

SENATE BILL REPORT

SB 5154

As Reported by Senate Committee On:
Environment, Energy & Technology, February 3, 2023

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

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

Sponsors: Senators Rolfes, Nguyen, Cleveland, Frame, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Nobles, Pedersen, Salomon, Stanford, Wellman and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/17/23, 1/18/23, 2/03/23 [DPS-WM, DNP].

Brief Summary of First Substitute Bill

- Requires producers of consumer packaging and paper products to join or register with the Department of Ecology as a producer responsibility organization, subject to funding, planning, and performance requirements, to increase the recycling and reuse rates of these products.
- Establishes minimum postconsumer recycled content requirements for thermoform plastic containers, plastic tubs, single-use plastic cups, and plant pots and trays.
- Authorizes the establishment and operation of a deposit return system for qualifying beverage containers by distributor responsibility organizations.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5154 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; Lovick, Trudeau and

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.

Wellman.

Minority Report: Do not pass.

Signed by Senators MacEwen, Ranking Member; Boehnke and Short.

Staff: Gregory Vogel (786-7413)

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.

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.

State law establishes that the following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

- waste reduction;
- recycling, with source separation of recyclable materials the preferred method;
- energy recovery, incineration, or landfill of separate waste; and
- energy recovery, incineration, or landfill of mixed municipal solid wastes.

Extended Producer Responsibility and Product Stewardship Programs. The Legislature has enacted laws that require the establishment of product stewardship programs for the management of five types of products:

- electronic products (2006);
- light bulbs that contain mercury—such as compact fluorescent lights (2010);
- photovoltaic solar panels (2017);
- pharmaceuticals (2018); and
- paint (2019).

In general, the state's product stewardship 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 products. Ecology is responsible for the oversight of the state's product stewardship 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 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, 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 ten policy recommendations related to the management of packaging materials.

As part of the 2022 supplemental operating budget, Ecology was directed to conduct a study to:

- assess the amount and types of consumer packaging and paper products sold or supplied into the state and recycling rates achieved for these materials through existing recycling programs and activities in the state; and
- in accordance with the recommendations from the 2020 report, consider and make recommendations on legislative action to address the items included in the list of problematic and unnecessary materials identified for elimination by the United States Plastic Pact.

Minimum Recycled Content Requirements. In 2021, the Legislature established minimum recycled content requirements applicable to three main categories of plastic products or products in plastic containers: trash bags, household cleaning and personal care product containers, and plastic beverage containers. Unique minimum postconsumer recycled content (PCRC) rates and timelines over which the minimum recycled content rates increase apply to:

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

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

minimum PCRC requirements for the following year of minimum PCRC standards, including 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 \$0.20 per pound of plastic below the amount of PCRC plastic needed to achieve minimum PCRC requirements.

Ecology is currently in the process of adopting rules to implement the minimum PCRC requirements. Producers subject to minimum PCRC requirements were required to register with Ecology and pay fees to cover Ecology's administrative costs related to minimum PCRC standards beginning in 2022.

Litter Tax. The Waste Reduction, Recycling, and Litter Control Act (Act), established in 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.

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

Pollution Control Hearings Board. 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 (First Substitute): Producer Responsibility Organizations. Beginning July 15, 2024, each producer that sells or distributes a covered product in or into Washington must join a producer responsibility organization (PRO) that is registered with Ecology or register with Ecology as a PRO. A producer that has not joined a PRO may not sell or supply covered products in or into Washington.

"Covered product" means packaging and paper products sold or supplied to consumers for

personal, noncommercial use. In addition to consumer products sold at retail establishments, packaging also includes materials supplied to consumers for the purpose of facilitating food or beverage consumption that is ordinarily discarded after a single use or short-term use. Paper products include flyers, brochures, booklets, catalogs, magazines, copy and printing paper, but does not include bound books, archival paper, paper designed for use in building construction, and paper products that, by any common and foreseeable use, could reasonably be anticipated to become unsafe or unsanitary to handle.

A producer is the first entity that meets the definition in a descending hierarchy from manufacturer, retail brand owner, licensee, or importer and distributor. For remote sale products, the producer of the product is the same for purposes of other covered products. The producer of the packaging used to ship the product is the person that packages and ships the product. For applicable paper products, the producer is the publisher.

Producers do not include government agencies, municipalities, or other political subdivisions of the state, charitable and social welfare organizations, or small producers:

- that annually sell or distribute into Washington State less than one ton of covered products; and
- that have an annual global gross revenue of less than \$5 million.

"Producer responsibility organization" means a 501(c)(3) nonprofit organization and is designated by a producer or group of producers to develop and carry out activities required of producers under the program, or a producer that registers with Ecology as a PRO.

Registration by a PRO must include a list of all member producers and their brands of covered products, and member of the board of directors.

By June 30, 2025, and every June 30th thereafter, every PRO must submit an annual payment to cover the costs of the program.

Within six months of the adoption of rules implementing the program, every PRO must submit a plan describing how the PRO will meet the requirements of the program to Ecology for approval.

A PRO registered with Ecology as of July 15, 2026, must implement its plan by January 1, 2028.

Rates Study and Needs Assessment. To inform the implementation of the program, Ecology must conduct a performance rates study and a statewide needs assessment that must be carried out by a third-party consultant and funded by PROs.

The performance rates study must be completed by September 1, 2024, and recommend performance rates, including:

- a rate for the overall combined reuse and recycling of covered products;
- a separate specific minimum reuse rate, that must be counted within the overall

- combined reuse and recycling rate;
- a source reduction rate to be achieved solely by eliminating plastic components; and
- if a distributor responsibility organization has notified Ecology of its intent to implement a deposit return system at least six months prior to the date of the completion of a study, alternate rates that exclude qualifying beverage containers that are to be managed under the deposit return system.

Recommendations must consider the feasibility of achieving recommended rates based on current rates achieved in the state, rates achieved in other jurisdictions with similar programs, and additional relevant data. The recommended performance rates must be designed to be achieved for covered products statewide by 2032.

The advisory council and any PRO must have the opportunity to review and comment on a draft study prior to its completion.

No more frequently than every five years, Ecology may update the performance rates study.

The statewide needs assessment must be completed by July 1, 2025 and:

- evaluate the capacity, costs, gaps, and needs for services and infrastructure relative to meeting performance rates, collection requirements, and other program components;
- compile information related to costs incurred by government entities for collection services, including cost factors to be considered in the development of reimbursement rates to government entities for curbside collection services;
- identify issues to be considered in the development of a service agreement template outlining terms and conditions for reimbursement;
- compile relevant information to be considered in the development of criteria by Ecology 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 the purpose of informing how each PRO can support this objective as it relates to program activities;
- evaluate the extent to which covered products contribute to litter and marine debris for the purpose of informing how a PRO can support litter and marine debris prevention as it relates to program activities; and
- compile information on the presence of toxic substances in covered products and their potential impacts on reuse, recycling, and composting systems.

The final scope of the needs assessment must be determined after considering comments and recommendations from the advisory council, UTC, and from any PRO registered with Ecology by January 15, 2024.

The UTC, the advisory council, and registered PROs must have the opportunity to review and comment on the draft needs assessment prior to its completion.

The needs assessment must be informed by the findings and recommendations of the performance rates study and the performance rates submitted by PROs and approved by Ecology.

In consultation with the advisory council, UTC, registered PROs, and Ecology may update the needs assessment to inform the development of PRO plans.

The scope of a needs assessment update may include an analysis of the plastic resin market, including analyzing market conditions and opportunities in the state's recycling industry for meeting minimum postconsumer recycled content requirements for covered products and determining data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry.

Producer Responsibility Organization Stakeholder Consultation. Registered PROs must maintain a public website informing the public of plan implementation details, including collection services and locations for each type of covered product, and a current list of all participating member producers and brands.

Prior to submitting a plan to Ecology, a PRO must directly and actively consult stakeholders to develop key plan elements. The PRO, through the consultation process, must solicit and respond to input and recommendations from the advisory council, UTC, and other stakeholders.

At a minimum, the consultation process must include:

- opportunities for all stakeholders and members of the public to provide comments on the plan; and
- documentation of all comments received and a summary of responses provided by the PRO to be included with the submission of a plan to Ecology.

Plan Contents. All plans and plan updates must contain several elements, including the following information:

- identification of the governing board members of the PRO;
- a list and explanation of the covered products supplied or sold in or into Washington by each member producer and their brands of covered products;
- a description of the structure of fees owed by producers to be used to implement the plan;
- proposed performance rates for covered products, including a description of the basis and reasoning for the rates proposed;
- activities to be undertaken to meet performance rates, collection requirements, and other program requirements;
- how the PRO will encourage and incentivize waste prevention and reduction of consumer packaging and paper products and their associated climate impacts;
- how the PRO will encourage and incentivize the redesign of covered products to be reusable, recyclable, or compostable;

- how the PRO will fund reuse and recycling infrastructure and market development in the state;
- a list of covered products designated for collection statewide;
- a description of how the plan implementation will maintain responsible management practices for covered products through to final disposition;
- a description of the base cost formulas used to calculate reimbursement rates for curbside collection and other services delivered by government entities, any terms or conditions covered in service agreements with government entities for receiving reimbursements, and the process to resolve disputes between the PRO and service providers;
- a stakeholder consultation report; and
- a description of how the PRO will coordinate with other PROs and any distributor responsibility organizations to meet program requirements, if more than one PRO or distributor responsibility organization is registered with Ecology.

Plan Approval, Updates, and Revisions. PRO plans may address no more than five calendar years, and updated plans must be submitted to Ecology one year prior to the expiration of any plan.

If the performance rates set in a PRO plan have not been met as of the time of plan update, the PRO must arrange for an independent evaluation to be conducted of the PRO's efforts to implement the plan. The evaluation must provide information for the PRO to use to target and improve program outcomes relative to the performance rates.

The stakeholder consultation process for PRO plans is not required to be carried out for submitting a revised plan in response to an order from Ecology, or subsequent to a letter disapproving a plan.

Ecology may require a PRO to update its plan more frequently than every five years if:

- the program and activities to implement the plan fail to achieve the performance rates set in PRO plans or otherwise fail to achieve significant program requirements;
- additional PROs register with Ecology or receive approval from Ecology to begin implementing a plan; or
- there are significant changes to the regulatory or economic environment in which plan activities are being carried out.

Program Management Standards. PROs, government entities, and service providers implementing the program must manage covered products 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 United States and other countries that are members of the Organization for Economic Cooperation and Development.

Producer responsibility organizations implementing a plan must include measures to:

- track, verify, and publicly report that the responsible management of covered products collected by the program is maintained and that recycled materials are delivered to a responsible end market;
- promote and facilitate reuse of covered products designed to be reused;
- meet the necessary quality standards for recycled materials so that covered products may be used to manufacture new products;
- document locations of all material recovery facilities and other processing facilities used to meet program requirements; and
- describe whether the processing facilities were preexisting, planned, or under construction as of plan approval.

Prior to program use of any alternative recycling process for conversion of post-use plastic polymers for the purpose of producing recycled material to be counted toward performance rates under the program, the PRO must seek Ecology's approval and submit a third-party assessment of the process's environmental impacts. For a process to be approved, Ecology must determine that the alternative process produces similar or lesser impacts than those produced in recycling that uses purely mechanical means based on environmental impacts, such as air and water pollution and energy efficiency.

Material recovery facilities and other processing facilities receiving covered products collected through program activities must measure and report annually to Ecology, by commodity types and material category, on several parameters associated with covered products, including:

- tons received, by jurisdiction and service provider;
- inbound and outbound material quality and contamination;
- outbound material tons and end markets by commodity type;
- management of contaminants and residue to avoid impacts on other waste streams or facilities;
- emissions of pollutants to air and water; and
- labor metrics including, but not limited to, wages, unions, and workforce demographics.

All data must be verified by an independent third party and shared with each PRO for which the material recovery facility provides a service.

To facilitate recycling of covered products back into covered products and encourage development of circular economic activity, material recovery facilities and other processing facilities handling materials under each program must prioritize agreements with and on behalf of producers or PROs, regarding long-term contracts and other purchase agreements based on fair market pricing for commodities of comparable quality.

Performance Rates. By January 1, 2025, any registered PRO must submit proposed

performance rates to Ecology for covered products reported by the PRO as supplied into the state to be achieved by 2033. In proposing the rates, the PRO must consider the rates recommended by the performance rates study, and propose, at minimum:

- an overall combined reuse and recycling rate of covered products;
- a separate specific minimum reuse rate, that must also be counted within the overall combined reuse and recycling rate; and
- a source reduction rate to be achieved solely by eliminating plastic components.

If the proposed rates differ from those recommended by the performance rates study, the PRO must provide a justification for the rates proposed.

Any PRO plan must include a separate set of performance rates, taking into account the findings of the performance rates study, the statewide needs assessment, and additional relevant data. The rates submitted in a plan must be achieved by the end of the plan implementation period.

At minimum, the plan performance rates must include:

- an overall combined reuse and recycling rate of covered products;
- a separate minimum reuse rate of covered products, which is also to be counted within the overall combined reuse and recycling rate;
- a combined reuse and recycling rate for each material category of covered products reported by the PRO as supplied into the state; and
- a source reduction rate to be achieved solely by eliminating plastic components.

Proposed rates must demonstrate continuous improvement in performance rates of covered products over time.

Ecology must adopt rules for measuring the performance rates of each material category of covered products in a producer responsibility organization plan.

Funding. A PRO implementing a plan must fully fund all activities required under the program. A nonreimbursable point-of-sale fee may not be charged to consumers to recoup the costs of meeting producer obligations under the program.

A PRO must develop a system to collect fees from participating producers to cover the costs of plan implementation. To minimize administrative and reporting costs of producers and the PRO, the fee system must include:

- a small producer level in which no fees are charged by the PRO;
- additional charges applied specifically to producers of products with existing postconsumer recycled content requirements, in an amount roughly equivalent to cover the PRO's costs of managing the requirements for those producers; and
- an optional flat rate for producers below a certain size.

A PRO must allow producers of magazines to satisfy their fee obligations by providing in-

kind advertisement or publication supporting the PRO's education and outreach activities.

A PRO must base the system of fees upon the estimated cost of managing the material categories of covered products, while seeking to avoid a material category that subsidizes any other material category. In establishing a system of fees, a PRO must consider the following factors:

- the total annual amount of covered products sold or supplied into the state, by material category;
- the material characteristics and costs associated with management of each material category; and
- the commodity value of each material category as a recycled material.

The fee system must use eco-modulation factors to incentivize the use of packaging design attributes that reduce the environmental impacts of covered products. Examples of activities that a fee system may include to satisfy this requirement, include encouraging designs that facilitate and improve infrastructure and systems for reuse, recycling, and home and industrial composting, and encouraging designs that discourage the use of problematic or difficult to recycle materials.

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

A PRO must provide curbside collection to residents in single-family and multifamily residences wherever curbside garbage collection services are provided, except in areas where a county has adopted an ordinance that designates that covered products be collected exclusively through alternate collection, and except for covered products designated for alternate collection under a PRO plan.

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 demonstrated to be of equal convenience; and
- additional drop-off locations or collection events in communities that are not covered by collection sites or locations.

A PRO, after soliciting input from Ecology, the relevant government entity, and the local community, must determine a reasonable number and location of additional drop-off locations and collection events held in underserved areas. A PRO must give special consideration to providing opportunities to island and geographically isolated populations.

A retail establishment may choose to serve as a drop-off location or site of a collection event, through mutual agreement with a PRO, but retail establishments are not obligated to

serve as either.

For the duration of initial plan implementation, collection must be provided in the following public places:

- any existing location where government entities provide and manage recycling collection receptacles; and
- at additional locations as determined by the PRO, after considering recommendations from stakeholders and the statewide needs assessment.

In any jurisdiction where collection of source separated recyclable materials from residences is provided by a city, town, county, or UTC-regulated hauler, a PRO must meet its curbside collection service obligation through the collection service in the jurisdiction.

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

Every PRO must provide maps on its website of each location where collection is provided and the type of collection provided.

Government Entity Authority. The program does not obligate a county, city, or town that utilizes its collection service contract authority or that directly provides collection service to its residents to participate in a plan implemented by a PRO, nor does the program restrict their authority.

A city, town, county, or other government entity may enter into agreements with a PRO for the purposes of reimbursement of costs of services.

In areas regulated by UTC, curbside collection of source separated recycled materials must be provided by a company that holds an applicable certificate issued by UTC.

A county may, by ordinance, direct that covered products designated for collection by a PRO plan be collected exclusively through alternate collection in areas regulated by the UTC if the area was designated as rural in the county solid waste management plan and no curbside recycling collection service was offered within those areas as of the effective date of the act.

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

Cost Reimbursement. A PRO with covered products designated for curbside collection under its plan must provide reimbursement to a government entity that chooses to seek reimbursement for costs incurred in delivering curbside collection services. Costs that must

be reimbursed by a PRO include any administrative, public education, collection, transportation, and sorting or processing costs incurred in delivering curbside collection services. Reimbursements must be calculated using base cost formulas established in the PRO plan approved by Ecology.

Similar reimbursement provisions apply if a PRO elects to use services other than curbside collection from a government entity.

Any government entity that receives reimbursement for costs incurred in delivering curbside collection services must report or publish reimbursed costs to its residents annually and as part of each rate increase notification.

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 the service in accordance with the rates approved by the commission.

To be eligible for reimbursement from a PRO, UTC-regulated hauler must provide service that:

- is offered to residents in single- and multi-family residences wherever curbside garbage collection services are offered;
- includes collection of all covered products designated for curbside collection;
- aligns with curbside collection service standards established by the PRO; and
- is provided in a manner consistent with the requirements of the program for curbside collection services.

Infrastructure Investments. Each PRO must fund and support investments in infrastructure and market development in Washington as needed to achieve program requirements or to address infrastructure gaps as identified through the needs assessment or consultation process.

Investments may include, but are not limited to, those needed to enable reuse of covered products or the recycling or composting of covered products not currently recycled or composted in the residential recycling system, such as installing or upgrading equipment to improve sorting of covered products or mitigating the impacts of covered products to other commodities at existing sorting and processing facilities, and capital expenditures for new technology, equipment, and facilities.

Infrastructure investments must be detailed in the PRO's annual report. A PRO must prioritize investments in preexisting infrastructure. If a PRO did not invest in preexisting infrastructure within Washington, the annual report must include a statement of the reasons why no such investment was made.

Producer Responsibility Organization Education and Outreach. To support the achievement of performance rates and other program requirements, a PRO must develop and provide

outreach and educational materials, resources, and campaigns about the program to be used by retail establishments, collectors, government entities, and nonprofit organizations.

A PRO must coordinate and fund the distribution and deployment of statewide promotional campaigns through media channels that may include print publications, radio, television, the Internet, and online streaming services.

A PRO must use consistent and easy to understand messaging and materials that are conceptually, linguistically, and culturally accurate for the communities served.

Some of the aims of education and outreach materials are to educate and engage with residents on recycling, reuse, and refill behaviors, describe where and how to recycle covered products, and reduce resident confusion regarding the recyclability of covered products.

A PRO must establish a process for answering customer questions and evaluate the effectiveness of education and outreach efforts for purposes of making progress toward performance requirements.

A PRO must coordinate with government entities that choose to participate in carrying out education and outreach activities and any other PROs to present a consistent statewide program.

Producer Responsibility Organization Reporting. Beginning July 1, 2028, each PRO must submit an annual report to Ecology for the preceding calendar year of plan implementation. Each report must include data, descriptions, and other information sufficient to allow Ecology to determine whether a PRO has fulfilled its obligations under the program for the preceding calendar year.

Each annual report must include identification of the governing board members of the PRO, the final destinations of recycled material managed by the program, and the total cost of implementing the PRO's plan, as determined by an independent financial audit.

All nonfinancial data and information that is material to Ecology's review of the PRO's compliance with the program must be audited annually by an accredited and nationally recognized independent laboratory or certification body.

Auditing and verification must include documentation of performance rate calculations and encompass management of materials from the point of collection through processing and sale of recycled materials to responsible end markets.

Advisory Council. An advisory council of members representing local government, environmental and community-based organizations, the recycling industry, tribal or indigenous solid waste organizations, producers, retail, and others is established.

Advisory council members must be appointed by the director of Ecology by January 1, 2024. In making the appointments, Ecology must appoint members that, to the greatest extent practicable, represent diversity in race, ethnicity, age, and gender, urban and rural areas, and different regions of the state, and must consider recommendations from relevant groups or associations and from individuals interested in participating on the council.

The terms of initial appointments must be staggered to two- and three-year appointments, with subsequent terms of three years, and members are eligible for reappointment.

The council must elect a chair and vice-chair and adopt bylaws and a charter for its operation of business.

The council must meet at least once every three months for the first three years, at times and places specified by the chair. The council may also meet at other times and places, including virtually, as specified by the call of the chair or a majority of members.

Ecology must provide staff support and facilitation as necessary for the council to carry out its duties, and may select an impartial, third-party facilitator to convene and provide administrative support.

Council duties including advising and making recommendations on PRO plans, reports, Ecology rulemaking, the performance rates study, and the statewide needs assessment.

Penalties. Ecology may impose a civil penalty up to \$1,000 per violation per day on any person who violates PRO program requirements or any PRO that violates the PCRC requirements applicable to PROs, and up to \$10,000 per violation per day for the second and each subsequent violation.

Prior to assessing a penalty, Ecology must provide notice and allow for a 60-day cure period.

Upon notification to a PRO that it has not met a significant program requirement, Ecology may, in addition to assessing penalties, issue a corrective action order, issue an order to a PRO to provide for continued implementation of the program in the absence of an approved plan, revoke the PRO's plan approval and require the PRO to implement its contingency plan, require a PRO to revise or resubmit a plan, or require additional reporting related to compliant.

Prior to taking these actions, Ecology must provide the PRO or producer the opportunity to respond to or rebut the written finding upon which the action is predicated.

Any person who incurs a penalty may appeal the penalty or order to the Pollution Control Hearings Board.

Penalties levied against PROs are deposited in the Recycling Enhancement Account.

Truth in Labeling. Beginning January 1, 2027, a producer may not make a deceptive or misleading claim about product recyclability, such as the use of a chasing- arrows symbol, if the product is not designated for program collection or a qualifying beverage container covered under a deposit return system.

A label is not considered a misleading or deceptive claim of recyclability if it is required by another state or federal law, part of a widely adopted and standardized third-party labeling system, or uses the chasing- arrows symbol and a slash to convey that the item is not recyclable.

Beginning July 1, 2023, a city, town, or county may not enforce a truth in labeling ordinance for covered products or qualifying beverage containers if the product is designated for collection in a PRO plan.

Petition for Exclusion. Prior to the submission of a new or updated plan, Ecology may review and determine for the duration of the upcoming plan's period of applicability whether to temporarily exclude for reasons of public health and safety from the requirements of the program, packaging used to contain a product regulated as a drug, medical device, or dietary supplement by the federal Food and Drug Administration or a product subject to requirements under federal laws that make their inclusion in the program infeasible or inadvisable.

Ecology's review may be initiated by the department or a petition from a PRO. In making a determination for exclusion, Ecology must consider the technical feasibility of including the product in the program, progress made by the producer of the product in achieving the goals of the program, including packaging reduction, increased recycled content and ability of the product's packaging to be reused or recycled.

Registration Clearinghouse. Ecology is authorized to participate in the development and ongoing operation of a regional or multistate clearinghouse for the purpose of facilitating the implementation of state laws on packaging and paper products. Ecology may direct producers to register and submit any required data, annual reports, fees, and annual payments to a clearinghouse in lieu of the department.

Responsible Packaging Management Account. The Responsible Packaging Management Account is created for the use of funds by Ecology to implement, administer, and enforce the requirements of the program. All receipts received by Ecology from a PRO must be deposited in the account.

Producer Responsibility Organization Management of the Postconsumer Recycled Content. By January 1, 2025, and each January 1st thereafter, a PRO that represents producers that

sell or distribute the PCRC products must register with Ecology on behalf of each producer registered with the PRO that sells or distributes PCRC products in or into Washington.

The registration information must include a list of the producers of PCRC products and the associated brand names of the PCRC products.

Each producer of a PCRC product must annually report PCRC to the PRO with which it is registered. Producer PCRC reports must include the amount in pounds of virgin plastic and the amount in pounds of PCRC by resin type used within a single PCRC product sold or distributed in or into Washington and the total PCRC resin as a percentage of the total weight of plastic reported for a single PCRC product category.

A producer must maintain a certificate of compliance, conducted by a third-party certification entity, stating that the covered product is in compliance with PCRC requirements.

A PRO reporting to Ecology must pay fees to cover the cost of PCRC administration.

A PRO may petition Ecology for an exclusion or adjustment covering the upcoming calendar year to the minimum PCRC requirements on behalf of producers registered with the PRO.

A producer that is assessed a penalty for non-compliance of PCRC requirements must remit the penalty to the PRO with which it is registered. A PRO must submit aggregated penalty payments from all producers owing penalties and that are registered with the PRO.

Plastic trash bags and plastic plant pots and trays subject to PCRC are not considered covered products under the PRO program and register, pay fees, report, and are otherwise administered by Ecology.

PCRC for New Product Categories. A producer must meet the following annual minimum PCRC percentage on average for the total quantity of PCRC products or product containers, by weight, that are sold or distributed in or into Washington:

- for plastic tubs for food products, effective:
 1. January 1, 2026, through December 31, 2030—no less than 10 percent PCRC plastic by weight; and
 2. on and after January 1, 2031— no less than 30 percent PCRC plastic by weight;
- for polypropylene single-use plastic cups, effective:
 1. January 1, 2029, through December 31, 2030— no less than 20 percent PCRC plastic by weight; and
 2. on and after January 1, 2031—no less than 25 percent PCRC plastic by weight;
- for polyethylene terephthalate (PET) and polystyrene, and other types of single-use plastic cups, effective:
 1. January 1, 2029, through December 31, 2030—no less than 20 percent PCRC

- plastic by weight; and
- 2. on and after January 1, 2031—no less than 30 percent PCRC plastic by weight;
- for thermoform plastic containers for consumable goods, effective:
 1. January 1, 2031, through December 31, 2035—no less than 10 percent PCRC plastic by weight; and
 2. on and after January 1, 2036—no less than 30 percent PCRC plastic by weight;
- for thermoform plastic containers for durable goods, effective on and after January 1, 2036, no less than 30 percent PCRC plastic by weight; and
- for plastic plant pots or trays, effective:
 1. January 1, 2026, through December 31, 2030—no less than 30 percent PCRC plastic by weight; and
 2. on and after January 1, 2031—no less than 80 percent PCRC plastic by weight.

Ecology must consult with the Liquor and Cannabis Board to implement and enforce PCRC for cannabis and cannabis products.

Implementation for existing PCRC requirements for beverages other than wine and dairy milk are delayed till 2024.

Deposit Return System. As an alternative to satisfying their compliance obligation under the PRO program for qualifying beverage containers, a PRO and Ecology may not consider qualifying beverage containers to be covered products under the PRO program upon a distributor responsibility organization's (DRO) establishment and operation of a deposit return system (DRS) for the qualifying beverage containers.

The provisions of the DRS program do not apply to qualifying beverage containers unless and until a DRO, other than a single distributor independently complying with the requirements of a DRO, is established and files a written notice with Ecology at, or prior to, the time of PRO registration, that the DRO will establish and operate a DRS.

Upon the receipt of the written notice by Ecology, all qualifying beverage containers of all producers subject to the PRO program cease to be considered covered products for purposes of the PRO program and are instead subject to the requirements of the DRS program.

"Distributor" means every person or entity who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer or importer who engages in such sales, and dealers who self-distribute their own brands.

"Dealer" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer and engages in the sale of beverages in qualifying beverage containers.

"Distributor responsibility organization" means a cooperative association that is designated by a group of distributors representing the majority of beverages sold in qualifying beverage

containers in the state, to develop and carry out activities required of distributors by the DRS program.

"Qualifying beverage containers" mean any individual, separate, sealed glass, metal, or plastic bottle or can, except for a carton, foil pouch, drink box, or metal container that requires a tool to be opened, that contains any beverage intended for human consumption and in a quantity greater than 4 ounces and less than or equal to 1 gallon. Beverage containers for dairy milk and infant formula are not considered qualifying beverage containers.

Distributor Responsibility Organizations. Beginning July 1, 2024, or four months after a DRO is approved by Ecology, whichever is later, each distributor that sells or distributes in or into Washington beverages in qualifying beverage containers must join a DRO or independently carry out all duties of a DRO. Distributors that have not joined a DRO, or that do not independently fulfill the duties of a DRO may not sell or supply beverages in qualifying beverage containers after October 1, 2024, or 120 days after a DRO is approved by Ecology, whichever is later, in or into Washington.

To qualify as a DRO for purposes of establishing the DRS, an organization must demonstrate to Ecology that its initial membership represents the majority of beverages in qualifying beverage containers sold or made available for sale in the state .

A DRO registering with Ecology must submit with its registration a list of its member distributors, their brands of beverages in qualifying beverage containers, and the total gross sales volume of beverages in qualifying beverage containers distributed by its members in Washington during the preceding year, representing a majority of such sales in the state.

By June 30th of the fiscal year of initial DRO registration and every June 30th thereafter, a DRO registered with Ecology must submit an annual payment to fund the costs to implement, administer, and enforce the program.

Beginning July 1, 2026, or within 180 days of the adoption of rules related to the program, a DRO must submit a plan to Ecology that meets the requirements of the program.

A DRO registered with Ecology must implement a DRS by July 1, 2027, or within one year of adoption of rules relating to the program.

A DRO may not distribute or otherwise disseminate funds from unclaimed refunds to members of the distributor cooperative as a dividend.

Deposit Return System Performance Requirements. A DRO must demonstrate that all qualifying beverage containers are designed to be reusable or recyclable by January 1, 2031, according to criteria established by Ecology.

For materials reclaimed under a DRS, the calculation point for the redemption rate is the number of qualifying beverage containers redeemed statewide by the DRO divided by the number of qualifying beverage containers sold in the state by members of the DRO. The reuse sales rate is the number of units in reusable packaging sold in a year.

At a minimum, each DRO plan must achieve the following performance requirements: by 2028, a minimum of 60 percent of all qualifying beverage containers are redeemed for reuse or recycling through the DRS;

- by 2031, a minimum of 80 percent of all qualifying beverage containers are redeemed for reuse or recycling; and
- by December 31, 2031, sales of beverages in reusable packaging must reach at least one percent of all qualifying beverage containers.

Deposit Return System Plan. Ecology must make a determination of approval of a DRO's plan to operate a deposit return system based on the following program criteria:

- the DRO presents a plan that imposes a refund value of \$0.10 for qualifying beverage containers under the plan;
- the plan includes a method for paying the refund value and collecting qualifying beverage containers from consumers; and
- other elements to meet program requirements.

If a deposit return system is approved by Ecology, then for the duration of the plan, all qualifying beverage containers sold or offered for sale must carry a \$0.10 refund value, be registered annually with the DRO, sold by a member of the DRO or individually complying distributor, and carry a clear and conspicuous marking indicating the refund value of the container. For wine containers, the indication of refund value may be satisfied through the use of a quick response code.

Operation of Deposit Return System. A DRO must, at its own cost, provide a convenient bulk drop-off option for bagged qualifying beverage containers at geographically dispersed locations in Washington that sell beverages in qualifying beverage containers, and are located a convenient distance from a dealer, or are located at a publicly owned facility.

A DRO may not charge customers for the drop-off service and must credit the cost of any required bag purchase back to the customer when the bag is processed. If drop-off bags are made of plastic film, the bags must have a minimum 50 percent recycled content.

Upon launch of the deposit return system, the DRO must provide at least 270 bag drop sites around the state, with at least one drop site located in each county, and at least one drop site located in each island community served by the state ferry system, distributed by county proportional to the volume of qualifying beverage containers sold in each county. Within two years of operation, the DRO must add an additional ten drop-off locations. The additional locations must be agreed upon by the DRO and Ecology, in consultation with the consumer convenience advisory council, balancing the need for consumer convenience and

access in rural counties, small cities, and underserved areas, and data regarding where beverages in qualifying beverage containers are sold. Five years after the DRO is required to provide 280 drop-off locations, every five years after that, the DRO must calculate an updated number using a calculation formula based on proportional volume of beverages sold, with consideration of consumer convenience. If the calculation determines a need for additional sites, the DRO must provide Ecology with a list of proposed locations. The DRO must make the new locations available within three years. Drop-off locations may be located at dealers, or any publicly owned facility convenient to consumers, but dealers or publicly owned facilities are not obligated to accept returned qualifying beverage containers or to allow a bag drop-off site to be sited at the dealer or publicly owned facility.

The DRO is not required to accept or pay refunds for any beverage container that:

- visibly contains or is contaminated by a substance other than water, residue of the original contents, or ordinary dust;
- is crushed, broken, or damaged to the extent that the brand appearing on the container cannot be identified; or
- for which the DRO has reasonable grounds to believe was not purchased through the state's DRS, or for which a refund has already been given.

Distributor Responsibility Organization Reporting. Beginning July 1, 2028, and July 1st thereafter, a DRO must submit an annual report to Ecology for the preceding calendar year of plan implementation. Each report must include data, descriptions, and other information sufficient to allow Ecology to determine whether a DRO has fulfilled its obligations under the program for the preceding calendar year.

Each annual report must include the final destinations of recycled material managed by the program, the number of qualifying beverage containers redeemed in aggregate, and by material categories, the annual redemption rate and reuse sales rate, and the total budget for the DRO, the total value of unclaimed refunds used by the DRO to support operations.

Consumer Convenience Advisory Council. In coordination with Ecology, the DRO must establish a consumer convenience advisory council, consisting of representatives of the DRO, a grocery association, cities, counties, and an environmental organization. The council must work with the DRO to identify potential bag drop-off locations and achieve consumer convenience requirements.

Consumer Convenience Assessment. In the fifth full year in which a DRO operates a deposit return system, Ecology, in partnership with the DRO, and in consultation with the consumer convenience council must conduct an assessment of consumer convenience, identifying any barriers to achieving the drop-off locations required by the consumer convenience requirements and any other potential barriers to consumer convenience or participation.

Independent Refund Program. A small distributor that is also manufacturer may operate an

independent refund program if it meets criteria related to number of beverages sold or distributed, reusable packaging, and refund value for redemption.

Payment for Other Collection Methods. The DRO must accept and pay the full refund value for any qualifying beverage containers presented to it by material recovery facilities, government entities, and other processing facilities handling recyclable materials as long as the qualifying beverage containers have been collected and separated in accordance with standards established by the DRO and are delivered directly to a DRO processing facility.

Education and Outreach. To support the achievement of performance rates and other program requirements, a DRO must develop and provide outreach and educational materials, resources, and campaigns about the program to be used by dealers, government entities, and nonprofit organizations.

A DRO must coordinate and fund the distribution and deployment of statewide promotional campaigns through media channels that may include print publications, radio, television, the Internet, and online streaming services.

A DRO must use consistent and easy to understand messaging and materials that are conceptually, linguistically, and culturally accurate for the communities served.

Some of the aims of education and outreach materials are to educate and engage with residents on recycling, reuse, and refill practices, describe where and how to redeem qualifying beverage containers, and reduce resident confusion regarding the recyclability of qualifying beverage containers.

A DRO must establish a process for answering customer questions and evaluate the effectiveness of education and outreach efforts for purposes of making progress toward performance requirements.

A DRO must coordinate with government entities that choose to participate in carrying out education and outreach activities and any other DROs to present a consistent statewide program.

Penalties. Upon notice of a significant program violation, after a cure period of 60 days, Ecology may assess a civil penalty of at least \$200 per violation per day, but no more than \$500 per violation per day.

In lieu of any other penalties for not achieving performance criteria, should the redemption rate performance requirements not be met, the DRO must annually calculate the number of containers representing the difference between the redemption rate of qualifying beverage containers and the redemption rate performance requirements, and pay a penalty that is equal to \$0.10 multiplied by the number of containers representing the difference. There is no penalty assessed to the DRO related to the reuse performance requirements.

After July 1, 2027, or the date in which a DRO begins operating a deposit return system, whichever is later, and after notification of noncompliance and a 60-day cure period, Ecology must impose a civil penalty to any distributor who fails to participate in a DRO, or fails to otherwise comply with program requirements by independently carrying out the duties of a DRO. The penalty must be at least \$0.15 per qualifying beverage container sold or made available for sale, or \$10,000, whichever is greater.

Recycling Revenue Augmentation Fund. The Department of Commerce (Commerce) must create and administer a recycling revenue augmentation fund, funded by a DRO, for the first five years in which a DRO operates a DRS in the state. For the first five years in which a deposit return system is operated by a DRO, a DRO must remit \$15,000,000 by December 31st of each year for the first five years of the deposit return system's operation to the fund. Beginning January 1st of the year following the year in which a DRO first operates a DRS, and each January 1st for the following four years, Commerce must accept requests annually from local governments, or operators of recycling programs in the state to receive funds to offset revenue losses from the previous year.

These requests must include third-party audited financial data demonstrating any revenue losses from the value of scrap materials diverted by operation of the DRS, less any decreased operating costs from not collecting, hauling, processing, or landfilling the material, and less any material weight losses represented by the operator serving fewer accounts.

Commerce must distribute funds to operators of recycling systems proportionally, based on valid requests and available revenue in the fund.

Deposit Return Organization Program Account. The Deposit Return Organization Program Account is created for implementing, administering, and enforcing the requirements of the DRS program. All receipts received by Ecology under the program must be deposited in the account.

Damages for Failure to Pay Refund Value. Unless specified in a DRO's bylaws or in a contract between a DRO and an individual distributor arranging specifically for the collection of beverage containers sold for the purpose of consumption on premises, any manufacturer, distributor, or importer that fails to pay to the DRO the refund value of beverage containers included in the program is liable to the DRO for treble the unpaid refund value and treble the collection costs incurred by the DRO for any beverage containers that were sold without the refund value of the container being remitted to the DRO.

Prohibition on Uses of Funds. A PRO may not use program funds for costs associated with program penalties, litigation between the PRO and the state, lobbying, or advertisements related to the passage of legislation.

This requirement does limit the authority of a PRO to collect funds, such as through a special assessment, for these purposes or for other non-program purposes.

Department Duties. Ecology must implement, administer, and enforce the PRO program and DRS program. Ecology must prepare a workload analysis that identifies the projected annual costs to implement, administer, and enforce these programs, in the next fiscal year, and determine a total annual fee payment to be paid by each PRO and DRO that is adequate to cover, but not exceed these costs.

For PROs, Ecology must apply any remaining annual payment funds from the current year to the annual payment for the coming fiscal year, if the collected annual payment exceeds the identified costs for a given year, and increase annual payments for the coming fiscal year to cover the identified costs, if the collected annual payment was less than the amount required to cover those costs for a given year.

Ecology must review and approve plans, reports, and PRO proposed performance rates, and make them available for public review.

Ecology may by rule require PROs to fund activities to make convenient collection services available for recycling of covered products from locations or entities determined to be significant sources of covered product waste and that are additional to those locations identified under convenience standard requirements. These locations or entities may include, but are not limited to, public places and official gatherings. Rules for these additional collection services apply to PROs no earlier than January 1, 2029, and may be updated no more frequently than every five years.

In lieu of DRO fees established by Ecology, after October 1, 2024, or 120 days after a DRO is approved, whichever is later, a distributor independently carrying out the duties and requirements of a DRO must pay a registration fee to Ecology equal to \$0.10 per qualifying beverage container until such time as a DRO begins operating a deposit return system.

Ecology must maintain a website that lists each PRO and DRO along with its members and covered products and makes available each plan and annual report received by Ecology.

Contingency Plans. PROs must submit a contingency plan to Ecology demonstrating how the activities in the plan will continue to be carried out by some other entity, if needed, such as an escrow company:

- until such time as a new plan is submitted and approved by Ecology;
- upon the expiration of an approved plan;
- in the event that the PRO has been notified by Ecology that they must transfer implementation responsibility for the program to a different PRO or DRO;
- in the event that the PRO notifies Ecology that it will cease to implement an approved plan; or

- in any other event that the PRO can no longer carry out plan implementation.

The contingency plan must be submitted as a component of the PRO's initial plan submitted to Ecology.

If a DRO ceases to exist and operate a deposit return system, other than for temporary disruptions due to unforeseen circumstances, as determined by Ecology, qualifying beverage containers become covered products under the PRO program.

Feasibility Study. By December 1, 2025, Ecology must complete and publish on its website a feasibility analysis to:

- identify options to improve the convenience experienced by consumers with unwanted products or packaging covered by state product stewardship, extended producer responsibility, and similar takeback programs, by harmonizing or establishing a system of common or centralized takeback centers or depots for consumers; and
- consider the viability, costs, and tradeoffs associated with each option that might lead to improved outcomes for consumers and improved end-of-life management outcomes for covered unwanted products.

Ecology must deliver policy recommendations to the Legislature by December 1, 2025.

Litter Tax Study. In consultation with PROs and DROs, Ecology and the Department of Revenue (DOR) must study:

- the impacts of producer and distributor requirements under the PRO and DRS programs on the litter rates of covered products and qualifying beverage containers; and
- possible improvements to the structure of the litter tax, including but not limited, administration, compliance, and distribution of the tax and application of the tax to certain products, for achieving its purpose.

By January 1, 2029, Ecology, in consultation with DOR, must provide recommendations to the appropriate committees of the Legislature on:

- applicability of the litter tax to covered products and qualifying beverage containers, based on whether the purpose of the litter is being achieved for those products by the requirements of the PRO and DRS programs; and
- improvements to the structure of the litter tax for meeting the tax's purpose.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Revises definition of "compostable" to include that the product is in compliance with state requirements for labeling a product as compostable.
- Revises definition of "covered product" to specify that covered packaging and paper

products are products sold or supplied to consumers for personal, non-commercial use.

- Removes source reduction provision prohibiting replacing the plastic component with a nonplastic component when removing a plastic component from covered material.
- Specifies that PRO program exclusion of qualifying beverage containers subject to the deposit return program does not include secondary or ancillary packaging.
- Exempts liquified petroleum gas containers that are designed to be refilled and reused.
- Exempts packaging material that is in direct contact with a product that is regulated as animal biologics from the PRO program.
- Exempts packaging related to containers of architectural paint that have been collected under the PaintCare program.
- Exempts newspapers and paper designed for use in building construction.
- Revises the definition of "producer" to specify for retail brands that the producer is the retail brand owner, that for packaging not covered under physical retail and remote sale provisions, the producer is the first distributor, and that a person who would be considered a producer can designate another responsible producer if they accept responsibility.
- Adds a definition for "responsible producer," which means a producer that is not a de minimis producer.
- Revises the definition of "reusable" to include packaging supported by adequate and convenient availability of services or infrastructure to ensure the packaging can be reused or refilled multiple times.
- Delays PRO program implementation dates by six months.
- Requires the initial PRO plan period to begin with a single PRO and any individually complying producers, allowing multiple PROs to register beginning in the second plan period.
- Specifies that Ecology rulemaking for additional collection at public places and official gatherings is limited to locations where a local government provides solid waste services and that locations may not include retail establishments.
- Directs the performance rates study to use relevant information from Ecology's 2020 plastic packaging study reports.
- Specifies that the needs assessment include sparsely populated, remote areas and dense urban areas when compiling information related to costs for government entities, and that reimbursement formulas consider whether a jurisdiction receives recycled commodity material revenue.
- Requires any needs assessment update to include an evaluation of public place recycling needs prior to Ecology considering public place recycling funding activities through rulemaking.
- Provides that a needs assessment performed prior to January 1, 2029, that includes an analysis of the plastic resin market is sufficient to meet the requirement for a study on the plastic resin market under postconsumer recycled content provisions.
- Removes several requirements under the stakeholder consultation process, including quarterly meetings, UTC prudency review, and consultation on reimbursement rates.

- Specifies that nothing in the program requires any individual producer to redesign covered products or an individual product to be redesigned to meet program performance requirements.
- References the utilization of material recovery facility reporting in producer requirements to ensure and report on responsible management practices through final disposition of the product.
- Specifies that the development of a process to resolve disputes between a PRO and a government entity or service provider is a third-party process.
- Requires a description of how the PRO will coordinate with any DROs as part of PRO plans.
- Changes the initial plan period from three years to five years.
- Removes provisions on the calculation points for measuring performance rates and directs Ecology develop rules for measuring material category performance rates.
- Specifies that the PRO funding de minimis level shall be determined by weight of covered products sold.
- Specifies that a PRO fee system must seek to avoid a material category that subsidizes any other material category.
- Amends references to composting throughout the bill to specify that it includes home and industrial composting.
- In service areas regulated by the UTC and designated as rural with no curbside recycling collection service, authorizes a county to adopt by ordinance that covered products be collected exclusively through alternate collection.
- Specifies that UTC-regulated service providers align with service standards for curbside collection by the PRO plan to be eligible for reimbursement.
- Eliminates provisions to be carried out by PROs as part of any contractual agreements with service providers outside of curbside collection services.
- Specifies enabling composting of covered products as a purpose of infrastructure investments.
- Requires PROs to prioritize investments in preexisting infrastructure within Washington.
- Removes assessment of net greenhouse gas emissions from annual reporting requirements.
- Removes requirement that auditing determine whether all facilities involved in collection, processing, and final disposition for covered products are operating in accordance with program requirements and responsible management practices.
- Specifies that local government representatives on the advisory council include two representatives of counties and two representatives of cities, each with one representative of urban communities and one representative of rural communities.
- Requires Ecology to provide notice of a program violation to producers and allow a 60-day cure period before imposing a penalty.
- Directs PRO penalties to be deposited in the Recycling Enhancement Account.
- Specifies that truth-in-labeling provisions apply to covered products, certified PCRC products, and qualifying beverage containers.
- In considering petitions for exemption, directs Ecology to consider the exemption

based on reasons of public health and safety.

- Allows Ecology to exempt packaging by category or subcategory of product, and to authorize exemptions for any products subject to requirements under federal laws that make their inclusion in the program infeasible or inadvisable.
- Removes intent language stating that the policy of the state is to achieve an overall recycling and reuse rate of 90 percent by 2035.
- Adds intent language that Washington should maintain the successful public-private partnership between the state, local governments, and solid waste and recycling service providers.
- Renames certificated PCRC products as certified PCRC products.
- Revises "plastic beverage container" to specify that is solely made of plastic and includes a container's cap or lid, but does not include paper-based beverage containers, containers for drugs, or liners, corks, closures, labels, and other items added externally or internally but otherwise separate from the structure.
- Aligns PCRC and certified PCRC "producer" definitions with new PRO "producer" definition.
- Excludes commercially or home compostable containers from "thermoform plastic containers."
- Delays implementation of PCRC for beverage containers to January 1, 2024.
- Removes the requirements of a submittal of a certificate of compliance with a PCRC report, and instead allows PCRC product and PCRC certified product producers to maintain a certificate of compliance on file.
- Allows PCRC product producers to submit a petition for exclusion or adjustment outside of annual reports.
- Removes provision allowing PROs to establish PCRC requirements, increase PCRC requirements, or accelerate timelines to meet PCRC requirements.
- Removes provisions establishing PCRC requirements for pesticide packaging.
- Restores ability of certified PCRC product producers subject to federal laws to apply for temporary exclusion or adjustments based on technical feasibility.
- Removes PCRC requirements for cannabis packaging.
- Allows a beverage container for wine to satisfy the requirement to indicate the refund value of the container through the use of a QR code.
- Requires a DRO to describe how the deposit return system will interact with the PRO program.
- Specifies that nothing in the deposit return program provisions requires a person to use a deposit return system or precludes the disposal for recycling of qualifying beverage containers via curbside recycling collection systems;
- Amends references to service standards as service standards for curbside recycling collection services.
- Directs the Liquor and Cannabis Board (LCB) to update rules related to containers for marijuana, with the goals of reducing plastic packaging and encouraging the reuse of containers, and authorizes LCB to establish minimum PCRC for containers.
- Adds an intent section to the deposit return system portion of the bill.
- Requires producers of qualifying beverage containers to satisfy PCRC requirements

- through limited participation in a PRO, rather than through a DRO.
- Clarifies that if a deposit return system is established, qualifying beverage containers may not be considered covered products that require participation in a PRO.
 - Excludes closures and labels for qualifying beverage containers from the scope of covered products under PRO requirements.
 - Clarifies that if a distributor of beverage containers opts to independently carry out the responsibilities of a DRO, it must fulfill all duties and requirements that apply to the DRO, including providing a convenient bulk bag drop off system, providing the same number, geographic distribution, and drop off locations that DRO must provide, and meeting performance targets.
 - Specifies that distributors that do not join a DRO or independently fulfill a DRO's responsibilities may not sell beverages in qualifying beverage containers 120 days after a DRO is approved by Ecology.
 - Eliminates restrictions on who may participate on the governing board of a DRO.
 - Eliminates requirements that a DRO report separately to Ecology as part of its registration on the number of qualifying beverage containers solid in Washington that are reusable or compostable.
 - Requires DRO annual payments of Ecology's oversight costs by June 30 of each year, rather than by December 31.
 - Establishes an annual payment rate to Ecology for Ecology's oversight costs of ten cents per beverage containers.
 - Requires a deposit return system to be implemented within one year of Ecology's adoption of rules pertaining to deposit return systems, rather than two years after registration with Ecology.
 - Eliminates the DRO's obligations to pay for updated performance rates studies undertaken by Ecology.
 - Eliminates the DRO's obligations to pay for the PRO's advisory council, and eliminates the PRO advisory council's oversight of DRO operations.
 - Establishes a consumer convenience advisory council comprised of specified membership, and with responsibility for working with the DRO to identify potential bag drop off locations.
 - Eliminates the prohibition on the use of unclaimed deposits and commodity sale revenues for the payment of penalties, litigation, lobbying, or political advertisements.
 - Specifies that a DRO may not distribute funds from unclaimed refunds to members of the DRO.
 - Eliminates the requirement that Ecology make DRO plans and annual reports subject to public comment for 30 days prior to Ecology's approval decision.
 - Eliminates the authority of Ecology to amend the contents of a DRO plan in the event that a DRO fails to submit a sufficient plan after a previous Ecology disapproval of a DRO plan.
 - Authorizes Ecology to review a DRO's records to assess records specifically related to the accuracy of the redemption rate reported by the DRO.
 - Authorizes Ecology to require a DRO to identify priority areas for drop off access to

- be provided in the event that a DRO fails to meet minimum redemption performance rates and is made to pay a penalty to Ecology.
- Requires a DRO to add at least ten additional drop off locations within two years of the initiation of deposit return system operations, and to increase the number of beverage container drop-off sites from 280 based on a capacity formula tied to the volume of beverage sales in Washington that is recalculated every five years.
 - Requires local governments to coordinate with DROs to identify opportunities for the siting of collection infrastructure, including on city and county properties where appropriate, to ensure convenient statewide access of drop-off locations.
 - Allows for a DRO to establish an alternative access drop off plan for any counties that do not reach a proportional level of sited drop sites.
 - Requires retailers over 5000 square feet with sales of qualifying beverage units over 100,000 annually to install self-serve kiosk to facilitate the printing of redemption vouchers, pay redemption voucher values, and sell bags for redemption at the DRO-established price.
 - Requires a DRO to establish a geographically-distributed network of processing facilities across Washington to facilitate bagged container returns by nonprofit organizations.
 - Amends the standards by which a DRO is not required to pay the redemption value for a returned bottle to allow for DRO nonpayment for any beverage container that the DRO has reasonable grounds to believe were not purchased in Washington or for which a refund has already been provided, rather than requiring evidence of such factors.
 - Requires a consumer convenience assessment to be carried out by Ecology in partnership with the DRO to assess customer convenience provided by the program.
 - Eliminates stakeholder consultation requirements applicable to DRO planning and operations.
 - Amends the standards for the payment of beverage container refund value for qualifying beverage containers returned to the DRO by material recovery facilities, government entities, and other processing facilities.
 - Eliminates human health and environmental protection standards that apply to facilities managing qualifying beverage containers.
 - Eliminates requirements that the DRO include certain tracking and reporting measures related to material recovery facilities and other infrastructure used by the deposit return system.
 - Amends and limits the contents of the plans and annual reports that a DRO must submit to Ecology for approval prior to the establishment of a deposit return system.
 - Amends the minimum and maximum volumes of qualifying beverage containers that must be managed through the deposit return system to those containers of less than one gallon and greater than four ounces.
 - Restricts Ecology—and independent audits that Ecology may require a DRO to carry out—from reviewing the financial details of a DRO.
 - Changes provisions related to Ecology enforcement of program requirements, including authorizing Ecology to impose a penalty of \$0.15 per qualifying beverage

- container of any distributor that fails to participate in a DRO, and eliminating provisions related to Ecology issuance of orders and other civil penalty authorities.
- Lowers the minimum reusable packaging performance rate that a DRO must achieve to 1 percent of all qualifying beverage containers by December 31, 2031, and eliminates the authority for Ecology to impose penalties for the failure to achieve reuse performance rates.
 - Eliminates restrictions on the use of alternative recycling technologies by a DRO.
 - Eliminates contingency plan submission requirements for DROs.
 - Authorizes manufacturer distributors that produce a de minimis quantity of beverages to operate an independent refund program that meets an alternative set of requirements, including a refund value of more than \$0.10, the use of beverages that are packaged in reusable containers, and convenient consumer return pathways, rather than requiring such manufacturer distributors to participate in a DRO or independently fulfill a DRO's responsibilities.
 - Specifies that if a DRO ceases to implement a deposit return system, qualifying beverage containers revert to being covered products subject to PRO participation requirements.
 - Requires a DRO to remit \$15 million by December 31 of each year for the first five years a deposit return system to a recycling revenue augmentation fund.
 - Makes Commerce responsible for the implementation of the Recycling Revenue Augmentation Fund (RRAF), to provide funds to offset revenue losses to local governments and operators of drop off recycling programs.
 - Creates new accounts related to the RRAF, Commerce's CRAF oversight, and Ecology's DRO oversight.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill is a much needed modernization of the recycling system, building on work from four years ago when statewide goals were adopted for recycling standards and recycled content for plastic. Today's bill includes recommendations from that 2019 report and brings producers together to reduce statewide packaging and ensure that waste in bins gets turned into something new. Those of us who do recycle play a daily game of can it be. Much of what we think is recyclable can't be recycled. You can't drive down the highway or go to a park without seeing litter. Things won't change unless we act. This system has been in place in Europe and Canada for years resulting in more recycling and less garbage. It has recently been adopted in other states and it is time for the Evergreen State to take action.

The bill was vetted in the legislative process last year and is ripe for passage this year. There is a statewide coalition that recognizes that recycling can do better. It's a big bill that addresses the system holistically. It's important that producer responsibility and beverage deposit go hand in hand for optimal systems.

We want to increase the performance and success of the recycling system but the current process has got us as far as we can. Residents are dealing with a constantly changing waste stream. Those making the decisions are not necessarily facilitating recycling improvement. The bill will increase access to curbside recycling in the state. Only about half of current waste in the system is recycled. There is a need to improve commodity markets to create a circular economy. Reducing waste will also help reduce emissions and help us achieve state greenhouse gas goals.

The WRAP act protects enjoyment of wildlife and habitat and the environment we live in, without the plastic litter that ends up in these places. The act inspires hope in our citizens. Our environment is our legacy. Recycling is something that people wished they had more access to. The bill holds producers of plastic accountable for pollution from their products.

CON: We do believe work can be done to address issues raised, like the definition of producer and the goal setting process and the way the PRO is set up. We are concerned about timeframes for registration, inclusion of a source reduction goal, recycled content rates, and the excessive PRO consultation process.

We are concerned about protection of existing infrastructure and investments. The bottle bill would undermine existing investments and is problematic and burdensome, requiring sites to hold on to bottles until pick up. We are asking that FDA and other federally regulated products be exempt. The current exemption process is cumbersome and puts industries at risk. There is not a specific exemption for excluding packaging recycled outside of the residential system.

Small stores do not have the ability to be producers. We would ask for an additional study to look at impacts to product costs. This bill doesn't address commercial recycling, which is one of the biggest problems in recycling. We have very good recycling rates compared to the rest of the nation. Low hanging fruit in states with low rates such as Colorado will not be addressed with this bill and it will lead to increased costs for consumers.

Nationally, paper product recyclability rates are high, with sustainable end markets. We have concerns about cross material subsidization, and want to ensure producers are responsible for their own products. We would like to see additional tools to allow innovative technologies to enable recycling. We would like to see a needs assessment before passage of the bill. We have concerns over the reuse and refill requirements and the wine industry would like to be able to use a QR code over any labeling requirements.

OTHER: EPR policies should provide convenience to consumers, be financially sustainable, offer materials to producers for closed loop recycling, and achieve positive environmental outcomes. We have supported other states that have embodied these principles but the current version of the bill adds layers of bureaucracy and audits. Oregon has a successful deposit program that is popular with residents there. The goal is to work with the sponsors and take the best of the Oregon system and build from there.

A successful program can provide equitable and universal access and improve current recycling systems and programs. We are pleased to see best practices from other EPR bills in the current proposal, such as use of the assessment to inform performance rates. We would like to see the program start with a single PRO before opening it up to additional PROs.

The WRAP act would modernize and improve the system, increasing recycling access across the state. We are excited to see incentives to increase recyclability and reusability and a statewide list of recyclables. We would like to highlight lost revenue in curbside systems from deposit program and would like to see support for this.

We are supportive of a well structured deposit return system for quality glass leading to higher recycling and reuse rates. We are supportive of refill and reuse rates, but it is a bit of a steep goal. Infrastructure needs to be established before refill goals can be reached. Newsprint is the single most historically recycled product and most valuable product in the recycling system until the onset of internet commerce.

Persons Testifying: PRO: Senator Christine Rolfes, Prime Sponsor; Mignon Senuta, Digimarc; Kate Bailey, The Association of Plastic Recyclers; Ramsey Doudar, Patients & Users for Reasonable Policy (PURP); Ann Murphy, League of Women Voters of Washington; Marlene Feist, City of Spokane; Scott Hazlegrove, WA Beer & Wine Distributors Association; Ezra Eickmeyer, Terramer Inc.; Thessalonika BENNY; Clifford Traisman, Washington Conservation Action; Carl Schroeder, Association of Washington Cities; Brenda Fincher, City of Kent Councilmember; Melissa Stuart, City of Redmond Councilmember; Pam Clough, Environment Washington; Manya Gupta, Juanita High School (student); Giovanni Severino, Latino Community Fund; McKenna Morigan, Seattle Public Utilities; Preston Peck, City of Tacoma | Environmental Services Department; Pat McLaughlin, King County; Staci McMahan, Seattle Aquarium; Blair Englebrecht, Puget Soundkeeper Alliance; Charlie Schneider, WashPIRG Students; Annabella (Bella) Hillyer, UW student; Dax Tate, WashPIRG; Heather Trim, Zero Waste Washington.

CON: Andrew Hackman, AMERIPEN; Christopher Reigelsperger, Waste Management; Samantha Louderback, Washington Hospitality Association; Carlos Gutierrez, Consumer Healthcare Products Association (CHPA); Katie Beeson, Washington Food Industry Association (WFIA); Vicki Christophersen, Washington Refuse and Recycling Association; Candace Joy, WA State Veterinary Medical Association; Steve Wulf, Sunshine Disposal; Rodd Pemble, Sanitary Service Company; Ron Phillips, Animal Health Institute; Mark

Gingrich, Waste Connections; Craig Smith, Food Northwest; Darbi Gottlieb, AdvaMed; Erin Hall, American Forest and Paper Association; Brandon Houskeeper, Northwest Grocery Association; Jacob Cassady, Association of Home Appliance Manufacturers (AHAM); Rowland Thompson, The Wine Institute; Tim Shestek, American Chemistry Council; Logan Harvey.

OTHER: Alex Truelove, Biodegradable Products Institute; Eric Chambers, Oregon Beverage Recycling Cooperative; John Worthington; Laurie Davies, Washington State Department of Ecology; Brad Boswell, Washington Beverage Association; Dylan de Thomas, The Recycling Partnership; Brendan Flanagan, Consumer Brands Association; Travis Dutton, Washington State Association of Counties and Washington Association of County Solid Waste Managers; Marian Dacca, Glass Packaging Institute (GPI); Rowland Thompson, Allied Daily Newspapers of Washington, Washington Newspaper Publishers Association; Mark Johnson, Washington Retail Association; Josh McDonald, Washington Wine Institute.

Persons Signed In To Testify But Not Testifying: PRO: Ramsey Doudar, Patients & Users for Reasonable Policy (PURP).

CON: Carol Patterson, Foodservice Packaging Institute; Wendy Weiker, Republic Services; Peter Godlewski, Association of Washington Business.

OTHER: Heidi McAuliffe, American Coatings Association; Daniel Groce, Novelis; Mike Smaha, Can Manufacturers Institute; James Toner, IBWA; John Worthington.