

HOUSE BILL REPORT

SHB 1085

As Passed House:
February 28, 2023

Title: An act relating to reducing plastic pollution.

Brief Description: Reducing plastic pollution.

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Mena, Bateman, Reed, Fitzgibbon, Ramel, Peterson, Pollet, Berry, Walen, Doglio, Macri, Simmons, Thai, Cortes, Kloba and Ormsby).

Brief History:

Committee Activity:

Environment & Energy: 1/10/23, 1/26/23 [DPS];
Appropriations: 2/6/23, 2/9/23 [DPS(ENVI)].

Floor Activity:

Passed House: 2/28/23, 97-0.

Brief Summary of Substitute Bill

- Prohibits the sale, distribution, and installation of certain expanded or extruded plastic foam overwater structures, and of expanded or extruded plastic foam blocks and floats used in overwater structures.
- Prohibits lodging establishments from providing personal health or beauty products in certain plastic containers or wrappers, effective July 1, 2027, for lodging establishments with 50 or more lodging units, and July 1, 2028, for smaller lodging establishments.
- Requires any construction in which a drinking fountain is required under the International Building Code to also require the provision of a bottle filling station for each required drinking fountain.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Barnard, Berry, Duerr, Fey, Goehner, Lekanoff, Ramel, Slatter and Street.

Minority Report: Without recommendation. Signed by 3 members: Representatives Ybarra, Assistant Ranking Minority Member; Abbarno and Couture.

Staff: Jacob Lipson (786-7196).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Environment & Energy be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Staff: Dan Jones (786-7118).

Background:

Regulation of Plastic Products.

Since 1992, state law has required plastic bottles and rigid plastic containers to be labeled with a code identifying the type of resin used to produce the container. The types of plastic resin are categorized as:

1. polyethylene terephthalate (PETE);
2. high-density polyethylene (HDPE);
3. vinyl (V);
4. low-density polyethylene (LDPE);
5. polypropylene (PP);
6. polystyrene (PS); and
7. other.

A variety of plastic products can be made from plastic foams, and plastic foams can be made from a variety plastic resin types.

Legislation enacted in 2020 and 2021 established a variety of restrictions on plastic products:

- retail establishments have been prohibited from providing single-use plastic carryout bags since 2021;
- expanded PS void-filling packaging products may not be sold or distributed in

- Washington beginning June 1, 2023;
- certain expanded PS portable cold storage containers and food service products are prohibited from being sold or distributed in Washington beginning June 1, 2024; and
 - food service businesses may provide single-use food service products, including plastic single-use food service products, only if a consumer affirms that it wants the items, and utensils provided by a food service business may not be bundled or packaged in plastic in such a way that the consumer is unable to take only the type of utensil desired without taking other utensils.

Penalties for violations of these requirements are appealable to the Pollution Control Hearings Board.

Water Pollution Regulations and Programs.

Washington law authorizes the Department of Ecology (Ecology) to implement the federal Clean Water Act's discharge program and state water pollution control laws. Through these programs, Ecology is authorized to issue federal and state water quality permits for persons that discharge to state waters.

The Hydraulic Project Approval (HPA) program is a permitting process managed by the Washington Department of Fish and Wildlife (WDFW). Any activity that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state must first obtain an HPA from the WDFW. Through the HPA process, the WDFW specifically analyzes and conditions projects based on the anticipated effect on fish life.

The Department of Natural Resources has responsibility for coordinating the cleanup, with other state agencies, of state and aquatic land pollution from plastic and other marine debris.

State Building Code Water Bottle Filling Station Provisions.

The State Building Code Council (SBCC) is a state agency that adopts and triennially updates the State Building Code (State Code). The State Code adopted by the SBCC establishes the minimum building, mechanical, fire, plumbing, and energy code requirements applicable to the construction of buildings.

Provisions of the State Code adopted by the SBCC currently require buildings classified for educational occupancy, or Group E buildings, with an occupant load of 30 persons to include a minimum of one bottle filling station provided on each floor of the building. The bottle filling station may be integral to the drinking fountain. In addition, for all types of occupancies that require more than two drinking fountains per floor or secured area, the State Code authorizes bottle filling stations to be substituted for up to 50 percent of the required number of fountains.

Summary of Substitute Bill:

Water Bottle Filling Stations under the State Building Code.

In any construction subject to the International Building Codes (Code) as adopted and amended by the State Building Code Council (SBCC) in which a drinking fountain is required by a Code, the rules adopted by the SBCC must require, for each required drinking fountain, the provision of a bottle filling station or a combined drinking fountain and bottle filling station. The SBCC's rules must take effect by July 1, 2026, and may be updated periodically.

Plastic Health or Beauty Product Containers and Wrappers.

Lodging establishments are prohibited from providing shampoo, hair conditioner, hand soap, bath soap, body washes and shower gels, lotion, and hand sanitizer in a small plastic container with a capacity of less than 6 ounces, a plastic wrapper, or other plastic packaging. Lodging establishments subject to these restrictions include hotels, motels, resorts, inns, timeshares, short-term rentals, and vacation rentals, but do not include hospitals, retirement communities, prisons, jails, homeless shelters, or long-term rentals, among other types of establishments. Refillable bulk containers are not subject to these restrictions. Lodging establishments may make personal health and beauty products in restricted containers available to be provided upon request. These restrictions take effect January 1, 2027, for lodging establishments with 50 or more units, and January 1, 2028, for lodging establishments with fewer than 50 units.

The Department of Ecology (Ecology) may adopt rules to implement, administer, and enforce these requirements. Violations of these requirements are subject to civil penalties of up to \$500 for each day of violation, and up to a \$2,000 annual limit on penalties issued to a lodging establishment. Penalties may be appealed to the Pollution Control Hearings Board (PCHB). Enforcement by Ecology must primarily be based on complaints filed with Ecology, and Ecology must establish a complaint-filing forum and a website with education and outreach resources that provides information to lodging establishments and consumers.

Expanded or Extruded Foam Overwater Structures, Blocks, and Floats.

Beginning January 1, 2024, it is prohibited to sell, distribute, install, or arrange for the installation of overwater structures containing expanded or extruded plastic foam, or of expanded or extruded foam blocks or floats used in overwater structures, unless the foam is fully enclosed and contained in a shell of concrete, aluminum, steel, or .15 inch-thick plastic. Floating homes and floating on-water residences are excluded from these restrictions, but docks, floats, walkways, and other accessory overwater structures associated with floating homes or on-water residences are subject to these restrictions.

Ecology may adopt rules to implement, administer, and enforce these requirements. Persons in violation of these requirements are subject to civil penalties of up to \$10,000 per violation, with penalties appealable to the PCHB, and collected penalties being deposited in the Model Toxics Control Operating Account.

The Department of Fish and Wildlife must carry out a study and make findings and

recommendations to the Legislature by November 1, 2025, related to the durability of air-filled and foam-filled water-based structures other than the foam structures and products that are subject to the restrictions enforced by Ecology.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Environment & Energy):

(In support) Plastic threatens wildlife on land and in the water. Plastic takes hundreds of years to break down in the environment, and contains harmful chemicals. A majority of plastic produced today is intended to be thrown away after a single use; a few seconds or minutes of convenience should not result in a product persisting in the environment for hundreds of years. This bill will reduce plastic use in three ways: (1) by reducing the need for single-use plastic water bottles by making refillable water bottles more convenient; (2) by restricting foams used in docks; and (3) by moving hotels towards refillable bulk containers for shampoo and soap. Foam-filled floats leak small bits of expanded polystyrene into the environment whenever the floats are punctured, releasing unseen microplastics and chemicals into the water as the foam degrades upon interaction with water. Foam docks are popular because they work, but a compromise with the maritime industry needs to be reached where the worst types of foam floats are phased out. Small plastic hotel bottles are difficult for recycling facilities to manage, and alternative bulk soap and shampoo dispensers will save hotels money in the long run, with lower environmental impacts. Small plastic hotel bottles are wasteful, because the contents of the bottles, as well as the bottles themselves, are often discarded once a guest leaves. Cardboard packaging for beauty products would continue to be allowed. Other state and local governments have enacted similar laws to restrict small plastic hotel bottles. Many hotel chains are already converting to bulk containers.

(Opposed) Plastic waste in the environment is a problem, but this bill is focused on law-abiding businesses, instead of persons that contribute to litter because they don't pay for or receive solid waste services. Litter cleanup along roadways would be more impactful to reduce plastic in the environment, but that problem is ignored. Foam-filled floats are the marine industry's preferred type of float, as they don't immediately become unusable once the float is punctured, and require less maintenance. There are other environmental tradeoffs from moving to air-filled floats, including an increased volume of solid waste due to shorter product lifespans. Recreational boatyards have a big economic impact, and this bill would significantly impact users of docks. It would be more reasonable to focus restrictions on soft-shell foam floats, which are more likely to release foam into the environment. Restrictions on small plastic hotel bottles should be amended to more closely

mirror restrictions that were enacted in California. The bill covers too many types of small hotel products, and does not provide enough lead time for the hospitality industry to comply with requirements, and will impose heavy up-front costs on hotels.

(Other) In the water bottle filling station provision of the bill, the reference to the building code should specify the International Building Code for commercial projects, and not the residential building code.

Staff Summary of Public Testimony (Appropriations):

(In support) This is a common sense approach to reducing plastic pollution for things that are difficult to recycle. Many major hotel chains have already committed to not using mini bottles, so the bill creates a level playing field. There should not be a large need for enforcement. The water filling station requirement is only for new construction. The study of Styrofoam docks would help examine the issue of do-it-yourself homeowner solutions that can be problematic. The requirements around docks and hotels are aligned with what other states are doing. It is time to take the initiative on reducing the use of plastic products, especially the ones causing the most harm. The bill doesn't require a bottle filling station in the legislative building, but still, one would be appreciated.

(Opposed) The bill punishes people who work in waste management, but doesn't keep plastic out of the oceans and streams. The funding would be better spent on providing garbage disposal where it doesn't exist. There needs to be a system to collect homeless people's garbage.

Persons Testifying (Environment & Energy): (In support) Representative Sharlett Mena, prime sponsor; Nora Nickum, Seattle Aquarium; Pam Clough, Environment Washington; Blair Englebrecht, Puget Soundkeeper Alliance; Annabella Hillyer, Oceana; Giovanni Severino, Latino Community Fund; Heather Trim, Zero Waste Washington; Ann Murphy, League of Women Voters of Washington; Ezra Eickmeyer, Terramer Inc; and Dean Jackson.

(Opposed) John Worthington; Walter Reiter, Expanded Polystyrene Industry Alliance; Samantha Louderback, Washington Hospitality Association; Roman Daniels-Brown, Northwest Marine Trade Association; Peter Godlewski, Association of Washington Business; Tim Shestek, American Chemistry Council; and John Stuhlmiller, Washington Public Ports Association.

(Other) Brent Ludeman, Building Industry Association of Washington.

Persons Testifying (Appropriations): (In support) Heather Trim, Zero Waste Washington; Peter Godlewski, Association of Washington Business; and Ezra Eickmeyer, Terramer Inc.

(Opposed) John Worthington.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.