

# HOUSE BILL REPORT

## HB 2049

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**As Reported by House Committee On:**  
Environment & Energy

**Title:** An act relating to improving Washington's solid waste management outcomes.

**Brief Description:** Improving Washington's solid waste management outcomes.

**Sponsors:** Representatives Berry, Doglio, Fitzgibbon, Ramel, Duerr, Mena, Ryu, Bateman, Slatter, Gregerson, Simmons, Peterson, Macri, Street, Alvarado, Fosse, Pollet and Kloba.

**Brief History:**

**Committee Activity:**

Environment & Energy: 1/9/24, 1/18/24 [DPS].

**Brief Summary of Substitute Bill**

- Requires producers of certain paper products and packaging (covered PPP) to participate in and fund the operations of a producer responsibility organization (PRO) to collect and manage covered PPP from consumers and carry out other specified recycling-related activities.
- Makes changes to minimum postconsumer recycled content (PCRC) requirements for certain plastic products, including: (1) requiring additional types of plastic products to meet PCRC requirements; (2) moving responsibility to the PRO for the registration and reporting of covered PPP that are also subject to PCRC requirements; and (3) amending existing PCRC requirements for products subject to PCRC requirements that are not covered PPP.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Doglio, Chair; Mena, Vice Chair; Berry, Duerr, Lekanoff, Ramel, Slatter and Street.

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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.*

**Minority Report:** Do not pass. Signed by 7 members: Representatives Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Fey, Goehner and Sandlin.

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

**Background:**

Solid Waste Management in Washington.

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.

Extended Producer Responsibility and Product Stewardship Programs.

The Legislature has enacted laws that require the establishment of extended producer responsibility or product stewardship (EPR) programs for the management of six types of products: (1) electronic products; (2) light bulbs that contain mercury, such as compact fluorescent lights; (3) photovoltaic solar panels; (4) pharmaceuticals; (5) paint; and (6) batteries.

In general, the state's EPR programs require producers to participate in a stewardship organization or program that is responsible for the collection, transport, and end-of-life management of covered PPP. Ecology is responsible for the oversight of the state's EPR programs, with the exception of the Pharmaceutical Stewardship Program, which is overseen by the Department of Health.

#### 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 EPR 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.

#### Litter Tax.

The Waste Reduction, Recycling, and Litter Control Act (WRRLCA), dating to 1971, prohibits littering and establishes statewide programs to prevent and clean up litter, reduce waste, and increase recycling. These programs are funded by the 0.015 percent litter tax on manufacturers', wholesalers', and retailers' gross proceeds on 13 categories of consumer products, including:

- food and groceries;
- beverages;
- cigarettes and tobacco products;
- newspapers and magazines;
- household paper and paper products;
- glass, metal, and plastic containers;
- cleaning agents; and
- nondrug drugstore sundry products.

Programs funded by the litter tax under the WRRLCA include: litter collection efforts by state agencies including Ecology, and state assistance of local government waste reduction, composting, and recycling programs.

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.

State law requires prevailing wages to be paid to laborers, workers, and mechanics employed in all public works and public building service maintenance contracts. The prevailing wage is established by the industrial statistician at the Department of Labor and Industries. It is calculated based on the hourly wage, usual benefits, and overtime paid in the largest city in each county, to the majority of workers, laborers, or mechanics in the same trade or occupation.

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**Summary of Substitute Bill:**

Producer and Producer Responsibility Organization for Paper Products and Packaging.

*Participation Requirements.*

Producers of paper products and packaging (covered PPP) must participate in a producer responsibility organization (PRO) that is required to carry out specified activities, including the implementation of an approved PRO plan.

- 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, dietary supplements, drugs, biologics, vaccines, and animal biologic drug products; reusable or refillable propane gas containers; paint containers; bound books; newspaper; paper used for building construction; qualifying beverage containers subject to a refund value for which a distributor responsibility organization or other entity has received approval from the Department of Ecology (Ecology) to implement; or certain products that are individually or categorically excluded temporarily after a determination is made by Ecology.

*Program Rollout Timing.*

Significant program implementation deadlines applicable to producers and PROs include:

- March 1, 2025: Producers must register with Ecology, either as a PRO or through a PRO that it has joined.
- March 1, 2025: Each producer that has not joined a registered PRO is prohibited

- from selling or supplying covered PPP in or into Washington.
- May 1, 2026: Each PRO must submit an annual payment to Ecology for projected costs of oversight, administration, and enforcement for the upcoming fiscal year.
  - July 1, 2027: A PRO must submit a postconsumer recycled content (PCRC) annual report for covered PPP that are also subject to PCRC requirements.
  - October 1, 2027: A PRO registered with Ecology must submit a plan to Ecology for approval.
  - January 1, 2029, or six months after plan approval, whichever is later: A PRO must begin implementing its approved plan.
  - July 1, 2030: Producer responsibility organizations must begin submitting annual reports for implemented PRO plans covering the preceding year of plan implementation.

For the first plan implementation period, Ecology may approve only a single PRO, exclusive of any producers independently fulfilling the responsibilities of a PRO. The bill provides additional implementation logistical details to PROs that register with Ecology after 2027. Ecology must review and may approve submitted plans and annual reports, and additional process steps must be followed in the event that a submitted plan or report is not approved by Ecology.

#### *Producer Responsibility Organization Plans.*

Producer responsibility organization plans for covered PPP must address all aspects of program implementation responsibilities assigned to the PRO. Producer responsibility organization plans must provide information about services and other details for each county and city that adopts a local solid waste plan. Plans submitted to Ecology have a duration of five years. Plans must include a contingency plan component that demonstrates how plan activities will be carried out by an entity other than the PRO in the event that the PRO is unable to carry out plan implementation for specified reasons. Ecology may also require a PRO to update its plan under specified circumstances. Prior to the submission of a PRO plan, Ecology may review and determine whether to temporarily exclude certain types of packaging from inclusion in the PRO plan.

Producer responsibility organizations must follow a prescribed stakeholder consultation process that includes the solicitation of input from an advisory council representing specified stakeholder interests, as appointed by Ecology, when the PRO is submitting or updating a plan. In the event that multiple PROs form and register with Ecology to implement a plan, PROs must submit a coordination plan to Ecology for approval, and must coordinate and collaborate on aspects of program funding, education, and outreach. Producer responsibility organizations must also coordinate with product stewardship organizations formed under the state's other product stewardship and extended producer responsibility programs to collect pharmaceutical products, solar panels, paint, batteries, electronic waste, and mercury-containing lights.

### *Management of Covered Paper Products and Packaging.*

Producer responsibility organizations, government entities, and service providers must manage covered PPP:

- consistent with the state's waste management hierarchy;
- responsibly at facilities that meet human health and environmental protection standards equivalent or better than those required in the United States or other countries that are members of the Organization for Economic Cooperation and Development;
- at material recovery facilities that ensure workers are not paid less than the prevailing rate of wage for the same trade or occupation; and
- using mechanical recycling processes, except for any alternative recycling processes that are approved by Ecology after a demonstration by the PRO that the alternative recycling process meets certain criteria, including equal or better protection for the environment and human health relative to recycling that uses purely mechanical means. Ecology decisions to allow a PRO to count material sent to an alternative recycling facility towards recycling performance rates is appealable to the Pollution Control Hearings Board (PCHB).

Producer responsibility organizations must include specified measures to track, verify, and report on the responsible management of covered PPP. Material recovery facilities receiving covered PPP from the collection activities of private service providers or government entities must report specified information annually to Ecology, including the volumes and quality of inbound and outbound material. Information reported by material recovery facilities must be independently audited by a third party upon Ecology request.

### *Producer Responsibility Organization Funding and Investments.*

The PRO's operations must be fully funded by producers in a manner that does not involve a point-of-sale fee charged to consumers, but that is instead based on a system of fees collected from participating producers of covered PPP, which may include:

- additional charges for producers of PCRC products, who have additional regulatory obligations managed by the PRO; and
- an optional flat rate for producers below a certain size.

The fee system must include a base rate based upon the estimated cost of managing covered PPP material categories, while seeking to avoid material categories subsidizing other material categories. In addition to the base rate, the fee system must also use eco-modulation factors to incentivize the use of design attributes that reduce the negative environmental impacts of covered PPP.

Producer responsibility organizations must fund and support investments in infrastructure and market development as needed to achieve convenience standards, management standards, and performance rates, and to address infrastructure gaps identified in the needs

assessment carried out under Ecology oversight. Specified types of investments are authorized. Investments must be detailed in the PRO's annual report. The direct or indirect receipt of PRO funds does not confer any inherent ownership or interest to the PRO, or confer any inherent right to control use of an asset or company operations.

*Government and Private Service Provider Reimbursement.*

Government entities may enter into contractual agreements with a PRO for reimbursement. Producer responsibility organizations must provide reimbursement to government entities that choose to seek reimbursement for administrative, planning, public education, collection, transportation, and sorting or processing costs incurred in curbside collection services directly or indirectly through a service provider. Government entities that receive reimbursement must annually report or publish reimbursed costs to their residents and as part of any rate increase notifications.

In areas where source separated recyclable material collection is Utilities and Transportation Commission (UTC) regulated, PROs must reimburse companies that hold the certificate to provide services to residential customers. Reimbursement rates must be in accordance with UTC-approved rates, and with solid waste collection company PRO reimbursement rules that must be adopted by the UTC. To be eligible for reimbursement from the PRO, it must include collection of all covered PPP designed for curbside collection, in a manner consistent with local solid waste plans and with UTC oversight, and provide recyclable material collection service wherever curbside garbage service is offered unless a county has adopted an ordinance that provides for drop-off collection in rural areas without curbside recycling service as of 2024.

*Convenience.*

Convenient collection services must be available in every jurisdiction in which covered PPP are sold or supplied. A PRO must fund activities to make convenient collection services available, including:

- curbside collection of covered PPP that Ecology identifies as suitable for curbside collection for single and multifamily residences wherever curbside garbage service is provided;
- drop-off collection of covered PPP that Ecology identifies as suitable for drop-off collection; and
- free and equitable collection of covered PPP that Ecology identifies as suitable for alternative collection, in a manner that meets certain convenience standards.

Retail establishments may serve as drop-off collection or collection event sites, but are not obligated to do so. Producer responsibility organizations must provide public place collection at locations where existing recycling collection receptacles were provided by government entities.



### *Performance Rate Achievement.*

Producer responsibility organization plans submitted to Ecology for approval must include performance rates that consider and justify any divergence from the findings of the 2023 performance rates study funded in the operating budget. Specified types of rates, such as an overall recycling rate and source reduction rates, must be included, and a separate reuse rate must be included beginning with the second PRO-submitted plan. Proposed rates must demonstrate continuous improvement for covered PPP until a maximum level of technically achievable progress has been achieved.

### *Education and Outreach.*

The PRO must carry out education and outreach activities in support of the implementation of its approval plan, including the performance of specified types of activities, such as the development of materials, the coordination with government entities, and the funding and coordination of a statewide promotional campaign.

### *Department of Ecology Duties.*

Specific administrative oversight and enforcement duties and authorities are assigned to Ecology, including the requirement or authority to carry out specified oversight and enforcement tasks, such as the:

- maintenance of a public website;
- adoption of rules in a manner that seeks to harmonize its adopted rules with regulatory standards, exemptions, reporting obligations, and other compliance requirements of other states that have adopted similar programs, except where conflicts exist with Washington program requirements established in statute;
- review and approval of PRO plans;
- oversight of registration of producers through PROs, and the review of annual reports submitted by PROs. Annual reports must include specified information, including an independent financial audit and detailed compensation descriptions, and be audited by an independent third party;
- authority to issue civil penalties and orders. Ecology may impose civil penalties on producers or PROs in violation of requirements. If a PRO does not meet a significant requirement, Ecology may additionally issue orders to a PRO, revoke the PRO's plan approval, require a PRO to revise and resubmit a plan, or report additional information. Penalties from Ecology are appealable to the PCHB;
- completion of an annual workload analysis that identifies Ecology's anticipated administration, implementation, and enforcement costs for the upcoming fiscal year, and which serves as the basis for a PRO's annual fee payment; and
- administration of a new packaging financial grant program, funded by a PRO through an annual fee paid to Ecology, for government entities, tribal governments, nonprofit organizations, and certain private organizations, to be used for actions that reduce the negative environmental impacts of covered PPP through reuse. The PRO's fee for the

new grant program is \$5 million from 2025 through 2028, and then becomes set at 4 percent of the PRO's annual expenditures, beginning in 2029.

In addition to the above ongoing or annual oversight and enforcement tasks, Ecology must arrange for the following substantive actions to be accomplished:

- By October 1, 2025, and upon approving a new or updated PRO plan, Ecology must identify the materials and methods for uniform statewide recycling collection of covered PPP, distinguishing between: (1) materials suitable for residential curbside collection; (2) materials for drop-off collection; and (3) materials for alternative collection. In identifying these lists, Ecology must consider end markets, environmental factors, compatibility with existing recycling infrastructure, material amounts, contamination, sorting and storage practicalities, and other factors. Temporary collection of additional materials is allowed via pilot programs approved by a PRO and service provider. A PRO may propose in its plan to include additional materials beyond those identified by Ecology.
- By October 1, 2026, Ecology must complete a statewide needs assessment carried out by a third party consultant, determined in consultation with a PRO, the advisory council, and the UTC. The needs assessment must rely on the recycling performance rates recommended to the Legislature in the 2023 Operating Budget target study; the lists of material suitable for curbside, drop-off, and alternative collection adopted by Ecology; and use other specified information. The needs assessment must evaluate a number of specific topics including:
  - the recycling services and infrastructure currently being delivered in each county and city with a local solid waste plan;
  - the new or expanded services, actions, and investments that are needed to meet new PRO-related requirements, including convenience standards; and
  - how the state's recycling system can be managed in a socially just manner. Ecology may update the needs assessment no sooner than every five years. Updates to the state needs assessment must evaluate public place recycling needs.
- By January 1, 2028, Ecology must create a model solid waste plan amendment that may be used by local solid waste planning jurisdictions in lieu of updating their solid waste plan to reflect the establishment of PROs for covered PPP.

An advisory council is created, with membership representing specified interests to be appointed by Ecology. The advisory council is given specified responsibilities with respect to aspects of PRO program implementation and Ecology's oversight of those programs, including responsibility for advising or commenting on: (1) the needs assessment and lists of materials suitable for curbside, drop-off, and alternative collection prior to their completion; and (2) the program plans and annual reports submitted to Ecology, prior to Ecology's determination of whether to approve plans and reports.

Ecology and PROs may not impose requirements on producers, including PCRC requirements, that directly conflict with a federal law or regulation.

*Local Solid Waste Planning and Solid Waste Collection Company Oversight.*

In jurisdictions where collection of source-separated recyclable materials from residences is provided by a city, town, or county, or by solid waste collection companies regulated by the UTC, the PRO must meet curbside collection service obligations through the curbside collection service in the jurisdiction. Where a UTC-regulated solid waste collection company collects source-separated recyclable materials, the company must provide curbside collection of covered PPP designated as suitable for curbside collection by Ecology. Drop-off, alternative collection, and public place collection must be provided in a manner consistent with local government and UTC solid waste collection authorities. Producer responsibility organizations must use existing recycling depots or drop-off centers that meet specified conditions.

Cities, counties, and towns that collect source-separated recyclable materials are not obligated to participate in a PRO plan. A county may also adopt an ordinance to direct that the full list of materials identified as suitable for curbside collection by Ecology be instead collected at drop-off locations in rural UTC-regulated service areas within the county where no curbside source-separated recycled material collection services existed as of 2024.

Beginning January 1, 2029, programs under county and city solid waste plans that must provide for the collection of source-separated recyclable materials from residences must:

- provide curbside collection of source-separated recyclable materials from single and multifamily residences wherever curbside garbage collection services are provided;
- include materials on the uniform statewide collection list designated for curbside collection; and
- include service standards for curbside collection frequency, container size, and method of collection established under PRO plans.

These requirements do not apply to any county that has adopted an ordinance establishing that materials on the uniform statewide collection list established by Ecology must be collected exclusively through drop-off locations in UTC-regulated areas. Local solid waste plans must be amended, revised, or updated by January 1, 2029, to be consistent with these requirements, or else the model comprehensive solid waste plan amendment developed by Ecology applies in the local jurisdiction until the local government updates, revises, or amends its solid waste plan.

The UTC must review PRO reimbursement of regulated service providers and must require regulated service providers to deliver covered PPP only to material recovery facilities that meet the labor standards that are applicable to facilities that manage covered PPP under PRO plans. The UTC must include in the base for collection rates of regulated service providers all costs related to the implementation of curbside recycling services performed by solid waste collection companies under PRO plan requirements. The UTC must adopt rules to establish schedules for payments from PROs to solid waste collection companies

for full cost recovery and reimbursement mechanisms. Payment schedule rules must ensure that solid waste collection companies maintain financial solvency and ordinary cash flow and meet other requirements. For residential recycling customer reimbursement, the UTC must develop rules that establish a credit mechanism for customer reimbursement and maintain existing billing practices. Solid waste collection companies are not required to issue billing credits if the company has not received a PRO payment sufficient to cover the cost of the credit to all customers covered by the company tariff. Covered PPP are excluded from the option for UTC-regulated service providers to retain up to 50 percent of the revenues paid for collected materials.

#### Postconsumer Recycled Content Requirements.

The compliance logistics for covered PPP whose producers participate in a PRO and which are subject to existing minimum PCRC requirements, including plastic beverage containers and personal care and household cleaning product containers that are not regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), are shifted so that registration, annual fee payment, reporting, and penalties related to PCRC requirements are managed through the PRO, rather than directly by Ecology. A PRO must take responsibility for existing PCRC requirements for covered PPP beginning January 1, 2026.

Ecology retains direct management responsibility for PCRC requirements for products other than covered PPP that remain subject to PCRC requirements, such as plastic trash bags and FIFRA-regulated household cleaning and personal care products. For products directly managed by Ecology, producers must submit an annual certificate of compliance to Ecology.

The method of imposing penalties for violations of PCRC requirements is also changed from a per-pound of underperformance penalty to a per-day-of-violation penalty.

The scope of products subject to minimum PCRC requirements is expanded to include new products, some of which are covered PPP and whose PCRC obligations are managed through the PRO, and some of which are not covered PPP and whose PCRC obligations are managed directly by Ecology.

The following products which are to be managed through the PRO have new PCRC requirements established for their plastic containers:

- plastic tubs for food products, requiring 10 percent PCRC from 2027-2030 and 30 percent PCRC beginning in 2031;
- single-use plastic cups: polypropylene cups requiring 15 percent PCRC from 2029-2030 and 25 percent PCRC beginning in 2031, and other types of single-use plastic cups requiring 20 percent PCRC from 2029-2030 and 30 percent PCRC beginning in 2031; and
- thermoform plastic containers: packaging for consumable goods requiring 10 percent PCRC from 2031-2035, and 30 percent PCRC beginning in 2036; and packaging for

durable goods requiring 30 percent PCRC beginning in 2036.

Plastic plant pots and trays, whose PCRC requirements are overseen directly by Ecology, requires 30 percent PCRC from 2026-2030 and 80 percent PCRC beginning in 2031.

Manufacturers and persons may only sell or distribute plastic collection bins used by solid waste collection services to collect recyclables, compostable materials, or garbage that are made from at least 25 percent PCRC, beginning January 1, 2025. Existing bins in the possession of a solid waste collection services company are not subject to these restrictions, and persons with existing municipal contracts are exempt until the expiration or renewal date of the existing contract. Upon request, manufacturers or persons that provide plastic collection bins must provide evidence to Ecology and purchasers of plastic collection bins of compliance with these requirements.

De minimis producers are made exempt from PCRC requirements, but must annually notify the PRO or Ecology, as appropriate depending on whether the product is covered PPP under the PRO, regarding the producer's de minimis status. For annual reporting regarding PCRC products managed through the PRO, the PRO must include a certification from an accredited independent third party verifying the quantity and dates of PCRC material purchases. Ecology must review and determine whether to approve PCRC annual reports from the PRO. Producers of PCRC products may petition for temporary exclusions and PCRC rate adjustments in a manner similar to the processes available to PCRC products directly overseen by Ecology, but petitions must be submitted through the PRO. Changes are made to existing PCRC requirements on plastic products, such as by excluding household and personal care product container corks, closures, and labels from PCRC requirements, and by clarifying that PCRC requirements apply based on the date of manufacture of a product.

#### Other.

A PRO may not use funds collected for purposes of implementing a plan for certain purposes, such as payment of administrative penalties or litigation. Producers are not granted immunity from federal or antitrust state liability, and producers and PROs are not exempt from federal and state laws prohibiting actions that are a restraint on trade, a conspiracy, or otherwise unlawful.

Producer responsibility organizations, material recovery facilities, or other processing facilities that submit confidential information to Ecology related to PRO or PCRC requirements 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.

The eligibility of entities for state or local incentives or financial assistance programs are

not affected by the establishment of the PRO or producer PCRC requirements.

The authority of the UTC to regulate the collection of solid waste, including curbside collection of recyclable materials, is not changed or limited by the establishment of the PRO or producer PCRC requirements.

Producers of covered PPP or PCRC products may not sell or distribute products that make misleading or deceptive claims about product recyclability. Certain types of claims are specified to be misleading or deceptive, or to not be considered misleading or deceptive. Federal criteria may be adopted in lieu of these requirements. Local governments are prohibited from enforcing ordinances prohibiting products from making specified claims about the recyclability of products.

In consultation with any PROs, Ecology and the Department of Revenue (DOR) must study the impacts of producer and distributor requirements on the litter rates of covered PPP, and possible improvements to the structure of the litter tax that do not include increasing the tax rate or expanding the types of covered PPP under the PRO that are subject to the tax. Ecology, in consultation with the DOR, must provide recommendations to the Legislature on the applicability of the litter tax to covered PPP and improvements to the litter tax structure.

A severability clause is included.

### **Substitute Bill Compared to Original Bill:**

Compared to the original bill, the substitute bill:

- amends the process by which a producer responsibility organization (PRO) may demonstrate to the Department of Ecology (Ecology) that an alternative recycling process may count towards recycling performance rates, including by requiring input from specified parties in addition to the advisory council, by specifying that the alternative recycling process may not include combustion, fuel production, or other forms of energy recovery from plastic covered products, and that it must provide equal or better protection for the environment and human health, as measured against seven criteria, relative to recycling processes that occur through purely mechanical means;
- makes decisions by Ecology regarding whether to approve a PRO's proposal to count material sent to an alternative recycling facility towards recycling performance rates appealable to the Pollution Control Hearings Board;
- amends the source reduction rate requirements that PROs must meet to allow for up to 75 percent of a PRO's source reduction requirement to be met through a reduction in the weight of covered products, rather than the elimination of plastic components;
- specifies that the creation and role of the advisory council does not limit the authority of Ecology to approve plans or reports or carry out other assigned duties;
- specifies that nothing in the act limits the authority of private parties or government

- entities to enter into contracts;
- clarifies that the service standards which a city or town contracting for residential curbside recycling service may establish to exceed the service standards in the PRO plan include frequency, container size, and method of collection;
- clarifies that if a county adopts an ordinance to exclude materials on Ecology's uniform statewide collection list for curbside recycling in rural, Utilities and Transportation Commission-regulated areas, the ordinance must exclude the full list of materials from curbside collection;
- exempts dietary supplements, and United States Food and Drug Administration-regulated biologics and vaccines from PRO participation requirements;
- amends and specifies a few dates for PRO obligations, and makes other logistical changes to PRO requirements;
- adjusts the exemption for fortified oral nutritional supplements from postconsumer recycling content (PCRC) requirements;
- exempts liners, corks, closures, labels, and other items that are separate from the structure of a household cleaning and personal care product container, other than a cap or lid, from PCRC requirements;
- amends provisions relating to the timing and logistics of the 2026 transition of oversight of PCRC requirements for covered products from Ecology to the PRO;
- specifies, consolidates, and clarifies the PCRC processes that Ecology must use to extend, temporarily exclude, or adjust PCRC requirements, and authorizes Ecology to grant multi-year extensions from PCRC requirements;
- requires that any exclusions for products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act must be granted for a period of four years;
- clarifies that the effective date of PCRC requirements applies to the date of product manufacture; and
- clarifies that a producer may maintain a single certificate of compliance that identifies all of its products that are in compliance with PCRC requirements.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The state's recycling outcomes have not been improving in recent years, and provide for a patchwork system in which recycling practices look different in different parts of Washington. Many materials that are recyclable are ending up in a landfill. Producers have the greatest ability to change the types of packaging used on products but need an incentive to reduce their packaging use and make it more reusable and recyclable. An

extended producer responsibility program has the potential to achieve significant improvements in recycling rates and has been extensively studied. Extended producer responsibility programs will not increase the price of consumer goods. Solid waste utility customers are currently forced to pay for the recycling system, with little power to improve recycling outcomes on their own. It is important to include recycling system access in rural areas and for multifamily residences. More postconsumer recycled content requirements will drive demand for recycled materials. Plastic and other garbage ends up as litter in the environment. The public wants action to improve recycling systems. A better recycling system will bring more and better-paying recycling jobs.

(Opposed) The costs of extended producer responsibility programs will be embedded in the price of consumer products. Recycling is not free. A needs assessment and improvements to postconsumer recycled content requirements should be instituted before setting up an extended producer responsibility system. Washington can achieve better recycling rates, but is already ahead of the national average. Establishing extended producer responsibility requirements will fundamentally overhaul the existing recycling system, and disrupt paper recycling systems that work. The bill goes too far in cementing the role of existing solid waste recycling infrastructure in place into the future. Recycling service companies are already investing heavily in better recycling outcomes, and it is unclear how existing system investments or ratepayer recycling costs will be reimbursed. The curbside recycling system does not achieve as high a recycling rate for beverage containers as can be achieved by a deposit return system. If a deposit return system is not established in the bill, beverage containers should be entirely exempted from producer responsibility requirements. Different definitions of the responsible producer are needed for the two parts of the bill dealing with extended producer responsibility and postconsumer recycled content requirements. A Washington program should be harmonized with requirements of other states. The approval process for alternative recycling systems will limit new and innovative technologies that can provide environmental protections. The packaging for some consumer products is regulated under federal law in ways that may work at cross-purposes with state extended producer responsibility. Extended producer responsibility can have negative impacts to county finances.

(Other) Extended producer responsibility for packaging can be feasible if properly designed in balancing producer responsibility organization discretion with Department of Ecology oversight. Issues that could still be improved include the plastic source reduction requirements, the role of the advisory council, and potential limits on producer on-the-ground investments. Packaging that does not enter the household curbside recycling stream should be excluded from requirements. A federal solution would be preferable to a state solution. Retail establishments should not be responsible for every package on their shelves. A lot of work has gone into the producer definition, but it also differs from the definitions used in other states with similar programs. Other states are having challenges in implementing similar laws, and we should learn from their experiences. A needs assessment is a key step prior to proceeding with producer responsibility organization program design. The establishment of producer responsibility organization requirements



could have mixed financial impacts for counties.

**Persons Testifying:** (In support) Representative Liz Berry, prime sponsor; Marlene Feist, City of Spokane; Kate Bailey, The Association of Plastic Recyclers; Carl Schroeder, Association of Washington Cities; Peter Lyon, Department of Ecology; Carrie Sessions, Office of the Governor; Giovanni Severino, Latino Community Fund; Noa Figlin; Pat McLaughlin, King County; Peter Steelquist, Surfrider Foundation; Michael Gonzales, Teamsters Joint Council 28; and Dylan de Thomas.

(Opposed) Erin Hall, American Forest and Paper Association; Scott Hazlegrove, Washington Beer and Wine Distributors Association; Brendan Flanagan, Consumer Brands Association; Vicki Christophersen, Washington Refuse and Recycling Association; Jay Balasbas, Sunshine Disposal and Recycling, Basin Disposal; Lyset Cadena, Waste Management; Wendy Weiker, Republic Services; Tim Shestek, American Chemistry Council; Terry Grill, Sealed Air Corporation; Amanda McKinney, Yakima County Board; Michael Connors, Washington Potato and Onion Association; Samantha Louderback, Washington Hospitality Association; Robert Flores, Berry Global; Brad Boswell, Washington Beverage Association; Scott DeFife, Glass Packaging Institute; and Peter Godlewski, Association of Washington Business.

(Other) Andrew Hackman, Serlin Haley LLP; Mark Johnson, Washington Retail Association; Jacob Cassady, Association of Home Appliance Manufacturers; Travis Dutton, Washington State Association of Counties; Dylan de Thomas, The Recycling Partnership; Katie Beeson, Washington Food Industry Association; and Brandon Houskeeper, Northwest Grocery Association.

**Persons Signed In To Testify But Not Testifying:** Heather Trim, Zero Waste Washington; Gary Smith, Independent Business Association; Sharon Bierach; Jeannette Mcchesney; Pepai Whipple; Tom Whipple; and Eric Pratt.