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## Environment & Energy Committee

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### HB 1900

**Brief Description:** Implementing strategies to achieve higher recycling rates within Washington's existing solid waste management system.

**Sponsors:** Representatives Fey, Reeves, Walen, Rule, Chapman, Bronoske, Wylie, Low, Ryu, Leavitt, Ramos, Callan, Kloba, Berg, Thai, Pollet and Shavers.

#### Brief Summary of Bill

- Requires producers to register and report to the Department of Ecology (Ecology) regarding their sale and distribution in Washington of certain paper products and packaging (covered PPP).
- Requires Ecology to carry out a recycling system needs assessment related to covered PPP, to publish and periodically update lists of recyclable materials suitable for curbside or drop-off collection, and to carry out a material characterization study to inform whether studied types of materials may be considered recyclable.
- Makes changes to minimum postconsumer recycled content (PCRC) requirements for certain plastic products, including requiring additional types of plastic products to meet PCRC requirements and amending existing PCRC requirements.

**Hearing Date:** 1/11/24

**Staff:** Jacob Lipson (786-7196).

**Background:**

Solid Waste Management in Washington.

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*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.*

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. County and city solid waste management plans are required to contain certain elements, including a waste reduction and recycling element, and a recycling contamination reduction and outreach plan. Under state laws addressing the local planning and management of solid waste, a waste management hierarchy is established for the collection, handling, and management of solid waste and prioritizes, in descending order: (1) waste reduction; (2) recycling, with source separation of recyclable materials as the preferred method; (3) energy recovery, incineration, or landfill of separated waste; and (4) energy recovery, incineration, or landfill of mixed municipal solid wastes.

The Utilities and Transportation Commission (UTC) regulates private service providers that transport solid waste, garbage, and recyclables from residential sites. The certificate to transport garbage and recyclables sets the geographic areas in which the service provider is authorized to collect waste. Cities and towns have the authority to provide their own solid waste collection services or to contract for solid waste collection services, including collection of source-separated recyclable materials. Counties may contract for the collection of source-separated recyclable materials in unincorporated areas of the county. Solid waste collection services provided or contracted by cities and towns or contracted by counties 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.

#### Plastic Labeling.

State law categorizes the following types of plastic resin:

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.

#### Plastics and Packaging Studies.

In 2019 the Legislature directed Ecology to evaluate and assess the amount and types of plastic packaging sold in and 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:

- achieving 100 percent recyclable, reusable, or compostable packaging in all goods sold in

- Washington by January 1, 2025;
- achieving at least 20 percent postconsumer recycled content (PCRC) in packaging by January 1, 2025; and
- reducing 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.

In January 2023 Ecology submitted a report to the Legislature from a contracted consultant that was mandated by a 2022 Operating Budget proviso. The report evaluates the amount and types of consumer packaging and paper products sold in and into Washington, and the recycling rates for those materials. The report also includes policy recommendations for how to improve the management of certain problematic plastic and paper materials that are often littered, a source of environmental pollution, disruptive to sorting and recycling infrastructure, or not recyclable or compostable at scale.

In December 2023 Ecology submitted a report, mandated by a 2023 Operating Budget proviso, related to consumer packaging and paper materials to the Legislature from a contracted consultant. The report recommends the highest achievable recycling, reuse, and source reduction performance rates for Washington under four policy scenarios involving a combination of policies, including scenarios that include an extended producer responsibility or product stewardship program for packaging and paper products, a deposit return system for beverage containers, the establishment of new postconsumer recycling rate targets for plastic products, and prohibitions on the use of false recyclability claims on product labels. The December 2023 report also reported the surveyed input of Washington residents on the state's recycling system.

#### Minimum Recycled Content Requirements.

In 2021 the Legislature established minimum recycled content requirements applicable to three categories of plastic products or products in plastic containers: trash bags; household and personal care product containers; and plastic beverage containers. Producers subject to minimum PCRC requirements were required to register with Ecology and pay fees to cover Ecology's administrative costs related to minimum recycled content standards beginning in 2022. Unique minimum PCRC rates and timelines over which the minimum recycled content rates increase apply to:

- beverages other than wine in 187 milliliter plastic beverage containers, requiring 15 percent PCRC in 2023, increasing to 50 percent by 2031;
- wine in 187 milliliter plastic beverage containers and dairy milk, requiring 15 percent PCRC in 2023, increasing to 50 percent by 2036;
- household cleaning and personal care product containers, requiring 15 percent PCRC in 2023, increasing to 50 percent by 2031; and
- plastic trash bags requiring 10 percent PCRC in 2023, increasing to 20 percent by 2027.

Beginning in 2025 Ecology may annually review and determine whether to adjust minimum

PCRC requirements for the following year. Ecology may do so for a type of container within a category of covered products after considering market conditions, recycling rates, and other specified factors. Manufacturers of products that are subject to PCRC requirements who do not achieve the PCRC requirements are subject to penalties. Penalties are calculated based upon the amounts in pounds in aggregate of virgin plastic, PCRC 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 PCRC plastic needed to achieve minimum PCRC requirements.

Other.

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.

**Summary of Bill:**

Producer Registration and Reporting on Paper Products and Packaging.

Producers of certain types of paper products and packaging (covered PPP) must register with the Department of Ecology (Ecology), beginning January 1, 2025. Producers are defined to include specified entities associated with covered PPP, but do not include government entities, nonprofit organizations, or entities that sell, distribute, or import de minimis volumes of covered PPP.

- Packaging is defined to include various materials, including single-use items that facilitate food or beverage consumption.
- Covered PPP does not include materials intended for long-term use associated with durable products; materials used to package federally regulated pesticide products; medical devices, drugs, or animal biologic drug products; reusable or refillable propane gas containers; paint containers; bound books; or newspaper or paper used for building construction.

Beginning April 1, 2026, producers must begin submitting annual reports to Ecology that include, by material category, the volume in pounds of covered products sold or distributed into Washington during the preceding calendar year. National data allocated on a per capita basis for Washington may be submitted if a producer demonstrates to Ecology that state-level data are not feasible.

The registration and reporting of producers must include specified information and may occur through a third-party representative that registers on behalf of producers.

Ecology may adopt rules to implement, administer, and enforce producer reporting and registration requirements. Ecology may conduct audits and investigations. Ecology must annually publish a list of registered producers and their brands and compliance status on their website.

### Material Characterization Study and Recyclability Claims.

Ecology must produce a material characterization study by January 1, 2027, to inform whether studied types of material are recyclable in Washington. The material characterization study must consider specified factors and be updated no less than every five years, with an initial update in 2030.

A product or packaging is considered recyclable in Washington if certain specified criteria are met, including:

- based on Ecology's material characterization study, the material type and form:
  - is collected for recycling by recycling programs for jurisdictions that encompass at least 60 percent of Washington's population; and
  - are sorted into defined streams for recycling processes by large volume processing or transfer facilities that process materials and collectively serve at least 60 percent of Washington's recycling programs;
- the product or packaging has a demonstrated recycling rate of at least 75 percent;
- prior to 2033, a product or packaging not collected by curbside collection programs is recyclable if the non-curbside collection recovers at least 60 percent of the product or packaging, and the material has economic value at the end of its useful life;
- beginning in 2033, a product or packaging not collected by curbside collection programs is recyclable if the non-curbside collection recovers at least 75 percent of the product or packaging, and the material has economic value at the end of its useful life; or
- beginning in 2026, if a product or packaging is part of a program under state or federal law governing the recyclability or disposal of that product or packaging, if Ecology determines the product or packaging will not increase curbside recycling contamination or deceive customers.

To be considered recyclable, packaging must be designed to not include contents that prevent the recyclability of packaging.

Beginning January 1, 2028, producers are prohibited from making deceptive or misleading claims about a covered product's recyclability, including the use of symbols or statements associated with recycling for products or packaging that do not meet the statistical criteria for being considered recyclable in Washington.

### Recycling Goals, Needs Assessment, and Material Characterization Study.

A goal is established for Washington to achieve a 60 percent recycling rate for covered PPP. A second goal is established for the state to reduce the sale or use of packaging not determined to be recyclable using the criteria established for making labeling and marketing claims by 50 percent by 2030 and 75 percent by 2035. Ecology must track progress towards these goals and make progress public. These goals must be used to inform the statewide needs assessment.

By October 1, 2025, Ecology must develop two lists:

- Recyclable materials suitable for curbside collection from residents in single and multifamily residences. Initially, this list must include newspaper; paperboard and chipboard; loose paper; corrugated cardboard; magazines; envelopes; aluminum, tin, or steel cans; and HDPE and PETE plastic containers.
- A list of materials suitable for residential drop-off collection, which initially must include glass and flexible plastic.

Ecology may identify additional materials for inclusion on these lists, or remove materials for inclusion on these lists, based on consultation with the Ecology-appointed stakeholder advisory committee, and after considering specified factors. Ecology must review and update these lists by 2030 and at least every five years afterwards.

Ecology must complete a statewide needs assessment carried out by a third-party consultant by October 1, 2026. Specified processes and sources of input must be considered and followed in scoping the needs assessment. The needs assessment must use the recycling rates from Ecology's 2023 report to the Legislature required by the 2023 Operating Budget proviso, focused on covered PPP collected from residences and included on Ecology's list. Each solid waste planning jurisdiction must be consulted prior to the completion of the needs assessment. The needs assessment must, for each solid waste planning jurisdiction, evaluate the capacity, costs, gaps, and needs relative to the achievement of performance rate goals for specified aspects of the recycling system, including types of recycling services and methods and infrastructure for covered PPP, education and outreach, and collection, transport, and processing capacity. The needs assessment must also compile certain cost-related information, and how the state's recycling system can be improved in a socially just manner.

#### Oversight and Enforcement for Producers of Covered Paper Products and Packaging.

A Stakeholder advisory committee is established, with a prescribed membership appointed by Ecology comprised of representatives of ten types of organizations or entities. The mechanics for forming and carrying out the business of the stakeholder advisory committee are prescribed. The stakeholder advisory committee's duties include making recommendations to Ecology on the lists of recyclable materials suitable for collection and the scope of the statewide needs assessment, and providing input on Ecology rules and implementation of producer registration and reporting requirements.

Beginning in 2025, Ecology must prepare a workload analysis used to determine the fee payment amount for producers required to register and report. Ecology's annual fee amount is calculated by including the Ecology's costs of supporting the stakeholder advisory committee, carrying out statewide needs assessments, developing lists of recyclable materials suitable for collection, and overseeing the registration and reporting of producers.

Producers that are in violation of registration and reporting requirements or the prohibition of making deceptive recyclability claims regarding covered PPP are subject to civil penalties of up to \$1,000 per day. Ecology must provide at least two notices of violation prior to issuing a

penalty. Penalties are appealable to the Pollution Control Hearings Board.

Producers that submit confidential information to Ecology may request that the information be only for the confidential use of Ecology. Ecology's Director may consider this request and must grant the request that the information remain confidential if it is not detrimental to the public interest and is otherwise in accordance with Ecology's policies.

### Postconsumer Recycled Content.

New postconsumer recycled content (PCRC) requirements are established for the following products:

- polypropylene tubs, which must meet 10 percent PCRC requirements from 2028 through 2032, and 30 percent PCRC requirements beginning in 2033;
- single-use plastic cups made of:
  - polypropylene, which must meet 15 percent PCRC requirements from 2031 through 2032, and 25 percent beginning in 2033; and
  - polyethylene terephthalate and polystyrene, which must meet 20 percent PCRC requirements from 2033 through 2034, and 30 percent PCRC beginning in 2035; and
- polyethylene terephthalate plastic containers, which for consumable goods must meet 10 percent PCRC from 2028 through 2032, and at least 30 percent PCRC beginning in 2033, and which for durable goods must meet 30 percent PCRC beginning in 2033.

Producers of these newly regulated PCRC products must register with Ecology on or before April 1, 2024, and submit an annual PCRC fee payment to Ecology to cover Ecology's program oversight costs beginning in April of 2025.

For existing PCRC products subject to PCRC regulation since 2021, certain changes to PCRC obligations are made, including:

- the PCRC requirements that apply to plastic beverage containers also apply to the cap or lid of plastic beverage containers, beginning January 1, 2025;
- plastic household cleaning containers or personal care product containers are subject to PCRC requirements regardless of whether the neck or mouth is narrower than the base of the container; and
- plastic trash bags subject to PCRC labeling requirements must be labeled with the percentage of PCRC content that the plastic trash bag contains.

Provisions addressing PCRC product program implementation by Ecology are amended, and apply to both the newly regulated PCRC products and PCRC products that have been subject to PCRC requirements since 2021. These amendments include:

- that Ecology must ensure that adopted rules to implement PCRC requirements consider guidelines and do not conflict with regulations issued by federal agencies. Ecology may not impose requirements in direct conflict with a federal law or regulation, including specified regulations;
- de minimis producers with a global gross revenue less than \$5 million or annual total resin

weight of one ton or less are made exempt from PCRC requirements, but must annually notify the Ecology of the producer's de minimis status;

- that annual reports to Ecology for PCRC products must include a certificate of compliance conducted by a nationally recognized independent third party;
- that Ecology is authorized to review and approve PCRC annual reports. Producers must submit revised annual reports within 60 days of receipt of an Ecology letter of disapproval; and
- dates for various PCRC requirements within the calendar year.

Other.

By December 1, 2024, the Utilities and Transportation Commission must submit a report to the Legislature regarding improvements for low-income solid waste collection company customer financial assistance mechanisms.

The Climate Commitment Account may be used to fund Ecology's activities related to producers of covered PPP.

A severability clause is included.

**Appropriation:** None.

**Fiscal Note:** Requested on January 2, 2024.

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