a food service business for each day single-use food service products are provided in violation of the provisions.

Ecology must issue at least two notices of violation prior to assessing a penalty. Penalties are deposited in the Model Toxics Control Operating Account.

A food service business may appeal penalties to the Pollution Control Hearings Board.

Beginning July 1, 2021, a city, town, county, or municipal corporation may not enact an ordinance to reduce pollution from single-use food service products by requiring a request of single-use food service products by the customer of the food service business or other retail establishment.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Amends the title to an act relating to expanded polystyrene prohibitions, optional food serviceware, and recycled content for beverage containers.
- Removes the extended producer responsibility subsection in the intent section.
- Exempts nonprescription drugs and dietary supplements as plastic beverage containers subject to the minimum recycled content requirements.
- Provides the following separate minimum content requirements for dairy milk containers: 2028 through 2030, no less than 15 percent; 2031 through 2035, 25 percent; and after 2035, 50 percent.
- Allows a manufacturer to submit national data allocated on a per-capita basis for Washington to approximate required reporting information if the manufacturer demonstrates to Ecology that state level data is not available or feasible to generate.
- Revises the fee calculation as a product of both of the following: the total pounds of plastic used multiplied by the relevant minimum postconsumer recycled plastic target percentage, less the pounds of total plastic multiplied by the percent of postconsumer

recycled plastic used; multiplied by \$0.20.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: We are very concerned about plastic pollution and the recycling system. The report has ten recommendations that address the issues. The number one recommendation is Extended Producer Responsibility (EPR) for all packaging. Although this bill is narrow in scope, we want to continue to work with stakeholders to bring in those policies.

Plastic pollution a growing threat to the world's oceans with an estimated 33 billion pounds of plastic entering the environment each year. Plastic production is expected to increase four fold. The pollution is everywhere, including in the world's most remote coastlines and on the ocean floor.

One-time use products serve for a few minutes but have lasting effects for many years. We will not miss these items when phased out. Washington is the envy of the country with our pristine landscapes—please help preserve our resources.

Since plastics are made from fossil fuels they are also a significant source of greenhouse gas emissions. Styrofoam is lightweight and buoyant ending up in rivers and the ocean. Increasing market value of recycled plastic will ensure more of what people put in bins gets recycled.

The beverage industry has launched an every bottle back program recognizing significant increased need in quantity and quality of plastic being collected. We need parallel advances to collect material that is high quality enough to meet food grade standards.

The public is supportive of a styrofoam ban and this is not a cutting edge issue. States, cities, and other jurisdictions have banned it and others are considering it as well. Very few jurisdictions do curbside pickup for this material. Styrene is a toxic chemical and is listed as a probable carcinogen.

Counties have primary responsibility for solid waste management, and programs have struggled with market contamination and changing standards. We are strongly in support of minimum recycled requirements to grow and stabilize the market for recyclables.

Recycling is important for our cities. It is the right thing to do and residents clearly want recycling opportunities. Cities are facing rising costs for recycling, particularly due to the changing waste stream driven by product packaging choices by manufacturers.

CON: We are opposed to the EPS ban and do not believe banning will reduce waste or increase recovery of replacement materials. Given the fact some of these products are produced locally, the ban could reduce local jobs. Now is not the time to eliminate essential services during the pandemic. We do believe a more appropriate approach is with a requirement that all food packaging materials be recyclable or compostable by 2030.

We are seeking an exemption for milk containers and believe this approach is wrong for dairy farmers. Milk a very important component of family nutrition and has small profit margins. We do not want to put undue pressure to pass on price increases to impact affordability.

We do share some concerns about EPR inclusion in the intent of the bill. There are other more cost effective ways to meet recycling goals. There should be clarity around what a beverage is not. Currently liquid medications could be required to have minimum recycled content. EPS is already being recycled to be used in other products and we believe the benefits of EPS outweigh its costs. There are other solutions than a ban to accomplish the goals of the bill.

Instead of singling out one particular material that we know is recycled and manufactured here in Tumwater, we would rather work with other stakeholders to expand current state recycling infrastructure.

Ecology only recently finished its study and recommendations. We welcome a comprehensive conversation about next steps. The manufacturing equation needs greater consideration on the ability of the supply chain to handle the ban with new replacement products. Recycling systems, technologies, and reuse markets have not been fully explored.

OTHER: The bill needs to be expanded to materials that do not have markets. We do not support EPR for all packaging in the intent section and cannot support the bill with that language in it.

Recycled material mandates an effective policy tool to help close the loop on recycled products and encourage new product design. Polystyrene is a problematic material for solid waste management systems, and recycling options are limited. Single use foodware is a common and easily avoidable source of plastic waste.

Several states are looking at this, but none with the infrastructure in California. California has a bottle deposit system and also took the time to study the market in the state and determine what is achievable.

Plastic wine bottles produced to reduce weight in the travel industry constitute an enormous savings in fuel in air, train, and ship travel. We are unable to get material or bottles that are not virgin content.

Over the counter medication and supplements are no different than prescription meds. They are both approved by federal government regulations and other regulations to withstand temperature change to maintain the integrity of the medicine and be childproof.

After the crisis created by the pandemic, the hospitality industry has been hanging on by a thread. Takeout and delivery has been a lifeline and that includes the use of these single use products. We appreciate the exemptions for delivery and drive thru and language that makes it a statewide standard and the provisions around beverage lids.

Persons Testifying (Environment, Energy & Technology): PRO: Giovanni Severino, Progreso: Latino Progress; Nora Nickum, Seattle Aquarium; Heather Trim, Zero Waste Washington; Sara Papanikolaou, Oceana; Paul Jewell, Washington State Association of Counties; Preston Peck, City of Tacoma | Environmental Services Department; Carl Schroeder, Association of Washington Cities; Richard May; Brad Boswell, Boswell Consulting; Christine Wolf, Recology; Madison DeCrescenzo, Lake Stevens Middle School.

CON: Tim Shestek, American Chemistry Council; Duane Naluai, Darigold; Peter Godlewski, Association of Washington Business; Walter Reiter, EPS Industry Alliance; Mike Perez, Dart Container; Tom McBride, Dart Container; Amber Carter, Maverik; John Chelminiak, Waste Management.

OTHER: Vicki Christophersen, Washington Refuse and Recycling Association; Laurie Davies, Department of Ecology; James (JP) Toner, International Bottled Water Association; Rowland Thompson, The Wine Institute; Carlos Gutierrez, Consumer Health Products Association; Samantha Louderback, Washington Hospitality Association; Catherine Holm, Washington Food Industry Association; Holly Chisa, North West Grocery Association.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.