

SENATE BILL REPORT

SB 5697

As of January 17, 2022

Title: An act relating to renewing Washington's recycling system and reducing waste.

Brief Description: Renewing Washington's recycling system and reducing waste.

Sponsors: Senators Das, Rolfes, Kuderer, Lovelett, Lovick, Nguyen, Pedersen, Saldaña and Stanford.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/18/22.

Brief Summary of Bill

- Establishes a program for the management of consumer packaging and paper products to be funded and implemented by producers of those products, including recycling and reuse performance requirements, convenient collection service standards, responsible management, infrastructure investments, and education and outreach.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Gregory Vogel (786-7413)

Background: Department of Ecology Plastics and Recycling Evaluations. 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 was required to assess specified aspects of plastic packaging markets and processing infrastructure, and 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 postconsumer recycled content in packaging by January 1,

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.

2025; and

- reduce plastic packaging when possible, optimizing the use to meet the need.

In December 2020, Ecology submitted a report to the Legislature that included 10 policy recommendations related to the management of packaging materials.

2021 Plastics Legislation. In 2021, the Legislature established minimum recycled content requirements, a prohibition on certain expanded polystyrene (EPS) products, and optional food service ware requirements. The legislation sets varying minimum content rates and implementation dates for plastic beverage containers, plastic household cleaning and personal care product containers, and plastic bags. The sale and distribution of certain EPS products is prohibited, beginning June 1, 2023, for void filling packaging products, and June 1, 2024, for cold storage containers and food service products.

Beginning January 1, 2022, food service businesses may only provide single-use utensils, condiment packaging, and beverage cup lids only after affirming the customer wants the product. Exemptions are provided for hot beverages, delivery services or pickup, service via a drive-through, or at certain large music and sports venues.

Solid Waste Services. The Utilities and Transportation Commission (UTC) regulates haulers transporting solid waste, garbage, and recyclables from residential sites. The certificate to transport garbage and recyclables sets the geographic areas in which the company is authorized to collect waste. Cities and towns have the authority to provide their own solid waste services or to contract for solid waste services. Solid waste services provided or contracted by cities and towns are not subject to UTC regulation. Materials collected for recycling are transported to material recovery facilities, which receive, compact, repackage, or sort materials for the purposes of recycling.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Producer Responsibility Organization Duties. Beginning January 15, 2023, and annually thereafter, each producer that offers for sale, sells, or distributes in or into Washington covered products must join a producer responsibility organization (PRO) that is registered with Ecology.

Covered products include packaging and paper products sold or supplied to consumers. A producer is the entity responsible for compliance with PRO requirements and is one of the following:

- if the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the manufacturer;
- if the covered product is manufactured by a person other than the brand holder, the producer is the licensee of a brand or trademark under which the product is sold; or
- if there is no person over whom the state can constitutionally exercise jurisdiction, the producer is the importer or distributor.

PROs must submit the following with their registration:

- a list of all member producers and their brands of covered products, and members of the board of directors; and
- data on covered products supplied into the state to consumers, until a PRO begins to submit annual reports.

By June 30, 2023, and every June 30th thereafter, every PRO must submit an annual payment, as determined by Ecology, to fund the:

- costs to implement, administer, and enforce the program, including rule making;
- statewide needs assessment; and
- support and facilitation of the Renew Advisory Council.

Beginning July 1, 2025, or within six months of the first adoption of rules relating to the program, whichever is later, every PRO must submit a plan to Ecology for approval.

A PRO registered with Ecology as of January 15, 2025, must:

- implement its plan approved by Ecology by July 1, 2026, or within six months of plan approval, whichever is later; and
- submit an annual report for the prior calendar year to Ecology by July 1, 2027, and each July 1st, thereafter.

PROs that register after January 15, 2025, must submit a plan within one year of registration, and implement the plan within six months of approval.

A PRO that submits information or records to Ecology may request that it be made available only for the confidential use of Ecology, and Ecology must grant this request if not otherwise in conflict with state law or detrimental to the public interest.

Department Duties. Ecology must implement, administer, and enforce the program, and is authorized to adopt rules for this purpose. By April 1, 2023, and every April 1st thereafter, Ecology must identify annual costs to implement, administer, and enforce the program in the next fiscal year, and determine a total annual fee payment to be paid by each PRO that is adequate to cover, but not exceed these costs, and the costs of the statewide needs assessment and support and facilitation of the Renew Advisory Council.

Beginning January 1, 2023, Ecology may develop criteria to determine whether covered products are reusable, recyclable, or compostable. When developing the criteria, Ecology must, at a minimum, consider whether the materials:

- are or may be collected, separated, and processed in sufficient quantity and quality into a marketable feedstock that can be used in the production of new products;
- contain toxic substances; or
- are designed in a way that is problematic for reuse, recycling, or composting.

Beginning January 1, 2028, and no more frequently than every five years, Ecology may by rule:

- require PROs to fund activities to make convenient recycling collection services available from additional locations or entities determined to be significant sources of covered product waste, including but not limited to public places and official gatherings;
- establish reuse and recycling performance requirements for years not specified;
- add performance requirements for material categories not specified; and
- adjust the performance requirements based on certain factors, such as market conditions and capacity of infrastructure, but may not adjust the overall performance rates for covered products below the minimum requirements.

Ecology must maintain a public website that lists each PRO and its member producers, and makes available PRO plans and reports. Ecology may impose a civil penalty up to \$1000 per violation per day on any person who violates provisions of the program and up to \$10,000 per violation per day for any second and subsequent violation.

Statewide Needs Assessment. Ecology must conduct a statewide needs assessment, to be completed within two years of the effective date of the act, subject to the following requirements:

- the final scope of the assessment must be determined based on comments and recommendations from the Renew Advisory Council, the UTC, and any PRO registered by January 15, 2023; and
- these entities must have the opportunity to review and comment on a draft assessment prior to its completion.

The assessment must be carried out by a third-party consultant selected by Ecology and funded by PROs.

The assessment must:

- evaluate the capacity, costs, gaps, and needs for factors, such as availability of recycling services for covered products; education and outreach activities; and availability and performance of collection, transport, and processing capacity and infrastructure;
- compile information related to costs for recycling services and other relevant information for PRO funding requirements;
- identify cost factors and other variables to be considered in the development of an objective method for establishing reimbursement rates to government agencies;
- identify key terms and conditions to be considered in the development of a service agreement for services provided by government agencies;
- compile relevant information for criteria to determine whether a covered product is recyclable, reusable, or compostable;
- evaluate how the state's recycling system can be managed in a socially just manner for purposes of informing PRO plans; and

- evaluate the extent to which covered products contribute to litter and marine debris for informing how a PRO can support litter and marine debris prevention.

Stakeholder Consultation. Prior to submitting new or revised plans to Ecology, a PRO must consult with and solicit and respond to input and recommendations from the Renew Advisory Council, the UTC, and other stakeholders.

PRO Plan Contents. A PRO must submit a plan to Ecology describing the approach and activities to fulfill program requirements.

All plans and plan updates must contain several elements, including:

- identification of the governing board members of the PRO;
- a list and explanation of the covered products supplied or sold into Washington by each member producer and their brands;
- the collection and structure of the fees owed by producers to implement the plan;
- how the PRO will encourage and incentivize waste prevention and reduction;
- how the PRO will use and interact with existing recycling programs and infrastructure;
- how the PRO will fund reuse and recycling infrastructure and market development;
- activities to meet recycling, reuse, and compost design and performance requirements;
- a list of covered products designated for collection;
- activities to make collection services available in accordance with the convenience standards;
- the jurisdictions where curbside collection services are available;
- education and outreach activities;
- activities to minimize the amount, cost, and toxicity of residuals and ensure that covered products designated for collection do not contain toxic substances;
- a description of how plan implementation will ensure responsible management practices; and
- a description of the objective method for establishing reimbursement rates to government agencies for services delivered.

Collection and Management. Covered products must be managed in a manner consistent with the state's solid waste management hierarchy. Covered products must be responsibly managed at facilities operating with human health and environmental protection standards broadly equivalent to or better than those required in the U.S. and other countries that are members of the Organization for Economic Cooperation and Development.

PRO plans must include measures to:

- track, verify, and publicly report the responsible management of covered products;
- promote and facilitate reuse of covered products designed to be reused;
- meet quality standards for recycled materials so that covered products may be used to manufacture new products;

- ensure that covered products do not contain toxic substances; and
- document the locations of all material recovery facilities and processing facilities.

Prior to use of any advanced technology for conversion of postuse plastic polymers for the purpose of producing recycled material, the PRO must provide Ecology with a third-party assessment to examine the environmental impacts of the technology.

Material recovery facilities and other processing facilities receiving covered products must measure and report annually on parameters such as tons received, material quality and contamination, outbound tons and end markets, residuals, pollutant emissions, and labor metrics.

Material recovery facilities and other processing facilities must prioritize arrangements proposed by a PRO regarding long-term contracts and other purchase agreements, based on fair market pricing, to facilitate recycling of covered products back into covered products.

Reuse and Recycling Performance Requirements. A PRO must demonstrate that all covered products are designed to be reusable, recyclable, or compostable by January 1st of the ninth calendar year from the effective date of the act, in accordance with criteria established by Ecology.

At minimum, each program must achieve the following performance requirements:

- by the sixth calendar year from the effective date of the act, a minimum of 55 percent of all covered products reported by the PRO as supplied into the state are reused or recycled, with a minimum of five percent reused; and
- by the ninth calendar year from the effective date of the act, a minimum of 75 percent of all covered products reported by the PRO as supplied into the state are reused or recycled, with a minimum of 10 percent reused.

For each material category of covered products reported by the PRO as supplied into the state, by the sixth calendar year from the effective date of the act, each program must achieve the following combined reuse and recycling rates:

- for rigid plastic, 25 percent;
- for flexible plastic, 5 percent;
- for paper, 60 percent;
- for aluminum, 55 percent;
- for steel, 45 percent; and
- for glass, 50 percent.

In its initial plan, a PRO must propose combined reuse and recycling rates for each material category of covered products reported as supplied into the state, to be achieved by the ninth calendar year from the effective date of the act, and by the final calendar year of each plan implementation period under each subsequent plan.

The proposed combined reuse and recycling rates for each material category of covered products must:

- increase by at least 20 percentage points above the rate required under the previous plan implementation period if the previous rate requirement was 60 percent or below; or
- increase by at least 10 percentage points above the rate required under the previous plan implementation period if the previous rate was above 60 percent, up to a rate of 90 percent.

A PRO that does not achieve the reuse and recycling performance requirements must submit a revised plan to Ecology to specify how the PRO's program will be modified to meet the requirements.

Funding Requirements. A PRO implementing a plan must fully fund all activities required under the program. A PRO must develop a fee system to collect fees from participating producers that is based on the estimated cost of managing the material, or a similar approach proposed by the PRO, and uses ecomodulation factors to incentivize the use of packaging design attributes that reduce the environmental impacts of covered products.

A PRO must reimburse a government agency that chooses to seek reimbursement for recycling services delivered in accordance with program requirements, including any administrative, public education, collection, transportation, and sorting or processing costs with consideration of revenues received for recycled materials. Reimbursement rates must be calculated using an objective method developed through the consultation process and based on documented costs submitted by the government agency or a formula developed through the consultation process, if documented costs are not provided.

Convenience Standards. In every jurisdiction in which covered products are sold or supplied, a PRO must fund activities to make convenient collection services available for the full list of covered products designated for collection in the plan. Convenient collection services must be available to residents as follows:

- curbside collection must be provided to residents in single-family and multifamily residences where curbside garbage collection services are provided, except for covered products designated for alternate collection;
- in jurisdictions without curbside garbage collection, and in all areas for covered products designated for alternate collection, free and equitable access to permanent collection facilities must be provided that are located at minimum at:
 - each existing solid waste transfer, processing, disposal site or other drop-off location, or a location of equal convenience; and
 - additional drop-off locations or collection events in communities not covered by curbside garbage collection or the other alternate collection methods.

In any jurisdiction where collection of source separated recyclable materials from residences is provided by a city, town, county, or UTC-regulated company, a PRO must

meet its curbside collection service obligation through the existing curbside collection service.

A PRO must, in its plan, establish a statewide list of covered products designated for collection.

Government Agencies—Collection Authority. The provisions of the program do not obligate a county, city, or town to participate in a plan implemented by a PRO, or restrict the waste collection authorities of those entities. A city, town, county, or other government agency may enter into agreements with PROs for purposes of reimbursement of costs of services provided in accordance with the program.

Where a city, town, or county chooses not to exercise its collection authority, curbside collection of covered products designated for collection in areas regulated by UTC must be provided by a company that holds an applicable certificate issued by UTC to transport garbage and recyclables.

A city, town, or county may not enact an ordinance requiring producers of covered products to provide additional residential recycling services for covered products unless producers are not required to fully fund the requirements of the program.

Reimbursement for Services Regulated by UTC. In areas where collection of source separated recyclable materials from residences is regulated by UTC, a PRO must provide reimbursement to the company granted a certificate to provide service in accordance with rates approved by UTC, provided that the service meets program requirements.

Service Provider Agreements. Except for residential curbside recycling services, a PRO that enters into contractual agreements with service providers to carry out producer responsibilities must:

- use fair and competitive procurement practices;
- provide opportunities for women, minority, or veteran-owned businesses, small businesses, and independent operators;
- require that all contracted service providers meet minimum operating standards and high labor standards and provide fair opportunities regardless of ethnicity, race, gender, age, disability, religion, sexual orientation, or national origin; and
- require that contracted service providers maintain records and provide the PRO with verifiable chain of custody documentation to evaluate performance relative to the requirements of the program.

Infrastructure Investments. Each PRO must fund and support investments in reuse and recycling infrastructure and market development in Washington State as needed to achieve the convenience standards, responsible management standards, the recycling and reuse rate requirements, or to address infrastructure gaps identified in the statewide needs assessment and through the consultation process.

This may include, but is not limited to:

- installing or upgrading equipment to improve sorting of covered products or mitigating impacts of covered products to other commodities at sorting and processing facilities; and
- capital expenditures for new technology, equipment, and facilities.

Education and Outreach. Each PRO plan must include an education and outreach component that effectively reaches diverse residents, is accessible, clear, and supports achievement of the reuse and recycling performance requirements. The education and outreach component must, at minimum, develop outreach and educational materials, resources, and campaigns addressing information about:

- proper end-of-life management of covered products;
- where and how to recycle covered products designated for collection; and
- how to prevent contamination.

PRO Reporting. Beginning July 1, 2027, and each July 1st thereafter, each PRO must submit an annual report to Ecology, including:

- the quantity and weight of covered products supplied, separated by material category, to determine recycling and reuse rates and other performance categories;
- the final destinations of recycled material managed by the program;
- the reuse and recycling rates achieved by the program;
- a description of the levels and types of physical contamination in the materials collected and managed by the program;
- activities undertaken to meet the convenience standards for collection of covered products;
- a description of the investments made in reuse and recycling infrastructure and market development;
- actions taken to prevent and reduce waste and reduce life-cycle impacts of covered products;
- actions taken to design covered products to be reusable, recyclable, or compostable;
- the total cost of implementing the plan approved by Ecology; and
- other performance metrics related to the program.

Prior to the submission of the annual report, all nonfinancial data and information that is material to Ecology's review of program compliance must be audited.

Plan Approval, Updates, and Revisions. A PRO must submit a plan to Ecology that addresses five calendar years of operation. A plan is valid for no more than five years. Within three years of implementation of the initial plan, a PRO must submit an updated plan for the following five calendar years to address changes in the operations and activities of the program. For all subsequent plans, a PRO must submit an updated plan one year prior to the expiration of the plan.

If the reuse and recycling performance requirements have not been met as of the time an updated plan is required, an independent evaluation must be conducted of the PRO's efforts and provide information for the PRO to improve reuse and recycling rate performance. Ecology may require a PRO to revise its plan more frequently if the program and activities to implement the plan fail to achieve the recycling and reuse performance requirements or other significant requirements of the program.

Renew Advisory Council. The Renew Advisory Council is established and consists of the following members appointed by Ecology:

- four representatives of local governments representing geographic areas across the state;
- one representative of tribes or tribal or indigenous services organizations;
- one representative of special purpose districts;
- two representatives of community-based organizations representing overburdened communities and vulnerable populations;
- two representatives of environmental organizations;
- one owner or operator of a small business;
- six representatives of the recycling industry;
- four representatives of producers of covered products or producer trade associations; and
- two representatives of packaging suppliers that are not producers as defined by the program.

Councilmembers must be appointed by Ecology by January 1, 2023.

Duties of the council include:

- advise and make recommendations on the scope of the statewide needs assessment;
- review and comment on a draft statewide needs assessment prior to completion;
- advise and make recommendations on PRO plans and reports; and
- provide input, review, and comment on program rule making.

Minimum Recycled Content. Minimum postconsumer recycled content standards are established for polypropylene tubs used for food products, polyethylene terephthalate (PET) thermoform plastic containers, and single-use plastic cups. Producers of these products must meet the annual minimum postconsumer recycled content on average for the total quantity of the products, by weight, that are sold, offered for sale, or distributed in or into Washington.

For polypropylene tubs, the requirements are as follows:

- January 1, 2026, through December 31, 2030—no less than ten percent postconsumer recycled content plastic by weight; and
- on and after January 1, 2031—no less than 30 percent postconsumer recycled content plastic by weight.

For PET thermoform container packaging for consumable goods, the requirements are:

- January 1, 2026, through December 31, 2030—no less than ten percent postconsumer recycled content plastic by weight; and
- on and after January 1, 2031—no less than 30 percent postconsumer recycled content plastic by weight.

For PET thermoform container packaging for durable goods, the requirements are:

- on and after January 1, 2031—no less than 30 percent postconsumer recycled content plastic by weight.

An exemption is provided for packaging designed to accompany a durable good where that durable good model is designed prior to the effective date of the requirement.

For polypropylene single-use plastic cups, the requirements are:

- January 1, 2029, through December 31, 2030—no less than 15 percent postconsumer recycled content plastic by weight; and
- on and after January 1, 2031—no less than 25 percent postconsumer recycled content plastic by weight.

For PET and polystyrene single-use plastic cups, the requirements are:

- January 1, 2029, through December 31, 2030—no less than 20 percent postconsumer recycled content plastic by weight; and
- on and after January 1, 2031—no less than 30 percent postconsumer recycled content plastic by weight.

Producers of the categories of products must comply with existing registration and reporting requirements for covered products subject to minimum recycled content standards.

Truth in Labeling. Beginning January 1, 2026, a person may not distribute, sell, or offer to sell, including by means of remote sale, any covered product that makes a deceptive or misleading claim about its recyclability. A covered product that displays a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating it is recyclable is deemed to be deceptive or misleading unless it is designated for collection in a PRO plan.

A label is not considered a misleading or deceptive claim of recyclability if:

- it is required by another state or by a federal law or agency at the time that the claim is made;
- it is part of a widely adopted and standardized third-party labeling system; or
- it uses a chasing arrows symbol in combination with a clearly visible line placed at a 45 degree angle over the chasing arrows symbol to convey that an item is not recyclable.

Beginning July 1, 2022, a city, town, or county may not enact an ordinance restricting the

distribution or sale of covered products due to displaying a symbol or statement indicating it is recyclable if the covered product is, at the time the claim is made:

- designated for collection in a PRO plan;
- required to display the symbol or statement by another state or federal law or agency;
- part of a widely adopted and standardized third-party labeling system; or
- using a chasing arrows symbol with a line placed at a 45 degree angle.

Roll Carts. Beginning January 1, 2023, a manufacturer or person may only sell, offer for sale, or distribute for use in Washington plastic collection bins made from at least 25 percent postconsumer recycled content, including at least 10 percent derived from curbside recycling programs.

A person providing solid waste collection services may distribute plastic collection bins that were in use or in its inventory prior to January 1, 2023, until the end of the bins' useful lives. A person with an existing municipal contract for plastic collection bins that was in place prior to August 1, 2022, is exempt until the expiration or renewal date of the contract.

Local Solid Waste Management Plans. As part of the waste reduction and recycling element of comprehensive solid waste management plans, plans that are newly, developed, updated, or amended after July 1, 2026, may incorporate by reference the plans of PROs. If participating in a PRO plan as part of a contamination reduction and outreach plan, the PRO plan must be referenced.

Appropriation: None.

Fiscal Note: Requested on January 6, 2022.

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

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