

FINAL BILL REPORT

E2SSB 5022

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Synopsis as Enacted

Brief Description: Managing solid waste through prohibitions on expanded polystyrene, providing for food serviceware upon customer request, and addressing plastic packaging.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Das, Rolfes, Carlyle, Dhingra, Keiser, Kuderer, Liias, Lovelett, Nobles, Nguyen, Pedersen, Saldaña, Salomon, Stanford, Wellman and Wilson, C.).

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

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

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- 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: Plastic Data Registration, Labeling, and Reporting. Beginning April 1, 2022, producers of beverages sold in plastic containers, plastic trash bags, and household cleaning and personal care products in plastic containers (covered products) selling or distributing in Washington must register with Ecology, either individually or through a third-party representative. Registration information must include a list of producers and brand names.

Beginning April 1, 2024, beverage and trash bag producers must provide an annual report to Ecology including the amounts of virgin and postconsumer recycled (PCR) plastic content by resin type in beverage containers sold or distributed in Washington. These annual reporting requirements begin in 2026 for household cleaning and personal care product containers, and in 2029 for producers of wine in 187 milliliter beverage containers and dairy milk.

Manufacturers may request information or records submitted to Ecology be kept confidential, under Ecology's processes for protecting confidential business information.

Plastic trash bag producers must begin labeling the packaging of products sold or distributed in Washington with the name of the producer or a uniform resource locator or quick response code, beginning January 1, 2023.

Civil penalties up to \$1,000 for each day of violation are established for violations of registration, reporting, and labeling requirements. Prior to assessing a penalty, Ecology must issue at least two notices of violation.

Minimum Post-Consumer Recycled Content Requirements. Minimum PCR content requirements are established for plastic beverage containers, trash bags, and household cleaning and personal care product containers, as follows:

- for beverages other than dairy milk and wine in 187 milliliter bottles, effective:
 1. January 1, 2023, through December 31, 2025—no less than 15 percent post-consumer recycled plastic by weight;
 2. January 1, 2026, through December 31, 2030—no less than 25 percent post-consumer recycled plastic by weight; and
 3. on and after January 1, 2031—no less than 50 percent post-consumer recycled

- plastic by weight;
- for dairy milk and wine in 187 milliliter bottles, effective:
 1. January 1, 2028, through December 31, 2030—no less than 15 percent post-consumer recycled plastic by weight;
 2. January 1, 2031, through December 31, 2035—no less than 25 percent post-consumer recycled plastic by weight; and
 3. on and after January 1, 2036—no less than 50 percent post-consumer recycled content plastic by weight;
- for household cleaning and personal care products, effective:
 1. January 1, 2025, through December 31, 2027—no less than 15 percent post-consumer recycled plastic by weight;
 2. January 1, 2028, through December 31, 2030—no less than 25 percent post-consumer recycled plastic by weight; and
 3. on and after January 1, 2031—no less than 50 percent post-consumer recycled plastic by weight; and
- for trash bags, effective:
 1. January 1, 2023, through December 31, 2024—no less than 10 percent post-consumer recycled plastic by weight;
 2. January 1, 2025, through December 31, 2026—no less than 15 percent post-consumer recycled plastic by weight; and
 3. on and after January 1, 2027—no less than 20 percent post-consumer recycled plastic by weight.

Beginning January 1, 2024, or when rule making is complete, whichever is sooner, Ecology may annually adjust, review, and determine whether to adjust minimum PCR requirements for the following year of minimum PCR standards, including for a type of container within a category of covered products, after considering market conditions, recycling rates, and other specified factors. Products for which the state is preempted under federal law from regulating packaging material are not subject to minimum PCR requirements. Ecology must temporarily exclude from minimum PCR requirements any covered products in plastic containers for which a producer annually demonstrates to Ecology it is not technically feasible to meet minimum PCR requirements to comply with health or safety requirements of federal law.

Manufacturers of products subject to PCR requirements who do not achieve the PCR requirements are subject to penalties. Penalties are calculated based upon the amounts in pounds in aggregate of virgin plastic, PCR plastic, and other plastic used by manufacturers to produce covered containers, at a rate of 20 cents per pound of plastic below the amount of PCR plastic needed to achieve minimum PCR requirements. Ecology must consider granting penalty reductions based on specified factors.

Stakeholder Advisory Committee. By July 1, 2021, the Department of Commerce and Ecology must select an independent, third-party facilitator to convene a stakeholder advisory committee for making recommendations on the development of PCR requirements

for plastic packaging other than covered products. The facilitator must submit a report to the Legislature with the recommendations of the advisory committee by December 1, 2021. The facilitator must select at least one member to serve on the advisory committee as a representative for each organization in a list of over 30 specified types of organizations.

Expanded Polystyrene Prohibitions. It is prohibited to sell or distribute in or into Washington three types of expanded polystyrene products:

- portable containers designed for cold storage;
- food service products; and
- void filling packaging products.

These restrictions apply beginning June 1, 2023, for void filling packaging products, and June 1, 2024, for cold storage containers and food service products. Ecology must provide technical assistance and guidance to manufacturers of expanded polystyrene products, as requested. Civil penalties for violations are established, but prior to assessing a penalty, Ecology must issue at least two notices of violation.

Food Service Products Upon Request. Beginning January 1, 2022, food service businesses may only provide single-use utensils, straws, condiment packaging, and beverage cup lids only after affirming that the customer wants the product. Five types of facilities, including senior nutrition programs and health care providers, are exempt from these requirements, and the requirements only apply to the extent operationally feasible and practicable to activities of the Department of Corrections and Department of Children, Youth, and Families. Beverage cup lids may be provided without customer affirmation for hot beverages, delivery services or pickup, service via a drive-through, or at certain large music and sports venues. Utensils, straws, condiments, and beverage cup lids may be made available to customers using bins, cylinders, dispensers, or other self-service customer options. Civil penalties between \$150 and \$2,000 per day are authorized, but Ecology must issue at least two notices of a violation prior to assessing penalties. All food service businesses are encouraged to take actions supportive of a goal of reducing single-use food service product use and waste.

Preemption of Local Authorities. A city, town, county, or municipal corporation may not implement local PCR requirements for plastic beverage containers, trash bags, and household cleaning and personal care product containers subject to minimum PCR requirements.

A city, town, county, or municipal corporation may establish local purchasing requirements that include PCR standards that exceed minimum state standards for plastic trash bags and for household cleaning and personal care product containers purchased by the local government or its contractor.

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 a customer of a retail establishment.

Other Provisions. Ecology must annually complete a workload analysis that identifies its costs for implementing PCR requirements applicable to covered products. Ecology must equitably determine payment amounts by product producers within each category of covered product that are adequate to cover Ecology's costs, at first through a general order issued to producers, and by 2024 through an adopted rule. Ecology may contract for the services required to implement PCR requirements, expanded polystyrene prohibitions, and other new duties.

Ecology may conduct audits and investigations to ensure compliance with PCR requirements. Ecology must annually publish on its website the compliance status of covered products and registered producers. Ecology must post information on its website regarding expanded polystyrene prohibitions and food service upon-request policies. Ecology may develop educational materials and resources for education and outreach. Ecology may adopt rules as necessary for all new duties.

The Pollution Control Hearings Board has jurisdiction to hear appealable Ecology decisions to set or adjust minimum PCR content requirements and to temporarily exclude covered products from minimum PCR requirements for technical feasibility reasons, and appeals relating to penalties for violations of minimum PCR requirements, PCR product registration, reporting, and labeling requirements, and expanded polystyrene prohibitions and food service product upon-request requirements.

State agencies must purchase plastic trash bags manufactured by plastic trash bag producers that meet minimum PCR requirements, beginning July 1, 2024.

A Recycling Enhancement Account (REA) is created for penalties from PCR requirement violations. Expenditures from the REA must be used by Ecology to provide grants to local governments for supporting local solid waste and financial assistance programs.

A Recycled Content Account is created for the payments to Ecology to cover Ecology's costs of implementing, administering, and enforcing PCR requirements.

Subject to appropriations, Ecology must contract with a research university or consultant to study plastic resin markets, including market conditions and opportunities, and data needs and tracking opportunities. If funding is provided for the study, it must be completed by 2029.

The codes for plastics 1 through 7 that must be displayed on plastic bottles and rigid plastic containers are no longer required to be placed within three triangulated arrows. Polyvinyl chloride (PVC) is identified as a type of vinyl plastic number 3.

If any provision of the act or its application to any person or circumstance is held invalid,

the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Votes on Final Passage:

Senate	31	17	
House	73	24	(House amended)
Senate	31	18	(Senate concurred)

Effective: July 25, 2021